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===== Start of Answer #1 (1171 words) =====

Q1 = 90

1. What arguments Rump (R) might make that the de-commercialization of elections act (Decom) is an invalid exercise of the Commerce Clause or is invalid as applied to him.

The Commerce Clause gives Congress plenary power to regulate Interstate Commerce. (IC) This power extends to the channels of IC (Highways, waterways etc.) To the instrumentalities of IC. TO the persons and things in IC, and to any activity that substantially effects IC.

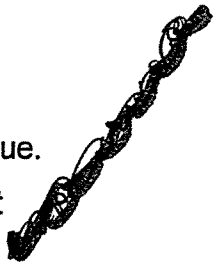
R will make the argument that Congress exceed their authority in regards to the Decom law. The commerce clause does not give them the power to prohibited the sale of books by presidential candidates one year prior to an election, unless the book was printed in the state it was sold.

Lottery?
cases?

The government would counter that the necessary and proper clause gives congress the power to carry out its authority by any means not prohibited by the constitution. Congress is acting well within their power with the Decom law. These books are clearly sold all over the country and the Commerce clause was designed to regulate this as this is part of IC.

When the commerce clause is challenged the courts will apply a rational basis test. Here the plaintiff must show that either that there is no legitimate government issue at stake or the law does not relate at all to that issue.

R will then contend that this law does not contend to any legitimate government issue. The only issue that it could possibly be is that they do not want him as the president and they will try to accomplish there goal by any means necessary. Even if the government can come with some legitimate purpose for the law it is ver doubtful the law



will relate to that purpose. The fact that they still allow sales of books that were made in the state shows the fact the law was design to prevent him from becoming president.

It appears the government would have to get creative as it does not appear the law is related to a legitimate government interest. they could contend that the law was designed to serve the purpose of preventing an unfair advantage in the election. Allowing book sales could lead to an unfair propaganda advantage.

*Not really a
commerce
power*

That being said it is a very far reach. It appears that there is no legitimate government reason they could rely on to justify the law. It is usually very difficult for a plaintiff to overcome the rational basis test when congress exercise their commerce power, but it just does not seem like there is a reason that would rationally justify stopping the sale of candidate books one year prior to an election.

2. What arguments R might make that any or all the law violate rights protected by the Bill of Rights?

Where a law limits the ability for all persons to engage in an activity Substantive Due Process might apply. The Due Process Clause of the 5th amendment applies to the federal government while the similar clause in the 14th amendment applies to the state. Since the federal government is acting here the 5th amendment will apply.

*// good
B.P. of K.S.
inc. 14th
// fundamental
rights*

The inquiry is whether the government has an adequate reason for taking away a person's life, liberty, or property interest. The analysis will depend on the right that is being taken away. If it is a fundamental right than the government will have to overcome strict scrutiny. All other cases a rational basis test will be applied.

R will argue that the government is attempting to violate his first amendment right of freedom of speech, as well as his right to assemble. R will contend that the government has no right to restrict was he says or were he says it. The framers put this right first in

the Bill of Rights for a reason. They realized that it was of the utmost of importance not to restrict the voice of anyone, least of all a potential candidate for president.

The Feds will counter that the law was put in place for a very compelling reason. They are trying to avoid going to war with other countries as well as preventing citizens of the US to be subject to abuse just because of their race, religion etc. Hate speech and statements criticizing immigration and anti-terrorism are very harmful to the well being of the United States. These acts could lead to alienating other nations and possibly lead to war. While it does take away the 1st amendment rights of people it is necessary to ensure the well being of the country. If the US was to go to war simply because of some loud mouth politicians, or people spewing hate, a lot of innocent people would die. Not to mention if this type of speech was allowed to continue Muslims, immigrants could become subject of hate crimes as this type of speech could incite unthinkable behavior in the public. Lastly the government will argue that while they realize this is an extreme measure, it is very narrowly tailored (only subject to hate speech, and Candidates) to be the least restrictive way to accomplish the compelling interest.

How is the 1st amendment is war? Hate crimes

R would come back with the argument that the freedom of speech is something that should not be taken lightly. Allowing these laws to stand would lead the US down a slippery slope. HE will agree that preventing war and hate crimes are a very serious issue, but the way the government is going about it is unconstitutional. Even if the court agrees with the government that it is a very compelling issue this is not the least restrictive way to go about accomplishing that interest. And there might not be a constitutional way to accomplish their interest if their interest requires the silencing of all Americans who feel like he does.

