Legislation/Administrative Law: Final Examination (Fall 1971)

William & Mary Law School

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This test consists of four questions with a total of 360 points. You should allot approximately one half minute for each point. Respond to all legal issues fairly raised by the questions. Your answers will be evaluated in terms, not only on legal issues, but also of clarity of presentation and organization.

Good Luck!

1. (150 points)

On September 3, 1971, the International Amalgamated Meatpackers Union brought a suit against, Interalia, Richard M. Nixon, as President of the United States, John Connely, as Secretary of Treasury of the United States, and the Cost of Living Counsel, seeking a temporary restraining order and a permanent injunction against the executive orders issued pursuant to the Economic Stabilization Act of 1970. Both the act and executive orders and legislative history employed by the District Court are appended. The Court of Appeals for the District of Columbia ordered a three-judge panel convened. The three-judge panel ruled against the Meatpackers Union on both the request for the temporary restraining order and that for the permanent injunction. No controversy concerning fact or jurisdiction exists. The case is appealed.

Using your knowledge from Administrative Law and Legislation:

(a) Write a brief for the Meatpackers Union, urging reversal of the Court below, and

(b) Write an opinion for the Supreme Court, affirming the decision below.

The brief and the opinion should argue all points of law, policy and philosophy relevant to the issue, and should dispose of the arguments raised by the other.

ANNEX "A"


To amend the Defense Production Act of 1950 and for other purposes.

** * * *

TITLE II -- COST OF LIVING STABILIZATION

§201. Short title
This title may be cited as the "Economic Stabilization Act of 1970."

§202. Presidential authority
(a) The President is authorized to issue such orders and regulations as he may deem appropriate to stabilize prices, rents, wages, and salaries at levels not less than those prevailing on May 25, 1970. Such orders and regulations may provide for the making of such adjustments as may be necessary to prevent gross inequities.

(b) The authority conferred on the President by this section shall not be exercised with respect to a particular industry or segment of the economy unless the President determines, after taking into account the seasonal nature of employment, the rate of employment or under-employment,
and other mitigating factors, that prices or wages in that industry or segment of the economy have increased at a rate which is grossly disproportionate to the rate at which prices or wages have increased in the economy generally.

§203. Delegation
The President may delegate the performance of any function under this title to such officers, departments, and agencies of the United States as he may deem appropriate.

§204. Penalty
Whoever willfully violates any order or regulation under this title shall be fined not more than $5,000.

§205. Injunctions
Whenever it appears to any agency of the United States, authorized by the President to exercise the authority contained in this section to enforce orders and regulations issued under this title, that any person had engaged, is engaged or is about to engage in any acts or practices constituting a violation of any regulation or order under this title, it may in its discretion bring an action, in the proper district court of the United States or the proper United States court of any territory or other place subject to the jurisdiction of the United States to enjoin such acts or practices, and upon a proper showing a permanent or temporary injunction or restraining order shall be granted without bond. Upon application of the agency, any such court may also issue mandatory injunctions commanding any person to comply with any regulation or order under this title.

§206. Expiration
The authority to issue and enforce orders and regulations under this title expire at midnight April 30, 1972, but such expiration shall not affect any proceeding under section 204 for a violation of any such order or regulation, or for the punishment for contempt committed in the violation of any injunction under section 205, committed prior to May 1, 1972.

ANNEX "B"
EXECUTIVE ORDER NO. 11615
August 17, 1971, 36 F.R. 15727

PROVIDING FOR STABILIZATION OF PRICES,
RENTS, WAGES, AND SALARIES

WHEREAS, in order to stabilize the economy, reduce inflation, and minimize unemployment, it is necessary to stabilize prices, rents, wages, and salaries; and

WHEREAS, the present balance of payments situation makes it especially urgent to stabilize prices, rents, wages, and salaries in order to improve our competitive position in world trade and to protect the purchasing power of the dollar:

NOW, THEREFORE, by virtue of the authority vested in me by the Constitution and statutes of the United States, including the Economic Stabilization Act of 1970 (P.L. 91-379, §4 Stat. 799), as amended, it is hereby ordered as follows:

Section 1. (a) Prices, rents, wages, and salaries shall be stabilized for a period of 90 days from the date hereof at levels not greater than the highest of those pertaining to a substantial volume of actual transactions by each individual, business, firm or other entity of any kind during the 30-day period ending August 14, 1971, for like or similar commodities or services. If no transactions occurred in that period, the ceiling will be the highest price, rent, salary or wage in the nearest preceding 30-day period in which transactions did occur. No person shall charge, assess, or receive, directly or indirectly in any transaction prices or rents in any form higher than those permitted hereunder and no person shall, directly or indirectly, pay or agree to pay in any transaction wages or salaries
in any form, or to use any means to obtain payment of wages and salaries in any form, higher than those permitted hereunder, whether by retroactive increases or otherwise.

(b) Each person engaged in the business of selling or providing commodities or services shall maintain available for public inspection a record of the highest prices or rents charged for such or similar commodities or services during the 30-day period ending August 14, 1971.

(c) The provisions of sections 1 and 2 hereof shall not apply to the prices charged for raw agricultural products.

Sec. 2. (a) There is hereby established a Cost of Living Council which shall act as an agency of the United States and which is hereinafter referred to as the Council.

(b) The Council shall be composed of the following members: The Secretary of the Treasury, the Secretary of Agriculture, the Secretary of Commerce, the Secretary of Labor, the Director of the Office of Management and Budget, the Chairman of the Council of Economic Advisers, the Director of the Office of Emergency Preparedness, and the Special Assistant to the President for Consumer Affairs. The Secretary of the Treasury shall serve as Chairman of the Council and the Chairman of the Council of Economic Advisers shall serve as Vice Chairman. The Chairman of the Board of Governors of the Federal Reserve System shall serve as adviser to the Council.

(c) Under the direction of the Chairman of the Council a Special Assistant to the President shall serve as Executive Director of the Council, and the Executive Director is authorized to appoint such personnel as may be necessary to assist the Council in the performance of its functions.

Sec. 3. (a) Except as otherwise provided herein, there are hereby delegated to the Council all of the powers conferred on the President by the Economic Stabilization Act of 1970.

(b) The Council shall develop and recommend to the President additional policies, mechanisms, and procedures to maintain economic growth without inflationary increases in prices, rents, wages, and salaries after the expiration of the 90-day period specified in Section 1 of this Order.

(c) The Council shall consult with representatives of agriculture, industry, labor and the public concerning the development of policies, mechanisms and procedures to maintain economic growth without inflationary increases in prices, rents, wages and salaries.

(d) In all of its actions the Council will be guided by the need to maintain consistency of price and wage policies with fiscal, monetary, international and other economic policies of the United States.

(e) The Council shall inform the public, agriculture, industry, and labor concerning the need for controlling inflation and shall encourage and promote voluntary action to that end.

Sec. 4. (a) The Council, in carrying out the provisions of this Order, may (i) prescribe definitions for any terms used herein, (ii) make exceptions or grant exemptions, (iii) issue regulations and orders, and (iv) take such other actions as it determines to be necessary and appropriate to carry out the purposes of this Order.

(b) The Council may redelegate to any agency, instrumentality or official of the United States any authority under this Order, and may, in administering this Order, utilize the services of any other agencies, Federal or State, as may be available and appropriate.

(c) On request of the Chairman of the Council, each Executive department or agency is authorized and directed, consistent with law, to furnish the Council with available information which the Council may require in the performance of its functions.

(d) All Executive departments and agencies shall furnish such necessary assistance as may be authorized by section 214 of the Act of May 3, 1945 (59 Stat. 134; 31 U.S.C. 691).
Sec. 5. The Council may require the maintenance of appropriate records or other evidence which are necessary in carrying out the provisions of this Order, and may require any person to maintain and produce for examination such records or other evidence, in such form as it shall require, concerning prices, rents, wages, and salaries and all related matters. The Council may make such exemptions from any requirement otherwise imposed as are consistent with the purposes of this Order. Any type of record or evidence required under regulations issued under this Order shall be retained for such period as the Council may prescribe.

