

CONSTITUTIONAL LAW I  
MIDTERM EXAMINATION  
Fall 2022

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EXAM INSTRUCTIONS

You will have three hours to complete this exam. There are two essay questions to be answered in Questions 1 and 2; Question 3 consists of two short answer questions and 15 Multistate Bar Exam-type (MBE) questions. Each question will count for 1/3 of your exam grade.

Unless expressly stated, assume that there are no Federal or State statutes on the subjects addressed.

Your answer should demonstrate your ability to analyze the facts in the question, to tell the difference between material facts and immaterial facts, and to discern the points of law and fact upon which the case turns. Your answer should show that you know and understand the pertinent principles and theories of law, their qualifications and limitations, and their relationships to each other.

Your answer should evidence your ability to apply the law to the given facts and to reason in a logical, lawyer-like manner from the premises you adopt to a sound conclusion. Do not merely show that you remember legal principles. Instead, try to demonstrate your proficiency in using and applying them.

If your answer contains only a statement of your conclusions, you will receive little credit. State fully the reasons that support your conclusions, and discuss all points thoroughly.

Your answer should be complete, but you should not volunteer information or discuss legal doctrines that are not pertinent to the solution of the problem.

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Constitutional Law (MCL-KCCL-HYB-SLO)  
Professors Welsh, Zulfa, Schrier, Wagner, Miranda  
Midterm Examination Fall 2022

Question No. 1

After extensive hearings, the State X legislature passed the Protect Puppies Act, which bans the in-state sale of puppies conceived and raised in large-scale commercial breeding operations. According to the legislative findings, pet stores across State X sell thousands of puppies each year from these so-called “puppy mills.” Puppy mills typically treat adult female dogs as breeding machines and their puppies as mere products to be shipped and sold. Many puppy mills have deplorable animal welfare records, which impacts the health of both the mother dogs and the puppies. Puppies bred in mills can also have health issues, which can lead to large veterinary bills and premature death. What’s also true is that there are no puppy mills based in State X. And while there is no federal law on point, the Federal Occupational Safety and Health Act does set workplace safety standards that apply to commercial breeding operations.

A pet store in State X that specializes in the sale of puppy mill puppies has brought suit in State X Superior Court seeking to block enforcement of the law. While that case was pending, a large-scale commercial breeder in State Y brought an action seeking declaratory and injunctive relief in Federal District Court in State X. Both the pet store and the commercial breeder have sued the Governor of State X.

1. Analyze the Constitutional issues present – including justiciability – with regard to the pet store’s case.
2. Analyze the Constitutional issues present – including justiciability – with regard to the civil action brought by the large-scale commercial breeder.

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## Question 2

Congress authorized federal funds for Colleges and Universities on condition that they enact and enforce a policy prohibiting all consideration of race in the application and admissions process. Sunstate University, a public university, enacted a policy complying with the funding condition and received federal funds.

Anna, an 18 year-old high school student living in Sunstate, applied for admission to Sunstate University. Her application included an essay in which she emphasized her African American heritage as a direct descendent of African enslaved people, and her community service as president of a national African American Youth organization working to eliminate racism. Barbara, a white high school student, also applied to Sunstate University and submitted an essay emphasizing her heritage as the third generation in her family to attend Sunstate University and her leadership of the political action committee of her church's youth group working for "Pro-life" issues. Both young women were first in their high school graduating class. The University refused to consider Anna's essay because of their federal funding requirement Policy prohibiting consideration of race, and rejected Anna's application; the University considered Barbara's essay and accepted her application giving her extra points after considering her family history and community service.

Anna filed a lawsuit against Sunstate University alleging violation of the 14<sup>th</sup> Amendment by discriminating against her based on her race.

1. Analyze the Constitutional issues in Anna's race discrimination case; how is the Court likely to rule on them and why? (Assume Anna has standing to sue on this issue).
2. Does Anna have standing to challenge the Constitutionality of the federal funding condition on which the University's policy on consideration of race was based? How is the Court likely to rule and why?

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Question 3

Write a short answer to the questions A and B; Each question is worth 25 points.

- A. A Committee of the U.S. House of Representatives issued a subpoena to a former president of the United States to appear before the House committee in its investigation of evidence relating to an attempted insurrection at the U.S. capitol. The former President asserted an executive privilege and refused to comply with the Congressional subpoena. In a lawsuit by the former President to Quash the subpoena how is the court likely to analyze the issues and to rule on the motion?
  
