1. A is the correct answer. States may not impose restrictions that impede the flow of interstate commerce by enacting legislation that protects its institutions or residents from competition, which is what this statute does. B is incorrect because the requirement that candidates be graduates of in-state colleges is not a classification based on residency. Both in- and out-of-state residents must be graduates of the state colleges.
2. D is the correct answer. Under the Equal Protection Clause, a state may not classify between citizens and lawful resident aliens. In fact, such classifications must pass strict scrutiny. This classification fails strict scrutiny because the state cannot prove that limiting barbers' licenses to citizens is narrowly tailored to a compelling governmental interest.
3. D is the correct answer. The question presents an issue of a state's denial of a property right, in this case license. Also implicated in the question are the right to travel and the right to protection from discrimination against out-of-state residents. Since each of these issues involve rights protected by the United States Constitution, they raise a federal question sufficient to give the court jurisdiction.
4. C is the correct answer. By limiting licenses to those candidates who have been residents of the state for at least two years, the state is classifying between long-term state residents and all others, and equal protection is the only challenge available. A is incorrect because the Privileges and Immunities Clause of the Fourteenth Amendment (not to be confused with the one in Article IV) protects only state citizens' privileges and immunities of United States citizenship. Since a barber license is not one of such privileges and immunities, it does not violate the privileges and immunities clause. B is incorrect because a license is not a fundamental right. D is incorrect because the measure does not impair the obligations of contracts, since no contract is at issue.
5. D is the correct answer. The Constitution severely limits states from enacting or repealing legislation that eliminates the state's pre-existing contractual burden. In this case, funding for parks was not a strong enough reason to overcome this limitation and legislatively cancel the contract; thus, the repeal of the legislation was unconstitutional. A is incorrect because the state consented to being liable to the terms of the contract by signing it. B is incorrect because the contract itself was not a law that the legislature had enacted. C is incorrect because this was not a bid but rather a signed contract.
6. C is the correct answer. Congress has plenary power to tax and spend for the general welfare, and it can impose any rational condition on the acceptance of federal funds as long as the recipient is free to reject those funds.
7. D is the correct answer. The decision to prosecute is reserved solely to the executive branch under Article II, § 3 of the Constitution. Therefore, it is within the power of the Attorney General to decide whether to prosecute. A is incorrect because the legislative branch has no authority under the Constitution to order prosecution. B is incorrect because the Attorney General has discretion to decide how the laws shall be executed and can decide who to prosecute and who not to. C is incorrect because the acts that the former ambassador was charged for were acts before the House after her tenure as an ambassador ended.
8. A is the correct answer. Congress is limited to legislating only in specific areas, but it may exercise whichever powers are necessary and proper to serve its interests in those areas. This means that it may require people to answer questions at hearings it holds, but only if those questions are related to matters upon which it may legislate. B is incorrect because it is unclear whether the former ambassador's actions had anything to do with Congress' appropriations. C is incorrect because there is no such limitation between the House and Senate. D is incorrect because Congress may investigate the performance of duties executed by an officer of the executive branch, and the House may even impeach executive or judicial branch officers.
9. D is the correct answer. Under the Constitution, public schools must be desegregated on the basis of race. The Constitution generally does not reach private action, however (Congress can constitutionally prohibit race-based private schools, but the Constitution does not). If public support of the segregated private school allows it to exist and remain segregated, that support would violate the Constitution. A is incorrect because the distribution of textbooks clearly serves a legitimate educational function, but that would not excuse the state perpetuation of segregation. B is incorrect because the state can provide some aid to private schools. C is incorrect because the Constitution has been held not to reach private action.
10. C is the correct answer. The test to analyze whether a government action violates the establishment clause of the First Amendment is 1) whether its purpose is secular, 2) whether its primary effect advances or inhibits religion, 3) and whether it fosters an excessive entanglement with religion. Therefore the strongest argument to support the constitutionality of the free distribution of textbooks to a religious institution is that its purpose and effect is secular and does not foster an excessive entanglement with religion.
11. A is the correct answer. Authorities may conduct a search incident to a valid custodial arrest, which this was, since the police officer had the power to arrest the defendant for speeding. B is incorrect because the officer probably lacked reasonable suspicion because the only evidence he had was speeding and nervousness. C is incorrect because it is reasonable to search someone incident to an arrest. D is incorrect because the police officer did not have to be in fear for his safety or have a reasonable suspicion since the arrest was lawful.
12. C is the correct answer. A person is only entitled to due process if that person is deprived of a liberty or property right by the government. Property rights are created by state law. Teachers in this state have no property rights in their jobs until after five consecutive years of employment. Moreover, the state provides no statutory protections for teachers employed for fewer than five consecutive years. Therefore the strongest argument in support of the college's refusal to give the assistant professor a statement of the reasons or an opportunity for a hearing is that he has worked there less than five years.
13. B is the correct answer. Congress has the power to make regulations to protect federal property, and wild animals on federal land would be federal property. A is incorrect because, although Congress has the power to spend to promote the general welfare, this is not related to Congress' spending. C is incorrect because state common law cannot override any federal interest protected by the Constitution. D is incorrect because the control and regulation of wild animals on federal land may be controlled by the federal government. States do not retain power over all wild animals under the Tenth amendment.
14. A is the correct answer. The state statute does not classify on the basis of legitimacy, but on the basis of acknowledgment of children. This distinction is important because classifications based on legitimacy are subject to intermediate scrutiny. A statute, such as the one in this fact pattern, that classifies based on acknowledgment would be subject to rational basis review. Thus, the strongest argument available is that the classification is not rationally related to a legitimate state purpose.
15. D is the correct choice. Legitimacy classifications are generally afforded the protection of intermediate scrutiny, meaning the classification must be substantially related to an important governmental interest, and a state statute cannot absolutely exclude illegitimate children from inheriting from their intestate fathers. Courts will look to the intent behind the policy, and will not uphold legislation designed to punish illegitimate children. Therefore, the state's best argument is that instead of punishing the illegitimate offspring, the statute protects them by encouraging formal acknowledgment.
16. C is the correct answer. By requiring certain businesses to spend certain amounts of money within the state, the state is impairing interstate commerce in violation of the commerce clause. A is incorrect because since there is no fundamental right at stake, the statute would only have to pass rational basis review, and requiring the spending is rationally related to easing unemployment, which is a legitimate state interest. Likewise, B is incorrect since the statute does not classify on any grounds at all. D is incorrect because the statute does not treat out-of-state residents differently than state residents. Thus, the privileges and immunities clause is not implicated.
17. Answer D is correct. When a statute regulating speech is content based, a court will use strict scrutiny to decide if the statute is constitutional unless the speech falls within a category of unprotected speech, such as obscenity or defamation. When a statute is content neutral and regulates speech only as a secondary effect, a court will use intermediate scrutiny to determine if the regulation is a constitutional restriction on freedom of speech. When a statute regulates protected speech in a public forum, the state must prove that the statute is content neutral, serves an important government interest, leaves open ample alternative channels of communication, and is narrowly tailored to achieve the government's purpose. In this fact pattern, the statute is content neutral because it does not prohibit speech on a particular subject matter or view point, and the statute is regulating speech in a public forum. The state must therefore prove that the restriction serves an important government interest and that the means to achieve that purpose are narrowly tailored. This is the standard described in answer D.
18. B is the correct answer. In order to have standing, a party must have an injury that is caused by the law being challenged and that can be redressed by the relief sought--here invalidation of the statute. A politician intending to make a speech on the Capitol steps during a prohibited time would have an injury that is imminent enough to create standing. A is incorrect because taxpayers do not have the kind of concrete injury to challenge a general statute unrelated to a tax the taxpayer is subject to. C is incorrect because the legislator who voted against the statute does not have a legally cognizable injury. D is incorrect because an organization that seeks to invalidate unconstitutional laws has suffered no injury.
19. A is the correct answer. The statute is probably constitutional under the strict scrutiny test. The interest to be served is probably the ability of workers at the State Capitol to be able to come and go as required to perform the functions of the state, which would be a compelling state interest. And the limitation is narrowly tailored to the times during which most coming and going would happen--the beginning and end of the work day and the beginning and end of the lunch hour. The limitation is also narrowly tailored to the place where the most coming and going would occur--the main entryway.
20. B is the correct answer. The statute would be constitutional on its face because the state may criminalize threats of harm. However, the owner of the manufacturing firm could not constitutionally be punished under it for this speech because the circumstances surrounding it demonstrate that his speech was not a real threat of harm to any public official, but was instead the rantings of a frustrated protester.
21. C is the correct answer. It is very difficult to establish an equal protection violation in selective prosecution, particularly since there have been some recorded prosecutions under the statute since its enactment. A is stronger because the terms "blasphemy or sacrilege" would likely be considered unconstitutionally vague. B is also stronger because blasphemy or sacrilege are "crimes" against a particular religion, and for the state to prosecute them would be for the state to support that religion. D is stronger because the law at issue is content based, and the state cannot limit speech on the basis of content unless the limitation satisfies strict scrutiny. And the Fourteenth Amendment is what makes the First Amendment applicable to the states, so it is the amendment which would be violated.
22. C is the correct answer. The restriction classifies on the basis of age, and that classification must satisfy equal protection. A is incorrect because it is irrelevant whether the mobile home is personal or real property, since the restriction is on the lot, and the lot is clearly real property. B is incorrect because, while the restriction might constitute a restraint on alienation, the man is not trying to sell or buy it. He was allowed to buy it--it is his children's continued occupancy that has been challenged. D is incorrect because the terms of the restriction need not be repeated verbatim in order for the restriction to apply.
23. D is the correct answer. Congress has the power to create agencies and to delegate legislative and judicial powers to those agencies. However, the President has the power to appoint officers of the United States to execute the laws. Therefore, in order for an agency to exercise executive power, the President must be able to appoint the governing person or people. Thus, the best argument the car manufacturer has is that the appointments by Congress would prohibit the Commission from being able to enforce its standards.
24. A is the correct answer. The court would allow the Commission to continue investigating automobile safety and making recommendations to Congress--two legislative functions. B is incorrect because prosecuting violations of the act would be an executive and judicial function, and without having the commissioners appointed by the President, the Commission cannot exercise this power. C is incorrect because the Commission may exercise the powers that Congress had the power to delegate. D is incorrect because the court would not have the power to rewrite the Act in this way. It can only invalidate the portions that are unconstitutional.
25. D is the correct answer. Congress has the power to create special Courts under Article I, and the judges for those courts do not have the protections of Article III, such as life tenure and the guarantee of no reduction in salary. The tribunal at issue here was an Article I tribunal. Thus, the woman was an Article I judge and was not entitled to life tenure. A is not correct because the woman was not an Article III judge, and because Congress can create judicial positions in special tribunals that are not Article III positions. B is incorrect because there is no general property right to government employment. C is incorrect because the woman did have standing - she had an injury caused by the abolition of her job.
26. A is the correct answer. Doctrines of federalism, designed to keep the federal government from encroaching on state governments (and vice versa) provide that federal law generally cannot be applied to state legislators acting in the course of their official duties. So this would be the strongest argument.
27. C is the correct answer. Because the potential constitutional concern with applying the law is federalism (the federal government usurping control from the individual states), the strongest argument against the constitutional defense would be that Congress does not significantly interfere with state government by applying the law to state legislators.
28. C is the correct answer. The speech here could probably be punished by the state as fighting words, obscenity, or conduct, but this statute is unconstitutionally vague. The terms annoying, disturbing, or unwelcome are too vague to give people sufficient notice of what exactly is prohibited. A is simply incorrect. B is incorrect because the speech could be punished. D is incorrect because the average person probably would not find the speech or action amusing, but the prohibition is too vague to be enforceable.
29. D is the correct answer. Congress has the power to make all the laws for the District of Columbia under the Constitution. A is incorrect because it is a more tenuous, implied power of Congress to raise and support the armed forces and navy. B is incorrect because federal judges and federal courts cannot exercise these powers without some kind of initial grant. C is incorrect because the executive branch does not have the power to define basic human rights, either.
30. C is the correct answer. Sovereign immunity is the principle that the state or federal government cannot be sued for damages. That is unlikely to be a consideration in drafting legislation on private land use. A is incorrect because the invalidation of restrictions is an impairment of property rights which might require compensation. B is incorrect because those restrictions are also contracts, and their legislative invalidation could be an unconstitutional impairment of contract. D is incorrect because zoning is an exercise of the state's police powers.
