

**CON LAW FINAL EXAM**  
***American Constitutional Systems***  
***Spring, 2002***  
***Professor Dave Oedel***

Welcome to this final exam. Please spend no more than 4 hours on the exam, one half-hour total per section. You may use the casebook and handouts, plus any notes and outlines that you have prepared -- but no commercial outlines.

Best of luck on this and all your subsequent finals.

Exam Contents

Quotes (30 minutes)

Multiple Choice (30 minutes)

Essay One: (30 minutes)

Essay Two: (30 Minutes)

Essay Three: (30 minutes)

Essay Four: (30 Minutes)

Essay Five: (30 minutes)

Essay Six: (30 minutes)

***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.***

***Part One, Quote Identification***  
***(30 minutes, 30 points, 2 points per identification)***

1. The delegation of lawmaking authority to the Commission is, in short, unsupported by any legitimating theory to explain why it is not a delegation of legislative power.

Case name: \_\_\_\_\_

Justice: \_\_\_\_\_

2. Accordingly, an author’s decision to remain anonymous, like other decisions concerning omissions or additions to the content of a publication, is an aspect of the freedom of speech protected by the First Amendment.

Case name: \_\_\_\_\_

Justice: \_\_\_\_\_

3. We start from the premise that peaceful picketing carried on in a location open generally to the public is, absent other factors involving the purpose or manner of the picketing, protected by the First Amendment.

Case name: \_\_\_\_\_

Justice: \_\_\_\_\_

4. Our cases dealing with abusive executive action have repeatedly emphasized that only the most egregious official conduct can be said to be “arbitrary in the constitutional sense,” thereby recognizing the point made in different circumstances by Chief Justice Marshall, “that it is a constitution we are expounding.” To this end, for half a century now we have spoken of the cognizable level of executive abuse of power as that which shocks the conscience.

Case name (other than McCulloch): \_\_\_\_\_

Justice (other than Marshall): \_\_\_\_\_

5. It is not within our constitutional tradition to enact laws of this sort. Central both to the idea of the rule of law and to our own Constitution’s guarantee of equal protection is the principle that government and each of its parts remain open on impartial terms to all who seek its assistance. Respect for this principle explains why laws singling out a certain class of citizens for disfavored legal status or general hardships are rare. A law declaring that in general it shall be more difficult for one group of citizens than for all others to seek aid from the government is itself a denial of equal protection of the laws in the most literal sense.

Case name: \_\_\_\_\_

Justice: \_\_\_\_\_

6. That Congress was legislating against moral wrongs in many of these areas rendered its enactments no less valid.

Case name: \_\_\_\_\_

Justice: \_\_\_\_\_

- 7. Determining whether invidious discriminatory purpose was a motivating factor demands a sensitive inquiry into such circumstantial and direct evidence of intent as may be available.

Case name: \_\_\_\_\_

Justice: \_\_\_\_\_

- 8. The constitution is either a superior, paramount law, unchangeable by ordinary means, or it is on a level with ordinary legislative acts, and like other acts, is alterable when the legislature shall please to alter it.

Case name: \_\_\_\_\_

Justice: \_\_\_\_\_

- 9. It is a question of which of two powers or rights shall prevail, the power of the state to legislate or the right of the individual to liberty of person and freedom of contract. The mere assertion that the subject relates, though but in a remote degree, to the public health, does not necessarily render the enactment valid. The act must have a more direct relation, as a means to an end, and the end itself must be appropriate and legitimate, before an act can be held to be valid which interferes with the general right of an individual to be free in his person and in his power to contract in relation to his own labor.

Case name: \_\_\_\_\_

Justice: \_\_\_\_\_

- 10. That is, quite simply, the issue in these cases: not whether the power of a woman to abort her unborn child is a "liberty" in the absolute sense; or even whether it is a liberty of great importance to many women. Of course it is both. The issue is whether it is a liberty protected by the Constitution of the United States. I am sure it is not.

Case name: \_\_\_\_\_

Justice: \_\_\_\_\_

- 11. Following *City of Boerne*, we must first identify the Fourteenth Amendment "evil" or "wrong" that Congress intended to remedy, guided by the principle that the propriety of any § 5 legislation "must be judged with reference to the historical experience . . . it reflects."

Case name: \_\_\_\_\_

Justice: \_\_\_\_\_

12. Those who won our independence by revolution were not cowards. They did not fear political change. They did not exalt order at the cost of liberty. To courageous, self-reliant men, with confidence in the power of free and fearless reasoning applied through the processes of popular government, no danger flowing from speech can be deemed clear and present, unless the incidence of the evil apprehended is so imminent that it may befall before there is opportunity for full discussion.

