

Question Number One

The government budgetary and funding crisis continues. With a single party holding supermajorities in both houses of the California legislature, income tax increases were easily approved. At the urging of the Governor, all graduated tax brackets were eliminated and a single 30 percent rate was imposed.

To provide some form of relief for overburdened tax payers, the Governor also proposed a new *State* bankruptcy law. As drafted by the legislature and signed by the Governor, the new law permitted the discharge of certain debts not dischargeable under the existing Federal bankruptcy law. The new State law, however, did not affect any tax obligations. The thinking was that the taxpayers would be more willing to support the new taxes if they could better evade their private debts.

The Federal government was not far behind in crafting its own version of a solution to the budget crisis. It imposed an income tax of 60 percent on the highest earners. A “highest earner” was defined as anyone making in excess of \$ 100,000 per year from all sources. The law authorizing the new tax narrowly passed both houses of Congress prior to being signed by the President. According to the text of the law, one-sixth of the proceeds of the new Federal tax would be dedicated to fund a United Nations effort to control green house gas emissions. The President had previously agreed to provide money to this fund pursuant to a treaty he negotiated with representatives of U.N. member nations and the U.N. Secretary General. Another third of the proceeds would be dedicated to fund Federal government employee pensions, which were currently grossly under-funded.

Frito was a business owner whose pre-tax annual income was \$ 110,000. Before the taxes were due, Frito declared bankruptcy under the new *State* bankruptcy law. By doing so he avoided the immediate obligation to repay \$ 100,000 he owed to Joe, permanently discharged \$ 80,000 of that debt, and delayed repayment of the remainder for 3 years.

Frito paid *most* of his Federal tax, but refused to pay *any* of the State tax.

The State prosecuted Frito for tax evasion. He ultimately lost the case and was sentenced to prison, stuck with a \$ 100,000 fine, and was ordered to pay the outstanding tax debt.

Frito also filed a civil challenge to the Federal tax. One of the statements he made on his petition was “I’m sick of working my butt off so that bureaucrats can retire in style.” He lost that challenge. He then appealed to the appropriate Federal court.

Pursuant to State law, Frito appealed his State case to an authorized State law court. When he lost the State appeal, he sought a Federal writ of certiorari (which was permissible under operative rules) in order to obtain a higher level of review. However, before any further action in either the State or the Federal tax cases occurred, Frito was pardoned by the President.

Discuss the following:

- (1) With respect to the State tax, what Substantive Due Process claim or defense does Frito have, and what would be the government's response?
- (2) Does Frito have similar Substantive Due Process (or other) claims or defenses against the Federal government? If so, what would be the government's response?
- (3) Is the Federal tax suspect in light of the Constitution's rules regarding treaty ratification?
- (4) What is the effect of the pardon on Frito's two appellate cases?
- (5) What claim does Joe have against Frito and what constitutional argument (or arguments) could he raise?

Question Number Two

The government budgetary and funding crisis continues. Because of massive spending cuts mandated by the so-called “Fiscal Cliff” agreement of 2011, the Federal government is no longer able to adequately fund the military. In response, Congress passed and the President signed the “Universal Service Act of 2013.” The Act requires all adult citizens between the ages of 18 and 35 to enlist in the National Guard of their respective States and to purchase an assault rifle. The bulk of the nation’s defense would now be handled by amateurs supplying their own equipment.

At the time the Act was signed by the President, California had an assault weapon ban in place, prohibiting the purchase and possession of such weapons. Ammunition, however, was not banned, though the State did prohibit the sale of ammunition in the State by persons who are residents of other States.

Po was a resident of California and a Citizen of the United States. He received notice of his obligation to enlist in the Guard and obtain an assault rifle. He contacted a weapons dealer named Oogway, who was based in Nevada. Oogway agreed to sell him an assault weapon and said he would deliver a gun and a supply of ammunition within a week. A week later, Oogway personally delivered the weapon and ammo to Po. The transaction was observed by Vachir. Once Vachir determined what was going on, he arrested both Po and Oogway. Po was subsequently prosecuted for violation of the State’s assault weapon ban. Oogway was prosecuted for violation of the ban on the sale of ammunition by a non-resident.

After the criminal prosecution concluded, Po sued Vachir for violation of his Constitutional rights.

Discuss the following:

- (1) Can Congress lawfully mandate purchase of a gun, as it has done here?
- (2) Is California's assault weapon ban pre-empted by any valid Federal legal authority, including but not limited to any Act of Congress?
- (3) How might Po use the so-called Dormant Commerce Clause to defend against State prosecution, and what would the government's response be.
- (4) Can Oogway raise Article IV's Privilege and Immunities Clause as a defense to the charge that he sold ammunition in California, and, if so, how would the State respond?
- (5) What right of Po's might have been violated when Po was *arrested*, and what would Vachir argue in response?