

Empire College of Law
Constitutional Law Examination
Fall 2025
Prof. R. Grady

Instructions

1. This examination consists of three (3) questions.
2. There is a three (3) hour time limit to complete the exam.

QUESTION NUMBER 1

California's Governor and legislative leaders are of the "Blue Party." They take issue with most everything that is done in "Red" States and by the federal government, which is controlled by a "Red" leaning administration. California's Governor had a debate with the Governors of Florida and Texas, who were both very "Red." Each Governor bragged about how much better their own policies were. California's Governor was likely a candidate for President in the future, as were the Governors of Florida and Texas.

In the wake of the debate, the California legislature passed a law called "The Fiscal Health Act." It provided for imposition of a sales tax on purchases in California of certain qualifying goods. It also provided for a tax credit for all purchases of qualifying goods if they were manufactured in California. The qualifying goods were ones that are subject to significant competition from producers who ship their products to California for sale from "Red" States like Florida and Texas. The Governor signed the law while flanked by dozens of members of the legislature who voted in its favor. After he put his pen down, he said "with this signature, I ensure both fiscal health for our State and tax relief for Californians."

Another law he signed was the "Trucking Safety Act." The law stated that "the People of California are entitled to roads free of hazards posed by semi-trucks and trailers coming into the California from States where safety takes a back seat to profits." The law provided for a number of alleged safety requirements, but exempted California licensed vehicles. The rationale for the exemption was that "California trucks and California drivers are not the source of the problem; trucks and drivers from States like Texas, Florida and others are." It just so happened that the largest percentage of trucks entering California from elsewhere were from Texas, Florida and other "Red" states. Meanwhile, California was indiscriminately granting trucking licenses to people who couldn't read English language highway signs.

Frito was a resident of Texas who worked as an independent trucker. His truck was licensed in Texas. He made regular hauls of widgets from Texas to California. When entering California, his truck failed inspection. His truck did not comply with the new "Trucking Safety Act." He was issued a citation and expelled from the State along with his truck.

California resident Suzie was in the market for widgets. She liked Texas widgets because they were typically cheaper than California widgets. She also thought they were better made. She bought a package of Texas widgets as usual, but was shocked at the price. Looking at the receipt she saw that it indicated a 20% widget surcharge. Later she learned that while purchasers of California widgets were entitled to a tax credit, she was not.

Discuss the following issues:

Whether or not the "Trucking Safety Act" violates Frito's rights under Article IV's Privileges & Immunities Clause.

Whether or not the "Fiscal Health Act" violates the Dormant Commerce Clause.

QUESTION NUMBER 2

Some years ago, the Senate passed The Economic Emergency Act, which allowed the President to take “necessary measures” to “protect the nation in times of economic emergency.” The phrase “economic emergency” was not defined in the law. Since being enacted, it has been used a half dozen times. In no case had a court ever ruled a President’s use of the law invalid or illegal.

When the current President ran for office he pointed to the bad economy and said the cause was unfair trade deals. He vowed to end those deals and make better ones because “the country is going to go belly up if I don’t.” He further said that “other countries can’t beat our military, so they are beating us with trade deals.”

On taking office he issued executive orders invoking the Economic Emergency Act. His orders raised tariffs on imports from 2 dozen trade partners with whom negative trade balances existed. At the signing ceremony, he said “other countries have declared war on us. They are fighting us using trade. Now, we are finally going to fight back.”

The President’s party was in control of Congress. No one in his party criticized the orders. However, a number of members of the minority party said “Constitutionally, only Congress can impose tariffs.” Several efforts were made to pass resolutions to end the “Emergency” and terminate the orders, but they failed.

Meanwhile, Vince was importing goods subject to the new high tariffs. His profit margin was already small. He was faced with the prospect adding the cost of the tariffs to the goods at the point of sale. This, however, would make his goods less competitive than goods not subject to the tariffs. He sued the federal government. The federal district judge ruled that the President acted illegally. The Judge issued an injunction prohibiting the tariffs. The President’s response was to very publicly forbid anyone in the executive branch from complying with the Judge’s ruling. The Judge responded by issuing an order to show cause (OSC) why he should not hold the President in Contempt of his ruling. When the federal government failed to appear for the hearing of the OSC, the Judge declared the President to be in Contempt and issued a warrant for the President’s arrest. The President was to be held in custody until he complied with the ruling, and was also to be prosecuted for criminal contempt.

