

San Luis Obispo College of Law

CONSTITUTIONAL LAW I

MIDTERM EXAMINATION

FALL 2024

Prof. S. Wagner

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.

\*\*\*\*\*1\*\*\*\*\*

Midterm Examination Fall 2024

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?

\*\*\*\*\*2\*\*\*\*\*

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?



Midterm Examination Fall 2024

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 14<sup>th</sup> 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

Prof. 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)

Criminal CaseJusticiability

Can the plaintiff bring this case?

*Crim. Case -  
Stb. would be  
conferred -  
hit the  
Immunity &  
up - front*

Case and Controversy

A plaintiff must have a live case or controversy to bring before the Supreme Court.

Standing

A plaintiff must have standing to bring forth their claim. Standing will be conferred if the following is met: Direct injury in fact, causation and resressability.

Direct Injury in Fact

To prove a direct injury in fact a plaintiff must show that there is a government actor that has caused them a direct injury or there is an imminent threat of injury.

Here, the government actor is the Sunshine State acting against the President. The injury or imminent injury is the criminal case against the President which can result in imprisonment which would take away the president's liberty. Thus, direct injury in fact has been met.

Causation

Casuation is demonstrated when the plaintiff can directly trace the government action to their direct injury.



Here, the president can directly trace the criminal suit in the Sunshine State to his injury. Thus causation is met.

### Redressability

N/A  
Redressability determines whether the court can fashion a remedy that would end/redress the plaintiff's alleged injury.

Here, the Supreme Court could fashion a remedy that would end the criminal action pending in the Sunshine state. Thus, redressability is met.

### Ripeness Mootness

In order to be heard a case must be ripe for adjudication, meaning that the reviewing court has everything it needs from the lower court to hear this case.

Here, the Criminal action in the Sunshine state court has not been adjudicated, this may present an issue for the President bringing his case before the Supreme Court. However the motion to dismiss the action has reached the highest court in the Sunshine state and there is no higher court that can review. The Supreme Court can decide to hear the case.

Mootness determines whether the injury is ongoing or live throughout all stage of litigation. If the injury has ended then the case is moot and will not be heard by the Supreme Court.

Here, the President has an ongoing injury because he is facing Criminal prosecution. This will be live through the stages of litigation until it is resolved. Thus, the court will likely find the case is not moot.

If a case is not moot, it is ripe for adjudication.

Conclusion: Standing will be conferred for the President to bring his case to the Supreme court.

to defend?

## Issues

### Presidential Immunity

The President's defense will likely raise the issue of Presidential Immunity. Under presidential immunity, the President is immune from civil and criminal suits while in office for matters related to his constitutionally delineated duties and his role as the Executive and Commander in Chief.

in effort to do what?

Here, the defense would argue the President cannot be prosecuted until his term has ended. They will further argue that the President has to tend to his duties and bringing a suit now would take away his ability to govern effectively.

Q: official vs.

Unofficial Acts

The Prosecution will argue that the President was not acting within his constitutionally granted powers and has violated the constitution by interfering with a presidential campaign. They will argue that the court must not extend presidential immunity because the President has abused his power through his campaign manager to commit a crime.

The prosecution will point out that the President did not use government resources or entities to accomplish the killing, which means these acts were not official in nature or related to the president's constitutional duties and that the President is not covered by this immunity for unofficial acts. They can further argue that delaying the case would be a miscarriage of justice and a violation of the right to a speedy trial.

OK - good

The Defense can argue that the president did act within his constitutional duties because he acted through government entities (campaign manager) and the connection to the US

*Good point*

election. This argument would likely hurt the president because this shows he used government entities in the commission of a crime.

The court will likely side with the prosecution, and rule that the Presidential Immunity does not apply in this case.

### Executive Privilege

Executive Privilege is asserted as a defense to keep confidential matters regarding national security or classified information from being disclosed.

Here, the President's defense can assert this privilege to prevent the President from testifying in the Criminal case. The defense can also raise the 5th amendment right against self-incrimination which would allow the president to refrain from testifying in the case. *compelled test?*

The Prosecution can argue that the killing was not related to national security or classified information. Much like the Watergate case, there are no classified materials or national security secrets that would be disclosed through the prosecution of this alleged crime.

