1. 3 pts a. It is barred by the 11th Amendment. The purpose of the 11th Amendment is to protect the state treasury from federal court awards. This is a claim against the state (a state agency is the state) for monetary damages so the 11th Amendment will bar the claim.

3 pts b. This claim is not barred by the 11th Amendment because it fits within Ex Parte Young which permits a suit against a state official for prospective relief. This claim is being asserted against the Commissioner of DMV and seeks an injunction. Thus, the 11th Amendment will not bar the claim.

3 pts c. This claim is not barred by the 11th Amendment. It is being brought against a state official in her individual capacity and therefore does not implicate the state treasury.

2. 5 pts The claim will be dismissed based on sovereign immunity. In Alden v. Maine, the Court held that the states were protected in state court from liability on federal claims. Congress cannot override the state’s sovereign immunity unless it is acting within its power under section 5 of the 14th Amendment. But this law was enacted pursuant to the commerce clause. Congress cannot override the state’s sovereign immunity when it acts pursuant to Article I. Thus, sovereign immunity will protect the state from suit.

3. 4 pts Justice Jackson set forth 3 categories. The first is where Congress has authorized the presidential action. When the president acts in this category, his power is at its zenith. The second is where the president acts without Congressional authorization and Congress has not made clear its position regarding whether or not the president has the power. Justice Jackson describes this category as a twilight zone. In the third category, Congress has disapproved of the President’s exercise of power. In this category, the President’s power is at its lowest ebb and can only be justified if it is authorized by the Constitution. Justice Jackson’s approach signifies that Congress has an important role to play in determining the extent of the President’s power.

4. 6 pts The first question to ask is whether the denial of a commercial fishing license is a “privilege” within the meaning of the Privileges & Immunities Clause. The clause has been interpreted to protect constitutional rights and earning a livelihood. Since a commercial license fits into the category of earning a livelihood, it is protected by the P & I Clause. The question then becomes whether Central Islip has a substantial reason for charging out of staters more and whether the higher fee is substantially related to achieving that objective, including a consideration of whether there are less restrictive means. Unless Central Islip could satisfy that demanding test, this law would violate the P & I Clause.

5. 8 pts In South Dakota v. Dole, the Court set forth 4 limitations on conditional spending. First, the spending must be for the general welfare. Second, the condition must be clear and unambiguous. Third, the condition must be related to the purpose of the federal expenditure. Fourth, it may not violate another constitutional provision. In this case, the spending, which is to improve access to justice, is certainly for the general welfare. The Court is very deferential when it comes to deciding this question. Second, the condition seems unambiguous because it clearly alerts the states to what they have to do if they accept the money – they must require their legal services providers to offer representation in family court matters. Third, the condition – requiring providers to offer representation in family court matters – is certainly
related to the goal of the expenditure which is improving access to justice. Fourth, it does not appear to violate any other constitutional provision. Thus, the conditional spending should be upheld.

6. a. 2 pts The intelligible principle test requires Congress to provide sufficient guidelines to the agency when it delegates rulemaking authority.

b. 10 pts Reins would be declared unlawful as an unconstitutional legislative veto. (INS v. Chadha) The action of disapproving agency action is legislative activity which requires bicameralism and presentment. This act is unconstitutional because it violates both bicameralism and presentment. Bicameralism requires a bill to pass both houses of Congress yet this bill permits Congress to disapprove agency action when only one house disapproves. Presentment requires a bill passed by Congress to be presented to the President. This bill permits Congress to disapprove agency action without presentment to the President.

7. 14 pts The first question to address is whether this state law is discriminatory or not. Since the law applies to all trains operated within Arizona, it is not discriminatory. Non-discriminatory laws are evaluated under the dormant commerce clause by a balancing test, which weighs the local benefits against the burden on interstate commerce. Here, the state asserts that its statute promotes railway safety, which is certainly an important, non-protectionist objective. The safety advantage, according to Arizona, is that long trains cause accidents due to slack action. However, this safety claim is refuted by Southern Pacific Railway, which argues that the statute results in more trains on the tracks which results in more accidents. The court would have to evaluate these competing claims in order to assess whether there are significant safety objectives served by the law. As to the burden on interstate commerce, it appears that the law is creating quite a burden: it is costing railroads more than one million dollars a year and causing congestion at the borders where trains need to be reconfigured because most states allow train lengths in excess of Arizona’s limits. Given the fact that 90% of rail traffic in Arizona is interstate, it would appear that the burden on interstate commerce exceeds the local benefit and the law would be found to be violative of the dormant commerce clause.

8. a. 7 pts This would be found to violate the 10th Amendment. The 2 controlling cases are Printz v. U.S. & N.Y. v. U.S. They stand for the proposition that the federal gov’t cannot compel a state to legislate or regulate in a specific way nor can the federal gov’t require the states to administer a federal program by ordering state officials to do certain tasks. In those two cases, the Court explained that such action creates a political accountability problem because if there’s a political price to be paid for the activity, the voters will blame the state when it is in fact the federal gov’t pulling the strings. The statute at issue here requires the states to establish state agencies to receive and process complaints of sexual abuse. This is forbidden by the 10th Amendment. The federal government can do it itself (assuming it has the power under the commerce clause) or accomplish the same result by conditional spending, but it cannot, consistent with the 10th Amendment, compel the states to act in this way.

b. 20 pts Pursuant to the Commerce Clause, Congress can regulate the channels of interstate commerce, the instrumentalities of interstate commerce, and activities that have a substantial effect on interstate commerce. Since this case does not affect a channel or an instrumentality, the question becomes whether the activity at issue here has a substantial effect on interstate commerce. The Court analyzes that question by looking at 4 factors.
1. Is the activity economic? The answer to that question seems to be no. Just as gun possession near schools (Lopez) was found to be not economic, and gender violence was found to be not economic (Morrison), sexual abuse of children is certainly not economic activity. Based on Lopez and Morrison, it therefore cannot be aggregated in order to find a substantial effect on interstate commerce.

2. Is there a jurisdictional element? A jurisdictional element is something in the statute that limits its reach to interstate commerce. There does not appear to be a jurisdictional element in this statute. If the statute said that the statute only applied to acts of sexual abuse where either the perpetrator or victim had crossed state lines, that might constitute a jurisdictional element. Or if the statute said it only applied to cases where the persons being protected were engaged in interstate commerce, that might constitute a jurisdictional element. But no such language appears in the statute.

3. Are there Congressional findings? Congress did hold hearings and did make findings that child sexual abuse is a major problem at the public school and university level; that states have been unable to stop this behavior; that victims grow up to be less productive members of society; and that perpetrators are often protected because they are revenue providers to the school. But, Morrison made clear that the court no longer defers to Congressional findings so the court may well disregard the findings in this case.

4. Is the link between the activity and interstate commerce too attenuated? Here the question is whether the link between child sexual abuse in school and interstate commerce is too weak. The gov’t argues that the activity affects interstate commerce because some victims of sexual abuse become less productive members of society. But this is similar to the argument made and rejected in Lopez & Morrison (kids going to school in a crime area will get an inferior education and be less productive members of society; gender violence diminishes national productivity). The gov’t also argues that some perpetrators are protected because they bring in a lot of money to the institution. But it certainly is a stretch to connect their sexual abuse of minors to the interstate activity they may be involved with – like college football. What’s being regulated here – reporting of child sexual abuse – has undeniably long been thought to be within the domain of the states. Child welfare and criminal law are within the states’ traditional police power. If Congress can do this, it is hard to imagine any areas left for the states.

Based on the analysis of these four factors, it is likely the statute will be struck down as exceeding Congress’ commerce clause powers.