Constitutional Law Midterm - Spring 2017 – A+ Answer

1.Witholding the funding is unconstitutional. Art 1 S 8 - Congress may provide for the common defense and the general welfare of the US. Art 6 states the federal supremacy. Typically, the courts will show great deference to Congress providing for the general welfare. However, in Dole, the SC lays out guidelines that must be met to remain constitutional. The funds must be used for the general welfare and not special interests, even though this has been skewed over the years. Clear Statement Rule applies so the states can exercise their choice knowingly and cognizant of the consequences of their actions. Lastly, the funds might be illegitimate if they are not related to the Federal Interest in particular National Projects. However, in Sebelius, there was an additional concern with the amount of funding that would be removed for a state's failure to comply with the federal directive. In this case, 8USC1373 is not a violation of vertical separation or federalism. The law was created by congress prior to Trumps executive order. The law would therefore "Trump" the state's law IRA2017. The funds are not sufficiently tied to the action taken by law. O'Connor would say not germane. Also, the statement related to removing the funds is not clear. Does it mean some of the funds, all of them, or just the ones related to immigration? The funds would also amount to 10% of the total funding from the fed. Sebelius shows that AZ was placed in a bind with their funding at approximately 20% and Dole showed that .01% was too little. It may also be held that 10% is too much or not, we don't know the lower limit as of yet. Nonetheless, this decision to withhold is unconstitutional.

2.Washington's IRA Sec1 is constitutional. The commandeering principle and the supremacy clause would control. Congress has authority to pass laws that are N&P to carry out their duties under Art.1S8 with uniform laws of naturalization and with common defense. Marshall says that Necessary is convenient. In this case it is likely necessary to have correct numbers on immigration status, it is certainly convenient to do their job. The law does not appear on its face to be a violation of 5th due process because it does not violate life, liberty or property. 1373 does not specifically instruct any state or local official to do anything, therefore is not commandeering. However, the state law Sec1 is not in direct conflict with 1373. It only says that if state officials act, there is a violation. whereas the federal law says "don't act to hinder". because it is not in direct conflict with supremacy, it would be constitutional. If court holds the second use of the term government entity is a fed entity, then the state sec1 and the 1373 law would both be constitutional.

3.WA IRA Sec2 is unconstitutional. The commandeering and supremacy clause principles would apply in additional to federalism. In this case, the state is making it a crime for a fed official to ask for immigration data. The state cannot hold a fed official liable for doing their job. The Fed law is supreme and the fed officer is complying with the law. As above, if the entities are correctly identified, then there is no commandeering conflict. There needs to be a separation of power between the state and fed in this matter. The census must be controlled entirely by the fed to prevent state officials from being commandeered and the state must refrain from interfering in the matters of the fed, unless the fed violates the state's sovereignty. If the state has an issue with potential commandeering, they need to litigate it as entities and not hold federal official accountable for doing their jobs.

4.Trump's order is constitutional. In Youngstown, Jackson stated there are three general categories of power that the president possesses in relation to congress. The president is at the highest ebb when he acts in concert with the express or implied wishes of congress. This court should find that to be a presumption of constitutionality and maintain minimum scrutiny. Zone 2 is when the president is in a zone of twilight with congress in that there is not enough information that congress leans one way or the other. This should receive normal scrutiny and be fact based. Zone 3 is where the president is at his lowest ebb and acting outside the express or implied wishes of congress and only operates under his constitutional power. This must maintain maximum scrutiny and there must be a presumption of liberty. Trump is in zone 1. His executive order is given in relation to 1182 and 1373. Both congressional actions are explicit that Trump can give this order. The discrepancy between 1152 and 1182 is resolved by chronology. 1152 was passed and published before 1182. This is evidenced by the numbers. With that in mind, it can be said that congress changed their minds, explicitly and created the newer law in which trump acts. Therefore, trump is still acting within zone 1. Because there were no other challenges to the order, the order should still stand as constitutional.

5.The court should not address the tweet. It is not the courts duty to involve themselves with the political process. Marshall made this clear in Marbury. When Marbury demanded that he receive his commission, Marshall analyzed whether the commission was valid. In finding that it was, Marshall noted that if the commission would not have been sealed, the court could not have heard the case. This shows up again in the Taney advisory opinion matter. Taney notes that it is not the court's job to provide information other than cases and controversies brought before the courts. Lastly, and most important, in Fed 78, Hamilton speaks about how judges should serve for life and their salary should remain constant in an effort to prevent the political process from permeating the bench. Therefore, the court should not address a purely political rant.