

MONTEREY COLLEGE OF LAW

CONSTITUTIONAL LAW

Midterm Examination

Fall 2019

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INSTRUCTIONS:

There are three (3) questions in this examination.

You will be given three (3) hours to complete the examination.

QUESTION 1

Perry Plaintiff has been in the business of growing Brussels Sprouts in Moss Landing, California for a generation. In the past decade, Perry's acreage of planted Brussels Sprouts has increased from 250 acres to 1250 acres. Perry owns the 1250 acres upon which he farms.

Surmising that Brussels Sprouts could not be 'hotter,' in an agra-tourism sense, Perry devised a plan, in accordance with all applicable relevant local zoning and planning ordinances, to develop 100 coastal acres he owned into BS-Ville! He expended considerable sums to determine the economic feasibility of the project, which would include a BS-hotel, a BS-restaurant and a small but delightful BS-amusement park.

Perry submitted a development application to the Monterey County Planning & Development Commission for the development of the BS-hotel as Phase 1 of the Project. The hotel was to be situated directly on the Coast. Because of the coastal proximity, the County Planning & Development Commission denied the application, indicating that the location was in a protected slough, subject to state protection of endangered animals.

Perry sued, asserting that the denial of the development application was an unconstitutional regulatory taking. It was established in the trial court that, with the proposed development, the 100 acres in question were worth no less than \$3,000,000.00; and without the proposed development, the property retained approximately \$250,000.00 in value.

The trial court, in ruling against Perry Plaintiff, ruled that no taking occurred, either total or partial.

Did the trial court correctly rule that the County's denial of the development application constitute:

A total taking? Discuss

A partial taking? Discuss

QUESTION 2

In reaction to state laws designed to either directly impede or indirectly slow the Federal enforcement of immigration laws, the President and his Attorney General proposed legislation to the United States Congress called the Immigrant Control Act (ICA). Congress passed the legislation and the President signed it into law. The ICA:

Imposed a 400% tax on goods found to have been produced with "illegal" labor;

Withholds Federal law enforcement and prison funds from states with laws in place designed to either directly or indirectly impede Federal immigration enforcement;

Requires that all states, on demand, place local state police departments under the direction of the United States Immigration and Customs Enforcement (ICE) Agency to enforce violations of federal immigration statutes.

The newly elected Governor of California declared that "The independent State of California is hereby a Sanctuary State. As such, we will not enforce federal immigration law or policy as it is currently being carried out by the President and his Attorney General. That includes not complying in any fashion with the provisions of ICA. It also includes continuing to impede the encroachment of Federal authorities on the sovereign territory of the Great State of California for the purpose of effecting illegal deportations."

The California Attorney General brings an action in Federal District Court challenging the provisions of the ICA as unconstitutional. What claims should the California Attorney General make and how should the District Court rule?

Several Cities in California with a substantial agriculture work force, state prisons located within their boundaries, and local police departments who deal with ICE, join the law suit asking the District Court whether they can follow the Governor's declaration. How should the District Court rule?

QUESTION 3

The Renewable Fuel Standards (RFS) law mandates ever-increasing use of biofuels such as ethanol, sometimes referred to as “gasohol.” Some within government advocate for the total repeal of the RFS. Despite this, however, in 2018, Congress, at the urging of President djt, changed the existing law to allow the sale of high-ethanol fuel blends, commonly known as E-15, on a year-round basis. Before the change, the law had banned the sale of gasoline with up to 15 percent ethanol during the summer months because its use allegedly contributes to smog on hot days. The fact that this ‘alternative’ fuel actually contributes to greater smog cuts against the Administration’s arguments in favor of it. It is largely suspected that the real reason for the change is to benefit the incomes of corn farmers and artificially inflate the demand for, and thus price of, corn. The change to year-round E-15 use has resulted in higher traditional fuel prices as well as higher price for E-10, the previously allowed gasohol formulation.

Oilco is a State Y petroleum company doing business in State X as a major retailer of gasoline. Oilco has no capacity to produce ethanol, either E-10 or E-15. Oilco has produced reliable evidence showing that, since the statute was enacted, its sales and profits in State X have decreased substantially because of its limited capacity to produce gasohol.

