CONSTITUTIONAL LAW

Prof. Scott M. Malzahn

Exam No. 1

Fall 2014

Monday, December 15, 2014, 2:00 p.m.

Timing of Exam (3 hours)
Open Book

Examination Instructions

This examination has two parts:

(a) Part 1 consists of 20 multiple-choice questions and is worth 50% of the total exam grade. Pick the best answer for each multiple-choice question and fill in the corresponding bubble on your answer sheet (if writing).

(b) Part 2 consists of 3 essay questions. You are to complete written answers to only 2 of the 3 questions. Each question is weighted equally. The essay portion of this exam is worth 50% of the total exam grade.

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 – Multiple Choice Questions

Instructions: Select the best answer for the following 20 multiple choice questions.

1. The Senate and House of Representatives both pass a bill that contains various appropriations. What does the President not have the power to do?
   a. Return the bill with his objections to the originating house.
   b. Do nothing.
   c. Veto those portions of the bill with the objectionable appropriations.
   d. Sign the bill and hold a press conference to criticize Congress for its wasteful spending.

2. Which one of the following statements is the least true statement about the intent of the Constitution’s framers in 1787?
   a. The framers intended to expand the power of the federal government.
   b. As individual men, the framers had different ideas and intentions relating to the meaning of the Constitution.
   c. The framers intended to give the federal government the power to pass laws relating to the health, safety, welfare, and morals of the population.
   d. The framers intended the structure of the Constitution to protect individual rights.
   e. The framers were concerned that the Constitution did not provide adequate protections for individual rights.

3. Congress passes a federal law that criminalizes mail theft. Is this law constitutional?
   a. Yes, because Congress has the enumerated power to establish post offices and post roads.
   b. No, because Congress was not granted a general police power to enact criminal laws.
   c. Yes, because the criminalization of mail theft is useful or convenient to some other enumerated congressional power.
   d. No, because the criminalization of mail theft is not absolutely necessary to establishing post offices or post roads.
   e. Answers (a) and (c).
4. Pursuant to a federal law that authorizes Native American tribes to file lawsuits directly in the Supreme Court, a Native American tribe files suit in the Supreme Court. It alleges that a law that prohibits its members from ingesting peyote infringes on its religious freedoms. What is the Supreme Court most likely to do?

a. Dismiss the case on the ground that the Native American tribe lacks standing to bring the case.
b. Dismiss the case on the ground that the law is a neutral, generally applicable law that only incidentally burdens religious-motivated conduct.
c. Dismiss the case on the ground that Congress does not have authority to expand the original jurisdiction of the Supreme Court.
d. Dismiss the case on the ground that the lawsuit is not ripe.

5. What did the Supreme Court not decide in *Marbury v. Madison*?

a. It held that the Supreme Court has the power to review the constitutionality of some executive actions.
b. It held that the Supreme Court has the power to decide whether certain legislation passed by Congress is constitutional.
c. It recognized that certain political decisions are within the President’s discretion and are not subject to judicial review.
d. It held that the Supreme Court does not have the authority to issue writs of mandamus.

6. A state law prohibits the “use of offensive or derogatory words directed towards police officers.” How is a court likely to rule on the constitutionality of this law?

a. The law is unconstitutionally vague.
b. The law is unconstitutionally overbroad.
c. The law is constitutional because fighting words are not protected speech.
d. Answers (a) and (b).

7. Which of the following is an implied power of the Presidency?

a. The removal power.
b. The appointment power.
c. The power to declare war.
d. The power to receive ambassadors.
e. The veto power.
8. A city ordinance requires the local school board to provide “private Catholic schools within the jurisdiction of the city” with math textbooks for free. What is the strongest constitutional argument to challenge this ordinance?

   a. The ordinance does not have a secular purpose.
   b. The ordinance fosters an excessive entanglement with religion.
   c. The ordinance discriminates among religious groups.
   d. The ordinance favors private religious schools over private secular schools.

9. A veteran claims that a federal agency wrongfully terminated his disability benefits. While the case is pending, the agency reinstates the veteran’s benefits pursuant to new regulations governing the procedures to be followed in determining eligibility for benefits. What is the Court most likely to do with the lawsuit?

   a. Dismiss the lawsuit on the grounds that it is moot.
   b. Dismiss the lawsuit on the grounds that it is not ripe.
   c. Consider the merits of the veteran’s claim on the ground that the underlying dispute is capable of repetition, yet evading review.
   d. Dismiss the lawsuit for lack of standing because the veteran’s claimed injury is hypothetical.

