

Past Examinations in Constitutional Law I

Prof. Gregory E. Maggs

The George Washington University Law School

This document contains copies of all of my past final examinations in Constitutional Law I (Course No. 6214). These examinations were given on the following dates:

December 19, 2019
December 15, 2016
April 20, 2015
December 15, 2014
April 22, 2014
April 23, 2013
April 24, 2012
April 20, 2010
April 22, 2008
April 27, 2006
April 28, 2005
May 6, 2003
May 5, 2000
May 4, 1999

The grading guides for these examinations are available in another document.

Final Examination In
CONSTITUTIONAL LAW I
(Course No. 6214-22; 3 credits)

Professorial Lecturer Gregory E. Maggs

Instructions:

1. This examination consists of five problems of equal weight (i.e., 20% each).
2. Absent special arrangements, you have 3 hours to complete this examination. I recommend that you devote approximately 36 minutes to each problem, but you may allocate your time as you see fit.
3. Your answers for the five problems combined may not exceed a total of 4500 words.
4. This is an open-book examination. In answering the problems, you may use any written materials that you have brought with you.
5. You should make reasonable assumptions about any facts not stated in the problems. If you find the problems ambiguous in any sense, describe the ambiguity in your answer.
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8. You may keep this copy of the examination at the end of the examination period. Good luck!

PROBLEM I.**(20 percent)**

The following edited excerpt comes from a recent case:

[The Endangered Species Act (ESA) authorizes federal agencies to issue rules protecting species threatened with extinction.] In 1984, the U.S. Fish and Wildlife Service ("FWS") reclassified the Utah prairie dog as a threatened species and issued a rule to govern the protection of that animal. On August 2, 2012, the FWS revised the rule to its current form. Under this revision, "take" of the Utah prairie dog is [not authorized on private property except] on "agricultural lands, . . . and areas where prairie dogs create serious human safety hazards or disturb the sanctity of significant human cultural or human burial sites." The rule [also] does not permit take of the Utah prairie dog on any federal land.

In context of the ESA, the term "take" means to "harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect" any endangered or threatened animal.

PETPO asserts that Congress does not have the authority to regulate take of the Utah prairie dog on non-federal land. Specifically, PETPO argues that the Commerce Clause and the Necessary and Proper Clause fail to authorize such regulation because the Utah prairie dog is located exclusively within the state of Utah and because take of the prairie dog does not substantially affect interstate commerce.

On the basis of this excerpt, answer separately and thoroughly each of the following questions:

- A. How might PETPO support its arguments regarding the Commerce Clause and Necessary and Proper Clause and how might FWS respond?
- B. How, if at all, might Congress protect the Utah prairie dog without relying on its Commerce power?
- C. To what extent, if at all, could Utah protect the Utah prairie dog in areas where the FWS rule does not protect it (i.e., on agricultural lands and in areas where prairie dogs create serious human safety hazards, etc.)?

PROBLEM II.**(20 percent)**

The following edited excerpt comes from a recent case:

Plaintiff [Perfect Puppy Inc.] entered into a lease on April 26, 2014, for a space in the City [i.e., East Providence, Rhode Island] to be used "only for the purposes of a Puppy Sales store," according to the lease. On May 20, 2014, an ordinance banning certain commercial transactions in dogs and cats was introduced and preliminarily passed by the East Providence City Council. The next day, on May 21, 2014, Plaintiff obtained its Rhode Island pet store license. Plaintiff opened its store that day. The City Council held a public hearing regarding the proposed ordinance on June 3, 2014, at which members of the public raised concerns about "puppy mills." The City Council passed the ordinance on that date. It states, in relevant part:

(b) It is unlawful for any person to display, offer for sale, deliver, barter, auction, give away, transfer, or sell any live dog or cat in any pet store, retail business or other commercial establishment located in the City of East Providence.

Plaintiff raises numerous challenges to the ordinance, claiming that it violates the dormant Commerce Clause, the Contract Clause, [and] the Takings Clause.

On the basis of this excerpt, answer separately and thoroughly each of the following questions:

- A. In support of its Dormant Commerce Clause challenge, Perfect Puppy argues: (1) "the ordinance allows an out-of-state merchant to continue to sell dogs and cats in the City, while City merchants cannot sell them within or outside of the City"; and (2) because Perfect Puppy "buys dogs exclusively from out-of-state breeders, prohibiting pet stores from selling cats and dogs has the effect of discriminating against out-of-state interests." What are the strengths and weaknesses of these arguments?
- B. What arguments might be made in support of and against Perfect Puppy's Contract Clause challenge?
- C. What arguments might be made for and against Perfect Puppy's Takings Clause challenge?

PROBLEM III.**(20 percent)**

The following edited excerpt comes from a recent case:

On December 22, 2017, President Trump signed into law the Tax Cuts and Jobs Act, which made substantial amendments to the federal Tax Code. Among other things, the Act took the novel step of placing an upper limit on the amount a taxpayer may deduct from her federally taxable income to offset those sums she has paid toward certain state and local taxes (the "SALT cap"). [Previously, the Federal Tax Code allowed taxpayers to deduct from their federally taxable income the entire amount of any real estate taxes that they paid to a state or local government.]

Concerned that the introduction of the SALT cap could impair their ability to pursue their own preferred tax policies, four Plaintiff States-- Connecticut, Maryland, New Jersey, and New York (the "States")--filed this suit against the federal government, alleging that the SALT cap violates the federalism principles that undergird the U.S. Constitution. The Government has moved to dismiss, contending that this Court lacks jurisdiction over the suit and that the States have failed to state a valid legal claim.

[T]he States claim that the SALT cap will reduce the revenues they glean from real estate transactions by depressing their housing markets.

On the basis of this excerpt, answer separately and thoroughly each of the following questions:

- A. The Government argues that the court lacks jurisdiction, explaining "this case demands a standardless inquiry barred by the political question doctrine" because "the States have suggested 'no clear, neutral standards or criteria for deciding when a given SALT deduction limit or cap passes constitutional muster.'" What arguments might the States make in response?
- B. Might the Government argue that the court lacks jurisdiction on any other basis and, if so, how might the States respond?
- C. If the court has jurisdiction, what arguments might the Government and the States make with respect to the constitutionality of the SALT cap?

PROBLEM IV.**(20 percent)**

The following edited excerpt comes from a recent case:

Center for Biological Diversity ("CBD") challenges the constitutionality of the Congressional Review Act ("CRA"), pursuant to which Congress recently passed legislation disapproving a Fish and Wildlife Service ("FWS") rule that prohibited certain hunting and trapping practices on National Wildlife Refuges in Alaska.

The CRA allows for congressional disapproval of rules promulgated by administrative agencies. Acting pursuant to the CRA, the House of Representatives introduced H.J. Res. 69 (the "Joint Resolution") to disapprove the Refuges Rule. The Joint Resolution passed the House by a vote of 225-193. The Joint Resolution passed the Senate by a vote of 52-47. President Trump signed the Joint Resolution into law as Public Law 115-20. [Afterward] FWS formally removed the text of the Refuges Rule from the Federal Register.

Pursuant to the CRA, Public Law 115-20 [also] prevents [FWS] from "reissuing" the Refuges Rule "in substantially the same form" or issuing "a new rule that is substantially the same, unless the reissued or new rule is specifically authorized by a law enacted after the date of the joint resolution disapproving the original rule."

On the basis of this excerpt, answer separately and thoroughly each of the following questions:

- A. How is the procedure Congress used to disapprove the Refuges Rule in this case similar to and different from the "legislative veto" procedure Congress used in INS v. Chadha?
- B. The court says: "CBD cites INS v. Chadha as support for its assertion that for Congress to alter [FWS]'s authority [to issue future regulations], it must first have 'amended through bicameralism and presentment . . . any law which provided [FWS] the rulemaking authorities and mandates executed via the Refuges Rule.'" What arguments might be made in support of and against CBD's position?
- C. If President Trump had vetoed the Joint Resolution, what alternative measures might the House and Senate have taken to further their opposition to the Refuges Rule?

PROBLEM V.**(20 percent)**

The following edited excerpt comes from a recent case:

Plaintiffs are current or former students of Charter Day School, a public charter school. They brought this action challenging the school's uniform policy, which requires female students to wear skirts. They argue the skirts requirement forces them to wear clothing that is less warm and comfortable than the pants their male classmates are permitted to wear and, more importantly, restricts plaintiffs' physical activity, distracts from their learning, and limits their educational opportunities. Plaintiffs assert sex-based discrimination in violation of the Equal Protection Clause of the Fourteenth Amendment.

Charter Schools are [publically funded schools that are] operated by private, nonprofit corporations. In this case, the nonprofit corporation which holds the charter for the School is defendant Charter Day School, Inc. ("CDS, Inc."). The individual defendants comprise the Board of Trustees of CDS, Inc. and adopt the policies for the School.

In furtherance of fostering the statutory goal of independence, the charter school's board, not the State, decides "matters related to the operation of the school, including budgeting, curriculum, and operating procedures." However, despite the stated goal and some freedoms, the State extensively regulates portions of charter school operations. For example, the State sets the formula for funding allocation, establishes criteria for student admission and prohibits charter schools from charging tuition.

On the basis of this excerpt, answer separately and thoroughly each of the following questions:

- A. If Congress wanted to address sex discrimination at charter schools like CDS, to what extent might it do so:
 - (1) using its power to enforce the Fourteenth Amendment; or
 - (2) using its powers to regulate commerce, to tax, or to spend money?
- B. Could Congress itself charter and fund, and then regulate, schools operated by private corporations?

END OF EXAMINATION

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Final Examination In
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PROBLEM I.**(20 percent)**

The following edited excerpt comes from a recent case:

In an effort to combat prescription drug abuse, the Commonwealth of Massachusetts, acting through defendant health officials who have been sued in their official capacities, has sought to regulate the use and handling of Zohydro™ ER, which is a Food and Drug Administration-approved opioid painkiller.

[T]he Commonwealth's Board of Registration in Pharmacy promulgated two Zohydro-related regulations. The first, which I will call the "pharmacist-only" regulation, stated that "[a] certified pharmacy technician, pharmacy technician, pharmacy technician trainee, or pharmacy intern may not handle [Zohydro]."
The second contained a host of prerequisites a pharmacist must satisfy before dispensing Zohydro.

Zogenix [the manufacturer of Zohydro] contends that the regulations are preempted by the federal Food, Drug, and Cosmetic Act, arguing that they "constitute an effective ban on Zohydro." According to Zogenix, the regulations preventing certified pharmacy technicians from handling Zohydro [also] "are unconstitutional because they make it so difficult to dispense Zohydro that pharmacists are unlikely to do so."

On the basis of this excerpt, answer separately and thoroughly each of the following questions:

- A. What legal standards govern Zogenix's arguments and under what circumstances might those arguments succeed?
- B. How might sovereign immunity limit Zogenix in pursuing remedies against Massachusetts and state health officials?
- C. If the state regulations are invalidated, could Congress enact legislation imposing the same restrictions on Zohydro?

PROBLEM II.**(20 percent)**

The following edited excerpt comes from a recent case:

Plaintiff Scott J. Bloch is the former head of the United States Office of Special Counsel ("OSC"), an independent agency of the federal government responsible for protecting federal employees from prohibited personnel policies such as reprisal for whistleblowing. In August 2008, the White House Counsel ("WHC") sent plaintiff a letter informing plaintiff that WHC was prepared to recommend that President Bush remove plaintiff from office for "inefficiency" and "neglect of duty," as permitted under federal law. See 5 U.S.C. § 1211(b). A few months later, in October 2008, WHC informed plaintiff that he could accept administrative leave for the remainder of his term as Special Counsel or be removed from office. Plaintiff, under threat of removal, accepted administrative leave.

On the basis of this excerpt, answer separately and thoroughly each of the following questions:

- A. Section 1211(b) says: "The Special Counsel shall be appointed by the President, by and with the advice and consent of the Senate, for a term of 5 years. . . . The Special Counsel may be removed by the President only for inefficiency, neglect of duty, or malfeasance in office." To what extent could Congress amend § 1211(b) to increase or decrease the grounds for which the President may remove the Special Counsel?
- B. In his lawsuit, Bloch presented a "legal theory that his removal [was] for less than adequate cause [and therefore] violates the constitutional separation of powers."
 1. What jurisdictional obstacles might Bloch face in attempting to present this theory in federal court?
 2. If in fact there was no cause to remove Bloch, would his removal violate the separation of powers?

PROBLEM III.**(20 percent)**

The following edited excerpt comes from a recent case:

Defendants Knowles and Thompson are charged in a one-count indictment with conspiring to distribute and to possess with intent to distribute at least five kilograms of cocaine on board an aircraft registered in the United States, in violation of 21 U.S.C. §§ 959 (substantive offense); 21 U.S.C. § 963 (conspiracy). The crimes for which defendants have been charged carry a mandatory minimum sentence of ten years of incarceration and a maximum penalty of life imprisonment.

The defendants have each filed motions to dismiss the indictment. Both point out that until their arrest and detention in this case, they had never stepped foot in the United States, and that the drugs that the government alleges that they conspired to transport were not destined for the United States. So the only nexus to the United States in this case is that the airplane that defendants allegedly used in furtherance of the conspiracy was registered in the United States.

[Section 959(c) says: "It shall be unlawful for . . . any person on board an aircraft . . . registered in the United States, to . . . possess a controlled substance . . . with intent to distribute." Section 959(d) says: "This section is intended to reach acts of . . . distribution committed outside the territorial jurisdiction of the United States."]

On the basis of this excerpt, answer separately and thoroughly each of the following questions:

- A. The Defendants argue that "Congress lacked the power to criminalize criminal activity with no nexus to the United States." How might the government respond?
- B. Could Congress amend § 959(d) to allow the President to establish by proclamation the areas outside of the territorial jurisdiction of the United States that § 959(c) reaches?
- C. Could a state enact a law that criminalizes the same conduct as § 959(c) and that applies both throughout the territorial jurisdiction of the United States and abroad?

PROBLEM IV.**(20 percent)**

The following edited excerpt comes from a recent case:

Plaintiff Edelhertz brings this Section 1983 action alleging defendant the City of Middletown, New York, violated plaintiff's rights under the Privileges and Immunities clause contained in Article IV.

Plaintiff is the building manager of a four-unit rental property located in Middletown. Plaintiff lives in the Town of Wallkill, New York, and his home is less than ten miles from Middletown.

Article III of the City of Middletown Code requires owners of "multiple dwelling" properties to obtain a permit from the Department of Public Works. The application for the permit requires the owner to provide the name, address, and phone number of the "managing agent or operator" of the property.

