CON LAW FINAL EXAM

American Constitutional Systems

Spring, 2005

Professor Dave Oedel

Welcome to this final exam. Please spend no more than 4 hours on the exam, one half-hour total per section with one-half hour to spare for planning your answers. Each of the seven sections will be weighted equally. The 10 multiple choice questions at the end are worth one-seventh of the exam total (equal to one essay). The exam is closed-book.

Please write in pen. If you run out of space on the exam, please use the blank backs of the pages first, and a blue book only if absolutely necessary.

If you type your exam, please indicate your answers to the multiple choice answers on the typed portion of the exam, rather than circling answers on the question sheet.

Best of luck on this exam – and have a fine summer. Do keep in touch.

Please write your blind grading number here: _____

Also please write your blind grading number on the top right-hand corner of each individual page of the exam.

1) Medicaid Funding Cuts. Congress presently allocates funds to programs in all 50 states that provide medical care payments for low-income individuals. Assume that Congress is considering passing legislation substantially to reduce the funding levels and change the requirements for coverage. Briefly consider the constitutionality of each of the following possible adjustments to the law. **Confine your analysis to whether A or B violates Equal Protection, whether C violates the 10th Amendment, and whether D violates procedural due process.**

(A) A provision barring coverage for sickle cell anemia (a condition solely afflicting persons with African ancestry, formerly covered).
(B) A provision barring coverage for gastric by-pass surgery (used to treat morbid obesity, the condition of persons who are extremely overweight).
(C) A provision that would require states receiving funds to have state officials register the identity and monitor the address of any person diagnosed with AIDS or HIV, regardless of whether the person is covered by Medicaid, so as to monitor the status of the AIDS virus in the population.
(D) A provision stating that any person presently receiving benefits in income brackets above the poverty line (possible under the present arrangements) would be automatically ineligible for the continuation of such benefits to the extent the records already submitted by the individual shows an income level higher than the new, lower cut-off.

2) Patriot Act Revision. Assume that, in a 2005 reauthorization of the USA Patriot Act (an act originally passed in the wake of the 9/11 attacks to help combat terrorism), a new line is included that gives the Justice Department the authority to conduct electronic surveillance of any individual upon a showing to a judge that the individual has been deemed to be "unpatriotic in the particular sense of having previously made inflammatory communications giving aid and comfort to enemies of the United States or otherwise inciting violence." Discuss the constitutionality of the provision as raised in a criminal prosecution of a member of a terrorist group who had been detected through surveillance authorized under the act.

3) Cloture. Article 1 c 5 of the Constitution states that each house of Congress can determine the "rules of its proceedings." Assume that the U.S. Senate has a longstanding rule of "cloture," by which debate on questions on the floor of the Senate cannot be cut off unless 60 members of the body vote to end the debate. As a practical matter, the rule requires most laws that pass the Senate to be supported by 60 percent of the members, rather than a simple majority of 51. Discuss a constitutional court challenge to the rule by a group of 46 Senators who claim that the Senate's cloture rule deprives them of their asserted constitutional right as senators to participate in votes up or down on particular matters that would otherwise require a simple majority of the body to pass. In particular, the senators cite as a prime example the constitutional requirement in Article II that the Senate is to offer its "advice and consent" on the President's judicial nominees. Assume also that the President in his most recent State of the Union address declared, "Cloture is unconstitutional. I need up or down votes on my nominees for the judiciary."

4) Assume that the U.S. Education Department (USED) purchases time on local television stations to advocate for controversial educational testing practices proposed by the executive administration. The way USED does this is to supply the local news stations with video spots that the local news stations can run as part of their own news programs. The spots do not indicate that the reports were prepared by USED, and instead just end with the actor (playing the role of "reporter") saying, "John Smith, reporting." Assume that Citizen C files suit objecting to her tax dollars being used for those spots because she states that the proposed controversial policies conflict with her personal religious views of how education should be structured (C's religion holds that numeric rankings of persons are spiritually offensive), contradict how she chooses to raise her own children, and constitute official discrimination against legitimate opposition to the controversial testing policy. Discuss C's suit and the constitutionality of USED's "news" spots.

