

CONSTITUTIONAL LAW I  
MIDTERM EXAMINATION

Fall 2023

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EXAM INSTRUCTIONS

You will have three hours to complete this exam. There are two essay questions to be answered in Questions 1 and 2; Question 3 consists of 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 evidence your ability to apply the law to the given facts and to reason in a logical, lawyer-like manner from the premises you adopt to a sound conclusion. Do not merely show that you remember legal principles. Instead, try to demonstrate your proficiency in using and applying them.

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

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

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## CONSTITUTIONAL LAW

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### Question No. 1

After extensive hearings, Congress made findings that animals raised for pork products are routinely confined in small or crowded enclosures, resulting in detriment to the animals' health and causing concern to consumers. Congress enacted the "Pig Protection Act" which authorizes the Secretary of Agriculture to promulgate regulations governing the treatment of animals raised for pork to ensure their safety and the health of consumers. The Act prohibits the interstate transport of any pork products that fail to comply with the Department's regulations. Pursuant to the Pig Protection Act the U.S. President directed the Secretary of Agriculture to adopt regulations governing the size of enclosures confining animals raised for pork products and to enact procedures for enforcement of the regulations including fines and penalties for violations. The Secretary adopted specific regulations mandating minimum sizes and maximum occupancy for pig enclosures, and rules for enforcement and penalties for violations. The Pork Producers Association filed a lawsuit challenging the constitutionality of both the Pig Protection Act and the regulations adopted by the Secretary of Agriculture.

1. Analyze the Constitutional issues presented, including Justiciability, in the challenge to the Pig Protection Act and whether Congress had the Constitutional authority to enact the Pig Protection Act.
2. Assuming justiciability, analyze the Constitutional issues presented in the challenge to the Secretary of Agriculture's Rules, including the Secretary's authority to adopt regulations governing the size of enclosures used to confine animals raised for pork products and imposing enforcement procedures with fines and penalties.

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### Question 2

The Sunstate Legislature enacted legislation to grant reparations to the state's Japanese Citizens because of the internment of Japanese Americans during World War II. Under the new law each state resident of Japanese Ancestry was entitled to claim \$20,000 in reparations upon proof that a family member had been incarcerated in an internment facility. A Reparations Fund was created by the state and funded by a tax imposed upon all businesses and corporations doing business in Sunstate if they had ever had a Judgment entered against them in Federal Court for violating Title VII of the Civil Rights Act, the federal law which prohibits employment discrimination based on race, color, religion, sex and national origin. Title VII provides for specific remedies and maximum damages.

Analyze the following questions:

1. Ali, a Sunstate resident of Italian ancestry, objects to the reparations law as unconstitutional because Ali's Italian family members were incarcerated in an internment facility during World War II and Ali is not entitled to apply for or receive reparations under the Sunstate law. Analyze the Constitutional arguments Ali can raise in a lawsuit to challenge the reparations law, and Sunstate's likely responses and defenses.  
How should the Supreme Court rule and why?
2. The Beta Corporation does business in Sunstate but is located in an adjacent state. Beta was required by Sunstate to pay the Sunstate tax for the Reparations Fund because a Judgment had been entered against Beta in 1995 in federal court in a sex discrimination case brought under Title VII of the Civil Rights Act. Beta had paid that Judgment in full for maximum damages, and objects to Sunstate's Reparations Fund tax under the Supremacy Clause, the commerce clause, and the Privileges and Immunities Clause. Analyze the Constitutional arguments Beta can raise in a lawsuit to challenge the Reparations law, and the likely responses and defenses to be raised by Sunstate.  
How should the Supreme Court rule and why?

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### Question 3

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

A. Frank Farmer owns a 200-acre parcel of land in State A. The land is unsuitable for farming, unlike his land located elsewhere, and is located several miles from the nearest commercial and residential areas. However, geologists have determined that there is coal underneath the parcel. Frank owns both the surface and mineral rights to the property. The State A legislature, concerned about the environmental impact of coal mining, imposes a ten-year moratorium on coal mining in State A. Frank sues the state, alleging that the moratorium is an unconstitutional taking of his property without compensation. How is the court likely to analyze and rule on the issues raised in Frank's lawsuit?

