

## Question 2

The Legislature of State X recently completed a study on the behavior of teenagers residing in the state that revealed a connection between an increase in the school dropout rate and an increase in the level of criminal activity. The study indicated that the connection was most pronounced among boys ages 15 to 18 years old.

Troubled by what it perceived as a breakdown in personal responsibility and social order among its teenagers, State X's Legislature has enacted a statute creating the State Forestry Corps ("Corps"). The Corps drafts boys ages 15 to 18 who have dropped out of school. It sends them to camps located on public lands administered by the State Forest Service. It also provides them with a comprehensive education leading to a high school diploma. To defray a portion of the costs, the Corps requires the boys to work on reforestation projects for a few hours each day.

Pete, age 15, has dropped out of school and, consequently, has been drafted into the Corps. Pete and his parents have filed a declaratory relief action attacking the validity of the statute under three provisions of the United States Constitution: (1) the Thirteenth Amendment's Involuntary Servitude Clause; (2) the Fourteenth Amendment's Due Process Clause; and (3) the Fourteenth Amendment's Equal Protection Clause.

What arguments could Pete or his parents reasonably make in support of their action, and how should the court rule on each? Discuss.

## SELECTED ANSWER A

### State Action

In order to prevail in their constitutional declaratory action under the 13<sup>th</sup> Amendment, 14<sup>th</sup> Amendment due process, and 14<sup>th</sup> Amendment equal protection against State X, Pete and his parents will need to show state action by State X in passing and enforcing the law against them.

The law in question regarding the compulsory forestry school was enacted by State X law and is applicable to Pete. Because the law was passed by State X, its procuring the law and enforcing it will constitute state action against Pete because he stands to be injured as well as Pete's parents so long as they can prove standing.

### Standing

The constitution requires that each plaintiff have standing to seek any type of relief under its provisions. It requires (1) actual or certainly imminent injury in fact, (2) causation, and (3) redressability through judicial remedies.

Here, it appears that Pete has been actually drafted by the Corps against his will. Pete stands to face injury in fact because he is compelled against his will to enlist and it is certain that he will enlist if he takes no action. State X law caused the law to be passed and enforced; thus causation is clear. Further, a declaratory judgment deeming the law facially invalid as to Pete will save him from the injury of entering the Corps.

Pete's parents have standing, in their argument, because they are losing their son and being discriminated against in the fundamental right to parent and make choices for their minor child. By compelling Pete to work at the Corps, their fundamental right is arguably undermined and infringed as they cannot choose a school for their son. Thus, they can likely show injury in fact. The State X law caused injury, as above. Also, a declaratory judgment would save the parents from injury as it would give them the fundamental power to make parenting decisions for their child and not be compelled by the State.

## **11<sup>th</sup> Amendment Sovereign Immunity**

States are protected from being sued in federal court (and in some state courts where states retain traditional sovereign immunity in their own courts) where the action seeks money damages from its treasury. However, declaratory judgments do not seek money damages and may be adjudicated.

Here, the 11<sup>th</sup> Amendment is not implicated because no plaintiffs seek money damages; rather, they seek declaratory relief and thus the action is not preempted by sovereign immunity concerns.

### **A. 13<sup>th</sup> Amendment**

The 13<sup>th</sup> Amendment of the Constitution abolished involuntary servitude in all of the United States. It applies directly to states like State X. Further, it was construed to allow Congress to pass laws which abolish the badges of slavery, which continue to linger, and which allows Congress to make prophylactic legislation to correct existing badges of slavery in the several states. Laws which force servitude to other individuals or the state are invalid absent an exception in federal case law or other federal authority.

Here, Pete will challenge that the law violates the 13<sup>th</sup> Amendment because the law purports to require three hours of compulsory labor at the Corps per day and that it threatens to infringe on the constitutional mandate against involuntary servitude. The strongest argument against Pete is that, absent a narrow exception for the Amish, the Supreme Court has ruled that states have the right to mandate that all children under the age of 16 be enrolled in compulsory education. This embraces the states' rights to oversee education and welfare of its citizens guaranteed to the states under the 10<sup>th</sup> Amendment, which states that all states retain power not otherwise usurped by the federal government in the constitution. Thus, the state will argue that since the Corps is educational, and that the forestry work on projects is part of that education, and that because Pete is merely 15 years old, that the requirement is akin to that of requiring students to attend regular public school in a compulsory manner absent special circumstances. The state will argue that Pete is not Amish or that he has a special disability to set him apart from other participants and that he should be required to

attend school at the Corps. The goal of the program is educational, just like regular school.

