

A toy manufacturer that has its headquarters and sole manufacturing plant in a particular state has developed a "Martian" toy that simulates the exploration of Mars by a remote-controlled vehicle. It accurately depicts the Martian landscape and the unmanned exploratory vehicle traversing it. The toy is of high quality, is safe and durable, and has sold very well.

Other toy manufacturers, all located outside of the state, have developed similar toys that are lower in price. These manufacturers have contracts to sell their Martian toys to outlets in the state. Although these toys are safe and durable, they depict the Martian landscape less realistically than the toys manufactured in the state. Nevertheless, because of the price difference, sales of these toys have cut severely into the sales of the Martian toys manufactured in the state.

The state legislature has recently enacted a law "to protect the children of this state from faulty science and to protect in-state toy manufacturers from unfair competition." The law forbids the sale in the state of any toy that purports to represent extraterrestrial objects and does not satisfy specified scientific criteria. The Martian toy manufactured in the state satisfies all of these criteria; none of the Martian toys of the competing manufacturers meet the requirements.

Is the state law constitutional?

- A. No, because it abrogates the obligations of the contracts between the other toy manufacturers and the in-state outlets that have agreed to sell their Martian toys.
- B. No, because it imposes an undue burden on interstate commerce.
- C. Yes, because it deals only with a local matter, the sale of toys in stores located within the state.
- D. Yes, because the state's interest in protecting the state's children from faulty science justifies this burden on interstate commerce.

Explanation:

Discrimination against out-of-state commerce

Type	Description	Example
Facial discrimination	Regulation's language explicitly favors in-state commerce	"Corn grown out-of-state must satisfy more extensive safety measures"
Discriminatory application	Facially neutral regulation applied to favor in-state over out-of-state commerce	State inspects corn grown out-of-state but not corn grown in-state
Discriminatory effect	Otherwise neutral regulation disproportionately affects out-of-state commerce	Enforcement of safety measures results in ban of corn grown out-of-state only

The commerce clause grants Congress extensive power to regulate interstate commerce—ie, nearly all activities involving two or more states. In the inverse, the **dormant commerce clause prohibits states** from **discriminating against out-of-state commerce** or otherwise unduly burdening interstate commerce. A state regulation can discriminate three ways:

- **on its face** – when language of a regulation expressly favors in-state interests
- **in its application** – when a facially neutral regulation is applied in favor of in-state interests
- **in its effect** – when an otherwise neutral law disproportionately impacts out-of-state commerce

A discriminatory regulation violates the dormant commerce clause unless the state proves that the regulation (1) furthers a **legitimate, non-economic state interest** (2) that could **not** be achieved by **reasonable alternatives**.

Here, the state law is neutral on its face and in its application since it applies equally to in-state and out-of-state toy manufacturers. But since only out-of-state toy manufacturers are impacted by the law, it has a discriminatory effect. The state does have a legitimate, non-economic interest in protecting children from faulty science. But there are reasonable alternatives to achieve this interest—eg, requiring a disclaimer that the toy is not scientifically accurate (**Choice D**). Therefore, the law unduly burdens interstate commerce and is unconstitutional.

(Choice A) Under the **contracts clause**, state laws that substantially impair existing private contracts are valid if the impairment is (1) reasonable and narrowly tailored (2) to achieve an important state interest. This narrowly-tailored standard gives *more deference* to states

than the dormant commerce clause's no-reasonable-alternative standard. As a result, the statute is less likely to be invalidated under the contracts clause.

(Choice C) Although the law deals with the local matter of selling toys in stores located within the state, it also unduly burdens interstate commerce by discriminating against out-of-state manufacturers.

Educational objective:

A state regulation that discriminates—on its face, in its application, or in its effect—against interstate commerce is invalid unless (1) it furthers a legitimate, non-economic state interest and (2) no reasonable alternative exists.

References

- U.S. Const. art. I, § 8, cl. 3 (commerce clause).
- *Bacchus Imps. v. Dias*, 468 U.S. 263, 273 (1984) (holding that a state discriminated against interstate commerce when its regulation only negatively impacted out-of-state economic activities).
- 15A Am. Jur. 2d Commerce § 103 (2019) (explaining the types of discrimination against interstate commerce).

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