B. President Green's administration becomes enmeshed in a scandal over charges that bribes were paid to a Justice Department official to make favorable recommendations on applications for Presidential pardons. The President denies any awareness of the bribes, and also denies that any pardons were granted on applications where bribes were paid. However, under pressure from Congress and the public, the President agrees that a special prosecutor should be appointed to investigate. The law provides that normally special prosecutors are inferior officers appointed by the Attorney General. However, a law enacted during the previous administration provided that special prosecutors investigating charges of Justice Department misconduct were to be appointed by a panel made up of three federal Circuit Court judges, but only if approved also by the chairpersons of the House and Senate Judiciary Committees. President Green's administration sues in federal court to block the appointment of a special prosecutor by this method, alleging that this appointment procedure is unconstitutional and the appointment can only be made by the Attorney General. How is the court likely to analyze and rule on the issues raised by the administration's lawsuit?

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C. Vern runs a business that rents motorized scooters to clients on an hourly basis. He operates his validly licensed business out of a van that he lawfully parks near Golden Gate Park in San Francisco. Ninety percent of the people who rent equipment (scooters, helmets and protective gear) ride the scooters in the park. Business is good, and Vern often runs out of scooters to rent by noon on weekends. After a rider of one of the scooters accidentally ran into a child who darted onto a path, the parks department met with the City Council to discuss active recreational activities in the public park. Upon further consideration, the City Council enacted an ordinance prohibiting all use of wheeled sports equipment in the park between the hours of sunrise to sunset, including bicycles, roller-blades, skateboards and scooters. The ordinance also prohibits the use of such equipment on the sidewalks bordering the park. Vern's rentals immediately declined. Vern seeks injunctive relief in federal court. Would the court hold that Vern has "Standing"? Briefly discuss.

D. Val applied to and was rejected by the Advanced Aeronautics Program ("AAP") at Jupiter State University ("JSU"). The makeup of each entering AAP class at JSU was determined by a formula established by state law that took into account the academic record, quality of undergraduate education, and the ethnicity of each applicant. According to state policy, the formula was necessary to ensure that each entering class reflected the cultural diversity of the state. Val's academic record was strong, placing her in the top 20 percent of applicants. Val believed that she failed to gain admission to AAP solely because she was white, and she filed suit in federal court challenging the state's admissions policy and seeking admission to JSU's AAP. While the suit was pending, Val reapplied and was admitted to the AAP and began her first year of studies. In light of all of the factors and events outlined above, would the federal court be willing to reach the merits of Val's claim? Discuss.

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## Brief Answer key to MCL Draft Constitutional Law Midterm Exam 2023

### Question 1:

The Answer will require a brief analysis of Justiciability and Association standing, and will include:

First, an analysis of whether Congress has power under the commerce clause to enact the “Pig Protection Act. It follows on the recent US Supreme Court case of *National Pork Producers v. Ross* where the Court rejected a Dormant Commerce Clause challenge to a similar law passed in CA by initiative. There the Court stated that Congress may have power to legislate in that area but did not do so, leaving the question of federal power open. Students must apply the criteria of *Lopez* and *Morrison* cases to determine if pork raising issues have sufficiently substantial effects on interstate commerce to allow congress to legislate.

Second, Whether the administrative agency (here the Dept. of Agriculture) had sufficient authority delegated to it by congress to enact regulations. This raises the application of the “Major Questions Doctrine” first announced in 2022 in *West VA. V. EPA*, and referenced again in *Biden v. Nebraska*, the student loan case in 2023 holding the President, through the Dept. of Education, lacked sufficient direction from congress to forgive student loans.

### Question 2:

First, students will analyze Leon’s equal protection claim based on race requiring an analysis of strict scrutiny in government’s granting reparations, and whether it is narrowly tailored to achieve that interest.

Second, Students will discuss preemption issues raised by a state’s taxing a company to fund reparations based on a sex discrimination judgement under a federal law, Title VII, which includes statutory remedies and maximum damages which have already been paid in full. Does the reparations law conflict with Title VII? Does it impede a federal objective? Does title VII occupy the entire field? Etc. And does the state’s reparations law violate the “Dormant Commerce Clause” by burdening interstate commerce? Students should apply the “Pike balancing test” for laws not discriminatory against interstate commerce on their face, but note that the Pike test was criticized and not applied in *National Pork Producers v. Ross* where the Court said Pike is really to be used as a way to determine if there has been purposeful discrimination against interstate commerce. Finally, students must point out that the Privileges and Immunities clause does not apply to corporations like Acme, but only to “citizens”. Some students may also add a due process analysis of whether or not taxing a company found liable for sex discrimination is rationally related to its legitimate interest in paying reparations for race discrimination.

