Kern County College of Law

CONSTITUTIONAL LAW I

MIDTERM EXAMINATION

FALL 2025

Profs. Judge John Somers & Theresa Goldner

EXAM INSTRUCTIONS

You will have three hours to complete this exam. The exam is divided into three questions. Questions 1 and 2 are essay questions. Question 3 consists of two short answer questions plus five MBE questions. Each of the three questions will count for 1/3 of your exam grade, and the short answer questions and the five MBE's (as a group) each count for 1/3 of your Question 3 grade. It is suggested that you allocate your time accordingly.

This exam is focused on your knowledge of Constitutional Law. Unless expressly stated the question, you should assume there are no federal, state or local statutes on the subjects addressed.

The purpose of the exam is to test your knowledge of the course subject matter, and ability to apply it to analyzing fact patterns which raise constitutional issues. You will be graded on your ability to identify issues, state the relevant rules and principles of constitutional law, analyze how they apply to the hypothetical facts in the questions, and draw a conclusion from that analysis. On the essay and short answer questions, there is not necessarily a "correct" answer, as they are hypothetical. We are more concerned with your ability to identify and thoughtfully analyze constitutional issues than with whether you give the "right" answer. Focus on both reciting the relevant constitutional principles AND on applying them to the facts of the question at hand.

Your answer should be thorough and complete, but you need not discuss legal doctrines that are not at issue in the question. Good luck and, as always, do your best!

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ESSAY QUESTION #1

Concerned about the increase in unemployment in the United States, Congress funded a study of the problem by the Congressional Research Service. The CRS study concludes that there is a partial correlation between the unemployment rate and the poor quality of math and science education in U.S. high schools, leaving students unprepared for computer science and other technical subjects in college that may help them find employment in the tech industry. The U.S. Senate conducts hearings at which evidence supporting the conclusions of the CRS study is introduced as part of the record of the hearing.

Ultimately Congress passes, and the President signs into law, the STEM Education Act which provides as follows:

1) It establishes federal requirements for the number and type of math and science courses that all U.S. high school students must take;

2) It provides that any state which fails to establish a mandatory statewide high school curriculum meeting the federal requirements for math and science education will lose all of its federal education funding for any year in which it does not meet the requirements;

3) Although the federal standards will take effect immediately, states will have a two year grace period before the loss of education funding penalties take effect for failing to adopt a curriculum that conforms to the requirements.

A coalition of state Attorneys General file a lawsuit in federal court challenging the constitutionality of the STEM Education Act, arguing it is beyond the power of Congress to enforce the provisions of the act against the states. The American Federation of Teachers files a separate lawsuit in federal court raising the same issues.

Will the court hear either or both of the respective lawsuits filed by the states and by the AFT? If so, what constitutional arguments will the parties raise challenging the constitutionality of the law, and what will the federal government argue in defending it? How do you believe the court will rule?

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ESSAY QUESTION #2

Eight months ago, the California State Legislature passed a law to address growing concerns about the proliferation and disposal of discarded electric car batteries, called the "Keep it Clean" Act. The Act requires that all electric car batteries disposed of or recycled in California be delivered, processed, and recycled only in Kern County, at a facility to be licensed by both the State of California and the County of Kern.

The Act defines a licensed facility as one that is physically located in the Mojave Desert in the eastern portion of Kern County, employs 90% Kern County residents as employees, pays a one-time $250,000 State approval fee to the State of California, and pays an annual $100,000 operating fee to the County of Kern. The Act also provides that persons who dispose of or recycle an electric car battery outside of a licensed facility or transports an electric car battery to another state for disposal or recycling are subject to a $5,000-per-battery civil penalty and the permanent revocation of their California driver's license.

The Act recites that its purpose is to protect California's pristine natural environment, create jobs for Kern County residents, and ensure that the subject disposal and recycling satisfy California's strict environmental protection regulations. During the legislative process, several California recycling companies and their industry lobbyist met with State legislators to promote the Act, and many of those companies donated to the legislators' reelection campaigns.

The "Good Battery Company" is a recycling company located exclusively in San Antonio, Texas where it disposes of and recycles discarded electric car batteries from car companies and sales dealerships across the western United States. Approximately 50% of its business is from contracts with California electric car companies and dealerships. In the past eight months, the Good Battery Company has lost all of its California based contracts because of the Act and is considering whether to file for bankruptcy protection.

The Good Battery Company has hired you as its lawyer to analyze the constitutionality of the Keep it Clean Act and to advise its board of directors whether the company has viable legal grounds to obtain an injunction to stop the enforcement of the Act.

