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## Relations Between Federal and State Governments

### 1. The state court should

*A man is the owner of a mountain resort in the Shaley Mountains, whose customers usually arrived on vehicles operated by the interstate bus company. After exhausting all available federal administrative remedies, the man filed suit against the interstate bus company in the trial court of the state in which the Shaley Mountains are located to enjoin the discontinuance by the interstate bus company of its service to that area. The man alleged that the discontinuance of service by the interstate bus company would violate a statute of that state prohibiting common carriers of persons from abandoning service to communities having no alternate form of public transportation. An interstate bus company operates in a five-state area. A federal statute authorizes the Interstate Commerce Commission (ICC) to permit interstate carriers to discontinue entirely any unprofitable route. The interstate bus company applied to the ICC for permission to drop a very unprofitable route through the sparsely populated Shaley Mountains. The ICC granted that permission even though the interstate bus company provided the only public transportation into the region.*

- Dismiss the action, because the man lacks standing to sue
- Direct the removal of the case to federal court, because this suit involves a substantial federal question
- Hear the case on its merits and decide for the man because, on these facts, a federal agency is interfering with essential state functions
- **Hear the case on its merits and decide for the interstate bus company, because a valid federal law preempts the state statute on which the man relies**

Note:

*The Supremacy Clause (Article VI, Section 1, Clause 2) invalidates any state action that is contrary to validly-enacted federal law. This Clause ensures that the U.S. Constitution, and federal laws made pursuant to it, constitute the supreme law of the land. It prohibits states from interfering with the federal government's exercise of legislative and constitutional powers.*

*When both a state and the federal government pass legislation in an area, the question of preemption arises. State laws can be preempted directly, such as when a federal law specifies that states may not pass laws in that area (called "express" preemption). State laws can also be preempted through implication, such as when: (i) Congress has legislated so significantly in that area that it preempts state law ("field" preemption); (ii) state laws conflict with federal laws; or (iii) state laws interfere too significantly with federal goals.*

*The Supreme Court will not decide a challenge to a government or private action unless the person who is challenging the action has "standing" to raise the issue. A person has standing only if she can demonstrate a concrete stake in the outcome of the controversy. A plaintiff will be able to show a sufficient stake in the controversy only if she can show an injury in fact, caused by the defendant, that will be remedied by a decision in her favor (i.e., causation and redressability).*

*State courts generally have concurrent jurisdiction with federal courts over cases arising under federal law.*

*D is correct. The state court should hear the case on its merits and find for the bus company because, pursuant to the Supremacy Clause, a state law that conflicts with a valid federal law will be preempted and the federal law will prevail. Here, the state law prohibiting carriers from abandoning service where there is no alternate form of public transportation conflicts with the federal law authorizing the Interstate Commerce Commission (ICC) to allow interstate carriers (such as the bus company) to discontinue unprofitable routes.*

*A is incorrect. The man does not lack standing to sue because he has suffered an injury from the bus company's discontinuing of the route, which inhibits the profitability of his business. This amounts to a stake in the controversy. And if the man were to prevail, his injury would be remedied.*

*B is incorrect. The state court may properly hear this case because of the doctrine of concurrent jurisdiction, which allows state courts to decide federal questions under their scope of general jurisdiction.*

*C is incorrect. This answer is only partially correct. Although the state court should hear the case on the merits, it should find for the bus company, not the man. The federal agency is acting properly under the authority of the federal statute, which preempts the state law giving rise to the man's action. Moreover, the regulation of common carriers that operate interstate is not considered an essential state function, but falls directly within the purviews of federal powers.*

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## 2. This amendment to the city's building safety code is

Congressional hearings determined that the use of mechanical power hammers is very dangerous to the persons using them and to persons in the vicinity of the persons using them. As a result, Congress enacted a statute prohibiting the use of mechanical power hammers on all construction projects in the United States. Subsequently, a study conducted by a private research firm concluded that nails driven by mechanical power hammers have longer-lasting joining power than hand-driven nails. After learning about this study, a city council enacted an amendment to its building safety code requiring the use of mechanical power hammers in the construction of all buildings intended for human habitation.