Pete will argue that the Corps's education labor is not aimed at education, but rather at reducing state costs, and thus since the state gains pecuniary benefit the program's work mandate is akin more to slavery than it is akin to formal education. Pete will argue that the program is an alter ego of the state's goal of saving money at the hands of slave labor by him and similarly situated individuals.

Because of the prior Supreme Court mandates regarding the 13<sup>th</sup> Amendment, and because there is no prophylactic federal legislation to pre-empt education of this kind, Pete will have difficulty showing that the law, as applied to him, infringes on the 13<sup>th</sup> Amendment's mandates. This is because prior case law allows states to require school attendance under the age of 16. Since Pete is 15, he would need to show special circumstances and argue those to show that he should be an exception to the rule. While the cost-saving goal of the state brings some questions regarding slavery intent, ultimately it prepares Pete for the real world of jobs, which is likely reason enough. Also, the goal of the program is to avoid criminal activity through education for this critical class of young men.

Thus, on balance, Pete would likely fail under a 13<sup>th</sup> Amendment argument.

## B. Due Process

### Substantive Due Process

The Constitution guarantees certain fundamental rights to individuals that they will not be deprived of life, liberty, or property without due process of law. The Supreme Court has interpreted the 5<sup>th</sup> Amendment, applied to the states via the 14<sup>th</sup> Amendment, to extend other fundamental privacy rights to individuals as well, which give them rights to procreate, have children, and to raise those children as they please without interference from the state as to that right. When a state infringes on fundamental rights of individuals, such as the right to liberty or the right to privacy, the state must show that the law is narrowly tailored to serve a compelling government interest, the highest judicial scrutiny under constitutional law. This is substantive due process and applies here to State X's Corps law. The burden is on the state to meet the strict scrutiny.

Pete

Pete has a fundamental right to liberty in his person. This includes the right to free movement and not to be compelled in movement of his body by the state without due process of law. Pete has not been adjudicated a criminal or otherwise, and thus the compelled requirement that he attend Corps infringes on his fundamental right to move freely as he pleases has been infringed upon by the law. Because the right of liberty in movement is a fundamental right, the state must show that the Corps law is necessary to further a compelling government interest. Pete will also argue that he has a privacy interest in his body and personal choices.

Pete will argue that the law violates his liberty interest because it compels his movement and participation in the Corps program. He will argue that he is not a criminal and that his rights have not been sacrificed merely because he dropped out.

The state will argue that it has a compelling interest in educating its young men and women below the age of 16. The state will likely prevail on that point. The state will further argue that its concerns regarding criminality avoidance and preserving future peace is compelling. This is also correct as it is part of the state's interest in welfare to protect its citizens. The state will argue that it has rights to dictate the education of its youngsters under the age of 16 under Supreme Court decisions. The state will likely prevail on that point, because of the above rules.

However, Pete will argue that while the purpose of the law is compelling, the means are not narrowly tailored because the program reaches too far in undermining his rights of freedom. The program is at a remote camp, far from a regular school, and subjects students to daily labor that appears to be more physical than other students. Pete will argue that the school would do better to have a day program that is supplemented by the required work and not mandated daily, which is more like prison over the students.

Pete will have the most success on this argument. The state will argue that the means are narrowly tailored because of the woes of young men 15-18 through the study. However, the study does not show that compulsory physical labor is the answer to the problems facing State X teen boys; it is but one idea, and a relatively extreme one at

that. The state could have employed its goals in a less infringing fashion on the liberty of its students.

While schools are entitled to more deferential invasions of students' freedoms, such as to discipline as a parent, and to search the student upon reasonable suspicion, the compulsory work mandate does not fall within those categories because of its extreme nature. Because the state's means are not narrowly tailored, the law will be unconstitutional as applied to Pete.

## Parents

Parents have a fundamental right in making decisions about how to raise their child. Laws that infringe on parents' right to choose and raise their children are subject to strict scrutiny above. Parents also have a fundamental right to keep a family together.

Here, the law infringes on the parents' rights to choose which school Pete attends because the decision is mandatorily imposed by the state. While the state may require attendance to school under 16, parents' fundamental interest in choice is still fundamental and must generally be deferred to by the state. Here, because the parents could have forced their child to go to school under state law at a different school or done homeschool, for example, the school's infringement by making the parental choice for them infringes on their fundamental right.

