

1)

1. Possible Unconstitutional Actions By President Becky and / or Ambassador Trump

A. The Agreement Between President Becky and India

Under Article II section II of the constitution the President is given the express power to negotiate all treaties. Ratification of the treaties rests with the Senate. While President Becky did bring the prospective agreement between herself and India to the Senate to be ratified and did not receive a sufficient number of votes, President Becky may have not been obligated to seek Senate ratification. The President is given broad powers to execute foreign policy. Not all agreements are treaties. The President is vested with the ability to make executive agreements with foreign nations which do not require the ratification of the Senate under Article II section II.

Undoubtedly if the agreement were considered a treaty all actions taken under the color of the treaty would be unconstitutional as it was not ratified by 2/3 of the Senate. However, as President Becky was authorized by Congresses joint resolution to authorize "necessary measures," it is likely the agreement will be considered an executive one under the broad discretion of the executive in such matters. It is possible the agreement itself could be considered unconstitutional. When determining the powers of the President in what is arguably an overlapping power with congress, i.e. treaty or executive agreement, one should consider the relationship between the power exercised by the president to the feeling of congress.

It is arguable congress authorized such an agreement under the joint resolution and that the agreement is a necessary measure within the broad discretion of President Becky. If congress is silent on an issue and the president acts within their power there will probably not be a unconstitutional use of power. However, when congress specifically condemns a course of action and the president exercises her power in a contradictory manner, constitutional scrutiny of the act will be at its highest

Here, although President Becky was authorized to take necessary measures, it is important to note that this was a tightening of the power previously authorized to use all necessary force and measures. Presumably, President Becky was authorized to do more under the old resolution. More importantly, here the Senate specifically did not ratify the agreement. Regardless if the agreement is of an executive nature and hence doesn't fall under the ratification powers of congress, congress has expressly stated it does not agree with such an agreement. The agreement itself is not a clear violation of the treaty power but will fall under a high degree of constitutional scrutiny.

Also to be considered is that the agreement, even if constitutional, gives the power to authorize the capture and killing of terrorist to the Ambassador to the country where the indian agent was sent. It is arguable that President Becky is attempting to give ambassadors to other countries powers which belong solely to the president.

B. Nomination of Ambassador Trump

The constitution vests the power of appointment for ambassadors in the president. However, appointees must be ratified by the Senate. There may be provision of the constitution which vests the appointment if congress fails to ratify a nominee after a certain period of time.

Such a power would be similar to the constitutional mandate that if Congress passes a law and presents it to the president, if the president does not veto the bill within 10 days it becomes law. Unless of course there is a pocket veto. If a similar "automatic ratification" exists for appointees for the position of the ambassador then the appointment may pass constitutional scrutiny. As there is no evidence to believe this is the case it is more likely that Ambassador Trump required ratification by the Senate before he could exercise any such duties. This would be unconstitutional.

2. What Can Congress Do About It?

Congress does not have a lot of options. The President is merely required to take an oath before entering office that she will "faithfully execute the office of the United States," and to the best of her ability "preserve, protect, and defend the constitution of the United States. The president is immune from suits for tortious activities arising out of acts undertaken while in office. More importantly congress cannot ask the judicial branch for help in this matter. In order for the court to get involved, the matter has to be justiciable. Justiciability requires, standing. Standing requires, a cause, an injury, and redressability. Unfortunately Justiciability does not allow for political questions. While the issue may be ripe, and there may be what seems like standing the courts will not adjudicate a matter that is properly within the powers of the executive and legislative branches. Whether or not the agreement in question was a treaty or an executive agreement, and whether not it needed to be ratified, or President Becky overstepped her broad discretionary powers in this matter are entirely political questions. Both the power to ratify treaties and the ability to make executive agreements under a joint resolution given to the president, furthered by the president's broad discretionary power in foreign affairs raises a clear political question which the Supreme Court of the United States will not adjudicate. Action against Ambassador Trump would be the same outcome for similar reasoning.

Congress cannot force President Becky to fire the Ambassador Trump. The power of appointment of ambassadors is vested in the executive. Congress ratifies and may limit the removal of such person to good cause, but ultimately the power has the express power under the constitution to remove Ambassador Trump. Clearly President Becky will not do such a thing unless political force and motive are applied.

