

CONSTITUTIONAL LAW QUESTION

State A, a leader in wind energy, recently enacted the “Green Energy Act” (“the Act”).

Section 1 of the Act requires that 50% of the electricity sold by utilities in the state come from “environmentally friendly energy sources.” Wind energy, which is produced in State A, is classified by the Act as an “environmentally friendly energy source.” Natural gas, which is not produced in State A, is not classified by the Act as environmentally friendly. The preamble of the Act contains express findings that the burning of natural gas releases significant quantities of greenhouse gases into the atmosphere and requires the diversion of scarce water resources for use in gas-burning thermoelectric plants.

Section 2 of the Act prohibits the Public Service Commission of State A from approving any new coal-burning power plants in the state, unless it finds that “the construction of the plant is necessary to meet urgent energy needs of this state.” A public utility in neighboring State B has applied for a permit to build a coal-burning power plant on property it owns across the border in State A. The Commission has denied the utility’s application based on its finding that there is no evidence of any urgent energy needs in State A. The State B utility presented undisputed evidence of severe energy shortages in State B, but the Commission rejected this evidence as irrelevant to the statutory exception.

Section 3 of the Act requires State A, whenever possible, to buy goods and services only from “environmentally friendly vendors located within the state.” To qualify as an “environmentally friendly vendor,” a firm must meet specified standards concerning energy efficiency, chemical use, and use of recycled materials. A vendor located outside of State A meets all the standards to qualify as an environmentally friendly vendor. The vendor has sought to sell goods and services to State A. The relevant State A agencies have refused to purchase from this vendor, pointing out that the Act requires them to purchase, if possible, only from “environmentally friendly vendors located within the state,” of which there are several.

There is no federal statute or regulation relevant to this problem.

Which provisions, if any, of the Green Energy Act unconstitutionally burden or discriminate against interstate commerce? Explain.

Question Presented

State A, a leader in wind energy, enacted the “Green Energy Act.”

Section 1 requires that 50% of electricity sold by utilities come from “environmentally friendly energy sources.”

← TYPE, not ORIGIN → facially neutral

Wind energy, which is produced in State A, is classified as environmentally friendly.

← in-state ✓

Natural gas, which is not produced in State A, is not.

← out-of-state ✗ (origin?)

The preamble finds that burning natural gas releases significant greenhouse gases and diverts scarce water resources for gas-burning plants.

← legit local purpose → balancing test

Section 2 prohibits the Commission from approving any new coal-burning power plants unless necessary to meet urgent energy needs of this state.

← only THIS state's needs count

A utility in neighboring State B applied to build a coal-burning plant on property it owns across the border in State A.

← plant sits IN State A; ban applies to ALL owners = evenhanded

The Commission denied it, finding no urgent needs in State A. The utility proved severe energy shortages in State B, but the Commission rejected that as irrelevant to the exception.

← out-of-state needs ignored; harm is local → balancing test

Section 3 requires State A, whenever possible, to buy goods and services only from “environmentally friendly vendors located within the state.”

← facial discrimination (in-state only)

To qualify, a firm must meet standards on energy efficiency,

← qualified out-of-stater excluded.
BUT State is BUYING = market participant → DCC N/A

chemical use, and recycled materials. A vendor located outside State A meets all the standards but the State A agencies refused to buy from it.

There is no federal statute or regulation relevant to this problem.

Which provisions, if any, of the Green Energy Act

unconstitutionally burden or discriminate against interstate

commerce? Explain.

← = Dormant Commerce Clause. No federal law → no preemption

Section 1: The 50% “Environmentally Friendly” Energy Requirement

Issue. Whether requiring 50% of electricity to come from “environmentally friendly” sources (which include in-state wind but exclude out-of-state natural gas) discriminates against or unduly burdens interstate commerce.

Favoring in-state wind over out-of-state gas frames the core question: real geographic preference, or neutral classification?

Rule. A law is facially discriminatory only if it draws lines based on the geographic origin of goods; if it lines up on some other basis and only incidentally burdens out-of-state commerce, it is nondiscriminatory and reviewed under a balancing test for incidental burdens. Courts also police discriminatory purpose and effect, but a genuine non-protectionist justification supports nondiscriminatory treatment.

State both tests; the case turns on which side of the discrimination line the law falls.

Analysis. Here, the Act classifies by energy type, not origin: wind qualifies wherever generated and gas is disfavored wherever sourced, so it is facially neutral. That in-state wind is favored and out-of-state gas disfavored supports a discriminatory-effect argument, but the preamble's genuine findings (greenhouse gases, scarce water) are legitimate, non-protectionist interests. So the better view is nondiscriminatory, and under a balancing test, the incidental burden on gas does not clearly outweigh the environmental benefits.

