

Keep answers w/ questions

**CONSTITUTIONAL LAW  
FINAL EXAMINATION  
Professors Malaguti and Winig**

**Fall 2005 Semester**

**YOUR ENTIRE SOCIAL SECURITY NUMBER:**

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**INSTRUCTIONS:**

**The instructions run onto the next page. You may read this page and then turn the page to finish reading the instructions. You are not to look beyond the second page of instructions until you are instructed to begin the exam.**

Please take three (3) blue books. Please write "Scrap" on one of the blue books. Please write "Two" and "Three" on each of the other two blue books. Please write your social security number *on all three* blue books as well as on this exam booklet.

Please do not identify yourself in any way other than by social security number. Please do not write any information in your blue book, scrap book, or this exam booklet that might reveal who you are.

This is a closed-book examination; other than writing implements, you are not to have any materials on your table or at your feet. Please place all books, knapsacks, briefcases, etc. at the side or front of the room.

Please do not use your own scrap paper. You may use the blue book labeled "Scrap" as scrap paper. Please turn in your scrap blue book with your exam blue book and this exam booklet. I will not accept any blue books after you have turned in your exam materials -- no exceptions.

This examination consists of three parts:

Part One consists of 19 fact patterns, each of which has a number of questions that follows and inquires about the law and analysis that applies to the particular fact pattern. You are to read each fact pattern carefully and answer each question that follows. There are a total of 50 questions, and you are to answer them all. **The suggested time for Part One is two hours (120 minutes).**

**Please place your answers to Part One in the space provided in this exam book, not in the blue book.** Please limit your answers to the lines provided below each question. We will not read beyond the lines provided under each question. Please make each answer readable in terms of neatness and the size of your handwriting. (We

will not use a magnifying glass to read your answers.) Please answer the question responsively; don't provide information not asked for in the question. For example, if the question asks "Who wins?" please state the name of the person who wins; don't state why he or she wins. Please state your reasoning only if the question asks for it.

Part Two consists of one (1) short essay question. Please put your answer in a blue book entitled "Part Two," and not into this examination booklet. Please limit your answer to four (4) single-spaced bluebook pages. The suggested time for Part Two is thirty (30 minutes).

Part Three consists of one (1) short essay question. Please put your answer in a blue book entitled "Part Three," and not into this examination booklet. Please limit your answer to four (4) single-spaced bluebook pages. The suggested time for Part Three is thirty (30 minutes).

Please take note again that Parts Two and Three are to go in **separate** blue books. Do not put both parts in the same blue book.

Despite the fact that the suggested time for all three parts is three hours, we will give you three and one-half (3.5) hours to complete the exam. You may use the extra half hour however you like, if you choose to use it at all.

Please make your answers legible. There is a bathroom book at the front of the room. Please sign out and in when you leave the room.

You have three and one-half (3-1/2) hours to complete the exam. We will tell you when there are 15 minutes left, at which point *no one* may leave the room. We will also warn you when there are 5 minutes left and 1 minute left. When we call time, you are to bring up your exam and blue books *immediately*.

**GOOD LUCK!**

# QUESTIONS

## PART ONE

### **DIRECTED ESSAYS**

**SUGGESTED TIME: TWO HOURS (120 MINUTES)**

**PERCENTAGE OF EXAM POINTS: 65%**

### **INSTRUCTIONS FOR PART ONE:**

This part consists of 19 fact patterns, each of which has a number of questions that follows and inquires about the law and analysis that applies to the particular fact pattern. You are to read each fact pattern carefully and answer each question that follows. On one or two occasions, there are questions that appear without a prior fact pattern. There are a total of 50 questions, and you are to answer them all.

Please place your answers in the space provided in **this exam book**, not in the blue book. Please limit your answers to the lines provided below each question. We will not read beyond the lines provided under each question. Please make each answer readable in terms of neatness and the size of your handwriting. (We will not use a magnifying glass to read your answers.) Please answer the question responsively; don't provide information not asked for in the question. For example, if the question asks "Who wins?" please state the name of the person who wins; don't state why he or she wins. Please state your reasoning only if the question asks for it.