- B. Owners bought a residence in the City with a plan to use it as a short term vacation rental unit. The City issued Owners a permit for use as short term rental property with a term of 5 years. Owners used the property as a short term rental unit. However, after 1 year the City Council passed an ordinance revoking all short term rental permits and prohibiting all short term rentals of less than 30 days in the City. The ordinance also authorized the City Building Official to enforce the ordinance and to enter upon any property suspected of being used as a short term rental by giving the owner 10 days prior notice. The Owners sued the city alleging that the ordinance effected an unconstitutional taking of their property without compensation. How is the Court likely to analyze the issues and rule in Owner's lawsuit?
  
- C. Please answer the 15 Multistate Bar Exam (MBE) questions posted in Examsoft.

## Constitutional Law Midterm Exam 2022 Answer Outline

### Question 1:

#### 1. Pet store's action:

1. Ripeness and standing – has the law been enforced? If not, is it likely to be enforced? Or is this like *Poe v. Ullman*? If the law *has* been enforced, can the pet store demonstrate standing even though it has not yet been prosecuted? Can they show injury, causation, and redressability? And have they chosen the proper defendant?
1. Is this law preempted (definitely not express; probably not implied)
1. Dormant Commerce Clause analysis: is the law discriminatory? If so, does the state have a legitimate interest, and is there no other way to accomplish that interest? If it's not discriminatory, do the benefits to State X outweigh the burdens on interstate commerce?
1. Privileges and Immunity Clause analysis: plaintiff is not an out-of-state citizen; no applicability
1. Due Process analysis: Rational review – it's economic legislation so legitimate interest and rationally related. Can look to legislative findings for State's interests.

#### 0. Puppy mill's action:

1. Ripeness and standing (see above);
2. Preemption (little more involved analysis since OSHA does apply to breeding operations; not express; not implied: no conflict in adhering to both the Protect Puppies Act and OSHA regs. No indication Congress intended to occupy the field).
3. DCC (see above)
4. P&I: is the owner of the puppy mill a citizen of State Y? Is he the plaintiff, or is it a corporation? If he's the plaintiff, does the law prevent him from enjoying a constitutional right or from accessing his livelihood? If so, does State X have a substantial interest and is there a substantial relationship between the law and that interest?
5. Due Process (see above)

Question 2:

I. Anna v. Sunstate University: Race Discrimination

- A. Intro: Policy Prohibiting University from considering Anna's racial heritage and community service while considering others discriminates against her based on her race in violation of the 14<sup>th</sup> Amendment
- B. What is the classification? Race
- C. What level of scrutiny applies? Strict: compelling state interest, narrowly tailored to the least restrictive alternative necessary to address that interest
- D. Does the University meet the requirements of Strict Scrutiny?

1. Compelling interest?

YES: state has a compelling interest in complying with condition required to receive essential federal funds for education programs, and in not discriminating in favor of any student based on race by giving extra credit denied to white students; or

NO: University's compliance with the unconstitutional funding condition is not a compelling interest, and in any case compliance is voluntary and funding should be declined since it requires the University to discriminate based on race; University had a compelling interest in achieving a diverse student body (per Grutter v. Bollinger and Fisher v. U. Of Tx) which cannot be met by refusing to consider race-related criteria thereby discriminating against African Americans in admissions.

2. Narrowly Tailored?

YES: State cannot comply with funding condition without enacting and enforcing its policy against all consideration of race, whether it is to benefit minorities or to their detriment, and University no other means are available for the University to meet its compelling interest in total nondiscrimination. Or

NO: The university's Policy and practice of not considering race-related heritage and service while considering other types of heritage and service is overbroad even to meet the nondiscrimination

criteria of the funding condition and results in violation of the State's duty under the Equal Protection clause.

- E. Conclusion: The court's likely ruling and why.
- II. Anna's Standing to challenge the Constitutionality of the Federal Funding Condition
- A. Intro: The Court will likely find that Anna (has/does not have) standing to raise the challenge to the constitutionality of the funding condition.
  - B. Rule: Standing requires proof of Injury to plaintiff, Traceable to Government, and redressable by the court.
  - C. Injury: Direct? YES, application was rejected based on the policy; or NO University revised its Policy and voluntarily accepted federal funds so injury is not caused directly from the policy but rather by the University itself and Anna lacks standing.
  - D. Causation: YES injury was caused by coercing the University to accept the policy, etc. or NO University enacted the policy, not the federal government and only the University can have standing to challenge the funding condition, etc.
  - E. Conclusion: Court's likely ruling and why.