31. B is the correct answer. Contractors who have been awarded contracts for specific projects which are contingent on payment of federal funds would be the only people who would suffer an injury under the federal statute sufficient to provide standing. A is incorrect because a taxpayer generally does not have standing because any sort of injury is not concrete enough nor particularized enough to differentiate the taxpayer from the general public. Likewise, C is incorrect because any injury wrought by fewer highway funds would not be a particularized enough injury for the automobile owner to have standing. D is incorrect because neither the organization nor its members would have suffered any concrete injury.
32. C is the correct answer. Congress has plenary spending power, and may impose reasonable conditions upon acceptance of federal funds. There is a nexus between safety, the speed limit, and the use of federal funds on the highways. Therefore the speeding limit is constitutional. A is incorrect because the states did not cede their authority over highways to the national government, although it must accept reasonable conditions attached to federal funds as long as it is free to accept or reject those funds. B is not correct because the federal government does not automatically control everything its funds help create. D is incorrect because popular support cannot validate an unconstitutional action.
33. D is the correct answer. This is a spending statute, and thus Congress' spending powers are implicated. Additionally, the interstate highway system impacts interstate commerce, and therefore its maintenance and condition are related to Congress' commerce power. Both give Congress broad power to enact legislation. As long as the legislation is reasonably related to a legitimate federal goal, it is constitutional. A speed limit of 55 miles per hour is reasonably related to highway safety, a legitimate federal goal. Therefore the statute is constitutional.
34. B is the correct answer. Laws that are overbroad or vague on their faces will be struck down. This ordinance prohibiting certain demonstrations, except upon prior approval by the police, is overbroad, especially since the police may grant an exception. Additionally, the terms "opprobrious words" and "abusive language" are vague. A is incorrect because prior restraints may be placed on speech even in public spaces. C is incorrect because the police can make determinations as long as there are defined standards. D is incorrect because the right to free speech is not unfettered
35. B is the correct answer. The defendant has standing because he still has a sufficient interest in his apartment even while he is in jail. He has not abandoned it or the property inside. A is incorrect because the injury for standing has to be to the expectation of privacy, not just to the damage the seized items could do. C is incorrect because the landlord could not waive the defendant's Fourth Amendment rights. D is incorrect because even though he was not there and had not paid rent, he still had a privacy interest in the apartment.
36. B is the correct answer. The priest's conviction will probably be sustained because sincere religious belief is not a defense to this statute. A statute that is neutral on religion and that has general applicability need only be rationally related to a legitimate government interest in order to be applied to a person even if it impairs a religious practice. This statute is neutral and applies equally to all members of the public. Furthermore, it is rationally related to preventing cruelty to animals, a legitimate government interest.
37. B is the correct answer. Congress has broad power to spend to promote the general welfare, and it has whatever powers are necessary and proper to carry out that power to spend. Thus, the strongest argument that the Arms Corporation has is that the power to spend includes the power to require that the funds be spent as Congress directed.
38. D is the correct answer. Literacy requirements have been used in the past to disenfranchise minority voters as a class. English proficiency is not a perfect proxy for being politically informed, and it is more likely that political minorities will be less proficient in English. Under Equal Protection, these types of restrictions would be unconstitutional.
39. C is the correct answer. This provision is very narrow to relate to the land affected by this watershed improvement district. Therefore the best argument for why the one person one vote principle need not apply is that the actions of this district principally affect these landowners. A is incorrect because the principle applies to all elections, not just for statewide office elections. B is incorrect because there is no property right exception to the one person one vote principle. D is not correct because the rights reserved to the states cannot override other specific rights enumerated in the Constitution.
40. A is the correct answer. This statute restricts employment to state citizens and in doing so, discriminates against out of state citizens and foreigners. A statute is only valid under the Commerce Clause if the regulation is rationally related to a legitimate state interest. The defense described in A is weakest because protecting a state from competition is not a legitimate state interest. Regulations that discriminate, as this one does, are almost always invalid if their purpose is to safeguard against competition.
41. D is the correct answer. The Supreme Court may not review the decision because the state court rested the decision in part on an interpretation of its own state constitution. The Supreme Court may not review a decision by a state supreme court when that decision rests upon an independent and adequate state ground. A, B, and C are incorrect because the Court may not review the decision at all by appeal or by certiorari.
42. B is the correct answer. While taxpayers generally lack standing to challenge general spending statutes, the taxpayer is challenging the spending on the ground that this particular spending violates a specific constitutional limitation on spending. Therefore, he has standing. A is incorrect because taxpayers do not have standing to challenge every spending authorization. C is incorrect because in the case of establishment clause challenges, the taxpayer need not show a special nexus in order to have standing. D is incorrect because state support of private schools is state action.
43. D is the correct answer. Although the supplements are not to be paid to a teacher who instructs in religious subjects, to ensure that the restriction was followed, the state would have to review which subjects were truly religious and which were not. This would create an excessive entanglement with religion. A is incorrect because the statute's provision restricting who may receive the supplements still must be overseen, which creates excessive entanglement with religion. B is incorrect because the state may support public school teachers but not private school teachers consistent with the free exercise clause. C is incorrect because all religions are treated equally.
44. A is the correct answer. The argument against the grants would be that any aid to the private universities would free funds to be spent on its religious resources, so that any state support is a support of religion. However, because this is not necessarily true, the grants would likely be sustained. B is incorrect because bricks and mortar could aid religion if it enabled the institution to devote substantially more resources to religious education. C is incorrect because small, incidental support of religion does not violate the establishment clause. D is incorrect because the grants do not need the kind of supervision that would amount to an excessive entanglement with religion.
45. B is the correct answer. The Constitution prohibits the state from classifying on the basis of race. However, it does not prohibit private parties from making race-based classifications. The private school could become a state actor if the state is involved enough in school regulation and support. A is incorrect because the performance of a public function does not make an institution a state actor. C is incorrect because the state is only constitutionally required to eliminate segregation in public schools. D is incorrect because licensing alone does not make the licensee a state actor.
46. C is the correct answer. Because one state is placing a limit on interstate carriers, the best argument is that the limit puts a burden on interstate commerce in violation of the commerce clause. A is incorrect because the statute does not impair a fundamental right. B is incorrect because the statute does not make a classification. D is incorrect because difficulty of enforcement is not a constitutional challenge.
47. B is the correct answer. The best argument in favor of supporting the discharge is that the oath as a whole is only a commitment to abide by constitutional processes, which the instructor was required to abide by anyway. A is incorrect because government employment cannot be conditioned on relinquishing a constitutional right. C is incorrect because the First and Fourteenth Amendments limit the ability of the state to impact its employees' rights of speech and association. D is incorrect because the state only has a compelling need to ensure that its functions are properly performed, and this interest must be balanced against the rights of its employees to speak as citizens.
48. C is the correct answer. Because the state Supreme Court requires that all lawyers be members of the State Bar Association, that bar association is arguably an agency of the state, and its payment to the private club could be said to promote the discrimination it engages in.
49. A is the correct answer. The federal district court should hear the case on the merits because the issue of state action and a potential constitutional violation are federal questions that the federal court has jurisdiction over. B is incorrect because the Fifth Amendment only applies to the federal government, not the states. C is incorrect because, while state courts also have jurisdiction to litigate federal questions, there is no requirement that parties go to state court first. D is incorrect because constitutional issues are federal questions.
50. D is the correct answer. The man has not been injured by the state statute since he has not applied for a marriage license and been required to submit to the counseling. Without an actual or an imminent injury, the claim is not ripe. A is incorrect because the residency of the plaintiff and his potential spouse are irrelevant both under the statute and for purposes of jurisdiction over the plaintiff's claim. B is incorrect because a substantial federal question is always presented when a statute's constitutionality is at issue. C is incorrect because this is not a matter that is clearly delegated to a coordinate branch of government, nor does it lack judicially manageable standards.
51. C is the correct answer. The right to marry is fundamental, and this statute substantially impacts that right, so the statute would be subject to strict scrutiny. The state bears the burden to show that the statute will pass strict scrutiny. A is incorrect because the presumption of constitutionality is not present when a law impairs the exercise of a fundamental right. B is not correct because the Tenth Amendment does not give the states power to insulate it from other provisions of the Constitution. D is not correct because young adults are not a suspect class, nor are they discrete and insular since people are constantly moving in and out of it.
52. C is the correct answer. The contractor built the building to precise specifications of a federal contract authorized by federal statutes. If the state sprinkler requirement conflicts with the federal statutes, the state sprinkler requirement cannot be enforced under the supremacy clause. Therefore, this is the strongest defense. A is not correct because the requirement that builders install sprinklers does not implicate a fundamental right, and it is rationally related to safety, a legitimate governmental interest. B is incorrect because the sprinkler requirement has no classification. D is incorrect because the requirement did not make it impossible to perform under the contract--in fact, both parties complied with the contract.
53. D is the correct answer. The statute classifies among various federal employees on the basis of age. Therefore, the strongest argument is that the statute invidiously discriminates on the basis of age in violation of the Fifth Amendment, which contains an implied equal protection provision.
54. D is the correct answer. The strongest argument in support of a statute regulating the wholesale and retail purchase of fuels and power is that the domestic purchases or sales of these products impact either interstate or foreign commerce, both of which Congress has the power to regulate.
55. B is the correct answer. Article III defines the Supreme Court's appellate jurisdiction, but Articles I and III provide that Congress may establish by law the manner in which that appellate jurisdiction is exercised. A is incorrect because Congress has no plenary power over energy usage. C is incorrect because states have no sovereign rights related to federal issues that would be greater than the interests of the federal government. D is incorrect because Article III does not limit how the Supreme Court's appellate jurisdiction may be exercised.
56. A is the correct answer. It would be a violation of the Equal Protection Clause of the Fourteenth Amendment for a public school teacher to exclude black pupils from her class based solely on their race. By coercing this state actor with threats of violence, the defendant might become a state actor which would warrant application of the criminal statute to him. B is incorrect because the school would not become a state actor merely by virtue of its license. C is not correct because the local church is not a state actor even if it provides a free bus service. D is not correct because the Fourteenth Amendment does not apply to the federal government.
57. D is the correct answer. Congress has plenary power to spend for the general welfare, and that power includes the power to mandate how appropriations will be spent. The President lacks any constitutional power to override Congress's appropriations decisions. Therefore, the Secretary of Health and Human Services must distribute the entire appropriation to the program, notwithstanding the President's order.
58. B is the correct answer. A state may not use residency requirements to limit the right to vote under the privileges and immunities clause unless it can show that requirement is the least restrictive means to serve a compelling state interest. Therefore, the strongest argument against the statute is that there are less restrictive means to assure that only actual residents of a community vote in its elections. A is incorrect because there may be a state interest compelling enough to justify the exclusion of a class of persons, especially when that class is nonresidents.
59. C is the correct answer. Of the four options listed, the Thirteenth Amendment, which prohibits slavery and the badges of servitude, would be the clearest source of power for this statute.
60. A is the correct answer. Congress has several enumerated powers and implied within those powers is the power to preserve the federal monopoly over foreign affairs. B is incorrect because the President shares power with Congress, which has primary authority to conduct foreign affairs. C is incorrect because there is no foreign relations exception to the First Amendment. D is incorrect because there is not a more lenient standard for federal criminal laws related to international affairs.
61. C is the correct answer. Classifications in state law based on alienage are suspect and must pass strict scrutiny. It is unlikely that whatever justification the state has for the classification will satisfy that burden. There is an exception to this standard when the state law discriminates against aliens participating in state government; in that case, rational basis is applied. However, that is not the case in this fact pattern because the individual is seeking tuition assistance, so strict scrutiny will apply. A is incorrect because not only is the classification invalid, but the class is considered a discrete and insular minority. B is incorrect because the classification must satisfy strict scrutiny, not rational basis review. D is incorrect because the privileges and immunities clause protects only United States citizens.