In November 2011, Middletown amended [Article III] to require a permit applicant to provide: "The name, address and telephone number of the managing agent or operator for each . . . multiple dwelling. . . . Such managing agent or operator must reside within the corporate limits of the City of Middletown."

On the basis of this excerpt, answer separately and thoroughly each of the following questions:

- A. Edelhertz argues that the amendment violates Article IV because it "discriminates against nonresident managing agents of multiple dwellings . . . without a substantial reason." How might Middleton respond?
- B. Under what circumstances, if any, would the amendment violate the Dormant Commerce Clause doctrine?
- C. Suppose Middleton had heard complaints about Edelhertz's conduct and had passed the amendment specifically so that Edelhertz would lose his job. Would the amendment violate the Contract Clause or the prohibition against bills of attainder?

PROBLEM V.**(20 percent)**

The following edited excerpt comes from a recent case:

Mr. Stefanoni alleges that the Darien Little League and four individuals [who are board members of the Darien Little League] violated [42 U.S.C.] Section 1985 by "banning" him as a coach from the Darien Little League and "demoting" his son to play on a lower level team in the League. He alleges that Defendants sought to deter him from building affordable housing in Darien, Connecticut and prevent him from increasing the African-American population of Darien.

The Darien Little League is a Connecticut corporation that runs a youth baseball league in Darien, Connecticut. Mr. Stefanoni alleges that he had been selected to coach Darien Little League games during the Fall 2010 season.

The Town of Darien does not participate in the day-to-day decisions made by the Darien Little League regarding its staff of coaches. At oral argument, it was conceded that no Town official directed the Darien Little League to take the actions it did against Mr. Stefanoni. Mr. Stefanoni does not allege that the Town funds the Darien Little League directly, but rather that a Town official's company donates to the organization. The Town of Darien does provide the Darien Little League with preferential access to public parks.

Section 1985 [has been interpreted to provide] an action for damages caused by "a conspiracy to deny equal protection in violation of the Fourteenth Amendment."

On the basis of this excerpt, answer separately and thoroughly each of the following questions:

- A. Other than by denying Mr. Stefanoni's factual allegations, how might the defendants respond to Mr. Stefanoni's § 1985 claim?
- B. Could Congress use its powers in Article I, section 8 to pass a law prohibiting the kind of conduct that Mr. Stefanoni alleges?
- C. What jurisdictional obstacles might Mr. Stefanoni face if he brings his § 1985 claim in federal court?

END OF EXAMINATION

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Final Examination In
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(Course No. 6214-13; 3 credits)
Professor Gregory E. Maggs

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PROBLEM I.**(20 percent)**

The following edited excerpt comes from a recent case:

This lawsuit is a constitutional challenge to Pennsylvania's reciprocal bar admissions rule. The rule in question, Rule 204, provides that the Pennsylvania bar will allow experienced lawyers admitted in other states to join the Pennsylvania bar without taking the Pennsylvania bar exam, subject to certain requirements. The particular requirement at issue here limits admission by motion [i.e., admission without examination] to lawyers practicing law in states that also allow Pennsylvania lawyers to gain admission by motion. Plaintiffs contend that this reciprocity policy infringes the rights of lawyers who wish to practice in Pennsylvania but now practice only in a state that does not have a reciprocal admission policy.

Mr. Riviere is admitted to the New Jersey bar. He asserts that he would apply for reciprocal admission in Pennsylvania, but that he would be rejected because New Jersey does not grant admission by motion to Pennsylvania lawyers. The National Association for the Advancement of Multijurisdictional Practice (NAAMJP)'s mission is to challenge the traditional bar admissions system that places high barriers before lawyers who wish to practice in multiple states.

On the basis of these facts, answer separately and thoroughly each of the following questions:

- A. Do the facts, as stated, establish that Mr. Riviere and NAAMJP have standing to challenge the constitutionality of Rule 204? If not, what else would they need for standing?
- B. Mr. Riviere and NAAMJP challenged Rule 204 under the Dormant Commerce Clause Doctrine and the Privileges and Immunities Clause. What arguments might be made for and against such challenges? Are there other plausible grounds for challenging the constitutionality of Rule 204?
- C. Could Congress, by statute, preempt Rule 204 and require Pennsylvania bar officials to adopt and implement rules that would allow Mr. Riviere to be admitted by motion?

PROBLEM II.**(20 percent)**

The following edited excerpt comes from a recent case:

[Inmate Jotunbane sued state prison officials for damages, alleging they were responsible for a "total and complete ban" of his religious practices.] The primary issue is whether a plaintiff may maintain claims against defendants under the Religious Land Use and Institutionalized Persons Act (RLUIPA) [which prohibits imposing a] "substantial burden on the religious exercise of a person . . . confined to an institution . . . unless the government demonstrates that imposition of the burden . . . is in furtherance of a compelling governmental interest"

Congress appeared to pass [the pertinent RLUIPA sections] pursuant to its Commerce Clause and Spending Clause powers. See § 2000cc-1 ("This section applies in any case in which . . . (1) the substantial burden is imposed in a program . . . that receives Federal financial assistance; or (2) the substantial burden affects . . . commerce with foreign nations, among the several States, or with Indian tribes."). An inmate may bring an RLUIPA claim against "any . . . person acting under color of state law," which appears to be very broad--so broad that it might include government officials in their individual capacities. On the other hand, several courts have held that it cannot be so broadly construed. See Smith v. Allen ("Congress cannot use its Spending Power to subject a non-recipient of federal funds, including a state official acting in his or her individual capacity, to private liability for monetary damages.").

On the basis of these facts, answer separately and thoroughly each of the following questions:

- A. What arguments might justify Smith v. Allen's statement regarding the federal Spending Power?
- B. What arguments might the parties make about whether Congress could enact the RLUIPA sections using its Commerce Power?
- C. Could Congress use its Commerce or Spending Power to provide Jotunbane a cause of action and claim for damages against the state government employing the prison officials?

PROBLEM III.**(20 percent)**

The following edited excerpt comes from a recent case:

Plaintiffs in this action are a non-profit organization devoted to government accountability, four members of the United States House of Representatives, and three individuals who allege they would have benefitted from the Dream Act [(a bill that the House passed but the Senate did not vote on even though it apparently had the support of a majority of Senators)].

Plaintiffs bring this suit against representatives of the United States Senate seeking a declaratory judgment that Rule XXII (the "Filibuster Rule")--which requires a vote of sixty [out of one hundred] Senators to proceed with or close debate on bills or presidential nominations--is unconstitutional.

The Complaint asserts that the Filibuster Rule is invalid because it conflicts with the Presentment Clause, art. I, § 7; the power of the Vice President to vote when the Senate is "equally divided," art. I, § 3, cl. 4; [and] the Advice and Consent Clause, art. II, § 2, cl. 2.

During the 111th Congress, over four hundred bills that had been passed by the House of Representatives--many with broad bipartisan support--died in the Senate without ever having been debated or voted on because of the inability to obtain the sixty votes required by Rule XXII.

On the basis of these facts, answer separately and thoroughly each of the following questions:

- A. What obstacles are the Plaintiffs likely to face in seeking judicial review of their claims?
- B. What arguments might the Plaintiffs make with respect to the cited constitutional provisions and what arguments might the defendants make in response?
- C. As an alternative to this litigation, how might the House of Representatives, the President, or others seek to counter the effects of Rule XXII?

PROBLEM IV.**(20 percent)**

The following edited excerpt comes from a recent case:

The Republic of the Marshall Islands filed a complaint [in federal court] alleging breach of the Treaty on the Non-Proliferation of Nuclear Weapons against the United States of America, the President, [and] the Department of Defense.

Plaintiff alleges that the United States has breached its obligations under Article VI of the Treaty by allegedly failing to pursue negotiations in good faith on effective measures for nuclear disarmament.

Article VI of the Treaty provides: "Each of the Parties to the Treaty undertakes to pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament, and on a treaty in general and complete disarmament under strict and effective international control."

Plaintiff [seeks] (1) a declaratory judgment with respect to (a) the interpretation of the Treaty and (b) whether the United States is in breach of the Treaty; and (2) an injunction directing the United States to take all necessary steps to comply with its obligations under Article VI of the Treaty within one year of the judgment in this matter, "including by calling for and convening negotiations for nuclear disarmament in all its aspects." Plaintiff contends that, as a signatory nation, it has standing to enforce the Treaty's provisions.

On the basis of these facts, answer separately and thoroughly each of the following questions:

- A. Do the federal courts have power to interpret the Treaty and decide whether the United States is in breach?
- B. What arguments might the defendants make with respect to the constitutionality of the requested injunction?
- C. How, if at all, could Congress address Plaintiff's concerns?

PROBLEM V.**(20 percent)**

The following edited excerpt comes from a recent case:

[Quality Terminal Services, Inc. (QTS)] provides "lift services" to railroads at intermodal yards. Lift services consist of operating cranes to lift highway trailers or shipping containers on and off of railroad flatcars. Plaintiff was hired by QTS to work at QTS's facility located in Cicero, Illinois. The offer was "contingent on the favorable outcome of a . . . hair analysis drug screen."

Plaintiff agreed to the drug test, and an agent took a hair sample from Plaintiff's head for drug testing. [Shortly afterward], Plaintiff received a phone call [informing him] that his pre-employment drug test results were positive for the presence of heroin. Plaintiff insisted there was a mistake or the results were wrong because he had not used drugs in nearly 20 years. Plaintiff further requested that either a second test be performed on the remaining hair sample, or that the remaining hair be sent to him so that he could have a second test performed. Neither request was fulfilled by QTS.

Plaintiff alleges QTS [denied] him pre-termination due process. Pursuant to 42 U.S.C. § 1983, an individual can bring an action for damages for violations of the individual's constitutional rights. The thrust of Plaintiff's [argument] can be summed up as follows: the Federal Railroad Administration has promulgated regulations requiring drug testing of certain railroad employees and, because of these regulations, QTS and the government are "willful, joint participants" with respect to drug testing. Plaintiff has not put forth evidence that QTS's operations at the Cicero facility were controlled by a government entity.

On the basis of these facts, answer separately and thoroughly each of the following questions:

- A. What arguments should the parties make about whether QTS had a duty to provide due process before terminating Plaintiff?
- B. To what extent could Illinois law require employers to provide the re-testing procedures requested by Plaintiff?
- C. Why does the federal government have power to mandate drug testing of employees who provide lift services to railroads?

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PROBLEM I.**(20 percent)**

The following edited excerpt comes from a recent case:

Owner-Operator Independent Drivers Association, Inc. ("OOIDA"), initiated this action challenging California's enforcement of the "Regulation to Reduce Emissions of Diesel Particulate Matter from Heavy-Duty Diesel-Fueled Vehicles" that operate in California, regardless of their origin.

According to OOIDA, out of 8,621,853 registered trucks [in the United States], 6,208,000 are not compliant with the Regulation and must be retrofitted to meet California's emissions standards. Older trucks that have not been retrofitted are prohibited from operating on public roadways until they are compliant, and steep fines are imposed [for] violation of the Regulation. Plaintiffs aver that it is cost prohibitive (i.e., tens of thousands of dollars per truck) to bring their vehicles into compliance with the Regulation. OOIDA's members made long-term investments in equipment (typically at least \$150,000 per truck), which met applicable standards at the time of purchase, with the reasonable expectation they would be able to use those trucks for many years. Because trucks are purchased with the intent that they be used for decades, many owner-operators have lengthy mortgages on their vehicles. If interstate owner-operators do not comply with the retrofitting mandates, the resale value of their existing trucks will diminish. On the other hand, the cost of compliance is so high that, for many, their only other alternative will be to discontinue conducting business in California.

On the basis of these facts, answer separately and thoroughly each of the following questions:

- A. Might the Regulation be challenged as an uncompensated taking of property or as being unconstitutional on other grounds?
- B. What obstacles might limit judicial review of the constitutionality of the Regulation in federal court and how should OOIDA and its members best address them?
- C. As an alternative to litigating their dispute, what kinds of legislative assistance might California and OOIDA seek from Congress to protect their respective interests?

PROBLEM II.**(20 percent)**

The following edited excerpt comes from a recent case:

The government charged Roque, in a one count indictment, with violating 18 U.S.C. § 2315, alleging: "[Roque] did knowingly receive, possess, conceal, store, sell, and dispose of goods. . . in excess of \$5,000, that is, computer hard drives, which had crossed a State boundary after being stolen . . . knowing the same to have been stolen"

Section 2513 provides, in pertinent part: "Whoever receives, possesses, conceals, stores, barters, sells, or disposes of any goods, wares, or merchandise . . . which have crossed a State or United States boundary after being stolen, unlawfully converted, or taken, knowing the same to have been stolen, unlawfully converted, or taken . . . shall be fined . . . or imprisoned not more than ten years."

Roque argues that § 2315 violates the Commerce Clause because it criminalizes the mere possession, receipt or sale of stolen goods that have crossed state lines after being stolen, even where the defendant had no involvement in the interstate transportation of the stolen goods.

On the basis of these facts, answer separately and thoroughly each of the following questions:

- A. Which precedents should Roque rely on and how should the government attempt to distinguish them? Which precedents should the government rely on and how should Roque attempt to distinguish them?
- B. How might Congress have addressed the problem of stolen goods other than by its power under the Commerce Clause?
- C. In a case in which the stolen goods had crossed a United States boundary, might the government have any additional arguments to make in support of § 2315?

PROBLEM III.**(20 percent)**

The following edited excerpt comes from a recent case:

In 1971, the State of Washington adopted the Uniform Controlled Substances Act. Since then, marijuana has been a controlled substance as a matter of state law. In 1998, the citizens of the state adopted the Washington State Medical Use of Cannabis Act (MUCA), through the initiative process. [T]he purpose of the MUCA was to allow certain individuals suffering from terminal or debilitating medical conditions to use marijuana medicinally.

On August 9, [state] law enforcement officers executed a warrant to search 939 Onion Creek Road. A federal agent participated in the search. The officers observed approximately 70 growing marijuana plants. According to the defendants, the persons who were growing the plants were attempting to comply with the MUCA. On August 16, federal agents executed a warrant that had been issued by a federal judicial officer authorizing them to search the same property. They seized all of the marijuana plants.

On February 6, a federal grand jury returned an indictment charging the defendants with violations of federal law. The defendants move to dismiss the indictment. They claim the instant prosecution violates the Tenth Amendment. For one thing, they argue the prosecution is a federal attempt to coerce state authorities into enforcing the federal Controlled Substances Act. For another thing, they argue the prosecution is a federal attempt to discourage the State of Washington from legalizing the possession of marijuana for medical purposes.

