

Constitutional Law I

Final Exam

Prof. Pi • Spring 2025

Instructions

- This exam consists of eleven multiple-choice questions.
- You will have *three hours* to complete it.
- In your exam document, list each question number followed by your selected answer, separated by commas. For example:

“1. A, 2. C, 3. D, 4. E, [...]”

- You may only select one answer per question.
- Each answer will be assigned a point value from 0 to 10.
 - 0 is the worst possible answer.
 - 10 is the best possible answer.
 - If you leave a question blank or input an invalid answer (for example, “1. Z, [...],” where “Z” is not a valid option), then you will be awarded 4 points by default.
- Your final exam score will be the sum of the points you receive for all your answers.
- The exam is open-book / open-internet.
- If you have any concerns about errata or apparent inconsistencies in the exam, you may note these in your exam document (after the enumeration of your answer choices).
- **The use of LLMs (e.g., ChatGPT, Gemini, Claude) is *not* permitted on this exam.**

Fact Pattern

On January 14, 2024, in response to rising public concern over the dominance of large national retailers and the disappearance of small farms and local manufacturers, the Vermont legislature passes the Locavore Empowerment and National Accountability Act (“LEAN”). The Act creates a system of annual rebates for Vermont residents who can demonstrate that 85% or more of their annual purchases—measured in dollar value—were made by Vermont-based producers. “Vermont-based producer” means a business whose principal place of manufacture is physically located in Vermont and whose majority owners are Vermont residents. To fund the rebate program, the Act imposes a uniform 2.5% sales tax on all retail transactions in the state, regardless of the seller’s location. The statute does not provide any tax credit or refund to sellers. All revenue from this tax is deposited into a “Community Integrity Fund,” which is used to finance the rebate program.

The LEAN Act begins with the following declaration of legislative findings and purpose:

The General Assembly finds that civic trust, community cohesion, and democratic self-governance depend upon localized economic engagement. The preservation of community-based commerce is essential to the maintenance of a self-governing republic. This Act shall be construed to promote local economic agency, to reward civic commitment through purchasing behavior, and to encourage the social and environmental benefits of proximity-based commerce.

On January 20, a coalition of online retailers files suit in federal district court, arguing that the LEAN Act violates the Dormant Commerce Clause and is preempted by the Federal Consumer Goods Free Transit Act (“FCGFTA”), a federal statute that states as its purpose: “to preserve open and unfettered trade among the several States.”

On February 5, the district court enjoins enforcement of the LEAN Act on both grounds. Vermont appeals. On March 10, the First Circuit reverses in part, holding that further factual development was necessary to determine whether LEAN’s rebate program substantially burdened interstate commerce under the Dormant Commerce Clause. The court remanded for further proceedings. On remand, the district court lifts the injunction and enters judgment for the state, concluding that the LEAN Act is facially neutral, does not discriminate against interstate commerce, and is not preempted by federal law. The plaintiffs appeal. On March 25, the First Circuit affirms.

In response to rising political momentum around similar legislation in other states, Senator Ernie Panders assembles a bipartisan coalition to pass the Federal Authorization of Trade Act (“FAT”). FAT provides that:

Sec. 1. States may adopt community-centric economic incentive programs that reward in-state commercial engagement, as such programs enhance civic participation, economic resilience, and local democratic agency.

Sec. 2. To support qualifying community incentive programs, \$2 billion shall be available to states whose programs are approved under the criteria set forth in this Act. This provision shall be administered by the Department of the Treasury.

Sec. 3. No state law or policy program designed to reward residents for engaging in locally sourced transactions shall be deemed to violate any dormant structural inference arising from the Commerce Clause.

Sec. 4. No court of the United States shall have jurisdiction to review any claim challenging a state rebate or incentive program of the sort described herein, and no writ of *certiorari* shall issue from any state judgment involving such claims.

Sec. 5. The Secretary of the Treasury shall have discretion to determine the eligibility of state programs under this Act and may issue guidance to ensure alignment with the statute’s purpose. The Director of the Office of Management and Budget shall coordinate disbursement schedules, subject to such standards as the Secretary may adopt. Nothing in this section shall be construed to require automatic disbursement absent administrative review. The Secretary may approve or deny any application, in whole or in part, in the Secretary’s sole judgment.

The statute does not specifically reference Vermont or the LEAN Act. Its provisions were enacted as part of a comprehensive appropriations package funding the federal government through the next fiscal year.

On April 1, 2024, President Klump, a proponent of “structuralist” constitutional interpretation, signs the omnibus package into law, but issues a signing statement declaring:¹

The Commerce Clause—very important, very powerful—it has a Dormant meaning, folks, and it’s there for a reason. Everybody knows it. This statute—it’s a disaster—totally undermines that structure. Total mess. I’m signing it, but only because we have to avoid even bigger problems—serious problems—for our great

¹ A signing statement is a written pronouncement issued by the President at the time of signing a bill into law. While not legally binding, it may express interpretive views, constitutional objections, or intentions about how the executive branch will enforce the statute.

country. But let me tell you, nobody—nobody—should think this signature means I approve it. Not even close. Bad statute.

Outraged, Senator Panders declares, “Rebates for buying locally are a *human right*. A *human right*, I say! The President’s unconstitutional signing statement is a violation of *human rights*. The people of Vermont are human, right? So who’s to blame? I blame the millionaires and billionaires!”

On the same day, President Klump issues a memorandum to the Secretary of the Treasury and the Director of the OMB, stating: “No federal funds appropriated under FAT shall be disbursed to any state absent express approval by the President following constitutional review. Treasury and OMB are to suspend all action under FAT until further directive.”

The Secretary of the Treasury promptly announces a “temporary enforcement pause,” but in a press release emphasizes the Department’s “statutory obligation to implement duly enacted appropriations unless and until enjoined.” He states that “executive guidance will be weighed alongside the clear text of the law.”

Meanwhile, the Director of the OMB circulates an internal memo indicating that FAT “remains presumptively valid unless suspended by judicial order,” and requests preliminary disbursement schedules from OMB staff.