62. B is the correct answer. Congress has broad power to regulate interstate commerce, and it could reasonably determine that bicycle theft impacts interstate commerce. A is incorrect because Congress has the power to exercise its spending power for the general welfare, but this is not a spending measure. C is incorrect because even if most stolen bicycles stay within the state, the thefts still impact the stream of commerce that bicycles are a part of. D is incorrect because the Tenth Amendment reserves to the states only those powers not given to Congress, and this power is given to Congress.
63. B is the correct answer. The right to use contraceptives is part of the fundamental right to privacy protected by the Fourteenth Amendment. Therefore, any statute that impairs that fundamental right must be narrowly tailored to further a compelling state interest. Moreover, the drugstore could raise the rights of the third-party minors as a defense, because it is the drugstore that is being injured by the prosecution, and there is a sufficient nexus between the minors' rights and the prosecution.A is incorrect because the statute probably does not present an undue burden on interstate commerce given that the prohibition would be within the state's police powers if it didn't violate a separate provision of the Constitution. C is incorrect because the statute does not deny any privilege of state citizenship. D is incorrect because not every regulation of morals violates the free exercise clause. Moreover, it is not clear that the restriction is based on the regulation of morals.
64. D is the correct answer. Article IV, Section 3 of the Constitution gives Congress plenary power to protect federal territory and property. Because both the land and the wild animals on it are the property of the federal government, this property clause provides the most easily justifiable source of authority for this federal law.
65. D is the correct answer. The federal courts have jurisdiction only over cases and controversies, which means that there must be two parties with a real stake in the controversy, one of whom has been injured by the other's actions, and that the relief sought by the injured party must remedy that injury. Moreover, the court must have the power to give effect to its judgments. Here, it is unclear that the disputes over the grant-in-aid funds would involve an injury that could confer standing. But more importantly, the agency dispensing the funds is free not to follow the court's judgment. Thus, the court is doing nothing more than issuing an advisory opinion, rather than deciding a case or controversy.
66. C is the correct answer. The federal courts abstain from deciding political questions, which are disputes that present issues committed by the Constitution to a coordinate branch of government. Here, the Constitution vests the power to conduct foreign relations to the President with some powers to Congress. And, therefore, a federal court would dismiss the suit as presenting a nonjusticiable political question.
67. A is the correct answer. Decisions related to raising children are fundamental rights, and restrictions on those are subject to heightened scrutiny. The government always has the burden to demonstrate that such restrictions satisfy that heightened scrutiny. Therefore, the state will have the burden to demonstrate that the application of this statute is necessary to accomplish a compelling state interest.
68. B is the correct answer. Regulations on access to the ballot must be narrowly tailored to promote a compelling governmental interest. Therefore, if the objectives of the statute could be satisfactorily achieved by less burdensome means, the statute is not narrowly tailored.
69. A is the correct answer. Under the Constitution, Congress can delegate its powers to an entity within the executive branch through a statute as long as it gives that entity sufficient guidance on how to exercise that power. The statute here gives the President these powers along with specific standards the President must apply. Therefore, it is probably constitutional.
70. A is the correct answer. Article I, § 8 gives Congress broad police powers. More importantly, Article I, § 8, cl. 18 (the necessary and proper clause) grants Congress the power to enact all laws necessary and proper to execute those police powers. The necessary and proper clause has been interpreted to give Congress broad powers to protect the property of the United States. Because the purpose of the statute is to conserve the wildlife which is property of the United States, it is within Congress' police powers.
71. B is the correct answer. Because the statute does not classify on any suspect grounds, rational basis is the test that would apply. Because it is rational to differentiate between common carriers transporting snipe traps and individuals possessing them, the statute would be constitutional.
72. D is the correct answer. The supremacy clause provides that federal law supersedes conflicting state laws. However, where the laws do not conflict, the federal law does not preempt the state law. Here, the federal law regulates the design of the traps to protect human safety, while the state statute prohibits their possession to protect the snipe population. Because the purposes of the regulations are different, the federal regulation does not preempt the state law.
73. A is the correct answer. Standing requires an injury, and a business from another state that supplies from that state 95% of the goods and services bought by a corporation that has annual sales in Green of $20 million stands to lose $10 million in sales of those goods and services. B is incorrect because the corporation is not affected since its annual sales fall below the $1 million threshold. C is not correct because the governor is not injured and cannot raise the issue on behalf of the state's residents without an injury. D is not correct because there is no indication that requiring the corporation to buy more of its goods and services in Green will have any impact on its bonds.
74. D is the correct answer. The government cannot impose a burden on someone because of that person's religious beliefs unless the measure is necessary to promote a compelling government interest. And the government may not evaluate whether the religion is worth protecting or whether the person held a sincere religious belief. Therefore, the strongest constitutional defense is that the government's prosecution denied the defendant the right of free exercise of religion because it required the state to analyze the sincerity of his religious beliefs.
75. B is the correct answer. The state tax should be held constitutional, since it is a nondiscriminatory tax on a private company. That the company's income came from the federal government does not make the tax a tax on the federal government. A is incorrect because the state does not have exclusive jurisdiction over commercial transactions within its borders. Such transactions almost invariably impact interstate commerce, which Congress can regulate. C is incorrect because the supremacy clause does not prohibit the taxation of private entities that receive federal funds as income. D is incorrect because taxation alone almost never imposes an undue burden on interstate commerce.
76. C is the correct answer. Probationary employees do not have any kind of statutory right to be rehired, nor do they have any statutory right to procedures surrounding the decision not to be rehired under this scenario. Choice A is incorrect because a bill of attainder is legislatively imposed punishment, which is not present here. B is incorrect because the employee is not the only person not given a statement of reasons, and there has been no classification on any suspect grounds. D is incorrect because the states have no Tenth Amendment powers to deprive state employees of other federal constitutional rights.
77. D is the correct answer. The state may not classify on the basis of alienage unless the classification is narrowly tailored to promote a compelling state interest. And, the government always has the burden to prove that a classification satisfies strict scrutiny. A is incorrect because alienage is a suspect class. Thus, rational basis is not the correct test. B is incorrect because the individual does not have the burden to show that a classification fails strict scrutiny. C is incorrect because rational basis does not apply, and because the state would not bear the burden under it.
78. B is the correct answer. Congress has plenary power to control the territory and property of the United States. Thus, the federal property clause is the most direct and easy support for this leasing program. A is incorrect because the general welfare clause relates to Congress' spending power, and this is not a spending program. C is not correct because, although this might impact interstate commerce, that is a more tenuous relationship than Congress' power to control federal property. D is incorrect because there is no potentially conflicting state law at issue.
79. C is the correct answer. Common law contracts are a matter for state and not federal law. And, because the parties are not diverse, the federal courts would lack jurisdiction over this state law claim. Choice A is incorrect because this case involves a state law contract issue, and not a federal constitutional impairment of contracts issue. B is incorrect because Article III does not provide jurisdiction over every action affecting interstate commerce. D is incorrect because there is a case or controversy, since the resident has been injured by an action of the corporation.\
80. D is the correct answer. The provision relating to the power of the designated standing joint committee is unconstitutional because it allows Congress to affect legal rights and obligations by less than a majority vote and without the President's approval, which the Constitution requires for the enactment of laws. The rules may be set aside by a majority vote of a designated standing joint committee of Congress, rather than the majority of Congress as a whole.
81. A is the correct answer. Congress may enact remedial legislation under the Fourteenth Amendment, and it can subject an unconsenting state to suit in federal court under the Fourteenth Amendment. B is incorrect because Congress is limited to authorize private actions for damages against states by the Eleventh Amendment. C is incorrect because the Eleventh Amendment does limit the power of Congress to modify the sovereign immunity of the states. D is incorrect because the Eleventh Amendment has been held to bar suits by citizens against their own states.
82. B is the correct answer. By limiting the price at which goods in interstate commerce may be sold, the state statute probably imposes an unreasonable burden on interstate commerce, and would be invalid. A is incorrect because there is no fundamental right being infringed, and the law need only be rationally related to a legitimate state interest. C is incorrect because the statute does not classify on the basis of residency. The requirement is uniform regardless of which state the wholesalers and manufacturers are from. D is incorrect because there is no classification among which wholesalers and manufacturers must comply.
83. D is the correct answer. The supremacy clause of the United States Constitution requires that where a state law conflicts with a valid federal law, the federal law preempts that state law. And because regulating interstate carriers is within Congress's commerce clause power, the federal law is valid. Answer A is incorrect because the man has standing. He has an injury to his business that was caused by the federal action, and prohibiting the discontinuance would remedy his injury. Answer B is incorrect because states have concurrent jurisdiction to decide federal questions, since state courts are courts of general jurisdiction. Answer C is incorrect because regulating interstate common carriers is not an essential state function; rather, it is a quintessential federal function.
84. Answer B is correct. The state court based its decision on its interpretation of the federal Constitution, an interpretation the state Supreme Court found to be wrong. The United States Supreme Court has jurisdiction over the case because the case raises a federal question - the constitutionality of a state statute - and the Supreme Court will exercise that jurisdiction because it has deemed the question important. However, there is a chance that the state Supreme Court might interpret its own Constitution differently than the United States Supreme Court interpreted the United States Constitution. And for that reason, the Supreme Court will remand the case to the state to give it the opportunity to interpret its own constitutional provision, knowing accurately what the United States Constitution would require.
85. Answer B is correct. Article I, § 7, cl. 3 of the United States Constitution provides that any matter that the houses of Congress can accomplish by majority vote must be presented to the President for signature or veto before it can have effect. As part of our system of checks and balances, Congress can act alone, without the assistance of the Executive Branch when the Constitution allows it, and the Constitution allows Congress to act alone only when it can command a super-majority.
86. Answer B is correct. The supremacy clause of the United States Constitution provides that a valid federal law controls when a state or local law conflicts with it. The law here is a valid exercise of Congress's commerce clause powers, and because the local law conflicts with it, the local law is unconstitutional.
87. Answer B is correct. The ordinance at issue regulates who may sell food from vehicles on the streets. It implicates neither a fundamental right, nor a suspect class. Therefore, the ordinance would be subject to rational basis review, and the court will defer to any economic choice made by the city as long as that choice is plausibly justifiable.
88. Answer A is correct. The power granted to Congress to regulate commerce has been interpreted so broadly that it encompasses almost any economic act that could conceivably have some kind of impact, even secondarily, on the stream of commerce. Because this statute prohibits the sale or resale of certain products without certain safeguards, it clearly falls under this broad power.
89. Answer A is correct. A state is treated like a person for purposes of federal law, and must comply with validly enacted federal laws. This law is validly enacted because tires, which are bought and sold, are part of the stream of commerce.Answer B is incorrect because the use to which the tires are put is irrelevant. Likewise, answer C is incorrect. The disposal of tires is not something that is part of the performance of core state governmental functions even if the use of tires is. Answer D is not correct because it is irrelevant that the state disposal scheme would meet most of the federal standards. The law requires that the disposal facility actually be licensed and that it meet all of the standards.
90. Answer A is correct. Congress can condition the grant of federal funds to public bodies on compliance with measures related to the public welfare as long as the public body is free to accept or reject the grants.
91. Answer B is correct. The power granted to Congress to regulate commerce has been interpreted so broadly that it encompasses almost any economic act that could conceivably have some kind of impact, even secondarily, on the stream of commerce. Because this statute prohibits the manufacture, distribution, or sale of certain products, it clearly falls under this broad power. Answer A is incorrect because this is not an action linked with federal spending. These products are not regulated as a condition of receipt of federal funds. Answer C is incorrect because the power to provide for the general welfare is part of the spending power of Congress, and this is not a spending measure. Answer D is incorrect because the statute at issue is a federal statute, and the Fourteenth Amendment applies only to the states.
92. D is the correct answer. The court should hold the statute to be unconstitutional in this case because requiring that all fabric be tested by a single company imposes an unreasonable burden on commerce where companies in neighboring states use the same testing methods.
93. Answer C is correct. There is no fundamental right to education, and wealth is not a suspect class. Because there is no fundamental right or suspect class at issue, the court will apply rational basis review, which would require the plaintiffs to demonstrate that the funding allocation formula bears no relationship to any conceivable legitimate state interest.
94. Answer A is correct. The Fifteenth Amendment requires that each individual be counted equally for the purposes of voting and representation. However, as long as they retain a republican form of government, as required by Article IV, § 4 of the United States Constitution, the states are free to set their own rules for providing for representation of their citizens. So, if the state constitution requires that legislative districts be compact and follow political subdivision boundaries, the reapportionment board's actions would be valid since those requirements seem neutral.