On the basis of these facts, answer separately and thoroughly each of the following questions:

- A. How might the defendants attempt to support their arguments with precedent, and how might the government respond?
- B. How do the defendants' arguments differ from Angel Raich's arguments in Gonzalez v. Raich?
- C. To what extent, if any, would the constitutional analysis change if the defendants had been hired by Washington State to serve as the sole producers of marijuana for use by patients under the MUCA?

PROBLEM IV.**(20 percent)**

The following edited excerpt comes from a recent case:

This complaint, brought by the United States Securities and Exchange Commission, alleges that Mulvaney aided and abetted Sachdeva in an accounting fraud designed to conceal the fact that Sachdeva had embezzled over \$30 million from Koss Corporation.

Mulvaney's affirmative defense alleges that the SEC's commencement of this civil enforcement action violates the separation of powers principle that the President shall "take care that the Laws be faithfully executed." U.S. Const., Article II, Section 3.

SEC Commissioners can only be removed by the President pursuant to the standard of "inefficiency, neglect of duty, or malfeasance in office." The Act not only protects Board members from removal except for good cause, but withdraws from the President any decision on whether that good cause exists. That decision is vested instead in other tenured officers--the Commissioners--none of whom is subject to the President's direct control. Such an arrangement is [said to be] "contrary to Article II's vesting of executive power in the President."

On the basis of these facts, answer separately and thoroughly each of the following questions:

- A. How might the parties argue this case is similar to or different from Morrison v. Olson and Bowsher v. Synar?
- B. Why might Congress have sought to limit the President's power to remove SEC Commissioners and what alternatives might Congress have considered to advance its interests?
- C. If Congress disagreed with the SEC's handling of this matter, what actions could Congress take to aid Mulvaney?

PROBLEM V.**(20 percent)**

The following edited excerpt comes from a recent case:

Plaintiffs Fournier and Jenkins filed this [42 U.S.C.] § 1983 action against their former landlords, Stein and Norberg and [against] Cuddeford, a deputy with the County Sheriff's Office, alleging violation of their right to due process under the Fourteenth Amendment.

At 9:00 a.m., the landlords entered the house. Jenkins awoke when he heard them coming up the stairs to his bedroom. Remembering Norberg's threat of the night before that she would use a gun to kick him out of the house, Jenkins ran out of the house onto an attached deck. The landlords entered Jenkins's bedroom and began throwing his personal property out of the house from the window of his second-floor bedroom.

Deputy Cuddeford responded to Plaintiffs' calls and found both Jenkins and Fournier outside the house. Jenkins told Cuddeford the landlords were "trying to kick them out of the house without going through the legal process." Deputy Cuddeford found the landlords at the house. When Cuddeford asked whether they had obtained a court order evicting Plaintiffs, the landlords told him they had not.

Cuddeford then returned [and] told Jenkins "they [the landlords] don't want you back here. You can't go back." Fournier protested that the landlords "can't do that," to which Deputy Cuddeford responded, "Well, it's a civil matter now. You're going to have to take them to civil court. There's nothing I can do about it." Cuddeford then left the property.

On the basis of these facts, answer separately and thoroughly each of the following questions:

- A. Does Congress have power to enact a statute providing a remedy for violations of the right to due process?
- B. What arguments should the landlords make in response to Plaintiffs' due process claim and how should Plaintiffs reply?
- C. What arguments should Deputy Cuddeford make in response to Plaintiffs' due process claim and how should Plaintiffs reply?

END OF EXAMINATION

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Final Examination In
CONSTITUTIONAL LAW I
(Course No. 6214-13; 3 credits)
Professor Gregory E. Maggs

Instructions:

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2. Absent special arrangements, you have 3 hours to complete this examination. I recommend that you devote approximately 36 minutes to each problem, but you may allocate your time as you see fit.
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8. You may keep this copy of the examination at the end of the examination period. Good luck!

PROBLEM I.**(20 percent)**

The following edited excerpt comes from a recent case:

[A New York state agency charges a toll for using the Verrazano Bridge, which connects the New York City boroughs of Staten Island and Brooklyn.] Staten Island residents who use the E-ZPass system pay \$6.36 per trip across the Verrazano. By contrast, non-residents of Staten Island using E-ZPass pay \$10.66 to cross the bridge. For Staten Island residents who do not use the E-ZPass system, the token fare is \$8.53; a non-resident paying cash must pay \$15.

Janes is a resident of New Jersey. Janes regularly traveled over the Verrazano Bridge to visit her parents in Brooklyn. During these trips, Janes frequently took her parents, who were essentially homebound, shopping for groceries, clothes, and various other items. On occasion, on these trips, she also purchased items for herself and her son. As a non-resident of Staten Island, Janes was not eligible for the Verrazano Bridge discount.

On the basis of these facts, thoroughly answer the following questions:

- A. Would it be correct to conclude that the tolls charged to Janes were constitutional because New York residents who did not live on Staten Island also had to pay the higher rates?
- B. Suppose Janes called her representative in Congress to complain about the different toll rates. Would it be accurate for the representative to tell her, "This is a state government matter; there is nothing Congress can do about it"?
- C. May New York constitutionally impose tolls on federal government vehicles, such as Postal Service trucks, when they cross the Verrazano Bridge?

PROBLEM II.**(20 percent)**

The following edited excerpt comes from a recent case:

Relator Kirkwood Florist, Inc. claims that Defendant Hi-Float, Inc. has attempted to obtain an unlawful monopoly for aqueous solutions that extend gas-inflatable balloon float time. [Kirkwood] claims that Hi-Float marked its products with expired U.S. Patent 4,634,395 in order to prohibit competitors from entering the market. [Kirkwood] claims that Hi-Float violated the False Marking statute, 35 U.S.C. § 292(a), "by falsely marking products as protected by patent for the purpose of deceiving purchasers, potential competitors, and the public into believing they are protected by patent, when they are not."

The False Marking statute contains a "qui tam" provision that provides, "[a]ny person may sue for the penalty [imposed by § 292(a)], in which event one-half shall go to the person suing and the other to the use of the United States." 35 U.S.C. § 292(b). In other words, "even though a relator may suffer no injury himself, a qui tam provision operates as a statutory assignment of the United States' rights." The relator must allege a violation of the statute, which suffices as an injury in fact to the United States.

[Hi-Float] argues that the qui tam provision of the False Marking statute violates the Appointments and Take Care [that the Laws be faithfully executed] clauses of Article II of the United States Constitution. U.S. Const., Art. II, § 2, cl. 2; § 3.

On the basis of these facts, thoroughly answer the following questions:

- A. What might Hi-Float say in support of its arguments about the Appointments and Take Care clauses, and how might Kirkwood Florist respond?
- B. How might Kirkwood Florist distinguish § 292(b) from the unconstitutional statute in Muskrat v. United States, 219 U.S. 346 (1911)?
- C. How might Kirkwood Florist respond to an argument that Congress lacked power to enact § 292(a)'s prohibition on falsely marking products?

PROBLEM III.**(20 percent)**

The following edited excerpt comes from a recent case:

New York City has been involved in regulating debt collection since at least 1984, when it began requiring debt collection agencies to obtain a municipal license in order to practice in the city. In March 2009, New York City Council passed Local Law 15, which, inter alia, amended the debt collection ordinance to cover debt buyers. [Creditors sometimes sell and assign their claims against debtors to "debt buyers."]

Plaintiffs [who are debt buyers] argue that, by requiring out-of-state debt buyers that do not directly engage in any in-state collection activities to obtain a license or else be subject to penalties, the amendments violate the Commerce Clause.

Plaintiffs [also] submit that, when an originating creditor assigns its right to a debt to a debt buyer, it intends to assign an unencumbered right, meaning that the debt buyer's rights and obligations mirror that of the creditor's. Local Law 15, however, imposes additional requirements [like obtaining a license] on the debt buyer that are not imposed on the original creditor. In this respect--according to plaintiffs--Local Law 15 undermines the parties' understanding at the time of contract formation, and, consequently, impairs the contractual agreements.

On the basis of these facts, thoroughly answer the following questions:

- A. What arguments might the Plaintiffs make in support of their Commerce Clause challenge to Local Law 15, and what counter arguments might they face?
- B. What additional factual information might be helpful to evaluate Plaintiffs' contractual impairment challenge to Local Law 15?
- C. The Federal Debt Collection Practices Act requires debt collectors to obtain state licenses but does not require debt buyers to obtain state licenses. Does this federal statute help or hinder Plaintiffs in challenging Local Law 15?

PROBLEM IV.**(20 percent)**

The following edited excerpt comes from a recent case:

In 2008, [Plaintiff, a member of Congress,] began facing an increasing swell of allegations that he had engaged in impropriety. Those allegations involved certain failures to report income on federal tax returns and on House financial disclosure forms; failures to pay tax on rental income from a Caribbean villa; the use of rent-stabilized apartments in Manhattan for his campaigns in contravention of state and city regulations; and the improper solicitation of donations.

Following [a] hearing, the [House] Ethics Committee presented its proposed sanction--censure--to the full House. After debate, the House voted to adopt the Ethics Committee's recommendation. Speaker Nancy Pelosi read the text of the censure resolution.

[Plaintiff now claims that "the integrity of his censure proceedings" was undermined by "ex parte communications between staffers and certain members of the committee." He sued Congressional leaders in federal court seeking "an injunction requiring defendants to 'take all necessary steps to vacate, strike and remove the recording of censure, as voted on by the House.'"]

Defendants argue that, even if [Plaintiff] has standing to sue, his claims should still be dismissed because they raise nonjusticiable political questions.

On the basis of these facts, thoroughly answer the following questions:

- A. Why might it be uncertain whether Plaintiff has standing to challenge the censure proceedings and seek an injunction?
- B. How might Defendants support their political question argument, and what counter arguments might they face?
- C. If Plaintiff had been subjected to a Joint resolution imposing a fine on him for the misconduct, instead of a House Resolution censuring him, how might the constitutional issues presented be different?

PROBLEM V.**(20 percent)**

The following edited excerpt comes from a recent case:

This case arises from a condominium association's restrictions regarding the flying of the American flag by a condominium owner. Murphree, who owns a condominium at The Tides Condominium, alleges that in 2011, he began "displaying a small United States flag in the garden pots [in a common area] outside the door to his condominium." According to Murphree, his flag display has prompted years of harassment, fines and other torment at the hands of the [condominium association]. Murphree alleges that on February 8, 2013, he "was given until February 15, 2013, to remove the flags or face fines of \$100.00 per day."

Murphree [filed a lawsuit seeking] "Declaratory Relief and Damages Pursuant to 120 Stat. 572," the Freedom to Display the American Flag Act of 2005 (the "Act"). Additionally, Murphree alleges that his "fundamental [constitutional] right to free speech has been chilled and curtailed" by [the condominium association's] actions.

The Act provides, in part, that: "A condominium association . . . may not adopt or enforce, any policy, or enter into any agreement, that would restrict or prevent a member of the association from displaying the flag of the United States on residential property within the association with respect to which such member has a separate ownership interest or a right to exclusive possession."

On the basis of these facts, thoroughly answer the following questions:

- A. What arguments might the parties make about whether Congress had power to enact the Act?
- B. What arguments might the Condominium Association make for why it could not violate Murphree's right to free speech and how might Murphree respond to these arguments?
- C. If Congress amended the Act to apply to common areas, what constitutional rights might the Condominium Association assert?

END OF EXAMINATION

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Final Examination In
CONSTITUTIONAL LAW I
(Course No. 6214-13; 3 credits)
Professor Gregory E. Maggs

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PROBLEM I.**(20 percent)**

The following edited excerpt comes from a recent case:

The California Legislature has determined that the practice of shark finning, where a shark is caught, its fins cut off, and the carcass is dumped back into the water, causes tens of millions of sharks to die each year. Sharks occupy the top of the marine food chain and their decline constitutes a serious threat to the ocean ecosystem and biodiversity. The Legislature also found that shark fin often contains high amounts of mercury, which has been proven dangerous to people's health. In order to address these problems and promote the conservation of sharks by, among other things, eliminating the California market for fins, the California Legislature enacted "the Shark Fin Law," [which prohibits all shark fin trade and possession].

Plaintiffs are engaged in cultural practices involving the use of shark fins and in business practices involving the buying and selling of shark fins in interstate commerce.

Plaintiffs argue that while the Shark Fin Law was ostensibly passed to prevent the practice of shark finning and to further the practice of shark conservation, in actuality it does not and cannot accomplish those goals, because it includes no restrictions on the practice of shark finning--only on the possession and selling of fins. Moreover, plaintiffs assert, the practice of shark finning in U.S. waters is already illegal under federal law.

On the basis of these facts, thoroughly answer the following questions:

- A. If the plaintiffs sued California officials in federal court to enjoin enforcement of the Shark Fin Law, should the court dismiss the case based on lack of standing or some other jurisdictional defect?
- B. How might the plaintiffs' stated argument and assertion be relevant to possible constitutional challenges to the Shark Fin Law? What counter arguments might be made in response?
- C. Would Congress have power to enact a federal law prohibiting all shark fin trade and possession? If so, would the United States have to pay for losses caused by the federal law?

PROBLEM II.**(20 percent)**

The following edited excerpt comes from a recent case:

Congress with the vocal support of one of New Jersey's own Senators, enacted [the Professional and Amateur Sports Protection Act (PASPA)] in 1992 to stop the spread of gambling on professional and amateur sports. To that end, PASPA made it unlawful for States to authorize a sports wagering system. PASPA included a grandfather clause which exempted states with preexisting sports wagering laws. PASPA also granted New Jersey a one year window to legalize wagering on sports. New Jersey did not exercise that option. Over twenty years later, however, New Jersey amended its state constitution and passed a law authorizing gambling on sports. That law directly conflicts with PASPA.

Defendants [Governor Christie and other state officials] argue that PASPA is an unconstitutional and improper use of Congress' Commerce Clause powers. Specifically, Defendants challenge the exceptions made for states which conducted legalized sports gambling prior to the enactment of PASPA as unconstitutionally discriminatory.

[Defendants also] argue that PASPA violates principles of federalism through 1) a "negative command prohibiting [New Jersey] from enacting any law legalizing or licensing Sports Betting," and 2) an "affirmative command requiring [New Jersey] to maintain State laws criminalizing sports betting."

On the basis of these facts, thoroughly answer the following questions:

- A. How might the defendants support their stated arguments? What counter arguments might be made in response?
- B. Is the vocal support of one of New Jersey's Senators or New Jersey's decision during the one-year window not to legalize wagering on sports relevant to the constitutionality of PASPA?
- C. In the absence of any federal statute on point, could New Jersey outlaw wagering on sports events occurring within New Jersey but outside New Jersey (or vice versa)?