On April 7, the President, citing “widespread ambiguity” and “insubordination by very bad people,” files suit in the U.S. District Court for the District of Columbia, naming as defendants the Secretary of the Treasury and the Director of the OMB. The complaint seeks injunctive relief under the Take Care Clause, alleging that the defendants have acted *ultra vires* by refusing to comply with the President’s signing statement and memorandum,² which directed the suspension of FAT disbursements pending constitutional review. The President asserts that their failure to implement the memorandum constitutes “total disrespect for the President’s constitutional powers—and a complete disaster for the Constitution—just terrible.”

The Treasury Secretary and OMB Director respond with motions to dismiss, arguing that the case is nonjusticiable.

² *Ultra vires* refers to acts taken by government officials that exceed the scope of their lawful authority. In federal litigation, a plaintiff may seek equitable relief to prevent *ultra vires* action even in the absence of a specific statutory cause of action.

On April 10, Vermont officials, having projected that the state’s 2.5% retail tax would fall short of covering the Community Integrity Fund’s long-term rebate obligations, submit an application for federal matching funds under FAT shortly after the law’s enactment. The Treasury Department does not act on the application. Concerned that the President’s litigation may delay or foreclose disbursement, Vermont files a motion to intervene in the President’s suit,³ arguing that it has a sovereign and financial interest in the outcome.

By the following spring—March of 2025—Vermont disburses over \$160 million in LEAN rebates based on verified in-state purchasing behavior. Officials indicate that the disbursement was funded entirely through revenue from the Community Integrity Fund. However, they caution that the Fund’s reserves are now substantially depleted, and that without federal matching support, Vermont will be unable to sustain the LEAN program at projected participation levels. State officials express concern that continued federal inaction—potentially shaped by the President’s position—has effectively denied Vermont the financial assistance contemplated under FAT.

Federal courts decline to hear additional challenges to the LEAN program, citing FAT § 4. The online retailers therefore file a second, as-applied Dormant Commerce Clause challenge in Vermont state court, where the case proceeds to the Vermont Supreme Court on a certified question. The retailers argue that the tax-and-rebate structure, while facially neutral, functions to discriminate against interstate commerce and violates the Dormant Commerce Clause as applied.

The Vermont Supreme Court holds that “the program rewards economic virtue rather than punishing economic vice,” and that “no consumer is forced to buy locally—they are simply thanked for doing so.”

In June 2025, following the D.C. Circuit’s decision affirming the dismissal of the President’s suit, the U.S. Supreme Court grants *certiorari* to resolve the consolidated litigation, including the initial facial challenge to the LEAN Act, the President’s intra-executive enforcement suit, and the as-applied Dormant Commerce Clause challenge brought by online retailers.

³ A *motion to intervene* is a procedural mechanism by which a non-party seeks to join ongoing litigation in order to protect its own legal interests. Under Federal Rule of Civil Procedure 24(a), *intervention as of right* is permitted when (1) the applicant claims an interest relating to the subject of the action, (2) the disposition of the action may impair or impede the applicant’s ability to protect that interest, and (3) the existing parties do not adequately represent the applicant’s interest.

Questions

1. Select the strongest argument (retailer justiciability):

- a. The lawsuit was not justiciable because no enforcement action had yet occurred. Courts require plaintiffs to show *actual* (i.e., not hypothetical) application of a law to establish a live controversy. Since no rebates had been issued and no penalties imposed, the plaintiffs had not yet suffered any enforceable legal injury. The plaintiffs thus lacked standing, and the case was not ripe for review.
- b. The retailers had standing because they were subjected to Vermont's new tax. The 2.5% sales tax was in effect on January 20, 2024 when the suit was filed. Since LEAN was being implemented against the retailers at that point, they had a concrete and particularized injury, caused by the law, which the courts could redress by striking down the law as unconstitutional. Therefore, the case was justiciable.
- c. Even if standing could be established, the lawsuit was not ripe because the LEAN program had not yet been implemented. Courts cannot resolve disputes about the validity of legislation when the statute's practical effects are speculative. Without a developed administrative record or evidence of consumer response, the challenge remained premature.
- d. The case was not justiciable because it presented a political question. Moral benefits (like "civic trust" and "community cohesion") are not commensurable with pecuniary costs. Therefore, they cannot be weighed against each other using the *Pike* test. See Gorsuch's plurality opinion from *National Pork*. Therefore, the case was not justiciable.
- e. The case was justiciable because it did not present a political question. Courts are competent to adjudicate disputes about the constitutionality of state laws when they do not implicate foreign affairs or military policy. The retailers' challenge involved questions concerning interstate commerce—not political discretion. Therefore, it was justiciable.
- f. The retailers' claim was justiciable because it was not moot. The LEAN Act remained in effect up to the present day, and the plaintiffs continued to face ongoing economic harm from its incentive structure. Mootness doctrine only applies when the legal controversy is extinguished, and here the ongoing operation of the statute preserved a live dispute for judicial determination. Hence, the case was justiciable.
- g. The retailers had standing because the LEAN Act inflicted concrete injury by distorting competitive market conditions. Even before any rebates were paid, the law created incentives which predictably altered consumer purchasing behavior to favor Vermont-based sellers. That prospective shift in market dynamics created a concrete, particularized economic injury. Under pre-enforcement standing doctrine, plaintiffs may seek judicial review when legislative enactments predictably impose economic disadvantages without waiting for formal enforcement actions.
- h. The lawsuit was ripe for review. The LEAN Act presented a concrete legal question without requiring further administrative development. Courts allow pre-

enforcement review of statutes which are self-executing and which generate immediate consequences. The retailers challenged the structural incentives created by LEAN, not its future enforcement, making the controversy fit for judicial resolution.