Since the First amendment is such an important right it is very unlikely laws 2 and three would pass muster in regards to due process.

3. Can R argue that one of the 3 laws is a Bill of Attainder?

A Bill of Attainder is a legislative act pronouncing a person guilty without a trial.

R will have a very difficult uphill battle if he tries to claim the laws are Bill of Attainder. While the law has his last name in the title, the law does not pronounce him guilty. It merely limits his ability to do some activities that he is known to partake in.

Good

He could make the argument that the government knows that he will continue to do the acts so in turn the law basically makes him guilty for just being him.

As stated earlier the law does not pronounce him guilty it just makes some of the acts he normally does guilty. If he did not do the acts then the law would not make him guilty.

R's best chance is to have the laws declared unconstitutional as discussed above, as this law does not appear to be a bill of Attainder.

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End of Answer #1 =====

2)

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Start of Answer #2 (1347 words) =====

1. Does the Agriculture Protection Act (AP) violate the so-called Dormant Commerce Clause?

Q2 = B3

The dormant commerce clause is a prohibition on state laws that negatively affect or burden interstate Commerce (IC). Courts, when determining if a law negatively affects IC they will look to place the law into one of 3 categories; Protective legislation, facially discriminatory, or facially neutral. Protective legislation is per se invalid and doomed from the start. The courts will apply strict scrutiny to facially discriminatory laws, and will use a rational basis test, with a balancing test to facially neutral laws.

The plaintiffs will make the argument that the AP law is the definition of protective

legislation, and should be considered unconstitutional.

Ca will contend that while the law might appear to be protective legislation it is really facially discriminatory as CA has a very compelling reason for the law. CA is currently in one of its worst drought on record and its agriculture industry has been hit the hardest. If the government does not act in order to help keep the farmers afloat than all farmers could go out of business leaving CA in a very unwanted spot. CA will continue to argue that this industry is vital to the well being of the state and while the law does discriminate it was only created out of bare necessity to try and preserve the industry that was once what drove the CA economy.

The plaintiffs will contend that if the court does buy the compelling interest argument that CA is providing it only meets half the strict scrutiny test. If it is a compelling interest CA has in protecting its industry the law is not narrowly tailed to the least restrictive means to achieve their interest. The Plaintiffs will make the argument the first half of the law might pass muster if thats all there was, ans the tax makes in state and out of state products virtually the same price. However adding the hefty licensing fee creates an unfair advantage to CA farmers, making their products more profitable. As this fact shows that this is not the least restrictive means possible to achieve CA compelling interest than the law should be deemed unconstitutional.

CA will counter that it is the least restrictive means possible to achieve their compelling interest. But they will have a very difficult time proving this. It appears that they over reached with the law and it is not the least restrictive way. If it was a facially neutral law then the law should have no problem passing muster but since it facially discriminatory and they must over come strict scrutiny, (which is very difficult to do) it does not appear they tailored their law to the least restrictive means. Since they did not the law will most likely be ruled unconstitutional.

2. DOes the AP violate Article 4's privileges and Immunities (PMs) clause?

The PMs of article 4 prohibits states from denying non-residents the PMs afforded to its citizens. Thus a law that discriminates agents out-of-staters in regards to civil liberties or the right to earn a living will be struck down as unconstitutional unless the state can show the law serves a compelling reason and the out-of staters are the sources of the evil.

First it must be determined if the plaintiffs even have standing. The PM clause only protects citizens of other states. It does not protect corporations or aliens. The facts do state that the plaintiffs are from out of state but the facts do not mention if they are citizens of another states. It also does not mention if they are corporations. The annalize will continue as if they are out-of-state individuals that are not aliens. But if it is later determined that the plaintiffs are either corporations or aliens they will not have standing under the PM clause of article 4.

The law clearly shows that it discriminates against out-of-staters, and that discrimination directly affects their ability to earn a living. Therefore CA must prove that the law is designed to serve a compelling reason and the reason for the discrimination is the out-of-staters are the source of evil requiring action for the compelling interest.