Sec. 6. The expenses of the Council shall be paid from such funds of the Treasury Department as may be available therefor.

Sec. 7. (a) Whoever willfully violates this Order or any order or regulation issued under authority of this Order shall be fined not more than $5,000 for each such violation.

(b) The Council shall in its discretion request the Department of Justice to bring actions for injunctions authorized under Section 205 of the Economic Stabilization Act of 1970 whenever it appears to the Council that any person has engaged, is engaged, or is about to engage in any acts or practices constituting a violation of any regulation or order issued pursuant to this Order.

RICHARD NIXON

THE WHITE HOUSE,
August 15, 1971

ANNEX "C"

91st Congress
HOUSE OF REPRESENTATIVES
2d Session

REPORT
No. 91-1330

DEFENSE PRODUCTION ACT EXTENSION AND ECONOMIC STABILIZATION ACT

JULY 27, 1970—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

MR. PATMAN, from the Committee on Banking and Currency, submitted the following

REPORT together with
MINORITY VIEWS AND ADDITIONAL VIEWS
[To accompany H.R. 17880]

** *

TITLE II--COST-OF-LIVING STABILIZATION

This title of H.R. 17880 would provide discretionary authority to the President to issue orders and regulations to stabilize prices, rents, wages, and salaries at levels of not less than those prevailing on May 25, 1970.

This discretionary authority would expire on February 28, 1971. It is envisaged that the freeze, to be effective in getting a handle on inflation, would need to be enforced for only 2 or 3 months. Title II of H.R. 17880 reflects a sincere congressional willingness to do its part — and to share the consequences — in a meaningful attack on inflation.

Under this legislation the President would have the authority to determine whether or not such orders and regulations should be issued. Further, the President would have the authority to make any adjustments within such orders and regulations as deemed necessary to prevent any iniquities that might occur as the result of such stabilization orders.

This title should be thought of in conjunction with the authority given by the Congress to the President in Public Law 91-151, enacted in December 1969, whereby the President was given authority to impose selective controls over any or all forms of credit when he determines that such action would be necessary or appropriate for the purpose of preventing or controlling inflation generated by the extension of excessive credit.
The combination of these two provisions — discretionary control authority granted the President last year and the proposed authority provided in this legislation — will, in the opinion of your committee, provide the President with all of the tools necessary to control inflation, while at the same time providing for healthy economic growth. In this way we will not need to rely exclusively on fiscal and monetary actions which place an inordinate burden on those segments of our economy and society least able to bear them.

Many economists, many Members of Congress, some of whom have introduced legislation similar to Title II of H.R. 17880, labor leaders, the AFL-CIO, mayors of some of our Nation's largest cities, and others have called on the Congress to provide discretionary standby authority to the President to impose wage, price, rent, and salary controls to combat and break the back of inflation and the inflation psychology which prevades our thinking and our economy.

A Gallup poll conducted in the middle of June clearly indicates the wishes of the American people in this matter. This poll concluded that if the question on wage and price controls "were put to the people of the Nation in the form of a referendum, *** they would *** vote in favor of mandatory controls."

(b) The Council shall develop and recommend to the President additional policies, mechanisms, and procedures to maintain economic growth without inflationary increases in prices, rents, wages, and salaries after the expiration of the 90-day period specified in Section 1 of this Order.

(c) The Council shall consult with representatives of agriculture, industry, labor and the public concerning the development of policies, mechanisms and procedures to maintain economic growth without inflationary increases in prices, rents, wages and salaries.

(d) In all of its actions the Council will be guided by the need to maintain consistency of price and wage polices with fiscal, monetary, international and other economic policies of the United States.