The State will argue that their rationale is compelling because of the study indicating criminality with dropout rates. However, as above, the means that it carries out is likely too broad. The parents will show that the concerns could have been met by allowing the parents to choose the schooling forum, rather than the state, and that it hurts their right to decide as parents. Thus, the law is not narrowly tailored.

Further, the parents will argue that they have a fundamental right to keep their family together. The law undermines that right by taking their boy away from them for months at a time. The state's broadly applied law could also apply to children who drop out for good cause, another basis for being too broad. Stripping families apart requires strict scrutiny and narrow laws that fit the purpose well. Here, the action is simply too broad for its extremity on hurting family relations.

Thus, because the parents' fundamental rights to parent and to keep the family together exist, the state failed to show that its law is narrowly tailored and the parents will be successful.

### Procedural Due Process

Whenever a fundamental right is infringed upon, generally a plaintiff is entitled to a notice and pre-deprivation hearing prior to the state intentionally depriving that individual of life, liberty, or property. This is procedural due process. Once a fundamental right/liberty is identified, there is a three part balancing required to know whether additional process is necessary.

Here, both Pete and his parents are deprived intentionally of their rights to liberty and privacy (respectively). These are fundamental rights and under the 14<sup>th</sup> Amendment, State presumptively was required to give notice and hearing with fact finding by a neutral fact finder in determining the rights of the individuals prior to deprivation of those rights. Here, no such process was given to either Pete or his family and the law does not provide for one. In balancing, the court considers (1) weight of interest, (2) interest in additional procedures based on the interest, and (3) efficiency and cost to the government.

Here, the weight of interests is great. Pete faces compulsory servitude to the state as a student and the parents lost their right to parent and choose what is right for their son. A process should have been in place to avoid prejudice.

Further, society has a great interest in liberty of their movement, even for young students, and privacy right of parents is compelling. Without those choices, parents are stripped of their ability to raise their children and protect them.

On balance, an additional process would not be costly to employ by the state; they would simply need to give notice to Pete and his parents, allow for facts to be presented, and make sure that Corps was in Pete's interest and/or that he qualifies for the program. Safeguards should have been in place.

Thus, because fundamental rights were at issue, both Pete and his parents were entitled to due process of law.

### Equal Protection

Where a state discriminates based on class either facially or actually and with intent to do so, this triggers equal protection. Laws that discriminate based on fundamental rights trigger strict scrutiny. Laws that discriminate based on sex must be narrowly tailored to serve an important interest with exceedingly persuasive justification. The burden is on the state. Other laws need only further legitimate state reasons and be rationally based and burden is on the challenger.

#### Pete

Pete will first argue that the law discriminates against him in his exercise of a fundamental right of liberty without adequate justification. Just as under the above arguments, the state will have to show a compelling interest. Here, because of lack of narrowly defined means and the broad requirement of all boys to attend between 15-18 who drop out, the discrimination as to the fundamental right is on the face of the law (boys are clearly required to join the Corps who qualify) and thus the law is unconstitutional as applied to Pete because it infringes on his assertion of his liberty rights. State will argue that it can do so and that it is justified under the above arguments, but it will likely fail.

Pete will then argue that the law is facially discriminatory against him and others based on their sex, males. Pete will argue that State's study and criminal reasoning are not exceedingly persuasive based on the fact that many girls drop out, yet are not included and that State's law is under inclusive, discriminatory, and lacks sufficient rationale.

The State will argue that its basis is important because it is aimed at lowering crime. This is likely sufficient. It will also argue that the study specifically showed that boys were the prime offenders who needed the Corps program specifically. However, the state fails to point to facts showing why girls are not treated alike. It appears no equal program exists for delinquent girls, but just for the boys. Also, manual labor is often a



stereotype attached to boys, that they can handle it and girls cannot. The State's law leaves many questions as to its unequal treatment of the boys over the girls, which may rest on stereotypes based on sex which the Supreme Court has clearly stated it does not support. Also, not all dropout boys offend. The State lacks some hard numbers showing recidivism and actual offender likelihood to justify its one-sided measures that are discriminatory. Only boys are impacted, not girls.

Thus, because there lacks an exceeding persuasive justification and because the law is under inclusive, it will fail equal protection and Pete will be successful in his action on these grounds.