States have a very difficult time over coming this burden of proof. That being said CA might be able to overcome the burden in this situation. As discussed above the law was designed for a very compelling reason. CA agriculture industry is on the verge of collapsing. If it were to collapse CA would be in a very bad situation and must on other states to be the sole providers for CA. If anything were to happen such as a natural disaster, CA residents could face a very serious food shortage. The compelling purpose is clear, CA must do something to save the industry. Law makers believe the source of evil is out-of-state food producers that are driving the prices down in the state and in turn driving CA food producers out of business. It appears that CA is correct that out-of-state food producers the main source of evil and they are the reason CA is in this situation.

The plaintiffs will argue that they are not the source of the evil. The source of the evil is the drought. CA is already experiencing a natural disaster of sorts and it is affecting the agriculture industry. IF this law were to be upheld then the drought would be affecting every individual in CA as the price of their food would sky rocket. Not to mention that the out-of-staters are affected as their ability to earn a living is greatly impacted. The drought just went from affecting one industry in one state to every resident in that state as well as every other state that ships food to CA.

good

CA will concede that the plaintiffs make a good point but they cannot let their agriculture industry die. It would make the state way to reliant on other states for their food. While discriminating against out-of-staters is not ideal for CA it is the only way that they can achieve their compelling purpose.

This will be a tough decision for the court. Like stated before this is a very difficult burden to overcome. COurts do not like to allow this type of discrimination to occur. That being said any agriculture industry is viable for a state to thrive.

It is unclear what the courts will do but since it is a hard burden to overcome the court might agree with the out-of-staters and side with them. That is if they are actually citizens of another state.

3. Is the Irrigation Reform (IR) Act preempted by federal law

The Supremacy clause provides that the constitution is the supreme law of the land.

COngress can preempt state law either expressly or implied. They preempt state law when the law specifically states that their intent is to control the field. It can be implied when it is not possible to comply with both a fed law and a state law. Also if a state law defeats the purpose of a fed law than it is preempted as well.

Here it appears that Congress is trying to control the Field with the Environmental

protection act. As it states "appropriate to further the ends of the law" This does not mean that CA could not adopt a laws that were stricter that the federal laws, but it appears that the feds did not want any state laws that were more lenient than theirs.

CA will argue that since these are only regulations and not laws they were not designed to preempt state laws. But this would not be a valid argument. The EPA act states it can enact any regulation to uther there cause.

Even if it was determined that the Fed was not trying to control the field, it appears at the very least CA law would destroy the purpose of what the fed law was trying to do.

It appears the IR act is not valid as it is preempted by fed law.

==== End of Answer #2 =====

3)

===== Start of Answer #3 (1453 words) =====

Q3 = 77

1. Is the agreement between Mexico and the US to build a wall a valid treaty?

Article 2 gives the President (P) broad power in dealing with foreign affairs. One of these powers is to negotiate and enter into treaties with foreign country's. There are 2 kinds of treaties self-executing and non-self executing. Self executing is just that, the treaty does not require any further action from congress. NOon-self executing treaties require further action from congress, generally appropriation of funds. A treaty is valid when signed by the head of the foreign nation and the P and is ratified by 2/3 Senate vote. The facts state that the senate approved the treaty but it is silent on whether it was a super majority or not. If it was not a 2/3 approval than this is not a valid treaty. IF it was there still is the fact that the treaty calls for the US to provide money. The treaty would be unconstitutional in regards to the requirement to provide money. The facts state that the P negotiated a new deal with Mexico making Mexico pay for the whole

wall. The facts are unclear if a new treaty was formed or not. It is also unclear if a new treaty would be required as the appropriation of funds part of the treaty was unconstitutional. The P has the power to terminate treaties and he does not need any consent from Congress. If a new treaty was formed the Senate would have to ratify that one as well.

More facts are needed about the senate voting to determine if a valid treaty was formed but if 2/3 of the senate did not approve then the treaty is not valid.

2. COuld the agreement be valid as an Executive Agreement?

Article 2 also give the P the power to enter into Executive Agreements with foreign country. THis is an agreement with a foreign country that is valid when signed by the P and the head of the foreign country. Senate does not need to approve this agreement. These agreements trump any conflicting state laws but is trumped by federal laws and treaties as well as the constitution.

The facts are silent on if either leader signed the agreement, however even if they did there is still the problem with the appropriation of funds. The P cannot spend any money on his own. He may only spend money that congress designates money for him to spend. And in those cases the P may only spend the money on what congress has designated the money for. It is unconstitutional for him to spend money that congress designated for one purpose on another purpose.