(e) The Council shall inform the public, agriculture, industry, and labor concerning the need for controlling inflation and shall encourage and promote voluntary action to that end.

Sec. 4. (a) The Council, in carrying out the provisions of this Order, may (i) prescribe definitions for any terms used herein, (ii) make exceptions or grant exemptions, (iii) issue regulations and orders, and (iv) take such other actions as it determines to be necessary and appropriate to carry out the purposes of this Order.

(b) The Council may redelegate to any agency, instrumentality or official of the United States any authority under this Order, and may, in administering this Order, utilize the services of any other agencies, Federal or State, as may be available and appropriate.

(c) On request of the Chairman of the Council, each Executive department or agency is authorized and directed, consistent with law, to furnish the Council with available information which the Council may require in the performance of its functions.

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RICHARD NIXON

THE WHITE HOUSE,

* * *

91st Congress
2d Session

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REPORT
No. 91-1330

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together with
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Under this legislation the President would have the authority to determine whether or not such orders and regulations should be issued. Further, the President would have the authority to make any adjustments within such orders and regulations as deemed necessary to prevent any iniquities that might occur as the result of such stabilization orders.

This title should be thought of in conjunction with the authority given by the Congress to the President in Public Law 91-151, enacted in December 1969, whereby the President was given authority to impose selective controls over any or all forms of credit when he determines that such action would be necessary or appropriate for the purpose of preventing or controlling inflation generated by the extension of excessive credit.

The combination of these two provisions--discretionary control authority granted the President last year and the proposed authority provided in this legislation--will, in the opinion of your committee, provide the President with all of the tools necessary to control inflation, while at
the same time, providing for healthy economic growth. In this way we will not need to rely exclusively on fiscal and monetary actions which place an inordinate burden on those segments of our economy and society least able to bear them. Many economists, many Members of Congress, some of whom have introduced legislation similar to Title II of H.R. 17830, labor leaders, the AFL-CIO, mayors of some of our Nation's largest cities, and others have called on the Congress to provide discretionary standby authority to the President to impose wage, price, rent, and salary controls to combat and break the back of inflation and the inflation psychology which prevades our thinking and our economy.

A Gallup poll conducted in the middle of June clearly indicates the wishes of the American people in this matter. This poll concluded that if the question on wage and price controls "were put to the people of the Nation in the form of a referendum, *** they would *** vote in favor of mandatory controls."

Many Members of Congress have received letters and an overwhelming response to questionnaires which they have sent their constituents favoring the institution of wage and price controls on an equitable basis at this time. A distinguished member of our own committee from the minority party, Hon. Albert W. Johnson, Republican, of Pennsylvania, perhaps has clearly reflected the views received by many Members of Congress when he said during the committee hearings on this legislation "*** I just finished tabulating a questionnaire from the people in my district and 69 percent said they favor compulsory wage and price controls at this time in order to control inflation."

It is the firm opinion of the majority of the members of your committee that if the Congress, in its wisdom, enacts this legislation, the President will have all of the necessary weapons needed to control inflation.

No one can doubt that inflation is still on a rampage in our economy. The cost-of-living figures released on July 22 indicated that prices have risen in the first half of this year at a 6 percent annual rate. Granted that this rate of increase is insignificantly less than that experienced in the first half of last year, this in no way provides any solace to the unemployed, the aged, and others living on fixed incomes, and the wage earner who finds his wages continually eroded by increases in the cost of living. This same inflation is responsible for the housing depression, the balance-of-payments crisis, and the current liquidity squeeze.

The majority of your committee finds that the "economic game plan" imposed by the administration has created fantastically high levels of unemployment and, at the same time, done nothing to effectively reduce living costs. Many economists including at least one academic economist who is a close adviser to the President, has indicated that the unemployment rate at the end of this year would probably approach or exceed 6 percent. Already unemployment in various industries is running at alarming levels. For example, the unemployment rate for construction workers in a most recent month was 9.1 percent: for unskilled. 8.1 percent: for Negroes, 8 percent: and for the semiskilled, 6.7 percent.