Discuss the following issues:

Does the Economic Emergency Act violate the Non-Delegation Doctrine and the principle of Separation of Powers?

Is Vince’s lawsuit justiciable?

What can the President argue or do in opposition to the Judge’s Warrant for his arrest and the pending action for criminal contempt?

QUESTION NUMBER 3

The President was constantly being criticized for his policies. Among the worst critics was Congresswoman Alix. She disagreed with the President so much she didn't even approve of his choice for the position of "chief Whitehouse groundskeeper." The position was created by Congress and placed within the Department of the Interior under the Secretary of that Department. The law creating the position permitted the Secretary of the Interior to make the selection. The Secretary of Interior chose Telmo, who had previously worked for one of the President's businesses. Congresswoman Alix said the appointment was "yet another example of cronyism from this President."

Six months into the President's term, it was learned that Telmo was not born in the United States and was also allegedly in the country illegally. Because he was such an opponent of illegal immigration, the President turned to the cameras at a press conference and said "Telmo, you're fired." He also declared that Telmo was going to be "deported as soon as we can find him."

The President's allies in Congress quickly arranged for the passage of a bill, which the President promptly signed. The new law provided that any foreign national who at any time had obtained a job in the federal government was subject to immediate deportation. The text of the law invoked national security and the need to disincentivize infiltration into the government by subversive agents from other nations.

Congresswoman Alix almost immediately decried the firing of Telmo as "unconstitutional" and proclaimed "this is yet another example of illegal conduct by this President." Telmo appeared with Alix at a rally. Alix said she would protect Telmo from arrest and deportation "with all my might." Telmo then took the microphone and said "They can't do this to me! I'm a citizen! My mother was a natural born citizen!"

The President was now fed up with Alix. After one of her rallies, she headed to the airport for a flight back to Washington D.C. Her flight was delayed for a day, so she returned to her hotel. At her hotel she was arrested by federal agents for "obstruction of a government proceeding" in the form of aiding and abetting Telmo's evasion of arrest and calling for resistance to federal law enforcement.

Telmo was also arrested and almost immediately placed on a plane for transport out of the country.

Discuss the following issues:

Whether or not the President can fire Telmo?

Whether or not the President can arrest and prosecute Alix?

What can Telmo argue in his defense against arrest and deportation?

Monterey College of Law

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GRADE

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Q1 = 75

Q2 = 90

Q3 = 85

Exam Grade = 83.3

important government interest.

TAX AND SPENDING POWER

The legislature has broad authority to tax and spend, so long as it promotes the general welfare and is uniformly imposed. However, if a tax is primarily regulatory in nature, rather than for the purpose of generating revenue, it is likely unconstitutional. Presumably, these same principles apply to state and local governments.

Here, the CA legislature imposed a sales tax and tax credit on certain qualifying goods. These tax measures were intended to ensure the fiscal health of the state and provide tax relief. While it could be argued that both fiscal health and tax relief promote the general welfare of the state since citizens need money to support themselves, it could be argued that these taxes and tax credits were regulatory in nature because they were intended to stifle competition from out-of-state and promote the producers located in CA.

Therefore, presuming that the prohibition on regulatory taxes applies at the state level, S may have a claim that FHA is unconstitutional as an unlawful use of tax and spending power.

2)

1. Does the Economic Emergency Act violate the Non-Delegation Doctrine and the principle of Separation of Powers?

NON-DELEGATION DOCTRINE

Under the non-delegation doctrine, Congress cannot delegate legislative functions to the executive branch without providing clear and intelligible principles to guide the executive. While this is one limit on the executive's power, both Congress and the executive have significant powers to address foreign affairs. The president has the ability to negotiate treaties and executive agreements, to recognize foreign nations (or place restrictions on their recognition); he can receive foreign ambassadors, and deploy troops abroad as commander in chief (to address military, diplomatic, or national security emergencies) without Congressional approval. *good*

Under the Take Care Clause, the president is authorized to faithfully execute the laws, including issuing executive orders, setting policy priorities, and refusing to enforce laws he reasonably believes to be unconstitutional.