- i. The retailers lacked standing because they had not suffered a concrete or particularized injury at the time of filing. Although LEAN was enacted, no rebates had been distributed, and no verifiable shift in consumer behavior had yet occurred. Under *Clapper v. Amnesty International*, plaintiffs cannot establish standing based on speculative or anticipated harm arising from uncertain third-party actions. Here, the chain of causation depended on predictions about future consumer choices, not immediate statutory effects. Without concrete evidence of actual market impact, the retailers' injury was too speculative to support standing.
- j. The retailers lacked standing because *their* conduct was not being regulated by the LEAN Act. The legislation regulates *consumer* behavior—not retailers—using subsidies. Courts require that plaintiffs demonstrate a concrete and particularized injury arising directly from the challenged legal provision. LEAN incentivizes the purchasing behavior of Vermont residents. It does not impose any obligations or restrictions on out-of-state businesses (the 2.5% sales tax applies to all businesses equally—including Vermont businesses). Hence, the plaintiffs cannot claim individualized injury. Absent explicit statutory targeting them, the harm alleged by the plaintiffs is indirect and speculative, and therefore constitutionally insufficient to support standing.
- k. The Commerce Clause imposes limits on Congress, not on the states. LEAN is a state-level program regulating in-state economic behavior and therefore falls outside the Commerce Clause's textual reach. Under the Tenth Amendment, regulatory authority over local economic activities, including programs that promote civic cohesion and community loyalty, remains with the states. Courts are cautious about invalidating state legislation that promotes traditional police power objective such as "civic trust" and "community cohesion." Because LEAN operates solely within Vermont's borders and involves no direct federal regulation of interstate commerce, it must be upheld as an exercise of state sovereignty.

2. Select the strongest argument (preemption):

- a. LEAN is not preempted. The Privileges and Immunities Clause protects the rights of *individuals*—not businesses—to engage in interstate commerce, prohibiting states from discriminating against nonresidents. LEAN's rebate program does not discriminate against nonresident individuals, and it is inapplicable to businesses. It applies neutrally to all consumers and does not restrict access to Vermont's markets. The plaintiffs are retailers not individuals. Since LEAN does not discriminate against nonresident individuals and the Privileges and Immunities Clause does not apply to businesses, there is no preemption.
- b. LEAN is preempted by the FCGFTA because it frustrates Congress's purpose of "preserv[ing] open and unfettered trade among the several States." The LEAN rebate structure, while formally neutral, effectively steers consumer behavior toward intrastate markets. Such incentive programs materially *frustrate*

Congress's objective of maintaining competitive neutrality across states. Therefore, the practical effect of LEAN justifies invalidation.

- c. LEAN is preempted because it violates the Dormant Commerce Clause. The Constitution prohibits states from enacting laws that favor in-state economic interests over out-of-state competitors. By conditioning rebates on local purchases, LEAN creates protectionist incentives that undermine national economic unity. The Constitution necessarily preempts any state legislation. Hence, LEAN is preempted.
- d. LEAN is not preempted. It complies with the requirements of the Dormant Commerce Clause. The Dormant Commerce Clause invalidates state laws that either *facially* or *purposefully* discriminate against out-of-state commerce. LEAN applies neutrally to all sales, regardless of geographic origin, and it does not expressly discriminate against out-of-state commerce. Since there is neither any express discrimination nor disparate impact, there is no constitutional violation, and thus no basis for preemption.
- e. LEAN is not preempted by the FCGFTA. Frustration preemption requires a direct obstacle to congressional objectives—not mere divergence from federal policy goals. LEAN's rebate incentive structure does not obstruct interstate commerce, nor does it physically impede the transportation of goods. Because FCGFTA's purpose clause expresses general aspirations rather than enforceable standards, and LEAN operates independently without legal contradiction, the Vermont statute does not frustrate federal law.
- f. LEAN is preempted because its rebate system conflicts with the requirements of FCGFTA. By rewarding in-state purchasing and discouraging interstate transactions, LEAN contradicts Congress's commitment to free and open markets. Compliance with both laws is not realistically possible. This is a paradigmatic case of *conflict preemption*. Therefore, the Vermont statute must yield to federal policy.
- g. LEAN is not preempted because compliance with both LEAN and the FCGFTA is clearly possible. LEAN imposes a local rebate incentive, while FCGFTA promotes free interstate commerce. Because LEAN does not forbid the sale or shipment of out-of-state goods, and retailers can simultaneously comply with both regulatory schemes, there exists no conflict. Therefore, the state law does not warrant invalidation under preemption doctrine.
- h. LEAN is not preempted because Congress did not seek to *occupy the field* of consumer incentive programs. Field preemption occurs only when Congress intends to regulate a domain of activity exclusively, leaving no room for supplementary state action. FCGFTA promotes open interstate commerce but does not preclude state experimentation with economic incentives. Because LEAN operates within an area of concurrent federal and state regulatory authority, it survives field preemption analysis.

3. Choose the strongest argument (Dormant Commerce Clause—facial challenge):

- a. LEAN is facially discriminatory under the Dormant Commerce Clause because its structure compels consumers to favor in-state products. Although the tax is uniform, rebate eligibility requires sourcing 85% of purchases from Vermont

- producers, thereby drawing a geographic line. Conditioning financial benefits on in-state purchasing functions like a tariff or prohibited protectionist subsidy. Strict scrutiny applies because the structure necessarily encourages geographic favoritism, and Vermont's civic goals could be achieved through less discriminatory means. Therefore, the statute is facially unconstitutional.
- b. LEAN is not facially discriminatory because it regulates consumer behavior neutrally without directly targeting out-of-state sellers. The tax applies uniformly to all sales, and the rebate depends on voluntary purchasing decisions. While LEAN may favor local economic engagement indirectly, it does not impose barriers to entry or explicitly disadvantage interstate sellers. Under *Exxon Corp. v. Maryland*, facial neutrality is preserved where laws regulate evenhandedly and affect in-state and out-of-state interests alike. Therefore, any challenge must proceed as an as-applied claim, not as a facial attack.
 - c. LEAN is not facially discriminatory. Vermont is acting as a market participant, not a regulator. Under *Reeves, Inc. v. Stake*, states may favor local interests when spending state funds or offering economic incentives without triggering Dormant Commerce Clause scrutiny. LEAN's rebate program reflects Vermont's decision to reward civic-minded consumption through a state-administered benefit, analogous to promotional state subsidies. Because the state is simply engaging in market participation rather than imposing regulatory barriers, the constitutional challenge must fail.
 - d. LEAN is not facially discriminatory because it serves legitimate civic and moral goals unrelated to economic protectionism. The Act promotes "civic trust," "community cohesion," and "democratic engagement"—*not* commercial advantage. In *Maine v. Taylor*, the Court upheld state regulations justified by non-economic concerns. Vermont's incentives encourage local engagement and do not prohibit interstate commerce. Because LEAN's purpose is civic rather than economic, any disparate effects on interstate commerce do not trigger strict scrutiny for facial discrimination.
 - e. LEAN is not facially discriminatory. The Dormant Commerce Clause prohibits protectionism, not all expressions of local economic values. LEAN promotes local economic agency within a federal structure. Vermont's rebate program incentivizes in-state purchases as a means of strengthening community resilience, a traditional state concern. Because LEAN does not erect barriers to commerce or penalize interstate sellers directly, and instead promotes internal civic goals, it survives constitutional scrutiny as a valid exercise of state authority.
 - f. LEAN is unconstitutional because it exerts extraterritorial control over consumer behavior. Under the Dormant Commerce Clause, states cannot project regulatory policies into other states' markets. LEAN pressures Vermont residents to avoid out-of-state purchases, affecting trade beyond Vermont's borders. By creating incentives tied to geographic loyalty, LEAN improperly regulates commercial conduct in other states, rendering the statute facially invalid.
 - g. LEAN is unconstitutional because it conflicts with the purpose of the Commerce Clause—promoting interstate trade. Any state law that undermines federal law is invalid under the Supremacy Clause. Because LEAN promotes local commerce at