Please work quickly but carefully through these questions. You will have enough time to answer all of the questions within the suggested time if you have adequately learned the law.

If you have not finished this Part of the exam when the suggested time is up, you should go onto the next part of the exam, and come back to finish it later.

### **QUESTIONS:**

#### **Questions 1 through 3 are based on the following facts:**

Shortly after taking office in 1969, President Nixon declared a national "war on drugs." As the first campaign of that war, Congress set out to enact legislation that would consolidate various drug laws on the books into a comprehensive statute, provide meaningful regulation over legitimate sources of drugs to prevent diversion into illegal channels, and strengthen law enforcement tools against the traffic in illicit drugs. That effort culminated in the passage of the Comprehensive Drug Abuse Prevention and Control Act of 1970. To effectuate these goals, Congress devised a closed regulatory system making it unlawful to manufacture, distribute, dispense, or possess any controlled substance. In enacting the CSA, Congress classified marijuana as a Schedule I drug. This preliminary classification was based, in part, on the recommendation of the Assistant Secretary of HEW "that marihuana be retained within schedule I at least until the completion of certain studies now underway." Schedule I drugs are categorized as such because of their high potential for abuse, lack of any accepted medical use, and absence of any accepted safety for use in medically supervised treatment.

California is one of at least nine States that authorize the use of marijuana for medicinal purposes. In 1996, California voters passed Proposition 215, now codified as the Compassionate Use Act of 1996. The proposition was designed to ensure that "seriously ill" residents of the State have access to marijuana for medical purposes, and to encourage Federal and State Governments to take steps towards ensuring the safe and affordable distribution of the drug to patients in need. The Act creates an exemption from criminal prosecution for physicians, as well as for patients and primary caregivers who possess or cultivate marijuana for medicinal purposes with the recommendation or approval of a physician. A "primary caregiver" is a person who has consistently assumed responsibility for the housing, health, or safety of the patient.

Angel Raich is a California resident who suffers from a variety of serious medical conditions and has sought to avail herself of medical marijuana pursuant to the terms of the Compassionate Use Act. She is being treated by licensed, board-certified family practitioners, who have concluded, after prescribing a host of conventional medicines to treat her conditions and to alleviate her associated symptoms, that marijuana is the only drug available that provides effective treatment. All marijuana she uses is grown locally.

On August 15, 2002, county deputy sheriffs and agents from the federal Drug Enforcement Administration (DEA) came to Monson's home. After a thorough investigation, the county officials concluded that her use of marijuana was entirely lawful as a matter of California law. Nevertheless, after a 3-hour standoff, the federal agents seized and destroyed all six of her cannabis plants. Raich thereafter brought an action against the Attorney General of the United States and the head of the DEA seeking injunctive and declaratory relief prohibiting the enforcement of the federal Controlled Substances Act. She alleges that the federal government lacks the authority to enforce the federal drug laws against her.

1. What issue that we studied this semester presents Raich's best argument that the federal government lacks the authority to enforce the federal drug laws against her?

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2. What three factors will the Court consider in deciding whether the argument will prevail?

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2. \_\_\_\_\_

3. \_\_\_\_\_

3. In the space below, please state whether Raich will prevail in her argument, and the reasons supporting your conclusion.

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**Questions 4 and 5 are based on the following facts:**

Former and current employees of the Waco, Texas Fire Department brought suit against the City claiming that its method of calculating overtime pay violated the federal Fair Labor Standards Act ("FLSA"). The City admits that its pay practices violated the statute, but claims that FLSA is unconstitutional as applied in this case because it interferes with solely local functions that do not substantially affect interstate commerce.

4. In the space provided below please apply the reasoning set forth in the case of *García v. San Antonio Metropolitan Transit Authority* (minimum wage for bus drivers case) to argue that FLSA is constitutional as applied.