95. C is the correct answer. Article III of the Constitution vests the Supreme Court with the power to resolve controversies between two states. Neither Congress nor the Senate alone is given that power. A is incorrect because Congress is given the power to regulate the method of amending the Constitution. B is incorrect because the Senate can determine the qualifications of its members. D is incorrect because the Senate can pass whatever resolutions it wishes as long as they do not affect anyone's legal rights or obligations.
96. Answer D is correct. The federal government is regulating, through this tax, what kinds of things people can be shown. That regulation is based on content. Content-based restrictions must satisfy strict scrutiny, and there is no compelling government interest that this regulation was narrowly tailored to achieve.
97. Answer A is correct. A public employee has a First Amendment right to speak on a matter of public concern, and may not be discharged for that speech unless the employee's actions interfere with the functions of the government. While the building inspector may have been speaking on a matter of public concern - enforcement of the building code and the state of low-income housing, which was the subject of a newspaper story - the statements demonstrated that the building inspector's attitude was interfering with his job, which was enforcement of the building code. Answer B is incorrect because government employees have a First Amendment right to comment publicly on matters of public concern. Answer C is incorrect because even when an employee's speech is on a matter of public concern, that employee may still be discharged if the employee's actions interfere with the functions of the government. Answer D is incorrect because the Fourteenth Amendment does not protect speech in newspapers.
98. Answer C is correct. The Constitution provides for equal protection of the law, which means that it protects individuals from actions by the state (the Fourteenth Amendment) or the federal government (the Fifth Amendment). The Constitution does not restrict private individuals or companies.
99. Answer D is correct. Article III provides that the Supreme Court shall have original jurisdiction in all cases affecting certain foreign officials and suits in which a state is a party, but that it shall only have appellate jurisdiction over all other types of suits. Therefore, the statute at issue conflicts with Article III and is unconstitutional.
100. Answer C is correct. Candidate qualifications need to be narrowly tailored to protect a compelling state interest to not violate equal protection or the First Amendment right of association, and the state has the burden to prove that its regulation meets strict scrutiny. Answer A is incorrect because for strict scrutiny, the burden is not on the individual, but rather on the state. Answer B is incorrect because rational basis would not apply, since a fundamental right is at issue. Answer D is incorrect because rational basis doesn't apply, and if it did, the plaintiff would have the burden under it.
101. Answer A is correct because Congress's powers to tax and to spend funds are both very broad, and there is no requirement that what is spent be related in any way to what is taxed. Answer B is incorrect because an exemption for travelers between other cities would not deny any purchasers equal protection of the law, since such an exemption would be rationally related to the legitimate governmental purpose of funding the busier airports. Answer C is incorrect because the test is not whether the burden outweighs the benefits for the travelers. In fact, the burdens and benefits are only relevant if they make the taxing irrational. Answer D is incorrect because the tax does not infringe on the right to travel, since it applies equally to all travel, is a small part of the total cost of plane fare, and there are many other easy ways to travel between the same destinations.
102. Answer C is correct. The list of suspect classifications include alienage, so the exclusion of aliens must be narrowly tailored to serve a compelling state interest. The state cannot demonstrate that this classification is necessary to advance a compelling state interest. Answer A is incorrect, because any power to spend state funds is necessarily limited by the Fourteenth Amendment. Answer B is incorrect because rational basis is not the test to apply, since the classification is suspect. Answer D is not correct because Congress cannot classify on the basis of alienage unless the classification is narrowly tailored to meet a compelling state interest.
103. Answer C is correct. Article III limits the power of the federal judiciary to cases or controversies. Here, there is no case or controversy as these terms have been interpreted because the plaintiff has no standing. To have standing, a plaintiff: 1) must have suffered an injury, 2) the injury must have been caused by the action the plaintiff is challenging, and 3) it must be such that the injury can be redressed by the relief the plaintiff is seeking. Here, the plaintiff has not himself been injured, because his friend was the one shot and killed by police. That is not a close enough relationship for the law to recognize the loss as a legal injury. And, while the harm (the loss of his friend) was allegedly caused by the unconstitutional statute, his injury cannot be redressed by a declaration that the statute is unconstitutional. Declaratory actions are particularly prone to lack standing because they don't seek a more concrete remedy.
104. Answer A is correct. The supremacy clause provides that valid federal legislation supersedes conflicting state law. The statute is valid because governing liability of interstate carriers is within Congress's broad commerce clause powers.
105. B is correct. The test to analyze whether an ordinance violates the establishment clause of the First Amendment is 1) whether its purpose is secular, 2) whether its primary effect advances or inhibits religion, 3) and whether it fosters an excessive entanglement with religion. Since this ordinance's purpose is secular, its primary effect neither advances nor inhibits religion. And since it does not foster an excessive entanglement with religion, the ordinance does not violate the establishment clause. Answer A is incorrect because the amount of government support is irrelevant to an establishment clause analysis. Answer C is incorrect because merely tangential support of a religious object does not violate the establishment clause. Answer D is incorrect because strict scrutiny is not the applicable test for establishment clause issues.
106. C is the correct answer. The best argument for the parents is that their son was deprived of liberty without due process of law. To make that argument, they will claim that application of the school board's rule physically restrained their son in a manner grossly disproportionate to his offense and circumstances, depriving him of due process, and thereby violating of the Fourteenth Amendment.
107. C is correct. The state law gives this employee a property right in her job, and ordinarily, such a right in a job may not be taken away without a pre-termination hearing. Accordingly, the district court should hold the statute unconstitutional. A is not correct because the controversy is ripe. A controversy is not ripe when an injury is anticipated but has not yet occurred. The teacher has been injured by being terminated, so her controversy is ripe. She need not wait for the state to fail to correct her termination. B is not correct because the due process clause does not require the state to prove that there is good cause beyond a reasonable doubt. Answer D is not correct because state employment is considered an important enough property right to require a pre-dismissal hearing.
108. D is correct. The rider has a property right in the commercial value of his performance, and although the television station has a First and Fourteenth Amendment right to publish information, it does not have any immunity under the Constitution for liability in tort if it deprives a person of the commercial value of that person's performance. Choice A is incorrect because the right of the press to cover newsworthy events is not an immunity from liability. Choice B is incorrect because there is no absolute privilege under the Constitution for the press. Choice C is incorrect because the Constitution only restricts the government from depriving people of property without due process of law. It does not restrict private parties. The television station does remain liable in tort, however.
109. C is the correct answer. Although Congress can usually enact laws that the President has vetoed by a two-thirds majority vote (as choice A would suggest), Congress cannot take power away from the President that the Constitution grants. Article II, § 2, cl. 1 states that the President shall have power to grant pardons except in cases of impeachment. That power is not qualified in any way, and for Congress to attempt to qualify the power is unconstitutional. B is incorrect because the power to grant pardons is not a Congressional power; rather it is solely an executive power. D is incorrect because there is no such rule for vetoes on unconstitutional grounds. The Constitution can be amended when a proposed amendment, passed by two-thirds of both houses of Congress, is ratified by three-fourths of the states, but that was not the scenario in this problem.
110. Choice B is correct. The strongest argument for the manufacturers and wholesalers is that regulating their prices relative to the prices they charge in other states unreasonably burdens interstate commerce. Choice A is incorrect because the state has not actually deprived the manufacturers and wholesalers of any property since they still have full use of their property without substantial interference. Choice C is incorrect because the state statute does not classify on the basis of residence. In-state manufacturers and wholesalers are treated identically to those out-of-state. Finally, choice D is incorrect because there is no classification here, and thus, the statute need only be rationally related to some conceivable legitimate state interest. This review is very deferential, and it is highly unlikely that the statute lacks that minimal rationality.
111. Choice C is correct. Under the supremacy clause, the state cannot regulate the federal government without the federal government's consent. Choice A is incorrect because even though the state has a legitimate interest in regulating pollution, and such regulation is within the state's police power, the state lacks the power to control the federal government. Choice B is incorrect for the same reason. Although the proposition it states is correct, the state simply cannot control the federal government. Choice D is incorrect because the state can regulate de minimus violations of its pollution control standards when those violations are committed by private parties. It can't regulate the federal government, however.
112. C is the correct answer. The state has a legitimate interest in regulating the sale of insurance. And, because the limit the state puts on insurance companies is uniform and is very small, (that it must charge a uniform rate to all customers within the same county but may charge whatever rate that the market will bear), that limit is reasonable. Therefore, it is constitutional. A is incorrect because the state has not substantially interfered with the use of any insurance company property. B is incorrect because the treatment of all insurance companies is uniform. D is incorrect because there is no reason to abstain. This is not a situation in which the meaning of the state statute is unsettled, or that involves an area that is so fully regulated by the state that the federal court, in the interest of good relations would abstain.
113. C is the correct answer. Choice C is the least helpful to the state in defending the constitutionality of its tax. States have the authority to structure their tax system in any manner that does not violate some other portion of the constitution. Choice A would be a better argument because if the widgets have not yet entered interstate commerce when they are taxed, then the tax would not be a burden on interstate commerce. Choice B is incorrect because if the tax is passed on to all purchasers equally, then it will not violate the privileges and immunities clause, since it treats in and out-of-state purchasers the same. Choice D is incorrect because, since the state doing the taxing is the state in which the widgets are manufactured, the tax is not likely to create the danger of a multiple tax burden on interstate commerce.
114. D is the correct answer. The Fifteenth Amendment provides that the right to vote shall not be abridged on the basis of race or color. Because this is a challenge by minority racial groups to the way voting is conducted, the Fifteenth Amendment is the most obvious basis to their claim. A is not correct because the Thirteenth Amendment abolishes slavery. And, while the inability to vote is a badge of slavery, the Thirteenth Amendment does not focus on the vote per se. B and C are incorrect for the same reasons. The Fourteenth Amendment is designed to promote racial equality, but it does not protect the right to vote explicitly.
115. B is the correct answer. Even though the tax is high at 50%, Congress has broad power to raise revenue through taxes. A measure that appears to be revenue raising on its face is not invalid merely because it may have adverse economic consequences for the activity being taxed. A is not correct because tax measures need not satisfy strict scrutiny. Answer C is not correct because the potential impact on attendance at sporting events does not defeat the rational relationship between the taxing and reducing the deficit. D is incorrect because a taxing provision needs to be only minimally rational to satisfy the Equal Protection Clause. It is irrelevant that championship events are singled out for taxation.
116. Choice B is the correct answer. Congress has broad power under the Constitution to regulate items in the stream of commerce including the possession of computers. Because this licensing act doesn't violate any prohibitory provision of the Constitution, it is constitutional. Choice A is incorrect because the power to enact laws that promote the general welfare is linked to Congress's spending power, and this is not a spending statute; rather, this is the regulation of possession of a good, and the necessary and proper clause enables Congress to enact laws that regulate interstate commerce. Choice C is incorrect because it is the act itself that makes unlicensed possession of a computer illegal. Choice D is incorrect because it is nearly impossible for a commercial product not to impact interstate commerce, and computers certainly move in interstate commerce. Because computers are part of the stream of commerce, they are not a purely local matter.
117. C is the correct answer. Under the supremacy clause, the federal agency's activities supersede any inconsistent local law. A local body may not regulate any part of the federal government. Thus, as long as the federal agency is involved in a lawful federal function, which it is, the city may not prohibit it from performing that function without the consent of Congress.
118. D is the correct answer. The Equal Protection Clause requires that classifications based on alienage be narrowly tailored to promote a compelling state interest. Because that is such a difficult test to satisfy, this is the strongest argument. A is incorrect because the law does not criminalize an act after that act was committed, nor does it impose a burden on a vested right; therefore it is not an ex post facto law. B is incorrect because employment is not a fundamental right. C is not correct because the privileges and immunities clause prohibits discrimination by states against United States citizens, and an alien is not a United States citizen
119. A is the correct answer. The government may regulate the time, place, and manner of speech as long as that regulation: 1) is content neutral, 2) serves a substantial governmental interest, and 3) is narrowly tailored so that there are alternative avenues of expression open. This regulation is a time, place, and manner regulation because it affects only the volume of the expression. B, C, and D give the incorrect standards for this type of regulation.