Case name: \_\_\_\_\_

Justice: \_\_\_\_\_

13. The word "travel" is not found in the text of the Constitution. Yet the "constitutional right to travel from one State to another" is firmly embedded in our jurisprudence.

Case name: \_\_\_\_\_

Justice: \_\_\_\_\_

14. Thus, where simple economic protectionism is effected by state legislation, a virtually per se rule of invalidity has been erected.

Case name: \_\_\_\_\_

Justice: \_\_\_\_\_

15. The demographic changes of the past century make it difficult to speak of an average American family.

Case name: \_\_\_\_\_

Justice: \_\_\_\_\_

***Part Two: Multiple Choice – Thirty Minutes, Thirty Points, Two Points Each***  
***Please circle the one best choice for each question***

1. Pursuant to a “deadbeat parent” collection law, assume that State X permits the garnishment of (i.e., state-enforced deduction from) a defendant’s wages anytime after the plaintiff can show a prima facie case in an ex parte hearing (i.e., one in which the opposing side is not present) that the plaintiff received less of a child support payment than apparently owed to the plaintiff by the defendant pursuant to a prior divorce decree. The garnishment would likely be:
  - A. constitutional because the plaintiff has standing.
  - B. unconstitutional because the defendant is not represented.
  - C. constitutional so long as the defendant is provided with a right to object after the garnishment.
  - D. constitutional if the government interest in providing proper funding for child custody is considered more important or compelling than the deadbeat parent’s rights to the money, under *Mathews v. Eldrige*.
  - E. constitutional if a more elaborate government procedure for determining accurate calculations of child support up front would on balance outweigh the defendant’s inconvenience of waiting until after the garnishment takes effect.
  
2. Assume that MARTA, public local train transit in Atlanta, is shut down. The closure
  - A. would be unconstitutional if shown to have disproportionate impacts on African Americans, in light of *Croson*.
  - B. would be unconstitutional if a white politician who sponsored the de-funding said at a political rally to his constituents that the purpose of the closure was to end a “racist subsidy to black Atlantans,” to the extent that such a statement evidenced an intent to discriminate on racial grounds by the closure.
  - C. would be constitutional if the effect of the closure would be directly experienced by persons of all races.
  - D. could not be sued upon in court, because it was a political spending decision.
  - E. could not be sued on in court, because it closure was a generalized harm to the public.
  
3. Assume that the city of Middleville contracts with a private corporation to haul its garbage. The corporation is alleged to discriminate against Hispanics in its hiring decisions.
  - A. The corporation would not be subject to equal protection scrutiny because it is not a state actor, but might be liable for statutory remedies.
  - B. The corporation would be subject to equal protection scrutiny because it has contracted with a state actor to serve the state actor’s business.
  - C. The corporation is a state actor, but is also cloaked with sovereign immunity, and so is not subject to equal protection unless the state tort claims act waives the immunity, or Congress has successfully abrogated that immunity.
  - D. The corporation is subject to equal protection scrutiny even if a private actor.
  - E. The corporation would be subject to equal protection scrutiny if garbage

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4. Pursuant to a school voucher program by which public funds are paid to parents who then transfer the money to a private school, the school
- A. would be a state actor if all its students received vouchers.
  - B. would not be a state actor unless all its students received vouchers.
  - C. would be a state actor if education is seen as a public function.
  - D. would not be a state actor if education is not seen as a public function.
  - E. would be cloaked with sovereign immunity either way.
5. In a federal law that funds state and local road projects initiated locally, assume that a line of the law indicates that citizens have a right to expect public hearings on road expenditures before the money is spent. The public hearing requirement
- A. is unconstitutional because it fails to notify the state and local authorities sufficiently that receipt of federal funds is conditioned on the state conducting public hearings.
  - B. would be a commandeering of state and local government, and hence unconstitutional.
  - C. would be a condition on receipt of federal funds, and hence unconstitutional.
  - D. is a constitutional condition on receipt of federal funds.
  - E. is a constitutional exercise of the Commerce Clause power, because roads have a substantial effect on interstate commerce, and are channels of commerce.
6. Middleville adopts an ordinance requiring all homeowners to fly the American flag. The ordinance is probably
- A. constitutional as a form of oath anticipated in the Constitution's oath-of-office clause.
  - B. constitutional as a form of land-use regulation, which ordinarily gets rational basis review.
  - C. unconstitutional as a form of compelled speech.
  - D. constitutional because flag-flying is not speech, but a mere symbol.
  - E. constitutional or not depending on whether flag-flying is deemed political speech.
7. If the vice president were impeached and stood trial in the Senate,
- A. special rulings on evidence would not be heard by the courts because of the bar against advisory opinions.
  - B. special rulings on evidence could be heard by the Supreme Court, because the Chief Justice presides over impeachment trials.
  - C. the vice president could invoke executive privilege regarding personal financial dealings with lobbyists.
  - D. special rulings on evidence would not be heard by the courts because of the political question doctrine.
  - E. special rulings on evidence would not be heard by the courts because of federalism.