Congress is vested with the power of impeachment. Congress can with majority vote in the House of Representative and a 2/3 majority in the Senate, impeach and convict the president of the United States for violating, high crimes and misdemeanors, bribery or treason. While assassination might fall under high crimes and misdemeanors the Joint Resolution only declared that the United States is to avoid killing United States Citizens when executing the nation's anti-terrorism policies. The death of Musa was not clearly an assassination though he is a naturalized citizen of the United States. There is no evidence to believe, bribery or treason has been committed. Furthermore if this was an assassination there is no evidence President Becky knew of any plot as Ambassador Trump, could under the agreement, authorize the assistance of India in killing and capturing. It is doubtful President Becky will be impeached under these circumstances.

3. Farad Is Most Likely Entitled To a Writ of Habeas Corpus

Farad is a naturalized American citizen. It is possible Farad could have lost his

citizenship is congress has passed some provision requiring naturalized citizens to do something to keep their citizenship. If Farad failed to comply with a congress that is expressly given to congress he could have lost his citizenship. As there is no evidence to suggest such action by congress we will assume Farad is still a naturalized citizen of the United States. It is also unclear if Farad has been categorized as an enemy combatant.

An enemy combatant, citizen or not, held on American soil has a right to challenge the constitutionality of the detainment with a Writ of Habeas Corpus. An enemy combatant not held on American soil does not have this right. Farad is in an Indian detention facility. If he has not been labeled an enemy combatant he is being detained by the Indian government and not the United States. The agreement between President Becky and India says India will assist in capturing, it says nothing about where the captured will be detained. If Farad is not classified as an enemy combatant, all be him a citizen, he has no right to a Writ of Habeas Corpus the challenge the constitutionality of his detainment in India.

However, Congress declared that any U.S. Citizen captured by U.S. forces and held as enemy combatants must be held in the United States. While it will not strictly speaking the United States who captured Farad, it was Amitab, a Indian agent, if the Indian government is holding Farad for the U.S. and the president has classified Farad as an enemy combatant, Farad would need to be moved to U.S. soil, or places considered U.S. soil immediately. The agreement doubtfully creates a strong enough American interest in the Indian detention facility to call it U.S. soil.

If Farad is moved to U.S. soil he will then be a citizen classified as an enemy combatant, and will be entitled to a Writ of Habeas Corpus to challenge his categorization as an enemy combatant. However the amount of process afforded to enemy combatants is much more narrow than the process afforded citizens in the civilian courts. Farad will be entitled to know why he is being held in front of a third party neutral. It is unlikely Farad will be able to present witnesses in his defence. He may have access to an attorney but other things normally inadmissible at a trial, such as hearsay, will likely be allowed.

4. President Becky and Ambassador Trumps Liability to Farad

If the agreement is unconstitutional, which it may be, though it is unlikely this will every be resolved by a branch of the federal government. Farad could argue his substantive and procedural due process rights have been violated. Any procedural due process rights argument would ultimately fail as congress as given the President the power to categorize citizen detainees as enemy combatants. The procedures available for those categorized as enemy combatants was discussed above. this is as far as procedural due process will reach for someone categorized as an enemy combatant, regardless of the allegations truth.

2)

1. Frito's Constitutional Objections

A. Contracts Clause

Article I section, 10 of the constitution prohibits states from impairing obligations to perfected contracts. Frito has an obligation under this franchise agreement with Spungo's Inc, to purchase certain food ingredients from a nation wide Spungo's Inc. processing center. California has now passed a law and established a Fast Food Commission to oversee enforcement of a law the Frito cannot comply with, while at the same time fulfilling its obligation. The Commission says Spungo's inc processing center does not comply with what is presumably the food quality standards just enacted in the Fast Food bill. Frito will argue this is an Unconstitutional interference with his contractual rights. California will argue the importance of food quality is a compelling state interest and it is within the power of California to legislate uniform food laws, if it was not it would be impossible to regulate.

