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1. Whether the Second Amendment provides Suzy with a defense to the conviction for violating California's gun law.

The Second Amendment is part of the Bill of Rights and provides that the rights of citizens to bear arms shall not be infringed. The Bill of Rights protects a wide range of personal interests, and is applicable to the federal government's regulation of private individuals. As such, it provides no protection to Suzy, as her conviction is based on a California Statute.

However, the Civil War Amendments, in particular the 14th amendment, made the Bill of Rights applicable to the States. By providing that 'No state shall deprive a citizen of life, liberty or property without due process of law', the amendment came to stand for the proposition that the Bill of Rights would be applicable to the states as well. However, the Supreme Court has chosen to apply selective incorporation of the provisions of the Bill of Rights. This means that the Court will analyze the applicability of each fundamental right, one at a time, and selectively incorporate it into being made applicable to the states. This way, the Due Process clause prevents States from violating a citizen's fundamental rights.

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The key issue in analyzing whether a right should be incorporated into the due process clause or not, is whether the right infringed is FUNDAMENTAL. Fundamental rights relate around the right to privacy and self-autonomy, the very liberty rights which can be looked at as 'natural'.

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Examples include right to abortion, right to contraception, right to raise children as one sees fit, right to control family relations. Nonfundamental rights, on the other hand, encompass economic rights and recreational rights. When the Court determines that a right is fundamental, it will use the strict-scrutiny approach in analyzing the law. Thus, in order to be upheld, the law must 1) serve a compelling state interest and 2) there be no less restrictive alternative in achieving the same goal. The burden of proof will be on the State to prove that both elements are satisfied. Almost no statutes will survive strict scrutiny. In contrast, when a right is deemed to be nonfundamental, the Court merely has to find a 'mere rationality' test. That is, the legislation must be 'merely rational' to achieving a legitimate state end. Here, the Plaintiff has the Burden of proof in proving that the state has acted irrationally in enacting the legislation. It is extremely difficult for the plaintiff to prevail when mere rationality standard is used.

So, whether the right to bear arms is a fundamental or nonfundamental right will be of key importance. Clearly, Gun ownership can be seen as a recreational right. Hunting is a sport, and the fact that Suzy's gun was an antique suggests that there is no fundamental right in question. However, it can also be said that the right to protect one's self is as fundamental a right as any. It deals with self-autonomy and liberty, almost as much as any other right. Indeed, if one can no longer rely on his own hands to protect himself, he risks becoming a victim and being subject to the whims of others more powerful than he. Liberty, it can be argued, is thus implicated when the right to bear arms is infringed.

LOOKING AT THE OTHER SIDE -

Therefore, if the Court were to decide that the right to bear arms is fundamental, then the state

statute will be struck down and Suzy will be able to rely on the Second Amendment for her defense. If, however, the Court decides that the right to bear arms is a nonfundamental, recreational right, then the 2nd amendment of the Bill of Rights will not be incorporated into the Due Process clause, and she will be unable to use it to defend her California conviction.

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2. Whether Suzy's privileges and immunities, as protected by Article IV of the Constitution, have been violated?

The Privileges and Immunities Clause prevents states from discriminating against non-residents. Basically, it means that resident of State A is guaranteed that he will receive all of the rights a citizen of State B receives when the resident of State A is in State B. There are fundamental rights, per the Privileges and Immunities Clause, which must be implicated. In this context, the fundamental rights are primarily economic - the right to be employed, the right to practice one's profession, the right to use the Court system or obtain public assistance under the same rules as residents. Generally, when a State infringes upon an individual's fundamental rights under the Privileges and Immunities clause, the law will be struck down as discriminatory. However, a state may defend its actions by arguing either that 1) the legislation, although it discriminates against non-residents, seeks to address a 'peculiar source of evil' which justifies the means; or 2) there is a substantial relationship between the rights of the non-residents that are infringed and the legislative aims.

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Since Suzy's fundamental rights, as defined by the Privileges and Immunities Clause, have not been violated, she may not turn to the Privileges and Immunities Clause to seek help. The right to keep a gun is not an economic right. Perhaps she could argue that her possessing the gun is for the sake of her profession (antique dealer) or that she somehow earns a living from the possession of the gun. This would be a difficult argument to uphold. Unless she were able to convince the Court that the possession of the gun is somehow a part of her economic right, she would not be able to use the privileges and immunities clause because her rights under the clause have NOT been violated.

*Gun owners h.t.
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3. The effect of the Pardon on Suzy's criminal conviction

The Constitution outlines the separation of power as its overarching scheme. It seeks to accomplish the independence of the three branches from the meddling of the others, and assigns powers to each that may not be infringed by the others. The Executive power, which is vested in the President, has certain powers enumerated which may not be infringed or questioned by the others. One of these is the pardon power.

The relationship of the three branches is further complicated in the grand scheme of federalism. In this way, the federal government must recognize state sovereignty (10th amendment), unless certain enumerated powers of the federal government are implicated. Where these enumerated powers are concerned, the federal government may interfere with state sovereignty. However,

this is the exception and not the rule.

The President is the Executive officer of the United States. However, his power does not reach into that of the states severally. The President does not have the power to overturn a state conviction based on State law, unless it is in the sphere of the federal government. Here, the conviction was appealed but was not decided at all by any federal courts. Therefore, the President does not have any power to pardon Suzy based on a state criminal conviction. The Governor of the State, as the Executive officer vested with the Executive Power, will have to be the one to issue the pardons based on state law.

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4. Whether President Rebeca abused the pardon power, and if so, is there a remedy.

The question of whether the pardon power was abused implies that there is a standard to measure it by. There is none - it is a discretionary power of the executive, and is not subject to review by the other branches. Therefore, there is no remedy for the abuse of power.

To do so would implicate the political question procedural issue. Under this idea, the Supreme Court may not adjudicate an issue that is wholly in the province of the legislative or executive branch to decide. Certain factors indicate that the matter is a political question, such as: deference to the other branches of government (here, the executive), no appropriate judicial measure to apply to the matter at hand (how can the court decide what is an appropriate exercise of the

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discretionary power of the executive?) and the necessity of a single pronouncement (the pardon power would be a weak one if it could be questioned by other branches of government). Here, the matter is a political question, outside of the sphere of the Court to adjudicate upon. To do so would violate the principle of separation of powers.

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