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1.) What constitutional challenges can the attorney general make to the Act and are they likely to succeed?

Standing

In order for a party to bring suit, they must have standing in court. Standing is determined if there is injury, causation, and redressability.

Injury

Injury is determined if the party suffered some harm due to the actions of the other party. Harm can be physical, or their rights being violated.

Here, State X's attorney general (X) has brought suit because they will claim that their injury is that the Act is requiring that if states are to accept the additional funds for public schools, then they are also forced to enact legislation setting as a minimum that 50% of public school lunch food budgets be allocated to the purchase of fresh fruits and vegetables. X will argue that this is commandeering and should consider the act unconstitutional.

Thus, there is likely injury because the Act affects all states that accept the funds and X is being represented by an attorney general.

Causation

Causation is determined when the party that is being sued is the cause of the injury that the other party is suing about.

Here, X is suing Congress. There is causation because they are the ones who plan to enact the Act and created the Act, alongside the president who has signed the Act.

Thus, there is causation.

Redressability

There must be redressability in order for a party to have standing. Redressability is when there is a way for the court to remedy the party's injury.

Here, X will argue that there is redressability because they will seek that the court find the Act unconstitutional so that the Act cannot go forward and be put into effect. Without the Act, then X's injury will be remedied since the Act will not cause the harm.

Thus, there is redressability.

Ripeness: No Injury Yet

A party cannot have standing if there is no injury yet or the injury is anticipated or too ripe to be brought into court.

Here, Congress will argue that the case cannot be brought into court yet because the facts

state that the Act has not gone into effect yet. If the Act has not gone into effect yet, X will only be suing based on fear of what might happen when the Act is in effect. Moreover, the Act is not affecting X's state because they may choose to not take the additional funds.

However, X will argue that even though the Act is not technically in effect yet, Congress has already passed the Act and the President has signed the Act. It is only a matter of time before the Act is put into effect. Moreover, even though the Act is still not affecting X's state, X might want to take the additional funding without the alleged commandeering of buying school lunch foods.

Thus, X likely has standing because the Act will soon be brought into effect.

Therefore, the court will likely find that there is standing.

Congress did not have the power to pass the legislation

In order for Congress to pass legislation, they must have passed it through one of their enumerated powers. Their powers consist of the Commerce Clause, Taxing, Spending, Amendments to the Constitution, and other powers such as the coins.

Spending

Congress has the power to determine where they use or allocate their funds. They may determine the use of funds properly and reasonably if the funds are used for the general welfare of the people. Congress is also allowed to make the funds conditional as long as the condition is reasonably connected or there is a proper nexus to the purpose of the fund allocation.

Here, Congress will argue that the Act is constitutional because its primary purpose is to provide additional funds to states for public schools with daily physical education classes for students. Congress is worried about the significant rise in diabetes among school-age children and based the Act on links between diabetes, exercise and diet. There is a connection between Congress' concern and their solution.

Thus, the court will find that there is a connection/nexus between Congress' concerns and what the funding is being used for.

Therefore, the court will likely find that Congress did have the power to pass the Act.

If Congress did have the power to pass legislation, they went too far

Even if Congress used their enumerated powers to pass a piece of legislation, like the Act, it can still be found unconstitutional if Congress went too far and commandeered the states or did not apply the legislation in a general manner.

Commandeering

Commandeering occurs when the Congress passes legislation that forces the states to adopt a law, creates an unreasonable condition that takes away too much funds away, or forces the states to require passing similar law.

Here, X will argue that even if Congress had the authority to pass the law, they went too far in conditioning too much funds. A state that wants to take the additional funds requires that 50% of

public school lunch food budgets be allocated to the purchase of fresh fruits and vegetables. Although the goal sounds compassionate, the facts state that the average public school spends only "25% of their school lunch budgets on fresh fruits and vegetables." If the average school spends only 25%, forcing the schools to spend an additional 25% would be too strong of a condition. The schools may have plans on using the budget in another manner such as the hiring of additional physical education teachers and purchasing physical education equipment. Additionally, Congress is not allowed to force states to make legislation. The facts clearly state that "the Act requires that states accepting the funds must enact legislation setting..." This is commandeering and is unconstitutional. The funds for healthy eating should not be held hostage by congress forcing states to make legislation.

However, Congress will argue that the condition they placed is purely voluntary and the state does not have to accept the condition if they do not want to. Moreover, it is not a reallocation of the funds the schools already have, which is why a sudden 50% of spending on fruits and vegetables sounds scary, but they would be receiving additional funds. There would be more funds to pay for the other matters like equipment and PE teachers, but now there will also be enough money for an abundant amount of fruits and vegetables.

Therefore, the court will likely find that the Act is unconstitutional because even if the Act is voluntary to the states, it forces states to enact legislation if they want funds, which is commandeering and unconstitutional

Equal Protection

Equal protection is an argument that is raised when a government act impedes on the rights of the people in a way that is determined by facial classification. Facial classification is determined when there is a clear favor in who is benefitting from the legislation and who is clearly at a disadvantage. Groups that can bring in equal protection arguments must be an identifiable group that is fundamentally protected.

Facial Classification

Facial classification consists of a an identifiable group that is being disadvantaged in the legislation. If a group is being discriminated against, there must be a history of discrimination that Congress is attempting to remedy.

Here, X will argue that those that are being disadvantaged are Caucasian students that are do not live in minority and low-income communities. They are not being treated to the additional subsidies that the non-caucasian and minority students are being treated with. Race is a group that has fundamental rights to not be discriminated against and warrants strict scrutiny. A history of diabetes is not a history that justifies the discrimination of a certain race. It would only count if there was racial discrimination and the purpose of the Act was to remedy racial discrimination.

Congress will argue that there is a history of diabetes that specifically harmed more non-caucasian and minorities and that justifies the additional subsidies.

Strict Scrutiny

Strict scrutiny standard is when the compelling interest is narrowly/necessarily tailored.

With applying the scrutiny, the court will find that the Act is not narrowly tailored for a compelling interest. Race is a fundamentally protected and the Act is not enough to justify the discrimination of a race when the Act does not specifically remedy a historical racial discrimination, but instead, diabetes.

Thus, the court with applying strict scrutiny, finds that the Act is unconstitutional.

Therefore, Equal protection is violated and the act should be considered unconstitutional.

Substantive Due Process

Substantive due process is when a fundamental right is violated and the scrutiny level is not satisfied enough to justify the violation.

2.) Does NASD have standing to intervene?

Standing

See rule above.

3rd party standing

in order for a 3rd party to have standing, there must be able to bring a suit on behalf of someone else if they can also feel the injury and have cause to bring such an action, and have redressability.

Here, NASD likely has 3rd party standing because they are the National Association of School Dieticians and will be the ones first hand handling the diabetes and diet of children in schools. They have an interest in the case to continue and would likely suffer an injury to the children they work with if the Act does not go forward.

Thus, NASD has 3rd party standing.

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