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5. the space provided below please apply the reasoning set forth in the case of *Printz* (Brady handgun registry case) and/or *Lopez* (no guns in school zone case) to argue that FLSA is unconstitutional as applied.

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**Questions 6 through 8 are based on the following facts:**

Camp Newfound is a Maine nonprofit corporation that operates a summer camp for the benefit of children of the Christian Science faith. The regimen at the camp includes supervised prayer, meditation, and church services designed to help the children grow spiritually and physically in accordance with the tenets of their religion. About 95 percent of the campers are not residents of Maine. The camp is located in the town of Harrison; it occupies 180 acres on the shores of a lake about 40 miles northwest of Portland. Camp Newfound's revenues include camper tuition averaging about \$400 per week for each student, contributions from private donors, and income from a modest endowment. In recent years, the camp has had an annual operating deficit of approximately \$175,000. From 1989 to 1991, it paid over \$20,000 in real estate and personal property taxes each year.

Chapter 36, section 652 of the Maine Revised Statutes Annotated provides a general exemption from real estate and personal property taxes for "benevolent and charitable institutions incorporated" in the State. With respect to institutions that are "in fact conducted or operated principally for the benefit of persons who are not residents of Maine," however, a charity may only qualify for a more limited tax benefit, and then only if the weekly charge for services provided does not exceed \$30 per person. Because most of the campers at Camp Newfound come from out of State, the Camp could not qualify for the complete exemption. And, since the weekly tuition was roughly \$400, Camp Newfound was ineligible for any charitable tax exemption at all.

Camp Newfound has brought a proper action challenging the Maine Statute as unconstitutional.

6. What issue that we studied this semester presents Camp Newfound's best argument that Maine's tax structure is unconstitutional as applied to it?

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7. Under the issue identified above, please state the standard of review that a court is likely to employ in considering the Maine real estate taxing statute.

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8. In the space provided below, please state whether Maine will prevail in its argument, and the reasons supporting your conclusion.

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**Questions 9 through 11 are based on the following facts:**

David Bach, a Virginia resident and domiciliary, wants to carry his Ruger P-85 9mm pistol while visiting his parents in New York. He has a permit from the Commonwealth of Virginia to carry a concealed weapon. Bach is a model citizen--he holds a Department of Defense top secret security clearance, is a commissioned officer in the United States Naval Reserve, a veteran Navy SEAL, a lawyer employed by the Navy's Office of the General Counsel, a father of three, and, perhaps most laudably, a son who regularly visits his parents in upstate New York. "During the ten-hour drive between Virginia and Upstate New York, [his] family and [he] travel on dimly lit rural roads and busy streets and highways[,] some of which are in densely populated areas that have extremely high violent crimes rates." Bach has read "about unarmed, law-abiding citizens being slain by sadistic predators despite the exceptional efforts of law enforcement" and believes that carrying a pistol will help him protect his family.

However, as a nonresident without New York State employment, Bach is not eligible for a New York firearms license. The State Police informed Bach that "no exemption exists which would enable [him] to possess a handgun in New York State" and that "[t]here are no provisions for the issuance of a carry permit, temporary or otherwise, to anyone not a permanent resident of New York State nor does New York State recognize pistol permits issued by other states." The State Police further explained that persons "who maintain seasonal residen[ce] in New York State likewise are not eligible for a New York State Pistol Permit" and warned Bach that if he were found in possession of his pistol in New York he "would be subject to automatic forfeiture of the firearm in question and criminal prosecution."

Without applying for a firearms license, Bach filed an action against New York state and local officials to contest his exclusion from New York's licensing scheme on constitutional grounds.

9. What issue that we studied this semester should he raise?

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10. Under the issue identified above, please state the standard of review that a court is likely to employ in considering whether New York's ban on non-resident firearms is constitutional.

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11. In the space provided below, please state whether Bach will prevail in his argument, and the reasons supporting your conclusion.