### Question 3: Short Answers Answer key:

- A. Students will analyze the constitutionality of the state’s regulatory “taking” of Farmer’s property by imposing a 10-year moratorium on coal mining. Under the *Penn Central* test and *Lucas* test students analyze whether Farmer has been deprived of all economically beneficial use, and under *Tahoe Sierra Preservation Council v. Tahoe Regional Planning Agency* in which the Court rejected a “per se” taking rule on moratoria, students will weigh relevant circumstances and determine whether this moratorium on mining constitutes a taking of Farmer’s property without just compensation.
- B. Students will analyze whether assigning the appointment of a special prosecutor to the panel of judges is constitutionally permissible. The special prosecutor is not a principal officer or other official who must be appointed by the President, so the appointment can be properly assigned to the courts. However, the scheme as structured is not constitutional because of the requirement of approval by (essentially a veto power to) the

chairpersons of the Congressional judiciary committees is not provided for by the Constitution, and that aspect of the scheme must therefore be struck down; however, the appointment by the panel of judges is constitutional and will be upheld. Substantial partial credit will be given for an answer that identifies the issues and analysis correctly but concludes that the entire appointment provision must be struck down.

This is consistent with the principles discussed in *United States v. Artherex (2021)* in the supplement.

- C. Has Vern suffered a cognizable injury, such that “standing” would be conferred? Students would be expected to call upon all of the threshold “Justiciability” or “Case/Controversy” concepts and to address the issue of “Standing” and the appropriate form (here, likely “Third Party” Standing). The impact of the ordinance appears to have resulted in disruption to Vern’s profession livelihood, thus leading to monetary harm (lost profits?). The recreational scooter clients/riders are also impacted, but the problem arises as to defining this group - this is the pathway to 3d P Standing.

D.

This question tests in the area of mootness as one of the considerations relative to “Justiciability” and more specifically, the “Mootness Doctrine. As a set rule, there must be a live controversy at both the inception phase of a lawsuit/controversy and throughout the course of litigation (i.e., and ongoing dispute). Here, Val’s reapplication and subsequent acceptance into AAP would render her claim moot. Val is not a class representative in a class action suit and the facts do not indicate that there are other similarly situated aggrieved parties.

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### **Question #1**

In order to determine the constitutionality of the Pig Protection Act and Congress' authority to enact the act, the issues of justiciability, commerce clause, dormant commerce clause, and privileges and immunities clause must be analyzed.

### **Justiciability**

A case has justiciability where there is a case or controversy. Justiciability requires standing, ripeness, that the case not be moot, and that political questions or advisory opinions not be addressed. We will analyze the elements of justiciability in further detail below.

### **Standing**

A plaintiff has standing when there is an injury in fact caused by the government that can be remedied by a judicial decision in favor of the plaintiff. Standing requires injury in fact, causation and redressability. An organization has standing when they can bring suit on behalf of their members and the issue is related to the purpose of their organization.

Here, the Pork Producers Association (PPA) likely have standing because the Pig Protection Act prohibits interstate transport of any pork products that fail to comply with the Department's regulations. The PPA will likely be injured by this act because it will impact how and where they can produce pork products, where they can ship them, and will also subject them to fines and penalties for violations. PPA will experience both economic injury and detrimental impacts to their supply chain by adhering to this act. Additionally, if the PPA operates in multiple states, they will have to change their operations, which will also cause injury. Congress will argue that the act serves a compelling and overriding government interest to protect the health and safety of the consumers and the animals raised for pork. However, PPA still has standing to bring this



case to federal court.

Congress can argue that PPA does not have standing because they are an organization are not directly being harmed by the Pig Protection Act. PPA is not a business owner and they as an organization will not be fined or penalized for not adhering to the regulations. However, PPA can rebut by saying they are filing this lawsuit on behalf of their members and their case is related to the purpose of their organization, which is to protect pork producers in the United States. Additionally, individual pork business may not be able to sue the federal government by themselves, and would need an organization like the Pork Producers Association to file suit on their behalf.

