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1)

1. The issue here is whether Congress may mandate the States to teach computer skills in public schools. Congress must have the authority under the Constitution to pass legislation, which is found in Article I Section 8. It is presumed that Congress does not have the authority to act unless they point to something in the Constitution which grants the authority. Most of the legislation passed under Art.1 Sec. 8 falls under the Commerce Clause. Congress has the power to regulate commerce 1) with foreign nations 2) among the States, and 3) with Indian tribes. Interstate commerce (commerce 'among the States') may be regulated when it deals with a) the channels of navigation, b) instrumentalities of commerce, or c) activities substantially affecting interstate commerce. When an activity substantially affecting interstate commerce is at issue, we look at whether it is a commercial or non commercial activity. A commercial activity affecting interstate commerce will allow Congress to validly legislate; but if it is a noncommercial activity, then that activity that is at the heart of the case must itself affect interstate commerce. Then, Congress must have a rational basis to pass this on. Even if the legislation passes this test, it must also not interfere with the State's 10th Amendment police powers, usually health and safety.

Traditionally, public schooling is left up to the states to decide the curriculum, as it falls under their 10th Amendment police powers. Here, Congress is mandating something that falls under the State police powers and does not seem to give a jurisdictional hook to connect it to the Commerce Clause. In itself, this is not an instrumentality of commerce, nor channel of navigation, so the federal government must show that the activity of educating children in computers substantially affects interstate commerce. The federal government will likely argue that computer skills are necessary with our ever-evolving economy, which already substantially relies on computers to do a lot of work, and because of that the computer-skills-related education of children in public schools substantially affects interstate commerce. While this may be a valid argument, the actual act of teaching children about computers in itself is not a commercial activity. The State will counter with the argument that the government is telling the State what to do with its resources (teachers, classrooms, etc) and its money (towards schools and developing curriculum). Congress may not directly tell a State what to do with its resources or money. A better approach of Congress would have been the "carrot" rather than the "stick". Congress through its Art. I Sec. 8 powers of taxing and spending is allowed to place conditions on grant money to the States so long as the conditions are 1) clearly stated and 2) reasonably related to the purpose of the spending. So Congress should have given a grant for public schools with the condition that they teach computer skills.

It is not likely that this law will be found valid, if challenged because it is a traditional State police power and Congress is telling the States what to do, in violation of their

sovereignty.

2. Congress, here, is closing an industry off to all other States. Again, the Congress has the power to regulate interstate commerce (see above). Manufacturing electronic devices is a instrumentality of commerce (as it manufactures products to be sent out into the nation and world). However, Congress must have a rational basis to pass this on. The statement does not articulate a rational basis. Perhaps California is the only State to make good electronics, however that would assume facts that are not in existence. This also assumes that California will, infact, make electronic products and if they do not, it will severely affect the nation. California could also argue that Congress is telling the State what to do with its resources, impliedly forcing the State to develop its electronic manufacturing industry. Arguments would be made that is protectionism of a State's industry, violating the Dormant Commerce Clause - which allows States to regulate commerce where Congress has not spoken. However, Congress has spoken as to the issue, so the Dormant Commerce Clause would not apply. Congress would also be substantially interfering with both private and government contracts between a State other than California and its electronics manufactures. However, the Contracts Clause only applies to the States.

This piece of legislation will likely fail, even though it substantially affects interstate commerce. The reason being is that there is no rational basis to pass it on.

3. Here, Congress is legislating to correct government discrimination based upon the Equal Protection clause of the 14th Amendment, which protects discrete and insular classes of people (race, age, gender, sexual orientation). The 14th Amendment was enacted in order to protect such people from the government and Section 5 empowers Congress to create legislation that corrects discrimination. There are two schools of thought on this. One is that Congress may legislate to correct direct violations of the 14th Amendment. Another is that Congress may legislate to correct anticipated violations of the 14th Amendment. The Court has determined through successive cases that Congress may legislate to protect, but cannot interpret the 14th Amendment itself (that's for the Supreme Court to do).

