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Judicial Review

1. How should the United States Supreme Court dispose of the case if it believes that this interpretation of the federal Constitution by the state supreme court raises an important federal question and is incorrect on the merits?

The state sought review of this decision in the United States Supreme Court, alleging that the state supreme court's determination of the federal constitutional issue was incorrect. A plaintiff challenged the constitutionality of a state tax law, alleging that it violated the Equal Protection Clauses of both the United States Constitution and the state constitution. The state supreme court agreed and held the tax law to be invalid. It said: "We hold that this state tax law violates the Equal Protection Clause of the United States Constitution and also the Equal Protection Clause of the state constitution because we interpret that provision of the state constitution to contain exactly the same prohibition against discriminatory legislation as is contained in the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution."

- Reverse the state supreme court decision, because the Equal Protection Clause of a state constitution must be construed by the state supreme court in a manner that is congruent with the meaning of the Equal Protection Clause of the federal Constitution
- **Reverse the state supreme court decision with respect to the Equal Protection Clause of the federal Constitution and remand the case to the state supreme court for further proceedings, because the state and federal constitutional issues are so intertwined that the federal issue must be decided so that this case may be disposed of properly**
- Refuse to review the decision of the state supreme court, because it is based on an adequate and independent ground of state law
- Refuse to review the decision of the state supreme court, because a state government may not seek review of the decisions of its own courts in the United States Supreme Court

Note:

The U.S. Supreme Court has complete discretion to hear cases that come to it by writ of certiorari. The cases that may be heard by certiorari include: (i) cases from the highest state courts where the constitutionality of a federal statute, federal treaty, or state statute is called into question or a state statute allegedly violates federal law, 28 U.S.C. § 1257; and (ii) all cases from federal courts of appeals. 28 U.S.C. § 1254.

The Court may determine whether a state court has reached a decision that is not in conformity with the U.S. Constitution, but it may not review state court decisions that merely adjudicate questions of state law; the Court's review of state court judgments is limited to questions of federal law.

Even if there is a federal question in the state court case, the Court may not review it if there is an "independent and adequate" state ground for the state court's decision. That is, if the same result would be reached even had the state court made a different decision on the federal question, the Court may not decide the case. This is because its opinion would in effect be an "advisory" one.

The state court may hold that a state statute violates both the state and federal constitutions. Such a holding may be achieved in one of two ways: (i) the state court may have independently interpreted the state constitutional provision, without relying directly on federal cases construing the federal constitutional provision; or (ii) the state court may have interpreted the state constitutional provision as being co-extensive with the comparable federal constitutional provision, and then attempted to follow the relevant federal case law. In that context, the Court may find that an independent and adequate state ground did not exist, allowing the Court to review it. However, the mere fact that a federal question is involved in a case is not sufficient to entitle the Court to review it. And, even if the Court is entitled to review a case, it will generally adjudicate only the federal issues.

B is correct. The Court has jurisdiction over the federal question raised in this case - the constitutionality of the state statute under the U.S. Constitution - and will exercise that jurisdiction because it has deemed the question important. However, the Court will only adjudicate the issue related to statute's violation of the U.S. Constitution, and will leave the interpretation of the statute under the state constitution to the state court. This is because when a state court interprets its own constitution co-extensively with the U.S. Constitution, as in this case here, there are no independent and adequate state grounds to support the decision. The Court may then review the case as to the federal issues, leaving the interpretation of the law under the state constitution to the state court.

A is incorrect. This answer is only partially correct. Although the Court has the power to hear the case and reverse the state court's decision with respect to the federal constitutional claim, it should then remand the case to the state court to determine the constitutionality of the statute under the state constitution. This is because state courts have the right to interpret their own constitutions and are not required to apply the Court's interpretation of the U.S. Constitution.