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**Questions 12 and 13 are based on the following facts:**

Dr. Nanda was employed as a non-tenured assistant professor in the Department of Microbiology at the University of Illinois's Chicago campus. The University of Illinois is an institution of higher education that is completely run by the State of Illinois. In July 1998 the University of Illinois failed to renew Dr. Nanda's employment contract. After exhausting her administrative remedies, Dr. Nanda filed this action in district court.

Dr. Nanda sued the State of Illinois, alleging that she had suffered harassment and that her employment had been terminated on the basis of her sex, race and national origin in violation of Title VII of the federal Civil Rights Act. Title VII expressly authorizes discrimination actions in the employment context. The State of Illinois has moved to dismiss the suit, claiming it is immune from such litigation.

12. What issue that we studied this semester should Illinois raise in claiming immunity?

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13. In the space provided below, please state whether Illinois will prevail in its claim of immunity, and the reasons supporting your conclusion.

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14. On May 17, 1954, the United States Supreme Court decided *Brown v. Board of Education*, which declared unconstitutional racial segregation in public schools (under the equal protection clause of the 14<sup>th</sup> Amendment). On May 31, 1955, the Supreme Court directed all defendants in the case, including the Little Rock, Arkansas District School Board to make a prompt and reasonable start toward full compliance with the May 17, 1954 ruling. In the words of the Supreme Court: "State authorities were thus duty bound to devote every effort toward initiating desegregation and bringing about the elimination of racial discrimination in the public school system."

In November 1956, an amendment to the Arkansas Constitution commanded the Arkansas Legislature to oppose "in every Constitutional manner the Un-constitutional desegregation decisions of May 17, 1954 and May 31, 1955 of the United States Supreme Court." Pursuant to this state constitutional command, a law relieving school children from compulsory attendance at racially mixed schools and a law establishing a "State Sovereignty Commission" were enacted.

On September 2, 1957, the day before the first African-American students were to enter Little Rock's Central High School, the Governor of Arkansas dispatched units of the Arkansas National Guard to the Central High School grounds and placed the school "off limits to colored students." This action caused a groundswell of opposition to desegregation in the Caucasian community and it became dangerous for the African-American students to attend Central High School.

The United States Department of Justice brought an action to compel compliance with the Supreme Court's desegregation order. The Governor and Legislature of Arkansas assert that they are not bound by *Brown v. Board of Education* because state sovereignty protects Arkansas from application of the 14<sup>th</sup> Amendment against the states and subdivisions of the state. In the space below, please state why the Governor and Legislature of Arkansas were incorrect:

(Please put your answer on the next page.)

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**Questions 15 and 16 are based on the following facts:**

In 1994, Michigan amended its Constitution to provide that "an appeal by an accused who pleads guilty or nolo contendere shall be by leave of the court" and not as of right. In 2000, the Michigan Legislature adopted another law stating that appointment of appellate counsel for indigents who plead guilty was prohibited. Two attorneys who represent indigent defendants in the Michigan state courts challenged the Michigan practice in the United States District Court for the Eastern District of Michigan. In bringing the claim, the two plaintiff attorneys did not purport to represent specific criminal defendants. The state of Michigan has asked that the case be dismissed without reaching the merits.

15. What issue that we studied this semester should Michigan raise in attempting to get the case dismissed?

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16. In the space provided below, please state whether Michigan will prevail in its claim that the case should be dismissed without reaching the merits, and the reasons supporting your conclusion.

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**Questions 17 and 18 are based on the following facts:**

Westlands Water District, Distribution District Number 1 ("Westlands") is a water distribution district formed pursuant to the California Water Code for the purpose of contracting with the United States for water service from the Central Valley Project. The United States and Westlands negotiated certain terms for inclusion in a long-term renewal contract between 1998 and 2000, and "tentatively agreed to several terms" on or before November 17, 2000. On that date, the United States released several proposed long-term water service contracts, including the Westlands contract, for public comment. The comment period closed on or about January 17, 2001.