(Note: Federal Preemption is NOT an issue here because it is a funding condition and not a regulation; the issue in the challenge is whether or not the funding condition was coercive, citing *South Dakota v. Dole*, *Sibelius*)

### Question 3 Short Answer outline

- A. Analyze *Trump v. Mazars* (2022 Supp. p. 83) criteria for Congressional Subpoena: Legislative purpose, Subpoena is no broader than necessary to achieve legislative purpose, Subpoena advances legislative purpose by nature of the evidence sought, and Asses the burdens on the President of complying with the subpoena.
  
- B. Analyze possessory taking under *Cedar Point Nursery v. Hassid* (temporary intermittent physical taking?); Analyze regulatory taking under Penn Central criteria: economic impact, Interference with investment-backed expectations, and character of the government's action. Also, *Lucas v. S. Carolina Coastal Council* is all economic use denied
  
- c. MBE Answers are not available.



1)

Question #1

### Justiciability

Ripeness:

Ripeness refers to the timeliness of an action being brought. An action is ripe when a harm has taken place or is taking place and is not a speculative or future harm. There is an exception to this which is pre-enforcement ripeness. This allows plaintiffs to bring action prior to enforcement when there is an undue amount of preparation necessary for following the regulations that would be expensive and difficult. In these cases, courts may hear the case and issue a judgement which determines the constitutionality prior to enforcement. This comes from a suit involving a labeling act and a pharmaceutical company.

good - POC

The facts do not expressly indicate whether enforcement has begun, but they do mention that they are bringing action to block enforcement, which could indicate that that it has not yet begun. If enforcement has not yet begun, they likely do not have a ripe case. This is because there is nothing to indicate that they would not be able to sustain their business and transition to dogs that are not from puppy mills while they seek to block the enforcement of the legislation. If enforcement has begun, this is a ripe action.

Arg imminent harm ?

Advisory Opinion:

An advisory opinion is a non-binding opinion giving by the court and these are banned. Here, the pet store is seeking to block the legislation which is binding, and not an advisory opinion.

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### Mootness:

Mootness occurs when the relevant issues of a case have been resolved prior to the court having opportunity to issue a judgement. Because the relevant issues here have not been resolved, this case is not moot.

### Political Question:

A political question is one which asks the courts to make a decision that would be better decided by another branch of government, or another branch of the government specifically has constitutional authority in the realm. The purpose is to prevent different branches of the government from issuing opinions that are in conflict. It also serves the purpose of showing respect to the other two branches of government. There is nothing in the facts that indicates that this is a non justiciable political question.

### Standing:

To establish standing, the plaintiff must allege an injury <sup>✓</sup> in fact that is reasonably related to the alleged bad actor's conduct and the harm must be redressable by the relief sought.

<sup>\$</sup> Here the injury the pet store alleges is that the legislation is costing them business opportunities and removing a large portion of what their business does. The economic <sup>✓</sup> impact is a concrete harm. The legislation is reasonably related to the harm suffered and blocking enforcement would redress their harm. The pet store does have judicability standing.

### Federal Preemption

Federal laws that express an intent to preempt state laws will prevail over any state law. When congress appears to occupy the field, meaning they intend their legislation to be

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*EXPLAINS  
VS.  
IMPLIANT ?*

controlling in a particular field, their laws and regulations will override any state laws or regulations.

Here, the plaintiffs may make a claim that the state's laws are preempted by the federal government's Occupational Safety and Health Act. This is because the act has standards that apply to workplace safety in puppy mills.

However, the state will argue that there is no indication of direct conflict between the federal act and the state law. There is also no indication that the federal government intended to occupy the field of puppy mill regulation. There is also no indication that the federal laws intended to preempt stricter local codes.

The court would likely find that the state's law is not preempted by the federal government's regulation.

Taking

When the state takes one's property or property interest, they must provide just compensation.

*Long  
Story* Here, the pet store may argue that the legislation is an unconstitutional taking because it impacts their business and reduces their ability to profit.