- Unconstitutional, because it was enacted subsequent to the federal statute
- **Unconstitutional, because it conflicts with the provisions of the federal statute**
- Constitutional, because the federal statute does not expressly indicate that it supersedes inconsistent state or local laws
- Constitutional, because the long-term safety of human habitation justifies some additional risk to the people engaged in their construction

Note:

*B is correct. The Supremacy Clause of the U.S. Constitution provides that a valid federal law controls when a state or local law conflicts with it. The law here is a valid exercise of Congress's commerce powers, and because the local law conflicts with it, the local law is unconstitutional.*

*A is incorrect. The timing of enactment does not matter in a Supremacy Clause analysis.*

*C is incorrect. The Supremacy Clause does not require that a federal law expressly state that it supersedes inconsistent state or local laws.*

*D is incorrect. The city council cannot ignore the Supremacy Clause because it disagrees with the reasoning behind the federal statute due to new information.*

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## 3. Consistent with United States Supreme Court precedent, may the state continue to dispose of its used tires in this manner?

A particular state has a very large fleet of motor vehicles, including trucks used to support state-owned commercial activities and police cars. The state disposes of used tires from both kinds of state motor vehicles in a facility owned and operated by the state. This state facility is unlicensed, but its operation in actual practice meets most of the standards imposed by the federal Environmental Protection Agency on facilities it licenses to dispose of tires. A federal law provides that all motor vehicle tires discarded in this country must be disposed of in facilities licensed by the federal Environmental Protection Agency. Pursuant to this federal law and all proper federal procedural requirements, that agency has adopted very strict standards for the licensing of such facilities. As a result, the cost of disposing of tires in licensed facilities is substantial.

- **No, because a state must comply with valid federal laws that regulate matters affecting interstate commerce**
- No, because some of the tires come from vehicles that are used by the state solely in its commercial activities
- Yes, because some of the tires come from vehicles that are used by the state in the performance of core state governmental functions such as law enforcement
- Yes, because the legitimate needs of the federal government are satisfied by the fact that the unlicensed state disposal scheme meets, in actual practice, most of the federal standards for the licensing of such facilities

Note:

*A is correct. A state is treated as a person for purposes of federal law and must comply with validly enacted federal laws. This law is validly enacted because tires, which are bought and sold, are part of the stream of commerce.*

*B is incorrect. This answer reaches the correct answer with the wrong reasoning. It is true that the state may not continue to dispose of tires in this manner, but it is not because of the way the tires are used. Rather, it is because the federal law is valid and therefore subjects the state's disposing of the tires to its regulations.*

*C is incorrect. As stated above, the use to which the tires are put is irrelevant. The disposal of tires is not something that is part of the performance of core state governmental functions even if the use of tires is.*

*D is incorrect. It is irrelevant that the state disposal scheme would meet most of the federal standards. The law requires that the disposal facility actually be licensed and that it meet all of the standards.*

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#### 4. In this suit, the court should hold the statute to be

*Because the fabric mill wishes to continue to have its fabric tested solely by the competing testing company, the fabric mill files an action in its state court challenging the constitutionality of the statute as applied to its circumstances. For many years, a fabric mill, located in the state has had its fabrics tested for flame retardancy by a competing testing company, located in a different state. The competitor is a reliable organization that uses a process for testing and approving fabrics for flame retardancy identical in all respects to that used by the Zetest Testing Company. After several well-publicized deaths caused by fires in products made from highly flammable fabrics, a state enacted a statute prohibiting "the manufacture or assembly of any product in this state which contains any fabric that has not been tested and approved for flame retardancy by the Zetest Testing Company." The Zetest Testing Company is a privately owned and operated business located in the state.*

