

Kern County College of Law

CONSTITUTIONAL LAW I

MIDTERM EXAMINATION

FALL 2024

Prof. C. Loo

EXAM INSTRUCTIONS

You will have three hours to complete this exam. There are two essay questions to be answered in Questions 1 and 2; Question 3 consists of four short answer questions. Each question will count for 1/3 of your exam grade.

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

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

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

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

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

Question No. 1

The United States president has had a tumultuous presidency over the last four years. Afraid that he will not win reelection, he decides to have his opponent in the upcoming election, an unmarried orphan, killed. To this end, he discusses the matter with his attorney general who convinces him not to use the government's resources or entities to accomplish the killing. Frustrated, the president seeks out his campaign manager and together they hatch a plot to hire a hitman to accomplish the task. The President uses his own funds to hire the hitman. The hitman accomplishes the task while his opponent is campaigning in the State of Sunshine, but is caught in the process of the killing and confesses that the president hired him. The killing causes two cases to be filed against the president- one civil and one criminal. The criminal case is brought in state criminal court in the State of Sunshine. A non-profit organization, "the justice league," a group of orphans formed to assert the legal rights of those without family to do so, files civil suit directly to the U.S. Supreme Court alleging violations of the fifth, sixth, and fourteenth amendments and various state-law tort claims on behalf of the slain opponent.

In the criminal matter, the president moves to dismiss the case against him claiming absolute immunity from prosecution. The trial court denies the motion and the appellate court and court of last resort in the Sunshine State affirm. The United States Supreme Court grants certiorari in the matter.

In the civil matter, the president moves to dismiss the action on jurisdictional grounds that it is non-justiciable.

1. In the criminal case before the United States Supreme Court, what issues will the prosecution and defense raise and how will the court likely rule and why?
2. In the civil case before the United States Supreme Court, what arguments for and against the United States Supreme Court's jurisdiction can the parties make and how is the court likely to rule and why?
3. In the civil case before the United States Supreme Court, what arguments for and against justiciability can the parties make and how is the court likely to rule and why?

Question No. 2

After voters approved an initiative enshrining the recreational use of marijuana into the Moonshine State's constitution, the Moonshine State's legislature became concerned with the recent influx of foreign corporations applying for business licenses in Moonshine State to sell marijuana and marijuana-related products. Additionally, it was concerned with residents of West Moonshine State, a neighboring State to the west of Moonshine State, moving east to Moonshine State to take advantage of its new marijuana laws and, in so doing, put pressure on its worsening housing crisis. Moreover, studies showed that the initiative had a disproportionate impact on men with several studies noting that men showed a particular propensity for dissociative behavior after prolonged use of marijuana and marijuana-related products. Accordingly, the Moonshine State's legislature passed the "Reefer Madness" bill that restricted the licensing of new marijuana businesses to those business entities that had already been conducting business in Moonshine State for five years prior to their business license applications. The law also prohibited the sale of marijuana or marijuana-related products to residents of Moonshine State who had become residents of the State within one year of the bill's passage. Finally, the law restricted the amount of marijuana or marijuana-related products that men could purchase or possess, setting specific guidelines and penalties for violation thereof.

1. Cheech, a new, male, resident of Moonshine State who moved to Moonshine State six months after it passed its initiative, brings suit due to the restrictions of Moonshine State's restrictions on the male gender. Analyze the Constitutional arguments Cheech can raise in a lawsuit to challenge the reparations law, and Moonshine State's likely responses and defenses. How should the Supreme Court rule and why?
2. The Bing Bong Corporation applied for a license to open a marijuana and marijuana-related products business in Moonshine State after it passed its initiative, but is located in a different State. Moonshine State, however, denied its permit application, citing the reefer madness bill. Bing Bong brings suit under the commerce clause and the privileges and immunities clause. Analyze the Constitutional arguments Bing Bong can raise in a lawsuit to challenge the Reefer Madness law, and the likely responses and defenses to be raised by Moonshine State. How should the Supreme Court rule and why?
3. Laura has just moved to Moonshine State, but has been denied access by every shop selling marijuana or marijuana-related products due to her having recently moved to Moonshine State. She brings suit under the privileges and immunities clause and the commerce clause. Analyze the Constitutional arguments Laura can raise in a lawsuit to challenge the Reefer Madness law, and the likely responses and defenses to be raised by Moonshine State. How should the Supreme Court rule and why?