the expense of national markets, it contradicts the purpose of the Commerce Clause. Therefore, the Commerce Clause preempts LEAN.

- h. The Dormant Commerce Clause applies to the federal government—not to the states. The Commerce Clause appears in Article I, Section 8 of the Constitution, which enumerates the powers of Congress. The negative inference, that Congress’s power does *not* extend to the regulation of *intra*-state commerce or noncommercial activities, is a limitation on *federal* legislation. Therefore, the Dormant Commerce Clause is simply inapplicable to state legislation like LEAN.
 - i. LEAN is not facially discriminatory because under the *Pike* balancing test, even if the statute indirectly affects interstate commerce, it regulates evenhandedly and promotes substantial local benefits. LEAN’s incentive structure rewards civic-minded purchasing but does not bar interstate goods or services. Because any burden on interstate commerce is incidental and outweighed by legitimate local goals, LEAN is not unconstitutional.
- 4. Assume that the court rejected the facial Dormant Commerce Clause challenge (the issue in Question 3). Choose the strongest argument (Dormant Commerce Clause—*as-applied* challenge):**
- a. LEAN is unconstitutional as applied because it imposes a substantial burden on interstate commerce that outweighs Vermont’s local benefits. *Pike v. Bruce Church* requires courts to invalidate state laws when their practical effects are disproportionately harmful to interstate commerce. LEAN’s rebate system incentivizes residents to prioritize purchasing local products, predictably distorting competitive dynamics. Although Vermont asserts that its purpose is to promote “civic trust” and “community cohesion,” those broad interests could be achieved in innumerable ways that would not burden interstate trade. Therefore, under *Pike*, the law must fail.
 - b. LEAN is unconstitutional as applied because it expressly discriminates against out-of-state commerce. Any incentive structure that rewards local behavior and disadvantages external actors amounts to facial discrimination under the Dormant Commerce Clause. State programs that favor local economic interests at the expense of the national market are presumptively invalid. See *Philadelphia v. New Jersey*. LEAN’s rebate threshold requires consumers to prioritize local purchases, creating an inherent barrier to interstate economic participation. The law imposes protectionist incentives based on geographic preference. Therefore, it is unconstitutional as applied to the out-of-state retailers.
 - c. LEAN is unconstitutional because it is preempted by FCGFTA, which promotes free and unrestricted interstate trade. State laws that undermine federal trade policy are presumptively invalid under the Supremacy Clause. The Commerce Clause gives Congress the power to regulate the transit of goods interstate. By creating economic incentives for in-state purchasing, LEAN obstructs Congress’s policy objective: promoting national market uniformity. Because compliance with both the state and federal laws would distort competitive neutrality, LEAN constitutes an as-applied violation of the Dormant Commerce Clause.
 - d. The Dormant Commerce Clause forbids laws that produce different commercial outcomes for in-state and out-of-state businesses. By rewarding Vermont

residents for buying locally, LEAN incentivizes parochial loyalty and distorts the national marketplace. Uniformity of competition is a foundational principle embedded within the structure of the Commerce Clause. Any state regulation that predictably affects the competitive landscape across state lines undermines that constitutional design and must be invalidated as incompatible with federal economic unity. This makes the application of LEAN against out-of-state businesses unconstitutional.

- e. LEAN is constitutional because the Tenth Amendment protects states' interests in local economic regulation. Vermont's rebate program reflects traditional police power objectives: promoting civic trust, strengthening local communities, and encouraging responsible consumer behavior. Federal courts defer to state judgments regarding internal affairs unless Congress clearly preempts such activity. Because LEAN operates entirely within Vermont's borders and addresses purely local interests, it is immune from Dormant Commerce Clause invalidation.
 - f. LEAN is constitutional because states' economic regulations are reviewed only for their *rationality*. Under rational basis review, courts do not second-guess policy decisions unless they are manifestly arbitrary or irrational. Vermont's interest in civic cohesion is legitimate, and its rebate structure has a rational connection to achieving that goal. There is no constitutional requirement that state laws avoid affecting interstate commerce as long as the law is rationally related to a valid objective.
 - g. LEAN is unconstitutional because it burdens interstate commerce. If state laws alter the balance of interstate economic competition, then they violate the Dormant Commerce Clause. *Pike v. Bruce Church*. LEAN's rebate structure distorts consumer incentives, encourages preferential loyalty to in-state businesses, and discourages free interstate market participation. Even if Vermont claims legitimate goals, the Constitution does not allow *any* means of achieving those goals. Because LEAN predictably affects the competitiveness of out-of-state businesses, the statute cannot survive under the Dormant Commerce Clause.
 - h. LEAN is constitutional as applied because it imposes only incidental burdens on interstate commerce that are justified by legitimate local benefits. Under *Pike v. Bruce Church*, courts uphold facially neutral laws unless the burden on interstate trade clearly outweighs local interests. LEAN affects consumer incentives but leaves markets structurally open. Vermont's goal of promoting local democratic engagement is substantial. Because any burden arises indirectly through voluntary consumer behavior, and the local benefits remain substantial, the statute satisfies constitutional requirements.
5. **Choose the strongest argument (congressional authorization of LEAN—FAT §§ 1, 3):**
- a. FAT validly delegates the power to regulate interstate commerce to the states. The plurality in *Gundy v. United States* held that Congress can delegate its constitutional powers as long as it provides sufficiently clear guidance. Congress has the power to regulate interstate commerce. As long as Congress identifies general programmatic goals, it can delegate that power to the states. Because FAT