Therefore, PPA likely has standing.

### Ripeness

Ripeness requires that the plaintiff suffer harm or be in imminent danger of harm. A case is not ripe if the law has not already been passed, as no injury can be suffered before a law has been enacted.

Here, PPA's case is ripe because Congress has enacted the Pig Protection Act and the Secretary of Agriculture now has the authorization to regulate the treatment of animals, which includes mandating minimum sizes and maximum occupancy for pig enclosures.

Thus, PPA's case has ripeness.

### Mootness

Mootness requires that there be a live, real controversy at every stage of review. Here, PPA's case is not moot because Congress has enacted the Pig Protection Act and the Secretary of Agriculture has adopted the regulations for the pig enclosures. PPA is currently subject to these regulations, and all pork producers in the country will be also as long as this act is in place. J need probably not part of it

Thus, PPA's case is not moot.

### Advisory Opinions

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HERE

A case must not address advisory opinions that are otherwise under the jurisdiction of administrative agencies. Here, Congress has authorized the Secretary of Agriculture to promulgate the regulations. Because the U.S. Supreme Court is not being asked to make decisions, then there is no unauthorized delegation of advisory opinions.

### Commerce Clause

The Commerce Clause gives Congress the power to regulate interstate commerce among foreign nations, the Indian tribes, and among the several states. Under the Commerce Clause, Congress can regulate the channels, instrumentalities, and anything else that substantially affects interstate commerce.

Here, Congress likely has the Constitutional authority to enact the Pig Protection Act because it is directly related to the interstate transport of pork products that fail to comply with the Department's regulations. The transportation of pork products is one of the channels of interstate commerce because this is how the products get to the different states. If one state is not following the same standards for the treatment of animals raised for pork, and contaminated pork products are transported to another state, this could impact the country as a whole if people are in danger of getting sick. In particular, meat products that are not kept at a regulated temperature, or animals that are not given the right medications or other things, can make lots of people sick.

Additionally, under the Commerce Clause, Congress likely has the authority to regulate the size and maximum occupancy of the animals, as this is an instrumentality of interstate commerce. This is also related to making sure the animals are raised in a safe manner, where disease prevention are focused on, as this can impact consumers as well.

PPA will argue that mandating minimum sizes and maximum occupancy for pig enclosures is outside the scope of Congress' power. Pigs come in all shapes and sizes, and farmers all have different sizes of enclosures. PPA could argue that imposing these types of regulations would be the actual adverse impact on interstate commerce because small farmers would have to spend money to rebuild their pig enclosures, maybe get rid of some of their pig if they exceed maximum occupancy, and may not be able to afford the penalties for the violations. If these regulations force small farmers to go out of business, this would be unduly burdensome to interstate commerce and therefore unconstitutional. However, this argument will likely fail because the burden of farmers adhering to the regulations does not outweigh the benefit of Congress ensuring that contaminated pork is not being shipped all around the country.

Therefore, Congress likely has the authority to enact the Pig Protection Act under the Commerce Clause.

## Question #2

In order to determine the constitutionality of the Secretary of Agriculture's Rules and regulations the animal enclosures, the issues of Legislative Power and President Executive Power must be analyzed.

### Delegation of Legislative Power

Congress has the ability to delegate their legislative power to other branches of government or administrative agencies. When they delegate their power, there must be clear and legitimate reasons for this, along with clear guidelines on how the legislation should be enacted.

Here, while Congress does have the authority to delegate their legislative power to a



government agency, the PPA could argue that the Secretary of Agriculture was not the correct agency to promulgate the regulations. The FDA would likely be a better organization to regulate the size of enclosures to confine the animals because they deal more with food and regulations for animals. However, this argument may fail because agriculture is related to raising crops and animals as well, thus Congress did delegate their power to the correct agency.

Additionally, the Secretary of Agriculture adopted specific regulations mandating the minimum sizes and maximum occupancy for pig enclosures, which addresses the specific issue that was raised at the congressional hearings, which was that the small and crowded enclosures was impacting the animals' health and also raising health concerns for consumers. PPA could argue that while the Secretary of Agriculture can standardize the pig enclosure sizes, that they do not have the authority to impose fines and penalties for violations because there is no federal police power. Congress has the power to tax and spend for the general welfare, but PPA can say that Congress can not delegate their authority to impose fines and penalties on business. This argument will likely fail because Congress and has put the Secretary of Agriculture in charge of providing clear guidelines for the act, which include minimum sizes and maximum occupancy for pig enclosures, and rules for enforcement. Anyone can go to any farm and measure the pig enclosure to determine whether the farmer is following the regulations. There is no ambiguity for the regulations, which is a valid delegation of Congressional authority to an administrative agency.