Question 3

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

- A. James Vanderstrand buys a parcel of beachfront property in Northcastle State, USA, planning to build luxury, high-rise condominiums. Before he can do so, however, the Northcastle State legislature enacts a law restricting the building of multi-family housing within 20 miles of any coastline in the State citing noise and crowding. James brings suit alleging that the law is an unconstitutional taking of his property without compensation. How is the court likely to analyze and rule on the issues raised in James's lawsuit?
- B. Johannes, a bird enthusiast, submits his application to sponsor the addition of the "puteketeke" to Seastate's bird of the year contest. Seastate, however, rejects Johannes's application because Puteketekes are known for wetting their nests. Johannes, however, believes that Seastate has rejected his application because he was born in a country outside of the United States and brings suit in federal court under the 14th amendment. While his suit is pending trial, Seastate's contest is held without the Puteketeke and the Titmouse wins the contest. In light of all of the factors and events outlined above, would the federal court be willing to reach the merits of Johannes's claim? Discuss.
- C. Concerned with the wild fluctuations in price in the U.S. grape market, Congress passes a law restricting the amount of grapes that farmers can produce each year. Dino, a grape farmer, produces grapes on his farm up to the limit of Congress's law, but additionally produces a little extra and uses the extra grapes to produce table wine for himself and his immediate family. Dino was cited for violation of the law and brings suit alleging that the law violates the commerce clause. How is the court likely to analyze and rule on the issues raised in Dino's lawsuit?
- D. The President of the United States, after becoming embroiled in scandal is impeached. Upon presentment to the senate of the house's articles of impeachment, the senate passes a rule permitting senators to vote on whether to remove the President by proxy vote. The President brings suit arguing that the Senate's rule violates Article I of the Constitution. In light of all of the factors and events outlined above, would the federal court be willing to reach the merits of the President's claim? Discuss.

Brief Answer key to

Constitutional Law Midterm Exam

Fall 2024

Profs. King (hyb Sec2), Wagner (slo), Migdal (mcl), Loo (kcl), Ruskell (hyb Sec1)

Question 1

1. In the criminal case, the court will have to determine whether the President's act is an official act or an unofficial act under *Trump v. USA*. Additionally, though the admission of the president's discussion with his attorney general prior to hiring the hitman would likely be inadmissible in the case, it is also the president's best evidence that the act was an official one. Whether the President could admit exculpatory evidence of official acts is an open question. The best answers will analogize to the Court's specific discussion of the various acts at issue in the case as official or unofficial.
2. In the civil case, the court does not have original jurisdiction to hear the matter as suits against the President do not fall under Article III's original jurisdiction. The best answers will include a discussion of *Marbury v. Madison*.
3. The justiciability issue here is third-party standing. Students will analyze whether the justice league has itself suffered harm, whether the aggrieved party is likely to assert its own claim, and whether it has a sufficient nexus to the person for whom it asserts associational standing such that there is an Article III case or controversy.

Question 2

1. Students will analyze Cheech's equal protection claim based on gender and apply heightened scrutiny. Is the State's interest important enough to justify its gender-based restriction?
2. Students will properly note that the privileges and immunities clause does not apply to corporations and then proceed to analyze the issue under the dormant commerce clause. The best answers will refer to the *Tennessee Wine & Spirits Retailers Association v. Thomas* and note that the durational residency prohibition is not narrowly tailored to achieve a legitimate local purpose.
3. Here, students will analyze whether the privileges and immunities clause applies. Here, it is properly applied to a state law that discriminates against out-of-staters. However, is Laura's right a fundamental right protected by the P&I clause? *Baldwin v. Fish & Game Commission of Montana* would suggest it is not as the activity is a recreational one unrelated to earning a living or other economic interests.