Here, the president was invoking a pre-existing law-- the Economic Emergency Act (EEA)-- when he issued executive orders affecting tariffs with foreign trade partners. It could be argued that the phrase "economic emergency" was not properly defined, and the law needed additional clear, intelligible principles before the president could act on it. In the same vein, it could be argued that the president's actions constituted a legislative act by reading into the law and deciding what that phrase meant. However, the fact remains that the law (EEA) was a properly enacted and binding law in effect at the time. Because there was a valid, binding law passed by Congress, it could be argued that the president was merely executing the law. Because the president has the authority to enact executive orders necessary in order to implement and enforce the law, his orders raising tariffs likely does not violate the non-delegation and

It was passed in Senate at least

separation of powers doctrine.

STEEL SEIZURE

Under the Jackson concurrence in the Steel Seizure cases, the courts use the following framework to analyze whether the president's actions were constitutional in cases involving separation of powers. If the president is acting with the express authorization of Congress, his acts are least likely to be unconstitutional. When Congress is silent, then the constitutionality of the president's actions depends on the specific circumstances and whether he was acting within his specifically enumerated powers. When the president acts against the express will of Congress, his acts are most vulnerable to being found unconstitutional and he must be acting squarely within his enumerated powers in order to be acting constitutionally.

Here, while Congress has the express authority to regulate international commerce and to impose tariffs, the president also presumably has some power under his foreign affairs powers. More specifically, because the president is authorized to negotiate treaties and executive agreements on a broad variety of topics, it could be assumed that he has that same authority in negotiating tariffs with foreign countries. Likewise, the president has the authority to place limits on the recognition of foreign powers. Implied within this power, the president has the authority to condition recognition on favorable trade relationships with foreign nations.

While the president would be in the best position to impose the new tariffs if Congress had issued a joint resolution permitting, condoning, or encouraging the president's conduct in invoking the EEA, the facts indicate that did not occur in this case. On the one hand, the president's party controlled Congress and did not criticize his orders.

Because there was no official statement one way or another, the president is likely acting in the zone of twilight. Furthermore, because of the president's broad discretion in matters concerning foreign affairs, including trade negotiations with foreign nations, the circumstances indicate that the president is likely acting within his authority.

Therefore, the president's executive orders raising tariffs likely does not violate the non-delegation and separation of powers doctrine.

2. Is Vince's (V) lawsuit justiciable?

JUSTICIABILITY

Justiciability refers to whether the Supreme Court may hear a case. Before the Supreme Court may hear a case, there must be a case or controversy. This means that there must be an actual dispute with an injured party who stands to win or lose something. That injured party must have standing to bring the suit. Standing requires that the person bringing the claim have suffered an concrete injury (not too remote or speculative) that is fairly traceable to the defendant's challenged conduct. The injury must be redressable, meaning there must be a way for a favorable court decision to remedy the injury.

There are some circumstances in which the Supreme Court cannot hear a case, including if there are adequate and independent state grounds, if the issue would require issuance of an

advisory opinion, or if the issue involves a political question. A political question is a case where the central issue relates to a power of one of the political branches. Baker v. Carr provided 6 factors, which courts look to in determining whether the issue is a non-justiciable political question, including where the case involves a power specifically enumerated to a political branch, where the case has no judicially manageable standards to review, and when the issue would require a policy determination by the courts. / good

Here, V is bringing a lawsuit against the president for making his goods less profitable under the newly imposed tariffs. V would argue that he has suffered an injury to his business because the tariffs make his business less profitable. However, the V's concerns are about tariffs that have not yet taken place. This is further evidence by the fact that the judge issued an injunction (which prevents injury). While the court may hear a case if the injury is imminent and inevitable, the president's actions are hotly disputed and may possibly not take effect ever. Because the injury has not yet occurred, and may possibly never occur, V likely has not suffered an injury for purposes of standing. good not 45%

Assuming that V has suffered an injury at this point, he would need to show that the injury-- loss of profits in his business-- are caused by the tariffs. While the president might argue that there no connection because V's profit margin was already very small, V would likely be able to show that the addition of the new tariffs had a direct and negative impact on his business. Finally, a favorable court decision would need to remedy V's injury. Because the court could issue an permanent injunction, or declare the tariffs unconstitutional and prevent the tariffs from taking effect or damaging V's business, V would likely be able to satisfy the redressability requirement.

