

MONTEREY COLLEGE OF LAW

CONSTITUTIONAL LAW

Midterm Examination

Fall 2018

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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

California passed the Prevention of Cruelty to Farm Animals Act. The Act's intent was to prevent animal cruelty by phasing out extreme methods of farm animal confinement, which also threaten the health and safety of California consumers, and increase the risk of foodborne illness and associated negative fiscal impacts on the State of California.

To do so, the Act

- Establishes new minimum space requirements for confining veal calves, breeding pigs, and egg-laying hens.
- Requires egg-laying hens be raised in a cage-free environment
- Prohibits certain commercial sales of specified meat and egg products derived from animals confined in noncomplying manner.
- Defines sales violations as unfair competition; and proscribes criminal sanctions under a new provision of the California Penal Code (a misdemeanor)
- Creates good faith defense for sellers relying upon written certification by suppliers that meat and egg products comply with new confinement standards.
- Requires State of California to issue implementing regulations.

Mr. Robert Eggbert is the sole proprietor of Bob's Country Eggs of Yerington, Nevada. Bob's sells eggs in California pursuant to contracts that were in existence at the time of the passage of the Act. However, Bob's chickens are caged, which is a violation of the Act. Mr. Eggbert was charged with a criminal violation of the Act in California, and was ultimately convicted. Mr. Eggbert appeals from the criminal conviction under the Act related to his failure to increase the confinement space of his egg-laying hens by eliminating cages. He was fined \$1000 and ordered to serve a six-month jail sentence for this conviction. Both the fine and the jail sentence have been stayed pending this appeal.

Before trial, Mr. Eggbert's made a motion to dismiss the case on the grounds that the Act is unconstitutional under the dormant commerce clause, the contracts clause and the privileges and immunities clause. The trial court denied his motion, and he was ultimately convicted.

On appeal, Mr. Eggbert makes the same constitutional claims. You should assume that Mr. Eggbert had a fair trial and makes no challenge to due process. You have been asked to write a memo to the court and rule on Mr. Eggbert's constitutional claims. How should the court rule?

Question 2

In reaction to state laws designed to either directly impede or indirectly slow the Federal enforcement of immigration laws, the newly elected 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 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

Central Bank, a private corporation, owns all of the mortgage loan contracts on homes located in the rural town of Greenfield, where 75% of the city's Hispanic population resides through a special Greenfield minority housing program. The City adopted its program and zoned itself as directed in order to implement the "Homes for All" federal funding that the U.S. Government provided to Greenfield on the condition the funding be used exclusively to expand home ownership opportunities for either 1) Hispanics or 2) lower-middle-class Americans earning less than the poverty level as defined by the U.S. Government.

Central Bank issued the mortgage contracts to secure loans for purchase of the Greenfield homes. The next year, a mortgage loan crisis occurred causing property values to fall below the amount of money owed by homeowners on their mortgages. The City Council of Greenfield offered to purchase the Greenfield mortgage loan contracts from Central Bank at a discounted value in order to relieve the homeowners and prevent foreclosures and loss of their homes. Central Bank refused to sell. Greenfield then initiated the process of taking the mortgage loan contracts through eminent domain for the same discounted value it had previously offered to pay Central Bank to purchase them. Central Bank filed suit against Greenfield to enjoin the taking of the mortgage loan contracts.

Robert Robertson is a White resident of Greenfield who met the income criteria for Greenfield Homes for All but had been denied a loan for a home in the Greenfield area, forcing him to purchase a home outside the Greenfield area. He also filed suit against Greenfield alleging that he suffered discrimination because Greenfield had not taken his loan contract through eminent domain, even though his mortgage loan at Central Bank exceeded the value of his home. Robertson lost his home after Central Bank foreclosed when he was unable to pay his loan.

- 1) What eminent domain issues will Central Bank raise under the U.S. Constitution in the lawsuit against Greenfield after the taking of the mortgage contracts, and how will Greenfield respond to those issues? How is the Court likely to rule?
- 2) What Equal Protection issues will Robertson raise under the U.S. Constitution in his lawsuit against Greenfield, and how will Greenfield respond to those issues? How is the Court likely to rule? [There are issues here other than Equal Protection. Please be advised that points related to those issues should be considered bonus points only.]

Q1 Prevention of Cruelty to Farm Animals Act:

CC/DCC

Facially neutral? Facially discriminatory?

10th Amd?

Contracts Cl

P&I Cl (is Bob an individual or a corporation?)

Question 2 ICA

Taxing & Spending Cl

Tax (400%) (RB Test)

Spend (withholding of federal funds)

10th Amendment (co-ops state and local police 1epts.)/State Sovereignty

Supremacy Clause/Preemption

Refusal of state enforcement vs

Prevention of federal action

Commerce Clause apply? Is this commerce?