- Constitutional, because it is reasonably related to the protection of the reputation of the fabric industry located in the state
- Constitutional, because it is a legitimate means of protecting the safety of the public
- Unconstitutional, because it denies to the fabric mill the equal protection of the laws
- **Unconstitutional, because it imposes an unreasonable burden on interstate commerce**

Note:

*D is correct. The court should hold the statute to be unconstitutional in this case because requiring that all fabric be tested by a single company imposes an unreasonable burden on commerce where companies in neighboring states use the same testing methods.*

*A is incorrect. Even if the statute is reasonably related to a legitimate state interest, it unduly interferes with interstate commerce.*

*B is incorrect. As stated above, even if the statute were reasonably related to a legitimate interest, it is unconstitutional because it unduly interferes with interstate commerce. Moreover, the safety of the public would be equally well-served by requiring that a particular process be used to test fabrics rather than that a particular company do the testing.*

*C is incorrect. The statute does not treat the fabric mill differently than any other company. Therefore, there is no equal protection issue.*

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## 5. In this suit, the court should

The interstate carrier's truck was involved in an accident in the state of Pink. The accident was entirely a product of the negligence of the interstate carrier's driver. The shipper's household goods were totally destroyed. In accordance with the contract, the interstate carrier reimbursed the shipper for less than the full value of the goods. The shipper then brought suit against the interstate carrier under the tort law of the state of Pink claiming that he was entitled to be reimbursed for the full value of the goods. The interstate carrier filed a motion to dismiss. A shipper contracted with an interstate carrier to ship household goods from the state of Green to his new home in the state of Pink. A federal statute provides that all liability of an interstate mover to a shipper for loss of or damage to the shipper's goods in transit is governed exclusively by the contract between them. The statute also requires the interstate carrier to offer a shipper at least two contracts with different levels of liability. In full compliance with that federal statute, the interstate carrier offered the shipper a choice between two shipping agreements that provided different levels of liability on the part of the interstate carrier. The less expensive contract limited the interstate carrier's liability in case of loss or damage to less than full value. The shipper voluntarily signed the less expensive contract with the interstate carrier, fixing the interstate carrier's liability at less than the full value of the shipment.

- **Dismiss the case, because the federal statute governing liability of interstate carriers is the supreme law of the land and preempts state tort law**
- Dismiss the case, because the contractual relationship between the shipper and the interstate carrier is governed by the Obligation of Contracts Clause of the Constitution
- Deny the motion to dismiss, because the Full Faith and Credit Clause of the Constitution requires that state tort law be given effect
- Deny the motion to dismiss, because it is unconstitutional for a federal statute to authorize the interstate carrier to contract out of any degree of liability for its own negligence

Note:

The Supremacy Clause (Article VI, Section 1, Clause 2) invalidates any state action that is contrary to validly-enacted federal law. This Clause ensures that the U.S. Constitution, and federal laws made pursuant to it, constitute the supreme law of the land. It prohibits states from interfering with the federal government's exercise of legislative and constitutional powers.

Article I, Section 8, Clause 3 empowers Congress to "regulate commerce with foreign nations and among the several states, and with the Indian tribes." Commerce is defined as "every species of commercial intercourse . . . which concerns more states than one" and including virtually every form of activity involving or affecting two or more states. *Gibbons v. Ogden*, 22 U.S. 1 (1824).

The Contract Clause under Article I, Section 10 states: "No State shall . . . pass any . . . Law impairing the Obligation of Contracts . . ." This Clause prevents only substantial impairments of contract (i.e., destruction of most or all of a party's rights under a contract). However, not all substantial impairments are invalid. The three-part test under the Contract Clause is to determine whether the legislation: (i) substantially impairs a party's rights under an existing contract; (ii) serves an important and legitimate public interest; and (iii) is a reasonable and narrowly tailored means of protecting that interest.