Can Oilco successfully assert that the statute violates any of the following provisions of the United States Constitution:

- (1) the Commerce Clause,
- (2) the Equal Protection Clause,
- (3) the Due Process Clause, and
- (4) the Privileges and Immunities Clause? Discuss.

Con Law Mid-term Fall 2019 Answer Rubric

1. Eminent domain – gov't authority to take private property when necessary for gov't purposes.
Vth amd: Nor shall private property be taken for public use without just compensation.
 - a. Is there a taking
 - a. Possessory
 - b. Regulatory
 - b. Was it "of property?"
 - c. If taking, was it for public use? (RB Test)
 - a. If not, get property back
 - b. If so... (total or partial taking; and what is the difference?)
 - d. For just compensation?

2. ICA

Taxing & Spending CL

Tax (400%) Rational Basis Test

Spend (withholding of federal funds)

10th amendment (co-ops state and local police depts)/State Sovereignty

Supremacy Clause/Preemption

Refusal of state enforcement vs

Prevention of federal action

Commerce Clause? Does it apply? Is this commerce?

3. E-15

Justiciability issues

Standing

11th Amd

Ripeness

Commerce Cl/DCC

Facially discy or facially neutral?

Undue Burden?

Eq Prot

Suspect class? Quasi-suspect class?

RB Test

DPC

Substantive

Procedural

P&I Cl

For aliens or corporations?

1)

#219321

The first issue is does the plaintiff have standing?

This is known broadly as justiciability. Prior to the court hearing a case, the plaintiff must have standing. To have standing the plaintiff (P) must have suffered a harm in fact or imminent harm, the harm must have been caused by the defendant (D) and it must be redressable by the court, in other words, the court must find in favor of the P and by doing so can remedy the harm caused by the D.

Here the P owns a farm consisting of 1250 acres and he intends to convert 100 acres to a agro tourism spot consisting of a hotel, restaurant and an amusement park. The economic value of the total project would be \$3,000,000 dollars and without the project moving forward, he will suffer an economic injury that of \$2,750,000 dollars as well as the financial loss he incurred by expending considerable funds in accordance with all relevant zoning and planning ordinances. P relied upon this regulations and ordinances. Without the ability to move the project forward, he will not only lose the economic return on this project, but the funds he has already invested. The cause of this harm is the zoning regulations that have been adopted by the Monterey County Planning & Development Commission (D) preventing P building his project, clearly the D has caused P harm. There is causation. The court can evaluate the regulation to determine if it is constitutional and if it is not, then the court can provide the P with injunction and prevent the zoning regulations from impacting P's project permitting it to go forward, which would redress the harm.

P has standing to bring this case to court.

The case also has to ripe. Ripe means that all elements of the case are ready for adjudication. It is not being brought prematurely to the court. As the zoning regulation is a current law, the project is ready to move forward and there is imminent harm to the P. The case is ripe.

Moot. A case is moot if it has already been resolved or there is no opportunity for this type of harm to be repeated. As the case is live and has an ongoing controversy, it is not moot.

The case can go forward.

Is Perry Plaintiff (P) entitled to due process?

Due process: under the Fifth Amendment to the Constitution, and applied to local and state governments through the 14th Amendment, persons are entitled to due process of the law prior to the loss of life, liberty or property. There is substantive due process and procedural due process. Substantive due process is if there has been a deprivation of a fundamental right (life liberty, property), then strict scrutiny is applied and then court will look to see if the proper procedures were followed. These procedures are notice and a hearing. Procedural due process is if life, liberty or property has been deprived, then the court will look at three factors: what was the weight of the interest that was deprived, what procedures should have been applied, and what is the efficiency (time and cost) to the government for the application of these procedures.

Here, P asserts that he was deprived a fundamental right, which is the loss of property. Strict scrutiny will be applied. Was the taking necessary to achieve a compelling government interest? The burden is on the government to show that the taking was necessary for a compelling government interest and no less restrictive means is available. The government will assert that protecting the coast line - from drilling, construction,

potential harm to the dunes/beaches/coral reefs, the protection of aesthetics, the increase in traffic from the development, the protection of the endangered species are all interests that the government has a responsibility to protect. Health, safety, and the general welfare of the people is a strong government interest. Enforcing the protection of the coastline and the endangered species can only be accomplished by denying the project from going forward. The P will argue that providing amusement and increasing tourism, and generating tax revenue is in the public's best interest and in P's personal financial interest and those interests outweigh the government's interest. Furthermore, P will argue that there is a lot of other coast line and he is only impacting a tiny portion. The government will argue that if they approve this permit, everyone along the coast will want the same consideration and then the public's interest will be negatively impacted along with the endangered species and there is no less restrictive means to accomplish this goal.