Question 3

- A. Students will determine whether this is a possessory or regulatory taking and, if a regulatory taking, has the owner been deprived of all economically viable beneficial use of the property under *Lucas*?

- B. The issue here is mootness as the contest is already over by the time the case reaches the court. However, students may note that this could be a controversy that persists but evades review as future challengers would be unlikely to have a final resolution on the matter before it reaches the supreme court.
- C. This is a *Wickard* issue testing students' knowledge of the cumulative effect doctrine in the commerce clause jurisprudence. If all grape growers similarly grew extra grapes for personal consumption, would it substantially affect interstate commerce in the aggregate?
- D. Students will properly note that the US supreme court has determined that impeachment questions are non-justiciable political questions.

1)

1)

1. U.S. v. President

Great discussion
of US v. Trump

Absolute vs. Presumptive Immunity in Criminal Cases

The President has absolute immunity from criminal prosecution for official acts committed under Constitutional authority. The President has presumptive immunity for all other official acts granted by federal statute or authority. Absolute immunity precludes the President from being criminally prosecuted for acts he committed while in office. Presumptive immunity assumes immunity for the President unless a Federal Court can argue that prosecuting the President for all other official acts will not deter, distract, or cause the President to hesitate with decisions that require bold and decisive action.

Here, the President did not use the government's resources or entities to accomplish the killing, and instead opted to use his personal funds to hire the hitman. The President will argue that he has absolute immunity for all official acts that he is granted authority by the Constitution. The U.S. will argue that hiring a hitman to assassinate a political rival is not an executive power granted by the Constitution, even so the President opted to use personal funds to hire the hitman so it cannot be an official act because it was motivated by personal gain.

The President will argue that if he does not have absolute immunity, then he should have presumptive immunity because he carried out the act while in office in the interest of what is best for the United States. Again, the U.S. will argue that if he was carrying out an official act in the best interest of the United States, then he could have used government resources to accomplish that purpose. But, because the President used personal funds and was afraid that he would not win reelection, then it indicated his motives were for the furtherance of his personal gain. However, the President will argue that presumptive immunity will delay his criminal prosecution until the case is remanded to federal court to determine whether prosecution of the President for these acts will hamper the President's unique office from making bold, decisive decisions.

The case will likely dismiss the President's absolute immunity defense, but remand his presumptive immunity to the federal courts for further review, however that review will likely dismiss any presumptive immunity defense.

Executive Privilege

The President has executive privilege to prevent discrete, secretive communications from being introduced as evidence as an issue of national security. However, the Courts can force relinquishment of all communicative evidence if they can show a need for the evidence in order to prosecute.

Here, the President will assert executive privilege over communications he had with his attorney general and campaign manager regarding his plot to hire a hitman to assassinate his political opponent.

2. Justice League v. President

Original Jurisdiction

The United States Supreme Court has original jurisdiction for disputes between states, states and foreign governments, and matters requiring judicial oversight. Further, a case can only reach the Supreme Court through Mandatory Review or Discretionary Review. Mandatory Review by the U.S. Supreme Court is triggered when a federal district court has a 3 judge panel that unanimously agrees judicial review is best suited by the Supreme Court. Otherwise, a case can only reach the Supreme Court following Discretionary Review.

Discretionary Review

Discretionary Review by the U.S. Supreme Court is triggered when the USSC grants certiorari after a writ of certiorari is drafted by the appealing party. The U.S. Supreme Court can only grant certiorari in state cases after the case has appealed from the state lower courts to the state appellate court and finally that state's highest court.

Here, the President will argue that the Supreme Court does not have jurisdiction to hear the Justice League's civil suit because it did not receive the case from neither Discretionary Review nor Mandatory Review. Further, the President will argue that allowing the Supreme Court to receive a direct filing exceeds the scope of their jurisdiction. Lastly, the President will argue that the civil suit includes various state-law tort claims that are not pertinent for Supreme Court review because the Supreme Court is limited to Constitutional interpretation and state law torts are not governed by or enacted by the Constitution and therefore cannot be reviewed by the Supreme Court.