B. Dormant Commerce Clause

The Dormant Commerce Clause is implied in the constitution and can be inferred from the powers given to congress under Article 1 section 8. Article 1, Section 8, grants congress the power over interstate commerce. This is a power to regulate the channels, products, persons, and instrumentalities of interstate commerce as well as to regulate intrastate and interstate activity which substantially effects interstate commerce. As the power to regulate interstate commerce is given to congress, it can be inferred from the constitution that when states enact laws which impair or have a substantial affect on interstate commerce, such laws will be subject to constitutional scrutiny.

A law is protectionist if it designed to restrict or impair interstate commerce to the benefit of the state passing the law. Protectionist laws, ie. overt trade barriers, will be invalidated. A law may also be facially discriminatory or facially neutral. A state law which is facially discriminatory is designed to somewhat discriminate but does not rise to the level of protectionist. Such a law is presumptively invalid. The presumption can be rebutted if the state can a compelling governmental purpose behind the law and that there is no lesser alternative, or lesser discriminatory means of achieving the compelling purpose. A law is facially neutral if there is no intent in the language of the statute to discriminate but when the law is enforced discrimination occurs. Such a law is presumed valid. A challenger can rebut this presumption by showing that there is no legitimate government purpose behind the law, or that if there is a legitimate government purpose, that the burden to interstate commerce is substantially outweighed by the benefit to the state.

the Fast food law is probably not protectionist. It simply sets forth certain requirements for food quality. Under the tenth amendment all powers not delegated to the United States by the constitution, or prohibited by it, to the states, is reserved with the states, respectfully or its people. The ability to to pass laws which set minum standards for food quality are certainly within the powers relegated to the states. The law does not favor California businesses more than out of state businesses as anyone who meets the requirements of food quality are allowed to sell food in California. It could be argued the law was protectionist in its food quality clause if California raised the food quality requirements to strict heights other states couldn't meet but were being meet by California food growers and processors.

This law is probably not facially discriminatory in commerce clause terms as it does not seem to contemplate the problems it could cause. It could be argued that any legislature whould ahve llooked into the food quality standards of other states, especially neighbors to determine their own standards. Such a legislature would have known that enacting a law which sets quality standards which are much stricter then the rest of the country would discriminate against interstate commerce. This would certainly be the case in fast food restaurants as

money are national and international brands which have to succumb to general provisions of any franchise agreements so that all restaurants run in accordance with the parent companies view of the restaurants as a whole. However, there is no reason to assume California's new quality standards law is stricter in the degree it would need to be to be an obvious issue. It is quite possible Spungo's Inc processing center food quality falls below its own states standards or the state has very low standards.

The law, as it relates to interstate commerce is probably facially neutral. This means Frito will have to show that there is either no legitimate governmental purpose in enacting such a law, or if there is, that the benefit to California is substantially outweighed by the burden placed on interstate commerce. This is a difficult hurdle for Frito, however it could be argued that while there is clearly a legitimate governmental purpose in setting food quality standards, doing so in the fast food industry places a heavy burden on interstate commerce. This is especially true if most fast food restaurants receive foods delivered from outside the state, and the states these foods come from have lower standards for food quality. It could be said that because the intention of the legislature is to respond to concerns over the dietary habits of Californians, that a simple sign showing the quality of the food California welcomes, and the quality of the food actually being served is different. This would allow people to make informed decisions about their diets instead of forcing many many fast food restaurants to comply with a law that may or may not interfere with their contracts and cause a substantial effect and impairment on interstate commerce as it relates to the fast food industry.

C. Due Process

The Due Process Clause of the 14th Amendment protects individual liberties, including protection against deprivation of life, liberty and property. Here Frito is arguably being deprived of the liberty to hire who he wants. There are really two rights being affected here, one is the right to work and the second is the right to an economic interest. Frito's restaurants are not in urban areas, it is unlikely he will be able to find people to drive from whatever "urban areas" are to the generally rural borders of our state. This could affect both, Frito's right to work, at his business, with the people, he wishes to hire, and may cause him economic issues. It sounds like Frito is being asked to fire the non urban people, or at least some and hire, urban people.

The state would argue that Frito's claim is not ripe, at least to a due process claim, he has not yet had to fire anyone and his denying of Jillian does not give him standing. However this is a wrong capable of repetition. It is very likely that if Frito's is not allowed to bring this claim that when he does have traditional ripeness, he will be having to comply with the rule on a yearly basis, which is the time he generally hires people for.

