

ASP – Con Law I (Prof. Steinman)
Spring 2007 - Session #3
Santa Clara University School of Law
Bannan Engineering Room 105
Thursday, 15 March 2007 4:10 – 6:10 PM

1. Introduction
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2. General Q&A and Pointers re Law School, Con Law and Steinman [5 mins]
 - a. Any new problems/concerns re Con Law/Steinman/Law School?
 - b. What is good time/place for Office Hours?
3. Warm-Up Exercise – *Pontiac v. Spellings*, No. Civ.A. 05-CV-7135-D, 2005 WL 3149454 (E.D. Mich. 2005), available at <http://www.nea.org/lawsuit/images/nclbddismiss.pdf>. [30 mins]
 - a. Facts [NOTE: these facts are vastly simplified from the real case]
 - i. Congress passed the No Child Left Behind Act (NCLB) in 2001.
 1. The NCLB requires any state that receives federal funding for its K-12 public schools to show, via yearly testing, that students in its public are making Adequate Yearly Progress (AYP) towards a goal of full literacy in math, English language arts and science by 2014.
 2. Section 9527(a) of the NCLB [20 U.S.C. § 7097(a)] states that “nothing in this Act shall be construed to authorize an officer or employee of the Federal Government to mandate ... [that] a State or any subdivision thereof to spend any funds or incur any costs not paid for under this Act.”
 - ii. In 2005, the Pontiac, Mich. School District needed more money than Congress had allocated for it in order to meet all the requirements of the NCLB.

1. The School District asked Sec. of Education Spellings to waive full NCLB compliance b/c it didn't have enough Congressional money.
2. Sec. Spellings told the School District that it would have to comply with all the NCLB requirements, even if that meant the school district would have to spend its own money.

b. Procedural History

- i. The School District sued the Dept. of Education arguing that it could not be forced to spend money Congress had not allocated b/c of § 7097.
- ii. The Dept. of Education moved to dismiss under FRCP 12(b)(6), arguing that § 7097 only applied if the Dept. of Education imposed requirements on a school district that were not originally in the NCLB.
- iii. The Dist. Ct. agreed and dismissed the complaint.
- iv. The School District appealed to the Sixth Circuit arguing that
 1. The Dist. Ct. had interpreted § 7097 incorrectly OR
 2. If Dist. Ct. interpretation is correct, then § 7097 is unconstitutional.
- v. The Sixth Circuit heard oral arguments in the case on Nov. 28, 2006, but hasn't issued an opinion yet. *See* National Education Association, *Standing Up for Children: Pontiac v. Spellings*, <http://www.nea.org/lawsuit/index.html>.

c. Problem – Deciding the Constitutional Question

- i. Assuming that the Dist. Ct. interpreted § 7097 correctly
 1. What is the basis of the constitutional challenge to § 7097?
 2. How should the court evaluate this constitutional challenge, i.e. what is the rule?
- ii. Group 1 – Appellant
 1. Who is the Appellant?
 2. What arguments would you make to show § 7097 is unconstitutional under the appropriate legal standard?
- iii. Group 2 – Appellee/Respondent
 1. Who is the Appellee/Respondent?
 2. What arguments would you make to defend § 7097 against the constitutional challenge?

4. Privileges & Immunities Hypo [1 Hour, 20 mins] – Modified from the Fall 1995 Final
 - a. Outlining [15 mins]
 - i. Where does the P&I clause come from, i.e. what part of the Constitution?
 - ii. When a law alleged to violate the P&I clause
 1. Who passed the law in question, Congress or a State?
 2. Who is challenging the law?
 3. What rules are used to decide if the P&I clause was violated?
 - b. Writing/outlining answer to Hypo below [50 mins]
 - i. What does the question ask for specifically?
 - ii. Think about what FACTS are relevant, don't just concentrate on the cases.
 - iii. Are there any related issues that you might want to mention before starting your analysis?
 - c. Groups discussion of answers [15 mins]
5. Wrap-up/Final Questions/Concerns [5 mins]
6. Next Session
 - a. Bannan Engineering Room 106, Thursday, 29 March 2007 4:10 – 6:10 PM

Privileges & Immunities Hypo [Modified from Question #3 on the Fall 1995 Final Exam]

At the time that Alaska was admitted into the Union as a state, a significant percentage of the residents of the old federal territory and of the new state were of Indian, Eskimo, or Aleut descent. Many of these still lived in the traditional wilderness manner in which fishing for salmon and hunting for seals were vital to their existence. As the State of Alaska grew and industrial operations expanded, a conflict developed between those living a wilderness existence and those carrying on the business of fishing for salmon and hunting seals for commercial exploitation. The conflict threatened to escalate into real violence, so the state adopted a policy to control these operations by all persons and businesses.

In essence, the state policy granted protections to “all Indians, Eskimos, and Aleuts who were residents of the state and were fishing for salmon or hunting for seals for traditional personal or tribal use at the time Alaska became a state.” The policy stated that these designated individuals would have “a first and assured catch right to enough salmon and seals to maintain their wilderness style of living for themselves and their descendants.” In years when the catch was low, this policy seriously cut into the profitability of the commercial operations; it just so happened that all of these commercial operations were owned by businesses from other states.

Assume that a lawsuit has been brought in the appropriate federal district court seeking to **enjoin** Alaska from continuing to implement this policy because it violates the Privileges & Immunities Clause of the constitution. Please write a memorandum explaining **who the plaintiffs are likely to be** and **whether the injunction should be granted** on the basis of the Privileges and Immunities challenge.

Professors vs. Students re Spring Break