In this piece of legislation, Congress is protecting such insular minorities from governmental discrimination, as the principal of the school, the officials of the Education District, and the State are all government entities. There may be an anticipated problem because the 11th Amendment to the Constitution disallows individuals from suing a State without the State's consent. However, Congress has the authority to grant the right to sue the State if the lawsuit arises from a violation of the 14th Amendment, as it does here. Otherwise, had it not arose under the 14th Amendment the party would have to sue an officer of the State. The legislation must be valid and not overbroad, reaching into areas that do no apply

This law is likely valid since it does protect a discrete and insular minority from discrimination by the government. It is rather specific about what is covered, unlike such legislation as the Brady Bill was, so it is not anticipated that it will affect an area other than discrimination based on denying public school children computer skills training. It may have a jurisdictional hook under the Contracts Clause, stated above, because the argument that educating children on computers substantially affects the economy (see above). The policy is to correct inequalities and discrimination that has occurred in the country's history.

This may be in response to a State's directly or effectively discriminatory law regarding a child's public school access to computer skills training. If so, the law may be facially discriminatory - which will require a strict scrutiny test to be valid (law is legitimate,

further a compelling state interest, and there is no other way to accomplish the goal) or it may be effectually discriminatory which requires a balance test (law has a discriminatory effect, there is a compelling and legitimate state interest, and the state's interest outweighs the discriminatory effect). However, no law is articulated in the facts. If it were, the Supremacy Clause in the Constitution would probably make it such that the federal law displaces the discriminatory State law.

4. This issue is the "carrot" approach discussed above. Again, Congress through its Art. I Sec. 8 taxing and spending powers may place conditions upon the State to receive grants as long as the conditions are 1) expressly stated, (so as not to surprise the States) and 2) the conditions are reasonably related to the purpose of giving the money. For example, Congress may give money for highways with the condition that the State raise the drinking age because of findings that excessive drinking by young drivers make the highways dangerous. Congress may not, though, place a condition of changing State election law for money designed to fix sewers (no reasonable relationship). Here the grant is for disaster preparedness:

a. The condition is that half of all the employees involved in providing disaster relief be women. This is a clearly stated condition. Whether this is reasonably related to disaster preparedness is debatable. The grant provides money to hire employees who will provide relief. It is in the interest of the government to help women who may be discriminated against or not get into the field of disaster relief. No matter, though, because the condition of hiring people who will be providing disaster relief is likely reasonably related to the goal of disaster preparedness. Usually, the federal government may not tell the State what legislation to enact, but it is a valid course of action here because the State does not have to pass the legislation, though they will not receive the money. This condition is likely to be valid.

b. The condition is in the event of a disaster, all police officials shall be under the control of the Director of Homeland Security. It seems to be reasonably related to the purpose of the spending: disaster preparedness. Who is in control during a disaster in the State and disaster preparedness seem reasonably related to each other. It may violate 10th Amendment police powers, but the State may submit its powers for the grant money. There may be an argument as to what "the sole control" means, but it seems pretty clear as to its meaning.

It is likely that both conditions will be found valid as they are clearly stated and reasonably related to the purpose of the money.

5. The Executive Branch's powers are set out in Article II of the Constitution and are limited. The President's powers are seen in three views. 1) Where the President is acting in accordance with an act of Congress or the Constitution, this is where his powers are at their height, 2) where the Executive and Legislative branches of the federal government share power, and 3) where the President is acting against the express or implied will of Congress, but only when Congress is totally incapable of acting. It is presumed under this last view that the President does not have the authority, unless can show he/she does. Here the President is authorized to by an act of Congress. In order for this to fly, the act of Congress must be valid (think President Clinton, line-item veto bill). The operation of a financial institution may fall under the Commerce Clause (see above) since financial institutions are instrumentalities of interstate commerce, as they actually give money. Also, it may be argued that evidence of the role of financial institutions in interstate commerce is seen through regulation through the FDIC. If the federal government can regulate financial institutions through the FDIC, it is likely that they substantially affect interstate commerce.