The court will likely side with the prosecution.

Conclusion: The Supreme Court will likely rule that the case can be heard. ✓

### SCOTUS Jurisdiction & State Law

*good* The Supreme Court of the United States may only review certain cases. The Supreme Court has original jurisdiction to hear cases where a state is a party, where the U.S. is a party, where there is a conflict between states, between a state and a foreign state or between citizens of different states. Typically the Supreme Court will not review a State Court decision unless there are adequate and independent state grounds behind the State Court's decision or there is a Federal Question raised by the State action.

*Not cases vs. Pres.*



Here, the state court civil action is based on Federal Law because it involves claims based on the Fifth, Sixth and Fourteenth Amendments. The prosecution will argue that the Supreme Court can hear the case because it involves a Federal issue regarding the Fifth, Sixth and Fourteenth Amendments. Further, the prosecution will argue that the Supreme Court can exercise its original jurisdiction over this case because the President is a party to the suit.

Art III

The defense can argue that the case cannot be heard by the Supreme Court because of State Sovereignty, and argue that the State has adequate and independent state grounds behind its decision, especially regarding the state-law tort claims against the President.

Conclusion: The Supreme Court will likely rule that it has jurisdiction to hear the Civil case.

#3

### Civil Case Justiciability

#### Justiciability

Can the plaintiff bring this case?

#### Case and Controversy

A plaintiff must have a live case or controversy to bring before the Supreme Court.

#### Standing

✓ A plaintiff must have standing to bring forth their claim. Standing will be conferred if the following is met: Direct injury in fact, causation and redressability.

#### Direct Injury in Fact

---

To prove a direct injury in fact a plaintiff must show that there is a government actor that has caused them a direct injury or there is an imminent threat of injury. In order to assert third party standing there must be one plaintiff that meets all other standing requirements in addition to: the group being unable or unlikely to assert their rights on their own or a special relationship between the plaintiff and the group.

Here, the government actor is the President acting against the Justice League. The injury or imminent injury is a violation of fifth, sixth and fourteenth amendment rights of the group of orphans. The justice league has a strong argument that the orphans are unable to assert their own legal rights and do not have family that can assert their rights for them. Thus, direct injury in fact has been met.

The defense can argue that the slain opponent no longer meets the injury requirement in order for the Justice League to be conferred Third-Party standing. Unless the Justice League has a plaintiff that can meet all standing requirements with a direct injury, standing will not be conferred. The defense can also argue there is no special relationship between the Non-profit organization and the orphans they are representing.

### Causation

Causation is demonstrated when the plaintiff can directly trace the government action to their direct injury.

Here, the Justice League can directly trace the injury to the president's actions.

The defense can argue that none of the orphans has been directly injured by the president's actions, and that the president's actions did not violate the orphan groups Fifth, Sixth or Fourteenth amendment rights.

### Redressability

Redressability determines whether the court can fashion a remedy that would end/redress the plaintiff's alleged injury.

Here, the Supreme Court could fashion a remedy that would uphold/protect the rights of the orphans in the Sunshine state. Thus, redressability is met.

The defense can argue that no remedy can be fashioned because there has been no violation of the orphan's Fifth, Sixth and Fourteenth amendment rights. Additionally for the State-law tort claims, the defense can argue that this is outside the court's jurisdiction because the claim is based on state law and states have sovereignty for state law matters.

### Ripeness Mootness

In order to be heard a case must be ripe for adjudication, meaning that the reviewing court has everything it needs from the lower court to hear this case or that the matter is not premature.

Here, the Civil action has been brought directly to the Supreme Court for review. The matter is not premature because it is a live case/ controversy with an imminent injury.

The defense can argue that the state-law tort claim should be fully adjudicated at the state court, and perhaps the highest state court before reaching the Supreme Court. The defense can further argue that the case should not be heard because it concerns a matter of state law (state tort claim).

Mootness determines whether the injury is ongoing or live throughout all stage of litigation. If the injury has ended then the case is moot and will not be heard by the Supreme Court.