On January 9, 2001, before the close of the comment period, the California Natural Resources Defense Council ("NRDC") sent a letter to the Deputy Secretary of the Department of the Interior and other federal officials providing its "Comments on Proposed CVP Long-Term Renewal Contracts for Friant, Hidden, Buchanan, Cross-Valley, Feather River and Delta-Mendota Canal Units." In the letter, NRDC expressed its view that "the proposed renewal contracts are a threat to California's environment and constitute misguided federal policy." The stated that the proposed contract terms contained "numerous legal deficiencies" including violations of provisions of the Central Valley Project Improvement Act, and, "[a]bsent action to correct these deficiencies," NRDC would resort to litigation. NRDC "urge[d] the Administration to withdraw these flawed proposed contracts and draft environmental documents, to complete proper EISs and ESA consultations, and to reinstate negotiations on new contracts that comply with law."

Westlands' proposed contract has not yet been finalized or executed and is currently pending review pursuant to the National Environmental Policy Act and the Endangered Species Act. The respective agencies responsible for compliance with federal guidelines are expected to complete their review within six (6) to ten (10) months.

Westlands sued NRDC before that review period had wrapped up, and seeks a declaratory judgment that its contract with the United States is proper. NRDC has asked that the case be dismissed without reaching the merits.

17. What issue that we studied this semester should NRDC raise in attempting to get the case dismissed?

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18. In the space provided below, please state whether NRDC will prevail in its claim that the case should be dismissed without reaching the merits, and the reasons supporting your conclusion.

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**Questions 19 through 21 are based on the following facts:**

Whiteman and a class of his peers are "present and former citizens and residents of Austria of Jewish descent [and their heirs and beneficiaries] who ... were victims of Nazi persecution [and] whose assets were converted and human rights were barbarously violated" from 1938 to 1945. They filed suit on October 20, 2000 in the United States District Court for the Southern District of New York, bringing claims against the Republic of Austria and a number of its instrumentalities that they allege recently sold property that was expropriated from Austrian Jews by the Nazis during before and during World War II. The class's claims are based principally on Austria's "looting, expropriation, Aryanization, and/or liquidation."

The Republic of Austria and the United States of America are not happy about the Whiteman litigation. Both the Clinton and Bush presidential administrations have committed the United States to a policy of resolving Holocaust-era restitution claims through international agreements rather than litigation. Consistent with that policy, the United States has engaged in extensive international negotiations culminating in the 2001 executive (presidential) agreement with the Republic of Austria to establish a fund to compensate Austrian Jews (and their heirs and successors) whose property was confiscated during the Nazi era. However, the Whiteman litigation is serving as an obstacle to the implementation of that fund to compensate Austrian Jewish victims of the Nazi regime for Holocaust-related property deprivations. In fact, distributions from the Austrian compensation fund remain contingent on the dismissal of the Whiteman case. Accordingly, the Republic of Austria and the United States of America have both moved for dismissal of the Whiteman class action on the ground that the federal district court should refrain from hearing the case.

19. What issue that we studied this semester should Austria and the United States raise in attempting to get the case dismissed?

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20. Please briefly state the considerations the Court will apply in deciding whether the argument will prevail?

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21. In the space provided below, please state whether Austria and the United States will prevail in their claim that the case should be dismissed without reaching the merits, and the reasons supporting your conclusion.

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**Questions 22 through 24 are based on the following facts:**

Congress enacted the Clean Air Act "to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population. . . ." The Act includes a variety of provisions aimed at reducing air pollution. Implementation and enforcement responsibilities under the Act are shared between the federal government and state governments. For example, the EPA has the authority to set national ambient air quality standards while the states have the authority to devise implementation plans to meet those standards. One of the specific aims of the Clean Air Act is to reduce air pollution by reducing motor vehicle emissions. Section 211 of the Act sets forth the statutory framework for regulating motor vehicle fuels and fuel additives to achieve that aim. Among other things, § 211 requires that gasoline sold in certain areas of the country have an oxygen content that equals or exceeds 2.0 percent by weight. Section 211 further requires that, during the winter months, gasoline sold in certain areas have an oxygen content that equals or exceeds 2.7 percent by weight.