Therefore, Congress has validly delegated their legislative power to the Secretary of Agriculture.

### Presidential Executive Power

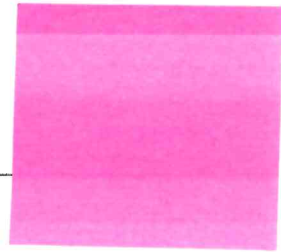
The President has executive power to issue executive orders. These orders must not conflict with federal law or with the constitution itself, unless there is a compelling and

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substantial government interest, or if it is for the health, safety, and general welfare.

Here, the President may have exceeded their executive power by directing the Secretary of Agriculture to adopt these regulations because they are now imposing fines and penalties for people who don't comply. PPA could argue that the President is exceeding his scope of power because this is more related to legislative power through Congress. The Executive Branch could rebut by saying that unregulated raising of animal products, particularly pork, is very dangerous if it's being transported all over the country. This could have detrimental impacts on the health, safety, and general welfare of the people, thus the President does have the power to directly an administrative agency in this situation. PPA could also argue that under the Takings Clause, the President can not authorize fines and penalties for not abiding by these regulations. However, this argument will likely fail because it is not public property that is being taken, and the fines and penalties are an incentive to comply with the regulations, which is for the general welfare of the people.

Thus, the President likely did not exceed the scope of his power by directing the Secretary of Agriculture to adopt the regulations.



2)

*Ali v. Sunstate*

Justiciability

Ripeness

For there to be an actual case and controversy, a complaint must be at a stage where it is ripe to be heard in court, meaning that the plaintiff has suffered an injury. In challenging a statute, the statute must be enforced in order for a plaintiff to suffer an injury. If there is strong indications that the enforcement is imminent, that may also put the plaintiff in a position where they believe the injury is imminent. Here, Ali is claiming discrimination that occurred because the legislature passed a reparations law that discriminated against people based on race. Because the discrimination happens when the law is passed and in effect, Ali has already been discriminated against if the law is in effect. Therefore, Ali has a ripe case.

Advisory Opinion

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Article III courts will not hear a case if their opinion will be an advisory opinion, meaning that the decision will have no impact on the parties. Here, Ali will argue that an injunction on the law will put similarly situated people back on equal footing and therefore a decision will have an impact. Therefore, a decision in this case will not be an advisory opinion.

Standing

For an Article III court to hear a case they have to determine that the specific person bringing the case before the court is the right party for adjudication. A party has standing if they have a concrete stake in the outcome of the controversy. To show a concrete stake, a party must show (1) injury, (2) causation, and (3) redressability.



## 1. Injury

To have standing, a party must show that they have an injury in fact that is concrete and personalized to them or that the injury is imminent. Generally, a person can only bring a claim for their own personal injury, however, organizations and associations are given standing if they meet certain elements. Here, Ali will argue that she personally and particularly injured because she is being discriminated against by the state law and she is not able to claim the \$20,000 reparations that she could claim by providing proof of her family member's internment. Therefore, she has an injury.

## Causation

In order to have standing, a party must show that their injury has a causal link to the actions they complain of from the defendant. Here, Ali will argue that the legislation itself grants for \$20,000 payments and she is being deprived of it due to the discrimination so there is a direct link between her injury and the statute. Therefore, there is causation.

## Redressability

A party must show that a favorable court decision will remedy their injury. Ali will argue that if the court finds the legislation unconstitutional, then the discrimination will end and she will be similarly treated as similarly situated people (those who had family members in internment camps). Therefore, she has redressability.

**Therefore, Ali has standing.**

## 11th Amendment- State Sovereignty

The 11th Amendment provides that the state itself cannot be sued by private individuals in federal court for damages, but injunctions are ok. Private individuals can sue state officials individually for damages. Here, Ali is suing Sunstate for discrimination. If Ali sues for an injunction, then she can sue the state. However, if she wants damages then she

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will need to sue a state officer individually.