---



*how so?*

---

Here, the Justice League faces an ongoing injury because the violation of their Fifth, Sixth and Fourteenth amendment rights are a wrong capable of repetition. This will be live through the stages of litigation until it is resolved. The defense can argue the injury ended when the president's opponent was slain, and the injury ended.

The court will likely find the case is not moot. If a case is not moot, it is ripe for adjudication.

**Conclusion:** Standing will be conferred for the Justice League to bring their case to the Supreme court.

**END OF EXAM**

---

2)

## STATE POWER SOURCE:

### 10th AMENDMENT

The powers not enumerated to the federal government are reserved for the states. This grants the states broad police powers.

✓ Here, the state enacted a law "Reefer Madness" to create a regulatory scheme for marijuana for the health safety and welfare of its citizens, following a constitutional initiative that now allows for the use of recreational marijuana. The 10th Amendment grants the states broad police powers to create laws for nearly anything so long as it does not violate the Constitution.

## 1. CHEECH'S SUIT AGAINST STATE GENDER RESTRICTIONS:

### EQUAL PROTECTION CLAUSE

✓ The equal protection (applied to the states through the 14th Amendment) clause protects individuals and corporations from unreasonable discrimination. It prevent the government from treating similarly situated persons differently. The level of scrutiny is based upon the magnitude of the discrimination. Discrimination can be facial or as applied by the statute or regulation. Strict scrutiny applies to suspect classifications race and national origin, intermediate scrutiny applied to quasi suspect classifications gender and non-marital children, the remaining types of discrimination are subject to rational basis (low-level) scrutiny.

✓ Here, ~~we~~ have a government actor, the state legislature passed legislation (which will be executed by the state departments) denying men marijuana products. Men and women

---

Appears to be based on gender

(+) who wish to exercise their right to purchase recreational marijuana are similarly situated and is based on gender. The classification is quasi suspect because it is gender. The level of scrutiny is thus intermediate scrutiny. Intermediate scrutiny requires the government bear the burden and prove that the discrimination is substantially related to an important government interest. ✓

10th Am. Here, the government's policy behind the regulation are *several studies* that indicate a disproportionate impact on men had unique behavioral issues with prolonged marijuana use. The state is trying to prevent dependency issues and possible crimes arising from these dissociative behaviors. This is an important government interest to protect the health and welfare of not only the male citizens who use recreational marijuana but all other citizens they come in contact with. Cheech will argue that restricting all men from purchasing marijuana in certain quantities does not substantially relate to this important government interest. Cheech will argue that the regulation scheme for men only limits men from purchasing marijuana gifts...they might not even be using the marijuana itself. F/A +

fast restr. means? The scheme does little to reduce male consumption of marijuana because men could just get women or other men who aren't using up to their limit to buy it for them. Cheech will also argue that the several studies are questionable because he will have an expert with several of his own studies showing the exact opposite as the state's studies. good

CONCLUSION: The court will likely rule that Reefer Madness gender restriction violates the EPC because it is not substantially related to an important government interest and there are other ways to address the issues of overuse dissociation rather than to discriminate against men by their gender. assuming facts

## 2. BING BONG CORPORATION CHALLENGES TO REEFER MADNESS LAW: COMMERCE CLAUSE AND P&I

### LIMITATIONS ON THE 10th AMENDMENT STATE POWER



---

## COMMERCE CLAUSE

✓ Under the Commerce Clause, Congress has the plenary power to regulate the channels, instrumentalities, and activities that substantially affect interstate commerce, including intrastate activities with an aggregate or cumulative effect on interstate commerce.

## DORMANT COMMERCE CLAUSE

Whereas Congress has not otherwise regulates, the states are free to regulate interstate commerce. The regulation must not be discriminatory or unduly burdensome. Regulations that are discriminatory will be reviewed under intermediate scrutiny and must be substantially related to an important government interest.

(Assuming that federal preemption and Congress's regulation of marijuana as a schedule 1 narcotic is not an issue, this is the analysis under the commerce clause.)