C is incorrect. When a state court has interpreted a state constitutional provision co-extensively with the comparable federal constitutional provision, the Court may find that an independent and adequate state ground did not exist, allowing the Court to review it as to the federal question. When the Court is entitled to review a case, however, it will generally adjudicate only the federal issues. Therefore, because the state court here found the statute in violation of both the state and U.S. constitutional provisions, but the Court believes that the federal constitutional interpretation was incorrect, it may adjudicate the federal question and remand as to the state constitutional issue.

D is incorrect. This is an incorrect statement of law. A state government may properly seek review of an adverse decision in the U.S. Supreme Court, just like any other party, as long as the Court has proper jurisdiction over the case.

2. The provision authorizing direct review of the constitutionality, interpretation, or application of this statute only in the United States Supreme Court is

The National AIDS Prevention and Control Act is a new, comprehensive federal statute that was enacted to deal with the public health crisis caused by HIV/AIDS. Congress and the President were concerned that inconsistent lower court rulings with respect to the constitutionality, interpretation, and application of the statute might adversely affect or delay its enforcement and, thereby, jeopardize the public health. As a result, they included a provision in the statute providing that all legal challenges concerning those matters may be initiated only by filing suit directly in the United States Supreme Court.

- Constitutional, because it is authorized by the Article I power of Congress to enact all laws that are "necessary and proper" to implement the general welfare
- Constitutional, because Article III provides that the jurisdiction of the United States Supreme Court is subject to such exceptions and such regulations as Congress shall make
- Unconstitutional, because it denies persons who wish to challenge this statute the equal protection of the laws by requiring them to file suit in a court different from that in which persons who wish to challenge other statutes may file
- **Unconstitutional, because it is inconsistent with the specification in Article III of the original jurisdiction of the United States Supreme Court**

Note:

Under Article III, the U.S. Supreme Court shall have original jurisdiction in cases involving ambassadors, ministers and consuls, and cases in which a state is a party. Article III suggests that Congress may place certain limits on both the Supreme Court's appellate jurisdiction and on the jurisdiction of the lower federal courts. Section 2 of Article III states that in all cases not falling within the Supreme Court's original jurisdiction (but falling within the federal judicial power), "in all other Cases before mentioned, [i.e., arising under the Constitution, Act of Congress, or treaty], the Supreme Court shall have appellate jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make."

*Under Article I, Section 8, Congress does have the right to "lay and collect taxes . . . to pay the debts and provide for the . . . general welfare of the United States . . ." But the phrase "provide for the . . . general welfare" in this sentence modifies "lay and collect taxes . . . to pay the debts . . ." Therefore, Congress may spend for the general welfare, it may tax for the general welfare, but it may not regulate for the general welfare. See *U.S. v. Butler*, 297 U.S. 1 (1936).*

D is correct. Article III provides that the Supreme Court shall have original jurisdiction in all cases involving ambassadors, ministers and consuls, and cases in which a state is a party. This provision, however, would impermissibly expand the scope of that limited original jurisdiction.

A is incorrect. Although the Necessary and Proper Clause does not allow Congress to regulate for the general welfare, it permits the enactment of laws that serve the general welfare. Nevertheless, the provision still impermissibly seeks to expand the Court's original jurisdiction as established by Article III.

B is incorrect. This is an incorrect statement of the law. Article III only allows Congress to make exceptions and regulations regarding the Court's appellate jurisdiction, not its original jurisdiction.

C is incorrect. This answer reaches the correct answer with the wrong reasoning. Although the provision is unconstitutional, it is not because it denies people bringing challenges equal protection. It does not treat or classify certain groups of individuals differently. Rather, as explained above, it is unconstitutional because it runs afoul of the Court's original jurisdiction as established in Article III.

3. The federal district court should

A city's police officers shot and killed a plaintiff's friend as he attempted to escape arrest for an armed robbery he had committed. The plaintiff brought suit in federal district court against the police department and the city police officers involved, seeking only a judgment declaring unconstitutional the state statute under which the police acted. That newly enacted statute authorized the police to use deadly force when necessary to apprehend a person who has committed a felony. In his suit, the plaintiff alleged that the police would not have killed his friend if the use of deadly force had not been authorized by the statute.

