

## **1. President's Authority**

The issue here is whether the president has authority to create and enforce an executive order to force businesses to produce personal and financial records of their customers to the FBI without a warrant.

### **Produce Personal and Financial Records**

The president can only act within the powers granted to him under the constitution. He has the power to act for the safety of the country. He can enact an order and create certain legislation for the safety of the country. More specifically he may send troops to foreign countries for the protection of the country prior to the declaration of war. However, the regulation of power must be reasonable. It is not a broad power.

Here, the president in response to terrorism, the president wanted to authorize the secretary of homeland security to issue national security requests, and to produce the records to the FBI without a warrant. However, Congress rejected the proposal. Soon thereafter, he issued order 999, for business to produce the personal and financial records of their customers to the FBI without a warrant.

The president's order may not be considered a valid exercise of his power. While the president can act for the safety of the country, he must do so reasonably. Under the 4<sup>th</sup> amendment, applicable to the states through the 14<sup>th</sup> amendment, a citizen has a right to be free from search unless there is a valid warrant or exception to the warrant requirement.

A citizen of state X may claim that the president has exceeded his power for the safety of the country because this would give the FBI an extraordinary power exceeding the 4<sup>th</sup> amendment in the constitution. While the president may act

for the benefit of the country for safety reasons he must not violate the constitutional rights granted to the citizens of the U.S.

Rather, the president should issue alternative orders involving a warrant or other means not to violate the constitution. If the president was allowed to overrule the constitution, then there would be no need for the constitution since the president would be free to violate it anytime he or she wishes.

In addition, the president should consider less restrictive alternatives such as other methods to obtain business and privacy information. Other ways may include subpoenas properly authorized, and investigations by the FBI through lawful means. He cannot simply grant a broad power to other agencies to act freely.

Therefore, because the president's order involving the production of records absent a warrant may violate one's 4<sup>th</sup> amendment, this aspect of the order should not be followed.

#### **State Agencies to comply with Order**

The issue here is whether the president may order states to comply with his executive privilege forcing them to require state and local law enforcement agencies to assist the FBI in obtaining records.

While the federal government may achieve certain results by withholding or granting funds to states, they must not force a state to act a certain way - or more specifically commandeer a state to act a certain way.

Here, the executive order requires the states to assist the FBI in obtaining the records.

The executive order need not be valid because the fed got cannot simply force a state to do a certain act. States may regulate as they wish.

The state may argue that while the fed got may not force the state to comply with the order, they may still attract the state to act accordingly through the proposition of assisting with granting certain federal funding.

However, a state must comply as with the fed got with the constitute. Because the order involves a violation of one's 4 th amendment right to be free from searches and seizures, the order may be invalid.

Therefore, this portion of the order may also be invalid.

Therefore, the executive order may be invalid because it exceeds the power granted to the president under the constitution.

## **2. Pre-empt ion of the order**

The issue here is whether the executive order may pre-empt the state regulation requiring the citizens of the states to produce copies of records to the State Dept.

Under the Supremacy clause, a federal law on point will overrule a state law. Under the 10 th amendment, a state may only regulate under its police power where the fed got has not occupied the field.

Here, while the president issued executive order 999, the state subsequently passed the terrorism prevention act requiring businesses in state X served with national security requests to produce copies of records to the state Dept.

The fed got may argue that the state's subsequent regulation is invalid because the Fendt got has already created legislation in the area. However, assuming the executive order is valid, the areas are substantially similar. The executive order deals with the production of personal and financial records of customers to the FBI without a warrant. While the state X regulation states that the documents be produced to the state X dept of justice.

The state must not regulate in an area where the got has already regulated. Because the Fendt got created a law involving the producing these records by businesses, the states cannot subsequently create their own law to circumvent the production to their own got.

Therefore, because the fed got had already regulated in the area, the state got regulation will be pre-empted under the supremacy clause.

### **3. Violation of 4 th amendment**

#### **4 th Amendment**

The issue here is whether the Order and Act violate one's 4 th amendment rights under the constitution.

Under the 4 th amendment, an individual is free from any and all unreasonable searches and seizures by a got official. Any evidence obtained in violation of one's 4 th amendment violation will be kept out under the exclusionary rule. A got official may conduct a search or seizure so long as he or she has a warrant or that they can show that an exception to the warrant requirement exists.

Here, the president and the states create legislation which interferes with one's 4

th amendment right. The regulations force local businesses to produce business records and personal records of their customers absent any warrant.

To allow such regulation would be in clear violation of one's 4 th amendment. The 4 th amendment granted to the states through the 14 th amendment allows a person to be free from unreasonable searches and seizures. Here, the 4 th amendment is clearly ignored by the president and states allowed them to create regulations to produce records without any warrant. Absent, a warrant, certain exceptions would additionally allow these records to be produced. However, the regulations do not specify any reasons for the production.

Rather, the regulations broadly ask these local businesses to produce these records to the FBI or state got for any reason. This would be unfair and unreasonable.

The State and president may argue that individuals do not have a reasonable expectation of privacy in certain documents such - such as bank records and phone records. However, while certain documents may not be protected within one's privacy, the got should still require a substantial reason for compliance.

### **10 th amendment**

The issue here is whether state X has the power to create legislation to force the production of business records in violation of one's 4 th amendment.

Where Congress remains silent, the states may regulate under the 10 th amendment - police power, for the health, safety, and welfare of its citizens. The state's may regulate so long as the legislation does not intentionally discriminate out of starters or create an undue burden on interstate commerce.

Here, State X citizens may argue that the regulation is invalid because while the

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state may have the power to regulate under the 10 th amendment for the citizen's safety, they must not violate an individuals' rights granted to him under the constitution. State X may not violate or intrude upon one's rights granted to him by the constitution. The 4 th amendment states that the citizen is free from unreasonable searches and seizures.

Here, the state X regulation allows the got to seek business records and personal records without a warrant. This would give the state got a broad power to retrieve any and all business and privacy records it wishes without any reason. This broad power would not be permissible.

Therefore, this regulation should be invalid because it exceeds the state's power under the 10 th amendment.

**END OF EXAM**