### Equal Protection Clause

The Equal Protection Clause (EPC) applies to the states through the 14th amendment and to the federal government through the Due Process Clause of the 5th Amendment. EPC applies when governments treat similarly situation people in dissimilar manners. The EPC classifies people into classes (suspect class, quasi-suspect class, and general class) and applies different standards of review based on those classes. Race and national origin is classified as a suspect class and is reviewed under strict scrutiny. Here, Ali is challenging the state statute based on the grounds that it discriminates based on race and national origin because it applies to Japanese Americans only and not people of Italian ancestry who were similarly situation (suffered in internment camps).

### Strict Scrutiny

A state law will be held invalid unless the government can show that is necessary to serve a compelling state purpose. The law must be the least restrictive means to achieve the purpose and be narrowly tailored to the purpose. The government has the burden of proof to defend the law. Here, Sunstate will argue that they have a compelling state purpose in remedying past discrimination. Courts have found that a state has a compelling interest in remedying past discrimination where there is a history or pattern of past discrimination. If a state does not show that it is remedying a past discrimination, then the law does not have a compelling purpose. A state cannot attempt to legislate for general past discriminations, it must specifically remedy discrimination that is localized to it. Here, the facts state that the state wants to grant reparations to its state's Japanese Citizens for the past discrimination they suffered presumably within Sunstate. The facts do not specify that the internment happened within Sunstate but given the intention to pay reparations to only its state citizens we will move forward under that assumption. However, if Sunstate did not operate internment camps in the past, then it would be attempting to remedy a general discrimination and not a localized,



jurisdictional discrimination that they can provide proof of past actions of discrimination about. If that were the case, then the tax would not pass strict scrutiny. Sunstate will argue that the tax is necessary because without some type of reparations, there is no way to remedy the past discrimination since internment camps are no longer operated and a remedy like freedom can't be given. Sunstate will argue that the law is narrowly tailored to remedy the discrimination against Japanese Americans because it pays reparations to only to families that provide proof that their family member was incarcerated in an internment facility. Ali will argue that this law is not the least restrictive means to achieve reparations for internment because her family members were also in internment camps and they are left out of this reparations fund, therefore, it is overly restrictive and should include people of all heritages that have family members that suffered in internment camps. However, courts have found that states are allowed to remedy issues in increments and its not necessary to resolve every part of the issue in one law. Sunstate will argue that for the purpose of remedying past discrimination against Japanese Americans, this is the least restrictive means of doing so since anyone can claim reparations from the fund as long as they provide proof of a family members past internment. **Therefore, the law is likely to pass strict scrutiny and be upheld by the court.**

*Beta v. Sunstate*

Justiciability

Ripeness

For there to be an actual case and controversy, a complaint must be at a stage where it is ripe to be heard in court, meaning that the plaintiff has suffered an injury. In challenging a statute, the statute must be enforced in order for a plaintiff to suffer an injury. If there is strong indications that the enforcement is imminent, that may also put the plaintiff in a position where they believe the injury is imminent. Here, the facts state that Beta was

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required to pay into the Sunstate tax and therefore, he has already suffered an injury and his case is ripe.

Advisory Opinion, see supra.

Here, Beta has already suffered a financial injury, therefore, the decision of the court will have an impact of remedying his loss. Therefore, a decision in this case will not be an advisory opinion.

Standing, see supra.

Here, Beta will argue that they have an injury because they have to pay into the tax fund due to economic discrimination. They will state their discrimination is caused by the reparations tax fund which was passed by the state, therefore there is causation. Beta will argue that if the tax fund is found unconstitutional and they no longer have to pay into it, then their injury will be remedied. **Therefore, Beta has standing.**

11A- State Sovereignty, see supra.

Here, Beta is suing Sunstate because he objects to the reparations tax. If Beta is suing for an injunction of the tax fund then he can sue the state. If he wants to sue for damages, he will not be able to sue the state.

Supremacy Clause

Under the Supremacy Clause, the Constitution, federal statutes and treaties are the supreme law of the land.