- outlines its purpose and provides federal funding oversight, it permissibly delegates regulatory discretion to the states without violating constitutional limits.
- b. FAT’s broad language about “community-centric programs” lacks the clarity required under the Major Questions Doctrine to override Dormant Commerce Clause protections. Without explicit congressional authorization allowing state protectionism, FAT cannot shield LEAN from constitutional scrutiny.
 - c. Congress cannot authorize programs like LEAN under the Commerce Clause because LEAN does not regulate *commercial transactions*. Vermont asserts that LEAN regulates *moral* conduct—not economic behavior. Since Congress’s commerce power extends only to economic activities, Congress lacks the power to authorize programs like LEAN. Yet absent congressional authorization, LEAN violates the Dormant Commerce Clause.
 - d. Congress cannot authorize LEAN under the Commerce Clause because the LEAN regulates purely intrastate behavior. Vermont asserts that LEAN does not discriminate against interstate commerce. The rebate program operates entirely within state borders, rewarding *local* consumer loyalty without directly affecting cross-border transactions. However, the Commerce Clause only empowers Congress to regulate commerce “among the several States,” which excludes purely local activities. Since LEAN involves no interstate transactions, federal authorization of LEAN exceeds Congress’s commerce authority. Yet absent congressional authorization, LEAN violates the Dormant Commerce Clause.
 - e. FAT authorizes LEAN by endorsing community-centric rebate programs that encourage local economic engagement. Congress may override the Dormant Commerce Clause if it unmistakably authorizes states’ burdening interstate commerce. Taken together, FAT’s legislative text, its funding structure, and § 3’s declaration communicate a clear legislative intention to support state initiatives like LEAN. While FAT does not name Vermont specifically, it clearly embraces programs rewarding local consumption, satisfying the “unmistakably clear” standard required to override the Dormant Commerce Clause.
 - f. FAT fails to authorize LEAN. FAT attempts to redefine Dormant Commerce Clause limits without articulating what specific discriminatory policies states are authorized to enact. Under *South-Central Timber v. Wunnicke*, Congress must clearly authorize the specific state activity under review. However, FAT § 3 declares an entire category of regulations immune from Dormant Commerce Clause scrutiny rather than authorizing particular instances of it. That is not legislative authorization. It is constitutional interpretation. Because Congress did not unmistakably authorize LEAN’s structure, the Dormant Commerce Clause remains fully applicable.
 - g. FAT authorizes LEAN because it functions as a federal preemption statute that supplants Dormant Commerce Clause constraints. Preemption occurs when Congress legislates comprehensively in an area otherwise governed by constitutional inferences, thereby displacing the need for separate constitutional scrutiny. By establishing a federal framework for community-centric economic programs, Congress in effect overruled the Dormant Commerce Clause (at least for community-building legislation). Because Congress’s affirmative legislation

overrides judicial structural inferences, FAT preempts any Dormant Commerce Clause challenges to LEAN.

- h. FAT authorizes LEAN because Congress's allocation of \$2 billion to support state incentive programs demonstrates unmistakable congressional approval. Appropriations are legislative acts that express binding policy preferences, and when Congress funds a category of programs, it effectively ratifies their legality. Since Vermont's LEAN program falls within the type of community-centric initiatives Congress intended to support, the Dormant Commerce Clause is displaced by the funding commitment itself.
- i. States do not require congressional authorization to legislate programs like LEAN. Under the Tenth Amendment, states retain broad authority over local economic activity and social policy. Vermont's rebate program addresses purely intrastate concerns and does not constitute an impermissible regulation of interstate commerce. Because the Tenth Amendment preserves state sovereignty over internal affairs, there was no need for FAT to authorize anything, and no Dormant Commerce Clause limitation applies.

6. Choose the strongest argument (congressional authority for FAT § 2):

- a. FAT § 2 is constitutional. Managing the cumulative local effects on commerce falls within the legislative powers of Congress. In FAT § 2, Congress sought to influence consumer purchasing behavior by promoting local economic resilience and reducing reliance on interstate markets. The intent to discourage interstate commerce is nevertheless an intent to regulate interstate commerce, which falls squarely within Congress's Article I powers.
- b. FAT § 2 is constitutional because it regulates channels of interstate commerce. The Commerce Clause empowers Congress to regulate the instrumentalities and channels of interstate commerce. *Gibbons v. Ogden*. State rebate programs that influence consumer purchases affect the flow of goods through commercial channels. Therefore, § 2 is a valid exercise of Congress's constitutional authority.
- c. Congress lacks the authority to enact FAT § 2 because it cannot override the Dormant Commerce Clause. The Dormant Commerce Clause reflects a constitutional limit on both state and federal action. Authorizing states to implement discriminatory programs violates that limit. Even if Congress passes a statute, it cannot negate the constitutional prohibition against state-level protectionism. Because FAT endorses behavior the Dormant Commerce Clause disallows, it exceeds Congress's power.
- d. FAT § 2 is unconstitutional because Congress may not regulate local economic behavior that lies within the states' exclusive sovereignty. The Constitution was designed to create a federal system in which the states retained authority over intrastate commerce. Programs like LEAN govern purely local consumption decisions. By stepping into this zone of state governance, FAT violates the Tenth Amendment and exceeds Congress's limited powers.
- e. FAT § 2 is constitutional because it regulates activities that substantially affect interstate commerce. Under *United States v. Lopez* and *United States v. Morrison*, Congress may regulate intrastate activity if it forms part of a broader scheme affecting interstate markets. Programs like LEAN alter consumer purchasing

behavior in ways that impact national commercial flows. Congress rationally determined that localized incentives could distort interstate commerce. Because FAT addresses these economic distortions as part of a broader regulatory framework, it falls within Congress's authority under the Commerce Clause.