The Justice League will argue that the Supreme Court has jurisdiction to review violations of the fifth, sixth, and fourteenth amendments because those are protections expressly granted by the Constitution. However, the President will argue that while the U.S. Supreme Court has jurisdiction to review Constitutional violations, it is premature as the matter needs to be first filed at the district court level, unless a Mandatory Review exception exists.

Therefore, the U.S. Supreme Court likely does not have jurisdiction to hear the civil case.

Absolute Immunity

The President has absolute immunity from civil liability for all official acts while in office. However, the President does not have absolute immunity from civil liability for acts from before he was President.

Here, the President will make similar arguments that he is precluded from civil liability under absolute immunity because the unique nature of the President's office requires he take quick and decisive action that would otherwise open him up to civil liability even if he acted in the best interest of the United States. However, the Justice League will argue that hiring a hitman to assassinate a political opponent is far from acting in the best interest of the United States, as the facts above indicate a motive for acting with personal interest.

Therefore, the President likely does not have absolute immunity.

3. Justice League v. President

Justiciability

Justiciability refers to cases before the Supreme Court that they are able to resolve. For a case to be heard by the Supreme Court, a Plaintiff must have standing, ripeness, a matter not moot, and does not answer a political question or require an advisory opinion.

Organizational Standing

A Plaintiff has standing if they can show an injury in fact, the defendant was the cause of the injury, and the Plaintiff can secure a favorable outcome (redressability). A Plaintiff has organizational standing if there is injury to at least one of its members, the injury is germane to the organization's purpose, and a member's participation in the suit is not required.

✓ Here, the Justice League (JL) will argue they have standing because the murdered opponent was an unmarried orphan, the purpose of the organization is to assert legal rights of those without family (like the opponent), and the opponent's participation is not required. Further, the JL can argue that they are a third-party asserting the rights of an individual unable to do so, however, the President will argue that typically only a third-party can assert the rights of alienated persons, such as non-citizens. This is not the case here since the reason the opponent cannot assert any rights himself is because he is dead, not an alienated individual.

✓ The JL will argue that the opponent was a member of the JL by meeting the unmarried and orphan criteria that defines their organization. The President will ultimately argue that the issue here is redressability, as an outcome favorable for the Plaintiff will not serve the opponent any good since he is dead.

✓ Therefore, the Supreme Court will likely not grant organizational standing.

2)

1. The state of Moonshine cannot marshal "extraordinary justification" for the provisions of the "Reefer Madness" bill that discriminate against men, and those provisions will be held to be unconstitutional.

Cheech is a member of a quasi-suspect class, and Moonshine State's "Reefer Madness" bill must pass intermediate scrutiny.

The 14th amendment to the United States Constitution applies to the states and requires equal protection under the law. Any state or local law that is discriminatory can be challenged under 14th amendment equal protection grounds. Cheech so challenges the Reefer Madness law.

Every state law that is discriminatory (whether it is discriminatory on its face, or invidiously discriminatory) must be analyzed. The state is not *prohibited* from discriminating against a group, as long as it can offer sufficient justification for doing so. The justification required depends on who the law discriminates against, and whether the law is facially discriminatory or invidiously discriminatory. Facially discriminatory laws are laws which discriminate against a specific group of people on their face: laws that specifically prohibit certain races, genders, or groups of people from doing something are facially discriminatory. Invidiously discriminatory laws are laws which do not discriminate on their face, but have discriminatory results. A law which requires an applicant to pass a civil service examination which results in mostly white candidates passing and mostly black candidates failing, is invidiously discriminatory.

Strict scrutiny does not apply because the "Reefer Madness" bill does not discriminate based on race or alienage.