The court will agree with the D and deny P that his due process rights were violated.

Citizens, aliens and corporations may raise a cause of action under Due Process.

Takings Clause

Under the Fifth Amendment to the Constitution and applied to the States and local governments under the 14th Amendment, the Takings Clause permits the government to take private property for public use. This is known as eminent domain. Since the *Kelo* decision, the Supreme Court has broadened the meaning of public use to include economic development. If the government exercises its authority under the Takings Clause, then the private property owner is entitled to due process of the and if there has been a taking is entitled to just compensation. Just compensation would be the fair market value of the property.

There are two types of takings. A physical taking and a regulatory taking. A physical taking would be the government taking the property and denying the private property owner all economic value of the property. The court will look to the *Lucas* test to determine if there has been a total taking. *Lucas* takes the economic value of the property after the taking and subtracts the economic value of the property before the taking. If the equation equals zero, then there has been a complete taking and the government must provide just compensation to the property owner.

Here, Perry Plaintiff (P) owns 1250 acres and is currently farming brussel sprouts. As he has been farming for the past 10 years and has grown his farming operation from 250 acres to 1250 acres, it can be concluded that he is successful at his business and that all 1250 acres is currently being farmed. The current value of the property is \$250,000 dollars if this subtracted from the potential economic value of 3,000,000 then there is a 2,750,000 economic loss. P will argue that he has suffered a complete taking because the loss is substantial. The D will argue that it is not a complete taking because P is still able to farm his land, that the only land impacted is the 100 acres and that P still have 1,150 acres left to use. There is not a total taking of his property for public use. The government is not physically invading his land and preventing him from using the 100 acres. He can still use not only the 100 acres to continue farming, but he may be able to use these 100 acres for some other purpose. As the government has not physically invaded the land, exercised its authority under eminent domain or prevented P from using his land for farming or other uses. There has not been a taking under. The court will look at the *Lucas* formula and side with the D and agree that there has not been a total taking as the land still have value.

There has not been a total taking under the Takings Clause.

Regulatory Taking

Is there a partial taking (a regulatory taking) when the D denied P's permit and he lost not only his investment funds, but also the economic potential of his project by losing \$2.75 million dollars?

A regulatory taking is generally not a taking, it can be a taking per se. If the government has a regulation that takes a substantial portion of the private property owner's economic use of their property, then there may be a taking per se. When the court analyzes whether or not there has been a regulatory taking, the court will look to the Penn Central Standard. First the government will look at the economic loss the private property owner experienced due to a regulatory taking, next they will evaluate the expected return on investment the private property owner expected from the economic development and third the court will look at the nature of the taking -- what was public purpose of the taking? The court will balance the first two against the third prong to determine if there has been a partial taking.

Here, P has invested heavily and expended considerable sums of money in reliance upon the current relevant zoning and planning ordinances to develop 100 coast acres he owned in Bs-Ville! P will argue that not only has invested heavily in economic development, but he has lost \$2,750,000 in potential economic use of his property. the Government (D) will argue that P's reliance upon the relevant zoning and planning ordinances was not based upon a permit that was issued by the Monterey County Planning & Development Commission. If P had relied upon PRIOR approval of this project, then the government may have a taking per se and owe just compensation to P. However, no permit was issued and P's expenditures were speculation and the D is not liable for P's faulty reliance. Furthermore, the D will argue that P still have value in the land prior to the application of the regulation protecting the slough and the endangered animals. P can still continue farming brussel sprouts and he will not suffer any economic loss. The court will look at the economic loss (investment in development based upon reliance of relevant zoning

