

Constitutional Law - Midterm

February 23, 2017

2:00-3:30

Josh Blackman

Instructions:

You will have **ninety minutes** to complete the midterm examination. There is one essay question, with a 1,000-word limit. Anything you write past 1,000 words will not be read. Please use the word-count feature to check the length of each answer. You can access it by clicking Tools > Word Count. Do not use the character count feature. If you hand-write the exam, please do a manual word count.

The exam is completely open-book. You can use anything you wish, so long as that it was printed *before* the distribution of this exam. Obtaining any new information from anyone or anything *after* the exam is prohibited.

Please don't turn the page until the proctor signals that the exam has begun.

Good luck!

Instructions:

The time is now. Shortly after President Trump’s inauguration, he issued an executive order concerning immigration, which gave rise to several legal disputes between the state of Washington and the federal government. You are a law clerk for Judge Robarts, who sits on the United States District Court for the Western District of Washington, in Seattle. He has asked you to prepare a memorandum of no more than 1,000 words addressing five issues affecting this case. In preparing this memo, please keep separate your personal feelings about the order from your analysis about these legal issues.

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On January 27, 2017, President Trump signed an executive order, titled “Protecting the Nation from Foreign Terrorist Entry into the United States. The executive order has three sections:

Section 1: 8 U.S.C. § 1182 provides, “Whenever the President finds that the entry of any aliens or of any class of aliens into the United States would be detrimental to the interests of the United States, he may by proclamation, and for such period as he shall deem necessary, suspend the entry of all aliens or any class of aliens as immigrants or nonimmigrants, or impose on the entry of aliens any restrictions he may deem to be appropriate.” Pursuant to 8 U.S.C. § 1182, I, President Donald J. Trump, hereby proclaim that the immigrant and nonimmigrant entry into the United States of aliens from Iraq, Iran, Libya, Somalia, Sudan, Syria, and Yemen, would be detrimental to the interests of the United States, and I hereby suspend entry into the United States, as immigrants and nonimmigrants, of such persons for 90 days from the date of this order.

Section 2: 8 U.S.C. § 1373 provides, “Notwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, the Attorney General information regarding the citizenship or immigration status, lawful or unlawful, of any individual.” In furtherance of this statute, I, President Donald J. Trump, direct the Attorney General, in his discretion and to the extent consistent with law, to ensure that jurisdictions that willfully refuse to comply with 8 U.S.C. § 1373, are not eligible to receive Federal grants, except as deemed necessary for law enforcement purposes by the Attorney General.

Section 3: The Attorney General shall take appropriate enforcement action against any entity that violates 8 U.S.C. § 1373, or which has in effect a statute, policy, or practice that prevents or hinders the enforcement of Federal law.



D O N A L D ★ T R U M P

In response, Washington enacts the *Immigration Resistance Act of 2017*, which has two sections:

Section 1: A state official that provides the federal government with information concerning any immigrant in the state shall be guilty of a misdemeanor, and be liable for a fine of at least \$1,000.
Section 2: A federal official that requests information from a state official concerning an immigrant in the state shall be guilty of a misdemeanor, and be liable for a fine of at least \$1,000.

The Attorney General sent a letter to the Governor of Washington, stating that pursuant to 8 U.S.C. § 1373, the state’s decision not to share information about aliens in custody “would result in a loss” of \$1 billion in grants, annually. Washington currently receives a total of \$10 billion in federal grants each year, and the state’s total budget is \$100 billion per year.

Several lawsuits are filed, all of which were consolidated in Judge Roberts’ court. He has asked you to prepare a memorandum of no more than 1,000 words addressing five issues affecting this case.

1. Washington filed suit against the Attorney General, claiming that the decision to withhold \$1 billion in funding violates the principles of federalism. Assess the constitutionality of the notice to withhold \$1 billion in funding.
2. The Attorney General challenged the constitutionality of **Section 1** of the Immigration Resistance Act, asserting that it conflicts with 8 U.S.C. § 1373. Assess the constitutionality of **Section 1** of the Immigration Resistance Act.
3. The Attorney General challenged the constitutionality of **Section 2** of the Immigration Resistance Act, asserting that it conflicts with 8 U.S.C. § 1373. Assess the constitutionality of **Section 2** of the Immigration Resistance Act.
4. Washington filed suit against President Trump, and other administration officials, asserting that **Section 2** of the Executive Order was illegal. [Washington **did not** bring suit under the Free Exercise Clause, the Establishment Clause, the Due Process Clause, or the Equal Protection Clause]. The complaint asserts that Section 2 of the executive order violates 8 U.S.C. § 1152, which provides that “no person shall receive any preference or priority or be discriminated against in the issuance of an immigrant visa because of the person’s race, sex, nationality, place of birth, or place of residence.” President Trump defended his action, stating that § 1182 allows him to “suspend the entry of all aliens or any class of aliens as immigrants” that he finds “detrimental to the interests of the United States,” and he has the ultimate constitutional duty to keep the nation safe. Judge Roberts tells you that he is uncertain how to reconcile the conflict between § 1152 and § 1182. He asks you to address how Justice Jackson’s concurring opinion in *Youngstown Sheet & Tube Co. v. Sawyer* should inform this question of statutory interpretation.
5. After the case is argued, but before it is decided, President Trump tweets about Judge Roberts: “The opinion of this so-called judge, which essentially takes law-enforcement away from our country, is ridiculous and will be overturned!” Judge Roberts asks you to assess whether he should, or should not, address the President’s tweet in his opinion. Please give specific reasons, with reference to the Supreme Court’s history, to support your recommendation.