The highest level of scrutiny under the 14th amendment analysis is strict scrutiny. For a statute to pass strict scrutiny, the discrimination must be necessary to achieve a compelling government purpose, and there must be no less discriminatory alternatives. The burden of proof rests with the state who is seeking enforcement of the discriminatory law. Because strict scrutiny requires such a high burden, states seeking enforcement rarely prevail. But strict scrutiny only applies to laws which discriminate based on race or alienage. "Alienage" refers to persons who are not United States citizens, and not citizens of other states. The "Reefer Madness" bill discriminates against men, and it discriminates against persons and businesses from out of state. Therefore, strict scrutiny does not apply to the analysis of the "Reefer Madness" bill in Cheech's lawsuit.

✓ **Intermediate scrutiny applies to the bill as it relates to Cheech because the "Reefer Madness" bill discriminates based on gender.**

The second highest level of scrutiny under the 14th amendment analysis is intermediate scrutiny. Intermediate scrutiny requires that the state's discrimination be substantially related to an important government purpose. This is a somewhat relaxed standard, but the state still bears the burden of proof. Intermediate scrutiny applies to so-called "quasi-suspect" classes.

✓ "Quasi-suspect" classes are those classes that are not specifically mentioned in the Constitution (like race and ethnicity), but are nevertheless protected because the characteristics of quasi-suspect classes tend to be immutable. Quasi-suspect classes include sex and children born outside of marriage. The statute at issue here discriminates based on sex because it is facially discriminatory toward men. Gender is a quasi-suspect class and laws which discriminate against quasi-suspect class are subject to intermediate scrutiny.

✓ **The state cannot show that discrimination based on sex is "substantially related" to the stated goal of the bill.**

As mentioned previously, the State bears the burden of proof that the law they are seeking to enforce is "substantially related" to an important government purpose. To meet this test, the state needs to show that the discrimination was necessary to achieve the purpose of the bill. Here, there were several stated purposes of the bill. The one that relates to Cheech's challenge to the law based on unlawful discrimination was that marijuana disproportionately affects men by increasing their propensity for dissociative behavior.

✓ *relevant*
obj 51 The State has several studies that show men who use marijuana and marijuana-related products are more likely to suffer dissociative behavior. This is similar to the studies shown by the state of Oklahoma in defense of their bill prohibiting the sale of near-beer to men under the age of 21 when women were allowed to purchase near-beer at age 18. The Supreme Court rejected this argument in Oklahoma and will reject it here as well, for the same reasons.

✓ The Supreme Court in that case held that in order to justify discrimination based on sex, the State must have "exceptional justification" which was not met by a handful of studies produced in Oklahoma. The same is true here: although the State has strong evidence that banning marijuana use by men will have some positive effects, the government interest is not important enough to justify a facially discriminatory bill against a quasi-suspect class (men.)

Because the State cannot meet its burden under intermediate scrutiny, the state of Moonshine will not prevail and the provision in the "Reefer Madness" bill which limits the amount of marijuana men can possess will be held to be unconstitutional.

11/

2. The dormant commerce clause protects Bing Bong and Moonshine's "Reefer Madness" law will be held unconstitutional for violating the dormant commerce clause, but the privileges and immunities clause does not apply to Bing Bong and that part of their claim will be dismissed.

element

The dormant commerce clause applies to the "Reefer Madness" bill as it relates to the prohibition of foreign corporations selling marijuana in Moonshine.

State and local laws which conflict with federal law on the same subject are preempted and federal law prevails. This preemption occurs most often in cases of interstate commerce. The commerce clause of the Constitution gives Congress the authority to regulate interstate commerce. Congress may do this explicitly or implicitly. Congress acts explicitly when it passes laws regulating an area of interstate commerce, and those laws say that the federal law preempts state law. Congress acts implicitly when it passes laws regulating interstate commerce or other areas which are inconsistent with state laws. When a state law is in conflict with a stated Federal objective, the state law is preempted even if Federal law is silent on whether or not state laws are preempted.