PROBLEM III.**(20 percent)**

The following edited excerpt comes from a recent case:

In 1997, a group of African-American farmers brought suit [in a federal court] against the Secretary of the United States Department of Agriculture (USDA). Their complaint alleged that, from January 1983 through January 1997, the USDA discriminated on the basis of race in allocating benefits under various federal agricultural programs. [Representatives of the plaintiffs and the USDA subsequently reached a settlement agreement that would bind all the plaintiffs if approved by the court.]

On November 30, 2010, Congress passed the Claims Resolution Act. The Act "appropriated to the Secretary of Agriculture \$1,150,000,000, to remain available until expended, to carry out the terms of the Settlement Agreement if the Settlement Agreement is approved by a court order that is or becomes final and nonappealable." [Objectors to the proposed settlement] argue the Claims Resolution Act violates the separation of powers between branches of government because it represents an attempt by Congress "to coerce the class and the Court into accepting the proposed settlement." [T]he Claims Resolution Act makes clear that Congress has funded the proposed settlement agreement only if this Court approves the settlement in a final order. But nothing in the statute presumes to instruct the Court how or whether to decide if the settlement should be approved. [Objectors also] contend that the Act "is [an improper] conditional attempt to limit the funds of this case retroactively, contingent upon the class and this Court's acceptance of the settlement."

On the basis of these facts, thoroughly answer the following questions:

- A. How should the court assess the objectors' separation of powers objection?
- B. If the court rejects the settlement, how could Congress coerce or induce the USDA to change its negotiating posture so that an acceptable settlement could be reached?
- C. Could Congress simply compensate the plaintiffs without conditioning payment on their agreement to a settlement? If so, does imposing the condition of a settlement affect the Claims Resolution Act's constitutionality?

PROBLEM IV.**(20 percent)**

The following edited excerpt comes from a recent case:

[Plaintiffs are numerous victims who have] obtained judgments against Iran for injury or wrongful death arising from acts of terrorism Iran sponsored, led, or in which it participated. Bank Markazi is an agency of the Iranian Government. By 2008, Bank Markazi had over \$2 billion in bonds held in an account with defendant Clearstream Banking S.A. [a corporation with an office in New York]. On August 10, 2012, the Iran Threat Reduction and Syria Human Rights Act of 2012 went into effect. Section 502 of the Act (22 U.S.C. § 8772) [says] "notwithstanding any other provision of law, including any provision of law relating to sovereign immunity and preempting any inconsistent provision of State law" financial assets of Iran of this kind "shall be subject to execution or attachment in aid of execution in order to satisfy any judgment to the extent of any compensatory damages awarded against Iran for damages for personal injury or death" Plaintiffs have moved for partial summary judgment against defendants Clearstream [and] Bank Markazi for turnover of approximately \$1.75 billion.

Defendants argue that turnover would run afoul of certain constitutional rights: first, that the specific statutory provision, 22 U.S.C. § 8772 is an invalid legislative act of adjudication that violates Article III; second, that it constitutes an unlawful bill of attainder; third, that turnover would amount to an unconstitutional taking in violation of their due process rights. They argue that, in passing § 8772, Congress effectively dictated specific factual findings in connection with a specific litigation--invading the province of the courts.

On the basis of these facts, thoroughly answer the following questions:

- A. How should plaintiffs respond to defendants' arguments?
- B. Under what circumstances might it help defendants to argue that § 8772 violates an international treaty?
- C. In the event of a military conflict with Iran, under what circumstances could the President seize control of a corporation like Clearstream Banking?

PROBLEM V.**(20 percent)**

The following edited excerpt comes from a recent case:

Anderson suffers from a severe seizure disorder. Because of her limited income, she qualified for coverage under Indiana's Medicaid program, which is administered by Indiana's Family and Social Services Administration (the "FSSA"). IBM [a company that provides computing services] participated in the administration of Indiana's Medicaid program with the FSSA. Specifically, IBM communicated with current and prospective Medicaid recipients regarding eligibility criteria and procedures for obtaining Medicaid benefits. However, although IBM submitted cases to be closed, the FSSA made the final determination of whether a current or prospective recipient was eligible for Medicaid benefits.

IBM [incorrectly] recommended that the FSSA terminate Anderson's Medicaid benefits. It was only after Anderson's struggle was featured on Channel 13 News that the FSSA reinstated Anderson's Medicaid benefits. While Anderson was without health coverage, a medical device that had been surgically implanted into her chest to control her seizures failed. Because Anderson had no health coverage, she could not afford to pay for corrective surgery. As a result, Anderson endured numerous seizures and her overall health suffered.

Based on the foregoing facts, [Anderson] claims that IBM violated Anderson's Fourteenth Amendment rights by terminating her Medicaid benefits without due process.

On the basis of these facts, thoroughly answer the following questions:

- A. Under what circumstances would IBM be liable on Anderson's claim?
- B. If Anderson chose to reside in another state, could Indiana deny her future benefits solely because she no longer lives in Indiana?
- C. Could Congress require each healthy person to pay a fixed sum of money annually to raise federal funds for subsidizing Medicaid programs in each state?

END OF EXAMINATION

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Final Examination In
CONSTITUTIONAL LAW I
(Course No. 214-13; 3 credits)
Professor Gregory E. Maggs

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PROBLEM I.**(20 percent)**

The following edited excerpt comes from a recent case:

Plaintiff Chrysler Group LLC ("New Chrysler") is a newly created entity that assumed certain liabilities of [the original Chrysler corporation, which declared bankruptcy]. Certain dealer agreements were not assumed by New Chrysler [severing ties with former Chrysler dealers]. The Bankruptcy Court entered an order that authorized rejection of the contracts with the rejected dealers. [In response, Kentucky amended its motor vehicle dealer laws.] The amendments preclude the Kentucky Motor Vehicle Commission from granting new dealer licenses to applicants within a ten mile radius of a rejected dealer for ten years unless the rejected dealer is first offered, and rejects, "substantially similar terms" by New Chrysler. New Chrysler [and the original Chrysler] filed a complaint asserting the Bankruptcy Code and orders of the Bankruptcy Court preempt the dealer law amendments. The plaintiffs also allege the state laws violate the Contract Clause.

Kentucky contends the plaintiffs lack standing. Kentucky further asserts that plaintiffs' claims are not ripe for adjudication because the Kentucky Motor Vehicles Commission has not been asked to issue a license, nor has it declined to issue a license, under the amended law. New Chrysler would like to award its vehicle lines to [any] dealer of its choice in Kentucky but that dealer will not be granted a license under the Kentucky statute unless New Chrysler first offers the same agreement to a former, rejected dealer. The Kentucky statute is having [a negative impact] on New Chrysler's ability to attract dealers on competitive terms. The Bankruptcy Code explicitly grants power to reject an executory contract. 11 U.S.C. § 365(a) ("the trustee, subject to the court's approval, may assume or reject any executory contract").

On the basis of these facts, answer the following questions:

- A. How should the court evaluate Kentucky's jurisdictional arguments?
- B. If the court has jurisdiction, how should it evaluate the plaintiffs' arguments against the Kentucky amendments?
- C. If the court strikes down the Kentucky amendments, could Congress use any of its powers to aid the rejected dealers?

PROBLEM II.**(20 percent)**

The following edited excerpt comes from a recent case:

Plaintiffs are nine individual residents of Illinois who seek work as journeymen roofers and three corporations who seek to employ the individual defendants and bid on public works projects in Missouri. Plaintiffs challenge the constitutionality of Missouri's Excessive Unemployment Law [which] provides that, during times when Missouri's unemployment rate has exceeded 5% for the preceding two months, only Missouri laborers or laborers from "nonrestrictive states" may be employed in public works projects. Nonrestrictive states are states that have not enacted laws that restrict Missouri laborers from working on public works projects in those states. The [Missouri Industrial and Labor Relations] Commission is the public body authorized to determine which states are restrictive and which are nonrestrictive.

Missouri has determined that, for purposes of the Excessive Unemployment Law, Missouri has been in a period of excessive unemployment. The Commission issued a Determination which held that Illinois had enacted one or more state laws restricting Missouri laborers from working on public works projects in Illinois.

Christopher N. Grant, an attorney for the International Brotherhood of Electrical Workers, wrote a letter to the Commission. Mr. Grant pointed out that Illinois's restrictive laws had been ruled unconstitutional and requested that the Commission reconsider its decision. [The] Commission issued an Order acknowledging that the [Illinois laws] had been ruled unconstitutional but refusing to read the [Missouri] Law as only applying to successful statutory efforts to exclude Missouri workers.

On the basis of these facts, answer the following questions:

- A. In what ways should the claims of the individual plaintiffs differ from those of the corporate plaintiffs?
- B. Would evidence that Missouri was primarily reacting to discriminatory laws of other states strengthen or weaken arguments that the Missouri law is unconstitutional?
- C. Why might the facts in the third paragraph of the excerpt be relevant to the constitutional analysis?

PROBLEM III.**(20 percent)**

The following edited excerpt comes from a recent case:

[Defendant Martinez, a U.S. citizen, allegedly kidnaped JC, a minor, in Texas, and then drove her to Mexico where he sexually assaulted her.] A Grand Jury sitting in the Western District of Texas returned a seven-count Indictment against Defendant, charging Defendant with [among other offenses] engaging in illicit sexual conduct in foreign places, in violation of 18 U.S.C. § 2423(c). Section 2423 states, in relevant part: "Any United States citizen or alien admitted for permanent residence who travels in foreign commerce, and engages in any illicit sexual conduct with another person shall be fined under this title or imprisoned not more than 30 years, or both."

Defendant's substantive argument is that § 2423(c) is unconstitutional because it violates the Commerce Clause. Specifically Defendant argues that "[i]n punishing an action that may be entirely legal in the host country and at best loosely connected to a channel of commerce, section 2423(c) reflects an unprecedented use of Commerce Clause authority."

Section 2423 was passed to enforce a multilateral treaty [the Optional Protocol to the United Nations Convention on the Rights of the Child, of which the United States is a party] designed to protect children from transnational and domestic child sex prostitution and "sex tourism." [T]he alleged illicit sexual conduct in the instant case is not itself commercial. However, a worldwide market exists for child prostitution, an activity that is "quintessentially economic" in nature.

On the basis of these facts, answer the following questions:

- A. How should the court evaluate the Defendant's Commerce Clause argument?
- B. Could a multilateral treaty give Congress additional power to enact § 2423? Would Congress have less power if the United States had joined a treaty in which it agreed not to exercise extraterritorial jurisdiction over such offenses?
- C. Might Congress and the President have power to enact and enforce § 2423 apart from the Commerce Power or Treaty Power?

PROBLEM IV.**(20 percent)**

The following edited excerpt comes from a recent case:

The Prevent All Cigarette Trafficking Act of 2010 ("PACT Act") makes it unlawful to deliver cigarettes and smokeless tobacco products through the United States Mail. [In addition,] the Act prohibits remote sales of cigarettes and smokeless tobacco unless the applicable state and local taxes are paid in advance. Gordon, an enrolled member of the Seneca Indian tribe, owns a store and mail order business that sells cigarettes and other tobacco products. Gordon previously accepted orders through an internet website and by mail, but since the summer of 2010 he has only sold his products in his store. Gordon's website "www.allofourbutts.com" also states that "[a]s a Sovereign [Indian] Nation, we do not pay state taxes on cigarettes and tobacco products." Before the PACT Act, 95% of Gordon's sales were shipped by U.S. mail.

Gordon's Tenth Amendment claim is based on the argument that the PACT Act unlawfully commandeers states by requiring them to collect taxes from delivery sellers before a product can be shipped and thereby forcing them to implement a taxation scheme that is different from the ones the states previously had. Gordon complains that under the Act states must collect taxes from the seller before the sale, rather than from the buyer after the sale. Gordon also argues that the PACT Act violates his rights under the Fifth Amendment by interfering with his property interest in his salary because he can no longer ship his legal products in a commercially viable way. The Government admitted that Gordon will not be able to continue his business of selling inexpensive tax-free cigarettes by mail, but argues that Gordon has no right to that business in light of Congress's conclusions regarding the harms perpetuated by mail order tobacco sales.

On the basis of these facts, answer the following questions:

- A. What arguments should Gordon make in support of his Tenth Amendment claim and how should they be evaluated?
- B. Does Gordon have a valid takings or Contracts Clause claim?
- C. Could a state create an exemption to its normal tax laws such that neither Gordon nor his customers has to pay tax?

PROBLEM V.**(20 percent)**

The following edited excerpt comes from a recent case:

This litigation has formed a web of legal principles grounded upon notions of federal supremacy and separation of powers. Plaintiff Alan Donn brought suit [under state law] for injuries sustained from asbestos exposure. Plaintiff served as an active-duty serviceman in the United States Navy aboard several nuclear submarines. Plaintiff avers that he was exposed to asbestos while aboard these vessels. Plaintiff avers that the Navy insulated with asbestos the hot metal casings on the vessels' propulsion turbines, which were manufactured by Defendants. These turbines were specifically designed to use asbestos, and Defendants [General Electric Co. and other private corporations] built the turbines pursuant to Navy contracts. Plaintiff contends that Defendants knew of the dangers of asbestos and failed to warn Plaintiff.

Defendants argue that the federal regulation of national defense is pervasive, and the federal interest in national defense dominates over state law. Thus, there is "no room for state law of any kind." As an alternative, Defendants contend that the Court lacks subject matter jurisdiction because the state tort claims at issue here--failure to warn--conflict with the concept that the "Federal Government (specifically, the President and Congress) exercise plenary control in the exercise of war powers, including military operations and the procurement and utilization of whatever goods and materials the Federal Government deems necessary to those operations." Defendants contend the Court will necessarily have to rule on the prudence of the Navy's use of asbestos. Defendants argue any adjudicating of this suit requires the Court to second guess the Navy and its warning policies.

On the basis of these facts, answer the following questions:

- A. What authority might the defendants cite in support of their constitutional arguments and how should a court evaluate these arguments?
- B. In what sense does this case concern separation of powers?
- C. If Donn had sued the defendants not merely for violations of state law but also violations of the Constitution, what additional obstacles would he face?

END OF EXAMINATION

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Final Examination In
CONSTITUTIONAL LAW I
(Course No. 214-15; 3 credits)
Professor Gregory E. Maggs

Instructions:

1. This examination consists of five problems of equal weight (i.e., 20% each).
2. Absent special arrangements, you have 3 hours to complete this examination. I recommend that you devote approximately 36 minutes to each problem, but you may allocate your time as you see fit.
3. Your answers for the five problems combined may not exceed a total of 4500 words.
4. This is an open-book examination. In answering the problems, you may use any written materials that you have brought with you.
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6. You must write your answers in essay form, using complete sentences and proper paragraphs. To make your answers easier to read, you must indent the first line of each paragraph and leave a blank space between paragraphs. The quality of your writing will affect your grade.
7. Each problem includes several specific questions. In grading, weight will be given to these questions according to their difficulty. Answers will be evaluated based on how well they: (1) identify the governing constitutional doctrines; (2) apply these doctrines to the specific facts of the problems; (3) compare the facts of the problems to precedents considered in the course; and (4) provide supporting arguments, explanations, and examples as appropriate.
8. You may keep this copy of the examination at the end of the examination period. Good luck!