The state will likely argue that this is not a taking because they have not prevented this business from operating, and have only hindered one area of their operations. Furthermore, the store does not have a substantial argument for why they cannot meet the regulations. If every pet store in the state must comply, raising prices would not be a unique burden and it would not make them less competitive with other pet stores.

The court would likely rule that this is not an unconstitutional taking.

Dormant Commerce Clause

*financial power*

Under the commerce clause, the US Congress has the authority to legislate and regulate over matters that involve the instrumentalities of commerce and the channels of commerce, as well as activities that substantially impact commerce. In areas where congress has been silent, the dormant commerce clause (DCC) applies. The dormant commerce clause allows states to regulate interstate commerce so long as their regulations do not create an undue burden on interstate commerce.

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There are different standards that apply here depending on whether the legislation is facially discriminatory. When a regulation is facially discriminatory against economic interests of out of state market participants, the state must show that the regulation is necessary to achieve a compelling government interest. In all other cases, a balancing test applies. The test balances whether the burden to commerce outweighs the states interest.

Here, the pet store would have a difficult time bringing a commerce clause action. They are not an out of state business. The legislation impacts all pet stores in the state the same manner and to the same extent. The simple fact that the store specializes in puppy mill dogs does not afford them any additional grounds here.

*good arg.*

Ultimately, the court would rule against the pet store in an action under the dormant commerce clause.

*fxl? d. separate treatment in vs out-of-states*

Contracts Clause:

The contracts clause prevents states from interfering with existing contracts between private parties in most cases.

*D.P. Clause P.B. Review Economic Impact*

N/A

Here, the pet store may assert a contracts clause violation. There are no facts that indicate a specific issue here, but the pet store may have a viable action if they have existing contracts with puppy mills for the purchase of dogs.

## Question #2

### Justiciability

#### Ripeness:

Ripeness refers to the timeliness of an action being brought. An action is ripe when a harm has taken place or is taking place and is not a speculative or future harm. There is an exception to this which is pre-enforcement ripeness. This allows plaintiffs to bring action prior to enforcement when there is an undue amount of preparation necessary for following the regulations that would be expensive and difficult. In these cases, courts may hear the case and issue a judgement which determines the constitutionality prior to enforcement. This comes from a suit involving a labeling act and a pharmaceutical company.

The facts do not expressly indicate whether enforcement has begun, but they do mention that they are bringing action for injunctive relief, which could indicate that that it has not yet begun. If enforcement has not yet begun, they likely do not have a ripe case. If enforcement has begun, this is a ripe action.

#### Advisory Opinion:

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An advisory opinion is a non-binding opinion given by the court and these are not allowed. Here, the commercial breeder is seeking a declaratory and injunctive relief, which are binding, so this is not a banned advisory opinion.

Mootness:

Mootness occurs when the relevant issues of a case have been resolved prior to the court having opportunity to issue a judgment. Because the relevant issues here have not been resolved, this case is not moot.

Political Question:

A political question is one which asks the courts to make a decision that would be better decided by another branch of government, or another branch of the government specifically has constitutional authority in the realm. The purpose is to prevent different branches of the government from issuing opinions that are in conflict. It also serves the purpose of showing respect to the other two branches of government. There is nothing in the facts that indicates that this is a non justiciable political question.

Standing:

To establish standing, the plaintiff must allege an injury in fact that is reasonably related to the alleged bad actor's conduct and the harm must be redressable by the relief sought. Here the breeder is alleging an injury in fact in the loss of ability to sell their puppies within the state. This is caused by the state's legislation, and is therefore reasonably related to the defendant's action. The harm is redressable in the form of an injunction. Therefore, the breeder does have justiciability standing.

Dormant Commerce Clause

Under the commerce clause, the US Congress has the authority to legislate and regulate over matters that involve the instrumentalities of commerce and the channels of commerce, as well as activities that substantially impact commerce. In areas where congress has been silent, the dormant commerce clause (DCC) applies. The dormant commerce clause allows states to regulate interstate commerce so long as their regulations do not create an undue burden on interstate commerce.

There are different standards that apply here depending on whether the legislation is facially discriminatory. When a regulation is facially discriminatory against economic interests of out of state market participants, the state must show that the regulation is necessary to achieve a compelling government interest. In all other cases, a balancing test applies. The test balances whether the burden to commerce outweighs the states interest.