✓ Congress may also do nothing. In the event that Congress has done nothing to regulate the interstate commerce in question, state and local laws may still be preempted by the so-called 'dormant' commerce clause. The dormant commerce clause is a plenary power of Congress. The principle of the dormant commerce clause is, essentially, that although Congress has not chosen to regulate this specific area of interstate commerce, states are nevertheless prohibited from interfering with interstate commerce because any laws they pass attempting to do so are preempted by the dormant commerce clause.

✓ The dormant commerce clause protects both persons and entities (such as corporations and partnerships.) If a state law unduly burdens interstate commerce, it will be held to be preempted by the dormant commerce clause and stricken down by the court. Here, Bing Bong is attempting to overturn the portion of the "Reefer Madness" bill which allowed Moonshine to deny Bing Bong's application for a business license. Bing Bong is relying on the dormant commerce clause, arguing that although Congress has not directly regulated the activity in question, Moonshine nevertheless is prohibited from interfering.

✓ Moonshine's "Reefer Madness" law substantially impairs interstate commerce and will be struck down under the dormant commerce clause.

The dormant commerce clause prohibits states from substantially impairing interstate commerce absent an exception. States may not pass laws that favor in-state business or disfavor out-of-state businesses simply because they wish to. The state must have strong justification for restricting commerce. Not all impairments to interstate commerce will be stricken down under the dormant commerce clause. If a state provides substantial justification for the restrictions their laws place on interstate commerce, then the laws will be upheld.

✓ Here, Moonshine will argue that their restriction on new business license is substantially justified. Moonshine will argue that the influx of foreign corporations into Moonshine is straining their state and harming local businesses. This argument is unpersuasive. Moonshine cannot justify their discrimination against foreign corporations simply by arguing that those corporations will harm local businesses. Interstate commerce functions best in an arena of strong competition. The dormant commerce clause functions to encourage economic competition between the states, and efforts to squash that competition will be rebuffed by the courts.

✓ Moonshine's best shot at getting around the dormant commerce clause is to become a market participant. When the state itself is a market participant (buying, selling, or otherwise becoming involved in the marketplace of the goods and services regulated) then the State can rely on this exception to justify their regulation of interstate commerce. But the fact pattern gives no reason to believe that Moonshine will ever be a market participant in the marijuana trade, so it is unlikely this exception would ever apply.

Moonshine can also get congress involved directly. Congress can create an exception to the dormant commerce clause by specifically authorizing a state or locality to regulate interstate commerce in the way proposed. If Moonshine gets Congress to pass a law authorizing their regulation of the interstate marijuana trade, then the dormant commerce clause will no longer apply. Congress will simply be regulating under the commerce clause, and Moonshine will be acting within that regulation.

✓ As it stands, though, Moonshine cannot offer sufficient justification to violate the dormant commerce clause and the provision of the "Reefer Madness" bill that prohibits foreign corporations from trading in marijuana in Moonshine will be struck down as unconstitutional on that ground.

great

The Privileges & Immunities Clause does not protect artificial entities, so Bing Bong's challenge will fail on this ground.

Bing Bong is also challenging Moonshine's "Reefer Madness" law under the Privileges & Immunities Clause. The Privileges & Immunities clause is a provision in the Constitution which guarantees that citizens of one state will be given all the privileges and immunities under the laws of other states when they are under the other state's jurisdiction. This clause only applies to natural persons. It is inapplicable to and unenforceable by other entities like corporations. Because Bing Bong is not a natural person, they have not been harmed under the Privileges & Immunities clause and have no standing to sue on this ground. This claim will be dismissed by the Supreme Court.

3. Laura is protected by both the commerce clause and the privileges & immunities clause, but her arguments under both fail because the state has substantial justification to regulate the possession of marijuana by new residents.

Laura is a natural person, and as such she is protected by both the commerce clause and the privileges and immunities clause of the constitution. Both clauses were previously explained.

As stated above, the dormant commerce clause applies to protect interstate commerce. A state may not substantially interfere with interstate commerce, even if Congress has not acted to regulate that space, unless the state has substantial justification for doing so. Laura will argue that there is no substantial justification for discriminating against her as a new resident of Moonshine. Moonshine will argue that there is. Moonshine has the better argument.