PROBLEM I.**(20 percent)**

The following edited excerpt comes from a recent case:

HRPT is a real estate investment trust. In 2003, HRPT bought land on Oahu [in Hawaii]. The land was subject to business leases averaging fifty years. These leases provide for rent [in certain cases to be set] by three impartial real estate appraisers charged with determining a "fair and reasonable annual rent."

In 2008, a number of HRPT's lessees advocated new legislation listing factors that appraisers would have to take into account when setting rent in long-term leases. In 2009, the Hawaii Legislature passed Act 189. Act 189 purports to protect small businesses by clarifying "vague or onerous" provisions in existing commercial leases. The Act applies only to property zoned for commercial use that is subject to a lease of at least ten years and is owned by a lessor with at least 50,000 square feet of commercial property in Hawaii. No party has identified any lessor other than HRPT that is subject to Act 189. Under Act 189, [an] appraiser determining "fair and reasonable" rent must consider the "use and intensity of the leased property during the term of the lease."

Act 189 did not pass without considerable debate. A number of HRPT's lessees testified that Act 189 was important to ensure that rent was fair and equitable. The Hawaii Attorney General, however, testified that the Act was unconstitutional. HRPT alleges that Act 189 violates the Contracts Clause and Takings Clause of the United States Constitution, by requiring appraisers to consider matters not set forth in the leases. HRPT also alleges that this Act is a bill of attainder.

On the basis of these facts, answer the following questions:

- A. What arguments might the lessees make in response to each of HRPT's allegations?
- B. Given the considerable debate on the issue, could the Hawaii Legislature have obtained a judicial determination of Act 189's constitutionality before enacting it?
- C. How, if at all, could Congress enact a law that would prevent enforcement of Act 189?

PROBLEM II.**(20 percent)**

The following edited excerpt comes from a recent case:

Plaintiffs Bruce A. Roth and Dana Chukwuemeka bring this lawsuit against Ohio University. Plaintiffs allege that the Contract of Admission between the parties violates the dormant Commerce Clause and the Privileges and Immunities Clause

Plaintiffs Roth and Chukwuemeka are both graduates of the Ohio University College of Osteopathic Medicine (OUCOM). As a condition of their admission into OUCOM, each entered into a Contract of Admission. The Contract requires that, as consideration for admission, non-Ohio residents practice medicine in Ohio for five years after completing their medical education, or they must pay liquidated damages in an amount necessary to subsidize the medical education of another OUCOM student. This contractual provision is consistent with Ohio Revised Code § 3337.14, which requires 80% of students enrolled at OUCOM to be either Ohio residents or nonresidents who intend to practice in Ohio for five years upon completion of their medical education.

Plaintiffs reside and practice medicine outside of Ohio and will be required to make liquidated damages payments pursuant to the Contract. Dr. Roth practices in Arizona; Dr. Chukwuemeka is completing her residency training in Michigan and intends to practice in North Carolina. [OUCOM is a state-funded institution.]

On the basis of these facts, answer the following questions:

- A. Does the Contract of Admission or § 3337.14 violate the dormant Commerce Clause, the Privileges and Immunities Clause, or any other constitutional limitation?
- B. If OUCOM were a private institution, would the Contract of Admission and § 3337.14 raise no constitutional issues?
- C. Could Congress use any of its powers to aid non-Ohio residents who want to attend OUCOM but who do not wish to remain in Ohio after graduation?

PROBLEM III.**(20 percent)**

The following edited excerpt comes from a recent case:

The Sex Offender Registration and Notification Act (SORNA) imposes a requirement on states to maintain a registry of sex offenders who reside in the state. Additionally, Title 18, United States Code, Section 2250 provides that a person required to register under SORNA who "travels in interstate or foreign commerce" and "knowingly fails to register or update a registration as required by [SORNA] shall be fined ... or imprisoned not more than 10 years, or both."

[P]rior to the enactment of SORNA, D.W. pled guilty in Virginia state court to the felony offense of Indecent Liberties with a Child. Under Virginia state law, D.W. is required to register as a sex offender for the remainder of his life.

On May 29, 2009, a federal grand jury returned a one-count indictment against D.W. for traveling in interstate commerce [i.e. moving to Louisiana] and failing to register as a sex offender pursuant to 18 U.S.C. § 2250. D.W. seeks dismissal of the indictment on grounds SORNA violates the Commerce Clause [and] the Tenth Amendment.

SORNA provides a financial incentive for states to comply with the federal sex offender registration requirements: "For any fiscal year, ... a jurisdiction that fails ... to substantially implement [SORNA's requirements] shall not receive 10 percent of the funds that would otherwise be allocated for that fiscal year to the jurisdiction under [the Omnibus Crime Control and Safe Streets Act of 1968]." 42 U.S.C. § 16925(a).

On the basis of these facts, answer the following questions:

- A. What arguments might D.W. make in support of his constitutional claims and how should they be evaluated?
- B. Could Congress accomplish the goals of SORNA without using federal commerce or spending powers?
- C. Under what circumstances could a state refuse to maintain a registry of sex offenders who reside in the state?

PROBLEM IV.**(20 percent)**

The following edited excerpt comes from a recent case:

This case arises from a dispute between Shirley-Ann and Herbert Leu, and the International Boundary Commission (IBC), a treaty-based binational commission that addresses boundary issues on the Canadian/American border, over a retaining wall that the Leus built in their backyard near Blaine, Washington. Although within their property lines, the retaining wall encroaches three feet into a 20-foot "boundary vista" maintained by the IBC. [T]he U.S. Commissioner of the IBC, Dennis Schornack, and the Canadian Commissioner, Peter Sullivan, informed the Leus that their wall encroached on the boundary vista and requested that they cease all work on the wall.

[Following a disagreement over the IBC's handling of this dispute,] President Bush sent Commissioner Schornack a letter notifying him that his commission was terminated. Commissioner Schornack responded. In a letter addressed to the President, Commissioner Schornack wrote: "Dear Mr. President: I am in receipt of a note inform[ing] me that my appointment to the International Boundary Commission 'is terminated effective immediately.' I am unable to recognize the authority of this communication. Mr. President, you appointed me according to the Treaty of Washington of 1925. The Treaty specified that new commissioners may be appointed 'upon the death, resignation, or other disability of either of them.' There is no lawful presidential power to terminate the appointment of a commissioner." That same day, President Bush appointed David Bernhardt Acting Commissioner on the part of the United States on the IBC.

On the basis of these facts, answer the following questions:

- A. What constitutional claims might Shirley-Ann and Herbert Leu make and what remedies might they seek?
- B. How might the President respond to Mr. Schornack's arguments?
- C. What obstacles might the parties face in obtaining judicially enforced remedies in this case?

PROBLEM V.**(20 percent)**

The following edited excerpt comes from a recent case:

Dr. Beck is a general surgeon who was recruited by Lawrence County Hospital to relocate his private practice from Fairfield to Lawrenceville. The hospital was in dire need of surgeons to serve the Lawrenceville community, and it was believed that Dr. Beck's presence as one of the hospital's staff physicians would be beneficial for the hospital.

Dr. Beck agreed to relocate, and he and the hospital executed an independent contractor agreement. In exchange for Dr. Beck's moving his practice, the hospital agreed to pay his relocation expenses, grant him staff membership and clinical privileges, pay him biweekly, and set up and manage his office by providing billing services and paying vendors. Dr. Beck's private practice was also located at the hospital.

On November 1, the medical director at Lawrence, asked Dr. Beck to provide a surgical consultation for R.G. [an inmate confined in the Menard Correctional Center, a county jail]. Dr. Beck examined R.G. at the hospital. He performed a colonoscopy and diagnosed him with having "superficial rectal fistula, rectal fissure and a spastic colon." Dr. Beck concluded that R.G. did not need surgery. Unfortunately for R.G., he continued to experience severe symptoms.

R.G. filed suit against Beck, alleging that [Beck] denied him adequate medical care for serious medical needs in violation of the [Cruel and Unusual Punishment Clause of the] Eighth Amendment while he was confined at Menard Correctional Center.

On the basis of these facts, answer the following questions:

- A. Apart from arguing that the care was adequate, what defenses might Dr. Beck assert and how should they be evaluated?
- B. Suppose that Congress wants to prevent similar incidents in the future.
 1. Could Congress directly regulate how state-funded hospitals treat prison inmates?
 2. Could Congress induce these hospitals to improve care of inmates without regulating the care directly?

END OF EXAMINATION

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Final Examination In
CONSTITUTIONAL LAW I
(Course No. 214-13; 3 credits)

Professor Gregory E. Maggs

Instructions:

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PROBLEM I.**(20 percent)**

The following edited excerpt comes from a recent case:

Plaintiffs [i.e., the City of Los Angeles and several other southern California localities] generate large amounts of sewage treatment residues known as "sludge" or "biosolids," some substantial portion of which they ship to farmland located in Kern County [in northern California] for use as fertilizer. This arrangement has aroused substantial local opposition in Kern County even though the EPA [i.e., the federal Environmental Protection Agency] considers land application to be a safe, effective means of recycling biosolids.

That opposition reached a fever pitch in 2006 when a local State Senator sponsored a ballot initiative known as Measure E, which sought to ban land application of biosolids in the County. The initiative campaign included colorful attacks on "Los Angeles sludge" and drew on long-simmering anti-Southern California sentiment for support. There being no "Friends of Sludge" to mount opposition to the initiative, the ordinance passed overwhelmingly, and therefore threatened to permanently ban Plaintiffs from further land application at their Kern County facilities. Without acknowledging any irony, Kern County ships its materials to a local composting company for sale to private firms out of its jurisdiction.

On the basis of these facts, answer the following questions:

- A. Why might the EPA's regulation of biosolids and Kern County's shipment of its own materials be relevant in determining whether Measure E is unconstitutional?
- B. If Measure E is unconstitutional, in what ways could Congress assist Kern County in its opposition to the local use of biosolids from Los Angeles?
- C. Must Kern County compensate the plaintiffs and the owners of farmland in Kern County who wish to apply biosolids?

PROBLEM II.**(20 percent)**

The following edited excerpt comes from a recent case:

[The U.S. Sentencing Commission promulgates guidelines for federal judges to follow in sentencing criminal defendants.] The Commission is established "as an independent commission in the judicial branch of the United States." It has seven voting members appointed by the President "with the advice and consent of the Senate." The members of the Commission are subject to removal by the President "only for neglect of duty or malfeasance in office or for other good cause shown."

[A recently enacted federal law called the] Feeney Amendment significantly alters the composition of the Sentencing Commission. Prior to that Amendment, no less than three of the Commission's seven voting members had to be selected from the ranks of federal judges. Post-Feeney, the President need not nominate any judges to the Commission. The Feeney Amendment also prohibits judges from ever occupying more than three seats on the Commission, thus ensuring that judges will never again comprise a majority of the voting membership of the Commission.

[O]ne of the most reprehensible features of the Feeney Amendment is the requirement that every downward departure [from the guidelines] immediately be reported to the Attorney General, and the House and Senate Judiciary Committees--with particular emphasis upon reporting the "identity of the sentencing judge."

On the basis of these facts, answer the following questions:

- A. The court held that the Feeney Amendment violates the separation of powers "by aggrandizing the Executive Branch while diminishing the Judicial Branch." What reasoning might support this legal and factual conclusion?
- B. How does the Constitution address possible concerns that might arise from the "reprehensible" requirement of reporting downward departures from the guidelines?
- C. If Congress wants to control sentencing discretion in federal criminal cases, what other options does it have?

PROBLEM III.**(20 percent)**

The following edited excerpt comes from a recent case:

On January 29, 1990, plaintiff [Michael Taylor] pled guilty to possession of cocaine after a previous conviction. Plaintiff received a sentence of 15 years to life in prison.

Nearly eight years later, on March 3, 1998, the Kansas Parole Board ("KPB") released plaintiff on parole. Pursuant to [a newly enacted Kansas law] which imposes parole supervision fees in the amount of \$25.00 per month, KDOC [i.e., the Kansas Department of Corrections] charged plaintiff monthly supervision fees of \$25.00.

Charles Simmons, former Secretary of KDOC, testified before the Senate Judiciary Committee in support of the bill which authorized the collection of fees for services from offenders in KDOC custody. Simmons testified in part as follows: "Assessing fees to offenders is based on a belief that offenders should be accountable for their actions, and contributing to the costs of incarceration or supervision are important components of establishing that accountability."

On the basis of these facts, answer the following questions:

- A. On what grounds might Taylor argue that imposing the parolee supervision fees on him is unconstitutional?
- B. May Kansas charge lower supervision fees to parolees who are less likely to flee the state, such as long-term Kansas residents?
- C. Could Congress regulate the parole supervision fees imposed by KDOC?

PROBLEM IV.**(20 percent)**

The following edited excerpt comes from a recent case:

[Plaintiffs are American citizens who worked for private contractors that provided trucking services to the U.S. Army in Iraq.] On the morning of April 9, 2004, the planned route called for the convoys to deliver fuel to Baghdad International Airport (BIAP). BIAP was an unfamiliar destination for the drivers. Many drivers merely followed the vehicle directly in front of them, who in turn, followed the Army's local Iraqi guide. The first convoy was attacked by anti-American forces and sustained heavy casualties. Six men were killed, eleven more were seriously wounded, and one man is still missing and presumed dead. [The plaintiffs include some of the injured and the estates of those killed.]

The plaintiffs' complaint alleges, among other things, that the defendants [i.e. the private contractors] knowingly and intentionally deployed the first convoy as a decoy into an area they knew to be under attack to ensure the safe passage of the second convoy, and the defendants had complete control over the decisions of when, where and how to deploy civilian convoys.

The defendants respond that the Army had control over the deployment and protection of convoys. They argue that since their decisions are so interwoven with Army decisions, the court lacks jurisdiction over the case under the political question doctrine.

On the basis of these facts, answer the following questions:

- A. How might the defendants support their jurisdictional argument?
- B. In addition to the jurisdictional argument, what arguments might the defendants make under the Supremacy Clause?
- C. If Congress is concerned about how the Army is using contractors in Iraq, how might Congress control the Army's discretion? What kinds of actions may Congress not take?