Here the legislation does not only pertain to out of state breeders. There are none of these types of breeders in the state, but if they were the legislation would apply to them equally. Because of this, there is a balancing test. Here the burden to interstate commerce would be balanced against the state's interest in preventing the sale of dogs within the state that are likely to have more expensive health problems than other dogs. The state has an interest in protecting its citizens from unhealthy dogs, primarily in an economic sense. There is also the issue of potentially communicable disease that could be spread from dogs bred in puppy mills to other dogs in the state. Furthermore, the state may have an interest in preventing the overcrowding of dog pounds.

The breeder may assert that the outright ban is not the least restrictive means to achieve their state interests. For example, rather than an outright ban, the state could issue standards and health tests for the dogs being sold, rather than ban the sale of all dogs from large scale commercial breeders.

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The burden to interstate commerce here is likely not that significant. This is because there is no ban on dog sales in general, just restrictions on the way the dogs were bred.

If the court finds that this legislation is unduly burdensome, they will likely find in the breeder's favor. However, given the relatively minor impact to interstate commerce, they will likely find for the state.

Contracts Clause:

*of clause?*

The contracts clause prevents states from interfering with existing contracts between private parties in most cases.

Here, the puppy mill may assert a contracts clause violation. There are no facts that indicate a specific issue here, but the puppy mill may have a viable action if they have existing contracts with State X pet stores for the purchase of dogs.

Federal Preemption

Federal laws that express an intent to preempt state laws will prevail over any state law. When congress appears to occupy the field, meaning they intend their legislation to be controlling in a particular field, their laws and regulations will override any state laws or regulations.

Here, the plaintiffs may make a claim that the state's laws are preempted by the federal government's Occupational Safety and Health Act. This is because the act has standards that apply to workplace safety in puppy mills.

However, the state will argue that there is no indication of direct conflict between the federal act and the state law. There is also no indication that the federal government



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intended to occupy the field of puppy mill regulation. There is also no indication that the federal laws intended to preempt stricter local codes.

The court would likely find that the state's law is not preempted by the federal government's regulation.

**END OF EXAM**

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Question #1

Justiciability:

Ripeness: Ripeness refers to the timeliness of an action being brought. An action is ripe when a harm has taken place or is taking place and is not a speculative or future harm. Here Anna's claim is based on her harm of the recent rejection from the university. This is not a speculative future harm and it is not moot. Therefore, this action is ripe.

✓ Ban on advisory opinions: An advisory opinion is a non-binding opinion giving by the court. Anna's claim is seeking a binding decision and is not an advisory opinion.

✓ Mootness: Mootness occurs when the relevant issues of a claim have been settled prior to the court having the opportunity to issue a judgement. Here, there are no facts indicating that the relevant issues relating to Anna's being allegedly discriminated against have been settled, therefore, the claim is not moot.

✓ Political question: A political question is one which asks the courts to make a decision that would be better decided by another branch of government, or another branch of the government specifically has constitutional authority in the realm. The purpose is to prevent different branches of the government from issuing opinions that are in conflict. It also serves the purpose of showing respect to the other two branches of government. Nothing in the facts indicates that this is a matter involving a political question.

Standing: To establish standing, a plaintiff must show that they have suffered an injury in fact that is rationally caused by the defendant's act and that the relief being sought would redress the harm. Here, Anna's alleged harm is that she was discriminated against and therefore did not receive admissions to the school. The school's policy can rationally be

Harm = economic ?  
reputation ?  
emotional ?

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seen to have caused this harm. In terms of redressability, the harm could be redressed by potentially either monetary compensation or injunctive relief.

Anna's action meets the justiciability requirements.

The issue here is whether Anna has a claim under the 14th amendment related to her discrimination.

Due Process:

Due process stems from the <sup>A</sup>14th amendment and arises when a right has been taken away. Discrimination against a suspect class frequently invokes the issue of due process. Here, Anna's claim is on the basis of race discrimination. However, the right that she has claimed is being taken away is the right to a college education at a particular school. There is no fundamental right here, therefore, this is not a proper due process claim.

Equal Protection:

✓ *good!* Equal protection provides that similarly situated individuals cannot be treated differently under laws and regulations. When an equal protection claim is brought against a state or state agency, it falls under the 14th amendment. When it is brought against the federal government, equal protection falls under the 5th amendment. Here, the claim is against a public school of the state government and properly falls under the 14th amendment.