Coupled with the continual price rise, the average workweek for factory workers is down substantially -- to the lowest level since the recession year of 1961. As a result, last year the average weekly earning of workers in the United States has increased less than the rise in living costs and brought the buying power of the worker's weekly pay check down to a level below that which it was 5 years ago:

The unfortunate "economic game plan" of the administration has also created a situation whereby the homebuilding industry and home mortgage market is in a depression. The commitment which Congress gave to the American people in the Housing Act of 1968 -- to provide 26 million additional units of housing in the next decade -- obviously cannot be met at current levels of construction. Currently, new units are being provided, at best, at only half the annual rate needed to meet this goal. Home mortgage interest rates are at all-time highs and not only our low-and moderate-income people, but also middle-income people cannot afford to acquire a home. But yet the cost of living inflation -- continues rampantly on.
Our Nation cannot suffer through another recession without doing extreme damage to the goals which we have set for ourselves over the coming years. We cannot allow productivity to be stifled by willfully promulgating economic policies at the national level to increase the employment, reduce productivity, and curtail the full use of all of our productive capacities.

Historic fact and economic analysis clearly indicate that once price and wages are brought under control, interest rates can be drastically reduced. Currently, the high level of interest rates include a large percentage for expected inflation. There is no question that interest rates themselves are inflationary in nature. When one looks at the level of interest rates now being demanded and obtained in the market of 10 percent or more, perhaps 6 percent of that can be accounted for by expected increases in prices during the coming year.

Those members of your committee who argued against this title during committee hearings and voted against this title during the executive sessions, argued that legislation providing for wage and price freezes should be mandated by the Congress if the Congress desires this authority, and not left up to the discretion of the President. The majority of your committee argued that this is an obvious must reside with the President and within the executive branch. The Congress itself is neither constituted or organized to take on this function. It is not a legislative function, both in terms of appropriate timing in instituting the controls and removing them, since only the Executive can determine the appropriate time for instituting the controls and removing them, and only the Executive is equipped to determine and establish the necessary rules and regulations to carry out the law once imposed.

The majority of your committee who voted for title II of H.R. 17880 deemed it highly improper for the Congress to mandate such authority. In supporting this proposal it was argued that one could easily envision the possibility that, once having imposed wage-price-salary-rent freezes, a few months hence it would be necessary to remove them in whole or in part. But if the Congress had mandated such action through to the termination date of February 28, 1971, as set forth in the bill, it would well be days or weeks before such action would be rescinded by the Congress if needed and, indeed, the Congress itself may not be in session when it would be appropriate to remove such controls.

For these reasons, the majority of your committee feels that such standby authority must be left to the discretion of the President and not mandated.

In summary, our economy has been and is not faced with the most anomalous situation of recession in some quarters with high unemployment rate, lack of productive activity in the homebuilding and other essential industries, and, at the same time, substantial inflation in terms of continued rapidly increasing prices and all-time high interest rates. This anomalous situation can be corrected by giving the President the appropriate tools to correct the situation. These legislative tools include the selective credit controls given to the President in Public Law 91-151, enacted last year, and the proposed wage-price-salary-rent discretionary authority proposed in this legislation.

With these tools the President will have a full opportunity to bring the economy under control and put an end to the twin economic evils of inflation and recession which has plagued the country in recent months.

MINORITY VIEWS

H.R. 17880 as reported is a better bill than the bill which was introduced. It has received our support because without it the Defense Production Act of 1950 would expire. However, we cannot concur with the majority views on title II -- Cost of Living Stabilization.
There are those who may argue that this delegation of authority to a joint committee of the Congress is improper or even unlawful. Such an argument is clearly without merit. Not only is our statute law full of examples of such delegation of authority, but, in addition, the theory has become an axiom that any authority of this nature which may be delegated to the executive branch may be retained by the Congress and may be exercised by a statutorily designated committee or body of the Congress.

