

CON LAW FINAL EXAM

American Constitutional Systems

Spring, 2006

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 answer print-out, rather than circling answers on the question sheet.

Best of luck on this exam and your others – 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 so that if a page were to be accidentally separated, it would be clear to which exam the page belongs.

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

- 7.1 Passage by Congress of an act over a presidential veto that would make it a “high crime” for a President or other executive branch employee to eavesdrop on American citizens in violation of federal wiretap laws would be
- A. unconstitutional because Congress is not free to interpret the meaning of the special impeachment-related language in the Constitution about what constitutes a high crime.
 - B. unconstitutional as a violation of the separation of powers because Congress is acting in the lowest zone of its authority.
 - C. constitutional as an exercise of the congressional section 5 power.
 - D. constitutional as a political question.
- 7.2 Assume that Juarez, a city in the U.S. state of Texas, has a formal “sister city” relationship with the city of Juarez, Mexico. After votes of their respective governing bodies, the two cities agreed to what they described as a “compact” whereby the Texas city would accept and employ 200 guest workers per year in exchange for which the sister Mexican city would agree to sell seven hundred thousand barrels of crude oil to an oil refinery operating in the Texas city of Juarez.
- A. A state department ruling indicating that the compact between the cities is in tension with official diplomatic negotiations between Mexico and the United States would preempt the compact under the field preemption doctrine.
 - B. Assuming the Immigration and Naturalization Service (INS), an agency of the federal government, has rules that could but would not necessarily conflict with the compact’s guest-worker program, then the compact would be preempted under the actual conflict doctrine.
 - C. The compact, to the extent is a contract, could not be invalidated without violating the Contracts Clause to the extent the compact was in existence before any court or other authority ruled on its validity.
 - D. A state department ruling indicating that the compact between the cities is in tension with official diplomatic negotiations between Mexico and the United States would preempt the compact under the frustration of purpose doctrine.
- 7.3 A new state law would make state government liable for any change in zoning that deprives a landowner from achieving the full speculative value of her property immediately prior to the zoning change. The law would likely be
- A. unconstitutional as in conflict with the Kelo decision and the Takings Clause of the U.S. Constitution.
 - B. unconstitutional under the Supremacy Clause.
 - C. constitutional as an example of federalism.
 - D. constitutional because state legislatures cannot be commandeered by the Supreme Court.

- 7.4 A local public school system adopts an “Intelligent Design” component to its science curriculum using a private published text that provides alternative ways of thinking about evolution in addition to discussion of evolution. The “Intelligent Design” text selection would likely be
- A. constitutional as the publishers of the text and the advocates of “Intelligent Design” are not state actors.
 - B. constitutional to the extent there is no explicit statement about a religious purpose in the local school board’s decision to include study of “Intelligent Design” in the curriculum, regardless of the curriculum’s entwinement with the effects on religious matters.
 - C. unconstitutional if “Intelligent Design” is advocated by religious groups.
 - D. constitutional if the local school board’s purpose in including study of “Intelligent Design” theories is deemed secular and entwinement with religious matters, minimal.
- 7.5 To the extent African-American males are over-represented in state G’s prison population compared with their representation in the general population, State G’s criminal justice system in a class-action lawsuit on behalf of African-American males prisoners would be
- A. given strict judicial scrutiny because of race is a suspect classification.
 - B. given intermediate judicial scrutiny because gender is a suspect classification.
 - C. given low-level judicial scrutiny absent proof of purposeful discrimination in incarceration decisions on the basis of race and/or gender.
 - D. given low-level judicial scrutiny because the absence of any formal classification of inmates by state G actors on grounds of race and/or gender.
- 7.6 In a private owned subdivision, solicitation is strictly prohibited by the private neighborhood association that governs the subdivision. The streets and sidewalks of the subdivision are privately owned, but connected to public streets and sidewalks adjacent to the subdivision. At the edge of the subdivision, the neighborhood association has erected a sign that reads, “No Soliciting.” In contrast, soliciting is generally allowed outside the subdivision by local ordinance. In the first amendment challenge to the no-solicitation rule within the subdivision by religious pamphleteers, the suit would likely
- A. be dismissed because religious solicitation is not a public function
 - B. be dismissed on grounds of ripeness because the religious pamphleteers have not yet been arrested for trespassing.
 - C. be dismissed because restrictive covenants are private contracts.
 - D. be dismissed because the neighborhood association is not a state actor.

- 7.7 In a transportation spending act, Congress conditioned receipt of several million dollars by the states on the states enacting uniform laws governing the employment of migrant labor. The provision would likely be
- A. subject to careful scrutiny by a court as to whether the migrant labor rules are matters of general welfare.
 - B. subject to careful scrutiny by a court as to whether the condition was unambiguously communicated to the states.
 - C. subject to careful scrutiny by a court as to the relationship between transportation funding and migrant labor
 - D. subject to careful scrutiny by a court as to whether transportation is included within the congressional Commerce power.
- 7.8 A federal court is asked to invalidate on facial grounds a new state law restricting abortion procedures as unconstitutional. The federal court will likely
- A. decline to rule on the constitutional matter if the state law could be construed and applied not to offend the Constitution.
 - B. strike the state law if the state law could be construed to offend the Constitution
 - C. decline to rule on the constitutional matter as a political question
 - D. decline to rule if the plaintiff in the lawsuit is not pregnant and seeking an abortion.
- 7.9 When it passed an energy development act pursuant to its Commerce power, Congress provided that states are not to interfere with private exploration for new sources of oil, gas and coal, and that states who do interfere may be subjected to federal suit by citizens and corporations. If Corporation X sues State Y for interference with X's energy exploration activities, a federal court will likely
- A. entertain the lawsuit as a matter of the Supremacy Clause
 - B. dismiss the lawsuit on grounds of sovereign immunity as having been improperly authorized pursuant to the Commerce power.
 - C. entertain the lawsuit as touching matters surely within the meaning of "commerce"
 - D. review the four factors in Lopez to determine the law's applicability to State Y.
- 7.10 When it passed a new immigration-identity-card program, to maximize the enforcement power, Congress required that local police officers in border states issue the identity cards and arrest immigrants without such cards. The provisions involving the local police would likely be
- A. constitutional as an exercise of the congressional power over immigration and naturalization.
 - B. constitutional under the necessary and proper clause.
 - C. unconstitutional under 11th amendment
 - D. unconstitutional under the 10th amendment