and planning ordinances) which amounts to X, they will look at the economic loss, which is valued at \$2.75 million dollars. They will then look at the expected rate of return from the P - he expected to substantially increase his property value and generate revenue, which again is based upon his estimates. The court will then balance it against the public use. Here, the court will recognize that there are strict coast commission zoning guidelines and endangered species that must be protected. The court will recognize that while P may want to build his project on this specific 100 acres, he also 1250 acres to choose from. It is not clear from the fact pattern, but it is assumed that not all of the acreage is along the coast, that some must go inland. As P has been able to farm 1250 acres, it is likely that his farming has not disturbed or the endangered species are not found throughout his acreage, therefore P can build his development in another area of his private property. The court will agree with the D that P's reliance on the POTENTIAL project was misplaced and because he did not request a permit PRIOR to his investment the D does not owe any funds to P. As there remains 1150 other acres in which to possibly build the development, the court will agreed with D that there has not been a partial taking.

Conclusion: There is not partial taking under the Penn Central Standard.

2)

Student ID: 219321

Question 2

The first issue is does the plaintiff have standing?

This is known broadly as justiciability. Prior to the court hearing a case, the plaintiff must have standing. To have standing the plaintiff (P) must have suffered a harm in fact or imminent harm, the harm must have been caused by the defendant (D) and it must be redressable by the court, in other words, the court must find in favor of the P and by doing so can remedy the harm caused by the D.

Here, the California Attorney General (CAG) brings an action in federal court challenging the provisions of the Immigration Control Act (ACA). The CAG is asserting that the ACA is unconstitutional. The CAG represents the people of the State of California and he is not personally injured by the ACA. However, if the CAG brings plaintiffs into the suit who will be harmed by the ACA, such as state prisons or agricultural companies that would be harmed by a 400% tax, his standing would be strengthened. As the law is just going into effect, the CAG is recognizing imminent harm on behalf of cities and businesses and the court is likely to see that the CAG can represent these individuals. The harm that is being caused is the increase in taxes as well as the conscription of state and local police departments caused by the President and Attorney General's (D) legislation. The D is the cause of the imminent harm. Redressability: the court can issue an injunction stopping the law or ruling it unconstitutional and this would be a remedy to redress the harm.

The court is likely to rule that P has standing to bring this case to court.

The case also has to ripe. Ripe means that all elements of the case are ready for adjudication. It is not being brought prematurely to the court. the ACA has passed and harm is imminent in the form of increased taxes and conscription of police. The case is ripe.

Moot. A case is moot if it has already been resolved or there is no opportunity for this type of harm to be repeated. As the case is live and has an ongoing controversy, it is not moot.

The court will also review whether or not this is a political question? This is not a political question as it relates to a conflict between a state law and a federal law. The court will also look at whether it is providing an advisory opinion. This is not an advisory opinion.

The case can go forward.

Does Congress have the authority to impose a 400% tax on goods found to have been produced with "illegal" labor?

Congress' Authority

Congress has 17 areas in which they are vested with authority under Article I of the U.S. Constitution. Pertinent to this case is that they are authorized to create Necessary and Proper laws that are under any power of any branch of the government that are for the general welfare of the public. As long as the law is created by Congress and presented to the President for signature. (Bi-cameralism) Here, the Congress passed the legislation and the President signed it. The purpose of the law is to enforce the immigration laws, which is a plenary power of the federal government, to ensure the health, safety, and welfare of the people. Illegal immigrants can negatively impact the economy with regard to use of emergency rooms without insurance, driving cars without insurance, taking jobs from Americans, etc. Congress has the authority to pass this law.

Is Congress permitted to increase taxes up to 400%?

Taxing Clause

Congress is permitted to tax on behalf of the public welfare. As long as the tax is uniform across the United States, is not coercive and is rationally related to the public welfare.

Here, Congress has issued the ACA and element one is to impose a tax of 400% on goods found to be produced with "illegal labor." Because this law is discriminatory on its face, strict scrutiny will apply. Strict scrutiny applies when a suspect classification is used (race, alienage, national original). The burden is on the government to show that the law is necessary to achieve a compelling government interest and that no less restrictive means is available to meet the government's goal. Here, the government is asserting that states are not complying with immigration laws and to gain their compliance, they are taxing goods that are produced by illegal labor. This tax will impact businesses that either hire illegal immigrants or purchase goods from businesses that are known to hire illegal labor. This will likely make it harder for businesses to hire illegal immigrants or to remain in business. This will reduce the demand for cheap illegal labor meeting the government goal. The CAG will argue that a 400% tax is punitive and coercive and less restrictive means can be used to accomplish this goal. The AG will argue that it is not coercive, because if no one buys from illegal labor organizations, no one will need to pay the tax. The tax is uniformly applied and the court will agree with the AG that it is constitutional.

