

A state spends several million dollars a year on an oyster conservation program. As part of that program, the state limits, by statute, oyster fishing in its coastal waters to persons who have state oyster permits. In order to promote conservation, it issues only a limited number of oyster permits each year. The permits are effective for only one year from the date of their issuance and are awarded on the basis of a lottery, in which there is no differentiation between resident and nonresident applicants. However, each nonresident who obtains a permit is charged an annual permit fee that is \$5 more than the fee charged residents.

A large fishing company operates from a port in another state and is incorporated in that other state. Each of the company's boats has a federal shipping license that permits it "to engage in all aspects of the coastal trade, to fish and to carry cargo from place to place along the coast, and to engage in other lawful activities along the coast of the United States." These shipping licenses are authorized by federal statute. Assume no other federal statutes or administrative rules apply.

Although it had previously held a state oyster permit, the company did not obtain a permit in that state's lottery this year.

Which of the following is the strongest argument that can be made in support of a continued right of the company to fish for oysters this year in the state's coastal waters?

- A. The company has a right to fish for oysters in the state's waters despite the state law because it holds a federal shipping license.
- B. The refusal to grant the company a permit this year is a taking of its property without due process of law because the company previously held a state oyster permit and the state knows that the company is engaged in a continuing business operation.
- C. The state law denies the company the privileges and immunities of state citizenship because it provides higher permit charges for nonresidents.
- D. The state law is an undue burden on interstate commerce because it provides higher permit charges for nonresidents.

Explanation:

Under the **supremacy clause**, the provisions of the **U.S. Constitution, federal laws, and treaties** are the **supreme law of the land**. As a result, these provisions **preempt conflicting** provisions in state constitutions, **state laws**, and local laws—rendering such provisions void and without effect.

Here, the fishing company possesses a shipping license authorized by a federal statute that *permits* it to fish in the state's waters. But the state statute *prohibits* the company from fishing since it lacks a state-issued permit. Since these statutes conflict, the company's strongest argument is that its federal shipping license gives it a right to fish in the state's waters despite the state law.

(Choice B) The Fourteenth Amendment due process clause requires a state to provide notice and a meaningful opportunity to be heard to those it deprives of **life, liberty, or property**. But the company has no property interest in its *expired* state permit, so the state did not violate this clause.

(Choice C) The Article IV privileges and immunities clause prohibits states from discriminating against *citizens* of other states by denying them a **right of state citizenship**. But noncitizens and corporations (like the fishing company) are not considered citizens under this clause. Therefore, this clause does not apply.

(Choice D) The **dormant commerce clause** generally bars states from discriminating against or otherwise unduly burdening interstate commerce. But discrimination is permitted when the state participates in the market—ie, buys or sells goods or services. And since the state is *selling* permits to fish in its coastal waters, it can charge nonresidents more for a permit.

Educational objective:

Under the supremacy clause, the U.S. Constitution, federal laws, and treaties preempt conflicting state constitutions, state laws, and local laws.

References

- U.S. Const. art. VI, cl. 2 (supremacy clause).
- *Douglas v. Seacoast Prods., Inc.*, 431 U.S. 265, 283 (1977) (holding that a state fishing law that prohibits federally licensed ships from fishing in the state's waters violates the supremacy clause).

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Supremacy Clause

