Professor Freeman Fall, 1994

CONSTITUTIONAL LAW I
Sections A & B
MIDTERM EXAMINATION

TIME LIMIT: FIFTY MINUTES

INSTRUCTIONS:

1. Please do not use pencil to write this examination. If you use a felt-tip or fountain pen make sure that your answer does not "bleed" on to the next shoot of paper.

2. WRITE ONLY ON THE LINES AND IN THE SPACE PROVIDED. WRITE ONLY ONE LINE OF SCRIPT ON EACH LINE. DO NOT WRITE IN THE MARGINS. DO NOT WRITE ON THE REVERSE SIDE OF THE PAGE - DO NOT WRITE IN A BELOW AVERAGE SIZE OF SCRIPT.

3. Do not take the examination from the room in which you are writing.

4. If you are finished with this examination early, place it on the instructor's table at the front of the room announced at the beginning of the examination.

5. Do not assume facts not given, and do not change the facts. In particular, do not assume the existence of statutes unless referred to in the question.

6. Discuss each issue fairly raised by a fact pattern, even if your answer on one issue makes discussion of another issue unnecessary. Complete in full your discussion of one issue before discussing another issue.

1. In 1992, Congress decided to levy an entertainment tax on the sale of tickets to all professional and college football games held in the United States. The proceeds from the tax are to be devoted to employ former college and professional football players to travel to countries around the world to teach others the sport of American football. Alan Alberts, who has paid season tickets to Cincinnati Bengal games, was compelled to pay a $50 entertainment tax. Because he thinks that this program is a huge waste of money, Alberts brought suit in federal court to enjoin the spending of the proceeds of this tax. The case was finally decided by the U.S. Supreme Court. What result, and why?

BEST ANSWER

The first issue is whether Alberts has standing to challenge the spending by Congress of money to send athletes to other nations. Although taxpayers suffer "injury in fact" by virtue of the taxes they pay, the Frothingham doctrine states that the injury in fact (although constituting a case or controversy) is too remote, speculative, and hypothetical to all the prudential standing. Thus, ordinarily taxpayers lack prudential standing to challenge federal expenditures.

There are two exceptions to Frothingham. First, Flast v. Cohen's two-part nexus: (a) There must be a logical link between the status of the plaintiff and the government action being challenged. Here, the link exists because a taxpayer is challenging the federal spending – the link is a financial one. (b) the taxpayer must allege that the spending violates a specific constitutional limitation on the power to spend, not merely that Congress has exceeded the scope of its powers. To date, only the first amendment establishment clause has been held to satisfy the second nexus. Alberts meets the first nexus (taxpayer-spending link), but fails the second.

The second exception on Frothingham is the case where, as here, the taxpayer's taxes are earmarked for the specific program being challenged. Rather than Albert's' $50 tax going into the general treasury, where it is intermingled with revenues from other taxes and spent for unknown purposes, here Alberts can trace his tax dollars on the very spending program that he challenges. Thus, he satisfies second exception on Frothingham.

The second issue is whether the spending program is constitutional. According to Article I, Congress may spend to provide for the common defense and promote the general welfare. The term "general welfare" is far broader than the sum of Congress' regulatory powers, and thus Congress may spend money and purchase a compliance that Congress could not mandate. Indeed, it is up to Congress to decide what in fact promotes the general welfare. If Congress decides that teaching people in foreign countries about American football, courts will defer on that decision. Deciding the mean of "general welfare" calls for decisions based on public policy, to be decided by Congress, not constitutional principle, as decided by courts. Thus, no matter how wasteful federal spending appears to be, courts will defer to the judgment of Congress.

2. The President of the United States, concerned about the growing budget deficit, decided that federal spending should be reduced. Accordingly, he issued an executive order directing the Secretary of the Treasury to reduce all federal contributions to the state education by 10%. The State of Colorado brought suit to compel the Secretary of the Treasury to give to Colorado all funds ($100,000,000) designated in the appropriations bill. The U.S. Supreme Court finally decided the case. What result and why?

BEST ANSWER

The Presidential order must be struck down. Because of separation of powers, the President cannot intrude into fields over which Congress has ultimate decision-making authority.

According to Article I, Congress has the power to spend money for the general welfare. Congress, not the President, allocates tax revenue. When Congress appropriated $100,000,000 for state education, the President either signed the bill or it was passed by Congress over his veto. The President cannot now alter the terms of the legislation.

Although the President has inherent Presidential power (presidential prerogative), the exercise of such power is subject to four important constitutional limitations: (1) The President cannot legislate or “make law” (only Congress can do so); (2) The President’s actions cannot be in conflict with the will of Congress; (3) These actions are subject to judicial review; and (4) the President cannot deprive persons of their property or personal rights. Here the President has violated the first two limitations – he is attempting to legislate (allocating tax revenues) and he is acting in direct conflict with the will of Congress, which decided that $100,000,000, not $90,000,000, be spent on state education.

3. The State of Franklin is a major coal-producing state, but the cost of extracting coal from the ground is much higher in Franklin that it is in other states due to geological factors. Because of the higher cost, many manufacturers in Franklin found it less expensive to buy coal in other states and transport it to their factories in Franklin. As a result, many Franklin coal mines went out of business and many coal miners lost their jobs. To alleviate the severe hardship, the Franklin state legislature enacted a statute requiring all manufacturers located in the state to purchase at least 50% of their coal from coal producers located in Franklin. Several manufacturing concerns brought suit challenging the constitutionality of this statute. The case finally was decided by the United States Supreme Court. What result, and why?

BEST ANSWER

The state regulation violates the commerce clause. Where Congress is silent, states may exercise their police powers to protect public health, safety, morals and welfare event if interstate commerce is affected. However, if the regulation discriminates against interstate commerce or out-of-state competition, or if the regulation imposes an undue burden on interstate commerce, the regulation must fall.

Here, the regulation clearly discriminates against out-of-state competition, by preferring coal producers located within the state to the detriment of coal producers located outside the state. This is a form of economic protectionism, which the negative side of the Commerce Clause was intended to prohibit. No matter how badly the state wants to protect its own economic interests and its own residents, the state cannot engage in economic protectionism. The Commerce Clause creates a “common market” within the United States, and states cannot erect trade barriers at state lines.

Also, the regulation imposes an undue burden on interstate commerce. The burden is too great if the merits and purposes to be derived from the regulation are outweighed by the burden on interstate commerce. Here, the burden is great and the merits and purposes are illegitimate.

The state regulation is unconstitutional.