

QUESTION NO. 1

A formerly rare disease has turned into a deadly epidemic in Honduras. Tens of thousands in that country are exhibiting symptoms. Nearly ten thousand have died in the space of 3 months. There is no sign of abatement. During this time, the President of the United States addresses the nation. He says “fear is irrational,” and that “it should not impede or impair this nation’s proud tradition of welcoming immigrants, particularly from Central America.”

Leaders in Congress remind the President of a Federal statute on the books allowing him to close the border to immigrants in times of emergency. The President refuses to apply the law, saying “I will not be bullied by fear mongers who reject the better heritage of this Nation.” The President then announces that immigrants from Central America would be welcome here, whether they had visas or not. This policy, however, is contrary to another Federal law that requires immigrants and foreign visitors to possess proper documentation.

The President then negotiates an agreement with five Central American governments, whereby those governments would each deposit twenty million dollars into a special account, to be matched by the U.S. government. The money would then be used to provide services for any new immigrants in this country hailing from one of the nations depositing funds. The Senate refuses to ratify the agreement. The President implements it anyway, and then deposits money into the immigrant account that Congress had previously appropriated for the purpose of paying the costs associated with transfers of illegal aliens from State custody to federal custody.

Hackers break into White House data bases and find evidence that Marco Salvio, a wealthy and influential citizen of El Salvador living in the United States, had deposited 5 million dollars into a discreet account accessible only by the President. The hackers post the documents on the internet and declare that there are other (more incriminating) documents that they have not yet acquired.

Congress serves subpoenas on the President’s Chief of Staff demanding production of all documents identified by the hackers. The Chief of Staff responds to the subpoena by invoking executive privilege. He says he’s too busy to respond to partisan harassment.

Congress passes a resolution condemning Mr. Salvio, declaring him to be an enemy who should be expelled from the country. Congress then enacts an amendment to the Immigration Act that immediately revokes the legal residency status of Mr. Salvio and requires him to exit the country within 10 days. The President vetoes the law. Standing with Mr. Salvio and his American-born children, the President denounces Congress’ amendment as “a wicked law, contrary to the tradition of due process enshrined in our Constitution.” Majorities in both houses vote to override the veto. On the eve of the vote, the President declares: “if my veto is overridden, I still won’t enforce the law.”

Discuss the following:

1. Are the President's refusal to close the border, the agreement negotiated with the five foreign governments, the decision to forego enforcement of the Immigration Act, and the deposit of funds into the immigrant account legitimate exercises of Executive power?
2. Is the invocation of Executive Privilege by the Chief of Staff Constitutionally proper?
3. With respect to any acts or omissions of the President that are Constitutionally improper, what remedy is available to Congress to combat them?
4. What Constitutional arguments, or Constitutional rights, can Mr. Salvio assert to combat the Amendment to the Immigration Act and its application against him?

QUESTION NO. 2

Inspired by Thomas Malthus's 1798 *Essay on the Principle of Population*, the President of the United States announced a policy of "zero population growth and balanced demographic allocation." Majorities in both Houses of Congress responded by passing the "Quality Not Quantity Act" (or QNQ), which was based on the President's policy. The President signed the bill into law after the close of the legislative session. The text of the law stated that it was based on Congress' powers to regulate interstate commerce and provide for the general welfare.

Section 1 of the QNQ required achievement of certain demographic goals in five year increments. The goals would be achieved, in part, by limiting movement from States that were "demographically deficient" to States that were "demographically abundant."

Section 2 of the QNQ required expansion of "educational" efforts aimed at discouraging child-birth in those places where the population was already "too large."

Section 3 of the QNQ permitted the federal government "to take all actions necessary and proper to facilitate the goals of this legislation."

Section 4 of the QNQ provided for appointment of a cabinet level official by the Speaker of the House of Representatives, whose job was to administer the law. The Speaker appointed Mr. Fife to the position. Once he took office, Fife issued an order to the Governor of California that he prevent anyone from moving into the State until the population fell below 25 million. Fife also issued a ban on transit across California State lines for purposes of selling literature promoting the increase in the nation's population. If California failed to enforce the orders, Fife threatened to withdraw all Federal health and welfare funding from the State.

Frito was a nationally known demographer who had published extensively on the issue of "the coming population collapse." He argued that the sexual revolution had triggered a demographic death spiral that was slowed only by the influx of large numbers of immigrants. This in turn threatened a societal and economic collapse. His solution was for people to start having more children and to discourage birth control.

The State of California had previously issued Frito a license to sell his books in the State. He frequently came to California to give seminars and sell his books. He was scheduled to deliver ten thousand books throughout California, and had already received payment for 80 percent of them. He had also long been planning on moving to California, in part for business reasons. He rented a trailer, loaded up his family, belongings and books and headed west to California.

When Frito arrived at the California border, he was informed by State officials of the following: (1) he could not sell his books in California, or even deliver them for sale by others; and (2) he could not move to California either alone or with his family. They also confiscated his books.

Frito commenced an action to recover his property and enjoin the State and Federal Government from excluding him from California.

Discuss the following:

1. What can Frito argue in order to invalidate the QNQ and any of the actions taken against him?
2. Assuming the first three sections of the QNQ are valid, is Fife properly authorized (pursuant to the Constitution) to enforce the QNQ?
3. In acting as it did, has California violated Frito's Article IV privileges and immunities?

Do Not Discuss the Dormant Commerce Clause.