Under the commerce clause analysis, a state may interfere with interstate commerce if it has substantial justification for doing so. Here, Moonshine is discriminating against new residents of Moonshine. Moonshine's justification for doing so is to preserve housing. Allowing an influx of residents would worsen their housing crisis. The legislature observed that the legal marijuana in Moonshine provided a strong incentive for people to move to Moonshine, aggravating the housing crisis. Moonshine's prohibition on new residents purchasing marijuana is rationally related to Moonshine's objective of preserving housing for their existing residents. There is, therefore, substantial justification for Moonshine's regulation of the marijuana market as it concerns new residents, and this provision of the bill will be upheld.

The privileges and immunities clause does not protect recreational activity and will not apply to Laura in this situation.

Great

This is the big issue

Qrest

The privileges & immunities clause applies to fundamental rights (like the right to vote) and the right to earn a living. The privileges and immunities clause does not protect individuals from justified regulation of recreation. Here, the discrimination against new residents does not impair any fundamental rights nor livelihood of the new residents. States may regulate interstate commerce more freely if the regulations do not impair fundamental rights or livelihoods. The regulations are related to recreation, and is similar to the case where a state charged much higher fees for recreational licenses to out-of-state residents as it did to in-state residents. Laura's claim under the privileges & immunities clause will fail.

3)

A. James v. Northcastle State

The Takings Clause

Under the 5th amendment it states that private property shall not "be taken for public use without just compensation". This clause generally will apply to physical takings of property, it may also apply to regulatory takings, when government action restricts the use of a property and it deprives the owner of the use and enjoyment of their property that constitutes a taking that must be compensated. The Penn Central test is used to determine if a taking has occurred by analyzing the facts of the case and using the following elements: (1) the economic impact on the property owner, (2) any interference with the property owners expectations and (3) the reason for the government action. Courts may also use the Per Se Takings Analysis under two specific circumstances, (1) where there is a physical invasion by the government into the property, or (2) the total deprivation of economic use, which occurs when a regulation deprives the owner of all economic use of their land, which then constitutes a Per Se Taking.

Penn Central Test:

Here, the court should analyze whether Northcastle State's law restricting the building of multi-family housing within 20 miles of any coastline constitutes a regulatory taking on James's property and using Supreme Court precedent from the Penn Central case to come to a decision. First, the court should look at how James economic interest may be affected by the restriction of the law. If James can no longer build a luxury high-rise condominium as he planned when he purchased the beachfront property, then his potential to make a profit may be affected and it may have a significant impact on James economic future. Second, the court would analyze to see if the law interfere's with James expectations of the property. James would have to demonstrate to the court that he had a reasonable expectation that he could build such a building when purchasing the property and that his expection was to build a high-rise building. If Northcastle State had no prior restrictions to building high-rise buildings like the one James wants to build, then James could argue that his economic expectation was impacted by the new law. However, if he can still build other type's of structures, then the court may find that his economic impact was not heavily impacted and may not be considered a taking. Lastly, the court would look at the government action and the reason for the new law. Northcastle State can argue that the law and its restrictions is for an important public purpose to reduce the noise and crowding near the coastline, and it is not discriminatory, then the court may deny Jame's claim that the law constitutes a regulatory taking.

The court would most likely use the Penn Central Test

Per Se Takings Analysis:

Here, there is no indication of a physical intrusion by the government into James property. Therefore the Per Se Takings Analysis would rely only on the second circumstance which is if there was a deprivation of the economic use of the property. James argues that he cannot build a luxury, high-rise building as he expected when purchasing the property. James may demonstrate to the court that he cannot make any profit with his beachfront property due to the restriction of the new law then his claim may succeed under this analysis.

The court would most likely not use the Per Se Takings Analysis on this claim.

If James can successfully argue that Northcastle State's restriction leave him with no possibility to make profit and impacts his economic use of the property or total deprivation of the property, then he has a strong chance of prevailing. However, if he can still use the property for other less profitable ventures, then the court is most likely to apply the Penn Central test and find that no taking here and his claim is most likely to fail. The court would most likely rule that there was no taking here.