Spending Clause

The spending clause authorizes Congress to spend funds on common defense of the people and for their public benefit. Here, Congress is entitled to spend money on federal law enforcement to hold up immigration laws and fund ICE. The organizations are under the executive branch of the government and immigration falls under the plenary powers

of the Federal government, therefore the funds have been appropriated to support immigration to keep the country safe on behalf of the people. The court will agree with the AG and uphold the expenditures to support the enforcement of the ACA.

Does Congress have the authority to withhold federal law enforcement funds and prison funds from states with laws in place designed to directly or indirectly impede the Federal government? Is this constitutional?

10th Amendment

Under the 10th Amendment to the Constitution, all powers not given to the Federal Government in the U.S. Constitution are given to the States and the people. Here, States have rights to set laws and regulations on behalf of health, safety and welfare of the people within their state. Congress is prohibited from commandeering the laws and regulations of the states under the 10th Amendment, but they may attach "strings" to grants as long as the conditions are expressly stated and are related to the purpose of the spending program.

Here, the CAG has declared that the State is a sanctuary state and will not enforce federal immigration law or policy and will not comply with the ACA in any fashion and it will impede the enforcement of the federal laws. He will assert under the 10th Amendment that the Governor's declaration is within the state's right as it relates to their sovereignty and under the 10th Amendment. The D will argue that withholding federal funds is in direct relationship to the funding program and that the conditions are expressly stated, "withhold federal law enforcement funds and prison funds from states with laws in place designed to directly or indirectly impede the Federal government." The CA Governor has expressly stated that he is not going to comply with federal laws, yet the Federal government is providing funding specifically to prisons and will assert the right to withhold the funds.

The court will apply strict scrutiny to this based on alienage being a suspect classification and they will look at whether the withholding of funds is necessary to achieve a compelling government interest and no less restrictive means is available. Withholding federal funds will negatively impact state prisons, however, this is not directly related to illegal immigration as prisons are not just places where illegal immigrants are housed, in fact a tiny minority of criminals are illegal immigrants according to recent studies conducted by the governor and the court will agree that this element is unconstitutional as it is not necessary to achieve this compelling government interest.

Is it within Congress' authority to require all states, on demand to submit to the direction of the ICE?

10th Amendment (see supra). Here, CAG will argue that the federal government is commandeering state and local police departments to be conscripted into federal service. The D will argue that this is necessary to ensure that all resources are dedicated to eradicating the U.S. of the illegal immigrants. The CAG will argue that it is not within the authority of the Congress to usurp the authority of the states and is a violation of the 10th Amendment and State's sovereignty. The Court will agree with the CAG that this is not within the authority of Congress.

Supremacy Clause

Under the Supremacy Clause the U.S. Constitution is the supreme law of the land. In order to determine if a law is pre-empted by Federal law. It must be either expressly or implied within the law. If the law does not expressly state that the law pre-empts state law, then there are three ways to determine if a state law is preempted: if the state law is in conflict with the federal law, if the state law impedes the administration of the federal law, or if federal law fills the "field." The latter is applicable in this case, the plenary authority of the federal government is immigration and this law is about immigration.

Here, the federal government has passed a federal law governing immigration. CA has passed a law concerning Sanctuary cities that not only refuses to enforce federal laws, but also will impede federal law. Here the CAG will assert State's rights, under the 10th Amendment. The D will argue that under the Supremacy Clause, the federal government is within their authority to enforce the federal law. Under the Supremacy clause, the state law is in direct conflict with the federal law and it is impeding the administration of the federal law, and the field is occupied by the federal government as immigration is under their authority. Therefore it is implied that the Federal law preempts state law. However, under State's rights, they are not required to enforce the federal law, they just must NOT impede the administration of the federal law. The court will rule that the law is constitutional as it relates to the first element of imposing a 400% tax on illegal goods, they may not withhold prison funds as it is not related to immigration, and they cannot require local and state police to come under federal jurisdiction. However, the federal government will prevail in that the California law is preempted by federal law and that governor's declaration that CA will impede the administration of the federal law violates the Supremacy Clause.