Question: What legal grounds exist, if any, for the Good Battery Company to challenge the constitutionality of the Keep it Clean Act under the United States Constitution? Please explain.

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SHORT ANSWER QUESTION #1

The United States becomes embroiled in a foreign policy dispute with several oil producing Middle Eastern nations. These countries respond by imposing an embargo prohibiting sale or shipment of either their crude oil or refined gasoline to the U.S. Together these countries provide 40 per cent of America's normal supply of gasoline. Faced with rapidly spiking gas prices, both houses of Congress pass a law that provides federal funding to reopen recently closed U.S. oil refineries, and authorizing new, expedited drilling leases on federal lands. However, the bill specifically prohibits drilling for oil in the Arctic National Wildlife Refuge (ANWR) in Alaska.

The President announces that she disagrees with the ANWR drilling prohibition, but because of the urgency of the crisis she will sign the bill "under duress." After the bill becomes law, the President nevertheless signs an executive order authorizing drilling in ANWR, arguing that other sources of oil are insufficient to provide enough gasoline, and that the economic harm from the embargo will endanger America's national security. Several environmental groups sue the administration, and the District Court rules that the case is justiciable.

Assuming that the case is justiciable and the Court will decide the substantive issue, how will it rule on whether the President's executive order is constitutional?

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SHORT ANSWER QUESTION #2

The City of Bakersfield owns 1000 acres of land along the Kern River. In 1929, the City dedicated the land to the public as the Kern River Park, to provide public recreation and access to the Kern River. Since 1950, approximately 50 homes were built on private property with scenic views overlooking the Kern River Park. Frank owns one of them.

During a 2025 City Council meeting, the City's finance manager informed the Council that the City's financial situation for 2026 would show a huge financial deficit and that drastic action was required to restore the budget to its operational 2025 level. In reaction to that news, the City Council proposed to sell the Kern River Park to a private developer who planned to build the "Soft Rock Casino & Hotel" there, consisting of a 100,000 square foot gaming floor with 1500 slot machines, 50 game tables several restaurants, and a 500-room hotel with a 2,500-seat concert space and a guitar-shaped swimming pool.

Frank sues the City of Bakersfield, claiming that the sale is a taking of his property interest in the scenic view without just compensation. Frank claims that his property value has dropped by 50% because of the loss of the unobstructed view and that the City's action fails the "public use" requirement under the Takings Clause of the Fifth Amendment to the United States Constitution.

Question: Does Frank have a viable claim under the Takings Clause of the Fifth Amendment, as applied to the states via the Fourteenth Amendment?

In your analysis, address the relevant Supreme Court precedents on what constitutes a "taking" and the scope of "public use." Assume all facts are as stated and there are no other constitutional issues. Please discuss.

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1)

Justiciability

In order for a case to be heard before the federal court it must be justiciable meaning that the parties must having standing to sue, the case is ripe for review, the case is not moot, the court is not giving an advisory opinion, or the court is not deciding a political question that is suited for another branch.

Standing

In order for a party to have standing the plaintiff must demonstrate: 1) an injury in fact that is particularized, concrete, and actual or imminent, 2) causation: the plaintiff's injuries are fairly traceable to the defendant's challenged conduct, and 3) redressability: that a court's favorable decision is likely to remedy the injury. A plaintiff can not generally assert third party standing or generalized grievances and court's also require prudential limits meaning that there can not be suits outside the zone of conflict and no generalized taxpayer standing.

States

Here, the **states have standing** to sue because the states will have an injury that is concrete, particularize, and actual or imminent. The cost of having to establish an new mandatory statewide high school curriculum that has taken affect immediately would cause all states to incur debt. The injury to the states can be directly traceable to Congress's enactment of the Stem Education Act and of course a favorable court decision in the states' favor would remedy the injury. The court can hear both issue from the states.

The American Federation of Teachers

Organization Standing

In order for a plaintiff to have organization standing, the plaintiff must demonstrate: 1) at least one of its members has suffered an injury, 2) the injury in germane to the organization's purpose, and 3) the members participation is not required

Here, **the American Federal of Teacher does not have standing to sue** of behalf of the teachers because teacher have not suffered an injury. The Act passed penalizes the states not individual teachers if the state fails to adopt a curriculum that conforms to the requirement. Article III prohibits

generalized grievance. This claim seems just that, maybe the teachers are not in favor of the new federal act but they have no suffered an injury in order to have standing to sue.

