

Congressional committees heard testimony from present and former holders of licenses issued by state vocational licensing boards. According to the testimony, the boards had unfairly manipulated their disciplinary proceedings in order to revoke the licenses of some license holders as a means of protecting favored licensees from competition.

In response, Congress enacted a statute prescribing detailed procedural requirements for the disciplinary proceedings of all state vocational licensing boards. The statute requires the state boards to provide licensees with adequate notice and opportunity for an adjudicatory hearing in all disciplinary proceedings. The statute also prescribes membership criteria for state vocational licensing boards, designed to ensure that the boards are likely to be neutral.

Which of the following provides the best source of authority for this federal statute?

- A. Section 5 of the Fourteenth Amendment.
- B. The general welfare clause of Article I, Section 8.
- C. The privileges and immunities clause of Article IV, Section 2.
- D. The takings clause of the Fifth Amendment.

Explanation:

Fourteenth Amendment protections

| Clause | Applicability |
|----------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Equal protection | Discriminatory treatment of similarly situated people |
| Due process | Substantive – deprivation of life, liberty, or property without adequate <i>justification</i> Procedural – deprivation of life, liberty, or property without adequate <i>process</i> |
| Privileges or immunities* | Interference with rights of national citizenship |

*Rarely a correct answer.

Section 5 of the Fourteenth Amendment gives **Congress the power** to enact appropriate legislation to **enforce** the rights guaranteed by the amendment (eg, procedural due process). Legislation is appropriate under this section when it:

- seeks to **remedy or prevent** state action that violates the Fourteenth Amendment *and*
- is **narrowly tailored**—ie, its requirements are congruent with and proportional to the violations it addresses.

A violation of **procedural due process** occurs when the state fails to follow certain procedures when it intentionally deprives a person of a **life, liberty, or property interest** (eg, vocational license). These procedures include giving the person **notice** and a **meaningful opportunity to be heard** by a **neutral decision-maker**.

Here, state vocational licensing boards apparently violated procedural due process by unfairly manipulating their disciplinary proceedings. Congress attempted to remedy this by enacting a statute prescribing detailed procedural requirements for such proceedings in all states. This statute is narrowly tailored since its requirements—ie, adequate notice and a hearing before a neutral board—are the basic standards of procedural fairness. Therefore, section 5 of the Fourteenth Amendment is the best source of authority for this statute.

(Choice B) The Article I, section 8 general welfare clause empowers Congress to **spend** for the general welfare (ie, for any public purpose). But this clause does not apply because the statute is not a spending measure.

(Choice C) The [privileges and immunities clause](#) of Article IV, section 2 prohibits states from improperly discriminating against citizens of other states. Since this statute does not address discrimination against citizens of other states, this clause does not apply.

(Choice D) The Fifth Amendment [takings clause](#) prohibits governmental taking of private property for public use without just compensation. But this clause only applies to real or personal property—not vocational licenses.

Educational objective:

Congress can enforce Fourteenth Amendment rights through legislation that (1) seeks to remedy or prevent state violations of the amendment and (2) is narrowly tailored—ie, its requirements are congruent with and proportional to the violations it addresses.

References

- Tennessee v. Lane, 541 U.S. 509, 520 (2004) (explaining that Congress can enact laws to remedy or prevent Fourteenth Amendment violations if there is congruence and proportionality between the injury and the law).

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