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1. What Constitutional Challenges Can the Attorney General Make to the Act and are they likely to succeed?

10th Amendment No Commandeering

The 10th Amendment provides that Congress cannot commandeer the states and force the states to enact specific laws and provides the states its own freedom in enacting their laws.

Here, the attorney general for State X will argue that in enacting the Childhood Physical Education Act ("Act") that Congress is violating the 10th amendment no commandeering clause because they are essentially requiring State X 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. This is a violation of the 10th amendment because Congress is requiring State X to enact legislation in violation and thus Congress is commandeering State X. State X will further argue that although Congress can apportion its spending and funds to the states, requiring State X to enact legislation is a clear violation of the 10th Amendment and can likely expose State X to further litigation on the part of its citizens through the application of the legislation because the legislation has a disproportionate effect on caucasian communities because there are additional funds apportioned to public schools in non-caucasian communities.

Powers Held by Congress for General Welfare, Apportionment and Spending

Congress holds specific powers that includes the apportionment of funds and spending for the general welfare. Here, Congress will argue that the Act is constitutional because it is within Congress' vested powers of spending for the general welfare because there has been a significant rise in diabetes among school age children and based upon the link between diabetes, exercise and diet. Additionally Congress will argue that the Act was signed by the President and is administered by the Federal Department of Education which additionally is provided for the general welfare of the citizens of State X. Congress will argue that public schools are signifcally affected by the childhood diabetes and that the testimony before Congress has revealed that childhood diabetes tend to be higher in minority and low income communities and thus this is imperative to the general welfare. Congress will further argue that the funds are optional and that if State X is not concerned with its state welfare than Congress has no choice but to intervene in the general welfare of the citizens of State X. The funds will be for hiring of additional physical education teachers and the purchase of physical education equipment thus in furtherance of the health and welfare of the school age children in State X.

The court will hold that the Act is unconstitutional because it requires that State X "enact" legislature in violation of the 10th amendment.

2. Does NASD have standing to intervene?

A party may seek intervention into a case where the party's interest is significantly affected, the

interest is not represented in the case and the outcome would be detrimental to the interest of the party (stake in the outcome).

Interest Significantly Affected

A party's interest is affected if the case involves an interest of the party in the case.

Here, NASD will argue that they should be allowed to intervene because their interest in promoting healthy diets for school age children especially through lunch programs is significantly affected because its is impeding on the current program provided by NASD's program. Moreover, enacting this legislature affects the programs promoted and implemented by NASD that include the school lunch programs and thus NASD's interest is affected.

The court will find that NASD has an affected interest in the case.

Interest Not Represented by Any Party in Case

In order to intervene, the party that is requesting intervention does not have an interest representing by any party to the case.

Here, NASD will argue that their interest is not currently represented in the action because the action involves State X and its challenge against the constitutionality of the Act by Congress. NASD will argue that the case does not currently include NASD and the interest that NASD has is not represented by State X or Congress. Thus, NASD's interest is currently not represented by any party in the case and allowing intervention will allow NASD's interest to be represented in the case.

The court will find that there is not party representing NASD in the case.

Outcome Detrimental to Interest (Stake in Case)

The outcome of the case must be detrimental to the intervening party's interest.

Here NASD will argue that the outcome would be detrimental to NASD's interest because if found constitutional, the act would limit the methods by which NASD currently distributes and promotes the school lunch programs. NASD will further argue that not allowing the intervention will effect NASD's interest because budgets for specific foods including requiring that 50% of public school lunch budgets be allocated to the purchase of fresh foods and vegetables will drastically change the NASD's budgets and severely impact their purpose in providing lunch programs to public schools and low income communities.

Congress will likely argue that the intervention is not necessary because currently the testimony revealed that rates of childhood diabetes tend to be higher in minority and low income communities and thus NASD is in essence failing those communities. Additionally, Congress will argue that the testimony additionally revealed that on average public schools spend only 25% of their school lunch budgets on fresh fruit and vegetables and thus the interest is not starkly contrasted as argued by NASD and a 25% percent increase is not likely to affect an interest to its detriment. Lastly Congress will argue that NASD is not affected by the legislature as a whole and thus does not have standing to intervene since only a portion of the Act affects NASD.

The court will find that NASD has standing to intervene.

Conclusion: The Court will find that the Act is unconstitutional due to requiring State X to enact legislature and NASD can properly intervene in the action.

Question #2 Final Word Count = 1000

END OF EXAM