120. C is the correct answer. The Fourteenth Amendment only limits the power of states and state actors. The baseball franchise is a private entity, and the Fourteenth Amendment cannot reach it unless somehow it has become a state actor. The franchise can only be a state actor if it performs some traditional governmental function or if the government has become very involved in the management of the franchise. The grant of money by itself is not enough involvement, so choice A is incorrect. Therefore, the court will probably rule that the Fourteenth Amendment does not apply. Choice B is incorrect because public preoccupation with baseball and its designation as the national pastime are not enough to make baseball a traditionally governmental function. Choice D is incorrect because this does not present a political question. There are two real sides with something at stake, and the controversy is concrete enough to be justiciable.
121. A is the correct answer. Congress has the sole power to regulate the trade between the United States and foreign governments. This power is similar to the internal commerce power. Because there is an effect on owners of automobiles manufactured outside of the United States, there is some effect on foreign commerce. Therefore, the state's action interferes with Congress' power in this area. This is sometimes known as the "dormant" commerce clause. B is incorrect because it is not very strong. Since the statute does not classify using any suspect class, only rational basis review would be applied, and statutes are almost never struck down on rational basis review. C is incorrect because ownership of a foreign car is not a fundamental liberty or property interest, and therefore, rational basis review would apply. Answer D is incorrect because the statute does not restrict parking only to in-state residents. Rather the classification is based on where the car was made. Thus, the statute does not interfere with national citizenship.
122. A is the correct answer. Article IV, § 3, cl. 2 of the Constitution gives Congress the power to make all necessary rules and regulations concerning the property of the United States. Therefore, the Act is within Congress's power and thus, constitutional. B is incorrect because Article I, § 8 gives Congress the power to enact laws to regulate commerce. These wild animals are not bought and sold, so they are not within the stream of commerce, subject to Congress's commerce clause power. C is incorrect because the supremacy clause provides that validly enacted federal laws supersede conflicting state laws, and the Tenth Amendment is subject to the limitation of the supremacy clause. Similarly, D is incorrect, and the full faith and credit clause is also subject to the limitations of the supremacy clause.
123. C is the correct answer. The test to analyze whether a law violates the establishment clause of the First Amendment is 1) whether its purpose is secular, 2) whether its primary effect advances or inhibits religion, 3) and whether it fosters an excessive entanglement with religion. The new sales tax exemption gives a benefit only to "recognized religious faiths" and only for the publication of their sacred writings. That exemption is effectively a subsidy of recognized religious faiths. While the tax may have a secular purpose and the advancement of religion is not its primary effect, the tax is an excessive entanglement with religion. Therefore, it violates the establishment clause.

D is the answer. The strongest constitutional basis for an attack on the provision is that by conditioning the award of a grant on the recipient's agreement to refrain from all kinds of political lobbying designed to secure additional tax support, the state was prohibiting a particular kind of speech or political activity in violation of the First and Fourteenth Amendments. State actions that restrict speech or similar political activity are subject to strict scrutiny, and rarely pass. A is not correct because the state action does not impair the flow of interstate commerce, since it does not restrict a commercial activity so much as a political activity. B is incorrect because no existing contract is being impaired by the statute. C is incorrect because the Fifth Amendment applies only to the federal government, not the states.

1. A is the correct answer. The Constitution gives Congress the power to make regulations concerning the Supreme Court's appellate jurisdiction. However, Congress cannot frustrate the establishment of a supreme and uniform body of federal law. Thus, the strongest argument against the constitutionality of this statute is that by removing an entire subject of constitutional cases from the appellate jurisdiction of the Court, Congress is frustrating the establishment of a supreme and uniform body of federal law. Fifty state supreme courts could set fifty different standards for measuring the constitutionality of the laws at issue.
2. A is the correct answer. The Constitution gives Congress the power to make regulations concerning the Supreme Court's appellate jurisdiction. However, Congress cannot frustrate the establishment of a supreme and uniform body of federal law. Thus, the strongest argument against the constitutionality of this statute is that by removing an entire subject of constitutional cases from the appellate jurisdiction of the Court, Congress is frustrating the establishment of a supreme and uniform body of federal law. Fifty state supreme courts could set fifty different standards for measuring the constitutionality of the laws at issue.
3. A is the correct answer. The Supreme Court should accept the case for review and determine the validity and interpretation of the federal statute if it is an important federal question. The Supreme Court may not review the state supreme court's interpretation of its own state constitution, but here, the state supreme court rested its decision on its interpretation of federal law. Its comment that the decision also comported with its state constitution was not an "adequate and independent" state ground that would cause the Court not to review the case. B is incorrect because asking the state Supreme Court for clarification would be completely unnecessary in this case, since the state constitution is identical to the federal statute. C is incorrect because the state constitution did not provide an adequate and independent state ground for the decision. D is incorrect because the Supreme Court can review the constitutionality of a federal statute, which is the issue presented by this case.
4. B is the correct answer. Congress has the power under the Thirteenth Amendment to eradicate the badges and incidents of slavery, and discrimination against black persons in business transactions is a badge and incident of slavery. Possibly a stretch, but the best answer among these four.
5. D is the correct answer. The government may regulate the time, place, and manner of religiously motivated conduct as long as the regulation is neutral and serves an important public interest. Here, the regulation is neutral on its face and it is neutrally applied, the Superintendent's views notwithstanding. The interest of public safety is important. Therefore the denial of the permit would be valid. A is incorrect because the permit rules do not target religious practices. B is incorrect because these facts do not demonstrate purposeful and invidious discrimination against the Friends of Lucifer. No group has been allowed to camp all night or to light campfires on Mt. Snow. C is incorrect because the establishment clause does not prohibit the holding of religious ceremonies on public land as long as those ceremonies do not foster an excessive entanglement with religion.
6. C is the correct answer. When challenging deprivation of a constitutionally protected right without due process of law, a plaintiff first must demonstrate that she has a constitutionally protected right. Here, the secretary must first demonstrate that state law created a constitutionally protected interest either in her job or in the procedures for termination.
7. C is the correct answer. Many explicit grants of power have been interpreted to also empower the branch of government to do whatever is reasonable to exercise that power. Therefore, the strongest argument is that the power of the President to negotiate with foreign nations impliedly authorizes the President to make executive agreements with those nations. If this action is valid, then the supremacy clause would make the agreement prevail over state law.
8. C is the correct answer. Congress's spending power is plenary, and Congress can choose how it spends its money so long as that choice can reasonably be said to serve the general welfare and not violate any prohibition in the Constitution. A is incorrect because Congress's creation of a polling system to allocate the funds is not an unconstitutional delegation of legislative power. The statute limits the discretion of the university presidents to specific well-recognized and generally accepted standards of academic quality, and so the power granted to the university presidents is very narrow. B is incorrect because limiting the funding to the ten best universities is a reasonable line to have drawn, given the fact that the funds are limited. D is incorrect because the validity of a statute will nearly always be justiciable and not a political question. This statute is not the type of action and is not on a subject that is clearly committed to the sole discretion of Congress by the Constitution, and ruling on the validity of a statute provides judicially manageable standards.
9. C is the correct answer. Because the supremacy clause provides that valid federal laws supersede conflicting state laws, the strongest argument for the fishing company to continue to fish for oysters is that it has a federal shipping license that allows it to fish for oysters. A is incorrect because the fishing company was denied a state permit. So the higher rate for permit charges is irrelevant to the fishing company which was denied the permit entirely. For similar reasons, B is incorrect. Additionally, the Privileges and Immunities Clause does not apply to corporations, but only to individuals. Even if the different rates charged to non-residents were to violate the privileges and immunities clause, that is not relevant to the fishing company which was denied the license entirely. Finally, D is incorrect because the permit is a property right which only lasts one year, and so there was no lasting property that the state could have taken.
10. D is the correct answer. The supremacy clause of Article VI provides that validly-enacted federal laws supersede conflicting state and local laws. As long as the federal concession statute is valid, which it probably is as an exercise of Congress's ability to make rules and regulations to protect the property of the United States, that law will insulate the activity taking place on federal property from state taxation.
11. A is the correct answer. There is no case or controversy here because the candidate lacks standing. One reason he lacks standing is that the issue is not yet ripe for review. The issue is not ripe because the candidate will not suffer an injury until he is barred from running for office or until he has won the election. At that point, an injury will either have occurred or will be so certain to occur as to confer standing. The second reason the candidate lacks standing is that the candidate has not joined the correct party to provide him the relief that will redress the injury. The chairman of his local political party would be the correct party to sue if the political party refuses to put him on the ballot due to the residency requirement. However, the candidate seems to be challenging the qualifications with the assumption that he will not be allowed to take office. The correct defendant would be whichever official enforces those qualifications and determines whether elected officials take office, presumably election officials. Finally, the mere agreement by the parties that the court should consider the issue is irrelevant; standing cannot be created by agreement.
12. D is the correct answer. The school's policy classifies on the basis of gender, which is a quasi-suspect class. Gender classifications are subject to intermediate scrutiny: they must be substantially related to an important governmental interest. Moreover, for suspect and quasi-suspect classifications, the government, and not the individual, bears the burden of persuasion. A is incorrect because the standard to apply is not rational basis. B is incorrect because the standard is not correct, and the individual does not bear the burden on standards higher than rational basis. C is not correct because strict scrutiny does not apply to gender classifications.
13. C is the correct answer. The standard for evaluating whether a statute affecting abortion is constitutional is whether it imposes an undue burden on the woman seeking an abortion. States are not required to fund abortions, which arguably the state would do in this hypothetical by providing the facilities to do so. This state statute would not prohibit the citizen from having an abortion or penalize her for doing so, and it does not affect her ability to get an abortion from a physician in a private facility. Additionally, the state may have a single-sided policy to encourage childbirth, and this is rationally related to that policy.
14. C is the correct answer. The federal statute is very general and does not regulate radon testers to the extent of licensing them. Therefore, the general federal statute does not conflict with the more rigorous state licensing standards, and those licensing standards are not superseded by the federal law under the supremacy clause. Furthermore, the state's licensing requirement is constitutional because it is reasonably related to a legitimate public interest.
15. C is the correct answer. There is no injury yet to the power company. It has not yet been denied a rate increase, and it does not even know whether it will need to seek a rate increase before the statute will allow it to. Therefore, there is not yet an actual or imminent injury, and the claim is not yet ripe for decision. A is incorrect because there is no vested property right that the company can claim has been injured. B is incorrect because there has been no injury that would allow a court to really determine whether this legislation is rationally related to a legitimate interest. D is incorrect because Article III provides no exemption for state-regulated utility rates. And, in fact, if the parties presented a case or controversy, the constitutionality of the rate regulation would raise a federal question.
16. B is the correct answer. Public employees have the right under the First Amendment to express their views on issues of public concern. The statement in this case, on the merits of the governor were clearly on a matter of public concern. The First Amendment requires that when a public employee engages in protected speech, the employer may not discharge the employee unless the statements impair that employee's ability to do the job. The court weighs the interests of the employer in fulfilling its duties against the interests of the employee speaking as a private citizen. Here, the employee's comments had nothing to do with his job of copying and filing real estate records, and could not be said to have interfered with his duties. Additionally, because he had no duties to interact with the public, any notoriety he gained or public disruption would not affect his ability to do his job. Therefore, the court should hold that his termination was unconstitutional.
17. B is the correct answer. The city here is not prohibiting a particular type of speech entirely. Rather it is regulating where that "speech" may take place. And, the test for evaluating time, place, and manner restrictions is whether the restriction is designed to serve a substantial governmental interest in a way that does not unreasonably limit alternative avenues of communication. Preventing adverse secondary effects associated with adult theaters and bookstores is a substantial governmental interest.
18. A is the correct answer. The ground for the homeowner's complaint is that her taxes are higher than the taxes paid by other owners of similar homes. Because she is protesting the way that the government is treating her compared to people she claims are similarly situated, she is making an equal protection challenge. B is incorrect because the privileges and immunities clause only prohibits states from treating out of state residents differently than state residents. Here, there is no classification of non-residents. C is incorrect because taxation is almost never a taking of property for public use. D is incorrect because the law is not a new enactment that makes illegal something that was legal when it happened. Therefore, equal protection is really the only valid claim the owner can make.
