Constitutional Law Outline Professor Leong Spring 2021

- State Action.
 - a. The Constitution almost entirely deals with State Action:
 - i. State Action is necessary (but not sufficient) to bring a constitutional claim
 - The question of whether there is state action is completely separate from the merits of the claim
 - State action = an action taken by the government (at any level)
 - Action by actors must be taken in their official capacity
 - b. In 1883, the Civil Rights Cases came before the USSC:
 - i. Does the 14th Amendment give Congress the power to regulate individuals who engage in certain behaviors?
 - 14 does not invest Congress with the power to legislate upon subjects which are the domain of state legislation, but to provide modes of relief against state legislation (state action)
 - a. Thus, state action is required to trigger constitutional action
 - Shelley v. Kraemer → They went to the state court to enforce the covenant, and the state court did enforce it → this is now state action which cannot stand
 - d. Brentwood Academy v. Tennessee Secondary School Athletics Association

→ Pervasive Entwinement Test:

- i. Is there pervasive entwinement between a public entity and a private one, such that a private act can be construed as a public one?
 - 1. This is a totality of the circumstances test
 - Here, the Association in question is private, but 84% of its membership is from public institutions
 - The state allows the Association to run interscholastic athletics
 - Because of the 84% public membership, the Association is an organization of public schools represented by their officials acting in their official capacity to provide an integral element of public schooling
- e. Exceptions:
 - Public Function Exception: When a private entity is performing a task that is traditionally an exclusively governmental function, effectively replacing the gov (Brentwood)
 - Entanglement Exception: When the state authorizes or encourages private conduct that would violate the Constitution if that action were performed by the state itself
- II. Interpretative Methodology
 - a. Textualism: How would an ordinary person in contemporary time understand the plain words of a document?
 - i. Intent of the original drafters = irrelevant
 - 1. Language evolves though, so dismissing intent could be dangers
 - Principle = Text is the best evidence of what was decided upon when the Constitution was written

Outline Of Austrian Constitutional Law

Marcius WILLSON

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