✓ There are different standards of review related to equal protection. Rational basis places the burden on the plaintiff to show that the government act was not rationally related to a legitimate government purpose. This is standard of review applies to non-suspect classes (such as weight, age, etc). It is the easiest of the standards of review for the government to prevail on. Intermediate scrutiny places the burden on the government to show that the act was/is substantially necessary to achieve an important government purpose. This

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standard of review applies to quasi-suspect classes, which include gender and illegitimacy. Strict scrutiny applies to suspect classes and requires the government to show that the act is necessary to achieve a compelling government purpose. Suspect classes include race, alienage, national origin, amongst others. The government must also show that this is the least restrictive means to achieve the compelling government purpose, and is the most difficult standard of review for the government to prevail under.

Here because Anna's claim relates to racial discrimination, therefore, it falls under strict scrutiny.

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F/A  
Anna will argue that race did not need to be considered for her essay to be considered, and that the discrimination, more so that the inability to consider her race lead to her essay being disregarded. The fact that she was a descendant of slaves is not necessarily an issue of race. It could speak exclusively to her family's history and her personal and family hardships. While slaves were generally of African heritage, race does not need to be factored into this discussion and that part could have been disregarded. Furthermore, the fact that she was the president of a national African American Youth organization does not need to be considered on the racial issue. It could be considered on the goal to end racism and the community service elements. Because of these factors, Anna's claim is based more on direct racial discrimination than it is on the policy that requires the refusal of consideration of race as an admissions factor.

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The school will argue that their policy is necessary to achieve a compelling state purpose. The purpose they would claim as compelling is receiving federal funding. There are several issues with this argument. The federal funding itself may fail to be a compelling state purpose. The funding may even rise to "important," but that is not the standard of review here. The funding may be important to continue functioning, but there are other ways a school can get funding. Those include donations from corporations or alumni, raising state taxes to fund the school, selling bonds, and raising tuition. Furthermore,

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there may be an issue with whether the way they are carrying out the policy not being necessary to achieve the funding. A less restrictive way would be to strict any direct reference's to Anna's race in her essay.

The court should find that Anna did suffer an equal protection claim. She was not treated equally to a similarly situated person, Barbara, and this is an example of how the policy is not providing equal protection under the law based on race.

## Question #2

### Justiciability:

✓ Ripeness: Ripeness refers to the timeliness of an action being brought. An action is ripe when a harm has taken place or is taking place and is not a speculative or future harm. Here Anna's claim is based on her harm of the recent rejection from the university. This is not a speculative future harm and it is not moot. Therefore, this action is ripe.

✓ Ban on advisory opinions: An advisory opinion is a non-binding opinion giving by the court. Anna's claim is seeking a binding decision and it is not an advisory opinion.

✓ Mootness: Mootness occurs when the relevant issues of a claim have been settled prior to the court having the opportunity to issue a judgement. Here, there are no facts indicating that the relevant issues relating to Anna's being allegedly discriminated against have been settled, therefore, the claim is not moot.

Political question: A political question is one which asks the courts to make a decision that would be better decided by another branch of government, or another branch of the government specifically has constitutional authority in the realm. The purpose is to

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*Must address constitution, as it is a pol*

prevent different branches of the government from issuing opinions that are in conflict. It also serves the purpose of showing respect to the other two branches of government. Nothing in the facts indicates that this is a matter involving a political question.

The remaining issue, and the one that is relevant here is whether Anna has standing to challenge the constitutionality of the federal funding that lead to the policy she alleges is the cause of her rejection.

#### Tax Payer Standing:

Here there are no issues that indicate that Anna is a tax payer and she is alleging a personal harm, not a general one. Therefore the issue of tax payer standing is irrelevant.

#### Association Standing/3rd Party Standing:

Here Anna is suing for a personal harm, and not attempting to sue on behalf of other who encountered similar problems when applying to college, so this is also irrelevant.