Key move: the line is drawn on energy type, not origin. That defeats facial discrimination and sends you to the balancing test.

Conclusion. Therefore, Section 1 is most likely constitutional: facially neutral and, under a balancing test, the incidental burden does not clearly outweigh State A's environmental interests. If a court instead found a protectionist purpose or effect, strict scrutiny would apply and the section would likely fall.

Commit to an answer, but flag the strict-scrutiny path if a court finds protectionism.

Section 2: Ban on New Coal Plants Absent “Urgent Energy Needs of This State”

Issue. Whether barring new coal plants unless necessary for the urgent energy needs “of this state” discriminates against or burdens interstate commerce when used to deny a permit to a State B utility building a plant in State A.

Rule. A regulation applied evenhandedly to in-state and out-of-state actors is nondiscriminatory and judged under a balancing test. A state may regulate to protect health and the environment within its own borders even if that incidentally restricts interstate commerce.

Analysis. Here, the law regulates coal plants located in State A and applies to every owner alike, so there is no origin discrimination; the State B utility is burdened by where its plant sits, not by being an outsider. The “this state” exception is defensible because the pollution harm is local, so State A may weigh only local benefits, disregarding the severe shortages in State B the utility proved. Under a balancing test, the incidental burden does not clearly exceed State A's interest in preventing coal pollution.

Conclusion. Therefore, Section 2 is most likely constitutional: evenhanded and non-protectionist, and the “in-state needs” exception reflects a legitimate focus on local environmental harm, so the incidental burden survives the balancing test.

Don't assume harm to an out-of-state utility equals discrimination; the plant is in-state.

Evenhanded regulation plus a local health and environment interest sets up the balancing test.

Winning point: the burden flows from the plant's location, not its ownership, and the harm is local.

Tie the result to evenhandedness and a non-protectionist purpose.

Section 3: Procurement Preference for In-State “Environmentally Friendly” Vendors

Issue. Whether directing State A to buy, whenever possible, only from environmentally friendly vendors “located within the state” discriminates against interstate commerce when the State refuses to buy from a qualifying out-of-state vendor.

Rule. A law that on its face prefers in-state sellers is ordinarily virtually per se invalid, but the *market-participant exception* removes DCC scrutiny entirely: when a state buys or sells for its own account rather than regulating, it may favor its own residents. The DCC restrains state *regulation* of the market, not the state's own purchasing.

Analysis. Here, the provision is the most discriminatory on its face: it prefers vendors “located within the state” and excludes an out-of-state vendor that meets every standard. As regulation it would fail strict scrutiny, since buying from any qualifying vendor

“Located within the state” is facial discrimination, but the State is buying, not regulating.

Lead with per se invalidity, then the dispositive market-participant exception.

Concede it fails as regulation, then pivot: spending its own funds makes State A a market participant.

is a nondiscriminatory alternative. But it governs only *State A's own purchases*, so the State is a market participant and the DCC does not apply. (Caveats: the exception does not reach downstream conditions regulating commerce beyond the deal, and it does not override Privileges and Immunities limits, which corporations cannot invoke anyway.)

Conclusion. Therefore, Section 3 is constitutional despite facial discrimination, because State A acts as a market participant in its own procurement, placing the provision outside dormant Commerce Clause scrutiny.

*The exception, not the merits, decides it.
Name it.*

Step-by-Step: Dormant Commerce Clause Analysis

Run each challenged provision through these questions in order. The first answer that reaches a result controls.

1. Is there a relevant federal statute or regulation?

- No (as here): the negative, or dormant, Commerce Clause applies. Continue.
- Yes: analyze preemption or congressional authorization instead.



2. Is the State a market participant, buying or selling for its own account rather than regulating?

- Yes: the DCC does not apply; the State may favor its own residents. **VALID.** §3
- No, the State is regulating: continue.



3. Does the law discriminate against interstate commerce on its face, in purpose, or in effect (favoring in-state over out-of-state)?

- Yes: virtually per se **INVALID**. Survives only if necessary to a legitimate local purpose with no reasonable nondiscriminatory alternative (strict scrutiny; rarely met).
- No, evenhanded with at most an incidental burden: continue.



4. Balancing test: is the burden on interstate commerce clearly excessive in relation to the local benefits?

- Yes: **INVALID**.
- No: **VALID.** §1 §2