Pete will also argue that because the law targets only boys between 15-18 that it discriminates based on age. He would be correct. However, the court only applies rational basis review for discrimination based on age and experience.

Here, the State's interest in protecting young men and the community through the Corps is a rational basis because it makes sense; saving boys from dropping out and avoiding the statistics of offending is legitimate and it is rational that a special school may help. Pete has the burden to prove otherwise, and it is unlikely that he can do so. This is because logic shows that boys who get through school will not offend as much.

Parents.

Like Pete, the parents will be successful in showing discrimination based on their assertion of the fundamental right to privacy. The law is too overbroad in its infringement and offends equal protection of the parents' fundamental right to choose Pete's school and parent him and keep the family physically together.

## **SELECTED ANSWER B**

### **1. Thirteenth Amendment Involuntary Servitude Clause**

The Thirteenth Amendment is one of the broadest amendments to the Constitution, applying not only to government actions, but also private actors. A regulation is unconstitutional under the Thirteenth Amendment if it compels one person to work for another, even if compensation is paid. Here, Pete will argue that he is being forced into indentured servitude because the Corps requires the boys to work on reforestation projects for a few hours each day. On the other hand, State X will argue that the work on reforestation projects are part of the education process for the boys. State X will argue that the work is only to defray a portion of the costs, and that it is only for a few hours per day. State X will try to compare the project to community service, where people are compelled to work on a community service project on a daily basis. Nevertheless, the boys have not committed a crime. The Corps and the work is not a punishment for the boys, but rather an attempt by State X to reduce criminal activity. It is therefore improper to compare the work to community service. Thus, the statute compels the boys into involuntary servitude and should be found unconstitutional under the Thirteenth Amendment.

### **2. Fourteenth Amendment's Due Process Clause**

There are two prongs to the Due Process Clause of the Fourteenth Amendment. The procedural due process prong strikes down any law that deprives a citizen of a fundamental right without proper procedural safeguards. On the other hand, the substantive due process prong strikes down any law that denies a citizen a fundamental right. Here, Pete and his parents can challenge the State X statute under both the procedural and substantive due process prong.

#### Procedural Due Process – Deprivation of a Fundamental Right without a Hearing

Procedural due process requires the government to provide the proper procedural safeguards to prevent the erroneous deprivation of a fundamental right. Typically, procedural safeguards include notice, a hearing, and/or the right to have an attorney. When evaluating whether a particular law requires these procedural safeguards courts

look at the person's interest in the right, the court's interest in efficiency, fairness and accuracy. Here, the State X statute compels boys 15 to 18 years old to attend camps run by the Corps. Pete is 15 years old and was drafted by the Corps. By being forced to join the Corps and live on the camps in the State Forest lands, Pete has been deprived of his fundamental right of liberty. The right of liberty is the most tantamount of the fundamental rights, and Pete therefore has a very strong interest in receiving proper procedural due process.

State X will argue that with a high number of dropouts, it would be impossible to administer hearings for each student efficiently. State X would also argue that the hearings would not create a fairer or more accurate outcome as its study already linked school dropouts with criminal activity. Pete and his parents will argue that the statute is too broad, and a hearing should be held to determine whether Pete has a propensity to commit criminal activity, and therefore needs to join the Corps. Ultimately, because State X is essentially creating an educational juvenile detention system, at least a hearing is required before State X can deprive Pete of his liberty. Therefore, Pete could successfully challenge the statute under the procedural due process prong of the Fourteenth Amendment.

### Substantive Due Process – Right of Liberty

As previously discussed, the statute violated Pete's right of liberty because it forces him to live on the State forest land, to receive their comprehensive education and to work on reforestation projects a few hours each day. There is no indication that Pete is free to come and go as he pleases. Instead, the facts tend to indicate that the boys must remain at the camp at all times until they reach the age of majority. Because this statute denies Pete his fundamental right of liberty, it must meet strict scrutiny. Strict scrutiny requires State X to prove that the statute is necessary to achieve an important government interest. Courts use the least restrictive alternative test – if there is a lesser restrictive alternative to the statute, then the court will strike the statute down.