Congress must also have a rational basis to pass this on. The economy is of national interest and the failure or wrongdoing of banks definitely affects interstate commerce and the nation, as we saw in the bank failures of the Great Depression, ENRON, and our current financial crisis.

If Congress has the ability to legislate here, it may act to allow the Executive Branch to have shared power. This seems to be the converse of what President Truman found himself in during the Youngstown Steel case. There, the President did not have an act of Congress on their side (Congress did not create an act when President asked them to) and he took over the steel mills in national emergency anyway. That was not a valid act of Presidential power. Here is the opposite situation.

2)

1. The State is trying to fix the mortgage mess that occurred because of the granting of adjustable rate mortgages. A State is able to enact legislation to protect its citizens. Two issues here are the Contracts Clause and the Dormant Commerce Clause. The Contracts Clause tells us that a State may not substantially impair the already existing contracts between private parties or between a government and another party. When the contract is between private parties, the State must show that it has a legitimate and substantial state interest to be achieved and the state's interest outweighs the substantial interference with the private contract. If the contract is between the government and another party we use the strict scrutiny test where the government must have a compelling state interest and there is no other less restrictive way to accomplish the interest.

Here we have the State government interfering with contracts between mortgage lenders and homeowners who have been affected by an increase in their adjustable interest rate. The State may have an interest in making sure its citizens can stay in their homes without foreclosure as a result of a financial crisis. This interest is legitimate and substantial because things like debt affect the State's economy, employment rate, sale rate, etc., etc. (as we are currently seeing). There is an interest of the mortgage lenders to keep their contracts valid because they invested money in people to buy homes with conditions, since they will lose a substantial amount of money in this, their interest is also valid. The test comes to the weighing of the interests. It will likely fall on the side of the State because if the State's economy, employment rate, etc. furthers the financial crisis, it will affect the mortgage lenders as well. The interest of maintaining the State's economy, etc probably outweighs the interest of mortgage lenders. However, if it is determined the lenders have a greater interest, the legislation will be invalid.

There may be a Dormant Commerce Clause issue. The Dormant Commerce Clause allows the State to regulate commerce where Congress has remained silent. The facts do not say whether Congress has spoken upon this issue. This breaks down into two areas, where the State is enacting protective legislation that is discriminatory to outsiders and where the State enacts legislation that is not facially discriminatory, but has a discriminatory effect. Facially discriminatory laws will be treated with the strict scrutiny test and effectually discriminatory laws will be treated with a balancing test. This law is not facially discriminatory, affecting outsider mortgage lenders (it seems, unless all the mortgage lenders in the state are outsiders). It may be shown that it has a discriminatory affect if most of the lenders affected are out of state businesses. However, the facts do not say and it is not likely to be targeting out of state lenders, since many mortgage agencies will have business and officers in the State. But it is something to consider.

This law will not likely violate the Contracts Clause or the Dormant Commerce Clause unless Congress has spoken on the issue and the State law conflicts

2. The idea here is that California is, for some reason, protecting its stamp collecting industry/hobby. What may affect this law is the Privileges and Immunities Clause of the Constitution. A State may not deny people from important economic activities within the State based upon their citizenry or residency of another state. The key phrase is "important economic activity". Something that denies a person the right to practice their trade or do a job is an important economic activity because employment is a necessary part of our economy and life. Something like moose hunting and stamp collecting is not likely to be an important economic activity. They are hobbies and not necessary to a person's livelihood. It may be argued that stamps are an industry to which people actually make money by selling them to collectors, however, the law says "stamp collecting shall not be engaged in" so it seems that people who sell stamps, rather than collect will not be affected. Since this is not an important economic activity, the State should have a rational basis to pass this law. The State may say what their stamps industry is suffering because outsiders come, buy the stamps, and leave. All in all, this law is likely valid since it is not restricting an important economic activity

3. This has to do with the conditions on property. Every piece of property is subject to some sort of zoning requirement. The State is trying to take away a person's right to bring a lawsuit against zoning conditions. This may not be allowed because the Takings Clause sets out the requirements for property-related issues, including zoning. The Takings Clause states that the government shall not take a person's property for private use unless just compensation is paid. This splits into three categories 1) Possessory Takings - actual occupation by the government, always a taking; 2) Regulatory takings - an effect of a regulation denies a person economic value, if it is deprived of its full economic value or the government "goes too far", then there is always a taking; 3) finally are takings based on conditions placed on the property, like zoning ordinances. A condition in property must be proportionate and reasonably related to the public purpose for which it is being taken. Thus, California cannot enact this legislation because the standard of "arbitrary" does not allow the Takings Clause to take full effect. The Constitutional provision of the Takings Clause will reign supreme and the State cannot legislate around that.