In essence, my amendment puts the issue of standby authority for wage and price controls in an absolutely clear context. If such standby authority is to be enacted, responsible Members of Congress will support my amendment and those who only wish to play politics will oppose it.

GARRY BROWN (Michigan).

We concur in these additional views.

LAWRENCE G. WILLISMS.
ALBERT W. JOHNSON

2. (75 points)

Article 4, Section 19, of the Constitution of the State of Indiana provides:

Subject matter entitled—Amendments. Every act, amendatory act or amendment of the code shall embrace but one subject and matters properly connected therewith; each subject shall be expressed in the title.

In 1969, the State of Indiana passed an act entitled "An Act Concerning Penal Officers, Employees and Lengths of Service of Convicts."

Section 21 of the Act provided:

The term of service and imprisonment of every convict shall commence from the day of his conviction sentenced. Provided, however, that the sentencing court, in the case of a conviction for any felony or misdemeanor shall order that the convicted person be credited with all of his actual time spent in imprisonment prior to trial. Such orders shall be credited with statutory good time and diminution of his service for time so served by imprisonment.

The bill was originally introduced in the Senate and contained 20 sections, all of which dealt with employment of counselors, chaplains, psychologists, and social workers in the Indiana State Penal System. It was passed by the Senate in this form. The 21st section was added in the House. The only legislative history that exists is the statement of the Conference Committee in which the Senate accepts the 21st Amendment, stating tersely:

The aim of this section is to further the rehabilitation of convicts, as are the first 20 sections of the Act.

The Conference Committee also ordered the title to be amended to read "An Act Concerning Penal Officers, Employees and Lengths of Service of Convicts" from "An Act Concerning Penal Officers and Employees".

The clerk of the Senate then transmitted the bill to the Governor, with the notation of the presiding officer of the Senate that the Act had been duly enacted by the General Assembly of the State of Indiana. The Governor signed the Act and it became a law. In October, 1969, the Honorable John Davis, Judge of the Criminal Court of the 19th Judicial Circuit, invoked this section of the Act to reduce a three-year sentence
for possession of gambling paraphernalia to 27 months. Noble Perry, prosecuting attorney for the 19th Circuit, seeks a writ of mandamus from the Supreme Court of Indiana, alleging that section 21 of the Act violates Article 4, Section 19 of the Constitution of the State of Indiana in ordering Judge Davis to impose a 36 month sentence.

What result? Discuss alternative theories and evaluate them in reaching your conclusion.

3. (75 points)

In 1887 the United States Congress passed an act, pertinent section of which follows:

Being enacted by the Senate and House of Representatives in the United States of America, in Congress assembled, that from an act of the passage of this act, it shall be unlawful for any person, company, partnership or corporation, in any matter whatsoever, to prepay the transportation or in any other way assist or incur the implication of migration of any alien or aliens, any foreigner or foreigners, in the United States, its territories, or the District of Columbia, under contract or agreement, parole or special, express and implied, made previous to the immigration or migration of such alien or aliens, foreigner or foreigners, to perform labor or services of any kind in the United States, its territories or the District of Columbia.

The only legislative history of the act is the Conference Committee report of the House and Senate, reconciling minor differences between the Act, and urged its passage, stating:

This Act aims to make a twin role. First, certain employers have imported into the United States aliens and foreigners to labor, work or perform services under arduous and disadvantageous circumstances. The result has been these persons have lived in substandard conditions. Second, the importation of such aliens and foreigners has resulted in the deprivation of necessary Americans of employment. We, therefore, urge its passage.

In 1891, the following pertinent section of an Act concerning immigration was passed.

Section 3: The provisions of any other Act to the contrary notwithstanding, professional actors, artists, lecturers, singers and domestic servants may be employed under contracts providing for their transportation to the United States of America.

No legislative history is present from the 1892 Act, except statements upon the floor of the House and Senate. The groups included in section 3 were stated to be either in shortage in the United States or possessed special skills which would benefit the United States.

