

11. The City of Fairhaven is located in the state of North Texas. The border with the neighboring state of South Texas is three miles south of the Fairhaven city limits. After a serious outbreak of food poisoning, traced to improperly butchered meat, the Fairhaven City Council passed an ordinance forbidding the sale within Fairhaven of any meat not killed at a slaughterhouse inspected by the Fairhaven Department of Sanitation. All evidence suggests that the Fairhaven ordinance was in fact motivated solely by health and safety objectives, not by any desire to favor local producers. Fairhaven Sanitation inspectors survey all slaughterhouses within a 70-mile-radius of the city, but do not attempt to cross the boundary to inspect South Texas slaughterhouses. South Texas, at the state level, conducts its own inspections of slaughterhouses for sanitation, using standards that are closely similar to those used by the Fairhaven inspectors.

Chopem, the owner of a butcher shop in Fairhaven, sells meat purchased from a slaughterhouse in South Texas. Chopem was charged with selling meat that had not been slaughtered in a Fairhaven-inspected slaughterhouse. Chopem would like to get the charges dismissed on the grounds that the statute, as applied here, violates the U.S. Constitution.

(a) What is the strongest argument that Chopem can make for the unconstitutionality of the Fairhaven ordinance? \_\_\_\_\_

(b) Will this constitutional attack succeed? State your reasons. \_\_\_\_\_

12. The state of New South Wales has a single nuclear power plant. Because the power plant has been in operation for over 20 years, it is now time for the plutonium used in the plant to be disposed of. The safest and cheapest way to do this is to bury it in a lead-enclosed structure 200 feet below the surface. Because residents of the state are worried that their state will become a "toxic dumping ground" if strict measures are not taken, the New South Wales state legislature has enacted the following statute: "No plutonium imported into this state after 1994 may be buried anywhere within the confines of this state." The effect of this statute is to permit the state's existing utility to make a one-time disposal of its pre-1994 plutonium by the burial method described above. The owners of a nuclear reactor located in South Australia, the state directly east of New South Wales, have attacked the new statute on the grounds that it violates the Commerce Clause because it prevents them from shipping their spent plutonium into New South Wales and burying it there.

Assume that Congress has not spoken on the issue of nuclear-waste disposal at all. Should the court hearing this action agree with the plaintiff? \_\_\_\_\_

13. The state of Rhode Island decided to build a new and large state office building. Quarries in Rhode Island had for years produced fine granite. However, in recent years, the in-state granite industry had begun to suffer because of high costs. In an effort to give a shot in the arm to the local industry, the Rhode Island legislature provided that all granite used in the new building should be purchased from in-state granite producers, even though the price would inevitably be higher than if the materials were bought from out-of-staters. A granite producer in a neighboring state has sued Rhode Island in federal District Court, asserting that Rhode Island's preference for in-staters violates the Commerce Clause. Should the court agree with the plaintiff's argument? \_\_\_\_\_

14. The state of Michigan, in order to raise money to repair its existing highways and build new ones, has imposed a flat "axle tax" on any truck travelling more than 100 miles on Michigan highways during any calendar year. The tax is \$200 per axle. (The typical truck has two axles.) If all trucks were required to pay their fair share of maintaining the state's highways, the fairly-allocated cost for a truck driven full time (at least 20,000 miles per year) within the state would be approximately \$500 per year. Trucker is a trucking company located in a state adjacent to Michigan. Trucker's one truck drives about 200 miles a year in Michigan, carrying goods into and out of the state.

(a) What is Trucker's best argument for attacking the constitutionality of the taxing scheme as applied to it? \_\_\_\_\_

(b) Will this attack succeed? \_\_\_\_\_

15. Same facts as Question 12 (on plutonium disposal). Now, assume that Congress has passed the following statute: "Any state may define the circumstances, if any, under which nuclear waste products [defined to include plutonium] may be buried or otherwise disposed of within the confines of that state." If the New South Wales statute is attacked on the grounds that it violates the dormant Commerce Clause, should the Court find the statute invalid? \_\_\_\_\_