The Full Faith and Credit Clause, Article IV, Section 1 requires states to honor (or give "full faith" and "credit" to) any rulings, decisions, and public records from other states. This Clause requires federal courts to only give full faith and credit to state laws that don't conflict with federal laws. It does not require a state to accept an action by the federal government that would not comport with its laws as long as those laws are not superseded by the Supremacy Clause or otherwise constitutionally invalid.

A is correct. Under the Supremacy Clause, an applicable federal law that is constitutionally valid will preempt any conflicting state law. Here, the tort law of the state of Pink is preempted by the federal statute, which provides that the liability claims are only to be governed by the agreement between the parties. This federal statute falls within the plenary congressional power to regulate interstate commerce.

B is incorrect. This answer reaches the correct answer with the wrong reasoning. Although the court should dismiss the case, it is not because the Contracts Clause is the governing authority of the claim brought by the shipper. A proper claim under the Contracts Clause requires that a state is substantially impairing one's rights under a contract, whereas here, the shipper is claiming state law should apply over federal law. The case should be dismissed because the applicable federal statute is the supreme law of the land and preempts any otherwise applicable state law, as explained above.

C is incorrect. The Full Faith and Credit Clause ensures that federal courts honor state laws, but only if such laws do not conflict with federal laws. It also provides that states must give full faith and credit to rulings and decisions of other states. The issue here does not fall within either of these categories because it involves a state law that conflicts with federal law.

D is incorrect. This is a misstatement of the law. There is no constitutional provision that would prohibit Congress from allowing the interstate carrier to contract out of liability for its own negligence. In fact, the Commerce Clause gives Congress that very power.

## 6. The state statute

Which of the following arguments offered by these plaintiffs is likely to be most persuasive in light of applicable precedent? Small retailers located in a particular state are concerned about the loss of business to certain large retailers located nearby in bordering states. In an effort to deal with this concern, the legislature of the state enacted a statute requiring all manufacturers and wholesalers who sell goods to retailers in the state to do so at prices that are no higher than the lowest prices at which they sell them to retailers in any of the states that border that state. Several manufacturers and wholesalers who are located in states bordering the state and who sell their goods to retailers in those states and in the state bring an action in federal court to challenge the constitutionality of this statute.

- Deprives them of their property or liberty without due process of law
- **Imposes an unreasonable burden on interstate commerce**
- Deprives them of a privilege or immunity of national citizenship
- Denies them the equal protection of the laws

Note:

*B is correct. The strongest argument for the manufacturers and wholesalers is that regulating their prices relative to the prices they charge in other states unreasonably burdens interstate commerce.*

*A is incorrect. The state has not actually deprived the manufacturers and wholesalers of any property since they still have full use of their property without substantial interference.*

*C is incorrect. The Privileges or Immunities Clause of the Fourteenth Amendment does not apply to corporations.*

*D is incorrect. There is no classification here, and thus, the statute need only be rationally related to some conceivable legitimate state interest. This review is very deferential, and it is highly unlikely that the statute lacks that minimal rationality.*

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## 7. May the operators of the federal office building be prosecuted successfully by state authorities for violating that state's pollution control standards?

*A federally owned and operated office building in a particular state is heated with a new, pollution-free heating system. However, in the coldest season of the year, this new system is sometimes insufficient to supply adequate heat to the building. The appropriation statute providing the money for construction of the new heating system permitted use of the old, pollution-generating system when necessary to supply additional heat. When the old heating system operates (only about two days in any year), the smokestack of the building emits smoke that exceeds the state's pollution-control standards.*

- Yes, because the regulation of pollution is a legitimate state police power concern
- Yes, because the regulation of pollution is a joint concern of the federal government and the state and, therefore, both of them may regulate conduct causing pollution
- **No, because the operations of the federal government are immune from state regulation in the absence of federal consent**
- No, because the violations of the state pollution-control standards involved here are so *de minimis* that they are beyond the legitimate reach of state law

Note:

*Under the doctrine of sovereign immunity and public policy, a state is forbidden from suing the United States without its consent. Congress can pass legislation that permits the U.S. to be sued by a state in given situations. Although federal officers may sometimes be sued, this will only be granted if the officer acted ultra vires: (i) beyond his statutory powers; or (ii) the valid power was exercised in an unconstitutional manner.*

*The power of state governments is sometimes called "inherent" because a state government, as far as the U.S. Constitution is concerned, holds a general "police power," i.e., the power to protect the health, safety, or general welfare of state residents. An action by a state government is valid under federal law unless it violates any specific limitation imposed by the U.S. Constitution.*

*C is correct. State authorities may not prosecute the operators of the federal office building under the state pollution control standards because the doctrine of sovereign immunity ensures that the federal government may not be sued without its consent. Absent some other exception, such as a federal official acting beyond the scope of his powers or in an unconstitutional manner (neither of which applies here), the state may not sue the federal operators without consent here.*

*A is incorrect. It may be properly within the state's power to regulate pollution in the service of the health, safety, or general welfare of its residents. Nevertheless, a state's exercise of such police power will not overcome the federal government's immunity from suit absent its consent.*

*B is incorrect. Even though regulating pollution is a joint concern of the state and federal governments, this does not mean both may regulate conduct causing pollution without regard to other constitutional provisions. States cannot control or sue the federal government (absent consent) and therefore, despite the importance of pollution control, this prosecution would be improper.*

*D is incorrect. This answer reaches the correct answer with the wrong reasoning. The state may not sue the federal operators, but not because the violations of the pollution control standards are de minimis. States may properly regulate such violations, no matter how de minimis, when bringing actions against private parties. It is the doctrine of sovereign immunity that precludes suit against the federal government here.*

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## 8. In this suit, the court should

An insurance company located in the state files suit in federal district court against appropriate state officials to challenge this statute on constitutional grounds. The insurance company wishes to charge customers residing within the same county in the state rates for burglary insurance policies that will vary because they would be based on the specific nature of the customer's business, on its precise location, and on its past claims. A state statute requires each insurance company that offers burglary insurance policies in the state to charge a uniform rate for such insurance to all of its customers residing within the same county in that state. So long as it complies with this requirement, a company is free to charge whatever rate the market will bear for its burglary insurance policies.

- Hold the statute unconstitutional, because the statute deprives the insurance company of its liberty or property without due process of law
- Hold the statute unconstitutional, because the statute imposes an undue burden on interstate commerce
- **Hold the statute constitutional, because the statute is a reasonable exercise of the state's police power**
- Abstain from ruling on the merits of this case until the state courts have had an opportunity to pass on the constitutionality of this state statute

Note:

The Commerce Clause grants Congress the power to regulate commerce among the states, and that power also creates a limitation on each state's ability to pass laws that affect interstate commerce. That limit is called the Dormant Commerce Clause. When a non-discriminatory state regulation affects interstate commerce (and is not otherwise authorized by a federal law), it must satisfy each of these three elements to avoid violating the Dormant Commerce Clause: (i) the regulation must pursue a legitimate state end; (ii) the regulation must be rationally related to that legitimate state end; and (iii) the regulatory burden imposed by the state on interstate commerce must be outweighed by the state's interest in enforcing its regulation. See, e.g., *South Carolina State Highway Department v. Barnwell Bros., Inc.*, 303 U.S. 177 (1938) (state law controlling weight and width of trucks on its highways was not unconstitutional under the Dormant Commerce Clause).

Courts especially frown on intentional discrimination against out-of-staters. A discriminatory state or local law may be valid, however, if it: (i) furthers an important, non-economic state interest (e.g., health or safety); and (ii) there are no reasonable alternatives available.

The power of state governments is sometimes called "inherent" because a state government, as far as the U.S. Constitution is concerned, holds a general "police power," i.e., the power to protect the health, safety, or general welfare of state residents. An action by a state government is valid under federal law unless it violates any specific limitation imposed by the U.S. Constitution.