Preemption

When a state law conflicts with a federal law, the federal law will preempt the state law. A state law can be preempted explicitly, as when a federal statute states that it is exclusive in a field. A state law can also be preempted impliedly as when Congress shows an intent to

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occupy the field or when a state law impedes a federal objective. Here, Beta Corporation (B) is challenging Sunstate's Reparations Fund tax under the Supremacy Clause. B had a sex discrimination case brought against them in 1995 and they had to pay full damages. However, the Title VII of the Civil Rights Act does not state explicitly that it occupies the field in discrimination reparations payments. Additionally, Congress has not shown an intent to occupy the field of discrimination remedies since Title VII prohibits only employment discrimination and Sunstate is dealing with racial discrimination outside of employment settings. Lastly, the Sunstate tax does not impede federal objectives because it deals with a broader discrimination beyond employment discrimination. Also, Sunstate will argue that state laws are allowed to be broader than federal statutes so long as they don't impede federal objectives or don't impede interstate commerce. Therefore, the court will likely find that the Sunstate tax does not impede federal objectives. The court will move on to interstate commerce analysis.

### Dormant Commerce Clause

A state can legislate local activities that affect interstate commerce where Congress has not legislated. The state law cannot discriminate against out of state actors. A state law will be found to be discriminatory if it is economically protectionist. The exception is where a state is a market participant and demonstrates a preference for local commerce. Statutes can either be discriminatory on their face or be facially neutral but have a discriminatory impact.

### Facially Discriminatory

A state law that is discriminatory on its face will be invalid unless the state shows it serves an important non-economic interest and there is no non-discriminatory alternative. Here, Sunstate will argue that the tax serves an important non-economic purpose because it is paying into a reparations fund for past discrimination and a state has a legitimate interest in remedying past discrimination. Additionally, Sunstate will argue that there is no non-discriminatory alternative because they are tying the tax to business that do business in



the state and that have had judgments against them for discrimination in the past. Beta will argue that there are non-discriminatory options such as making every business pay into the tax, not just businesses who have had Title VII judgments against them. Sunstate will argue that the tax applies to all businesses who operate in the state and, therefore, there is no discrimination to out of state businesses. Because the tax applies to all businesses who operate within the state, the court is likely to find that it is not discriminatory.

### Facially Neutral with Discriminatory Impact

Where a state law is facially neutral but has a discriminatory impact, the court will apply a balancing test to decide whether the discriminatory impact outweighs the legitimate state interest. Here, Sunstate will argue that although on its face the law applies to all businesses, it has a disproportional impact on the businesses who have had Title VII judgements against them. Sunstate will argue that this is not a discrimination born from the fact that they are an out of state business, but rather from their employment practices. Given that the law applies to all in state businesses and the state has a legitimate interest in remedying past discrimination, **the court will find the tax is not discriminatory.**

### Privileges and Immunities Clause

7 P+I ONLY APPLIES TO PEOPLE, NOT CORPORATIONS

A state cannot deny out of state residents the privileges and benefits it offers its in state residents. A state statute is invalid if the economic discrimination affects a fundamental right or an important economic interest unless the state law is closely related to a substantial state purpose and there is no less discriminatory alternative available. Here, Sunstate will argue that they are not violating the privileges and immunities clause because the tax is applied to all corporations who do business in the state and have had a Title VII judgment against them. Sunstate will argue that the tax is an economic discrimination against them as an out of state company and that it affects an important economic interest for them (their business revenue) and that the state (as argued above)

does have less discriminatory options available to them. Sunstate will argue that the tax is closely related to a substantial state purpose of remedying past discrimination. They will argue that the tax is the least discriminatory alternative because it affects all businesses who operate in state and who have had judgements against them under title VII which means that it affects companies guilty of past discrimination, which is their objective to solve with the tax. Although the tax does discriminate economically and impacts an economic interest of Beta, the court will likely find that it is closely related to a substantial state purpose and there is no less discriminatory alternative, therefore, **the tax does not violate the privileges and immunities clause.**