The right to work is a fundamental right under the fourteenth amendment. As this is the case the state would have to show a compelling governmental purpose in forcing Frito to hire and fire certain types of people which affects his ability to work. The state would also have to show that the law is narrowly tailored to achieve this compelling governmental purpose. While food safety is certainly a compelling government interest or purpose. It is doubtful that monitoring the dietary habits of those who frequent fast food establishments is a compelling government interest. Furthermore the law is not very narrowly tailored. Urban and non urban environments appears to be very ambiguous and certainly with any real thought the legislature would see the inherent problems in enacting a statute that provides fast foods restaurants in non urban areas must hire urban people. It makes very little sense as to the rationale for placing the urban residents, whose habits are worse, into the restaurants like Frito's who

apparently doesn't meet the food quality requirement. It is likely that at least the portion of the law requiring Frito to employ residents based on residence type would be unconstitutional under the due process clause of the fourteenth amendment.

Frito's economic right is, however, less protected. Economic rights were given a degree of protection until the 1920's. Since this time economic rights under the fourteenth amendment are afforded minimal protection. The law is presumed valid and can only be rebutted by Frito if he can show that there is no legitimate purpose behind the provisions of the fast food law and that there is no rational basis for the legislature to believe the law will further this legitimate purpose. Frito might actually win on the urban residence requirement for the reason mentioned above as making "very little sense." However the court is free to imply the intent of the legislature and free to assign a rational basis for the law, even if it was not the rational one intended by the legislature. This being said the intent of the legislature was not ambiguous, it was to deal with concerns over dietary habits of Californians. Although this is a tough burden for Frito to overcome he may very well be able to say there is not a rational basis for certain clauses.

D. Ex Post Facto Laws

Under Article 1, section 10 states are prohibited from passing criminal statutes which apply retroactively. There is no such prohibition on civil ex post facto laws. The one thousand dollar fine for each of Frito's violations is probably not a civil ex post facto liability. Frito is being fined four months after the legislation was passed.

E. Preemption

Frito could also argue that he does not need to comply with the food quality guidelines set forth in the act as there is federal law on point. If there is evidence in the federal law governing food quality that congress intended to occupy the field of laws governing food quality then a state law may be held to be preempted by the express powers of congress. Under the necessary and proper clause, Article 1, section 8, clause 18, congress has the ability to pass any law which is necessary and proper in carrying into execution and power expressly granted to it.

There is no evidence that suggests the field of food quality has been occupied by congress or that the federal and state laws are mutually exclusive so that it is impossible to comply with both. Anyone can simply comply with the federal food quality law by complying with the California food quality law which affords a higher standard than the federal. Frito will likely fail in a preemption argument.

INCREASE PAY

2. Jillian's Privileges and Immunities

Article 4 section 2 of the constitution entitles the citizens of the several states to the same privileges and immunities of the citizens of other states. Specifically, if Jillian, a resident of Nevada, goes to California, she should be provided the same privileges and immunities as the citizens of California. The supreme court has long held that in order for the clause to give protection the privilege being discriminated against must be a fundamental one. If the privilege is fundamental then the law is presumed invalid. The state can rebut this presumption by showing that a substantial reason for the discrimination exists and that the degree of discrimination is closely related to the evil to be averted. The law must remedy the evil to be averted that is

poised by citizens of other states.

Here Jillian is being discriminated against in her right to work, maybe. As discussed above this is a fundamental interest. It is not clear if the law requires Frito to only higher his urban quota from within California. The state would argue that Jillian is not being discriminated against because as she lives in a non urban area in Nevada, the law would require frito to hold off on highering non - urban residents of California. If the law doesn't require Frito fill his quota of non-urban workers from california there may be no cognizable discrimination against Jillian based on her out state residence. However if the law does require hiring of california citizens only, and the intent of the legislature to deal with California's urban and non urban residence seems to suggest maybe it does, then this is a violation of Jillians fundamental right to work. The state would argue that she is free to work at Frito's, he just made a decision not to hire, her. This will likely fails as the only reason Frito wouldn't hire her was his need to comply with an arguably unconstitioal law.

END OF EXAM

Question No. 1 = 82

Question No. 2 = 76

Final Total = 79