The Supreme Court has held that a state may affect interstate commerce if it is an incidental consequence of its exercise of "police powers."

Procedural process requires a legitimate claim or "entitlement" to a benefit under state or federal law. *Board of Regents v. Roth*, 408 U.S. 564 (1972). Examples of protected property interests include: (i) public education when school attendance is required, meaning that a significant suspension (e.g., 10 days) requires procedural due process, *Goss v. Lopez*, 419 U.S. 565 (1975); (ii) welfare benefits if one has previously been determined to meet the statutory criteria, *Goldberg v. Kelly*, 397 U.S. 254 (1970); and (iii) continued public employment when there is a state statute or ordinance that creates a public employment contract, or there is some clear practice or mutual understanding that an employee can be terminated only for "cause," then there is a property interest, *Arnett v. Kennedy*, 416 U.S. 134 (1974), but if the employee holds his position only at the "will" of the employer, there is no property interest in continued employment. *Bishop v. Wood*, 426 U.S. 341 (1976).

C is correct. The statute requires in-state insurance companies to charge a uniform rate for burglary insurance for county residents in that state, which may be dictated by the market value. There is no basis for concluding that the state statute is unconstitutional under the federal Constitution. For example, it does not discriminate against out-of-state entities or unduly burden interstate commerce, it does not conflict with specified federal legislation or otherwise trigger preemption, and it is not taking property without due process.

A is incorrect. This is a misapplication of the law. Although under the precedent established by *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310 (2010), the Due Process Clause may potentially apply to "corporate personhood," the property interest at issue here is not protected by procedural due process. Those protected rights typically include entitlements to certain benefits under the law, such as public employment, welfare benefits, and public education. The company's ability to charge customers whatever prices it wishes is not this type of "property" that invokes due process protections.

B is incorrect. As explained above, this law does not discriminate against out-of-state companies, and even if it triggered the balancing test to determine whether it otherwise posed an undue burden on interstate commerce, the legitimate interest in regulating the sale of insurance would likely outweigh any incidental burden.

D is incorrect. There are times when federal courts abstain from deciding claims involving state interests, such as when the decision would depend on the answer to an unsettled question of state law. Here, there is no indication of an underlying unsettled issue.

## 9. Which of the following arguments would be LEAST helpful to the state in defending the constitutionality of this proposed state tax on widgets?

Widgets are manufactured wholly from raw materials mined and processed in a particular state. The only two manufacturers of widgets in the United States are also located in that state. However, their widgets are purchased by retailers located in every state. The state's legislature is considering the adoption of a statute that would impose a tax solely on the manufacture of widgets. The tax is to be calculated at 3% of their wholesale value.

- At the time widgets are manufactured and taxed they have not yet entered the channels of interstate commerce
- The economic impact of this tax will be passed on to both in-state and out-of-state purchasers of widgets and, therefore, it is wholly nondiscriminatory in its effect
- **Because of the powers reserved to them by the Tenth Amendment, states have plenary authority to construct their tax system in any manner they choose**
- A tax on the manufacturer of widgets may be imposed only by the state in which the manufacturing occurs and, therefore, it is not likely to create the danger of a multiple tax burden on interstate commerce

Note:

Article I, Section 8, Clause 3 empowers Congress to "regulate commerce with foreign nations and among the several states, and with the Indian tribes."

Commerce is defined as "every species of commercial intercourse . . . which concerns more states than one," including virtually every form of activity involving or affecting two or more states. *Gibbons v. Ogden*, 22 U.S. 1 (1824).

The power of Congress to regulate commerce, although very broad, does have limits. A federal law must regulate under one of four categories: (i) channels of interstate commerce; (ii) instrumentalities of interstate commerce and persons and things in interstate commerce; (iii) articles moving in interstate commerce; or (iv) activities that have a substantial effect on interstate commerce.