5) Corneal Harvesting. Assume that State T has a law permitting official coroners to "harvest" or take out corneas (i.e., parts of eyeballs) from corpses "to the extent the coroner is unaware of any objection that the deceased person or the deceased's family would have to the donation." The law is defended on the grounds that corneas can only be harvested for a few hours after death, not long enough to figure out whether consent can be obtained, and the need for corneal transplants is substantial. As a result of its unusual cornea harvesting policy, State T is a major national source of scarce corneas for transplant, and ships the corneas nationwide after harvesting at a price designed, according to State T, simply to cover costs. The State uses the proceeds from the shipment of the corneas partially to cover the costs of its state coroners' offices. Assume that Fred, a State T citizen, objects to the law on the ground that it would offend his religious convictions to have his corneas harvested. Fred produces a survey showing that a majority of citizens if asked would object to having the cornea harvested. Discuss Fred's challenge to the law.

6) The Patient Lifeline Act. Assume the passage of a new federal law, the Patient Lifeline Act, in connection with which Congress declared its interests as follows: "Whereas it has come to the nation's attention in the Schiavo case that states are routinely depriving patients of hydration and nutrition, whereas hospitals are substantially supported by federal funding, whereas medial care is a major industry comprising more than ten percent of the gross national product, therefore be it enacted that no state-sponsored hospital supported with federal funds may deprive any patient of hydration and nutrition, or else the sponsoring state may lose its Medicaid funding at the discretion of the Secretary of Health and Human Services, and be sued for any damages caused by such deprivation, including an action by the estate of a deceased patient for wrongful death." Discuss the constitutionality of the PLA.

CIRCLE THE ONE BEST ANSWER for each of the following ten multiple choice questions.

7.1) Airlines flying out of Airport A in a particular city are permitted by law to fly to any destinations, but other airlines flying out of Airport B in that same city are legally restricted only to flying to destinations in seven other states. The legal restrictions on airlines flying out of Airport B

A) would be unlawful as violating the Dormant Commerce Clause if they were federal regulations issued by Federal Aviation Administration.
B) would be lawful if passed as acts of Congress pursuant to its Commerce power.
C) would be unlawful if they were in the form of federal regulations issued by the Federal Aviation Administration, in view of the non-delegation doctrine.
D) would be lawful if the legal restrictions were local regulations passed by the city's duly elected city council and signed by the city's mayor.
E) would be unlawful as burdening the Privileges and Immunities enjoyed by the airlines flying from airport B.

7. 2) Congress passed a foreign aid law funding various humanitarian programs directed by Country X. Country X is later found to be engaging in hostile acts involving nuclear weapons proliferation. An executive order suspending payment of the previously allocated funds would not violate the principles of Youngstown and Dames & Moore:

A) if Congress is deemed to acquiesce in the suspension.
B) if Congress objects to the suspension.
C) if Congress is silent about the suspension.
D) if the Secretary of State endorsed the decision.
E) because Congress lacks control over foreign policy.

7.3) If Congress and the President together pass a law removing a justice of the Supreme Court who has become incapacitated, the law will likely

A) be deemed constitutional because two of three branches agree.
B) be deemed unconstitutional because it is private legislation.
C) be deemed constitutional because the judicial appointment power implies a removal power.
D) be deemed unconstitutional because Congress lacks power to pass the law.
E) not be addressed by a court due to the political question doctrine.

7.4) A federal regulation prohibiting distribution of the "morning-after pill," a drug that stops eggs (possibly already fertilized) from implanting in the woman's uterine wall,

A) would be unreviewable if directed by Congress and the President pursuant to validly enacted legislation.
B) would be reviewable to evaluate possible interference with a woman's right to reproductive autonomy.
C) would be unconstitutional as infringing on professional advice protected under the 1st Amendment pursuant to the doctor/patient relationship.
D) would be unconstitutional as applied to an individual whose particular sincerely held religious belief as a so-called "New Shaker" is that becoming pregnant is sinful.
E) would be constitutionally suspect because the state can burden a woman's right of reproductive autonomy only in the interests of potential life, and such a potentiality of life, before embedding in the uterine wall, is too attenuated.