In conclusion, V likely does not have standing because he has not suffered an actual injury at the time he brought the suit.

POLITICAL QUESTION (Supra)

Assuming that V does have standing, the court may still choose not to hear the case since the issue of tariffs, regulation of the economy, and foreign trade relations are left to the political branches-- the executive and legislative branches. While it could be argued that the Supreme Court has the authority to declare any law or act unconstitutional, the case law indicates that there are certain issues that Supreme Court will not hear, and due to the political nature of tariffs and trade relations, the Supreme Court would likely not hear this case, even if V had standing.

3. What can the president argue or do in opposition to the Judge's warrant for his arrest and the pending action for criminal contempt.

EXECUTIVE PRIVILEGE AND IMMUNITY

A president does not have a generalized privilege of confidentiality, but there is a presumption that information concerning national security, diplomatic, or military affairs is privileged. Once the president invokes this privilege, the burden is on the government to show a compelling need for the information (such as when it is essential to the justice of a pending criminal trial) and show that the disclosure is narrowly tailored to serve that interest.

Under executive immunity, a president enjoys absolute immunity for all acts done within the outer perimeter of their duties. However, a president may still be liable for acts done before the presidency or for acts done outside the scope of his official duties. There is no immunity in the case of impeachment.

Here, V has sued to president with respect to his executive orders raising tariffs. It could be argued that the president was acting unconstitutionally, and thus was acting outside the scope of his authority as president. If this were the case, then the president may be subject potentially to criminal liability. However, as discussed above, the president was likely acting within his foreign affairs authority by negotiating trade relations with other countries. In this sense, the executive orders issued falls squarely within the president's authority. As such, the president would be entitled to absolute immunity.

great!

Regarding the arrest warrant and pending action for criminal contempt, as previously discussed, the president is likely immune from the action by V. Assuming that the president is not entitled to immunity, the president could still try to assert his executive privilege so that he would not have testify in the case, or possibly to have the trial stayed until the end of his term to prevent undue interference with his duties. It could be argued that the president's presence is essential to bringing justice in the criminal case, especially in case wherein he is the defendant. But the president may still try to argue that the nature of trade relations, especially those with hostile nations, could involve sensitive national security or diplomatic information that cannot or should not be disclosed in a public criminal trial. For this reason, he could argue that he should not be required to disclose his rationale for seeking to raise tariffs by executive order and significantly limit his testimony.

Therefore, the president could argue that he is entitled to absolute immunity or, alternatively, prevent testifying under executive privilege.

3)

1. Whether or not the president can fire Telmo (T)?

APPOINTMENT AND REMOVAL

The president has the authority to appoint ambassadors, federal judges and principal officers. Those appointees must be confirmed by the Senate before they may take office. Congress can vest the power to appoint inferior officers in the president, department heads, or the lower courts. Congress cannot delegate the appointment power to itself. The power to remove is not clearly indicated in the Constitution, but courts generally recognize that if the president had the authority to appoint, then they have the power to remove. This means that the president can terminate at will any principal officer. If the president was vested with the authority to appoint an inferior officer, then they may remove inferior officers at will too. However, Congress can place some restrictions on termination and removal. If the office requires some level of independence from the president, the president may be required to show good cause for their removal, but Congress cannot outright prohibit the removal of officers since the president needs to have the authority to execute and control policy as he sees fit.

Here, the president fired T, the groundskeeper, after learning that T was not born in the United States. This is an inferior officer because the groundskeeper was appointed by a the Secretary of the Department of the Interior. For this reason, it could be argued that the president did not

have the authority to remove T because it was not the president who appointed T. In the same vein, it could be argued that the role of a groundskeeper is not related to any policy determinations, and therefore, has some level of independence from the president. For this reason, it could also be argued that the president would need to show some good cause before removal.

However, on the other hand, the president has complete control over principal officers and may fire them at will. If the president wanted to fire T, he could simply have the Secretary of the DOI fire T; he could also fire the secretary if they refused to do so. Even if the president were required to show good cause before removal, the president has alleged that immigrants employed by the federal government pose a national security risk. Thus, the president would likely be able to establish good cause for the removal.