4. Again, we are dealing with the Dormant Commerce Clause. The Dormant Commerce Clause allows a State to regulate commerce where Congress has not spoken. Issues are protectionism of the State's industries. Here the State wants to make sure that all vehicles entering the State are fumigated because of its danger to agriculture. The legislation here is overbroad because it says "all vehicles" including people who enter or leave California in their private cars on vacation. The law is not facially discriminatory since it applies to everyone, including California residents. But it may have a discriminatory effect on out of state people and businesses who come into California. It seems to be designed to be against trucks bringing in produce, who would likely carry diseases that would harm Californian crops, so California has a legitimate and substantial interest in protecting their crops (California's agriculture is an important part of the economy). But balanced with the substantial harm it would do to people coming from out of state, it is extremely inconvenient. It would create backups at all the border points, even for private cars who probably do not have the contact with crop diseases that agricultural trucks would, cost businesses money, waste time, and probably stop out of state producers from selling in California (not to mention the wasted fuel and added pollution). This law will not likely survive the balance test. Had it been narrower, like requiring all vehicles who transport agricultural products into the State be fumigated, it

might have passed the test.

5. The issue here is a woman's right to abortion. Abortion is not a fundamental right, as seen in *Planned Parenthood v. Casey*, but it has a test all of its own. A State may not substantially burden a woman's right to an abortion if the fetus is previability. A state may, however, ban abortion post viability as long as there are exceptions for the health or life of the mother because of the State's interest in the life of the fetus. A "substantial burden" is a fine line. Courts have held that waiting periods are valid requirements as long as they are not unnecessarily burdensome. The key here is whether the waiting period of 4 days is a burden on a woman's right to choose. It can be argued that the law should have an exception for women who decide to have an abortion in that period between 4 days before viability and viability, but there is no requirement to make this provision. Viability tends to be around 24 weeks, where a woman most likely would know if she is pregnant by the symptoms, so the State will argue that it is not unreasonable or a substantial burden to require a waiting period to consider the options before an abortion is allowed. It will not result in the denial of a woman's choice to abort in almost all cases. The Court found that waiting periods enforced by other states are valid, so California's 4 day waiting period is also likely to be valid.

6. There are two issues here, one of which is a fundamental right. There is a fundamental right for a parent to keep their family together, requiring strict scrutiny. If the State can show that the parent is unfit to raise their child they must go through a parental fitness proceeding. So the operative issue seems to be that thst State has a compelling interest in protecting children, that homosexual parents engaging in homosexual activity endanger children, and there is no other way to protect them. The problem is that homosexual activity does not likely endanger a child (endangerment comes from extreme mental incapacity, etc). This law is discriminatory against homosexual people, depriving them of their right to raise and keep their family together. Although sexual activity is not a fundamental right, only requiring a rational basis test, there is no rational basis to think that homosexuals endanger children. The law is designed to protect children and the State may argue, probably wrongly, that homosexual behavior psychologically or physically endangers children, or homosexuals or more likely to be pedophiles. However, it is facially discriminatory and designed to deny a class of people their fundamental rights. It does not consider that not all homosexuals are these stereotypes. This would violate the 14th Amendment right to Equal Protection, that people engaging in homosexual activity (a discrete and insular minority) are being denied a fundamental right to have children and keep the family together. This law fails the rational basis test since there is no articulated rational basis to believe that people engaging in homosexual activity are bad parents, endangering their children. The intent is to harm and discriminate against homosexuals, and it cannot be valid.

END OF EXAM