7.5) State M legalized gay marriage. State G changed its constitution to deny recognition of gay marriage. A & B, gay citizens of state G, traveled to State M and there married.

A) A & B could not be denied recognition of their State M marriage upon returning to State G because of the Privileges and Immunities clause of Article IV c 2.
B) A & B could be denied recognition of their State M marriage upon returning to State G because the Full Faith and Credit Clause permits states to refuse to honor the laws of other states that contradict the home state's policies.
C) A & B could not be denied recognition of their State M marriage upon returning to State G to the extent the federal Defense of Marriage Act is ruled by a court of competent jurisdiction not to address the marriage of A & B.
D) A & B could be denied recognition of their State M marriage upon returning to State G because Lawrence v. Texas only addressed questions of gay sexuality and privacy.
E) A & B could not be denied recognition of their State M marriage upon returning to State G because of the Privileges and Immunities clause of Article IV c 2.

7.6) Assume that Congress passes, over a presidential veto, the Advisory Committee Disclosure Act, requiring that Congress be notified of the identities of all advisors to the President. The Act will likely be interpreted

A) to be constitutional as within congressional power to offer advice and consent on the appointment of senior officials.
B) to be unconstitutional as a clear violation of executive privilege.
C) as overbroad and vague in light of the term "advisor."
D) as narrowly as possible pursuant to the Ashwander doctrine to avoid possible conflict with executive privilege.
E) to be non-justiciable under the political question doctrine.

7.7) Assume that State X, a state with a long tradition of family farming, has a law that outlaws the ownership by corporations of farmland in State X. As there are no significant farming corporations in State X to begin with, the ban as a practical matter only tends to affect out-of-state farming corporations. Ducks-R-Us, Inc., a non-profit corporation from another state involved in purchasing land nationwide for conservation purposes, has signed a contract to buy a large tract of land in State X that has traditionally been used for family farming, but will be put into trust as habitat for migratory birds. State X's attorney general opposes the sale as a violation of the ban on corporate ownership of farmland. The ban will likely be held

A) constitutional if land ownership is deemed not be commerce.
B) unconstitutional as a violation of the Privileges or Immunities clause of the 14th Amendment.
C) unconstitutional under the Commerce Clause and Lopez because there is a long state tradition of family farming in state X.
D) unconstitutional because it is a violation of the Privileges and Immunities clause of Article IV c 2.
E) unconstitutional as a violation of the Contracts Clause.

7.8) Assume that State Z passes a law making it a crime to facilitate the crossing of the state's line by a minor to secure an abortion. The law will likely be deemed

A) constitutional as minors have no fundamental rights to abortion.
B) unconstitutional as interference with a parent's substantive due process right to make such important familial decisions with and for the child.
C) constitutional as within the state's traditional police power.
D) unconstitutional if within the first two trimesters.
E) to implicate serious questions about the Privileges or Immunities of U.S. citizenship.

7.9) City Y passes an ordinance making it unlawful to discriminate in employment decisions on the basis of physical appearance. The law would likely be deemed

A) constitutional as within the state's traditional police power.
B) unconstitutional as no suspect class has been identified.
C) constitutional because physical appearance is relatively discrete and immutable, and has been the basis of historical discrimination.
D) unconstitutional as interference with the right to contract.
E) unconstitutional as an undue burden on interstate commerce.

7.10) Assume that Congress passes the Right to Bear Arms Act, declaring that "The right to bear arms is a personal right that cannot be unduly burdened by any governmental entity." The law would likely be deemed

A) constitutional assuming Congress showed that arms are in commerce.
B) constitutional to the extent that Congress demonstrated a prior history of discrimination against the exercise of gun rights and that this act is congruent and proportional to the extent of prior discrimination.
C) unconstitutional under the plain language of Marbury v. Madison.
D) unconstitutional under the modern understanding of Marbury v. Madison.
E) unconstitutional only to the extent the act conflicts with U.S. v. Miller.