Therefore, even if the president's removal authority were restricted to showing good cause, the president would likely be able to fire T.

2. Whether or not the president can arrest and prosecute Alix (A)?

CONGRESSIONAL PRIVILEGES AND IMMUNITIES

Under the Speech and Debate Clause, a congressperson cannot be held criminally or civilly liable for legislative acts, which are acts done or statements made during a legislative session. Furthermore, congresspeople enjoy protection from arrest during a legislative session, or while travelling to or from a legislative session. The exception is that a congressperson may be arrested at any time if the charge is treason, felony, or breach of the peace.

Here, A was a vocal critic of the president. The facts are not clear **where** A was making statements of criticism about the president, but presumably these statements were made during a legislative session. Therefore, A would have immunity for these statements. More troubling is A's assistance of T in evading arrest and deportation. The facts indicate that A specifically told T that she would help protect him from arrest and deportation during a rally. She was later found and arrested for obstruction of a government proceeding, aiding and abetting, and resisting federal law enforcement officers.

Assuming that these are all valid crimes that may be prosecuted, these acts occurred outside of a legislative session because they occurred during a rally, and presumably also at the hotel where A was staying. While it could be argued that these were legislative acts because A was representing her constituents and their dissatisfaction with the president's policies on immigration. However, regardless of her political reasons for making these comments and taking these acts, A was not in a legislative session when she agreed to help T avoid arrest and deportation.

Therefore, A would likely not be able to raise a defense for herself under the speech and debate clause.

ARREST (supra)

Here, A was arrested at a hotel after a flight delay on her way to Washington DC. Presumably,

A was flying to DC for the purpose of attending a legislative session since Congress convenes in Washington DC. In this sense, A was travelling to a legislative session because she was not in her home town, but rather en route to DC. The fact that she was delayed would not matter because she was already in the process of travelling as further evidenced by the fact that she was staying in a hotel. While it could be argued that the delay created a condition wherein she was no longer travelling to a legislative session, this argument will likely fail since, as discussed above, she was still in a state of travelling as indicated by her staying at a hotel.

However, the charges against A are extreme. The facts do not indicate whether these charges are felonies. Assuming that there is a felony charge, A could still be arrested while travelling to a legislative session. Assuming that none of the charges are felonies, however, A may still be arrested while travelling since she is breaching the peace by obstructing the justice of a pending government proceeding and inciting other citizens to disregard the law.

Therefore, A's arrest at the hotel was likely lawful.

3. What can T argue in his defense against arrest and deportation?

CITIZENSHIP

A president has authority to determine who may enter the country; he may deny entry if he believes that their entry would be detrimental to the interest of the US. However, the authority over citizenship belongs to Congress. While citizens have a right to remain citizens until they voluntarily relinquish it, Congress has the authority to place conditions on citizenship for those naturalized outside the US, and revoke citizenship for failure to comply.

Here, the president has enacted a law which subjects foreign nationals who worked in government to deportation in order to disincentivize infiltration into the government by subversive agents. The president is likely able to enforce this law under his authority to deny entry in cases where it would be detrimental to the interests of the US. Because the president has claimed that there is a national security risk for employing and permitting foreign nationals into the country (that they infiltrate and promote their subversive agenda) the president likely has the authority to deny entry to these individuals.

However, T claims that he is a citizen, even though he was born out of the US, because his mother was a US citizen. While the facts do not provide enough detail, it is possible that T is a US citizen entitled to Due Process Protections. Even if Congress could implement laws restricting the citizenship of those naturalized outside the US, like T, the facts do not indicate that is the case here. Therefore, T is likely a US citizen subject to the protections of the Due Process Clause.

PROCEDURAL DUE PROCESS

Procedural Due Process requires that certain procedures be followed before the government can deprive a citizen of their life, liberty, or property (usually notice and a hearing). A citizen has been deprived of their liberty if there has been a significant loss of freedom provided in the Constitution. There has been a deprivation of property if the citizen had an entitlement and the entitlement was not fulfilled. An entitlement occurs where a citizen has a reasonable

expectation of continued receipt of a benefit.