PROBLEM V.**(20 percent)**

The following edited excerpt comes from a recent case:

[Ms. Ciacciarella has sued Messrs. Bronko, Zehnder, Greene, and DelGobbo. Mr. Bronko is the mayor of Naugatuck. Ms. Ciacciarella claims that] Mayor Bronko directed Mr. Zehnder, Naugatuck's part-time town counsel, to fire Ms. Ciacciarella from her paralegal position in Mr. Zehnder's law office because of Ms. Ciacciarella's support for Mayor Bronko's opponent. Ms. Ciacciarella asserts [First Amendment] claims under 42 U.S.C. § 1983.

Messrs. Greene and DelGobbo, both of whom are State Representatives to the General Assembly, move to dismiss the § 1983 claims against them on the grounds that they are not state actors. They also argue that because Ms. Ciacciarella is not a public employee, she cannot sue under the First Amendment for losing her private sector job, even if--as she alleges--the loss of the job was politically motivated and directed by the Mayor.

[Ms. Ciacciarella alleges] that "[i]n a series of meetings between May 7, 2007 and May 23, 2007, defendants Bronko, DelGobbo and Greene concluded that the plaintiff's employment with defendant Zehnder would make it impossible for defendant Zehnder to serve as town counsel"; and that "[t]he three defendants agreed that defendant Zehnder would be given an ultimatum either to fire the plaintiff or lose his position as town counsel."

On the basis of these facts, answer the following questions:

- A. How might Ms. Ciacciarella respond to Messrs. Greene and DelGobbo's arguments?
- B. What constitutional claims and defenses might Mr. Zehnder raise?
- C. Could Congress use its commerce power to protect persons in the position of Ms. Ciacciarella from being discharged from their employment?

END OF EXAMINATION

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Final Examination In
CONSTITUTIONAL LAW I
(Course No. 214-13; 3 credits)
Professor Gregory E. Maggs

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PROBLEM I.**(20 percent)**

The following edited excerpt comes from a recent case:

The Town of East Hampton [located on Long Island in New York State] is 22 miles long and its width, north to south, ranges from 3/4 of a mile to 6 miles. The main east to west artery, Montauk Highway, provides one traffic lane in each direction.

Beginning in 1966 officials recognized burgeoning transportation problems in the region. Myriad studies, reports and conferences confirmed what residents already knew: inadequate roads and an increasing population were creating escalating traffic congestion in the area, particularly in the summer months. All of the studies recognized the increasing population, worsening traffic congestion and the lack of viable vehicular alternatives in light of the dearth of roads in the area which could accommodate the traffic load.

In August 1995, a Councilwoman of East Hampton issued a memorandum to the Town Board recommending a moratorium on all ferry service [bringing cars into the town]. Following the issuance of agency approvals, the Ferry Law was adopted, becoming operative on January 13, 1998. The Ferry Law states, *inter alia*: "No . . . vehicle ferry of any description shall dock at or otherwise make use of any [terminal in East Hampton]."

[The Ferry Law is preventing Cross Sound Ferry Services, Inc. (CSF) from carrying vehicles from New London, Connecticut to East Hampton, New York.]

On the basis of these facts, answer the following questions:

- A. Is the Ferry Law constitutional?
- B. Suppose CSF obtained a license, issued under an Act of Congress, "to perform coastal ferry service." Would this license affect the application of the Ferry Law to CSF?
- C. When two neighboring towns challenged the Ferry Law, the court ruled that the towns would have to "show that their alleged injury (1) was caused by the Ferry Law, or (2) would likely be redressed by a favorable decision." Why is this showing a requirement and how might the towns make it?

PROBLEM II.**(20 percent)**

The following edited excerpt comes from a recent case:

Judicial Watch, Inc. ("Plaintiff") contends that Senate Rules effectively impose a supermajority voting requirement for [confirmation of federal] judicial nominees. To correct this purportedly unconstitutional exercise of legislative power, Plaintiff seeks [a judicial order] "declaring that Senate Rules XXII and V are unconstitutional as applied to judicial nominees," and "enjoining [the United States Senate] from continuing to prevent votes" on two judicial nominees.

Plaintiff alleges that "[t]he federal courts are experiencing a significant number of vacancies in federal judgeships." As a result, Judicial Watch contends that it "has experienced substantial delays in matters pending before the federal courts." Plaintiff contends a minority of the Senate has blocked the confirmation of Miguel Estrada and Priscilla R. Owen to the United States Court of Appeals.

Plaintiff contends that, "[b]ased on published reports, at least a simple majority of fifty-one senators intend to vote in favor of the Estrada and Owen nominations." However, Plaintiff alleges that Senate Rules V and XXII have unconstitutionally enabled a minority of senators to prevent the confirmation of these nominees. The effect of these rules is two-fold: based on Senate Rule XXII, sixty votes are needed [to cut off debate in the Senate before voting can occur on] most judicial nominees, and under Senate Rule V, sixty-seven votes are needed to amend the Senate Rules, including Rule XXII. [Because fewer than 60 senators have agreed to end debate, the Senate has not voted on whether to confirm or not confirm the two nominees.]

On the basis of these facts, answer the following questions:

- A. Should the court dismiss Judicial Watch's lawsuit without reaching the merits?
- B. Are Senate Rules V and XXII an "unconstitutional exercise of legislative authority?"
- C. If the court does not issue the requested order, could the President, the House of Representatives, or the states take any actions to impel the Senate to vote on the nominees?

PROBLEM III.**(20 percent)**

The following edited excerpt comes from a recent case:

Plaintiffs are owners of leasehold interests in a condominium complex in Honolulu, Hawaii. That property is owned in fee simple by Kamehameha Schools. Plaintiffs entered into contracts with Honolulu in which each party agreed to seek diligently to acquire for Plaintiffs an undivided fee simple interest in the real property. Plaintiffs each paid the City \$1,000 in consideration, and in return, the City agreed [to convey the units in the condominium complex to the plaintiffs]. These actions were to be undertaken after the City acquired the property through its power of eminent domain, pursuant to Chapter 38 of the Revised Ordinances of Honolulu. [T]he purpose was to provide affordable housing and to strengthen the economy.

[But Honolulu never acquired the condominium complex because Honolulu passed] City Council Bill 04-53, which was written to repeal Chapter 38. In section 1, the City Council issued the following findings: "The council finds that mandatory conversion of multi-family residential leaseholds under Chapter 38 is no longer needed to assuage social and economic problems and, therefore, no longer advances a public purpose for which the city should exercise its extraordinary powers of condemnation."

On the basis of these facts, answer the following questions:

- A. The City argued that it is absolved from any liability to Plaintiffs because "a state government may not contract away an essential attribute of its sovereignty." Is this argument valid?
- B. Instead of condemning the complex and transferring the units to the Plaintiffs, could Honolulu simply require the Kamehameha Schools to allow the Plaintiffs to occupy the units indefinitely at the current rate of rent?
- C. If Honolulu had not passed City Council Bill 04-53, could Kamehameha Schools have blocked the condemnation of the condominium complex on constitutional grounds?

PROBLEM IV.**(20 percent)**

The following edited excerpt comes from a recent case:

The City of New York sues the main suppliers of handguns in the United States ("Gun Industry") seeking injunctive relief and abatement of an alleged public nuisance caused by the Gun Industry's negligent and reckless merchandising.

After extensive discovery and pretrial motion practice, trial was scheduled to begin on November 28, 2005. On October 26, 2005, the President approved the Protection of Lawful Commerce in Arms Act, Pub. L. No. 109-92 ("PLCAA" or "Act"). The Act, which was immediately effective, requires that a "qualified civil liability action that is pending on the date of enactment . . . shall be immediately dismissed."

With exceptions, a "qualified civil liability action" is a "civil action . . . brought by any person against a manufacturer or seller of a [firearm that has been shipped or transported in interstate or foreign commerce] . . . for damages, . . . injunctive or declaratory relief, abatement, . . . or other relief, resulting from the criminal or unlawful misuse of [the firearm]." The City is a "person" as defined by the Act. Defendants are manufacturers and sellers of firearms that have been shipped or transported in interstate or foreign commerce, and are protected by the Act.

On the basis of these facts, answer the following questions:

- A. Before Congress enacted the PLCAA, the defendants sought dismissal of this lawsuit on grounds that "the practical and inevitable effect of the City's suit [would be] to regulate commerce beyond the borders of New York state." Would this "effect" be unconstitutional?
- B. Is the PLCAA constitutional as applied to state and federal lawsuits pending at the time of its enactment?
- C. Could Congress immunize gun manufacturers and sellers from state law tort liability by some method other than by requiring the dismissal of lawsuits against them?

PROBLEM V.**(20 percent)**

The following edited excerpt comes from a recent case:

Jessie Curtis Morton ("plaintiff") brings this action against The Salvation Army ("defendant"). On October 8, 2003, plaintiff was released from prison on the condition that he immediately begin a drug treatment program. Upon the recommendation of his probation officer, plaintiff enrolled in a program at Syracuse Adult Rehabilitation Center ("ARC") operated by defendant. The Syracuse ARC was not plaintiff's first choice, but his previous suggestions had been rejected by his probation officer.

Defendant, a branch of the Christian Church, operates ARCs throughout the United States. These programs are offered to individuals for free and defendant receives no government support.

When plaintiff [who is a Muslim] arrived at defendant's facility, he immediately began to encounter hostility on account of his religion. An intake coordinator made plaintiff remove his kufi, telling him, "This is a Christian house of prayer and we do not wear hats in here." [He] also told plaintiff: "Look if it is going to be a problem then you can go back to jail, but if you stay you cannot pray, and you cannot have a Quran, or anything Islamic." Plaintiff was "mandated," meaning a judge had mandated that he complete the program. Over the ensuing weeks plaintiff experienced several additional incidents of religion-based hostility.

On the basis of these facts, answer the following questions:

- A. Does Morton's constitutional freedom of religion limit the policies that the Salvation Army may follow at the Syracuse ARC?
- B. Suppose that Congress wants to prevent incidents of religion-based hostility in probation programs for state prisoners.
 1. Could Congress regulate the conditions of these programs directly?
 2. Could Congress induce states to prohibit religion-based hostility in the programs without regulating the programs directly?

END OF EXAMINATION

Please note that some sentences and words were omitted from the preceding quotations without indication by ellipses. Text appearing in brackets was added to the quotations for clarification or other purposes. The names and citations of the cases are not identified here. They will be revealed later.

Final Examination In
CONSTITUTIONAL LAW I
(Course No. 214-13; 3 credits)

Professor Gregory E. Maggs

Instructions:

8. Absent special arrangements, you have 3 hours to complete this examination.
9. This examination consists of five problems of equal weight. I recommend that you devote approximately 36 minutes to each problem, but you may divide your time as you see fit.
10. This is an open-book examination. In answering the problems, you may use any written materials that you have brought with you.
11. You should make reasonable assumptions about any facts not stated in the problems. If you find the problems ambiguous in any sense, describe the ambiguity in your answer.
12. You must write your answers in essay form, using complete sentences and proper paragraphs.
13. Each problem includes several specific questions. In grading, weight will be given to these questions according to their difficulty. Answers will be evaluated based on how well they: (1) identify the governing constitutional doctrines; (2) apply these doctrines to the specific facts of the problems; (3) compare the facts of the problems to precedents considered in the course; and (4) provide other arguments, explanations, and examples as required by the questions.
14. You may keep this copy of the examination at the end of the examination period. Good luck!

PROBLEM I.**(20 percent)**

The following edited excerpt comes from a recent case:

Piazza sells imported seafood [to restaurants throughout the United States]. One of the products imported by Piazza is a catfish grown in China. According to Piazza, these Chinese-grown catfish are biologically identical to domestic catfish.

In March 2004, the [Louisiana Department of Agriculture] ordered businesses not to sell any fish purchased from Piazza due to violations of [Louisiana Revised Statutes] § 4617. Section 4617 provides:

[C.] No one shall misrepresent the name, or type of any fruit, vegetable, grain, meat, or fish, including catfish, sold or offered ... for sale, to any actual or prospective consumer. "Catfish" shall mean only those species ... grown in the United States....

D. No person shall advertise, sell, offer or expose for sale, or distribute food or food products as "Cajun" ... unless the food ... is produced, processed, or manufactured in Louisiana.

Piazza began marketing [its catfish] under the brand names "Cajun Boy" and "Cajun Delight" in 1976. [It] has a substantial investment of money in promoting its products and claims sales of over fifty million dollars in the last five years. [Louisiana says that Piazza's products cannot be sold in Louisiana under these names and cannot be sold as "catfish."]

On the basis of these facts, answer the following questions:

- A. What constitutional claims might Piazza and businesses that have purchased Piazza's catfish make in court?
- B. If Piazza could show that Louisiana passed § 4617 at the urging of local competitors to retaliate against Piazza for underpricing them, would Piazza have any additional claims?
- C. If Piazza lobbies the federal government for legislative assistance, how might the federal government offer to help?

PROBLEM II.**(20 percent)**

The following edited excerpt comes from a recent case:

The United States and the Soviet Union entered into the bilateral ABM Treaty on October 3, 1972. The ABM Treaty limited the number of anti-ballistic missile systems that each side could deploy for defense against nuclear missile attacks. [The treaty was based on] an understanding that without ABM defenses neither side would risk starting a nuclear war because the other side would massively retaliate.

President Bush, however, concluded that international security had drastically changed since the inception of the ABM Treaty three decades ago. Accordingly, he gave Russia notice of the intention of the United States to withdraw from the ABM Treaty, pursuant to the Treaty's termination clause:

Each Party shall, in exercising its national sovereignty, have the right to withdraw from this Treaty if it decides that extraordinary events related to the subject matter of this Treaty have jeopardized its ... interests.

Before he withdrew from the Treaty, President Bush did not submit the question to the Senate or the House. Nor did the President otherwise seek congressional consent for the withdrawal.

On the basis of these facts, answer the following questions:

- A. If members of Congress challenge the treaty's termination in federal court, what obstacles might they face?
- B. Could Congress enact legislation effectively preventing the President from terminating the treaty?
- C. To what extent may the President now make expenditures to deploy anti-ballistic missile systems?

PROBLEM III.**(20 percent)**

The following edited excerpt comes from a recent case:

A group of organizations filed suit in October 2000 seeking an injunction against the construction of a proposed World War II Memorial on the National Mall. The defendants were a variety of [federal executive] agencies responsible for the construction of the Memorial.

In May 2001, while the case was pending in district court, Congress enacted Public Law No. 107-11, 115 Stat. 19 (2001). The text is as follows:

Sec. 1. Approval of World War II Memorial Site and Design. Notwithstanding any other provision of law, the World War II memorial ... shall be constructed expeditiously at the dedicated Rainbow Pool site in the District of Columbia....