- Decide the case on its merits, because it raises a substantial federal question
- Dismiss the action, because it involves a nonjusticiable political question
- **Dismiss the action, because it does not present a case or controversy**
- Dismiss the action, because the Eleventh Amendment prohibits federal courts from deciding cases of this type

Note:

Under Article III of the U.S. Constitution, federal courts shall have judicial power over all "cases and controversies" arising under the Constitution, laws, or treaties of the U.S.

The U.S. Supreme Court will not decide a challenge to a government or private action unless the person who is challenging the action has "standing" to raise the issue. A person has standing only if she can demonstrate a concrete stake in the outcome of the controversy. A plaintiff will be able to show a sufficient stake in the controversy only if she can show an injury in fact, caused by the defendant, that will be remedied by a decision in her favor (i.e., causation and redressability).

Injury in fact requires: (i) a particularized injury - an injury that affects the plaintiff in a personal and individual way; and (ii) a concrete injury - one that exists in fact. It is not enough to show merely that a federal statute or constitutional provision has been violated (and that we all suffer when that happens). *Spokeo, Inc. v. Robins*, 578 U.S. ____ (2016).

To have standing, the claimant must have suffered or may presently suffer a direct impairment with his own rights. A plaintiff may, however, assert third-party rights where he himself has suffered injury and an additional factor is present, including when a third party has difficulty asserting their own rights or the plaintiff's injury adversely affects his relationship with third parties.

The Court will not decide political questions. Political questions are those issues committed by the Constitution to another branch of government; or those inherently incapable of resolution and enforcement by the judicial process (e.g., questions regarding the conduct of foreign relations or issues as to when hostilities have stopped; questions relating to which group of delegates should be seated at the Democratic National Convention; and Senate impeachment procedures).

The Eleventh Amendment is a jurisdictional bar that modifies the judicial power by prohibiting a federal court from hearing a private party's or foreign government's claims against a state government. See *Hans v. Louisiana*, 134 U.S. 1 (1890).

C is correct. Here, the plaintiff has suffered no injury himself, as required by the law. Rather, his friend was the one shot and killed by the police. And, while the harm (the loss of his friend) was allegedly caused by the unconstitutional statute, his injury cannot be redressed by a declaration that the statute is unconstitutional. Declaratory actions are particularly prone to lack standing because they don't seek a more concrete remedy. Therefore, without proper standing, the court should dismiss the action because it does not present a case or controversy.

A is incorrect. In order to adjudicate a case that raises a substantial federal question, the plaintiff must first establish that he has standing to bring the action, which gives him a stake in the case or controversy. Without standing, the substantial federal question cannot be reached by the court because it does satisfy the case or controversy requirement under Article III of the Constitution.

B is incorrect. A nonjusticiable political question arises when it relates to issues that have been designated to another branch of government by the Constitution. This is not the case here; the statute does not raise any question that is more properly answered by another branch of government (or the political process). Rather, it presents an issue of statutory constitutionality that traditionally falls within the court's jurisdiction, but without proper standing, the plaintiff's action must be dismissed.

D is incorrect. The Eleventh Amendment is a bar to federal courts hearing a private party's claim (or a claim by a foreign government) against a state government, whereas in this case, the plaintiff is suing the city police department and the individual officers, not the state.