In determining what procedures are owed, the courts use the Mathews test, which balances the following factors: (1) the importance of the interest to the individual, (2) the ability of additional procedures to prevent risk of erroneous deprivation, and (3) the government's interest. //

JOB

Here, T lost his job, and now faces arrest and deportation. T has been deprived of his government job, in which he had an entitlement because he likely expected to continue to be employed. T did not seem to have received any notice or hearing. His interest in continued employment is significant, since that is how he makes a living and supports himself; his employment is directly related to his survival. A pre-termination hearing would have afforded T the opportunity to raise his defense that he was a citizen since that was the basis for his firing, and seems to be disputed. Finally, the government has an interest in controlling national immigration policy and in saving time by not having to hold a hearing. However, given the significance to T of his job and his ability to remain in the country, T's interest in having a pre-termination hearing likely outweighs the government's interest in promoting their immigration and foreign policy objectives.

or pre-
deportation
hearing

Therefore, T likely should have been afforded a pre-termination hearing.

FREEDOM

Here, T is being threatened with the possibility of arrest and deportation. While it could be argued that there is no liberty interest at stake since the administration does not believe T to be a citizen deserving of due process, as discussed above, T likely is a US citizen entitled to due process. Furthermore, T's liberty would be deprived if he were to be deported since T would no longer get to enjoy the privileges of being a US citizen, such as working in the US. Just as with his job, a pre-deportation hearing would significantly decrease the risk of erroneous deprivation of his liberty interest since T could address the issue of his citizenship and potentially avoid deportation entirely. The government would likely argue that given the potential number of persons that could be deported under the president's new law, they would not have the time, money, or resources to grant each individual a pre-deportation hearing. However, T's interest in continuing to reside in the US is so significant, that a court would likely find that T was entitled to a pre-deportation hearing.

WRIT OF HABEAS CORPUS

A citizen detainee can challenge the legality of the arrest and detention through a writ of habeas corpus. Under the suspension clause, the writ of habeas corpus can be suspended if public safety requires it, such as cases of insurrection, rebellion, invasion or significant breaches of peace. However, once peace is restored, writ of habeas corpus must also be restored.

Here, the facts do not indicate that T has been arrested or detained. However, it is imminent since federal law enforcement are on the lookout for T. Assuming T is ultimately arrested, if T

wanted to dispute his detention, arrest, and deportation, T could file a petition for habeas corpus. While the administration could argue that there is an ongoing emergency due to the influx of foreign nationals seeking to infiltrate the government, there are no facts beyond the passage of this law to indicate that this threat is real. Therefore, in the absence of any genuine public safety emergency, T could petition for writ of habeas corpus to receive a hearing on this issue of his citizenship, immigration, or employment status.

END OF EXAM

Ex Parte Arce ?

B.11 of Affirmation ?

Monterey College of Law

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GRADE _____

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Q1 = 80

Q2 = 76

Q3 = 77

Exam Grade = 77.6

1)

1. Violation of Privileges and Immunities under Article IV?

Privileges and immunities under Article IV indicates that state law that discriminates against out of state citizens' fundamental rights, for example the right to travel, earn a living, etc. The state carries the burden to prove that there is a substantial reason for the discrimination and that the discrimination bears a close relationship to that reason.

Based on the facts, Frito is a Texas trucker who regularly traveled to California to deliver widgets. Under, California's new "Truck Safety Act, Frito was found in violation of this new legislation and was issued a citation and was expelled from the state of CA with his truck. This law specifically exempts CA licensed drivers. Due to Frito being an independent truck out of Texas, it could be determine that this is his livelihood. Frito could raise the issue that this new law does violate his privileges and immunities under article 4 of the constitution. Thus the burden then falls on CA to prove that there is a substantial reason for the discrimination against the Texans and that the discrimination bears a close relationship to that reason. CA's reason for this new law was to ensure safety on the roads that they have claimed to be brought in by other states, like those of Texas and Florida. That being said, Frito is a trucker of state of Texas, meaning his discrimination would have a close relationship into the reasoning of CA.