#### Congress's Power to Tax and Spend:

Congress is empowered by the constitution to levy taxes and spend for the general welfare of the nation. Here, there is no issue of taxation, but there is an issue of spending. Here congress is withholding funds from states that do not enact a particular piece of policy. This is generally allowed when the funds are related to the interest of the policy (for example withholding highway funds from states that do not outlaw drunk driving) and the withholding is not coercive. Here, the funds are for schools and are predicated on a policy related to college admissions. Therefore, that element is lawful and constitutional. Withholding can be deemed coercive when the state has no other reasonable way to obtain the amount of funding being withheld and the policy being required is expansive and involves significant change. Effectively, coercion occurs when there is no meaningful

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choice left to the state to decide against enacting the legislation and it in essence becomes a commandeering violation. Here there is no indication of how much funding is on the line, but there is enough evidence to consider whether the changes being requested of the state are too broad. This is a rare determination, and here, the changes are not that significant. It is nothing like what was required under the medicare expansion that the courts found was coercive.

Here, Anna is not a recipient of the funds, the state is. There is nothing in the facts to indicate that congress supplied the language to be used in the state's policy. Therefore, her harm was not directly caused by the policy required by congress, but rather the state's particular way of following the funding requirements which caused them to not consider any part of the essay Anna submitted.

The state would have standing to challenge the constitutionality of the funding requirement, should they refuse the funding. However, they would likely fail because there is no information indicating that the funding requirements are coercive or unrelated to the purpose of withholding.

If Anna were to pursue a claim against the federal government, her standing likely would be under 5th amendment equal protection. Because it is a matter of race, it would be under strict scrutiny. The government would have to show that the regulation was necessary to achieve a compelling government interest. Here, preventing race based admissions decisions could be a compelling government interest. However, this is likely not the least restrictive means to achieve it and therefore not necessary.

*Yes - main issue!*

However, if Anna were to bring a claim against the federal government, she would most likely fail to prevail on causation because the government would be able to assert that she there act was not the mostly likely cause of her rejection, it was the way the state and the university chose to implement the regulation. Furthermore, it may fail on redressability

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because even if the congressional regulation was nullified, it would not prevent the state or the particular university from implementing similar policy that would have the same outcome.

Ultimately, Anna does not have standing and the court would most likely rule against her.

**END OF EXAM**



3)

**A. Executive Privilege**

Based on separation of power principles, the court has inferred that the Executive Branch has executive privilege, which prevents the release of sensitive presidential/cabinet member conversations/work-product because the court has found that the president should be free to discuss certain matters candidly, without fear of political reprisal. However, this privilege is tempered by a judicial balancing test, which will weigh the interests of the public on the matter at hand, against the privilege attempting to be asserted.

Here, the president is asserting executive privilege in response to having received a subpoena to testify at a congressional hearing. The president will argue that the executive privilege applies to protect the interests of the president to have candid conversations, where the committee members will argue that the privilege is outweighed by the public interest in the instant issue -- chiefly, the fundamental preservation of our democratic society. Thus, the judiciary will find that there is no executive privilege because of the gross imbalance.

**A(2) Political Question**

The political question doctrine prevents the court from adjudicating a case involving litigation concerning political issues, such as those that are best reserved to other branches of government, those decisions which require a policy determination before a ruling by the court, one that would result in multifarious results from different branches of government, or those issues the judiciary lacks skills to resolve.

*Random  
bandit  
analysis*

*Let  
the  
subp.  
too  
hard?*

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Here, the president will argue that the question presented to the court is that of a political nature because the question relates to the important separation of powers doctrines that the court has explored. The president will argue that the judiciary is ill-equipped to make such a determination because they should not make such political balancings when the public may just as easily make such a determination for themselves at the next election, or that to release the product of the privileged conversations would improperly discriminate against the president, in a political sense.

On the otherhand, the congress will argue that this is not a political question, and the congress will have history to back them up. It was the court, afterall, which originally fashioned the executive privilege doctrine, and it was the court in the Nixon/Watergate controversy which found that there was a balancing test necessary to resolve whether executive privilege is appropriate given the context. Thus, the Court will find that the political question doctrine will not impede their ruling on this matter.

### B. Takings Clause

FC . The U.S. Constitution prevents the government taking of private land, unless just compensated, and the taking is done for a public purpose. This clause has been narrowly interpreted to cover only takings which are a permanent physical occupation, or those regulations which cause a complete/near total deprivation of economic viability of the subject property. Further, public purpose has been widely interpreted, meaning that if there is a foreseeable public benefit to the taking, the Constitution does not require compensation.

Here, a regulation has been enacted which prevents the short term leasing of a property, even after the Government has licensed the property to do so. Here, there is no permanent physical occupation of the property, and so we must turn to whether there is a complete/near total deprivation of economic viability of the property. Clearly, while the

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