4. If the losing party in the state supreme court seeks review of the decision of that court in the United States Supreme Court, the United States Supreme Court should

The federal statute admitting a particular state to the Union granted the state certain public lands, and established some very ambiguous conditions on the subsequent disposition of these lands by the state. This federal statute also required the new state to write those exact same conditions into its state constitution. One hundred years later, a statute of the state dealing with the sale of these public lands was challenged in a state court lawsuit on the ground that it was inconsistent with the conditions contained in the federal statute, and with the provisions of the state constitution that exactly copy the conditions contained in the federal statute. The trial court decision in this case was appealed to the state supreme court. In its opinion, the state supreme court dealt at length with the ambiguous language of the federal statute and with cases interpreting identical language in federal statutes admitting other states to the union. The state supreme court opinion did not discuss the similar provisions of the state constitution, but it did hold that the challenged state statute is invalid because it is "inconsistent with the language of the federal statute and therefore is inconsistent with the identical provisions of our state constitution."

- **Accept the case for review and determine the validity and interpretation of the federal statute if it is an important and substantial question**
- Ask the state supreme court to indicate more clearly whether it relied on the state constitutional provision in rendering its decision
- Decline to review the case on the ground that the decision of the state supreme court rests on an adequate and independent state ground
- Decline to review the case because a decision by a state supreme court concerning the proper disposition of state public lands is not reviewable by the United States Supreme Court

Note:

Under Article III of the U.S. Constitution, federal courts shall have judicial power over all "cases and controversies" arising under the Constitution, laws, or treaties of the U.S. The Supreme Court has complete discretion to hear cases that come to it by writ of certiorari. The cases that may be heard by certiorari include: (i) cases from the highest state courts where (a) the constitutionality of a federal statute, federal treaty, or state statute is called into question, or (b) a state statute allegedly violates federal law, 28 U.S.C. § 1257; and (ii) all cases from federal courts of appeals. 28 U.S.C. § 1254.

The Court may determine whether a state court has reached a decision that is not in conformity with the Constitution, but it may not review state court decisions that merely adjudicate questions of state law because the Court's review of state court judgments is limited to questions of federal law.

Even if there is a federal question in the state court case, the Court may not review it if there is an "independent and adequate" state ground for the state court's decision. That is, if the same result would be reached even had the state court made a different decision on the federal question, the Court may not decide the case. This is because its opinion would in effect be an "advisory" one.

A state court may hold that a state statute violates both the state and federal legal provisions. A holding that the state constitution is violated may be achieved in one of two ways: (i) the state court may have independently interpreted the state constitutional provision, without relying directly on federal cases construing the federal provision; or (ii) the state court may have interpreted the state constitutional provision as being co-extensive with the comparable federal provision, and then attempted to follow the relevant federal case law. In that context, the Court may find that an independent and adequate state ground did not exist, allowing the Court to review it. However, the mere fact that a federal question is involved in a case is not sufficient to entitle the Court to review it. And, even if the Court is entitled to review a case, it will generally adjudicate only the federal issues.

A is correct. The Court may not review the state court's interpretation of its own state constitution, but here, the state court rested its decision on interpretation of federal law. Its comment that the decision also comported with the same provision in the state constitution, without any interpretation, was not an "independent and adequate" state ground that would require the Court to decline to review the case. This is because when a state court interprets state and federal provisions co-extensively, the Court may decide to hear the case as to the federal issues. Therefore, the Court should accept the case for review and determine the validity and interpretation of the federal statute if it raises an important federal question.

B is incorrect. Based on the fact that the state constitution and federal statutory provision are identical and the state court interpreted them co-extensively, it would serve no purpose to ask the state supreme court for clarification.

C is incorrect. As explained above, the state court opinion did not provide an independent and adequate state ground for the decision given that it rested on an identical interpretation of the state and federal provisions.

D is incorrect. The issue revolves around the interpretation of a federal statute, which is plainly within the U.S. Supreme Court's jurisdiction established by Article III to exercise judicial power over all "cases and controversies" arising under the Constitution, laws, or treaties of the U.S.