19. B is the correct answer. When a neutral law of general applicability impacts a religious practice, the law is subject to rational basis review. There is no inquiry into the extent of the impact or the sincerity of the religious beliefs. The law must merely be rationally related to a conceivable legitimate state interest. A is incorrect because it is not the deceased's rights that are being analyzed; rather it is the rights of the parents, who are persons protected by the Fourteenth Amendment. C is incorrect because a neutral law of general applicability need not meet strict scrutiny if it affects a religious practice. Likewise, D is incorrect because the law need not meet intermediate scrutiny either, only rational basis.\
20. D is the correct answer. Congress's power to tax is plenary, and this statute does not contain provisions extraneous to tax purposes, and it does not violate any other section of the Constitution. A is incorrect because the tax does not make any irrational classification. The tax is limited to one product, and while the product is mined only in one state, residents of other states could be doing the mining. The tax's limitation to one subject is not irrational and is therefore constitutional.
21. A is the correct answer. The set-asides classify on the basis of race, and therefore, must pass strict scrutiny; they must serve a compelling governmental interest and use the least restrictive means possible. The Supreme Court has recognized that remedying past discrimination is a compelling governmental interest. Here, there is no compelling governmental interest because there has been no history of discrimination, the community is diverse, and forty percent of the members of the governing board are members of racial minorities. Without this, the set-asides are unconstitutional discrimination against members of the majority race in violation of equal protection.
22. A is the correct answer. Congress has no authority to require a state legislature to enact any specified legislation except when it is acting under its spending power. This is not a spending provision, so Congress cannot make the states enact these laws. B is incorrect because the statute only applies to drugs that were transported in interstate commerce. Moreover, controlled substances, whether legal or illegal, are probably part of the stream of commerce, and Congress can probably regulate them under its commerce clause power.
23. C is the correct answer. In order to have standing, a party must have an imminent or actual injury. Here, because the plaintiffs do not trade in the stock market and do not plan to, they have no injury. Accordingly, they lack the standing required to create a case or controversy under Article III.
24. D is the correct answer. Regulations of commercial speech must be a reasonable fit to promote a substantial interest. Protecting the streets from litter may be a substantial interest, but forbidding machines from dispensing publications consisting wholly of commercial advertisements is not a reasonable fit, since only ten percent of the machines were removed under this scheme. Therefore, the ordinance would be unconstitutional.
25. C is the correct answer. The statute prohibits only release of the information from the government, but not publication of the same information or release of the information by private parties. There is generally no First Amendment right of access to records kept by the executive branch, and here it is only access to those records and not censorship of the information more generally that the statute accomplishes. Preventing adverse consequences from information about an arrest or charges that are later dropped or dismissed is at least a legitimate state interest, and this measure is closely related to that goal. Therefore, it would be constitutional.
26. D is the correct answer. Congress has broad powers to legislate to promote the general welfare, and this statute does that. Moreover, the statute has concrete objectives, provides adequate criteria for conducting the essay contest and awarding the prize money, and contains safeguards ensuring Congressional input into the makeup of the decision makers. Therefore, the statute is neither beyond Congress's powers generally, nor, more specifically, is it an unconstitutional delegation of legislative authority.
27. B is the correct answer. The ordinance classifies on the basis of county residency: only residents of Kelly County can register taxicabs there, and only registered taxicabs can pick up or drop off passengers in the county. The ordinance effectively gives Kelly residents a monopoly over the taxicab business in the guise of reducing congestion. This monopoly burdens interstate commerce, and because there is no limit on the number of taxicabs that can be registered, it is difficult to see how the ordinance will reduce congestion. Thus, the ordinance impermissibly burdens interstate commerce without adequate justification.
28. D is the correct answer. A person may not be deprived of liberty or property without procedural due process. The city ordinance is the source of the property right alleged here, but the scope of that property right is limited. Taxicab licenses do not include a right to be free of competition from additional licensees, because the ordinance does not limit the number of licenses that may be issued and provides for a hearing only when the ground alleged is a lack of qualifications. Therefore, the grant of a license to the woman does not deprive the licensed driver of any property right that would require procedures to protect it. Moreover, there is no statutory right to a hearing because the only ground for a hearing is a lack of qualification, and the decision of whether to grant a pre-termination hearing is up to the discretion of the city licensing officials.
29. C is the correct answer. The Fourteenth Amendment prohibits a state from limiting access to the ballot to members of particular political parties unless the prohibition is narrowly tailored to promote a compelling interest. Thus, this is the provision most helpful to the new political party in its efforts to attack the constitutionality of the statute.
30. B is the correct answer. The supremacy clause provides that federal laws preempt conflicting state laws, but here, Congress gave the Redville City Council the power to set the rates. Thus, there is no conflict and no preemption under the supremacy clause. Moreover, since Congress empowered the Redville City Council to set the rates there is no discrimination by the city against interstate commerce.
31. B is the correct answer. The statute is probably unconstitutional because the members of federal boards must be appointed in a manner consistent with the appointments clause of Article II. They must be appointed in this manner because they are members of the executive branch. A is incorrect because Congress may not appoint members of an executive branch agency. It can create the agency, but appointment of its leaders must comport with Article II, concerning the executive branch. C is incorrect because the necessary and proper clause does not allow Congress to exercise executive branch powers. D is incorrect because the spending power does not give Congress the power to exercise executive branch powers either.
32. A is the correct answer. The case is not within the original jurisdiction of the Supreme Court as defined by Article III. And, it cannot exercise appellate jurisdiction if there has been no decision to be appealed. Therefore the Supreme Court would not have jurisdiction over this case and the federal statute would be unconstitutional.
33. C is the correct answer. The statute does not classify corporations that can acquire one of the state's corporations, but only regulates the acquisition of those corporations. Therefore, it does not violate the privileges and immunities clause or discriminate against interstate commerce. Additionally, because corporations are created by state law, this statute does not create an impermissible risk of inconsistent regulation on this subject by different states. No other state can regulate how the state's corporations can be acquired.
34. C is the correct answer. The limitation on all abortions after the first trimester except when the life or health of the mother is threatened is an undue burden on women's fundamental right to reproductive choice prior to fetal viability. The state may not impose an undue burden on the ability of women to get abortions at any point in the pregnancy, although after fetal viability, most limitations will not be an undue burden as long as there is an exception for the life and the health of the mother.
35. B is the correct answer. Setting up an advisory commission to encourage vaccination as a public health measure is within the scope of executive authority vested in the President by the Constitution. And, no federal statute prohibits its creation so that even if Congress shares the power to legislate in this area, it has not prohibited executive branch involvement. Thus, the commission is constitutional.
36. D is the correct answer. The government cannot restrict speech based on its content unless the content falls into a category of speech that is not protected for some reason. Political speech is at the core of protected speech. Therefore, the government cannot prohibit political speech based on its content. Further, the government cannot condition a right or benefit on an agreement by an individual not to engage in constitutionally protected speech. Therefore the license holder has a meritorious defense to the license revocation proceeding.
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38. C is the correct answer. The Supreme Court will not hear cases from the highest state courts if the decisions of those courts rest on independent and adequate state law. Here, the state supreme court found that its state constitution protected the fan's right to speak, and that he could not be convicted. Furthermore, the state supreme court also stated that its state constitution was interpreted in a manner different from the federal Constitution. Accordingly, the state constitution afforded an independent and adequate state ground for the decision.
39. C is the correct answer. The tax here is a tax only on the rental value of the personal use of the automobiles by the taxpayer. The tax does not reach the use of the automobiles as part of the operations of the federal government. Moreover, the allowance by the federal government of use of the automobiles for personal use is like wages or a benefit, which can be taxed once it's received by an individual. Therefore, the state can collect this tax.
40. A is the correct answer. The city may limit the time, place and manner of adult businesses as long as the restrictions allow enough avenues of expression and protect against the secondary effects caused by such businesses. This ordinance does just that, and is therefore constitutional. B is incorrect because adult entertainment is protected by the First and Fourteenth Amendments. C is incorrect because the government may regulate speech that is not obscene. D is incorrect because the government is not limited to protect against secondary effects only in residential areas.
41. A is the correct answer. A license is a property right created by state law and cannot be revoked without due process of law. Part of that process may include the ability to cross examine accusers. Thus, the strongest argument by the barber is that his inability to even know who his accusers were denied him a fair hearing which denied him his barber's license without due process of law.
42. A is the correct answer. A state court is required to give full faith and credit to judgments of sister states. Here, the state employees and the state submitted to the jurisdiction of the other state court, and raised the defense they raise now in their own state courts. There is no fundamental unfairness to the proceedings that would warrant not giving the judgment full faith and credit, and it would be enforced in full in the current proceedings.
43. C is the correct answer. Article III limits the exercise of federal court jurisdiction to cases and controversies, and once the injury that gave rise to the case is incapable of remedy, the case becomes moot and no longer justiciable. Here, once the trial was over, the relief the student sought-–televising the trial-–was no longer possible, and his case became moot. Moreover, it is unlikely that the controversy will be revived because the case is on appeal now, and there were no obvious errors in the proceedings. Therefore, the federal court should grant the motion to dismiss.
44. D is the correct answer. The requirement that the company construct an addition and create a child care center in it is governed by the takings clause of the Constitution. In order to justify a condition on a building permit, there must be a nexus between a legitimate state interest, here the availability of childcare facilities, and the condition. If there is a nexus, there must also be a rough proportionality between the required dedication and the impact it will have on the community. And the city bears the burden of meeting this higher test. Here the city failed to demonstrate the rough proportionality between the requirement and the impact on the residents. The requirement would be a very large burden on the supermarket, since it would at least double the cost of the addition and would doubly reduce the amount of parking available. The addition of one daycare center, however, would have a smaller impact on the community which has a general lack of child care facilities.
45. B is the correct answer. A state cannot display a nativity scene unless it is displayed in a context that commemorates the Christmas season as a primarily secular holiday. If a display includes religious symbols as well as other holiday decorations, the display will be deemed to have a secular purpose; however, if it is only the religious symbol in a display, it will be deemed to have a religious effect. Although this scene will be set up with other non-religious displays, those displays are not related to Christmas as a secular holiday and those displays are also permanent, rather than related to the particular Christmas season.
46. B is the correct answer. The commerce clause would provide the most credible support for a statute prohibiting sexual orientation discrimination in sale or rental of housing. The rent or purchase of housing could reasonably be found to affect interstate commerce.
47. D is the correct answer. The Fourteenth Amendment prohibits state action but not private action. Therefore, the prohibition of women from serving as officers in this organization is not unconstitutional. A is incorrect both because the Fourteenth Amendment does not reach this private actor, and also because the private actor does not become a state actor merely by inviting the public to an activity. B is incorrect because the use of the auditorium does not discriminate on the basis of gender; women can come to the installation of new officers, and the use of the auditorium does not make the organization a state actor. C is incorrect because the city could regulate who would be allowed to use its facilities, although some regulations might have to pass strict scrutiny.
48. A is the correct answer. The state's attorney in this case intentionally struck jurors based upon their gender. These decisions would have to satisfy intermediate scrutiny, and they can't because they were based on the assumption that women as a group would be biased in favor of a woman claiming sexual harassment. Without proof of actual bias, this belief cannot be narrowly tailored to an important governmental interest.
49. B is the correct answer. The speech and debate clause of Article I provides that anything said in the course of the federal legislative process is immune from prosecution. Speeches outside the Senate are not covered, nor are statement made as the result of bribes. Thus, the Senator would be immune from suit for any speech she makes in the Senate and her assistant would be cloaked with immunity for his assistance to her in preparing the speech. A, C, and D are all incorrect because they misstate the law and how it would protect the Senator and her assistant.
50. B is the correct answer. A state or municipality may not discriminate against citizens of other states under the privileges and immunities clause of Article IV. Such classifications must meet strict scrutiny, and there is no indication here that the state could meet that burden. A is incorrect because a bill of attainder is legislatively-imposed punishment, which is not present in this issue. C is not correct because the doctor was not deprived of a fundamental right. D is not correct because the rule did not make illegal something that was legal when it was done.
51. A is the correct answer. The best defense for the corner store is that the statute is excessively vague and overbroad. It is vague because the terms "harmful" and "violent or sexually explicit nature" are terms that are not concrete enough to allow most people to understand what is prohibited. The statute is overbroad because it may prohibit material that is not shown to harm minors, but would not prohibit written material describing violent and sexually explicit acts, which would be harmful to minors.