B. Johannes (J) v. Seastate (S)

Standing

Every federal lawsuit must have standing to establish standing under Article III of the U.S. Constitution, a plaintiff must meet three elements as follows: (1) Injury-in-fact, the plaintiff must show that they suffered a concrete and specific injury that is actual or imminent, (2) Causation, the plaintiff must show that the defendant's actions caused the injury, and (3) redressability, the court must be able to provide relief to the plaintiff for the injury caused.

Injury-in-Fact

Here, J alleges discrimination based on his national origin in violation of the Equal Protection Clause (EPC) of the 14th Amendment. This could constitute an injury if J can show that his application was rejected because of the birth place. However, S may argue that they only denied the sponsorship.

Causation

Here, J claims S decision was due to discriminatory intent. If J can provide evidence to support his claim then he can establish causation, however the facts do not provide more detail as to why J believes his claim and do not provide any outside evidence or claims as to S rejecting other applications for the same reason they denied J's. If he can provide proof then he may have a claim.

Redressability

Here, if the court finds that S violated J's constitutional rights, it could order remedies to J, such as requiring S to reconsider J's application or give J compensatory damages.

It is likely that the court would find that J can establish Standing if he provide sufficient evidence of S's discriminatory intent.

Mootness

Continuing all stages

Mootness arises when the claim by the plaintiff or their personal stake in the outcome, makes it impossible for the court to grant effective relief to the plaintiff. Courts recognize an exception to mootness where an issue has the possibility of reoccurring, so they would hear the case to avoiding the possibility of an injury caused to a plaintiff be repeated but evading review by the court.

Here, the bird contest has already occurred, and a winner has been declared. However, if S hold's this bird contest every year and continues to reject J's application based on the alleged discrimination, then the issue has the capability of reoccurring. Also, depending in which type of relief J is seeking, his claim may not be moot by the conclusion of the contest.

The court would likely find that mootness is not an issue in this case because the claim has the possibility of being repetitive or reoccurring.

Ripeness

Ripeness ensures that courts adjudicate only disputes involving actual controversies rather than hypothetical or premature claims.

Here, J's claim is ripe because S has rejected the application and held the contest without J. J alleges he has suffered a harm that has already occurred and is not based on future events.

The court would most likely find J's claim to be ripe.

Claim under 14th Amendment

No

The 14th amendment clause prohibits states from denying any person within their jurisdiction equal protection under the law.

Here, although S is not a government entity, courts have applied constitutional principles to non-governmental entities performing public events such as the bird contest. J would have to show that S would qualify as a state actor, he must also prove S's discriminatory intent.

The court would most likely rule that even if standing exist, J's claim fails because S is a private entity and not a state actor

The federal court would likely find that J established standing and may overcome mootness concerns by showing the ongoing harm of being capable of repetitive buy yet evading review. However J's claim may fail based on proving S's intent and S not being a government actor.

Dinos Lawsuite

Affect in aggregate

The court is likely to analyze the lawsuit under the Commerce Clause to regulate even small scale local productions if it has substantial effect on interstate commerce. If the activity, when aggregated with similar actions impacts interstate commerce. Since Dino's production of extra grapes for personal wine-making could be seen as part of an effect on the grape market even if it is not commercial. Congress can regulate it if it affects the broader grape market and demand.

The court is likely to find that congress acted within the commerce clause powers in restricting grape production. The court therefore likely to rule against Dino and uphold the law constitutional.

The Presidents impeachment Claim:

Under Article I Section 3, the senate has the sole power to try all impeachments. This provision will grant broad discretion to the Senate in determining how impeachment trials are conducted. In this case, while the President argues that proxy voting violates Article I requirements for an impeachment trial, the courts are unlikely to intervene.

The Federal courts are unlikely to find the President has a claim and would dismiss the case as non justiciable political question

END OF EXAM

*yes - issues re
impeachment 22*

*political question
Non-justiciable*