5. In this case, the court should

An ordinance of a particular city requires that its mayor have continuously been a resident of the city for at least five years at the time he or she takes office. A candidate, who is thinking about running for mayor in an election that will take place next year, will have been a resident of the city for only four and one-half years at the time the mayor elected then takes office. Before he decides whether to run for the position of mayor, the candidate wants to know whether he could lawfully assume that position if he were elected. As a result, the candidate files suit in the local federal district court for a declaratory judgment that the city's five-year-residence requirement is unconstitutional and that he is entitled to a place on his political party's primary election ballot for mayor. He names the chairman of his political party as the sole defendant but does not join any election official. The chairman responds by joining the candidate in requesting the court to declare the city's residence requirement invalid.

- **Refuse to determine the merits of this suit, because there is no case or controversy**
- Refuse to issue such a declaratory judgment, because an issue of this kind involving only a local election does not present a substantial federal constitutional question
- Issue the declaratory judgment, because a residency requirement of this type is a denial of the equal protection of the laws
- Issue the declaratory judgment, because the candidate will have substantially complied with the residency requirement

Note:

A is correct. There is no case or controversy here because the candidate lacks standing. One reason he lacks standing is that the issue is not yet ripe for review. The issue is not ripe because the candidate will not suffer an injury until he is barred from running for office or until he has won the election. At that point, an injury will either have occurred or will be so certain to occur as to confer standing. The second reason the candidate lacks standing is that the candidate has not joined the correct party to provide him the relief that will redress the injury. The chairman of his local political party would be the correct party to sue if the political party refuses to put him on the ballot due to the residency requirement. However, the candidate seems to be challenging the qualifications with the assumption that he will not be allowed to take office. The correct defendant would be whichever official enforces those qualifications and determines whether elected officials take office, presumably election officials. Finally, the mere agreement by the parties that the court should consider the issue is irrelevant; standing cannot be created by agreement.

B is incorrect. The qualifications of an elected official, even for a local election, do present a substantial federal constitutional question.

C is incorrect. The court may not reach the merits of the case if the candidate lacks standing. Moreover, it is not clear that this residency requirement would deny candidates equal protection of the law.

D is incorrect. The federal courts may not modify the state law by finding substantial compliance enough if the state law is otherwise constitutional.

6. In this case, the court should

The power company files an action in the federal district court in the state requesting a declaratory judgment that this new state statute forbidding public utility rate increases more often than once every two years is unconstitutional. Assume no federal statute is relevant. A state legislature recently enacted a statute forbidding public utilities regulated by the state's public service commission to increase their rates more than once every two years. A power company, a public utility regulated by that commission, has just obtained approval of the commission for a general rate increase. The power company has routinely filed for a rate increase every ten to 14 months during the last 20 years. Because of uncertainties about future fuel prices, the power company cannot ascertain with any certainty the date when it will need a further rate increase; but it thinks it may need such an increase sometime within the next 18 months.

- Hold the statute unconstitutional, because such a moratorium on rate increases deprives utilities of their property without due process of law
- Hold the statute constitutional, because the judgment of a legislature on a matter involving economic regulation is entitled to great deference
- **Dismiss the complaint, because this action is not ripe for decision**
- Dismiss the complaint, because controversies over state-regulated utility rates are outside of the jurisdiction conferred on federal courts by Article III of the Constitution

Note:

C is correct. There is no injury yet to the power company. It has not yet been denied a rate increase, and it does not even know whether it will need to seek a rate increase before the statute will allow it to. Therefore, there is not yet an actual or imminent injury, and the claim is not yet ripe for decision.

A is incorrect. There is no vested property right that the company can claim has been injured.

B is incorrect. There has been no injury that would allow a court to really determine whether this legislation is rationally related to a legitimate interest.

D is incorrect. Article III provides no exemption for state-regulated utility rates. And, in fact, if the parties presented a case or controversy, the constitutionality of the rate regulation would raise a federal question.