52. C is correct because Article I, Section 8, Clause 1 of the Constitution gives Congress broad power to tax and to spend for the general welfare. Courts defer to reasonable congressional taxing measures, such as the statute at issue in this case, as well as to expenditures that reasonably further the general welfare.
53. B is correct. The commerce clause (Article I, Section 8, Clause 3 of the Constitution) gives Congress the power to regulate commerce among the states and, by negative implication, restricts the regulatory power of the states with respect to interstate commerce. Any state law that has a substantial effect on interstate commerce must not be protectionist or otherwise impose an undue burden on interstate commerce. A protectionist law benefits in-state interests at the expense of out-of-state interests. A state law that discriminates against interstate commerce is protectionist unless it serves a legitimate local interest that cannot be served by nondiscriminatory legislation. By barring the sale in the state of the Martian toys manufactured in other states, the state law has a substantial effect on interstate commerce. Although the law does not explicitly discriminate against the out-of-state toy manufacturers, it has a purely discriminatory effect against them, and the state has less discriminatory alternatives available to protect the legitimate interests cited in the law. The state law therefore violates the negative implications of the commerce clause.
54. Answer B is correct. The privileges and immunities clause of Article IV, Section 2, Clause 1 of the Constitution does not apply on these facts. The clause only reaches actions by a state that discriminate against citizens of other states. The woman is a citizen of the state that employed her because she was a resident of that state (Fourteenth Amendment, Section 1).
55. Answer A is correct. The provision is a bill of attainder in violation of Article I, Section 10, Clause 1 of the Constitution. A bill of attainder is a law that provides for the punishment of a particular person without trial. The challenged provision satisfies this definition because it deprives two named professors of their salaries, and thus, their employment.
56. Answer B is correct. The Supreme Court may not review a judgment by the highest court of a state if that judgment is supported entirely by state law and is wholly independent of the interpretation and application of federal law. In this case, although the defendant claimed a violation of the Sixth Amendment of the U.S. Constitution, the state supreme court based its decision entirely on the state constitution without addressing the federal constitutional issue.
57. Answer A is correct. Prayer and Bible readings in public schools violate the Establishment Clause. It does not matter whether participation is voluntary or involuntary. The Supreme Court has held that officially sponsored prayers as part of public high school commencement ceremonies, like the prayer at issue in this case, violate the establishment clause of the First Amendment.
58. Answer B is correct. Congress may delegate rule-making authority to federal agencies through statutes that provide an intelligible principle governing the exercise of that authority. The Supreme Court has been very deferential in applying the intelligible principle requirement, and the statute's provision of authority to the Forest Service to issue regulations controlling campfires and establishing a penalty schedule likely satisfies the requirement.
59. Answer D is correct. The zoning board's denial of the permit discriminated against neither a suspect class nor a quasi-suspect class. Nor did it unduly burden the exercise of a fundamental right. The denial therefore triggers rational basis scrutiny.
60. Answer D is correct. A government regulation that eliminates the investment-backed expectation and economic value of an individual's property is a taking within the meaning of the Fifth Amendment, as applied to the county by the Fourteenth Amendment. Because the regulation has this effect, it constitutes a taking of the purchaser's property, for which the county must pay just compensation. Because the county did not compensate the purchaser for the land, the county has violated the takings clause.
61. Answer C is correct. The full faith and credit clause of the Constitution (Article IV, Section 1) prohibits state courts from re-litigating cases in which the courts of another state have rendered final judgment. Accordingly, the court in State A should dismiss the suit.
62. B is correct. The Supreme Court has held that parental notification requirements violate a minor's right to an abortion unless there is a satisfactory judicial bypass procedure. Such a procedure must allow a court to approve an abortion for a minor without parental notification if the court finds: (1) the minor is sufficiently mature and informed to make an independent decision to obtain an abortion; or (2) the abortion would be in the minor's best interest. Because no such bypass procedure is included in the statute at issue, the court will hold the statute unconstitutional. Answer B is correct and answer D is incorrect.
63. Answer A is correct. The law school's denial of the meeting room to the student group violates the speech clause of the First Amendment. The meeting rooms are a limited public forum because the law school made the rooms generally available for extracurricular student use. Because the meeting rooms are a limited public forum, the law students had a First Amendment right to use a room for expressive activity consistent with their purpose (i.e., extracurricular student use). Because the law school's denial of the room was based on the content of the students' expression, the denial must be tested by strict scrutiny, which requires the law school to prove that its denial was necessary to serve a compelling governmental interest. It is unusual for the courts to uphold content-based speech restrictions at strict scrutiny, and the law school's concerns here are clearly insufficient to meet that test.
64. Answer A is correct. Section 1 of the executive order is constitutional. The president, as the chief executive officer of the U.S. government, has authority to direct the actions of federal executive agencies, so long as the president's directives are not inconsistent with an act of Congress. (The facts state that there is no applicable statute here.) Section 2 of the executive order is unconstitutional. At least as a general rule, the president does not have authority to direct the actions of persons outside the executive branch unless the president's direction is authorized by an act of Congress. There are no circumstances presented in the facts (such as a sudden attack on the U.S.) that might justify an exception to this general rule.
65. Answer A is correct. The incidence of the state sales tax on the collector's purchases of antiques is on the collector, who is independent of the National Park Service.
66. D is correct. The federal courts lack power to entertain a suit that is not ripe for adjudication, because such a suit does not present a "case" or "controversy" within the meaning of Article III, Section 2, Clause 1 of the Constitution. The court should dismiss the suit because the Bureau has yet to announce the beer-quality standards, and therefore the case is not ripe. The court may not maintain jurisdiction over the suit by issuing a stay because it lacks the constitutional authority to retain control over the suit. Thus, answer D is correct, and answers A, B, and C are incorrect.
67. Answer B is correct. Congress may use its commerce power (Article I, Section 8, Clause 3 of the Constitution) to permit states to discriminate against interstate commerce. The federal statute here explicitly authorizes states to enact state-of-origin labeling requirements on imported citrus fruit.
68. C is correct. The man communicated a threat with the intent to intimidate the recipient. The Supreme Court has held that such threats are not protected by the speech clause of the First Amendment. Because these threats are not constitutionally protected, states may outlaw them regardless of whether the speaker acts on the threat. Thus, answer C is correct, and answer A is incorrect.
69. Answer C is correct. The space on city buses used for the posting of placards qualifies as a designated public forum because it is public property that the city has decided to open for an expressive use. The organization's placard was consistent with the city's designated use of the forum. The city administrator's denial of space to the organization was based on the content of the placard and therefore triggered strict scrutiny, which requires that the denial be necessary to serve a compelling government interest. The reasons cited for the city's denial of the organization's request do not implicate compelling government interests that would justify a content-based speech restriction.
70. Answer C is correct. The court has federal question jurisdiction over the case because it "arises under" a treaty of the United States, as provided for by Article III of the Constitution. The self-executing treaty is valid because it was entered into by the President and a foreign country with the advice and consent of the Senate.
71. The law regulates only commercial speech, and the First Amendment invalidates any law regulating such speech unless the law is narrowly tailored to serve a substantial government interest. The U.S. Supreme Court has held that a law barring the solicitation of accident victims within a limited time period following an accident was narrowly tailored to serve the state's substantial interest in protecting the privacy of the victims. Thus, Answer C is correct.
72. Answer A is correct. A bill of attainder is a legislative act that singles out particular individuals for punishment without a trial; bills of attainder are explicitly prohibited by the Constitution. The U.S. Supreme Court held, in United States v. Lovett, 328 U.S. 303 (1946), that a statute barring particular individuals from government employment qualified as punishment within the meaning of the constitutional provision prohibiting bills of attainder.
73. Answer D is correct. In order to prevail in its First Amendment claim, the challenger must show that the government action targeted the religious practice in question. By doing so, the court will exercise strict scrutiny over the government's actions. A court typically invalidates government action when it applies strict scrutiny. Thus, Answer D is correct.
74. Answer A is correct. The statute satisfies the commerce clause because it regulates a commercial activity (the purchase of cars) that, when aggregated, has a substantial effect on interstate commerce. The statute does not violate the Tenth Amendment as applied to the city because it does not commandeer the city to regulate the conduct of others pursuant to congressional direction. Instead, it directly regulates the city on the same terms as other entities engaged in the same conduct, which is permissible under the Tenth Amendment. Thus, Answer A is correct and Answer D is incorrect.
75. Answer B is correct. The U.S. Supreme Court held, in Bolling v. Sharpe, 347 U.S. 497 (1954), that the equal protection principles of the Fourteenth Amendment apply to actions of the federal government through the due process clause of the Fifth Amendment. The new security measures presumptively violate equal protection because they contain a racial classification: the new security measures apply only to individuals of one race. A court therefore would uphold the new security measures only if the government could prove that they are necessary to serve a compelling public interest, a standard that the government typically cannot meet. Thus, Answer B is correct.
76. Answer A is correct. Section 5 of the Fourteenth Amendment gives Congress the power to enforce the provisions of the Fourteenth Amendment by appropriate legislation. Congressional legislation is appropriate within the meaning of Section 5 if (1) it seeks to prevent or remedy actions by state or local governments that violate provisions of the Fourteenth Amendment, and (2) its requirements are congruent with and proportional to the Fourteenth Amendment violations it addresses. In this case, the legislation seeks to prevent actions by state agencies that violate the due process clause of the Fourteenth Amendment, and the requirements of the legislation appear to be proportional to and congruent with the Fourteenth Amendment violations Congress has sought to prevent.
77. Answer C is correct. The usual rule prohibiting Congress from enacting a statute overruling a constitutional decision of the U.S. Supreme Court does not apply to enactments based on Congress's commerce power because the Constitution gives Congress plenary authority to regulate conduct that is within the commerce power. Thus, Answer A is incorrect. The congressional statute permitting any state to regulate the degree of light reflectiveness of the exteriors of commercial trucks using the state's highways is a valid enactment of the commerce power because commercial trucks are instrumentalities of interstate commerce. Thus, Answer C is correct.
78. Answer D is correct. The disparate impact of a law on women, without more, does not constitute sex discrimination and thus is insufficient by itself to trigger heightened judicial scrutiny of the constitutionality of the law. In order for the ordinance to be considered discriminatory against women, a court must find that the city adopted the ordinance because it would have a disparate impact on women, and there are no facts upon which to base such a finding. The ordinance is constitutional because it is rationally related to a legitimate government objective. Thus, Answer D is correct.
79. Answer B is correct. The political party's best argument is that the ordinance is not narrowly tailored to an important government interest, nor does it leave open alternative channels of communication. Because the ordinance is a content-neutral restriction of expression, it must satisfy intermediate scrutiny. Intermediate scrutiny requires the city to prove that the ordinance is narrowly tailored to an important government interest and that it leaves open alternative channels of communication. Thus, Answer B is correct.
80. Answer B is correct. The law does not trigger heightened judicial scrutiny because it neither classifies regulatory subjects on a constitutionally suspect basis nor unduly burdens the exercise of a fundamental right. The appropriate constitutional standard of review therefore is whether the law is rationally related to a legitimate government interest. The apparent legislative judgment that diagnostic centers not affiliated with hospitals would be less reliable than hospitals is rational, regardless of whether it is in fact correct. Thus, Answer B is correct.
81. Answer A is correct. The tax clause of Article I, Section 8 gives Congress plenary power to raise revenue through taxes. Application of the tax to the sale of newspapers does not violate the freedom of the press protected by the First Amendment and trigger strict scrutiny because the tax is generally applicable and in no way targets press operations. Thus, Answer A is correct, and Answers B and D are incorrect.
82. Answer D is correct. The case arguably is not ripe for adjudication because the agency's inspection does not itself pose any risk of harm to residents of the community. The residents face a risk of harm only if the agency selects their community as a site for a landfill, but on these facts it is unclear whether or when the community would be selected. Thus, Answer D is correct.