In order to meet the Clean Air Act's oxygen content requirements, gasoline manufacturers add oxygenate fuel additives to gasoline. MTBE and ethanol are the two most widely used oxygenates. California determined that, while MTBE reduces air pollution from motor vehicle

emissions, it also causes substantial and deleterious groundwater pollution. In response to concerns about groundwater pollution, the California Air Resources Board decided to ban the use of MTBE as a fuel additive.

On May 4, 2001, the Oxygenated Fuels Association (OFA) filed suit in the district court seeking to enjoin California's MTBE ban. Given the interplay between California's ban of MTBE and the federal Clean Air Act, OFA has moved for summary judgment in its favor.

22. What issue that we studied this semester should OFA raise in its motion for summary judgment?

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23. What are the three types or permutations of the issue you identified in your answer to Question 22?

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2. \_\_\_\_\_

3. \_\_\_\_\_

24. In the space provided below, please state whether OFA will prevail in its motion for summary judgment, and the reasons supporting your conclusion.

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**Questions 25 through 27 are based on the following facts:**

Congress adopted the Food Security Act (FSA) on December 23, 1985 to "discourage the draining and cultivation of wetland that is unsuitable for agricultural production in its natural state." To further this goal, Congress included the "Swampbuster" provision of the FSA, which stated that "following December 23, 1985, any person who in any crop year produces an agricultural commodity on converted wetland shall be ineligible for" various USDA farm benefit programs.

Jerry Dierckman (Dierckman) is a farmer who grows crops on his land in Franklin County, Indiana. In 1986, he cut down the trees on roughly the eastern two-thirds of the northern portion of this property and left the stumps in the ground for a number of years. In August 1990, Dierckman began digging up the stumps, filling in the holes and hauling the stumps away. In the Spring of 1991 he began planting crops on that acreage.

In early 1991, Dierckman attempted to become "eligibility certified" by the United States Department of Agriculture (USDA) in order to receive USDA farm benefits. On January 7, 1991, Jerry completed USDA Form AD-1026, indicating that he intended to convert "wet areas" and intended to grow crops on converted "wet areas" on his farm. In late March 1991, a USDA conservationist inspected Dierckman's land and determined that he was in violation of the Swampbuster provisions. The USDA accordingly determined that Dierckman was ineligible for all USDA farm benefits as a result of the conversion.

25. Dierckman has challenged the USDA's action to withhold funds as beyond the scope of its authority under the Commerce Clause. If the USDA prevails on this claim, on what issue will it prevail?

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26. What limitations apply to the Congress's power to condition the grant of funds, as stated above, on standards it imposes?

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2. \_\_\_\_\_

3. \_\_\_\_\_

27. In the space provided below, please state whether Dieckman will prevail in his attempt obtain the USDA subsidies, and the reasons supporting your conclusion..

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**Questions 28 and 29 are based on the following facts:**

Maine School Administrative District No. 53, the local government agency responsible for schooling children in the Maine communities of Pittsfield, Burnham, and Detroit, does not operate its own public high school. Instead it underwrites secondary education for students through a contract with Maine Central Institute ("MCI"), a privately operated high school in the district. The contract provides that MCI will accept and educate all of the school district's students in the ninth through twelfth grades in exchange for specified tuition payments by the school district.

On January 19, 2000, Zachariah Logiodice, an eleventh grade student at MCI during the 1999-2000 school year, allegedly cursed at a teacher who had confiscated his soda just prior to a

mid-term English exam and then refused to leave the classroom, cursing once again at the school's dean of students who had been summoned to get him out. MCI subsequently suspended Zach from school and informed Zach's parents that he would not be allowed to return until he obtained counseling and a "safety evaluation" from a licensed psychologist. Twelve days after the incident Zach's parents were still unable to get the required "safety evaluation" for Zach. The psychologist they contacted did not have an appointment available until February 7 and further told them that no psychologist would be willing to give such an evaluation. At this point, Zach's parents called MCI's headmaster, requesting that Zach be allowed to return to school without the evaluation and arguing that a suspension of greater than ten days would violate state law.