7. May the federal court determine the merits of this suit?

Congress recently enacted a statute imposing severe criminal penalties on anyone engaged in trading in the stock market who, in the course of that trading, takes "unfair advantage" of other investors who are also trading in the stock market. The statute does not define the term "unfair advantage." There have been no prosecutions under this new statute. The members of an association of law school professors that is dedicated to increasing the clarity of the language used in criminal statutes believe that this statute is unconstitutionally vague. Neither the association nor any of its members is currently engaged in, or intends in the future to engage in, trading in the stock market. The association and its members bring suit against the Attorney General of the United States in a federal district court, seeking an injunction against the enforcement of this statute on the ground that it is unconstitutional.

- Yes, because the suit involves a dispute over the constitutionality of a federal statute
- Yes, because the plaintiffs seek real relief of a conclusive nature—an injunction against enforcement of this statute
- **No, because the plaintiffs do not have an interest in the invalidation of this statute that is adequate to ensure that the suit presents an Article III controversy**
- No, because a suit for an injunction against enforcement of a criminal statute may not be brought in federal court at any time prior to a bona fide effort to enforce that statute

Note:

C is correct. In order to have standing, a party must have an imminent or actual injury. Here, because the plaintiffs do not trade in the stock market and do not plan to, they have no injury. Accordingly, they lack the standing required to create a case or controversy under Article III.

A is incorrect. The presence of a constitutional question cannot make up for a lack of standing.

B is incorrect. Although the remedy the plaintiffs seek will redress the injury caused others by this statute, they themselves have no injury, and lack standing.

D is incorrect. A suit to enjoin enforcement of a statute can be brought before a bona fide effort to enforce the statute unless it is clear that the executive plans never to enforce it. An imminent injury is present when someone could be subject to prosecution at any time.

8. The best constitutional argument in support of the EPA's request is that

A federal statute provides that the United States Supreme Court has authority to review any case filed in a United States Court of Appeals, even though that case has not yet been decided by the court of appeals. The Environmental Protection Agency (EPA), an agency in the executive branch of the federal government, issued an important environmental rule. Although the rule had not yet been enforced against them, companies that would be adversely affected by the rule filed a petition for review of the rule in a court of appeals, seeking a declaration that the rule was invalid solely because it was beyond the statutory authority of the EPA. The companies made no constitutional claim. A statute specifically provides for direct review of EPA rules by a court of appeals without any initial action in a district court. The companies filed a petition for a writ of certiorari in the Supreme Court requesting immediate review of this case by the Supreme Court before the court of appeals has actually decided the case. The EPA acknowledges that the case is important enough to warrant Supreme Court review and that it should be decided promptly, but it asks the Supreme Court to dismiss the petition on jurisdictional grounds.

- **The case is not within the original jurisdiction of the Supreme Court as defined by Article III, and it is not a proper subject of that court's appellate jurisdiction because it has not yet been decided by any lower court**
- The case is appellate in nature, but it is beyond the appellate jurisdiction of the Supreme Court, because Article III states that its jurisdiction extends only to cases arising under the Constitution
- Article III precludes federal courts from reviewing the validity of any federal agency rule in any proceeding other than an action to enforce the rule
- Article III provides that all federal cases, except those within the original jurisdiction of the Supreme Court, must be initiated by an action in a federal district court

Note:

Under Article III, the U.S. Supreme Court shall have original jurisdiction in cases involving ambassadors, ministers and consuls, and cases in which a state is a party. Article III itself suggests that Congress may place certain limits on both the Supreme Court's appellate jurisdiction and on the jurisdiction of the lower federal courts. Section 2 of Article III states that in all cases not falling within the Supreme Court's original jurisdiction (but falling within the federal judicial power), "in all other Cases before mentioned, [i.e., arising under the Constitution, Act of Congress, or treaty], the Supreme Court shall have appellate jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make." Congress has the general power to decide what types of cases the Supreme Court may hear, as long as it doesn't expand the Court's jurisdiction beyond the federal judicial power as established by Article III, Section 2.