Sec. 3. Judicial Review. The decision to locate the memorial at the Rainbow Pool site in the District of Columbia and the actions [of the agencies responsible] ... shall not be subject to judicial review.

In passing the statute, Congress acted on its October 2000 resolution that "the completed memorial will be dedicated while Americans of the World War II generation are alive." S. Con. Res. 145, 106th Cong. (2000).

On the basis of these facts, answer the following questions:

- A. To what extent could federal courts consider statutory and constitutional challenges to the construction of the Memorial and to Public Law No. 107-11?
- B. Suppose the President was thinking about ordering the agencies involved not to build the Memorial. What legal advice should he have received?
- C. If the President had directed the federal agencies involved not to build the Memorial, could Congress simply have paid an independent contractor do the work?

PROBLEM IV.**(20 percent)**

The following edited excerpt comes from a recent case:

[When investigating crimes, police in Wisconsin often seek to learn who has made calls to a particular telephone number. To acquire this information, the police obtain a subpoena from a court which they then serve on Ameritech, the local phone company.]

Unlike cell phone companies, which bill their customers for calls received as well as calls made, landline phone companies bill for outgoing calls only. Ask a landline company such as Ameritech "who placed the calls received by customer X?" and it has no easy way to answer, as the computer databases organize all of the information by which customer placed the calls.

[Preparing a report in response to a subpoena for information about] a given number requires an hour of employees' time plus about 15 minutes of computer time. Ameritech receives 400 requests for reports monthly.

Ameritech wants to be compensated for the expense of producing these reports. According to Ameritech, [18 U.S.C.] § 2706 requires law-enforcement agencies to pay for the information. Here is the statute:

... [A] governmental entity obtaining the contents of communications, records, or other information ... shall pay to the person or entity assembling or providing such information a fee for reimbursement for such costs as are reasonably necessary ... for assembling, reproducing, or otherwise providing such information.

On the basis of these facts, answer the following questions:

- A. Can Congress, through § 2706, require Wisconsin law enforcement agencies to pay for the subpoenaed reports?
- B. Absent the federal statute, could Wisconsin require Ameritech to provide the subpoenaed reports without charge?
- C. If the police somehow violate due process in obtaining subpoenas, might compensation of the kind contemplated by § 2706 increase Ameritech's exposure to liability?

PROBLEM V.**(20 percent)**

The following edited excerpt comes from a recent case:

Julia Garcia was [treated] for persistent pain in her neck and shoulders. Dr. Iwanow gave her a prescription for Duract, a non-steroidal, anti-inflammatory medication manufactured by Wyeth-Ayerst Laboratories, which had been approved for use earlier that year by the United States Food and Drug Administration (FDA). The drug destroyed Julia Garcia's liver; she was required to undergo a liver transplant to save her life. Wyeth has since voluntarily withdrawn the drug from the market.

Michigan has a drug products liability statute that immunizes drug manufacturers from liability for damages in suits contending that their drug was defective or unreasonably dangerous "if the drug was approved for safety and efficacy by the United States food and drug administration, and the drug and its labeling were in compliance with the United States food and drug administration's approval at the time the drug left the manufacturer or seller." Mich. Comp. Laws § 600.2946(5). [This law, if enforceable, would prevent Wyeth from being held liable under Michigan tort law.]

On the basis of these facts, answer the following questions:

- A. What constitutional challenges might Garcia make to § 600.2946(5)?
- B. Could Congress require Michigan to provide a tort remedy for injuries caused by drugs even if the FDA had approved them?
- C. If Congress wanted to involve the states in the drug evaluation process, could Congress by statute make FDA drug approval conditional on the express consent of the states in which the drug is to be sold?

END OF EXAMINATION

Words and punctuation were omitted from the preceding quotations without indication by ellipses. Text appearing in brackets was added to the quotations for clarification and other purposes. The names of the cases from which these excerpts came will be revealed at a later time.

Final Examination In
CONSTITUTIONAL LAW I
(Course No. 214-12; 3 credits)
Professor Gregory E. Maggs

Instructions:

1. Absent special arrangements, you have 3 hours to complete this examination.
2. This examination consists of five problems of equal weight. I recommend that you devote approximately 36 minutes to each problem, but you may divide your time as you see fit.
3. This is an open-book examination. In answering the problems, you may use any written materials that you have brought with you.
4. You should make reasonable assumptions about any facts not stated in the problems. If you find the problems ambiguous in any sense, describe the ambiguity in your answer.
5. You must write your answers in essay form, using complete sentences and proper paragraphs.
6. Each problem includes several specific questions. Answers to these questions will be evaluated based on how well they: (1) identify the governing constitutional doctrines; (2) apply these doctrines to the specific facts of the problems; (3) compare the facts of the problems to precedents considered in the course; and (4) provide other arguments, explanations, and examples as required by the questions.
7. You may keep this copy of the examination at the end of the examination period. Good luck!

PROBLEM I.**(20 percent)**

The following edited excerpt comes from a recent case:

On July 16, 1999, the New Jersey Department of Transportation enacted "Emergency Regulations," which applied to double-trailer truck combinations and 102-inch wide standard truck semi-trailers ("Restricted Vehicles"). Under the Regulations, Restricted Vehicles traveling through the State with neither an origin nor a destination in the State, must stay on "National Network" roads and may deviate onto other roads only for limited distances to get food, fuel, repairs, and rest. [The Regulations identify several major highways crossing New Jersey as "National Network" roads.] Restricted Vehicles with origins or destinations in the State are permitted to use local roads. The state's aim is to reduce accidents and motorist deaths from truck-related collisions by reducing the number of large trucks on local roads which are mostly two and four-lane, undivided streets.

[Truckers] allege that the Regulations will "cost the trucking industry, and ultimately the national economy, millions of dollars annually." They argue the burden comes in the form of increased toll costs, fuel consumption, and time needed to reach destinations.

On the basis of these facts, answer the following questions:

- A. What constitutional challenges might be brought against the Emergency Regulations and how should they be evaluated?
- B. If the Emergency Regulations are upheld as constitutional, what options would Congress have (and not have) if Congress opposed the Regulations and wanted them to be eliminated?
- C. What effect, if any, might the existence of federal safety standards governing the size and construction of Restricted Vehicles have on the Emergency Regulations?

PROBLEM II.**(20 percent)**

The following edited excerpt comes from a recent case:

Danny Stillman is a former employee of the Los Alamos National Laboratory. After Mr. Stillman's retirement, he authored a manuscript entitled "Inside China's Nuclear Weapons." As a condition of Mr. Stillman's employment at Los Alamos, he signed non-disclosure agreements that require submission of this manuscript to the [CIA] for pre-publication review to determine whether any portion contains classified information. In October of 2000, Mr. Stillman was informed that no portion of his manuscript would be approved for public release. [Mr. Stillman sued the CIA. Mr. Stillman's attorney, Mr. Mark Zaid, asked the CIA for permission to view the classified information.]

[The President's] Executive Order 12958 sets forth a system for safeguarding national security information. Mr. Zaid was denied access to the classified information because the CIA determined he did not have a "need to know" as defined in Executive Order 12958. The [CIA] stated by way of explanation that "[t]he fact that you represent a client in litigation with the CIA does not establish a need-to-know. Under Executive Order 12958, this determination is wholly within the discretion of the agency, and there is neither a right to, nor an administrative process for, appeal."

On the basis of these facts, answer the following questions:

- A. To what extent might the existence (or non-existence) of federal legislation affect the President's ability to order the CIA to follow his system for safeguarding information?
- B. May the President, by executive order, prevent a federal court from reviewing the CIA's determination that Mr. Zaid cannot have access to the classified information?
- C. If Congress distrusts the CIA's determinations in cases like this one, what options would Congress have (and not have) for addressing the situation?

PROBLEM III.**(20 percent)**

The following edited excerpt comes from a recent case:

Eagle Environmental, L.P. owns approximately 680 acres of land in Pennsylvania. Eagle's intention was to develop the "Happy Landing Landfill," which would serve as a depository for municipal waste generated in New York City. The Landfill site is located 5.25 miles from the Dubois-Jefferson County Airport. Leatherwood, Inc. [proposed to create another] landfill near the Dubois-Jefferson County Airport.

On October 9, 1996, the Federal Aviation Reauthorization Act was enacted into law. Section 1220 of the Act states as follows:

Landfills: For the purpose of enhancing aviation safety, in a case in which 2 landfills have been proposed to be constructed or established within 6 miles of a commercial service airport . . . , no person shall construct or establish either landfill if an official of the Federal Aviation Administration has stated in writing that 1 of the landfills would be incompatible with aircraft operations at the airport

On the basis of these facts, answer the following questions:

- A. Is section 1220 unconstitutional if Congress enacted it specifically to shut down the Happy Landings Landfill after local voters complained about receiving trash from New York?
- B. Must Congress compensate Eagle and Leatherwood if Congress enacted section 1220 so that aircraft could fly over their land without hitting birds attracted by landfill trash?
- C. Could Pennsylvania prohibit landfills in the state from receiving trash from New York?

PROBLEM IV.**(20 percent)**

The following edited excerpt comes from a recent case:

Patricia Demarest produced a show called "Think Tank 2000," which aired on a local cable television station, Orange Television, Inc. [OTV]. Think Tank 2000 concerned itself with issues of local concern, and some broadcasts focused on the behavior of officials in Athol, Massachusetts. In particular, Demarest criticized one official as having a conflict of interest, and accused [another] of using his position to get special treatment. When these officials complained, OTV suspended Demarest.

Athol demanded the creation of OTV as a condition of Time-Warner's license [to provide cable television in the town]. Time-Warner paid \$15,000, followed by payments of \$120,000 and \$30,000 to form, organize, and maintain OTV. The agreement [between Athol and Time Warner] provides that OTV "may be used by the public," and that "[a]ny resident of the Town, or any organization based in the Town, shall have the right to place locally produced programming on [OTV]." Athol retained authority to appoint the members of the "Access Group," which manages and operates OTV.

On the basis of these facts, answer the following questions and thoroughly explain your answers:

- A. Does the Constitution require OTV to respect Demarest's First Amendment Free Speech rights?
- B. Putting aside any First Amendment concerns, may Athol or OTV limit the right to place programming on OTV only to residents of Athol and organizations based in Athol?
- C. Could Athol, by passing an ordinance, rescind the requirements in its agreement with Time Warner?

PROBLEM V.**(20 percent)**

The following edited excerpt comes from a recent case:

[When parents divorce or separate, state courts often order one parent to pay "child support" to the other parent. Parents often disobey these orders.]

Beginning in 1975, Congress decided that an important way to help needy families was to improve child support collection. As a part of welfare reform in 1996, Congress required each state to implement a number of new procedures including the establishment of several major databases, and the ability to suspend all types of licenses including drivers' licenses of individuals owing past due child support. Congress has a policy for utilizing [social security numbers] to locate absent parents and to collect child support. Under the current statute, "each State must have in effect laws requiring ... that the social security number of any applicant for a ... driver's license ... be recorded on the application." [42 U.S.C. § 666(a)(13)].

On the basis of these facts, answer the following questions:

- A. May Congress require states to record the social security numbers of applicants for state driver's licenses as a means of improving child support collection?
- B. How, if at all, could Congress use its Commerce and Taxation Powers to impel individuals to obey child support orders?
- C. What limitations, if any, would Congress face in using its Spending Power to aid needy families directly?

END OF EXAMINATION

For your reference, please note that words and punctuation were omitted from the preceding quotations without indication by ellipses. Text appearing in brackets was added to the quotations for clarification and other purposes. Because this is an open-book examination, the names of the cases from which these excerpts came will be revealed at a later time.

Final Examination In

CONSTITUTIONAL LAW I

(Course No. 214-11; 3 credits)

Associate Professor Gregory E. Maggs

Instructions:

You have 3 hours to complete this examination.

The examination consists of five problems of equal weight. You should devote approximately 36 minutes to each problem (5×36 minutes = 180 minutes or 3 hours).

Each problem includes several specific questions. Points will be allocated among the questions within a problem according to their difficulty.

Please write your answers in test booklets or type them on separate paper.

In completing the examination, you may use your textbook, your syllabus, your syllabus appendix, your copy of the Constitution, and any notes that you have prepared substantially yourself. You may not use commercial outlines or case reports.

You should make reasonable assumptions about any facts not stated in the problems. If you find the problems ambiguous in any sense, describe the ambiguity in your answer.

You may keep this copy of the examination at the end of the examination period.

Good luck!

PROBLEM I.**(36 minutes)**

The following edited excerpt comes from *Greyhound Lines, Inc. v. City of New Orleans*, 29 F. Supp. 2d 339 (E.D. La. 1998) :

[The New Orleans City Code] requires bus drivers to pay a fee to obtain a permit for the operation of buses within the City. Greyhound maintains a national fleet of passenger buses that operate on interstate and intrastate routes. It does not have any locally registered or housed buses in New Orleans. Greyhound has not obtained the permits required by the City.

In September, several Greyhound drivers were operating buses that had been chartered to pick up and transport passengers from their hotels [in New Orleans] to the Convention Center in New Orleans. While delivering their passengers at the Convention Center, all drivers were cited for violating the City Code. The drivers have been arrested in some cases, and the City intends to enforce the Code provisions.

[A federal statute] states: "No State or political subdivision thereof ... shall enact or enforce any law ... relating to ... the authority to provide intrastate or interstate charter bus transportation." 49 U.S.C. 14501(a)(1)(c).

The City does not contend that the Code requirements are anything more than a registration under which drivers have to pay a fee for a special permit. There is no safety test, no control for the number of permits to be issued, or any size, weight, route, or insurance restrictions.

On the basis of these facts, answer the following questions, and thoroughly explain your answers:

- A. If Congress had not enacted the federal statute, could New Orleans enforce its law against the Greyhound drivers?
- B. Is the federal statute constitutional? What effect does the federal statute have?
- C. How, if at all, could Congress impel New Orleans to repeal its law?

PROBLEM II.**(36 minutes)**

The following edited excerpt comes from *Mojica v. Reno*, 970 F. Supp. 130 (E.D.N.Y. 1997):

Legal permanent residents long [have] had a right to seek [in court] a waiver of deportation under section 212(c) of the Immigration and Nationality Act. Among the elements considered are family ties, residence of long duration, evidence of hardship, and evidence attesting to an individual's good character.

On April 24, 1996, Congress enacted the AEDPA [Anti-Terrorism and Effective Death Penalty Act], which included a provision--section 440(d)--barring section 212(c) relief for individuals "deportable by reason of having committed any criminal offense."

Navas is a twenty-two year old native and citizen of Panama who lives in New York. He was admitted to the United States as a legal permanent resident on July 10, 1987. On November 8, 1995, Navas was found deportable [based on his conviction of car theft and other crimes]. On December 8, 1995, Navas filed his application for a waiver of deportation. After all the evidence was presented, the Immigration Judge determined Navas was eligible for a section 212(c) waiver. [The United States appealed.]

