

A state owned a large natural gas field and took bids for its exploitation. The highest bid came from an interstate pipeline company that distributed natural gas to providers throughout the country. A local gas company submitted the next highest bid, which included the commitment that it would pass along to local customers any savings if it was awarded the contract. The state awarded the contract to the local company.

The interstate company sued to overturn this decision.

Should the interstate company prevail?

- A. No, because the state acted as a market participant.
- B. No, because the state has a compelling interest in reducing the cost of gas for state citizens.
- C. Yes, because the state acted irrationally by not choosing the highest bidder and thus denied the interstate company due process of law.
- D. Yes, because the state discriminated against interstate commerce.

Explanation:

The [commerce clause](#) gives Congress broad power to regulate interstate commerce—ie, nearly all activities involving two or more states. The negative implication of this clause (ie, the **dormant commerce clause**) is that **states are generally prohibited from discriminating against** or otherwise unduly burdening **interstate commerce**. But under the **market-participant exception**, states are not subject to the dormant commerce clause when they act as a market participant—ie, buy or sell goods or services—rather than as a market regulator.

Here, the state discriminated against interstate commerce when it awarded the contract to the *local* company even though the *interstate* company was the highest bidder. But since the state was selling the right to exploit the natural gas field that it owned, it acted as a market participant. As a result, the dormant commerce clause does not apply, and the interstate company should not prevail in its suit to overturn the state's decision **(Choice D)**.

(Choice B) Had the dormant commerce clause applied, this state decision would have been subject to strict scrutiny. Under this test, state action that discriminates against interstate commerce is invalid unless (1) it furthers a legitimate, *noneconomic* state interest and (2) no reasonable alternative exists. And since the state's interest in reducing local customers' gas costs is *economic* in nature, the decision likely would have failed strict scrutiny.

(Choice C) Under the Fourteenth Amendment [due process](#) clause, most state deprivations of life, liberty, or property are justified if they are rationally related to a legitimate state interest. And here, choosing the local company's lower bid was rational since any savings would be passed on to local customers—a legitimate state interest. Therefore, the state did not deny the interstate company due process of law.

Educational objective:

The dormant commerce clause—which prohibits states from discriminating against or otherwise unduly burdening interstate commerce—does not apply when a state acts as a market participant (eg, buyer or seller).

References

- U.S. Const. art. I, § 8, cl. 3 (commerce clause).
- *Reeves, Inc. v. Stake*, 447 U.S. 429, 439–40 (1980) (holding that a state acts as a market participant and is not subject to the dormant commerce clause when the state buys or sells goods or services).
- 15A Am. Jur. 2d Commerce § 33 (2019) (explaining that the dormant commerce clause does not apply when a state acts as a market participant as opposed to a market regulator).

Dormant commerce clause analysis