A is correct. This is the strongest argument in support of the EPA's jurisdictional challenge to the action because Article III defines the scope of the Supreme Court's original jurisdiction, and although Congress may regulate the appellate jurisdictional scope of the Court, it may not expand the Court's original jurisdiction as outlined by Article III. This argument properly recognizes that it is not an appellate jurisdictional issue because no lower court has decided it, so it's not coming up on appeal. Without a provision allowing for the expansion of the Court's original jurisdiction, the case should be dismissed on jurisdictional grounds.

B is incorrect. This would not be an effective argument for the EPA because if the case were appellate in nature, the fact that it raises a federal question would bring it within the scope of the Court's appellate review powers.

C is incorrect. This is an incorrect statement of the law. Federal courts can, in fact, review the validity of a rule issued by a federal agency through a declaratory judgment as long as other requirements for justiciability are met. As such, this would not be the strongest argument for the EPA in dismissing the case on jurisdictional grounds.

D is incorrect. This is also an incorrect statement of the law. Article III has no such requirement that all federal cases not under the Court's original jurisdiction be initiated in a federal district court. In fact, Congress need not have created district courts at all.

9. In this case, the United States Supreme Court should

The United States Supreme Court grants a writ of certiorari to review this decision of the state supreme court. For his conduct, the fan was charged with inciting to riot and was convicted in a jury trial in state court. He appealed. The state supreme court reversed his conviction. In its opinion, the court discussed in detail decisions of the United States Supreme Court dealing with the First Amendment Free Speech Clause as incorporated into the Fourteenth Amendment. At the end of that discussion, however, the court stated that it "need not resolve how, on the basis of these cases," the United States Supreme Court would decide the fan's case. Instead, the court stated, "this court has always given the free-speech guarantee of the state's constitution the broadest possible interpretation. As a result, we hold that in this case, where no riot or other violence actually occurred, the state constitution does not permit this conviction for incitement to riot to stand." The home team lost the game. Although no violence ensued, spectators crowded menacingly around the umpires after the game. As a result, the umpires were able to leave the field and stadium only with the help of a massive police escort. A baseball fan has a fierce temper and an extremely loud voice. Attending a baseball game in which a number of calls went against the home team, the fan repeatedly stood up, brandished his fist, and angrily shouted, "Kill the umpires." The fourth time he engaged in this conduct, many other spectators followed the fan in rising from their seats, brandishing fists, and shouting, "Kill the umpires."

- Affirm the state supreme court's decision, because the fan's ballpark shout is commonplace hyperbole that cannot, consistently with the First and Fourteenth Amendments, be punished
- Remand the case to the state supreme court with directions that it resolve the First and Fourteenth Amendment free-speech issue that it discussed in such detail
- **Dismiss the writ as improvidently granted, because the state supreme court's decision rests on an independent and adequate state law ground**
- Reverse the decision of the state supreme court, because incitement to violent action is not speech protected by the First and Fourteenth Amendments

Note:

The Supreme Court has complete discretion to hear cases that come to it by writ of certiorari. The cases that may be heard by certiorari include: (i) cases from the highest state courts where (a) the constitutionality of a federal statute, federal treaty, or state statute is called into question, or (b) a state statute allegedly violates federal law, 28 U.S.C. § 1257; and (ii) all cases from federal courts of appeals. 28 U.S.C. § 1254.

The Court may determine whether a state court has reached a decision that is not in conformity with the U.S. Constitution, but it may not review state court decisions that merely adjudicate questions of state law because the Court's review of state court judgments is limited to questions of federal law.

The state court may hold that a state statute violates both state and federal constitutional provisions. However, the holding that the state constitution is violated may be achieved in one of two ways: (i) the state court may have independently interpreted the state constitutional provision, without relying directly on federal cases construing the federal constitutional provision; or (ii) the state court may have interpreted the state constitutional provision as being co-extensive with the comparable federal constitutional provision, and then attempted to follow the relevant federal case law. The mere fact that a federal question is involved in a case is not sufficient to entitle the Court to review it.