Question 3 Homes for All Program

Bank v. Greenfield: Eminent Domain issues

Taking? Of Property?

Public Use?

Is the refusal to sell mortgages a taking (denial of permit)?

Nollan/Dolan Rough proportionality

For just compensation?

Contracts Clause

Substantial impairment

Significant Gov't al purpose

Reasonable & related to goal

Robertson v. Greenfield: Eq Prot, 5th & 14th

Issues re standing

Injury

Traceable to gov't

Redressable by Court

Eq Prot re race

Hispanics favored, affirmative action?

Strict Scrutiny

Compelling gov't interest? (defer?)

Narrowly tailored (overbroad vs. underinclusive)

Eq Prot re wealth

RB Test

Legit state interest?

Rationally related?

Does Congress have the power to impose these funding conditions?

For the Gen'l welfare, but only if act does not offend another Const. provision

Congruent & proportional remedy (City of Bourne)

1)

Dormant Commerce Clause (DCC) ✓

The issue is whether the Prevention of Cruelty to Farm Animals Act (which will be referred to as the "Act" from here on) that was passed by California discriminates against out of state businesses by prohibiting commercial sales of meat and eggs from businesses that do not comply with the Act.

The rule for the DCC is that Congress has broad authority to regulate interstate commerce (IC) but it does not have exclusive authority over the states to regulate IC. The states can regulate IC unless preempted by federal law. However, even when there is no federal law on point, the states cannot discriminate against out of state residents, unless it is necessary to achieve a compelling state interest. A state law that does not discriminate against out of state residents (thereby treating instaters & out-of-staters the same) will be found constitutional unless it unduly burdens IC. *good, rational vs discry*

Here, California has passed a law that prevents the commercial sale of meat and egg products that come from animals confined in a non-complying manner. Eggbert will argue that the Act discriminates against his business in Nevada, however this argument will fail because the Act sets standards for ALL businesses, not just out of state businesses. *good*

California may set stricter standards for the minimum size requirement for animals as long as it does not conflict with any laws set by the USDA. Unless there is a change in the federal law resulting in an express preemption or the standards change in such a way that will conflict with the Act making compliance with both regulations impossible, the Act will be held as constitutional. Furthermore, the state will argue that it's interest in preventing cruelty to animals and food poisoning is a sufficient justification for the Act,

sort of like our emission standards

especially since the majority of pork and eggs Californians eat come from other states, and does not unduly burden IC.

So...? who wins? Conclusion?
25/30

Contracts Clause

The issue is whether Eggbert has a claim against California for impairing his existing contract (K) rights to sell his eggs in California.

The rule is that states are prohibited from retroactively and substantially impairing the existing K rights absent a showing of an important public purpose and that the impairment is reasonably and narrowly tailored to that purpose. The clause applies to both private and public Ks. It's not clear from the facts whether Eggbert has Ks with other farmers or retailers in the state to sell his eggs OR if his Ks are with the state. The same requirements of the rule discussed above will apply, however public Ks are held to a stricter level of scrutiny because of the risk of self-dealing with the impairment by the state and it's own K.

Eggbert will argue that he had existing Ks (either private or public) to sell his eggs that came from caged chickens into California at the time the Act was passed, and his rights are substantially impaired by the Act due to the cost and burden of overhauling/rebuilding his entire business in order to allow the hens to be cage free. California will argue that although the Act does retroactively impair his existing contracts, the changes in the law are necessary to prevent animal cruelty as well as protect consumers from food poisoning. California will also argue that the cage free requirement is reasonably and narrowly tailored to achieve this purpose of animal welfare, as there would be no other less restrictive means to accomplish this goal. Therefore, Eggbert's claim under the Contracts Clause will fail.

good 10/10

Privileges and Immunities Clause (PIC)

The issue is whether Eggbert can bring a claim against California for discrimination against any fundamental rights he may have involving his commercial activities.

The rule under the 14th Amendment bars state governments from discriminating against out of state citizens related to matters of fundamental rights including commercial activities and civil liberties.

Unlike Due Process and Equal Protection, the PIC protects US citizens, not corporations and aliens. Mr. Eggbert is bringing suit as a business owner, therefore, he does not have a claim under PIC. If he did have a claim as under the PIC, his strongest argument would be that the Act impairs his ability do business in California. Because California primary imports eggs from out of state, he is restricted in his abilities to earn a living, and would suffer economic harm.

5/10

END OF EXAM

MISSING 10th And

otherwise, good answer

80

or 20

2)

JUSTICIABILITY

In order for a federal court to hear a case, justiciability must be met. Justiciability is comprised of five elements: 1) No advisory opinions; 2) standing; 3) ripeness; 4) mootness; and 5) political question.