By negative implication, the Commerce Clause restricts the regulatory power of the states with respect to interstate commerce (called the "Dormant Commerce Clause"). Where Congress has not regulated a subject, a state's regulation of local aspects of interstate commerce is valid if the regulation: (i) does not discriminate against out-of-state parties to benefit local economic interests; and (ii) is not unduly burdensome.

The Privileges and Immunities Clause of Article IV, Section 2 of the Constitution states that "the citizens of each state shall be entitled to all privileges and immunities of citizens in the several states." This Clause protects the fundamental rights of individual citizens and restrains state efforts to discriminate against out-of-state citizens.

C is correct. This answer is the LEAST helpful in defending the constitutionality of the tax because it misstates and overstates the constitutional authorization of states to levy taxes. States do not have plenary authority to construct their tax system in any manner they choose. On the contrary, states have the authority to structure their tax system in any manner that does not violate some other portion of the U.S. Constitution. Citing the Tenth Amendment would be the least effective way to defend this proposed tax because it does not defeat an argument that the tax is otherwise unconstitutional.

A is incorrect. The argument that the widgets have not yet entered channels of interstate commerce at the time they are manufactured and taxed would be a more helpful basis for defending the proposed tax. This is because the Commerce Clause grants Congress plenary power to regulate interstate commerce, which includes channels of interstate commerce. Regardless of whether this argument would actually prevail, it is at least more helpful in combatting the idea that the widgets would be subject to this type of commercial regulation.

B is incorrect. The argument that the economic impact of this tax is non-discriminatory because it will be passed on to both in-state and out-of-state purchasers of widgets would also be a more helpful basis for defending the proposed tax. Multiple constitutional provisions prohibit or restrict discrimination against out-of-state individuals or businesses in favor of local interests. For example, such discrimination could raise constitutional problems under the Equal Protection Clause, the Privileges and Immunity Clause of Article IV, or the Dormant Commerce Clause. Thus, the fact that the tax is wholly non-discriminatory as to purchasers is a potentially helpful defense.

D is incorrect. The argument that a tax on the widget manufacturers is not likely to cause a multiple tax burden on interstate commerce would also be helpful in defending the proposed tax. The Dormant Commerce Clause prohibits a state's regulation of local aspects of interstate commerce from being unduly burdensome. As such, arguing that the tax will not add to or cause this type of burden would be a potentially helpful ground for defending the proposed tax.



# 10. May the Department of Energy continue to transport these nuclear materials through the city?

*The United States Department of Energy regularly transports nuclear materials through a particular city on the way to a nuclear weapons processing plant it operates in a nearby state. The city recently adopted an ordinance prohibiting the transportation of any nuclear materials in or through the city. The ordinance declares that its purpose is to protect the health and safety of the residents of that city.*

- No, because the ordinance is rationally related to the public health and safety of the city's residents
- No, because the Tenth Amendment reserves to the states certain unenumerated sovereign powers
- **Yes, because the Department of Energy is a federal agency engaged in a lawful federal function and, therefore, its activities may not be regulated by a local government without the consent of Congress**
- Yes, because the ordinance enacted by the city is invalid because it denies persons transporting such materials the equal protection of the laws

Note:

*C is correct. Under the Supremacy Clause, the federal agency's activities supersede any inconsistent local law. A local body may not regulate any part of the federal government. Thus, as long as the federal agency is involved in a lawful federal function, which it is, the city may not prohibit it from performing that function without the consent of Congress.*

*A is incorrect. Even though the ordinance is rationally related to the public health and safety of the city's residents, and therefore constitutional as applied to private parties, it cannot be applied to the federal government because of the Supremacy Clause.*

*B is incorrect. The Tenth Amendment does not reserve to the states the power to control the federal government. Where there is a conflict between federal action and state or local law, the federal action will prevail as long as the federal action is otherwise valid.*

*D is incorrect. The ordinance does not classify among who may transfer nuclear materials. Because it is neutral, it does not deny transporters equal protection of the law.*

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