Constitutional Analysis Flowchart

IS THE CASE JUSTICIABLE? (Standing, Mootness, Ripeness, Political Question)

YES

NO, Case Over

1. Does it involve a federal statute?

YES

NO

Is the statute pursuant to a power of Congress? Comm. Cl, Spending Cl., Nec. & Prop. or s5 of 14th Amd.

YES

NO

Does it violate Tenth Amendment?

YES, Case Over

NO

Does it: Coerce state (NY v. US), Commandeer state apparatus (Printz), Regulate state not as sovereign, or Regulate in area traditionally reserved to states?

YES

NO

Does it violate separation of powers?

YES, Case Over

NO

2. Does it involve an executive order OR decision of executive branch?

YES

NO

Is it pursuant to executive power in Art. II or from Congress?

YES

NO, Case Over

Does it violate separation of powers?

YES

NO

3. Is there a state law (statutory or common law)?

YES

NO

Is it preempted by Federal Law?

OR

Does it burden or tax interstate commerce?

YES, Case Over

NO