- f. FAT § 2 exceeds Congress's commerce power because it targets moral behavior. Under *Lopez* and *Morrison*, Congress cannot regulate activities that are noneconomic and traditionally reserved to the states. LEAN's focus on "civic trust" and "community cohesion" reflects moral and cultural goals—not economic regulation. Because FAT regulates expressive conduct rather than substantial commercial activity, it falls outside Congress's commerce authority.
- g. FAT § 2 is unconstitutional because the Constitution does not empower Congress to fund or authorize programs based on moral or civic objectives. The federal government exists to regulate commerce, not to influence personal values or shape cultural behavior. Programs like LEAN seek to build community loyalty and moral cohesion—topics that are inherently local and outside federal jurisdiction. Because FAT is designed to promote moral outcomes, it falls outside any enumerated power and is constitutionally invalid.
- h. FAT § 2 is constitutional because it falls within Congress's authority to spend for the general welfare. Under Article I, § 8, Congress may appropriate funds to support policy objectives it deems to serve national interests, even where it lacks direct regulatory power.

7. Choose the strongest argument (congressional authority for FAT § 5):

- a. FAT § 5 is a constitutionally permissible delegation of power because it articulates an intelligible principle to guide administrative decision-making. *Gundy v. United States* upheld delegation where Congress provided broad policy direction, and FAT similarly instructs agencies to align programs with economic resilience and civic engagement goals. Although FAT allows agency judgment, it limits discretion within a defined framework. The statute thus remains clearly within permissible constitutional boundaries.
- b. FAT § 5 violates the Nondelegation Doctrine because it delegates broad discretionary authority without limiting principles. Under *Panama Refining* and *Schechter Poultry*, Congress must articulate legislative policy and can permit agencies discretion only to gap-fill details. By instructing agencies merely to align their policy choices with its "statutory purpose," FAT leaves critical legislative choices undefined. Such aspirational language does not define operative legislative choices and fails to constrain executive discretion, rendering FAT an unconstitutional delegation.
- c. FAT § 5 is unconstitutional because Congress failed to provide specific criteria to guide the Secretary's discretion. Under the Nondelegation Doctrine, Congress must do more than express broad policy goals—it must supply concrete standards or rules that meaningfully constrain executive action. Here, FAT allows the Secretary to determine eligibility based solely on whether a program "aligns with the statute's purpose," a phrase that provides no defined metrics or thresholds. Because Congress did not include any specific benchmarks or limiting language

to cabin the Secretary's authority, it failed to meet the constitutional requirement for delegation. The law is therefore invalid.

- d. FAT § 5 is unconstitutional because it allows Congress to dictate how executive agencies must spend money, intruding upon the executive's domain of constitutional authority. Congress has the power to appropriate funds, but it cannot micromanage implementation. By directing the Secretary of the Treasury to approve programs that align with congressional purpose, Congress is in effect wresting control over administrative discretion. That kind of legislative involvement in ongoing decision-making violates the separation of powers and renders the delegation impermissible.
- e. FAT § 5 is unconstitutional under the Major Questions Doctrine because it delegates control over a multibillion-dollar funding program without providing clear congressional authorization. Congress must speak clearly when delegating authority over issues of vast economic and political significance. FAT contemplates substantial federal spending, open-ended eligibility standards, and significant effects on interstate commerce. Because Congress did not include a specific rule or policy judgment, the delegation is invalid under the Major Questions Doctrine.
- f. FAT § 5 is unconstitutional. The fundamental principle undergirding the design of the Constitution is the separation of powers. In order to prevent the accumulation of power in any branch of government, Congress is prohibited from delegating its authority to the executive branch. The Constitution vests legislative power in Congress alone. Allowing the Treasury Secretary to decide which programs are eligible for funding under FAT amounts to an impermissible transfer of legislative discretion.
- g. FAT § 5 is unconstitutional because the Appropriations Clause requires Congress itself to control the disbursement of federal funds. Allowing the Secretary of the Treasury to determine eligibility criteria effectively abdicates Congress's exclusive authority over spending decisions. The Constitution mandates that Congress specify who receives federal money and under what conditions. Because FAT leaves critical eligibility decisions to the executive, it violates the Appropriations Clause and undermines congressional fiscal supremacy.
- h. FAT § 5 is valid. Although the courts are ordinarily the ultimate interpreters of the Constitution, the Supreme Court has ruled that matters relating to Congress's powers are nonjusticiable political questions. Hence, Congress interprets the meaning of the Constitution when it relates to Congress itself. *Baker v. Carr*. If Congress believes a program is consistent with its purpose, that decision is binding on the courts and the executive. FAT § 5 is valid because it expresses Congress's intent to control the economic framework directly, and the courts have no authority to override Congress on matters of legislative design. Congress authored FAT § 5. Therefore, its judgment about how it should be administered cannot be second-guessed by another branch of government.

8. Choose the strongest argument (congressional authority for FAT § 4):

- a. FAT § 4 is constitutional because Congress possesses broad authority to structure the jurisdiction of federal courts. Under Article III's Exceptions Clause, Congress

may make exceptions to the Supreme Court’s appellate jurisdiction. In *Ex parte McCordle*, the Court upheld such jurisdictional restrictions. FAT § 4 removes federal jurisdiction over a category of claims but preserves access to state courts. Because Congress historically regulates judicial review mechanisms without impairing constitutional rights directly, FAT § 4 is a valid jurisdictional regulation.