Even if there is a federal question in a state court case, the Court may not review it if there is an "independent and adequate" state ground for the state court's decision. That is, if the same result would be reached even had the state court made a different decision on the federal question, the Court may not decide the case. This is because its opinion would in effect be an "advisory" one.

C is correct. Here, the state court specifically found that its own constitution protected the fan's right to speak and that his conviction should be reversed. The state court did analyze federal case law, but then stated that it "need not resolve how, on the basis of these cases," the Court would decide the fan's case. The opinion then said that it would give the state constitutional provision "the broadest possible interpretation" and that it "does not permit this conviction for incitement to riot to stand." (emphasis added). The state court's application of its own constitution thus afforded an independent and adequate state ground for its decision, and the writ should be dismissed.

A is incorrect. It is not necessary to determine whether the speech in question would have been protected under the U.S. Constitution because an independent and adequate state-law ground existed for the state court decision. However, it is possible that the statement "kill the umpires" amounted to "fighting words" or even posed a "clear and present danger" of inciting criminal acts under federal law, which means the speech would be considered unprotected.

B is incorrect. There is no need to remand the case to the state court for adjudication on the federal issue because the state supreme court decision rested on an independent and adequate state-law ground, as stated above.

D is incorrect. It is also not necessary to determine whether the speech would have been unprotected by the U.S. Constitution because there was an independent and adequate state-law ground for the state court decision. However, it is still possible that the speech would have been protected federally given that there was a delay between the speech and the crowd surrounding the umpires, and there was no actual violence.

10. The most proper disposition of this motion by the federal court would be to

Before the student's case came to trial, the defendant's criminal trial concluded in a conviction and sentencing. There do not appear to be any obvious errors in the proceeding that led to the result in the defendant's case. After the defendant's conviction and sentencing, the opposing party in the student's case moved to dismiss the suit. The student brought an action in federal district court against the judge in the defendant's case asking only for an injunction that would require the judge to resume the televising of the defendant's trial. The student alleged that the judge's order to stop the televising of the defendant's trial deprived him of property--his investment in cable television service--without due process of law. In the midst of the trial, the judge prohibited any further televising of the defendant's trial because he concluded that the presence of television cameras was disruptive. A student contracted for an expensive cable television service for a period of six months solely to view the televised trial of a defendant, who was on trial for murder in a court of a particular state.

- Defer action on the motion until after any appellate proceedings in the defendant's case have concluded, because the defendant might appeal, his conviction might be set aside, he might be tried again, and television cameras might be barred from the new trial
- Defer action on the motion until after the state Supreme Court expresses a view on its proper disposition, because the state law of mootness governs suits in federal court when the federal case is inexorably intertwined with a state proceeding
- **Grant the motion, because the subject matter of the controversy between the student and the judge has ceased to exist and there is no strong likelihood that it will be revived**
- Deny the motion, because the student has raised an important constitutional question: whether his investment in cable service, solely to view the defendant's trial, is property protected by the Due Process Clause of the Fourteenth Amendment

Note:

C is correct. Article III limits the exercise of federal court jurisdiction to cases and controversies, and once the injury that gave rise to the case is incapable of remedy, the case becomes moot and no longer justiciable. Here, once the trial was over, the relief the student sought, (televising the trial), was no longer possible, and his case became moot. Moreover, it is unlikely that the controversy will be revived because the case is not on appeal now, and there were no obvious errors in the proceedings. Therefore, the federal court should grant the motion to dismiss.

A is incorrect. The chances that the conviction would be set aside are small enough that it is unlikely the controversy would be revived. Moreover, the court might allow cameras for the second trial if one were granted.

B is incorrect. There is no state law of mootness.

D is incorrect. A federal question cannot be considered without a case or controversy, and a moot issue is not a case or controversy.
