

USE YOUR IMAGINATION™

Blue Book

EXAMINATION BOOK

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QUESTION 1

LEGALITY ISSUE

Is the ALQEA properly delegated?

To be properly delegated the regulation must contain intelligible principles. Intelligible

Principles (IP) are a specific formula whereas

a set of guidelines are created so there is something

to measure the delegated discretion. Here, an

argument can be made that this act contains

no IP as it allows/authorizes the President to

take whatever steps necessary & appropriate to

limit immigration.

Usually if an act/regulation contains no IP,

it will be ruled as being invalid & unconstitutional.

We see this in the cases of Panama & Paulter case

✓ However the problem that CFMEI will bump into is the idea that this could be also argued as a field where flexibility & congressional policy constitutes the main essence of the program (FAHET & Pesticide cases). plus non-delegation theory pretty much obsolete!

✓ The policy of the IP is to make sure there are certain guidelines that we can measure against the delegated discretion, & also that the court charged w/ measuring ~~this~~ the actions can measure ^{review} it against ascertainable standards. There since there appears to be no IP, a strong argument can be made that we have nothing to measure, no guidelines to follow, & there is going to be an unbridled & unfettered authority & discretion.

However, ALQEA could be argued that it would fall into the field where flexibility is necessary b/c the fear of terrorism is something the public has a great interest in & the policy of the act is to limit terrorism activity & this act fits that policy.

ALQEA will argue that we need innovation to be able to experiment & determine just exactly would be the best IP for this issue. However, I will argue public interest is not enough to ~~take away~~ stray away from the requirement of IP. Terrorism is nothing new & this isn't a field where we need to experiment.

I would suggest that this issue could be decided

either way. There appears to be strong argument regarding the issue of IP. My main ^{strategy/} argument would be to press hard on the Policy of IP - To have guidelines where ~~we can~~ we \rightarrow the reviewing ctr has something to measure the ~~&~~ exercise of the delegated discretion against ascertainable standards. And in this case there are none.

SEPARATION OF POWERS?

Here there are ~~20~~ members of the commission,

✓ w/ members from all 3 branches of the gov. There

is a separation of Powers issue b/c The ^{congress} ~~senate~~

is limiting who the president can appoint. Four

needs to be from senate & 1 from S.Ct. Since

ALQEA seems to be ~~a~~ ^{performing} a executive function,

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the judiciary & legislative branches are involved.

They can counter this argument by stating that there is no sep. of pow. issue b/c none of the other branches is interfering w/ the function of the agency & commission & they don't have the power to terminate (Bowers). But I will base the majority of my argument on this issue

on the fact that the selection of the president is

limited. Pres. elected officials + Sup. Ct. judges can't serve in any other Govt capacity, while in office

Judicial Review (JR)

Judicial Review here is a strong argument.

The ^{Act} statute/provision is silent w/ respect to Judicial

Review. Therefore since JR is not expressly prohibited

the hurdle of § 701 (a)(1) is cleared (STATUTORY PROHIBITION)

We must look into congressional intent to see if JR is applicable. I will argue that since the sanctions that are imposed (imprisonment, deportation, fines, etc.) are extremities congress intended there to be procedural safeguards such as JR.

JR is good as it protects against arbitrary & capricious & even an abuse of discretion. w/o JR we would have a runaway 4TH Branch of the govt.

But in order for CFMEI to have JR there would need to be standing. To have standing there

must be an injury in fact or immediate affect; causal

connection that is fairly traceable to gov action; &

redressability. Since there is nothing in the fact

pattern about any injury happening & only a prospective

look of what will happen (Lujan) the standing issue to JR would fail. But just in case I will argue that CFMEI's ^{formation} ~~purpose~~ is germane to its purpose to counteract this act, & to prohibit such discretionary limitation of Middle Easterners.

SANCTIONS (Due Process & Priv v. Public)

The act gives the agency the authority to provide sanctions for the violations. The extremities that this sanctions provide would weigh heavily on our favor to challenge the act as an improper delegation of power.

People are entitled to be ~~heard~~ have their cases heard by an (Art. III) ct. when it is a private ~~PR~~

right or when it is depriving the people a fundamental right. Here, ALQEA will argue that agencies can hear the cases b/c it is a public right instead of private right. Their argument is based upon the fact that it is of general applicability & not focused on an individual specific problem.

I will argue that since the sanctions include imprisonment, detention, & deportation - which all infringe on an individual's freedom - an article III Ct is the proper forum. The deportation sanction is interesting to note b/c one cannot be deported unless they are already in the U.S & if they are already here DP Due Process would req. them to be heard by art. III before deportation.

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~~Sub~~

Subpoena

✓ Subpoenas are allowed if it is w/ the statutory auth (it is); Pertains to material / relevant info (it is); & not too broad & Burdensome (need more facts)