

QUESTION NUMBER ONE

Drug gangs have taken over and are running the northern border states of Mexico. In the space of two years, 10 million Mexicans moved across the border without visas to escape exploitation and oppression. As make-shift villages arise on the American side of the border, adverse environmental impacts occur (including river pollution), in violation of various Federal environmental regulations.

In the wake of the massive influx of Mexican nationals, the City of San Diego (California) elected a Mexican-born majority to its City Council. San Diego's new City Council majority announced plans to formally join the adjacent Mexican state of Baja California. The City Council organized a civil militia to defend the City against what its mayor called "illegitimate claims" of American governmental authorities.

In response to the events in San Diego, Congress passed a joint resolution calling on the President to enforce existing environmental regulations and "reconcile San Diego to the United States." President Kenny did not comply. Instead, he negotiated an agreement with Mexico to permit unrestrained border crossings by persons from Mexico. A majority of senators voted in favor of the agreement.

Additionally, President Kenny's Secretary of Homeland Security called a press conference. During the press conference, the Secretary welcomed the new arrivals to the country and instructed them how to sign up for various government benefits, including the President's new "Kenny Car" give-away. The "Kenny Car" was a stripped down vehicle, lacking many federally mandated safety and environmental features. President Kenny had proposed giving these vehicles to qualifying persons of low income. Within 6 months of the press conference, another 5 million Mexican nationals crossed the border without visas and settled in the United States.

Both houses of Congress then voted to remove Secretary of Homeland Security from office, as well as to mobilize American military forces to remove visa-less Mexican nationals and combat the San Diego civil militia. Congress also voted money to fund the military effort. President Kenny announced that he would not go to war against "our Mexican friends or interfere with the autonomy of local government." After signing the bill appropriating money for war, President Kenny used the money to fund his "Kenny Car" program.

Numerous suits were later filed against President Kenny, alleging various claims arising from personal injuries and deaths caused by the "Kenny Car."

Discuss the following:

1. Is the agreement negotiated by the President with Mexico valid?
2. Is the President entitled to: (a) refrain from enforcing Federal environmental regulations; (b) refrain from spending money authorized by Congress for a particular purpose; (c) refrain from going to war; and (d) spend money without Congressional authorization?
3. Was removal of the Secretary of Homeland Security Constitutionally proper?
4. What actions can be taken against the President in response to his various acts and omissions?
5. Must the civil suits against President Kenny be dismissed?

QUESTION NUMBER TWO

Rick, Glenn and Herschel are in business together. They manufacture and ship zombie masks from Georgia to California and other States. Sometimes they make deliveries themselves, which they call "going on runs." The masks are popular among party goers all year round. California has the highest actual and per capita sales of zombie masks in country. Low manufacturing costs in Georgia permit Rick and his associates to charge a price much lower than other zombie mask vendors.

In California, the Legislature enacted a law that bans use of petroleum in certain products, including Halloween paraphernalia, and requires that any out-of-state manufacturers who ship their products overland submit their products for inspection and testing upon entry to the State.

The Legislature's findings, as included in the law's preamble, set forth that petroleum is a source of adverse climate change, and that 65 percent of all products received in California from out of state are shipped overland.

Any testing performed on entry to California was to be paid for by the shipper via a testing fee, which was based on 10 percent of the expected net profit to accrue from sale of the tested item.

California enacted no similar inspection and testing provision with respect to any of the covered products which enter the State by air, or which are manufactured in California.

Rick's vehicle was inspected by Agent Martinez, who discovered 10,000 zombie masks inside of crates labeled "Baby Formula." Rick was arrested and charged with violation of the aforementioned law. Before Rick was tried, the Governor (of California) verbally condemned Rick as "a danger to the health, safety and morals of the People and the wellbeing of the earth." Two days later, the State Legislature passed a law that mandated the forfeiture of California business licenses by residents of other States who bring "climate altering materials" into California. Rick subsequently received a letter stating that his California business license was revoked, but that he could challenge the decision within 120 days.

Congresswoman Andrea of Georgia drafted and sponsored the so-called "Federal Zombie Protection Act," which imposed national standards for permissible levels of petroleum in Halloween masks and other similar products. The law provided, in part, that it would take effect retroactively prior to the date of Rick's arrest. After the House of Representatives approved of the Bill, the President signed it.

Discuss the following:

1. Does the Dormant Commerce Clause invalidate the State of California's law.
2. Assuming that each law is not inherently defective, what effect, if any, does the Federal Zombie Protection Act have on California's law.
3. What could the State of California argue in order to invalidate the Federal Zombie Protection Act?
4. What defenses does Rick have to payment of the testing fee and the forfeiture of his California Business License?