Should the several cities and state prisons, and local police departments (Plaintiffs) follow the governor's actions?

The first issue is will have standing (see supra) As they can demonstrate harm from the ACA caused by the D and can seek redressibility through an injunction of the law. They will have standing.

Ripe - see supra. The case is ripe.

Moot -- see supra. The case is ripe.

Supremacy Clause (see Supra). Based on the Supremacy clause state above. The Plaintiffs do not have to enforce the federal immigration laws, but as stated above they may not impede the administration of the federal law. The court will rule that the governor's declaration may only be followed in part and disregarded in part due to the Supremacy Clause.

3)

Student ID: 219321

Question 3

The first issue is does the plaintiff have standing?

This is known broadly as justiciability. Prior to the court hearing a case, the plaintiff must have standing. To have standing the plaintiff (P) must have suffered a harm in fact or imminent harm, the harm must have been caused by the defendant (D) and it must be redressable by the court, in other words, the court must find in favor of the P and by doing so can remedy the harm caused by the D.

Here, the Plaintiff is Oilco (P) and they assert that its sales and profits have substantially decreased since the law was passed that requires all gasoline to include 15% ethanol, a substance that came from corn. The law was passed by Congress and it is the law that caused the harm. The redressability is that the court can find the law unconstitutional and overturn it, which would be a remedy for the harm caused to P.

The case also has to ripe. Ripe means that all elements of the case are ready for adjudication. It is not being brought prematurely to the court. the Renewable Fuel Standards has passed and harm is imminent in the form of lost revenue. The case is ripe.

Moot. A case is moot if it has already been resolved or there is no opportunity for this type of harm to be repeated. As the case is live and has an ongoing controversy, it is not moot.

The court will also review whether or not this is a political question? This is not a political question as it relates to commerce and falls under the authority of Congress. The court

will also look at whether it is providing an advisory opinion. This is not an advisory opinion. The P has standing and the case may move forward.

Suing the Federal Government

Can P sue D?

Individuals are not permitted to sue the Federal Government unless that are suing for a violation of expenditures (such as spending money on a religion) without the Federal Government's express permission. Here Oilco would need to sue the Attorney General of the United States as the executive branch officer who enforces that federal laws. Oilco can sue the federal government in a federal court and a federal court can hear a case based upon the constitutionality of a federal law.

The Commerce Clause under the U.S. Constitution grants Congress the authority to govern the channels of commerce (roads, highways, waterway, internet, etc.), the instrumentalities (cars, trucks, boats, airplanes, the internet, finance, etc.) and the economic activities that will have a substantial effect on interstate commerce.

Here, Congress has passed a law that requires E-15 be sold year round. Gasoline is an instrumentality as it is a product that moves across state lines, is involved in economic and commercial activities and falls within the authority of the Congress under the Commerce Clause.

Individuals including aliens and corporations may sue under the Commerce Clause. Here, Oilco is a corporation and they may sue under this commerce clause. This law is not discriminatory on its face as it does not prevent any specific entity or state from engaging in a specific activity. It is uniformly applied to all the states and therefore, it will require Oilco to show that this law is not rationally related to a compelling government interest. Here, the compelling government interest is to create larger incomes for corn growers and

to artificially inflate the demand for corn and thus the price for corn. While the fact pattern does not state that any particular state is gaining the benefit of this law as a corn growing state, the facts imply that State X is no longer purchasing as much gasoline as it did before. As the law is applied uniformly across the United States, the government will argue that the law is not discriminatory and they are not responsible for lower sales in State X. Oilco will argue that there is a less restrictive mean to achieve the government's goals of increasing the demand for corn and that the impact of the law is actually causing environmental harm and hurting not only Oilco's business, but also raising the cost of corn and both E-10 and E-15 fuels, indicates that the law is not meeting the government's goals of creating laws that benefit the people.