ADVISORY OPINION

A federal court will not adjudicate moot cases, collusive suits, or cases where there is no actual threat of harm to avoid premature litigation. Here, the court is not dealing with an advisory opinion as the ICA was already signed into law and is in effect.

STANDING

In order to challenge a governmental action, a plaintiff must have standing. Standing implies that a plaintiff has suffered an injury caused by the government which can be remedied by the court (causation and redressability). Here, The AG in his capacity as a political figure within the state of California will argue that an injury has been sustained as California is a sanctuary state and the provisions of the ICA work against the state and its morals. He will claim that the court can remedy the harm by declaring the ICA as unconstitutional. A court will most likely find that the AG does not have standing on his own, but given his prominent position within, he may be able to challenge the constitutionality of the ICA on behalf of the citizens of the state. Given the imminent threat to California as a sanctuary state, the court will most likely find that standing exists.

RIPENESS

Ripeness entails that an immediate threat must be present (threat must not be speculative). Here, the case at bar is ripe as the ICA has already been passed.

MOOTNESS

Mootness requires that a real, live controversy exists at all stages of litigation (exception: cases that are likely to evade review due to short duration such as pregnancy). Here, a live controversy exists as the case has not been resolved.

POLITICAL QUESTION

There is no political question here.

CONGRESS TAXING POWER

T 4 5

15/20

The issue of Congress' ability to tax is presented here. Congress has the ability to lay and collect taxes. The taxes must be uniform throughout the United States. A tax measure will be upheld if it relates to revenue production or is reasonably related to an important government interest. The label of a tax is not important, it is the functioning of the tax that is the main concern. Here, provision one of the ICA imposes a 400% tax on goods found to have been produced with illegal labor. It is reasonable to infer that this tax is uniform throughout the country. It is logical to assume that Congress passed the ICA to provide for a safer nation with stricter immigration laws, which can be seen as an important government interest. As the 400% tax is uniform and serves to work toward an important interest, it is likely that provision one of the ICA will be found constitutional.

COMMERCE CLAUSE (CC)

10/20

Article 1 grants Congress the power to regulate commerce with foreign nations, the several states, and Indian tribes-this is known as the Commerce Clause. Moreover, the CC provides Congress the ability to oversee the channels (roads, waterways, airways) and instrumentalities (trucks, boats, planes) of interstate commerce and any activity that has a substantial economic effect on interstate commerce. Here, as mentioned *supra*, Congress has imposed a tax on goods produced with illegal labor. It is likely that the goods produced may move between states, which gives Congress the power to regulate them via the CC.

*a lot more to discuss here
Somewhere you've got to discuss refusal of state
enforcement vs prevention of federal action*

CONGRESS SPENDING POWER

should be w/ Taxing

The issue of Congress' spending power surfaces within this fact pattern. The constitution grants Congress the power to spend for the common defense and general welfare. Spending can be for any public purpose and is not restricted to enumerated powers. Regulations on spending can be imposed on entities which accept government funding (for example, Congress can attach strings to federal grants). Here, Congress is withholding prison funds from states with laws in place designed to impede Federal immigration enforcement. Prisons are most certainly entities which rely on government funding, and Congress can withhold funds. Congress will argue that the states with laws that impede Federal immigration enforcement are preventing the federal government from carrying out an important interest (tightening immigration laws and providing for a safer country). A 10th amendment issue will likely be raised by the state (see *infra*).

10TH AMENDMENT

This fact pattern offers a 10th Amendment issue that the Attorney General (AG) will most likely raise. The 10th Amendment provides that any powers not delegated to the

United States by the Constitution nor prohibited by it to the states are reserved to the states or the people. The AG will argue that the provisions of the ICA infringe on California's ability to provide for the safety and well-being of its citizens. As a sanctuary state, California will further express that immigrants are a crucial component of the state's population. Pursuant to the 10th Amendment, Congress can not commandeer states to act in a particular manner and the AG will shed light on the fact that provision three of the ICA "Requires that all states, on demand, place local state police departments under the direction of ICE to enforce violations of federal immigration statutes." Provision three will most likely be found to be unconstitutional as it commands the states to take certain action and interferes with California's police powers.

SUPREMACY CLAUSE (SC)

An issue regarding the Supremacy Clause is worthy of discussion in the case at bar. The SC states that the Federal law shall be the supreme law of the land. If the federal government and a state attempt to legislate on a similar issue, then the federal law will prevail. Moreover, there are particular areas of the law Congress has complete power to oversee, such as immigration, which is at play here. Given that Congress has authority over immigration, it is likely that the ICA is constitutional.

move to do here

10/20

CONCLUSION

For the reasons discussed *supra*, the Court will most likely find provisions one and two of the ICA constitutional and provision three unconstitutional.