*Duration*  
*Res.*  
*Reg.* Here, the state has created a regulatory scheme for recreational marijuana. There is a state law on point. The scheme is facially discriminatory because it allows for in-state marijuana businesses to apply for a recreational license if they have been in the state for 5 years. This operational residency requirement facially discriminates against out of state businesses and will be reviewed under intermediate scrutiny. The state will argue that preventing the influx of recreational marijuana operations is an important government interest because it is triggered by this influx of out of state applications to open weed shops. This influx could have health and safety impacts and law enforcement tries to deal with the public and these new drug use laws. People might overindulge at first and get high and drive vehicles. Plus, the state's regulatory departments need to be built and expand and this will take time...5 years is very reasonable time for a state to expand it's regulatory operations. This is a serious concern and the state policy is designed to ease the state into this new exploding use of recreational marijuana.

*(+) FA +*

✓ Bing will argue that the operational residency requirement is protectionist. Bing will argue it is designed to protect in-state marijuana businesses and unreasonably prevents Bing for doing business in the state. Bing will argue that a lesser operational residency requirement will achieve the government's interests of protecting citizen health and safety. 2 least restr.

CONCLUSION: The court will likely rule that the state regulatory scheme and the operational residency requirement is reasonable to achieve an important government interest of needing time to ease its citizens, law enforcement, and regulatory state department into the new recreational marijuana usage.

#### PRIVILEGES AND IMMUNITIES CLAUSE, ARTICLE IV (P&I)

✓ States must give the citizens of other states the same privileges and immunities as they accord their own citizens. The P&I Clause protects out of state citizens--not corporations--from discrimination and in-state economic protectionist discrimination. It protects the fundamental rights associated with national unity with a focus on states that gives their own citizens an economic or business advantage.

Here, Bing Bong Corp is a corporation, so the P&I clause of Article IV does not apply.

### 3. LAURA (L) CHALLENGES REEFER MADNESS LAW: COMMERCE AND P & I

#### LIMITATIONS ON THE 10th AMENDMENT STATE POWER

#### COMMERCE CLAUSE

Under the Commerce Clause, Congress has the plenary power to regulate the channels, instrumentalities, and activities that substantially affect interstate commerce, including intrastate activities with an aggregate or cumulative effect on interstate commerce.

---

## DORMANT COMMERCE CLAUSE

Whereas Congress has not otherwise regulates, the states are free to regulate interstate commerce. The regulation must not be discriminatory or unduly burdensome. Regulations that are discriminatory will be reviewed under intermediate scrutiny and must be substantially related to an important government interest.

Here, the state Reefer Madness law restricts L from purchasing rec marijuana because she has not been a resident for a year since's the bill's passage. This is facially discriminatory because it discriminates against recent resident of the state as opposed to residents of more than one year. The state will say that this citizen residency restriction serves an important government interest of slowing the influx of people it is expected to have that are drug seekers and only coming to the state to seek legal drugs. The state's one year requirement promotes an important policy of making sure people have jobs before they just move to the state to see recreational drugs and is substantially related to the important objective of curbing the housing crisis because the longer someone is in the state the more likely they have had time to find a roommate and not put a burden on single housing. The longer they are in a state they will also have more time to advance in a job and earn more, allowing them to purchase a bigger house and not burden the more affordable housing. Further if people come to the state seeking recreational drugs it is likely that they do not have stable roots if they are moving just for recreational drugs, thus exacerbating the housing problem and being homeless. Homelessness caused public health problems and strains the stat's welfare programs.

L will argue that this policy does not substantially relate to the government interest because someone could have moved for any reason--not necessarily drug seeking and might have transferred with a big company and already have housing. Or they could have already moved to take care of a sick family member. Or moved for college. Just because



someone moves to a state does not mean that they are a drug addict and will be homeless. The law does not substantially relate to the stated reason of the housing crisis.

### PRIVILEGES AND IMMUNITIES CLAUSE, ARTICLE IV (P&I)

States must give the citizens of other states the same privileges and immunities as they accord their own citizens. The P&I Clause protects out of state citizens--not corporations--from discrimination and in-state economic protectionist discrimination. It protects the fundamental rights associated with national unity with a focus on states that gives their own citizens an economic or business advantage.