This might point might not matter as the facts indicate that the P renegotiated the agreement and US is not required to pay anything. The facts do no indicate if a new agreement was signed or not or if the P negotiated the terms orally. Like stated above the agreement is only valid if signed by both leaders. It is also unclear if a new agreement is required as the appropriation part of the agreement was unconstitutional.

It appears that a valid executive agreement was created with Mexico as they have

agreed to pay for everything.

3. Relying on Justice Jacksons (JJ)Youngstown Sheet test, is the agreement with Mexico for Mexico to pay all construction cost a valid exercise of presidential power?

JJ's test laid out how to determine if the P was acting within his authority. IT stated that if the P was actin within his constitutional powers and with the express consent of COngress his power was at his greatest. If he was acting in an area where Congress was silent his actions would most likely be valid as long as his actions were not invoation of a constitutional clause. HOwever, if he was acting against the express intend of congress his actions would most likely be invalid.

It is unclear why Congress passed a joint resolution condemning the wall. It could be reasonably assumed that COngress passed the resolution because of the costs soaring. It would seem logical as they never approved any costs in the first place. Regardless of the reason Congress passed the resolution in both houses condemning the wall. P should have halted all activity with Mexico in creating the wall right then and there.

P could make the argument that the only reason the resolution was passed was because of the cost. Even though he was acting against the express will of congress his actions were only taken to correct the problem Congress had with the wall. If we rely on the JJ test it appears that the P's were not valid as he was acting directly against congress's wishes. P could also make the argument that this was a foreign affair and congress cannot control his actions in foreign affairs. This would be untrue. WHile the P has very broad powers the wall is still in America territory. COngress also controls the immigration laws and entry into the country and the necessary and proper clause would justify their resolution.

Since it is unclear why the resolution was past it is hard to tell if P was acting

against Congress's wishes. If they decided to just throw in the towel on the wall and passed in order for the wall to be finished the P over stepped his powers and his actions were probably unconstitutional. If the cost was the only issue and P was just trying to make the wall work his actions were probably ok. COngress response to the continued construction of the wall would give us more information on the intent of Congress and passing the joint resolution.

4. If P rump and the US government were to maintain custody of the activists after the COurt ordered their release, what might the activists argue in response?

The activists first would argue that their Procedural and substantive DUE Process was violated. The procedural part of th Due process clause of the 5th amendment requires the government to provide citizens with fair process and procedures before taking away a life, liberty, or property interest. A liberty interest is deprived when the government takes away a signiifant freedom secured by the constitution or statute. The substantive inquiry is whether the government has an adequate reason for taking away a person's life, liberty, or property interest. The analysis will depend on the right that is being taken away. If it is a fundamental right than the government will have to overcome strict scrutiny. All other cases a rational basis test will be applied.

Here is it clear the government has violated numerous constitutional rights of the prisoners. There 4th amendment right to not be subject to unreasonable search and seizures. The prisoners will argue that being seized immediatley after a court has released them was unconstitutional. It also appears after the second arrest they were not granted a hearing to argue their case which is a direct violation of their procedural due process.

The US will first argue that some of the prisoners are not even US citizens but mexico citizens and they are being held as enemy combats and are not subject to the same laws as citizens are. that Being said even alien enemy combatants cannot be denied to their right to a hearing. HOLDing them without a hearing is still unconstitutional and their

rights have been violated. The government could argue that they were arrested on Mexico soil and since they were not arrested on American soil enemy combatants are not subject to the laws of the constitution.

They will then argue that the prisoners that are American citizens are being held as enemies of the state and they are being jailed for safety reasons. Since their freedom is at stake strict scrutiny will apply and the government will lose. Protecting the country is a very compelling reason to lock up someone, but the way the P went about it was not the least restrictive way to do it. First the prisoners were already subject to one hearing and were released. While the P is a very powerful man even he cannot violate people's constitutional rights the way he has. The prisoners were cleared of all charges and there is no evidence that they are enemy combatants. At the very least they need an opportunity to be heard again so they can have a chance to argue for their freedom.

Since it appears the P overstepped his authority and courts have already granted the prisoners their releases, their constitutional rights were violated without being afforded the due process of law. They should be released immediately.

==== End of Answer #3 ====
END OF EXAM