In July, 1969, several leading members of the congregation of the Holy Trinity Church, a corporation duly organized and incorporated as a religious society under the laws of the State of New York, were in London, England. There, they heard E. Walpole Warren deliver a sermon in a Church of England church. They subsequently met Mr. Warren and determined that he believed firmly in the High Church ritual of the Church of England.
These members of the congregation of the Holy Trinity Church felt that there was some danger that the traditional High Church mode of worship in the Holy Trinity Church might be abandoned. Upon return, they contacted other members of the congregation and ultimately the Board of Directors, who upon their recommendation tendered an offer to Mr. Warren to become the pastor and rector of the Holy Trinity Church. Mr. Warren was employed under a contract, which provided, in addition to compensation in the United States, for payment of his transportation costs to the United States.

The United States District Attorney of the southern district of New York brought action against the Holy Trinity Church under the criminal provisions of the Act of 1887, previously cited. The District Court for the southern district of New York convicted and the Circuit Court of Appeals for the Second Circuit affirmed.

Using all methods of legislative interpretation with which you have studied, what result should be reached by the United States Supreme Court in this case after it grants certiorari?

4. (60 points)

The following provisions of the State Constitution and a state statute and the following legislative history are at issue:

1. The Washington Constitution, Article 224, provides:

Lotteries. A legislature shall never authorize any lottery.

Chapter 119 of the Criminal Code of Washington provided in part:

Section 1 - Definitions ** *

7. Non-profit corporation shall mean a corporation incorporated under the laws of the State of Washington as a non-profit corporation pursuant to chapter 133 of the Corporation Code.

** * **

Section 4. It shall be unlawful for any person, association, group, club, corporation, or any other group to operate slot machines or a device which is a clear substitute for a slot machine in the State of Washington; provided, however, that all non-profit corporations shall be exempted from the provisions of this Act.

** * **

Section 21. Any person who violates this Act shall be guilty of a felony and shall be fined at least $1000 and not more than $5,000 and imprisoned in the state penitentiary for a period of not less than one year nor more than five years.

In the original Act, Section 1 on purposes read:

The operation of slot machines has become an evil business, lending itself to attempts to corrupt public officials and other crimes. Moreover, the promotion of the slot machine business seeks to entice children by deliberately placing the machines near the schoolhouses. Therefore, it is hereby declared the policy of the State of Washington as to banning slot machines and obvious substitute devices.

This section was eliminated from the final draft of the bill. The major changes in the bill from previous law were that it raised the penalty for violation from a misdemeanor with a $50 fine and exempted the non-profit corporations as defined by the Act. Both debate upon the Senate and
House floor and newspaper commentary indicated that at the time of the increased penalty there was considerable concern that bona fide private clubs which relied upon receipts from slot machines for much of their revenue would be severely harmed if the Act passed.

As to the Constitutional provisions, at the time of its passage, the sale of lottery tickets was widespread in the United States. In these lotteries, drawings were held and the holder of the winning ticket won. However, at the time of passage of this provision, other forms of gambling were also existent. The Supreme Court of the State of New York had held that at band concerts, when a ticket stub was drawn and the holder of that ticket awarded a sum of money, a lottery had occurred. Likewise, the Supreme Court of Wyoming had held that when a wheel of fortune, that is, a wheel with a series of numbers upon it, was employed as a gambling device with the persons who had wagered upon the number at which the number on the wheel stopped received compensation, was a lottery. Likewise, the Supreme Court of the State of Texas had held that the placing of prizes in some boxes of candy for sale was a lottery.

Prosecuting attorney for Spokane County has been named in a writ of mandamus ordering him to proceed against the Spokane Athletic Club, a non-profit corporation incorporated under the corporation code, Chapter 133, so as to be excluded from the provisions of the slot machine act. The mandamus is an original action in the State Supreme Court.

Employing your knowledge of legislative interpretation, should the writ of mandamus issue, ordering the prosecuting attorney to prosecute the Spokane Athletic Club because the exclusion is invalid as a violation of Article 224 of the Washington Constitution?