AG will argue Congress violated the anti commandeering doctrine

The 10th amendment reserves to the states all powers not delegated to the federal government and prohibits the federal government from commandeering state governments. Congress can not force the states to adopt, enact, enforce, or administer federal regulatory laws and cannot commandeer state executive officials to carry out federal directives. However, Congress can regulate individuals directly, preempt conflicting state law when acting within its enumerate powers, and can add valid conditions to federal funding given to the states.

Here, the varying state AGs will argue that the Stem Ed is a violation of the 10th amendment because it is forcing the states to establish requirements for the number and type of math and science course that all U.S. high school students must make OR will lose ALL federal education funding the following year. Congress is force the states basically to adopt a federal law and if not suffer an penalty. Additionally, education requirements are not delegated to the federal government and thus shall be reserved to the states so Congress is acting beyond their delegated powers.

AG will also argue Congress excessed it power under the Spending Clause

Spending Clause

Under the Spending Clause, Congress has the authority to spend for the general welfare and attach conditions to federal funds given to the state as long as 1) the conditions are unambigous, 2) related to the federal interest in the program, 3) does not induce the states to engage in unconstitutional acts, 4) and must not be so coercive to turn pressure into compulsion. For a condition to be valid, it must give the states a meaningful choice to accept or denied the funds.

Here, the Congress states in the act that if any state fails to establish a mandatory statement high school curriculum meeting the federal requirements that it will lose ALL of its federal education funding for any year it does not meet the requirements, the states will argue this is undulyH coercive and basically compel states into following the federal requirements or get no education funding at all.

Congress would likely argue that they also gave the states a two year grace period before the loss of education funding penalties took effect, however, it still leaves the states force to follow the federal requirement in two years. The states do not have a meaningful choice to accept or deny and

denial of all federal education funding is a penalty made to compel the states into following the regulation.

Congress will argue they are acting within their enumerate powers and that the Act is Constitutional, but they will fail.

Commerce Clause (Art 1, Sec 8)

Under the commerce clause, Congress can regulate: 1) the channels of interstate commerce, 2) the instrumentalities, things and people within interstate commerce clause, and 3) activities that substantially affect interstate commerce.

Here, Congress will argue that under Article 1, section 8, Congress had the power to enact the Stem Education Act because it is an activity that substantially effects interstate commerce. Congress is concerned about the increase in unemployment in the United States and conducted a study that there is a partial correlation between the unemployment rate and the poor quality of math and science education in U.S. high schools thus leaving students unprepared for technical subjects in college that may help them find employment. Congress will argue that the poor quality of math and science score leading to eventually unemployment is a economic activity that substantially affects interstate commerce.

However, the states can argue that the poor quality of math and science education in U.S. high schools is not an economic activity that affects interstate commerce and Congress can not regulate a noneconomic activity. (*Lopez*) Here, the states would have a better argument against Congress that this exceeded their enumerate power under the Commerce Clause.

Necessary and Proper Clause (Art 1, Sec 8, Cl 18)

Under the Necessary and Proper Clause, Congress has a broad authority to make all laws that are necessary and property to the carrying out their enumerated powers and all other powers vested in the federal government.

Here, since Congress is relying on the Commerce Clause, Congress will also argue that the Necessary and Proper Clause applies since congress "has a broad authority to make all laws that are necessary and property." However, the Necessary and Proper Clause is not a stand alone doctrine and must be used in conjuncture with another valid enumerate power. Since Congress's use of the commerce clause was invalid, there is no enumerate power left to hold the use of the Necessary and Proper Clause. This argument will also fail.

2)

Dormant Commerce Clause

Under the dormant commerce clause, states are prohibited from discriminating against or unduly burdening interstate commerce. When a law is discriminatory against nonresidents it is presumptively invalid. In order to overcome the presumption, the state must show that 1) the law serves a legitimate local interest, and 2) that there is not other reasonable nondiscriminatory alternatives. This is treat like strict scrutiny. If the law is nondiscriminatory and applied even handed like then the court must apply the ***Pike's balancing test***. Here, the law is presumed valid, unless the imposed burden on interstate commerce is "clearly excessive" in relation to the putative local benefits. Courts can consider the nature and extend of the burden, the importance of state interest, and whether the objective can be achieved in a less burdensome manner.

