

Other/Miscellaneous:

Kentucky: Incentive to Purchase In-State Versus Out-of-State Coal Likely Violates Commerce Clause

Case No. 21-6069, 6th Cir. (2/3/23). In a detailed opinion involving the constitutionality of Kentucky legislation enacted in 2021 (S.B. 257 (2021)) requiring the Kentucky Public Service Commission (Commission) to “evaluate the reasonableness of fuel costs in contracts and competing bids based on the cost of the fuel less any coal severance tax imposed by any jurisdiction,” the US Court of Appeals for the Sixth Circuit (Court) cited various US Supreme Court cases (including *Wayfair*) and concluded that, on remand, the challenging coal producer “is likely to be able to show that SB 257 discriminates against interstate commerce.” In determining whether such discrimination is impermissible under the Commerce Clause on remand, the Court explained that because the Commission “has proffered no explanation for SB 257 except that it is designed to nullify the competitive disadvantages created by Kentucky’s severance tax” and “Kentucky may not level the playing field in this way,” the coal producer in this case “is likely to succeed on the merits.” The Court remanded the case back to the lower court to consider factors for a preliminary injunction. Please contact us with any questions.

URL: <https://www.opn.ca6.uscourts.gov/opinions.pdf/23a0018p-06.pdf>

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