8. If terrorists held as prisoners of the United States military forces are convicted and given life sentences under military procedures, and they then seek habeas corpus relief,
- their actions may be dismissed because habeas corpus rights are available only to legal aliens.
  - their actions may be entertained in light of the tradition of separation of powers and Article I, section 9, clause 2.
  - their actions may be entertained only if Congress has specifically by act authorized judicial review of such claims, as in *Ex Parte McCardle*.
  - their actions may be entertained only if the President has specifically by executive order authorized such claims.
  - their actions may be dismissed because such rights are generally available only to U.S. citizens.
9. If the President signs an agreement with Yasser Arrafat and the Palestine Liberation Organization to provide one billion dollars in funding for a new Palestinian state, the agreement
- is binding on the United States as a treaty.
  - is binding on the United States according to *Youngstown and Justice Jackson* because the president is operating at the height of his powers in foreign affairs and military matters.
  - is binding on the United States according to *Youngstown and Justice Jackson* only to the extent that Congress authorizes the funding, because Congress in authorizing expenditures is operating at the height of its powers.
  - is not binding because only treaties bind the United States to agreements with foreign entities.
  - is not reviewable in federal court because it is a political question.
10. If the Middle Georgia Militia requires its members to make pipe bombs, such conduct would probably
- be constitutionally protected under the Second Amendment if pipe bombs were understood as "arms" at the ratification of the Second Amendment.
  - not be constitutionally protected under the Second Amendment if the Middle Georgia Militia were merely a private association, but would be constitutionally protected if it were chartered by the state as a non-profit corporation.
  - be constitutionally protected if the Middle Georgia Militia were an office of the state government.
  - be constitutional because the Second Amendment is a collective right.
  - be constitutional because the Second Amendment is a personal right.
11. The City of Middleville imposed a temporary ban on issuing new building permits until it could adopt a comprehensive land use plan. The ban lasted one year. Owners who could not build during the interim period
- have no claim for a taking to because they retained possession of the property.
  - have no claim for a taking unless they were forced to share possession of the property with the
  - have no claim for a taking if a court concludes that the temporary ban did not even temporarily deprive the owners of the full value of the property.
  - have a claim for a taking if the regulation is deemed irrational.
  - have a claim for a taking if the government's interest in the land-use plan is not deemed legitimate.
12. If the president orders the Food and Drug Administration to halt use of the RU-486 "abortion pill," the action likely would

- A. be unconstitutional because such a decision was not made with proper presentment to Congress.
  - B. be unconstitutional because the decision involved a first-trimester interference in women's reproductive processes and decisions.
  - C. be constitutional to the extent not contradicted by congressional act.
  - D. be constitutional if a court determined it not to pose an undue burden on a woman's right to seek an abortion.
  - E. be constitutional because potential life has been held to have a constitutionally protected interest from conception.
13. If Macon were to contract with a local trash-hauling contractor to haul the city's trash despite the presence of a bid from a large out-of-state contractor with a lower price, the decision would probably be
- A. unconstitutional under the Dormant Commerce Clause as a per se discrimination.
  - B. constitutional under the Dormant Commerce Clause because it was facially neutral.
  - C. unconstitutional if it had the purpose and effect of discriminating against out-of-staters.
  - D. unconstitutional if it had the purpose or effect of discriminating against out-of-staters.
  - E. constitutional because Macon is a market participant.
14. If Georgia were to require the licensing of all professional wrestlers, the decision would likely
- A. be subjected at least to intermediate scrutiny to the extent professional wrestlers are deemed substantially to be engaged in commercial, artistic or political speech.
  - B. be subjected to heightened scrutiny only if the license required the professional wrestlers to refrain from making certain political comments during their performances.
  - C. be subjected at least to intermediate scrutiny even if professional wrestlers are deemed solely to be athletes.
  - D. be subjected to rational-basis scrutiny under the Williamson case.
  - E. be a violation of the Privileges and Immunities Clause of Article IV, section 2.
15. If a state were to allow its wildlife only to be hunted by its own citizens, the law would likely be unconstitutional as a violation of
- A. the Privileges and Immunities clause of Article IV, section 2.
  - B. the Privileges or Immunities clause of the Fourteenth Amendment.
  - C. the principle of federalism.
  - D. the principle of separation of powers.
  - E. the Equal Protection clause of the Fourteenth Amendment.



