Despite his parents' inability to obtain a "safety evaluation" from any of the several licensed psychologist they contacted, MCI continued to refuse to allow Zach to come back to school. They only relented about a month later after Zach had been to several counseling sessions with several different licensed psychologists.

On November 29, 2000, Zach's parents filed on Zach's behalf a federal law suit against MCI and the individuals involved. The complaint alleged that MCI and the individuals involved had violated procedural due process requirements by suspending Zach without giving him an opportunity for a hearing. MCI's has moved to dismiss the complaint without reaching the merits of whether it has violated Zach's constitutional rights.

28. What issue that we studied this semester provides MCI's best argument for its motion to dismiss?

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29. In the space provided below, please state whether MCI will prevail in its attempt to get the complaint dismissed, and the reasons supporting your conclusion..

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**Questions 30 and 31 are based on the following facts:**

On April 17, the Tennessee Legislature passed a statute, which the Governor signed into law, providing that it is unlawful for any licensed optometrist to "[p]ractice or offer to practice optometry in, or in conjunction with, any retail store or other commercial establishment where merchandise is displayed or offered for sale." At the time that the law was passed, proponents argued that the prohibition was necessary to "upgrade the profession" and to protect the doctor-patient relationship from interference by commercial interests. The Commissioner of the



Tennessee Department of Health claimed that the law was enacted to prevent the harm that may occur if optometrists are subjected to the control of optical retail stores.

LensCrafters, a nationwide dispenser of eye exams and eyeglasses, generally provides "one-stop shopping." It leases space in its retail eyewear superstores to optometrists who perform eye exams. The new Tennessee law essentially outlaws this practice.

LensCrafters has challenged the constitutionality of the new Tennessee law under the federal constitution.

30. What issue that we studied this semester provides the likely argument that LensCrafters will make?

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31. In the space provided below, please state whether LensCrafters will prevail in its argument, and the reasons supporting your conclusion..

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**Questions 32 through 34 are based on the following facts:**

On September 8, 1986, the Chicago City Council enacted the Chicago "Residential Landlord and Tenant Ordinance" (Ordinance), recasting the relative rights and obligations of most residential landlords and tenants in Chicago. The Chicago City Council passed the Ordinance in order to "protect and promote the public health, safety and welfare of its citizens, to establish the rights and obligations of the landlord and the tenant in the rental of dwelling units, and to encourage the landlord and the tenant to maintain and improve the quality of housing."

The Ordinance applies to all rental agreements for dwelling units located in Chicago, with exceptions for owner-occupied buildings of six or fewer units, dwelling units in hotels, motels, boarding houses and the like, accommodations in hospitals, not-for-profit shelters, school dormitories, and units in cooperatives occupied by holders of proprietary leases. The Ordinance applies to such leases either entered into or to be performed after October 15, 1986.

The Ordinance provides, among other things that: (1) landlords must maintain applicable standards of habitability, (2) landlords must give notice before terminating a lease for failure to pay rent or otherwise comply with lease requirements, (3) landlords who accept the full rent due knowing that payments are in default waive the right to terminate the lease for that default, (4)

landlords must provide two days' notice before entering a unit for maintenance, repairs or inspections, except in the case of an emergency, (5) tenants are authorized to withhold rent when a landlord materially fails to comply with his or her legal obligations, (6) tenants are required to keep their units clean and safe, to use appliances and utilities in a reasonable manner and to avoid disturbing neighbors' "peaceful enjoyment of the premises," (6) landlords can charge no more than ten dollars per month for late payment of rent, and (7) all security deposits must be maintained in a federally insured account in a financial institution located in Illinois. Chicago City Council

On the day before the Ordinance was to go into effect, a group of Chicago property owners and managers and organizations representing their interests sued in federal court seeking a declaration that the Ordinance was unconstitutional.

