EXAM Number______

CONSTITUTIONAL LAW I

3 Hours
Open Book

Professor Brown
Spring 2011

May 12, 2011

Instructions:
1. You may refer to any books or other paper materials during the exam. However, all use of the internet, phones, email or other electronic communication is prohibited during the examination.
2. The Exam consists of TWO PARTS: Part I is an Essay Question. Part 2 is a set of Multiple Choice questions. Recommended time is 1.5 hours for each part. Both parts carry equal weight in the grading. For the Multiple Choice part, your score will be the total number of correct answers.
3. This exam consists of 15 pages (including this cover sheet).
4. Please accept all given facts as true, and do not assume any additional facts without stating what they are.
5. Address only the constitutional issues that we have studied in this course.
6. ➔ IMPORTANT: PUT YOUR EXAM NUMBER AT THE TOP OF THIS PAGE AND TURN IN THIS EXAM PACKET ALONG WITH YOUR TYPED ANSWERS. YOU MUST TURN IN THE EXAM QUESTIONS IN ORDER TO GET CREDIT.
7. Good Luck!

YOU MUST STOP WRITING WHEN INSTRUCTED TO DO SO BY THE PROCTOR. FAILURE TO DO SO WILL BE CONSIDERED A BREACH OF ACADEMIC DUTY AND WILL BE REPORTED TO THE DEAN’S OFFICE BY THE PROCTOR.

DO NOT LIFT THIS COVERSHEET UNTIL INSTRUCTED TO DO SO BY THE PROCTOR.
PART 1

Essay Question – 1.5 Hours

Artificial insemination (AI) is a process by which sperm is injected into a woman's reproductive system by means of a syringe, for the purpose of causing a pregnancy. It is a very simple, painless procedure that can be performed at home, without medical assistance, but many people prefer to have a doctor perform the procedure to enhance the safety. Typically the sperm used in AI is obtained from a sperm bank.

The new Tea Party Caucus in Congress is alarmed at information it has received showing that the incidence of childbirth among unmarried women has increased dramatically. The data indicate that the increase is not in the teenage group, but rather in the 30-to-45-year-old age group. Based on informal reports of gynecologists and Google tracking of searches for “artificial insemination,” the legislature believes that there is a growing increase in the use of AI by unmarried women.

These Members of Congress are concerned that the states are not taking this threat to public welfare seriously enough. Citing a whole panoply of concerns—including a national interest in preventing the breakdown of the traditional family, fear of pressure on federal public financial assistance for single-parent households, risk of commercialization of unsafe and unnecessary AI services such as sperm banks, diminished educational and professional opportunities for children raised in single-parent homes with an expected diminished ability to contribute to the economy, and a threat to public health from the risk of sexually transmitted diseases—the caucus persuades the Congress to pass (over presidential veto) the Responsible Parenting Act of 2011 (RPA), which provides as follows:
“Any state that accepts federal funding for any of its state and local health and human services operations must agree to prohibit the practice of artificial insemination by any person, and to enforce the prohibition vigorously. This enforcement must include penalties for medical personnel, sperm banks, or other providers who assist persons with Al. This policy shall not apply to artificial insemination performed by a licensed medical professional on a married person with the consent of the spouse.”

The State of Idaho has already adopted a law limiting Al to married couples, and so it is not worried about losing its critical federal funds. Back in 2000, the state legislature was advised that its then-extant law, specifically forbidding only same-sex couples from availing themselves of Al, might run afoul of the Supreme Court’s decision in Romer v. Evans. The Idaho legislature responded at that time by prohibiting Al by anyone other than married couples. The legislative findings included a statement that “childbearing should be reserved for two-parent households, since children will do better, emotionally and financially, if they have two parents to raise them.” The same bill also prohibited same-sex couples from marrying in the State and declared that the State would not recognize any out-of-state marriages of same-sex couples. The Al prohibition has been enforced sporadically, and records show that on several occasions an unmarried woman approaching middle age was allowed to receive the Al services upon showing financial means and a concern that she might not find a husband in time to beat the biological clock.

Ellen is a woman who would like to become pregnant. She and her longtime lesbian partner were married under the laws of Massachusetts, but their work now requires them to live in Idaho. Al would be the only possible way for her to accomplish her goal of starting a family, and so she is dismayed when she finds out about the Idaho law prohibiting it. She has approached several doctors and sperm
banks to seek assistance in her quest to use AI, but they have all refused on the
ground that they might suffer legal consequences for violating the Idaho law. Using
a legal form that she gets online, she files a complaint in federal district court
challenging the state law as a violation of the Constitution. Before the ink is dry, the
state responds to her complaint with a motion for summary judgment stating, “Even
if anything in this complaint were valid, which it is not, the state clearly has the most
compelling of interests in retaining its federal funding, and so its law is justified by
the RPA.”

Now, better late than never, Ellen approaches your law firm for advice. She
tells the partner that, for now, she is only interested in getting AI, and not seeking to
attack the same-sex marriage ban in Idaho. The partner in your firm asks you to
prepare a detailed memorandum to help her advise Ellen about how to proceed,
what claims Ellen might be able to raise in an amended complaint, what responses
she is likely to get from the State, and her chances of success.

END OF PART 1