83. Answer A is correct. Congress's statute is unconstitutional because the U.S. Supreme Court held, in New York v. United States, 505 U.S. 144 (1992), that the concept of federalism embedded in the Tenth Amendment disables Congress from requiring states to enact laws or to administer federal law. Thus, Answer A is correct. Answer B is incorrect. The commerce clause of Article I empowers Congress to regulate economic or commercial activity that, in the aggregate, has a substantial effect on interstate commerce. The sale of controlled substances is a commercial activity. The facts disclose "a dramatic increase in the number of elementary and secondary school students bringing controlled substances to school for sale," suggesting that, in the aggregate, this activity has a sufficient effect on interstate commerce to bring the regulation within Congress's commerce power. In addition, the statutory limitation requiring that any controlled substance must have been previously transported in interstate commerce may provide a sufficient jurisdictional nexus with interstate commerce to bring Congress's statute within the commerce power.
84. Answer A is correct. Any permanent physical occupation by the government of private property is a taking for which just compensation to the property owner is required. It is irrelevant that in this case the portion of the owner's tract of land to be occupied by the government is unused and very small. Thus, Answer C is incorrect. Nor is it relevant that in this case the construction and operation of the facility will not affect any of the uses that the owner is currently making of the entire tract of land. Because in this case construction and operation of the facility would constitute a permanent physical occupation by the government of the owner's land, the government would have to compensate the owner for having taken his property. Thus, Answer A is correct.
85. Answer A is correct. U.S. Supreme Court precedent establishes that an individual's decision to marry is a fundamental right, and that therefore laws that unduly burden a decision to marry trigger strict judicial scrutiny. This strict scrutiny standard obligates the state to prove that the law is necessary to serve a compelling government interest. Here, the law burdens the right to marry by requiring that a person who has been divorced may not remarry unless he or she is current on all child-support payments. Because this law burdens the fundamental right to marry, the court will apply the strict scrutiny standard and require the state to prove that the law is necessary to serve a compelling state interest.
86. Answer A is incorrect. The Fourteenth Amendment's enforcement clause supports only congressional regulation of state action. The enforcement clause therefore would not support application of the statute to private individuals and entities.
87. Answer A is incorrect. Although the state law deprives the principal of his freedom to enroll foreign nationals in his school, this liberty interest is not fundamental. A court therefore might well reject a due process challenge to the state's application of the law to the principal on the ground that the application is rationally related to a legitimate government interest.Answer B is incorrect. Although the state law classifies state employees who provide the prohibited services and subjects them to a special penalty, the classification is not constitutionally suspect. Nor does it burden a fundamental individual right. A court therefore would reject an equal protection challenge to the state's application of the law to the principal because the classification is rationally related to a legitimate government interest.
88. Answer A is correct. A bill of attainder is a legislative act that inflicts punishment on named individuals or on easily identifiable members of groups. Because the statute proscribes a type of conduct when engaged in by anyone, it is inaccurate to say that the statute is a bill of attainder.
89. Answer D is correct. The protester's burning of the tax code qualifies as expressive conduct protected by the free speech clause of the First Amendment because (1) the protester intended to communicate a message and (2) the audience was likely to understand the communication. But because the state's interest underlying the law that the protester violated (preventing the burning of public buildings) is unrelated to the message communicated by the burning of the tax code, a court will not subject the state law to strict scrutiny. Instead, the court will uphold application of the law to the protester if the law is narrowly tailored to further a substantial government interest, a standard of justification that this law should satisfy easily. Thus, Answer D is correct.
90. Answer B is correct. The protections afforded by the Fourteenth Amendment apply only to conduct that is attributable to the state. Because the professor was discharged by a private university and not by a state actor, the Fourteenth Amendment does not apply.
91. Answer A is correct. The U.S. Supreme Court does not have appellate jurisdiction over a decision by the highest court of a state when that decision is supported by state law grounds that are (1) independent of federal law and (2) adequate to sustain the result in the case. The result in this case is fully supported by the state court's ruling that the law violated the state constitution, and this ruling is independent of any consideration of the federal constitutional claim. Accordingly, even if the U.S. Supreme Court were to reverse the state court's ruling on the federal constitutional issue, the result in the case would not change, and thus the decision is not reviewable.
92. Answer A is correct. Two provisions of the statute violate the appointments clause of the Constitution. First, the provision limiting the President to a list of three potential nominees violates the President's power to nominate principal officers. Second, the automatic confirmation provision violates the requirement that the Senate consent to the appointment of a principal officer.
93. Answer A is correct. The drug company's claim that the drug was safe for children is commercial speech because it promoted the sale of a commercial product. The court should not grant the motion to dismiss because U.S. Supreme Court precedent establishes that the First Amendment does not protect commercial speech that is false or misleading, regardless of whether the speaker knew that the speech was false or misleading. Thus, Answer A is correct.
94. Answer A is incorrect. The state need not demonstrate a compelling interest in order to justify its decision to accept the local company's bid. When the state participates in the economic marketplace, it may decide with whom it wishes to contract without regard to the restrictions of the dormant commerce clause. Here the state is a market participant because it is selling the rights to exploit a natural gas field that it owns. The usual rules of the dormant commerce clause restricting the power of the state to prefer local economic actors over interstate companies therefore do not apply. Answer B is the correct answer.
95. Answer D is correct. U.S. Supreme Court precedent establishes that a state law requiring children to attend public schools infringes on the right of parents to control the upbringing of their children. Supreme Court precedent also establishes that this right is a fundamental aspect of liberty protected by the due process clause of the Fourteenth Amendment. A state law that infringes on that right must therefore undergo strict judicial scrutiny, which requires the state to prove that the law is necessary to further a compelling state interest. In this case, the state cannot satisfy strict scrutiny, because requiring private school students to attend public schools in order to raise the test scores in public school districts is not necessary to further a compelling state interest. Thus, Answer D is correct.
96. Answer D is correct. The provision of the statute authorizing a congressional committee to overturn the agency's designations of federal lands is an unconstitutional legislative veto. Congress may overturn the action of an executive agency only by enacting a statute. Thus, Answer D is correct.
97. Answer D is correct. The ordinance is a content-based regulation of speech because it permits an expressive activity (picketing) on one subject (neighborhood zoning requirements) and prohibits it on all other subjects. Such a content-based restriction on expression presumptively violates the freedom of speech protected by the First Amendment. To justify a content-based restriction, the government must satisfy strict judicial scrutiny, proving that the restriction is necessary to serve a compelling government interest. The city would be unable to meet that burden in this case. Thus, Answer D is correct, and Answer A is incorrect.
98. Answer D is correct. Congress may exercise its authority under the commerce clause to permit a state regulation that would otherwise violate the negative implications of the commerce clause, as long as the congressional legislation unmistakably grants such permission. The federal statute that permits states to restrict or prohibit the transport of groundwater from one state to another qualifies as such legislation. Thus, Answer D is correct.
99. Answer D is correct. The U.S. Supreme Court has held that the freedom of association protected by the First Amendment prohibits a state from inquiring about an individual's associations in order to withhold a right or benefit because of the individual's beliefs. Although the state has a legitimate interest in determining the character and professional competence of bar applicants, the Court has held that the state has other means of making these determinations that are less restrictive of First Amendment freedoms. Thus, Answer D is correct.
100. B is the correct answer. The supremacy clause provides that federal law will override inconsistent state laws. So in a supremacy clause analysis of this statute, the most important consideration among these four choices are the treaties and immigration laws of the United States. If they conflict with this statute, they will override it. A is incorrect because only federal laws prevail, not federal conditions. C is incorrect because the need of the state for this statute is irrelevant if it conflicts with validly enacted federal law. D is incorrect because federal laws are the only relevant consideration.
101. B is the correct answer.
102. C is the correct answer.
103. A is the correct answer.
104. C is the correct answer. The federal courts abstain from deciding political questions, which are disputes that present issues committed by the Constitution to a coordinate branch of government. Here, the Constitution vests the power to conduct foreign relations to the President with some powers to Congress. And, therefore, a federal court would dismiss the suit as presenting a nonjusticiable political question.
105. Answer A is correct. The text of the exceptions clause of Article III does not limit congressional power to strip the U.S. Supreme Court of its appellate jurisdiction to hear particular types of cases, and the Court's own decisions arguably support the view that the exceptions clause grants Congress this power. Thus, Answer A is correct.
106. B is the correct answer. In order to have standing, a party must have an injury that is caused by the law being challenged and that can be redressed by the relief sought--here invalidation of the statute. A politician intending to make a speech on the Capitol steps during a prohibited time would have an injury that is imminent enough to create standing. A is incorrect because taxpayers do not have the kind of concrete injury to challenge a general statute unrelated to a tax the taxpayer is subject to. C is incorrect because the legislator who voted against the statute does not have a legally cognizable injury. D is incorrect because an organization that seeks to invalidate unconstitutional laws has suffered no injury.
107. B is the correct answer. While taxpayers generally lack standing to challenge general spending statutes, the taxpayer is challenging the spending on the ground that this particular spending violates a specific constitutional limitation on spending. Therefore, he has standing. A is incorrect because taxpayers do not have standing to challenge every spending authorization. C is incorrect because in the case of establishment clause challenges, the taxpayer need not show a special nexus in order to have standing. D is incorrect because state support of private schools is state action.
108. A is the correct answer. Congress has several enumerated powers and implied within those powers is the power to preserve the federal monopoly over foreign affairs. B is incorrect because the President shares power with Congress, which has primary authority to conduct foreign affairs. C is incorrect because there is no foreign relations exception to the First Amendment. D is incorrect because there is not a more lenient standard for federal criminal laws related to international affairs.
109. D is the correct answer. The federal courts have jurisdiction only over cases and controversies, which means that there must be two parties with a real stake in the controversy, one of whom has been injured by the other's actions, and that the relief sought by the injured party must remedy that injury. Moreover, the court must have the power to give effect to its judgments. Here, it is unclear that the disputes over the grant-in-aid funds would involve an injury that could confer standing. But more importantly, the agency dispensing the funds is free not to follow the court's judgment. Thus, the court is doing nothing more than issuing an advisory opinion, rather than deciding a case or controversy.
110. D is the correct answer. The government cannot impose a burden on someone because of that person's religious beliefs unless the measure is necessary to promote a compelling government interest. And the government may not evaluate whether the religion is worth protecting or whether the person held a sincere religious belief. Therefore, the strongest constitutional defense is that the government's prosecution denied the defendant the right of free exercise of religion because it required the state to analyze the sincerity of his religious beliefs.
111. A is the correct answer. There is no case or controversy here because the candidate lacks standing. One reason he lacks standing is that the issue is not yet ripe for review. The issue is not ripe because the candidate will not suffer an injury until he is barred from running for office or until he has won the election. At that point, an injury will either have occurred or will be so certain to occur as to confer standing. The second reason the candidate lacks standing is that the candidate has not joined the correct party to provide him the relief that will redress the injury. The chairman of his local political party would be the correct party to sue if the political party refuses to put him on the ballot due to the residency requirement. However, the candidate seems to be challenging the qualifications with the assumption that he will not be allowed to take office. The correct defendant would be whichever official enforces those qualifications and determines whether elected officials take office, presumably election officials. Finally, the mere agreement by the parties that the court should consider the issue is irrelevant; standing cannot be created by agreement.
112. C is the correct answer. The federal statute is very general and does not regulate radon testers to the extent of licensing them. Therefore, the general federal statute does not conflict with the more rigorous state licensing standards, and those licensing standards are not superseded by the federal law under the supremacy clause. Furthermore, the state's licensing requirement is constitutional because it is reasonably related to a legitimate public interest.
113. Answer B is correct. The privileges and immunities clause of Article IV, Section 2, Clause 1 of the Constitution does not apply on these facts. The clause only reaches actions by a state that discriminate against citizens of other states. The woman is a citizen of the state that employed her because she was a resident of that state (Fourteenth Amendment, Section 1).
114. Answer D is correct. The case arguably is not ripe for adjudication because the agency's inspection does not itself pose any risk of harm to residents of the community. The residents face a risk of harm only if the agency selects their community as a site for a landfill, but on these facts it is unclear whether or when the community would be selected. Thus, Answer D is correct.
115. Answer A is correct. Congress's statute is unconstitutional because the U.S. Supreme Court held, in New York v. United States, 505 U.S. 144 (1992), that the concept of federalism embedded in the Tenth Amendment disables Congress from requiring states to enact laws or to administer federal law. Thus, Answer A is correct.