

CONSTITUTIONAL LAW I

Mr. Cole

December 21, 1985.

This examination is scheduled for three and one-half hours (210 minutes). The total number of points possible is 210 and each question is rated at one point per minute. Thus a 30 minute question is worth 30 points and so on. You should budget your time accordingly.

With the exception of the initial true-false questions, please write in examination books only, unless you are typing. Put the course name, Constitutional Law, the semester, Fall, 1985, and my name, Mr. Cole, on the front page of each bluebook. Be sure to put your examination number only on the book. Please return the exams with your bluebooks.

The breakdown of the questions is as follows:

I.	(5 questions at 10 minutes =	50 minutes)
II.	(2 questions at 30 minutes =	60 minutes)
III.	(One question at 100 minutes =	<u>100</u> minutes)
	Total	210 minutes

The examination will be due at 12:30 p.m.

Good luck and Merry Christmas!

I. (50 minutes)

Circle True or False and explain. (10 minutes each)

1. The Supreme Court would most likely review a case in which the President of the United States argued that he or she had been unconstitutionally impeached. True (and) False. Explain. (10 minutes)

2. A resident of Rabun County, Georgia has standing to object to the erection of a lighted cross on a high mountain, visible to the plaintiff's home twenty miles away, on the basis that it violates the establishment clause of the First Amendment. True (and) False. Explain. (10 minutes)

3. The State of Georgia can limit the sale of kaolin taken from state owned lands to buyers who agree to process the kaolin in Georgia plants before shipping to other states. True (and) False. (10 minutes)

4. The federal commerce power can reach and regulate any economic activity in this country through the bootstrap or superbootstrap theory. True (and) False. Explain. (10 minutes)

5. Congress has the power to protect fetal life against abortions without passing a Constitutional Amendment. True (and) False. Explain. (10 minutes)

II (60 minutes) (Bluebook)

- A. In *National League of Cities v. Usery* (1976) the Court reopened a conversation about limits on a certain federal power and then, in later cases, struggled with establishing a proper test for those limits before (temporarily) giving up the effort in the *Garcia* case. (1985). What federal power was involved in these cases, how did the court choose to "reopen the conversation," what tests did it later announce, and on what theory did the *Garcia* case give up the effort? (30 minutes)
- B. In the *Piper* case, Ms. Piper, who lived in Vermont, 400 yards from New Hampshire, was refused membership to the New Hampshire Bar until she moved to New Hampshire. She went to court and argued that this refusal violated her rights under the due process, equal protection, commerce, and privilege and immunity clauses of the Constitution. Sketch each argument that she made and explore her winning argument in detail. (30 minutes)

III. (100 minutes -- One Hour and Forty Minutes)

Since the railroad unions first gained strength in this country the problem of staffing trains has presented an issue of constant dispute between railroads and unions. Some states, such as Arkansas, believing perhaps that many railroads might not voluntarily assume the expense necessary to hire enough workers for their trains to make the operation safe as they could and should be, passed laws providing for the minimum size of the train crews. One of the Arkansas statutes, passed in 1907, makes it an offense for a railroad operating a line of more than 50 miles to haul freight trains of more than 25 cars without having a train crew consisting of not "less than an engineer, fireman, a conductor and three brakemen . . ." A second Arkansas statute, enacted in 1913, makes it an offense for any railroad operating with lines 100 miles or more in length to engage in switching activities in cities of designated populations, with "less than one engineer, a fireman, a foreman, and three helpers . . ."

In states where there were no such laws the question of the size of crews was settled by collective bargaining, though not without great difficulty. In 1959, the nation's major railroads notified the unions (brotherhoods) that they considered it to be the right of management to have the unrestricted discretion to decide how many employees should be used to man trains, and that they did not intend to submit that subject to collective bargaining in the future. At bargaining sessions to negotiate a new collective bargaining agreement, the two sides came to an impasse on this issue. The railroad owners insisted that changed conditions, particularly the substitution of diesel and electrically propelled engines for steam engines, had made firemen completely unnecessary employees. They continued to insist that railroads should be free to decide for themselves when and how many firemen should be used. The brotherhoods insisted that a fireman is needed even on a diesel engine, particularly to aid the engineer as a lookout for safety purposes, and to help make needed repairs and adjustments while the train is moving, should the engine fail.

All efforts at reaching a negotiated settlement on this issue failed and President Kennedy reported to Congress that on July 29, 1963, the railroads "can be expected to initiate work rule changes and the Brotherhoods can be expected to strike. This nation," he said, "stands on the brink of a national rail strike that could in short order create widespread economic chaos." The President recommended legislation to provide an interim remedy while awaiting the results of private collective bargaining, which he preferred as a settlement procedure over a settlement imposed by the government. He suggested that interim work rule changes that could not be settled should be settled by submission to the Interstate Commerce Commission for binding determination of the issue for a two year period. One Brotherhood witness speaking for this proposed legislation testified as being apprehensive that the ICC, if given the power, might declare states' full crew laws superceded by orders of the commission. The House and Senate dropped the section of the proposed bill that would have given the ICC arbitration power and substituted for it an arbitration panel of seven members (two appointed by unions, two by management and the other three appointed by the President). This board was given the power to decide the dispute over the firemen and full-crew questions for a period of two years. A separate section of the statute stated that any award granted by the arbitration panel was valid unless Congress directed a change in the arbitration award within 90 days by concurrent resolution. The law was passed and signed by the President.

The Arbitration Board, pursuant to the provisions of the statute, after extensive hearings and proceedings, issued its decision in November, 1963. The award provided that subject to certain protective provisions, for employees, 90 percent of the firemen positions (excluding passenger service) on railroads were to be abolished. This was predicated on their finding that such employees were unnecessary to the safe and efficient operation of freight and yard diesel locomotives.

Thereupon, the railroad companies went into federal court in the Western District of Arkansas seeking declaratory and injunctive

relief against prosecuting attorneys in Arkansas. The complaint contained allegations of identity of the plaintiffs, and alleged that they are engaged in the transportation of property in interstate commerce over railroads which they own and operate in the State of Arkansas and numerous other states; that each plaintiff owns and operates lines of more than 100 miles in length, regularly operates freight trains in Arkansas consisting of more than 25 cars, and regularly conducts switching operations in cities of first and second class across public crossings, and that by reason of such operations they are subject to the provisions of the Acts of Arkansas. A second group of named plaintiffs alleged that they were members of an organization which opposed unions and governmental control of the free market.

The complaint identified the defendants as prosecuting attorneys in their respective circuits in Arkansas who are required by their oath of office, and are in fact threatening, to enforce the penalties of these Acts against the plaintiffs. The complaint alleges that the Arkansas laws are outdated, unreasonable, and have no effect on safety. Further, the state laws impose a substantial financial burden on the railroads as well as forcing them to stop or slow interstate trains at various points entering and leaving the State of Arkansas for the sole purpose of loading or unloading employees who are unnecessary to the safe and efficient operation of the trains. Investigation indicates that each of the sixteen intrastate railroad companies have less than 50 miles of tracks in Arkansas.

(1) Discuss all possible arguments and counterarguments that are relevant to the suit in the Federal District Court. (70 minutes)

(2) Assume that the District Court granted relief to the railroad companies, and an appeal was taken to the Supreme Court which reversed the District Court. Discuss the most probable grounds in support of this District Court's holding and write the probable