On February 21, 1997, [while the appeal was pending,] the Attorney General began ordering deported all immigrants with pending applications for a waiver of deportation that were affected by section 440(d).

On the basis of these facts, answer the following questions and thoroughly explain your answers:

- A. May Congress, by enacting 440(d), in effect reverse the Immigration Judge's decision to grant Navas a waiver?
- B. If Congress had not enacted 440(d), could it have prevented Navas from obtaining a waiver by stripping the courts of jurisdiction to consider his application?
- C. If the Attorney General had refused to apply 440(d) to Navas, what recourse might Congress have?

PROBLEM III.**(36 minutes)**

The following edited excerpt comes from A.L. Blades & Sons, Inc. v. Yerusalim, 921 F. Supp. 251 (M.D. Penn. 1996):

PennDOT [the Pennsylvania Department of Transportation] publishes standard specifications which are included in all of its contracts for highway construction.

Section 107.26 reads: "Laborers and mechanics to be employed for work under the contract are required, by [Penn.] Act 1935-414, to have been residents of the State for a period of at least 90 days prior to their starting work on the contract. Failure to comply with these provisions will be sufficient reason to refuse paying the contract price."

[PennDOT hired A.L. Blades & Sons, Inc.] for a project to be constructed in Potter County, Pennsylvania. Blades proceeded to perform work on the project. Included among the individuals Blades employed to work on the project were [laborers] Jeffrey Elliot and Simon Barnes, both of whom are New York residents. [When PennDOT discovered this violation of 107.26, it] withheld payments totaling \$18,171.00 from Blades for work performed on the project.

On the basis of these facts, answer the following questions, and thoroughly explain your answers:

- A. What claims, if any, might A.L. Blades & Sons assert?
- B. Suppose that A.L. Blades & Sons had refused to hire Elliot and Barnes in order to comply with Act 1935-414.
 1. To what extent might A.L. Blades & Sons challenge Act 1935-414 or 107.26?
 2. What claims, if any, would Elliot and Barnes have?

PROBLEM IV.**(36 minutes)**

The following edited excerpt comes from *Made in the USA Foundation v. United States*, 56 F. Supp. 2d 1226 (N.D. Ala. 1999) :

In 1990 the United States, Mexico and Canada initiated negotiations with the intention of creating a "free trade zone" through the elimination or reduction of tariffs and other barriers to trade. After two years of negotiations, the leaders of the three countries signed the North American Free Trade Agreement ("NAFTA") on December 17, 1992. Congress approved and implemented NAFTA on December 8, 1993 with the passage of NAFTA Implementation Act, which was passed by a vote of 234 to 200 in the House and 61 to 38 in the Senate. The Implementation Act served two purposes, to "approve" NAFTA and to provide a series of laws to enforce NAFTA's provisions [in the United States].

Neither NAFTA nor the Implementation Act were subjected to the procedures outlined in the Treaty Clause [in Article II, section 2]. [Several labor unions] contend that this failure to go through the Article II, Section 2, prerequisites renders the Implementation Act unconstitutional.

On the basis of these facts, answer the following questions, and thoroughly explain your answers:

- A. How is what Congress and the President did here different from the ordinary process of making and ratifying treaties?
- B. What might the United States argue to justify Congress and the President's actions?
- C. May a federal court adjudicate the labor unions' contention that the Implementation Act is unconstitutional?

PROBLEM V.**(36 minutes)**

The following edited excerpt comes from United States v. McCormack, 31 F. Supp. 2d 176 (D. Mass. 1998):

Kevin McCormack has been indicted for giving cash payments of \$4,000 to a Malden police officer in violation of 18 U.S.C. 666(a)(2). While the Malden Police department receives federal funds, the alleged bribe had nothing whatever to do with those funds, or indeed, with any cognizable federal program or purpose. To the extent the Government alleges any quid pro quo, it suggests that the money was intended to keep the Malden Police from investigating McCormack for various state offenses.

The statute under which McCormack has been charged makes it a federal crime, under certain "circumstances" (later defined in 666(b)), to

corruptly give, offer, or agree to give anything of value to any person, with intent to influence or reward an agent of an organization or of a State [or] local government . . . in connection with any business, transaction, or series of transactions of such organization, government, or agency involving anything of value of \$5,000 or more.

18 U.S.C. 666(a)(2). The circumstances outlined in (b) are that the local government or agency must have received "benefits in excess of \$10,000 under a Federal program." 18 U.S.C. 666(b). [Malden, a city in Massachusetts, has received such benefits.]

On the basis of these facts, answer the following questions and thoroughly explain your answers:

- A. If the United States had not acted, could Massachusetts charge McCormack with violation of a similar state bribery statute?
- B. Why might Congress desire a federal law on this subject?
- C. May the United States apply 666 to McCormack?

END OF EXAMINATION

For your reference, please note that text and punctuation were omitted from the preceding quotations without ellipses and paragraph structure was changed without indication. Words appearing in brackets were added to the quotations for clarification and other purposes.

The George Washington
University Law School

May 4, 1999

Final Examination In

CONSTITUTIONAL LAW I

(Course No. 214-13; 3 credits)

Associate Professor Gregory E. Maggs

Instructions:

You have 3 hours to complete this examination.

The examination consists of five problems of equal weight. You should devote approximately 36 minutes to each problem (5×36 minutes = 180 minutes or 3 hours).

Each problem includes several specific questions. Points will be allocated among the questions within a problem according to their difficulty.

Please write your answers in test booklets or type them on separate paper.

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You should make reasonable assumptions about any facts not stated in the problems. If you find the problems ambiguous in any sense, describe the ambiguity in your answer.

You may keep this copy of the examination at the end of the examination period.

Good luck!

PROBLEM I.**(36 minutes)**

The following edited excerpt comes from Utility Reform Network v. California Public Utilities Commission, 26 F. Supp. 2d 1208 (1997) :

On February 8, 1996, the Telecommunications Act of 1996 was enacted. The Act, among other things, provided for the introduction of competition into local telephone service. Congress was concerned, however, that the introduction of local competition might have the effect of rendering basic telecommunications services too expensive in rural and high cost areas. The Act therefore provides that telecommunications carriers "that provide intrastate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, in a manner determined by the State to the preservation and advancement of universal service in that State." 47 U.S.C. 254(f).

[The California Public Utilities Commission ("CPUC") implemented 254(f) by imposing "end-user surcharges" on California telephone customers to obtain revenue to subsidize service in rural and high cost areas.] Each surcharge is listed as a separate item on customers' telephone bills and is collected by customers' telephone service providers. Prior to the CPUC's decision, TURN, an organization representing residential and small business customers, had urged the CPUC to require telephone service providers [instead of customers] to fund the universal service programs. Although TURN acknowledges customers would pay for at least part of the universal service programs regardless of the specific funding mechanism chosen, it urged that telephone service providers be required to pay for the programs in the first instance because market forces may prevent telephone companies from passing the entire cost of these programs onto customers.

On the basis of these facts, answer the following questions and thoroughly explain your answers:

- A. What challenges might be brought against 47 U.S.C. 254(f), and how should a federal court resolve them?
- B. What challenges might be brought against the CPUC's end-user surcharges and how should a federal court resolve them?
- C. Could Congress have imposed end-user surcharges on all telephone customers directly and then used the revenue to subsidize rural telephone service?

PROBLEM II.**(36 minutes)**

The following edited excerpt comes from *Imperial Sanitation Corp. v. City of New York*, 1997 WL 375745 (E.D.N.Y.):

Local Law 42, enacted by the City of New York, overhauled the regulatory structure of the trade waste removal business in the City. [It made] all existing carting contracts terminable upon thirty days notice by either the customer or the carting company, unless the carting company received a waiver. The purpose of the law is to rid the City's carting and hauling industry of the influence of organized crime. The New York City Trade Waste Commission reviews waiver applications.

Imperial Sanitation applied for a waiver of the contract termination provision and was denied. The Commission informed Imperial that its customers would be notified that they were free to terminate their contracts at any time with thirty days written notice.

[In enacting Law 42, the City found the vast majority of the carting contracts were tainted by the threat of violence. Garbage haulers are] involved in a highly-regulated industry, and were therefore aware of the possibility that future regulations might significantly alter their businesses.

Imperial argues that the primary value of its enterprise lies in its customer contracts and that converting term contracts into at-will contracts deprives the business of its value. [Yet,] even if all of the prior customers cancel their contracts, Imperial retains all of its equipment and other business assets and is free to seek new customers. [Imperial also argues that it and other] local carting companies were held to a higher standard than national companies in the Commission's evaluation of [waiver requests].

On the basis of these facts, answer the following questions and thoroughly explain your answers:

- A. What challenges might be brought against Local Law 42? How should a federal court resolve them? Does it matter how many customers have canceled their service contracts?
- B. When reviewing waiver requests, could the Commission hold local companies to a lower standard than national companies?
- C. How, if at all, could Congress impel New York to address the influence of organized crime in other local businesses?

PROBLEM III.**(36 minutes)**

The following edited excerpt comes from *Floyd v. Clinton*, 942 F. Supp. 32 (D.D.C. 1996):

Ballistic missiles are capable of carrying conventional explosives, nuclear warheads, chemical or biological warfare agents and radiological agents. For decades the United States has been working to develop ballistic missile defenses. Theater missile defense systems with the capability to defend areas rather than just points are still in research and development.

In the Ballistic Missile Defense Act, Congress directed the Secretary of Defense to achieve certain capabilities for four theater defense systems. Among the four systems and at issue here are the U.S. Army's Theater High-Altitude Area Defense ("THAAD") and the U.S. Navy's Theater-wide Defense ("NTW"). Under the Act, the THAAD system is to have a first unit equipped by fiscal year 2000. The NTW system is to have an initial operational capability during fiscal year 2001. Congress subsequently appropriated \$9,411,057,000 for research, development, test and evaluation in the Defense Appropriations Act.

On February 16, 1996, the Secretary of Defense announced that the Department of Defense intended to restructure the development of the THAAD and NTW systems. The restructuring would result in a delay for the THAAD and NTW programs, beyond those envisioned in the Ballistic Missile Defense Act. [The Department of Defense also announced it would not spend all of the funds appropriated for the systems.]

On the basis of these facts, answer the following questions and thoroughly explain your answers:

- A. Is the Secretary of Defense obliged to meet the development deadlines and spending requirements? How might Congress seek to compel compliance or respond to non-compliance?
- B. The Secretary of Defense argued that the political question doctrine bars "judicial review of this matter" because it "would insert the court into a political tug-of-war ... regarding the particulars of highly controversial strategies for two national defense systems." Is this correct?
- C. To what extent could Congress pass legislation giving control over missile defense systems to someone who is independent of the President and Secretary of Defense?

PROBLEM IV.**(36 minutes)**

The following edited excerpt comes from N & N Catering Co. v. City of Chicago, 1999 WL 80932 (N.D. Ill.):

[The Illinois Liquor Control Act allows the voters of any precinct in a city to decide by referendum "the question of whether the sale at retail of alcoholic liquor shall be prohibited at a particular street address within the precinct."]

N & N [was] licensed to sell alcoholic beverages for on-premises consumption at 4220 S. Halsted in Chicago, the site of the International Amphitheatre. In July 1998, residents of the precinct surrounding the Amphitheatre initiated a campaign to prohibit the sale of alcohol at the arena. Pursuant to the Liquor Control Act, [these residents petitioned to have] submitted to the voters the proposition: "Shall the sale at retail of alcoholic liquor be prohibited at the following address: 4220 South Halsted Street."

The referendum was placed to a vote on November 3, 1998. The final voting tally was 178 in favor and 88 against. The referendum's passage extinguished N & N's licenses to sell alcohol at the venue.

The Liquor Control Act expressly states that a liquor license "shall not constitute property." Further, by the terms of the Liquor Control Act, a liquor license lacks many of the typical attributes of property. For instance, a liquor license cannot be transferred or sold, and "applies only to the premises described ... in the license issued." [During a debate on the Liquor Control Act in the Illinois legislature,] a legislator commented that single-address referenda "will not penalize the good licenses ... but only target that bad operator."

On the basis of these facts, answer the following questions and thoroughly explain your answers:

- A. What challenges might be brought against the Act and the referendum, and how should a federal court resolve them?
- B. How, if at all, could Congress endeavor to restore N & N's permission to serve liquor at the Amphitheatre?
- C. If the federal government purchased the Amphitheatre from N & N, could it sell alcohol there?

PROBLEM V.**(36 minutes)**

The following edited excerpt comes from Indorato v. Patton, 994 F. Supp. 300 (E.D. Pa. 1998):

On October 26, 1996, an NCAA Division II football game pitting Cheyney University against East Stroudsburg University was held at East Stroudsburg. Late in the third quarter, during a running play with Cheyney in possession, a foul for "illegal use of the hands" was called on Kip Patton, Cheyney player number sixty-seven. Anthony M. Indorato, a NCAA-certified football official serving as head linesman at the game, prepared to mark off the appropriate loss of yardage. Upon hearing obscenities hurled by [Patton], [Indorato] called a second foul, this time for "unsportsmanlike conduct." Now enraged, [Patton] struck [Indorato] in the face with his helmet, rendering him unconscious.

Cheyney punished [Patton] for his actions. It appears that within one month of the incident, Cheyney suspended [Patton] from the football team, withdrew his financial aid package, and expelled him.

[Additional facts are that] Cheyney is a member of the Pennsylvania State Athletic Conference; [Patton] was a member of Cheyney's varsity football team under the supervision of his coach, a paid Cheyney employee; [Patton] attended Cheyney on an athletic scholarship; spectators paid admission to watch the game, which was held on state-owned realty; and at the time of the incident, [Patton] wore a uniform identifying him as a member of the Cheyney football team. The state [of Pennsylvania] is committed to funding a part of Cheyney's operations and plays a central role in virtually all areas of Cheyney's general affairs.

On the basis of these facts, answer the following questions and thoroughly explain your answers:

- A. Indorato sued Patton for violating his "constitutional right to bodily integrity" under the 14th Amendment. Could Patton have violated this right, if it exists?
- B. Why might Indorato prefer to bring a constitutional claim against Patton (if he has one) over a state law tort claim?
- C. Was Patton entitled to due process before his expulsion? Could the NCAA, which sets collegiate athletic standards, have violated due process under any circumstances?

END OF EXAMINATION

For your reference, please note that text and punctuation were omitted from the preceding quotations without ellipses and paragraph structure was changed without indication. Text appearing in brackets was added to the quotations for clarification and other purposes.