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### Question A

#### Takings Clause ✓

Under the Takings Clause, The 5th Amendment prohibits the federal government to take property for a public purpose without just compensation. The 14th Amendment imposes the same limitation on state and local governments. Here, because Frank owns both the surface and mineral rights to the property, the moratorium is likely unconstitutional because Frank is unable to profit from the land. The land is unsuitable for farming, and is 200 acres, so it will likely just sit there unused if he is not able to take advantage of the economic benefits of the land. The State A legislature could argue that if the land is not suitable for farming, that Frank could develop the land by building houses and/or building commercial buildings on it. Additionally, the legislature could say that it would be in the best interest of the State to develop the land rather than mine it because is it far from commercial and residential areas, and it may be good to connect his land to the other inhabited areas. Frank could rebut by saying this is more reason for him to mine the land, because it is far from commercial and residential areas, and will not impact the residents in an adverse way. Also the facts state that geologists have determined there is coal underneath the parcel, and as the experts, didn't mention anything about the environmental impacts of coal mining. The State A legislature needs to have a stronger argument for their "concerns" about the environmental impact of coal mining. If they can provide research based evidence to measure the environmental impact, they may have more justification for taking the property as they would have proof for their public purpose for imposing the moratorium. Finally, what does State A believe will be different in 10 years? One could argue that the environmental impact will be the same in 10 years that it is now.

Thus, the court is likely to rule that the 10 year moratorium on coal mining in State A is



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an unconstitutional taking of Frank's land without just compensation.

## Question B

### Executive Appointment Power

Under Executive Appointment Power, the President has the authority to appointment Supreme Court justices, public officers, ministers, and ambassadors. However, when there is a situation where a special prosecutor is appointed to investigate a presidential administration, then Congress can be involved in the appointment of these inferior officers. Here, the appointment procedure is likely constitutional because the special prosecutors are being appointed to investigate the president's administration, and therefore must be neutral. The founders of the Constitution put checks and balances in place so that no single branch of government would have too much power. The checks and balances also keep the branches accountable, and specifically make sure that the president does not have overarching power over the other branches. While the special prosecutors are inferior officers, they are being appointed for a specific investigatory purpose, which requires Congress to be involved. The executive branch will argue that this is unconstitutional because it delegates the president's executive appointment power to Congress, and that the Attorney General is the neutral party who should appoint the special prosecutors. However, this argument is likely to fail because the Attorney General is part of the Justice Department who is now a part of the investigation, and also plays a part in the pardon applications.

Therefore, to maintain the balance of power and based on the totality of the circumstances, the court will likely rule that the appointment procedure is constitutional.

### Question C

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## Standing

Standing requires injury, causation, and redressability. The injury must be in fact and caused by the government, and the situation must be able to be remedied by a judicial decision in favor of the plaintiff. Here, Vern is seeking injunctive relief in federal court, which federal court likely would not have jurisdiction in this case. Vern runs his business out of a van near Golden Gate Park in San Francisco. It was a city ordinance that was imposed to prohibit the use of wheeled sports equipment in the park. While Vern did suffer injury because his rentals declined, it was the city that imposed this ordinance, and not the federal government. It was even the state government that imposed the ordinance or caused the injury. This is a very local issue and a very local injury. Therefore, federal court would likely not be able to redress the issue, unless they have jurisdiction to give an injunction to the city of San Francisco for the ordinance. If this was a state law that was imposed, or one that impacted several states, then Vern could bring the case to federal court to seek injunction relief. Vern could also argue that if this ordinance were enacted in the aggregate, that most city councils could impose ordinances like this. However, city council imposed this ordinance in response to the child who was hit from one of the scooters, so this is unlikely to rise to a state or federal issue.

Therefore, Vern likely does not have standing to seek injunctive relief in federal court for the ordinance enacted by city council.

## Question D

### Mootness

A case is moot when there is no live, real controversy at all stages of review. Justiciability requires standing, ripeness, that a case not be moot, and that advisory opinions or political questions are not addressed. Here, Val's case is likely moot because Val was admitted to AAP and had begun her first year of studies while the suit was pending. Val's

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case for discrimination may have been valid at one point, even though the state policy was likely constitutional because formula's purpose was to reflect the cultural diversity of the state, which is a necessary and narrowly tailored compelling government interest for discrimination under strict scrutiny. However, because she was similarly situated based on her academic record and in the 20% of the applicants, Val may have had a valid argument at the time the suit was filed. A federal court, looking at the events at this stage of review, would not be able to remedy the situation because Val was already admitted and had begun her studies. Val could argue that her claim is not moot because there could be future white students like her who are not admitted to AAP based on race. This argument will likely fail because if the State of Jupiter can show a compelling government interest in JSU apply the admissions formula to reflect the cultural diversity of the state, then there is no real, live controversy at that point.

Therefore, the federal court will likely not reach the merits of Val's claim based on mootness.

**END OF EXAM**