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Question 1.

Declaratory judgement

To bring a case of unconstitutionality, there must be a justiciable issue and the party must have standing. Justiciable issues must be issues which are not be a political question, but a legal question that the court can rule on, the issue should be (ii) ripe, (iii) non-moot, (iv) actual controversy which can be remedied by a decision. Courts may not rule on political questions, or render judgements which are advisory opinions on a legislation which has not yet been enacted or the applicability of such a legislation. A case must be ripe, thus there must have been actual harm, or an imminent risk of harm, and non-moot, so a decision of a case in favor of the plaintiff must have the potential to remedy the harm or risk at hand. In addition, a plaintiff must have standing to be able to file a claim of unconstitutionality. Standing means that the plaintiff must be the actual party subject to harm or imminent, or in rare cases file a case for a party that cannot file the case on their own (a legal guardian filing a case against legislation which impacts their child is an example). Here the plaintiff must also be subject to harm, there must be a reason for the actual party to not file the case (competence is a good example of why a minor would not file on their own) and the other requirements must be met.

The attorney general (AG) has standing to bring a declaratory judgement to this case, as it will be enacted and there is imminent harm which will occur to State X once enacted, as the other states may not bring suit to the case and benefit from funds which State X will not benefit from.

Unconstitutionality of Act

In this case, the AG may claim that the act is unconstitutional based on (1) the federal government requiring the states to enact legislation that requires them to set a minimum of 50% of public school budgets to the purchase of fresh fruit or vegetables stating that such requirement breaches, as the federal government does not have the right to compel states to enact legislation, and that (2) as said legislation has significant additional subsidies for public schools where the majority of the student population is non-Caucasian, the Act is discriminatory as it prefers non-Caucasian majority schools.

I. Spending and Taxing Clause:

Within the principle of federalism based on the United States Constitution (USC) the federal government may only exercise enumerated powers in the USC and the states have general powers unless specifically limited by the USC. The federal government does not have the power to compel states to enact any legislation. On the other hand it has plenary spending and taxing power, meaning it can allocate budgets to further specific interests and can use said spending and taxing power to provide funds to states which wish to benefit from said allocations. In such cases, it is deemed constitutional for the federal government to tie conditions to the distribution of said funds. Yet conditions cannot be tied in form of mandating or compelling to enact any legislation, but rather must be in form of requirements that must be met for a state to be able to obtain funds based on an act. As an example, the federal government

may provide funds to states for their motorways, based on the condition that there is a maximum speed of 50 miles per hour in said state's motorways. But Congress may not compel or mandate states to enact legislation of a maximum speed limit of 50 mph for states to obtain said funds. That would be unconstitutional.

Here, the Act calls for significant funds for states for public schools for physical education, and as a condition of said legislation **requires** states to enact legislation allocating min. 50% of public school lunch budgets to fresh fruits and vegetables. The AG will claim that the requirement to enact legislation is unconstitutional because under USC the federal government cannot compel State X to enact any legislation. The AG is likely to succeed in this constitutional challenge as the legislation requires states to enact legislation to meet the Act's conditions. Had the Act stated the minimum fresh fruit-vegetable allocation of budget as a required condition, without mandating State X to enact legislation, the AG would not have been likely to succeed.

II. Equal Protection Clause:

Under the USC, and binding the states based on the 14th Amendment, the government must provide equal protection to persons, and may not discriminate based on race, alienation, ethnic heritage, or other quasi-suspect classes. In addition, based on the 13th Amendment, which is applicable to government and private action, people may not be discriminated against based on race, gender, sexual orientation, or similar protected qualities.

If a legislation is discriminatory at its face, and is based on suspect class (national origin, alienage, race) then it is subject to strict scrutiny (SS). A legislation will only pass SS if it is necessary and narrowly tailored to serves a compelling government interest. This is a high bar and most legislation will not pass this. On the other hand if legislation mentions a suspect class but the aim is not to discriminate, then rational basis is applied. Rational basis (RB) requires a rational relations with a legitimate government interest. If the Congress, based on spending and taxing power aims to remediate previous injustice or prior inequality by providing for additional resources to a suspect or quasi-suspect class through an act, this is not deemed at its face discriminatory and RB applies to said legislation. In SS, burden of proof is on the government, whereas in RB burden of proof is on the plaintiff.

Here, the legislation refers to race, namely provides additional funds to non-Caucasian majority public schools. AG of State X will claim that this is discriminatory and that the government must prove that the legislation is narrowly tailored to serve a compelling government interest. The Department of Education and the NASD will claim that the legislation is based on RB and SS should not apply. In such case the government will be able to prove that there is a rational relation between lunch budgets allocating at least 50% to fresh fruits and vegetables and the fight against diabetes and better health for school age children. The AG will likely not succeed.

Question 2.

Organizational standing

To bring a case of unconstitutionality, there must be a justiciable issue and the party must have standing. The case not be a political question, but a legal question that the court can rule on, the issue should be (ii) ripe, (iii) non-moot, (iv) actual controversy which can be remedied by a decision. Courts may not rule on political questions, or render judgements which are advisory opinions on a legislation which has not yet been enacted or the applicability of such a legislation.

A case must be ripe, thus there must have been actual harm, or an imminent risk of harm, and non-moot, so a decision of a case in favor of the plaintiff must have the potential to remedy the harm or risk at hand. In addition, a plaintiff must have standing to be able to file a claim of unconstitutionality. Standing means that the plaintiff must be the actual party subject to harm or imminent, or in rare cases file a case for a party that cannot file the case on their own (a legal guardian filing a case against legislation which impacts their child is an example). Here the plaintiff must also be subject to harm, there must be a reason for the actual party to not file the case (competence is a good example of why a minor would not file on their own) and the other requirements must be met.

It is also possible for organizations to have standing, this is called organizational standing. Here an organization may file a case on behalf of their members. The conditions required here are that (i) the case falls within the *raison d'etre* of the organization, meaning the case falls within the subject matter of the organization, it exists to further the interests of its members pertaining to the issues which form the case at hand, (ii) there is no requirement for the members to file independent lawsuits (for example the case does not contain individual injuries that need to be proven on a case basis) and the lawsuit by the organization will remedy the harm/imminent harm faced by the members, and (iii) the case is ripe and not moot.

Here, the case that the National Association of School Dietitians is requesting to intervene pertains to the Act which aims to provide additional funds for public schools with physical education classes and also requires states to require schools to enact legislation to allocate 50% of their lunch food budgets to fresh fruit and vegetables. This issue lies within the the NASD's charter on promoting healthy diets for school age children, so is the interest that the NASD is trying to further. There is no requirement for individual members of the organization to file individual suits, because the intervention of NASD will be sufficient to defend the members' interests.

Thus, it is clear that the NASD has standing to intervene in said case.

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