- b. FAT § 4 is unconstitutional under *United States v. Klein* because it violates the principle of judicial independence by functionally dictating how courts should evaluate Dormant Commerce Clause claims. In *Klein*, the Court held that Congress cannot prescribe a rule of decision in a pending case or use jurisdictional manipulation to control judicial outcomes. By categorically precluding review of all challenges to state rebate programs, FAT effectively ensures that courts cannot strike down any protectionist law falling within its scope. This disables the courts from exercising independent judgment over constitutional matters and amounts to an impermissible legislative incursion into the judicial function. Therefore, FAT § 4 is unconstitutional under *Klein*.
 - c. FAT § 4 is valid because the Dormant Commerce Clause is not express in the text of the Constitution. It is a judicial inference—not a textual imperative. Therefore, Congress can override it. Since nothing in the Constitution forbids protectionist state rebate programs, and the Dormant Commerce Clause is not a binding constitutional provision, FAT § 4 can limit judicial review of such claims without violating Article III.
 - d. FAT § 4 is constitutional. Under the Constitution’s system of checks and balances, Congress retains ultimate authority over the jurisdiction of the federal courts. Article III courts are creatures of statute, and their jurisdiction is therefore subject to congressional regulation. The Exceptions Clause grants Congress plenary authority to withdraw appellate review—even of constitutional claims—so long as it does not affirmatively dictate a particular outcome. See *Klein*. Judicial supremacy is a norm established by tradition—not a constitutional requirement. In a system of coordinate branches, it is entirely appropriate for Congress to insulate sensitive economic policies from judicial interference. FAT § 4 is a valid legislative check on the judicial power.
 - e. FAT § 4 is unconstitutional because it eliminates all federal court jurisdiction over Dormant Commerce Clause claims, including Supreme Court review. *Martin v. Hunter’s Lessee* prohibits Congress from wholly cutting off appellate oversight of constitutional issues. FAT’s blanket jurisdiction-stripping measure would leave state courts as final arbiters of federal constitutional law, undermining national uniformity. Because FAT denies essential judicial review, it violates both Article III and the Supremacy Clause.
9. Choose the strongest argument (Presidential authority to decline enforcement):
- a. The President lacks the authority to suspend FAT disbursements because Congress delegated quasi-legislative discretion to the Treasury Secretary and OMB Director. Under *Humphrey’s Executor*, when officials exercise legislative or adjudicative functions, they are not subject to full presidential command. FAT § 5 grants discretionary authority over eligibility and disbursement criteria,

- rendering these actions functionally independent from the President. Even though the President retains removal power, he cannot override discretionary decision-making delegated by Congress without violating separation of powers principles.
- b. The President lacks the authority to refuse enforcement of FAT because the Take Care Clause requires that he faithfully execute duly enacted laws. Having signed FAT into law, President Klump cannot now decline to enforce it based on his personal interpretation of the Constitution. Judicial review—not executive discretion—determines whether a statute is constitutional.
 - c. The President possesses the authority to decline enforcement of FAT because the Take Care Clause obligates him to faithfully execute the Constitution. Although acting against Congress places the President at the lowest ebb of his power under *Youngstown*, his duty to uphold constitutional structure persists. Presidents have historically refused to enforce statutes they deemed unconstitutional. Klump’s signing statement placed Congress on notice of his constitutional objections. His refusal to disburse funds reflects adherence to his oath, pending judicial review.
 - d. The President has the constitutional authority to refuse enforcement of FAT because his signing statement reserved his objections at the time of enactment. While the Take Care Clause obligates the President to enforce laws generally, that obligation must be read in conjunction with his oath to support the Constitution. By issuing a signing statement identifying FAT’s Dormant Commerce Clause problems, the President effectively signaled that implementation would occur only to the extent consistent with constitutional limitations. This reservation preserves the President’s capacity to decline execution of unconstitutional provisions, and thus his subsequent directive suspending FAT disbursements is a legitimate exercise of executive discretion under Article II.
 - e. The President’s directive suspending FAT disbursements is a lawful exercise of executive supervision over agency discretion. The Take Care Clause does not merely permit but *requires* presidential oversight of how agencies implement discretionary programs. FAT § 5 vests the Treasury Secretary and OMB Director with eligibility and scheduling authority, which is inherently subject to executive supervision. By pausing disbursements pending constitutional review, the President exercised managerial judgment within his constitutional role without nullifying the underlying statute.
 - f. The President’s directive to halt FAT disbursements is constitutionally valid because it falls within his broad authority to supervise and manage executive branch implementation of federal statutes. Under the Take Care Clause, the President must ensure faithful execution of the laws, but that obligation necessarily includes discretion over how executive agencies prioritize, interpret, and coordinate program administration. FAT § 5 grants substantial implementation discretion to the Secretary of the Treasury and the Director of OMB. Therefore, the President, as the head of the executive branch, retains ultimate oversight over those discretionary judgments. Suspending disbursements pending constitutional review reflects executive supervision over discretionary program management, not a categorical refusal to enforce the law. Because FAT expressly authorizes administrative review before disbursing funds, the

President's intervention operates within the law's structure and is consistent with his constitutional role.

- g. Because the Constitution vests the entirety of the executive power in the President, he has full authority to override any discretionary determinations made by subordinate officers. Even where Congress has assigned specific implementation tasks to agencies, those agencies act only as agents of the President. Under the unitary executive theory, the President may override statutory discretion at will, including disbursement decisions under FAT § 5. The President's suspension of FAT disbursements is therefore fully consistent with the design of the Constitution.
- h. The President's duty to take care that the laws be faithfully executed includes the discretion to decide which laws should be enforced and which should not. The Take Care Clause grants the President evaluative authority over statutes, allowing him to decline to enforce those he deems inconsistent with constitutional principles or public policy. Because the President found FAT inconsistent with constitutional norms, he was within his discretion to suspend its implementation.
- i. The President's signing statement operates as a constitutional veto, rendering FAT unenforceable unless it is modified or clarified by Congress. Although the President signed the legislation into law, his constitutional objections reserved authority to prevent implementation if those objections were not addressed. A signing statement, when based on constitutional grounds, carries the same functional effect as a line-item veto.
- j. The President's constitutional interpretation is binding on all branches of government when exercised in good faith. Because he is uniquely responsible for safeguarding the Constitution, his determination that FAT violates structural principles overrides congressional enactments and judicial interpretations. In matters of constitutional doubt, the President's views are final, and courts must defer to executive constitutional judgments.
- k. The President's refusal to implement FAT falls within *Youngstown* Category 2 (where Congress has not clearly mandated how executive discretion must be exercised). FAT § 5 delegates eligibility determinations and disbursement schedules to the discretion of the Secretary of the Treasury and OMB. Because the statute leaves significant implementation details to executive judgment, Congress has not issued a direct command that disbursements must proceed in all circumstances. In the absence of an express congressional mandate, the President retains authority to guide the exercise of administrative discretion. His decision to suspend FAT disbursements pending constitutional review operates within a zone of concurrent executive and legislative authority, not in defiance of a clear congressional will. Therefore, the President's action falls within Category 2 of the *Youngstown* framework and is constitutionally permissible.