Exam Name: ConLawMCL-F18

END OF EXAM

Six
80 20

3)

✓
Question #1 - Eminent Domain

The issue is whether Central Bank has a claim under the 5th Amendment's Takings clause of the Constitution against the city of Greenfield for the taking of the mortgage contracts (Ks).

The rule under the 5th Amendment is that private property cannot be taken for public use, without just compensation. There are two types of takings: possessory takings and regulatory takings. For a regulatory taking to occur, a value of "property", in this case, mortgage contracts would meet the definition of a regulatory type of taking. To determine if a "taking" of a property right that is compensable has occurred, the following will be analyzed:

1) Is there a 5th Amendment taking?

The City of Greenfield initially offered to purchase the mortgage Ks from Central Bank, but when the bank refused to sell, the city initiated the process of taking the mortgage loan Ks under eminent domain, therefore, a taking by the city has occurred.

2) Was it for a public use?

When a property is taken for public use, the taking will generally be upheld if it achieves an important public interest, especially for purposes of economic development. Here, the city has taken the Ks in order to relieve the homeowners and prevent foreclosures and the loss of their homes as a result of market forces - the mortgage home crisis. The city will argue that this taking is for public use in order to the homeowners recover the value of their homes as well as protect the city's interests in providing homes for its minority

populations, thereby preserving the federal funding it received for expansion of home ownership opportunities.

3) Is there a property right that is compensable?

The Bank will argue that its mortgage Ks are 'property' because of the contractual obligations to execute performance by securing loans for the purchase of the homes in Greenfield. Although the value of mortgages have been significantly diminished by the mortgage crisis, the City's taking of the Ks will further diminish the value, which the Bank will argue is compensatory. The City will argue the Ks value have already been significantly affected by the mortgage crisis, leaving very little value that could be compensated for.

4) Was there just compensation?

Based on the facts, the City paid a discounted value to the bank, which City will argue is just compensation because it is based on the fair market value of the mortgages at the time of the taking.

5) Rough proportionality test: is there a correlation between the magnitude of what the city is "taking and the problem it's trying to fix?

The City is attempting to help homeowners recover the value of their homes by purchasing the Ks from the bank. The City will argue that the amount given to the Bank for taking is roughly proportional the value of the Ks at fair market value.

Good section 20

Question #2 - Equal Protection

The issue is whether Robertson has an Equal Protection (EP) claim against Greenfield for denying to give him a loan for a home in the Greenfield area when he met the income criteria for the Homes for All program.

The rule is that no state shall deny all persons the EP of the laws. The EP clause protects people from unreasonable discrimination. The test for reasonableness will depend on the criteria used for the classification. The classification can be proven in two ways: facially and facially neutral. This appears to be a facially neutral classification that is applied in a discriminatory manner but does have requisites of discriminatory purpose and intent. The intent of the Homes for All loan that Robertson was denied of was to help homeowners who were effected by the mortgage crises and prevent foreclosures on their homes.

Under the strict scrutiny test, the burden is on the government to show that its classification is necessary to achieve a compelling state interest. This test applies to race, alienage (with one exception) and national origin. Here, Robertson belongs to a suspect classification because he is white, and he will argue that his race was one of the factors that led to the denial of the loan. The City will argue that its decision to deny him of the loan was not due to race, but was done in order to help the minority population and other lower to middle class Americans earning less than the poverty level to achieve the dream of home ownership in an area where they would have otherwise not been able to do so.

Under the intermediate scrutiny test, the burden is on the government to show that its quasi-suspect classification pertaining to gender and legitimacy, is substantially related to an important government interest. Although Robertson is male, the facts don't suggest that he was denied the loan based on his gender.

However, under the third test, under rational basis review, the burden is on the challenger to show that the classification is not rationally related to a legitimate government interest. The government has alot of latitude under this test, and as long as the interest is for any

conceivable purpose, it will be upheld. Robertson can challenge the City by claiming discrimination based on his income criteria, and that he meets the lower-to-middle class income requirements, living in poverty. Unless he can overcome the city's argument that its denial of his loan based on his income level is rationally related to a legitimate government interest (here, expansion of homeownership opportunities for minorities), his claim under EP will fail.

good - wealth

Other possible issues that I see but ran out of time:

Conditional Spending: the Homes for All funding given to the city by federal government

Standing issues *YES*

Substantive Due Process issues *NO*

also missing K el

Good ESSAY

Most students miss that Eg Prot has 2 facets, Race & wealth.

That was a good issue-spot.

END OF EXAM

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