

Question One – One Hour

Al Qaeda operatives from Yemen boarded a bus in Sacramento, California that was bound for Reno, Nevada. They had explosives strapped to their bodies. They intended to detonate the explosives once they arrived in Reno. Fortunately, the explosives failed to detonate and the plotters were apprehended.

The Legislature of Nevada responded to this incident by enacting the “Nevada Bus Safety Act,” which required the search at border check points of all persons entering Nevada on commercial buses. Searches of persons would be via very revealing x-ray machines and/or thorough pat downs. Persons who presented valid Nevada driver’s licenses or Nevada issued identification cards were exempt from search.

Frito, who had been born outside the United States, took passage on a commercial bus en route to Nevada once per week in order to meet with business associates. After enactment of the “Nevada Bus Safety Act,” he boarded a commercial bus in order to attend his weekly business meeting in Reno. While waiting to be searched by Nevada officials at a border check-point, Frito observed persons with Nevada drivers’ licenses and Nevada identification cards being cleared without undergoing any kind of search.

Frito refused to submit to a search. He was not permitted to cross the border into Nevada by Nevada officials.

Frito sued the State in Federal Court for declaratory and injunctive relief.

*Discuss any constitution-based arguments in support of Frito’s request for relief and any relevant arguments in response.*

Question Two – One Hour

Al Qaeda operatives from Somalia placed explosives on a commercial bus. Fortunately, the explosives failed to detonate and the plotters were apprehended.

In the wake of this incident, many States attempted to provide higher safety for bus passengers, but many of those efforts raised constitutional concerns.

In response to the constitutionally “suspect” efforts of the States to ensure safety for bus passengers, Senator Dave sponsored and the Senate passed the “Federal Bus Safety Act.”

The Act provided that anyone boarding a commercial bus *anywhere* in the country would be subject to searches of their persons and possessions via use of revealing x-ray scanners and/or thorough pat downs.

The Act also prohibited use of *any* vehicle other than a commercial bus to cross state lines unless the user of the vehicle purchased an annual interstate transit license and paid a tax each time they made an interstate trip. The Act would lapse after two years if not re-enacted by Congress.

The Senate transmitted the text of the “Federal Bus Safety Act” to President Becky. The President did not immediately sign it due to a week-long celebration of her 35<sup>th</sup> Birthday. Nine days after presentment to her, she signed the legislation.

A week after the President signed the “Federal Bus Safety Act,” the Department of Homeland Security (part of the executive branch) commenced enforcing the law.

Frito purchased a vehicle for the *sole* purpose of driving to Nevada from California for weekly business meetings. After enforcement of the “Federal Bus Safety Act” commenced, Frito drove his personal vehicle to Nevada in order to attend his weekly meeting. Frito had *not* obtained a transit license. He was not permitted to cross the border in his personal vehicle. He therefore slipped onto a commercial bus and hid in the bus’ restroom until the bus arrived in Reno. Fellow bus passengers later reported his presence to authorities.

A month later, Frito received notice that he was being prosecuted by the United States Attorney in Nevada for violation of the “Federal Bus Safety Act.”

He also received notice that he was being prosecuted by the State of Nevada for violation of the “Nevada Bus Safety Act” (as described in Question One). Specifically, he was being prosecuted for failing to submit to a search, or, in the alternative, to present a Nevada license or Nevada identification card prior to entering the State.

1. *In his defense against Federal prosecution, what defects in the process of enactment of the law can Frito raise?*
2. *What rights protected by the Constitution can Frito raise as a defense against Federal prosecution?*
3. *With respect to the State’s prosecution of Frito, discuss the merits and demerits of a pre-exemption defense.*

Question Three – One Hour

In an effort to combat threats to the nation posed by international terrorists, Congress passed a law *requiring* the Secretary of State of each State either to directly undertake collection of information about gun possession in their respective State or to contract with private parties to undertake that task. States could opt out of the information collection mandate, but they would lose money provided them by the Federal government for education.

In accordance with this Federal law, any person who refused to provide information pursuant to the inquiry was placed on a list that was circulated among gun dealers, who were admonished not to sell guns and/or ammunition to persons whose names appeared on the list. It was the obligation of the State or any party they contracted with to compile and circulate this list.

The Federal law was entitled “An Act to Regulate the Militia and Combat Enemy Weapon Stockpiling.”

California opted to enter into year-long contracts with private parties to conduct the federally mandated inquiry into gun possession. Vince successfully bid on one of these contracts. He was to be paid on a monthly basis over the course of twelve months. Vince commenced his inquiry in Sonoma County. When Vince approached Frito and attempted to make the federally mandated inquiry, Frito refused to provide him with any information.

When several of his neighbors’ homes were burglarized three months later, Frito went to Walmart to purchase a shot gun for home defense. He was informed by Walmart staff that Walmart would not sell him any guns because his name was on a list of persons to whom guns should not be sold.

Frito sued Walmart, Vince, the State of California and the United States, seeking declaratory and injunctive relief. He also sought damages against Walmart and Vince pursuant to Section 1983.

During the pendency of the litigation, California terminated its contract with Vince.

1. *What arguments based on the Constitution can Frito raise to defeat the Federal law, and what arguments, if any, can be raised in reply by the State and/or Federal government?*
2. *Will Frito’s claim against Vince and Walmart prevail? If not, why?*
3. *If Vince sues the State for breach of contract, are there any constitution based arguments he can raise either to enforce the contract or recover damages?*
4. *What defenses, if any, can the State raise to an action by Vince to enforce the contract or recover damages?*