10. A state law prohibits the carrying of handguns within 200 yards of any public or private school. A gun-owner who lives next door to a school wants to challenge the law. What is the best constitutional argument in support of this law?

   a. The Second Amendment does not protect an individual right to bear arms.
   b. This law is presumptively constitutional because it falls within a public safety exception.
   c. The protections of the Second Amendment do not apply against the individual states.
   d. This prohibition on the carrying of handguns near a school is narrowly tailored to achieve a compelling state interest.

11. Congress passes a law that limits the number of hours that truck drivers may drive on a daily (10 hours) and weekly basis (60 hours). A truck driver challenges the constitutionality of this law. What is the likely judicial result?

   a. The law is struck down as unconstitutional on the ground that it interferes with the truck owner’s fundamental right to earn a livelihood.
   b. The law is struck down as unconstitutional on the ground that it intrudes upon the power of the states to regulate traffic within their state.
   c. The law is upheld on the grounds that Congress has the authority to regulate interstate commerce, and there is a rational basis for the law.
   d. The law is upheld on the ground that the law is narrowly tailored to achieving a compelling government interest.
12. Congress amends the Patient Protection and Affordable Care Act to increase the financial penalties people must pay if they fail to obtain health insurance. A constitutional challenge is filed to this amendment. What is the key question that will have to be decided by the Court?

   a. Whether Congress has authority under the commerce clause to increase the financial penalties.
   b. Whether the increased financial penalties are so great that the penalties can no longer be reasonably characterized as a tax.
   c. Whether the increased financial penalties are uniform throughout the United States.
   d. Whether Congress lacks the power to amend the Patient Protection and Affordable Care Act.

13. The Constitution prohibits the federal government and the states from infringing all of the following rights except:

   a. The fundamental rights in the first eight amendments.
   b. The equal protection of the laws.
   c. Prohibitions on laws that retroactively increase the penalties for crimes committed in the past.
   d. The right to indictment by a grand jury in criminal cases.
   e. The right to bear arms.

14. The Supreme Court has held that the due process clause protects all of the following rights except:

   a. The liberty of persons to choose their own intimate personal relationships.
   b. The right to marry a person of one’s own choosing, regardless of sexual orientation.
   c. The right of married couples to use contraception.
   d. The right to a hearing.

15. A Nevada law makes it mandatory for state police officers to retire at age 50. What level of scrutiny applies to this law?

   a. Strict scrutiny.
   b. The rational basis test.
   c. Intermediate scrutiny.
   d. None of the above.
16. A California man who grew a small quantity of marijuana in his backyard for recreational purposes is convicted of violating a federal law that criminalizes the production of marijuana. He challenges his conviction on the ground that he was growing the marijuana for his own use and had no intention of selling it. What arguments would you make to respond to this argument?

   a. The cumulative effect of people growing marijuana in their backyards has a substantial effect on interstate commerce in marijuana.
   b. The defendant's activities in this case had an indirect effect on interstate commerce.
   c. The growing of marijuana is an economic activity even though the defendant in this case did not intend to sell the marijuana that he grew in his backyard.
   d. Answers (a) and (b).
   e. All of the above.

17. A political demonstrator is convicted for violating a city noise ordinance that prohibits the use of loudspeakers in residential neighborhoods. He challenges his conviction as a violation of his free speech rights. What is the most likely ruling of the court?

   a. The conviction will be overturned because the city has unconstitutionally discriminated against political speech.
   b. The conviction will be upheld because the noise ordinance is rationally related to a legitimate state interest.
   c. The conviction will be upheld because the ordinance does not discriminate based on the content of speech.
   d. The conviction will be upheld because the ordinance does not prohibit the demonstrator from communicating his political views.
   e. Answers (c) and (d).

18. For the past 20 years, Kansas has received federal funds for school lunch programs so long as the lunches that it serves to students comply with federal nutritional guidelines. This year, the federal nutritional guidelines were substantially revised, which increased the costs of the program to Kansas. What is the best constitutional argument to challenge the revised guidelines?

   a. Traditionally, states – not the federal government – have authority over education.
   b. Congress may not use its spending power to achieve objectives that it could not obtain through its other enumerated powers.
   c. Kansas has no choice but to participate in the federal program.
   d. Kansas' compliance with the nutritional guidelines is not related to the funds received from the federal government.
19. An Alaskan resident challenged an appropriations bill that authorizes the expenditure of $200 million to construct a bridge in Alaska that would connect the mainland to a small island with 50 residents. What arguments would you make to defend against this lawsuit?

   a. The plaintiff lacks standing to file this lawsuit because he or she has not identified a particularized, concrete injury.
   b. Congress has the authority to pass the law under the commerce clause.
   c. Congress has the authority to pass the law under its taxing and spending powers.
   d. Answers (a) and (c).
   e. All of the above.