Here, the state's interest is preventing criminal activity. This is a compelling state interest and State X may enact laws to further this interest. The statute creating the Corps, however, is not necessary to achieve this interest. State X will argue that it has

linked an increase in criminal activity with the dropout of boys aged 15 to 18. It will further argue that in order to prevent these boys from entering into illegal activities, it had to create the Corps to remove the boys as a threat to society. However, there are many other less restrictive alternatives State X could have used to decrease criminal activity. State X could invest more in its educational system, providing better education to boys at an earlier age to prevent them from dropping out. State X could provide the Corps as an option for parents that were having difficulty dealing with children. State X could set up a scholarship fund for graduating boys to encourage them to stay in school. All of these actions could decrease the dropout rate and thus criminal activity without depriving the boys of their fundamental right of liberty. The law therefore is not necessary and would most likely be found unconstitutional.

#### Substantive Due Process – Right of Privacy

Pete's parents can argue that the law unconstitutionally violates their rights to privacy. The Supreme Court has held that the "penumbra" of the Bill of Rights, incorporated and applied to the states through the Fourteenth Amendment, has created a fundamental right to privacy. Moreover, the Supreme Court has found that included in the fundamental right of privacy is the right of parents to control the upbringing of their children. Here, the State X law drafts boys who are aged 15 to 18. These boys are still in the minority, and their parents therefore still have a legitimate interest in their upbringing. In addition, the law compels these boys to attend camps on public lands administered by the State Forest Service. On its face, the law does not appear to give parents a choice once their boy drops out of school. The parents cannot refuse to send him to the Corps, nor can they take their own remedial actions – hiring a tutor, homeschooling, sending the boy to private or military school, etc. Control is taken away from the parents.

Because the law takes away the ability of the parents to control the upbringing of their children by compelling the boys to enter the Corps when they drop out of school, the law is unconstitutional unless it passes strict scrutiny. That is, the law must be necessary to achieve a compelling state interest. As discussed previously, while reducing criminal activity is a compelling state interest, the Corps is not necessary to

achieve this purpose. This statute therefore could also be successfully challenged by the parents under the Due Process Clause of the Fourteenth Amendment.

### **3. Fourteenth Amendment's Equal Protection Clause**

A regulation that has a classification on its face is subject to constitutional attack under the Equal Protection Clause of the Fourteenth Amendment. The Equal Protection Clause provides that no state shall enact a law favoring one citizen over another. Here, State X has two classifications on its face: an age-based classification and a gender-based classification.

#### Age-Based Classification

The Supreme Court has ruled that age-based classifications are non-suspect classifications that are subject to the rational basis test. Under the rational basis test, the law will be upheld unless Pete or his parents can prove that the law is not rationally related to a legitimate government purpose. Here, State X completed a study on the behavior of teenagers, which indicated a positive correlation between school dropout rate and criminal activity. Moreover, the connection was most pronounced among boys 15 to 18 years old. The reduction of criminal activity is a legitimate government purpose. Because of the link between criminal activity and school dropout rate, State X decided to send boys aged 15 to 18 to camps in order to provide them with a comprehensive education, and to remove them as a threat for criminal activity elsewhere in the state. State X's law creating the Corps to draft boys aged 15 to 18 is therefore rationally related to the government's purpose of reducing criminal activity. If most 15 to 18 year-old male school dropouts become involved in criminal activity, sending them to the Corps should reduce criminal activity. Thus, the law will be upheld as constitutional if it is attacked as an age-based classification.

#### Gender-Based Classification

While age-based classifications are subject to the rational basis test, gender-based classifications required heightened scrutiny. In order to withstand a constitutional challenge, a gender-based law must be substantially related to an important government interest. Unlike the rational basis test, here the government bears the

burden of proving that the law is constitutional. As previously discussed, the statute aims to reduce the amount of criminal activity within State X by confining male dropouts to the Corps. Reducing criminal activity is an important government interest. The dispositive question is therefore whether the Corps is substantially related to State X's interest in reducing criminal activity.

As already discussed, the law is not necessary as it is not the least restrictive means of achieving the government's objective. The law also does appear not to be substantially related to the government's purpose. A study linked the dropout of boys ages 15 to 18 years old with an increase in criminal activity. There is no evidence, however, that this is a strong causal connection. For example, a 50% increase in dropout rate could only lead to a 1% increase in crime. State X must positively demonstrate a strong correlation between the Corps law and its purpose of reducing criminal activity. Without more evidence, it is unlikely a court would find that the law is substantially related to State X's interest and thus the law will likely be found unconstitutional.