While on the other hand Frito has his fundamental rights to travel and to earn a living even as an out of state citizen. Thus, the new CA Truck Safety could be found in violation of his fundamental right to earn a living, which violates Frito's rights under the Article IV's privileges and immunities Clause.

2. Violation of the Dormant Commerce Clause?

The dormant commerce clause is an implied constitutional principle that indicates that state law that is discriminatory against out of state competitors to benefit local economy and unduly burdens interstate commerce is invalid. If the state law is found to be discriminatory on its face it then is faces to the strict scrutiny standard to ensure it does not violate a fundamental right. The **strict scrutiny standard** is the judicial standard that test whether the law is of a compelling government interest, is narrowly tailored, and there no other less-restrictive resolution. While on the other hand of the dormant commerce clause if the law is not discriminatory on its' face but is unduly burdensome to interstate commerce, then the law must now go through the Pike balancing test. The **Pike balancing test** weighs the local governments' benefit of the discriminatory law against how burdensome it may be to interstate commerce. There are two exceptions to the dormant commerce clause which is whether the state has **congressional authority** to impose the law or if the state is a "market participant", which means that the states is involved in selling and buying and they are not actually regulating the intrastate commerce.

Based on the facts of the case, the "Fiscal Health Act", provided for the imposition of sales tax on purchases in CA of certain qualifying goods, while also providing a tax credit for all purchases of qualifying good if manufactured in CA. When Suzie, the CA resident, wanted to buy the widgets being produced in TX, it was determined that there was a 20% surcharge and that CA purchasers were entitled to a tax credit. Due to the fact that the law favors CA purchases of certain qualifying goods and that there is a tax credit for their goods, it can be

It determined that the CA law is discriminatory against out of state competitors to benefit their local economy. Thus, due to the very apparent discrimination, this law would have to go through the strict scrutiny test.

CA carries the burden to prove this law is not unconstitutional. CA could make the argument that they passed this law to help both their fiscal health and tax relief for their citizens, meaning this could be their argument for their compelling government interest. They ensure their state fiscal health is strong and that their citizens are gaining some tax relief. But the next prong of the test they must pass would be that the law is narrowly tailored, which is not the case for the law as it is under a broad category of the CA citizens that would be be enjoy this government interest. Although this is would be where CA would fail in the strict scrutiny test, the last prong of the test for them to get past would be that there is a no other less-restrictive resolution, which CA could not make the argument for as there other areas within their intrastate commerce that could be taxed that would not restrict other states from participating in interstate commerce.

Thus, this CA law does not pass the strict scrutiny standard making the law unconstitutional. Therefore, the "Fiscal Health Act" does violate the dormant commerce clause.

2)

1. Economic Emergency Act violations?

The **Non-Delegation Doctrine** states that Congress cannot delegate their legislative power to any other agency under any branch or to the President. The Economic Emergency Act was an act that was passed by the Senate, this act gave the president the powers to take necessary measure to protect the nation.

The President made the decision to raise tariffs on imports of trade partners whom did not necessarily help the nations' economy. The argument is made that only Congress can impose tariffs. Which is one of the powers Congress possesses under the taxing and spending clause under Article I, section 8, which indicates that Congress has the power to tax and spending for the general welfare of the US, which including making revenues for the public and it must be of national concern. Thus the power was delegated to the president under the Economic Emergency Act, does give him the power to create tariffs for the nation being in times of economic emergency, but this was done so unconstitutionally based on the Non-Delegation doctrine because the president was trying to create revenue for the nation in his dire times, but this is a power that is granted to Congress under Article I, section 8. The president has exclusive powers which are listed under Article II, of the **president's enumerated powers**; which including the vesting clause, the power to appoint, the power to burden, and the power to remove federal officers. Thus the president did not have the legislative power as indicated under his enumerated powers. Therefore the president could not have the power to impose the tariffs, Congress would have had to initiated this. While under **The principle of the separation of powers** indicates that no, one, branch of the federal government will have more power than the others, thus the executive branch will have their own powers and duties (the President), the legislative branch will have their own power and duties (Congress), and the judicial branch will have their own power and duties (The Supreme Court). Therefore if the president did in fact keep this power to create and impose these tariffs it would create an unbalanced scales of power, which is what the principle of separation of powers is put in place for.

What about Foreign Affairs powers of president?