

Congress enacted a statute prohibiting discrimination in the rental of residential property anywhere in the United States on the basis of sexual orientation or preference by any person or entity, public or private.

Which of the following provisions provides the strongest basis for Congress's authority to enact this statute?

- A. The commerce clause of Article I, Section 8.
- B. The enforcement clause of the Fourteenth Amendment.
- C. The general welfare clause of Article I, Section 8.
- D. The privileges and immunities clause of Article IV.

Explanation:

The **commerce clause** of Article I, section 8 gives **Congress broad regulatory authority** over most activities involving two or more states. This includes the power to regulate:

- the **channels** of interstate commerce (eg, airports)
- the **instrumentalities** of interstate commerce (eg, planes)
- **people and things** moving in interstate commerce (eg, commercial shipments) *and*
- activities that, singly or in the aggregate, **substantially affect** interstate commerce (presumed when **activity is economic** in nature).

Here, Congress enacted a statute prohibiting discrimination based on sexual orientation in the rental of residential property. Since renting is an *economic* activity, there is a strong presumption that this activity substantially affects interstate commerce. Therefore, the commerce clause provides the strongest basis for Congress's authority to enact this statute to regulate that activity.

(Choice B) Under the Fourteenth Amendment's enforcement clause, Congress can enact legislation to enforce the amendment's **other provisions** against state actors—but not private actors (eg, residential landlords).

(Choice C) The Article I, section 8 taxing and spending clause (ie, general welfare clause) only empowers Congress to tax and spend for the general welfare—not to prohibit rental discrimination.

(Choice D) The Article IV privileges and immunities clause prohibits states from discriminating against out-of-state citizens by denying them a right of **state citizenship**. But this clause is a limitation on state power—not a basis for congressional authority.

Educational objective:

The commerce clause grants Congress extensive authority to regulate (1) the channels of interstate commerce, (2) the instrumentalities of interstate commerce, (3) persons and things moving in interstate commerce, and even (4) activities that substantially affect interstate commerce.

References

- *Heart of Atlanta Motel, Inc. v. United States*, 379 U.S. 241, 258 (1964) (holding that the commerce clause allows Congress to prohibit racial discrimination by local motels serving travelers).

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Commerce clause challenge