20. Congress passes a law that reduces the size of the Supreme Court from nine to seven members by eliminating the two most junior members of the Court at the start of the next judicial term. A couple months before the law goes into effect, the most junior member of the Court challenges the constitutionality of the law. What is the most likely judicial result?

   a. The Court will dismiss the case as not ripe.
   b. The Court will rule that the law is constitutional because Congress has the power to change the size of the Court.
   c. The Court will rule that the law is unconstitutional because appointed justices have a right to hold their offices during good behavior.
   d. The Court will dismiss the case for lack of standing.
Part 2 – Essay Questions

Instructions: Prepare answers to two of the following three essay questions.

Essay Question #1

Historically, family law is a matter that has been governed by the individual states. Following the end of a marriage or other relationship, state family law courts generally determine child support obligations that a parent is required to make for the financial benefit of a child. The vast majority of child support payments are made electronically through banking institutions, and many of these payments are transmitted across states lines.

Although the individual states historically have determined the criminal penalties that apply to the failure to comply with child support obligations, in 2012, the U.S. Congress passed the Child Support Law ("CSL"). This law makes it a federal crime for "any non-custodial parent to willfully fail to pay a past due child support obligation imposed by a state court, regardless of whether the parent is located in the same state or a different state as the child or the custodial parent." The preamble to the law sets forth certain legislative findings in support of the law. Among other things, Congress found that about $5 billion in child support obligations are not honored on an annual basis, which has contributed to the problem of child poverty and weakens the national economy. Congress also found that the costs associated with the failure to pay child support obligations ultimately are borne by taxpayers and the government, which pay over a billion dollars each year to remedy the problem of child poverty. Additionally, Congress found that "custodial parents often face particular difficulties in enforcing support obligations when the noncustodial parent relocates to a different state."

A Pennsylvania state court ordered Deadbeat Dave to pay child support. After defaulting on those support obligations, Deadbeat Dave, who lived in Pennsylvania at all relevant times, was found guilty of violating the CSL. He challenged his conviction on the ground that the CSL exceeds Congress’ authority under the commerce clause.

Analyze the merits of Deadbeat Dave’s lawsuit and how a court is likely to rule.
Essay Question # 2

An Oregon state law makes it unlawful for a person to possess a handgun in public without a permit. To obtain a permit, an applicant must demonstrate a “justifiable need” for a handgun by showing that there is a special danger to the applicant’s life, either because specific threats have been made on his or her life or the applicant is the past victim of a violent crime.

Sean Beller, a law professor at the University of Oregon, applied for a permit under this Oregon state law. Sean admitted on his application that he had never been a victim of a violent crime and that no one had made any specific threats on his life. However, he stated on his application that he wanted to carry a handgun in public because he was generally afraid for his personal safety and felt safer with a gun. Sean’s application was denied on the ground that he failed to demonstrate any special danger to his life.

Sean filed a lawsuit challenging the constitutionality of the Oregon law. While the lawsuit was pending, Sean sold his home in Oregon and moved to California for a new job. He intends to move back to Oregon in a couple of years and periodically visits the state.

Analyze the merits of Sean’s lawsuit and how a court is likely to rule.
Essay Question # 3

The Washington, D.C. Athletic Association (“DCAA”) is a nonprofit athletic association that serves as the governing body for high school sports in Washington, D.C. It was founded in 1990 after the City Council voted to move the authority for interscholastic athletics from the local school board to individual schools. Since then, the vast majority of public schools have chosen to join the DCAA and have agreed to abide by its rules and regulations.

The DCAA’s membership is comprised of over 40 high schools, over 60 percent of which are public. The DCAA has a nine-member board of directors, which determines interscholastic athletic policies. The board members are elected to their positions by member schools, but are not permitted to be employees or representatives of public schools or the city. The DCAA receives 45% of its funding through ticket sales generated by member schools, and receives the rest of its funding through private donations.

The DCAA has set up separate leagues for male and female sports with different schedules. The boys play their sports in the traditional seasons for each sport, whereas the girls play their sports in nontraditional seasons (meaning a season of the year that differs from when the sport is typically played). The DCAA’s executive director has explained that “[b]oys’ sports were in [DCAA member] schools first and girls’ sports, which came later, were fitted around the pre-existing boys program.” The DCAA asserts that these scheduling decisions were designed to maximize girls’ and boys’ participation in athletics, arguing that the scheduling system maximizes opportunities for participation “by creating optimal use of existing facilities, officials and coaches, thereby permitting more teams in a sport or more spots on a team.”

Misty Maye attends a public high school in Washington, D.C. where she plays on her school’s volleyball team. She believes that the scheduling of women’s sports in non-traditional seasons has damaged her ability to attract college recruiters for a volleyball scholarship. She files a constitutional challenge to these scheduling rules.

Analyze the merits of Misty’s lawsuit and how a court is likely to rule.

END OF EXAM