Here, the law states that all electric car batteries disposed of or recycled in CA be delivered, processed, and recycled only in Kern County at a facility to be licensed by both the State of CA and the County of Kern. The purpose of the act is to protect CA's pristine nature environment. The act is nondiscriminatory and it applies even handedly to all California resident as well as to out of state residents as it only uses the word persons in the statute. However, the act does create and undue burden on interstate commerce as all electric batteries would now have to make their way to Kern County or be subject to a $5,000 per battery civil penalty, the permanent revocation of CA driver's license, and out of state businesses losing profits from its contracts with CA electric car companies. Under the Pike's balancing test, the burden imposed on interstate commerce is clearly excessive compared to the putative local benefits. **Here, the law would be invalid under the Dormant Commerce Clause, however, there is an exception.**

Market Participate

The Dormant Commerce Clause does not apply to states that act as a market participate instead of a regulatory, here states can favor there own citizens in the buying, selling, and subsidizing of goods and services. Here, while the act does regulate the disposal of electric car batteries and it does unduly burden interstate commerce, the dormant commerce clause does not apply to CA because CA is a market participate. Here, the facility is licensed by both the state and the county of Kern, the facility employs 90% of Kern County residents, and pays an annual $100,000 operating fee to the County of Kern. The state is operating, employing its residents, which means its providing its residents with an income. Here, it would be different is the State of CA simply stated in its act that disposal of car batteries must made be done in Kern County only then it would be similar to the case

where Alaska would tell individuals purchasing timber that it had to be cut in Alaska, there the court invalidated the law. But here the state is acting as a market participate by engaging the disposal of the car batteries. **Since the market participate exception applies, the law will be valid.**

Privilege and Immunities

The Privileges and Immunities Clause bars states from discriminating against out of state residence relating to fundamental rights or important economic activities such as pursuing a livelihood, owning property, or accessing courts. A law that discriminates against nonresidents is presumed invalid unless the state can show 1) a substantially reason for the different treatment, and 2) that there is no reasonable nondiscriminatory alternative.

Here, the Good Company can argue that CA state law is discriminating against his fundamental right to pursuing a livelihood because he has lost all contracts with CA because of the act and is having to consider filing for bankruptcy. The good company would not win on this ground as CA did not discriminate against out of state residents since its law applied to out of state residents and its own residents evenly.

11th amendment

The 11th amendment bars the federal government from hearing a case brought against a state from a private party including a state's own citizens or a citizen from another state unless the state consents, Congress abrogates, or the action is for an injunction against a state official based on the 14th amendment.

Here, a private company from Texas, "the Good Battery Company" would like to seek an injunction against the state of CA. Since CA is not a state official, the Good Battery Company would not have standing to sue the State of CA unless CA consents to the suit.

3)

SHORT ANSWER QUESTION 1

Whether the President's executive order authorizing drilling in Arctic National Wildlife Refuge (ANWR) is constitutional.

- **Take Care Clause**
  - Under the U.S. Constitution, Article I, the President as leader of the executive branch is charged with taking care that laws are duly executed and followed.
  - Here, Congress has passed a law that provides federal funding to reopen recently closed U.S. oil refineries and authorizing new, expedited drilling leases on federal lands due to the embargoes imposed by Middle Eastern nations. Congress has also explicitly prohibited drilling for oil in the ANWR. Although the President has discretion to duly execute and follow the laws as she sees fit, she is not allowed directly act against an express mandate enacted by Congress.
- **Executive Orders**
  - The President has broad authority to sign executive orders having the same authority as laws passed by Congress. When an executive order's constitutionality is in question, the court must take into consideration what "zone" of adherence the presidential action falls into: (1) if it is in direct compliance with a legislative enactment, the president's action is at it's strongest authority; (2) if it is neither in direct compliance, nor contradictory to legislative action, it is still strong but not as much as the first; and (3) when the president's action is in direct conflict/opposition with legislative action, the president's action is at it's weakest.
  - Here, the President's executive order authorizing drilling in ANWR is in direct conflict/opposition with the recently passed Congressional bill that specifically prohibits drilling for oil in the ANWR. The President would argue that she was against the bill from the very beginning, as she had announced that she disagreed with the prohibition, but due to the urgency of the crisis, she signed the bill get the ball rolling and start drilling to get oil supplies up for the nation. The environmental groups could argue that the President could have used her veto power to send the bill back to Congress, and give them a chance to amend to remove the prohibition. The fact that the President signed the bill into law, with the plant that she would be signing an executive order in direct conflict of the express prohibition thereafter, weakens the President's stance.
- The court would rule the President's executive order unconstitutional.



SHORT ANSWER QUESTION #2 Good job!

Takings Clause

The 5th amendment takings clause states that government may not take a private property for public use without offering just compensation. Just compensation is owed when a taking is physical or when a regulation goes too far. The facts indicate that land property was taken and sold to a private developer to build the Soft Rock Casino & Hotel. While the facts do not specifically state that Frank's land itself has been taken by the government, land around his property has been taken and that his views have been obstructed. See below analysis for physical v regulatory taking.