The court will agree with the P that the goals of the RFS law is not clear, it is neither contributing to the health and safety of the people, it is hurting private companies, and negatively impacting pre-existing private contracts in violation of the Contracts Clause, which requires intermediate scrutiny. P will further argue that there is no substantial justification supporting an important government interest based on the analysis above, the court will agree with the P.

Equal Protection Clause (EPC)

Does this law violate the EPC?

Under the Equal protection clause all similarly situated persons are to be treated equally. This applies to states under the 14th Amendment to the Constitution. Depending upon the classification that is used in the law, will depend upon the type of scrutiny applied (strict, intermediate or rational basis review). Strict scrutiny applies when a suspect classification is used, suspect classifications include race, alienage and national origin. The burden is on the government to show that the law is necessary to achieve a compelling government interest and that no less restrictive means is available to meet the

government's goal. Intermediate applies to quasi-suspect classification and the burden is on the government to show that there is substantial justification for an important government interest this applies to gender and illegitimacy. Strict scrutiny applies for all other classifications such as age, wealth, economic, etc. As this law affects the economics of organizations, rational basis review will apply. The burden is on the challenger of the to prove that the law is not rationally related to a government interest. Here, Oilco will assert that the requirement of having 15% ethanol is not related to an important interest. The Government is aware that the use of this type of gasohol contributed significantly to smog during the summer, this is evidenced by the previous law banning the use of the gasohol during the summer months. Laws passed by Congress are intended to be necessary and proper for the health, welfare and overall public benefit, this law does not meet those standards. The government (D) will argue that it is only during summer months and hot day that gasohol creates smog and remainder of the year it does not and is in fact environmentally positive. The P will argue that there is a less restrictive means to accomplish the D's goal and that is to go back to the pre-existing law and only require that some companies produce gasohol and not all companies. The court will find that the law does not meet an important government interest and requiring it be sold year round is not rationally related to the government's goal of protecting the environment. The court will rule that it violates the equal protection clause as all companies are not able to produce gasohol and are being discriminated against.

Aliens and corporations may sue under the Equal Protection Clause.

Does this law violate the P's Due process rights?

Under the Fifth Amendment to the Constitution, and applied to local and state governments through the 14th Amendment, persons are entitled to due process of the law prior to the loss of life, liberty or property. There is substantive due process and procedural due process. Substantive due process is if there has been a deprivation of a

fundamental right, then strict scrutiny is applied and then court will look to see if the proper procedures were followed. These procedures are notice and a hearing. Procedural due process is if life, liberty or property has been deprived, then the court will look at three factors: what was the weight of the interest that was deprived, what procedures should have been applied, and what is the efficiency (time and cost) to the government for the application of these procedures.

Aliens and corporations may sue under the Equal Protection Clause.

Here, Oilco is a corporation and may sue under the Due Process Clause. A fundamental right has been affected by this law - the loss of property. Here, the property that is lost is economic as evidenced by the evidence produced by Oilco in lost revenues and profits since the law has taken affect. Based on this loss of property, Oilco was entitled to a notice and hearing prior to the deprivation of this fundamental right. The government will however balance the three factors prior to determining if due process has been deprived. The weight of the interest is the loss of economic property, prior to the loss notice and hearing could have been provided to Oilco, however, on balance, the government will look to the cost for the government to provide notice to all potentially impacted refineries and to hold hearings to determine the loss of property and whether or not the law would result in a loss of property. This is not feasible for the government to, hundreds if not thousands of hearings across the U.S. prior to passing a law that is under the authority of Congress to do on behalf the public's welfare. Laws are negotiated in Congress and each State has representatives and Senators to represent the needs of their states' organizations. Oilco could have petitioned their reps or attending congressional hearings in order to have their interests considered. The court will rule that Oil Co was not deprived of their due process rights.

Does this law violate the Privileges and Immunities Clause?

The Privileges and Immunities Clause states that all citizens are granted the same Privileges and Immunities of all citizens in all of the states. These privileges and immunities are fundamental rights (life, liberty, property), civil liberties (right to travel, vote, etc.) and engaging in important economic activities. Here, the fundamental right would be an economic one. Unfortunately, corporations and aliens may not raise a cause of action under the Privileges and Immunities Clause, so this will not be applicable to Oilco.

END OF EXAM