✓ Laura can bring an argument under this clause because she is an individual. This residency restriction is not economic based, it is personal use based, so the P&I clause does not necessarily apply. There are no fundamental rights except maybe travel implicated. Laura's best argument would be that this violates her right to travel, but because it's not economic or job related, she is likely to lose. *main issue*

### CONCLUSION:

The court will agree that the law violates Laura's rights under the DCC, because the discrimination is not substantially related to the important govt interest. Laura will not likely succeed on the P&I claim because even if travel were implicated, access to recreational drugs is not how the court applies the right to travel.

**END OF EXAM**



100

3)

## 25 A. Takings

Private property may not be taken for a public use without just compensation. Public use is interpreted broadly and just compensation is fair market value. A taking may be a permanent physical invasion, or a regulation that limits the beneficial economic viability of a property. To determine whether there has been a regulatory taking, the court will apply a three part test and examine: 1) the extent of the government invasion; 2) the economic impact on the property owner; and 3) the extent of the regulation on the economic backed investment. yes

FLA  
⊕ Here, James bought beachfront property with the plan to build high-rise condos, but the state legislature blocked the building of multi-family housing within 20 miles of the coast. The extent of the government invasion is extensive because it has stopped him from building the high-rises. The impact is substantial because if he can only build single family homes, that is a radical difference. There might only be room to build one, two or three homes. Compared to perhaps hundreds of condos, this is a massive difference. And it is clear that this was an investment based on the planned use. This was not an individual who already owned a lot and decided to build, this is an individual who bought the land with this plan in mind.

Because of these reasons, it's likely that the court will see this regulation as a regulatory taking and either order an injunction allowing James to build or order the state to compensate him.

25 B. In order to reach the merits of Johannes's claim, the court will need to determine if it will meet justiciability standards.

✓ *Standing:* For personal standing, the plaintiff must prove they have an actual or imminent injury, causation by a government actor, and redressability.

Actual injury: Johanne was injured because he was not able to enter his bird in the bird of the year contest, so he meets this standard.

Causation by a government actor: Seastate rejected Johanne's application which caused him to miss out on the opportunity for his bird to win. The injury was caused by a government actor.

Redressability: If the court decision is favorable, would it redress the injury? Here, the contest is already over, so the bird cannot win this year. However, if the court sides with Johanne and orders the rules to be changed, he could enter his bird again next year. Therefore, the court is able to fashion a remedy for Johanne's injury.

*Ripeness:* A case must be ripe for review. Overlapping with standing, there must also be an actual or imminent injury. This is not an advisory opinion that Johanne is seeking--the rejection has already taken place and his injury is real.

*Mootness:* There must be a live controversy at each state of review. Exceptions to this include "wrongs likely repeated yet evading review" and voluntary cessation. Here, the contest is already over for the year. However, this is likely to happen again next year, so the "evading review" exception applies and the issue is not moot.

Although the merits of Johanne's case are questionable, he meets justiciability requirements and his case should be heard.

### C. Commerce Clause

✓ Congress has plenary power to regulate commerce between the states, foreign governments, and the Indian Tribes. They may regulate the instrumentalities, channels, and people and things of interstate commerce, and activities substantially affecting interstate commerce. Congress may regulate intrastate commerce if on aggregate, the activity substantially affects interstate commerce.

④ Here, Dino is producing more grapes than allowed by federal law. Dino will likely argue that the small amount of grapes he grows over the limit for his family's table wine is unrelated to interstate commerce. Unfortunately for Dino, prior cases have held that even relatively small amounts produced over the allowable limits, in the aggregate, substantially effect interstate commerce. In a very similar case, the court found that wheat production for personal use could be regulated under the Commerce Clause. Therefore, Dino's lawsuit will not be found in his favor. *yes!*

25 D. No, the federal court will not hear the President's claim because it is a political question.

Political Questions: Some constitutional violations are inappropriate for judicial review because they are political questions better left to the other branches of government. Examples include gerrymandering and impeachment.

Congress has power over impeachment, not the judicial branch, and thus has the power to determine the rules of impeachment. *Nixon* was a similar case where the subject of the impeachment disagreed with the way Congress used a committee for fact finding. The court held that it was a decision left to Congress and not appropriate for judicial review.

ID: 264264

Exam Name: ConLaw-SLO-F24-SWagner-OS

---

**END OF EXAM**