Physical Taking

A physical taking is when the government takes a private property and uses it for public use. Public use can be for the betterment of a community to use such as a highway or government building. When a physical taking occurs, just compensation is owed. The facts do not indicate that Frank's land itself has been taken. If Frank's property itself would have been taken by the government which they do have the right to do so, just compensation would have needed to be offered to Frank. Here, the facts do not indicate that Frank is unable to access his property, Frank's claim is that his property value has been diminished due to the nearby sale of the land and that his value has dropped by 50%. As Frank's property itself has not been taken, Frank does not qualify for a physical taking.

Regulatory Taking

A regulatory taking is different than a physical taking. A regulatory taking is when the economic value of a property substantially diminishes so much so to the point that it constitutes a regulatory taking. The courts look to a categorical approach test and balancing test to determine if the government may owe just compensation to the owner of the property. Frank is claiming that because of a sale of nearby land, his property value has diminished so much so, specifically by 50% per the facts. Frank used to have an unobstructed view and now he will not. While Frank may not have a physical taking, he may have a regulatory taking if certain tests and balancing approaches are met. See below analysis for Lucas Total Wipeout and Penn Central Balancing Tests.

Lucas Total Wipeout Test

Under Lucas, if a regulation completely depletes the economic value of a property, it is deemed to be a taking and just compensation is owed. If the total economic value of a property is completely depleted, then the property owner would qualify for a taking and be owed just compensation. In this case, the facts do not indicate that Frank's property value has been diminished to the point of a total wipeout. The facts do indicate that only he is claiming that his property value has been diminished. Due to the fact that Frank's property value and economic interest has not been completely wiped out, Frank does not qualify for a regulatory or per se taking under the Lucas Total Wipeout Test.

Penn Central Balancing Test

When a property does not face a physical taking and the economic value of a property is not completely diminished, the court will look to the Penn Central Balancing Test to determine if just compensation may be owed to the property owner. The Penn Central Balancing Test looks to (1) how has the economic impact affected the property (2) Have the owners reasonable investment

backed expectations been affected and (3) The courts look to the character of the governments actions. Since the total value of Frank's property has not been diminished and wiped out under Lucas, the court will most likely apply the Penn Central Balancing Test should Frank's claim make it to the Supreme Court. (1) the economic value has been impacted by 50% per Frank due to the loss of unobstructed views. (2) Have Franks reasonable investment backed decisions been affected by the building of this Soft Rock Casino? Frank may have chosen to purchase this property solely because of the view and that is maybe why he invested all of his money into this property. If that is the case, which it seems to be then Franks reasonably investment backed decisions have been completely impacted by this nearby Government action. (3) The court will look to why the government chose to make this action. The facts indicate that in a city council meeting, it was determined that there was a huge deficit in the budget and that there was a need to bring the budget up to par. There could have been potentially many other decisions that the city could have done aside from this project but this project seems to be the most viable option to bring the budget up to par. It did seem that this action was necessary to help not sink the overall city budget. If Frank's property value has in fact depleted by 50% and Frank is not just stating this, then yes Frank will be entitled to just compensation and may bring suit through inverse condemnation to seek the damages that he has incurred due to his property value depleting.

14th Amendment Claims

The 14th Amendment states that a state cannot deprive any person of life, liberty or property without due process and the law of equal protections. Have the fundamental freedoms of an individuals constitutional rights of life, liberty or property been affected by the actions of the State? Have any of Frank's fundamental freedoms been obstructed or affected? Frank is claiming that this project taken on by the government is affecting his liberties as a person. However, he is still able to enjoy his life, his property to an extent and his liberty. The Government is depriving Frank of some liberties and he feels that he may seek a claim for this.

Equal protections issue - Other classification (Rational Basis)

Frank will most likely argue that this is an equal protections issue, that the government has the intent to discriminate against him by a discriminatory application. However Frank will most likely be unsuccessful in this situation as he would have to show that his other classification of this issue as the challenger is not rationally reliant upon a legitimate government interest. Frank would not succeed in claiming an equal protections claim based on discrimination since Frank would not be able to prove that the issue is not rationally related to a government interest.

Conclusion

Frank will most likely be entitled to just compensation for the depletion of his property values and Frank does havea viable claim under the Takings Clause of the 5th Amendment as applied to the states via the 14th amendment as discussed above.

END OF EXAM