10. Select the strongest argument (President justiciability):

- a. The President's lawsuit is justiciable because courts must enforce the Take Care Clause against executive officers who refuse to carry out lawful orders. The constitutional duty to faithfully execute the laws imposes a legal obligation on subordinate officers to obey the President's directives. When that obligation is

breached, courts have a responsibility to intervene to maintain the constitutional structure of government. Because the President's injury stems from a breach of constitutional duty, his claim is justiciable.

- b. The President's lawsuit is justiciable because his signing statement explicitly reserved constitutional objections to FAT, creating a personal legal stake in its implementation. When subordinate officers implement a statute contrary to a presidential directive, their defiance constitutes a concrete legal injury to the President. That injury establishes standing to seek judicial redress.
- c. The President lacks standing to sue because under either a unitary or nonunitary executive theory, Article III requirements are not satisfied. From a unitary executive perspective, the President's supervisory power negates the redressability element. The President's power over subordinates is both more direct and efficacious than any remedy the court could provide. On the other hand, from a nonunitary perspective, when a subordinate lawfully exercises discretion, there is no legal injury to the President since the power exercised by the subordinate is independent from the President's. Thus, regardless of theoretical frame, standing fails. There is no redressability under a unitary theory, or no harm under a nonunitary theory. Either way, an element of standing is absent.
- d. The President's lawsuit is nonjusticiable because it invites judicial entanglement in internal executive branch processes. The Take Care Clause creates a political obligation—not an enforceable right—under Article II. In *Youngstown* and *United States v. Nixon*, the Court emphasized that the courts' constitutional role is the adjudication of rights. They do not manage internal executive branch disputes. Courts lack the competence, democratic legitimacy, and constitutional power to supervise discretionary enforcement decisions. Therefore, the President's claim is nonjusticiable.
- e. The President's lawsuit is justiciable because genuine adverseness can exist between officials within the executive branch. Courts assess adverseness by examining whether the parties assert opposing legal interests—not by asking what branch of government they work for. The President alleges that subordinate officers are acting contrary to his constitutional directives, creating a genuine legal controversy. Because internal branch disputes over legal authority can satisfy Article III's adverseness requirement when opposing interests crystallize, the lawsuit is justiciable.
- f. The President's lawsuit is justiciable because it alleges *ultra vires* conduct by subordinate officers. Courts have traditionally reviewed such claims. FAT § 5 assigns duties that must be carried out according to the law's terms. The President's claim that the Treasury Secretary and OMB Director exceeded their delegated authority presents a historically recognized legal controversy—not merely an internal management disagreement. Because the suit challenges unlawful executive action, it satisfies Article III requirements.
- g. The President's lawsuit is nonjusticiable under the Political Question Doctrine. When a constitutional responsibility is textually committed to another branch of government, the judiciary typically declines jurisdiction. The execution of laws is committed to the executive. *Baker v. Carr*. FAT § 5 grants discretionary

administrative authority, and disputes over discretionary enforcement are not the kinds of controversies suitable for judicial resolution. Because the dispute concerns political dynamics internal to the executive branch—rather than legal rights—it falls outside the domain of Article III.

- h. The President’s constitutional interpretations are binding on the executive branch and judicial review must defer. The President’s oath and constitutional role entitle him to prioritize his understanding of constitutional requirements. Courts may not override executive constitutional judgments regarding enforcement duties. In areas touching on faithful execution, the judiciary must defer to the President’s constitutional decisions as controlling interpretations of law.
- i. The President’s signing statement operates as a constitutional veto that suspends FAT’s enforceability. Although FAT became law, the President’s constitutional objections at signing functionally conditioned its implementation on constitutional compliance. Courts have traditionally recognized signing statements as binding constitutional reservations equivalent to a line-item veto. When presidential constitutional objections are properly lodged at the point of enactment, continued enforcement of the statute without presidential approval violates the prerogative of the executive.
- j. The President has standing because an infringement on his constitutional interpretation constitutes a personal injury. When subordinate officials refuse to implement the President’s understanding of the Constitution, they impair his executive authority and pose a concrete, individualized harm sufficient to satisfy standing requirements.

11. Select the strongest argument (Vermont justiciability):

- a. Vermont’s motion is nonjusticiable because it fails to establish a concrete and imminent injury. The application for FAT funds remains pending, and no final agency decision has been issued. Injury must be actual or imminent, not hypothetical. Even if the President’s directive is overturned, Vermont’s application would still be subject to administrative review. Without an approved award or final denial, Vermont’s interest remains speculative and not fit for judicial resolution.
- b. Vermont’s motion is nonjusticiable because it asserts a generalized grievance about federal policy, not a personal injury. Dissatisfaction with a presidential directive suspending disbursements applies equally to all states participating in FAT and does not single out Vermont in any way. Courts have consistently held that generalized grievances about governmental policies are not sufficient to confer standing. Because Vermont’s objection relates to national policy rather than a specific, individualized harm, it lacks standing to intervene.
- c. Vermont’s motion is nonjusticiable because its claimed injury is not ripe for judicial review. Ripeness doctrine requires imminent and concrete injury, not hypothetical or speculative harms. Vermont’s application for FAT funds remains pending, with no final agency action. Future disbursement decisions depend on discretionary administrative review. Without finalized agency action or denial, Vermont’s alleged harm remains contingent on multiple intervening variables, rendering the case premature for judicial intervention.

- d. Vermont's motion is moot because the President's directive has already suspended FAT disbursements, eliminating the immediate controversy. Courts dismiss cases where judicial intervention would have no practical effect. Since the funding process is frozen and Vermont's application remains indefinitely suspended, there is no live dispute requiring judicial resolution. Mootness doctrine ensures that federal courts do not issue advisory opinions once executive action has foreclosed any possibility of funding approval.
- e. Vermont's motion to intervene is justiciable because it asserts a concrete financial injury caused by executive suspension of FAT funds. Standing doctrine requires actual, particularized harm, not abstract policy grievances. Loss of expected federal funding impairs Vermont's fiscal health and sovereign interests. Because the President's action directly impairs identifiable state interests, judicial intervention is proper.
- f. Vermont's motion is nonjusticiable because the allocation of federal funds is a political question committed exclusively to the discretion of the executive and legislative branches. Courts have no role in overseeing the administration of federal appropriations, and any dispute about the execution of spending programs is inherently political and outside judicial competence.