32. What issue that we studied this semester provides the likely argument that the property owners, managers and organizations will raise?

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33. What three steps will the court take in analyzing the issue you described above?

1. \_\_\_\_\_

2. \_\_\_\_\_

3. \_\_\_\_\_

34. In the space provided below, please state whether the property owners, managers and organizations will prevail in their argument, and the reasons supporting your conclusion..

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**Questions 35 through 39 are based on the following facts:**

The Michigan High School Athletic Association (MHSAA) was founded in 1924 "to exercise control over the interscholastic athletic activities of all schools of the state through agreement with the Superintendent of Public Instruction." MHSAA's Articles of Incorporation further illuminate that its purpose is to "create, establish and provide for, supervise and conduct interscholastic athletic programs throughout the state consistent with [the] educational values of the high school curriculums. . . ." Membership in MHSAA is open to all secondary schools in

Michigan. Assume for this question that MHSAA *does* engage in state action, rendering it liable for violations of the federal Constitution.

MHSAA is in charge of scheduling athletic seasons and tournaments for all boys and girls high school sports in the state. It has scheduled six of the high school girls sports -- basketball, volleyball, soccer, golf, swimming and diving, and tennis -- during the nontraditional season (meaning a season of the year that differs from when the sport is typically played). For example, although girl' golf is played in the spring the boys play in the fall, which is more advantageous. Girls basketball is played in the fall although 48 states schedule girls basketball in the winter. Michigan high school girls volleyball is played in the winter season although the traditional playing season for women's volleyball is the fall, and 48 states play high school girls volleyball in the fall.

No boys' sports are scheduled in non-advantageous seasons.

This off-season scheduling places Michigan female high school athletes at a substantial disadvantage when competing for NCAA scholarships, or even just to be recruited by colleges and universities. It prevents them from playing on "club" teams and in tournaments whose schedules usually take the typical high school schedule into account. And, it isolates them from some of the traditional celebrations and cultural aspects of their sports.

Communities for Equity (CFE), an organization of parents and high school athletes that advocates on behalf of Title IX compliance and gender equity in athletics, and some of the individual female athletes who participate in Michigan high school athletics have brought a gender discrimination claim against the MHSAA.

35. What provision of the Federal Constitution provides the best that the MHSAA's scheduling practices are unconstitutional?

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36. What three categories or classifications must one consider when applying the constitutional provision identified in your answer to Question 35?

1. \_\_\_\_\_

2. \_\_\_\_\_

3. \_\_\_\_\_

37. Which one of those categories/classifications applies to the facts presented?

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38. What will the result be of applying the category/classification identified in your answer to Question 37? Explain your conclusion.

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39. Who maintains the burden of proof in regard to this action? (Please circle one).

CFE

MHSAA

**Questions 40 through 42 are based on the following facts:**

The City of Chicago owns O'Hare Airport. Almost twenty years ago the City, distressed by traffic congestion at O'Hare Airport, established a livery dispatch system. Until then livery drivers had been allowed to park their cars outside the terminals while they hawked within for "walk-up" passengers-- arriving passengers who had not arranged for ground transportation in advance. The parked cars used for livery service blocked traffic. The principal offenders were the suburban livery services, simply because most livery business at the airport is suburban. Taxi service (and now the rapid-transit system) is cheaper than livery service for destinations in Chicago, but more expensive for most destinations in the suburbs. Under the livery dispatch system, drivers are forbidden to park at the terminal unless and until they have a passenger. Either they have a prior arrangement to pick up the passenger when he arrives or they wait in a satellite lot until summoned by a dispatcher stationed in a booth in the terminal. The dispatcher hawks fares the way the drivers themselves used to do, only without blocking traffic.

Because livery dispatch booths were considered unsightly and the dispatchers boorish and raucous, the City wanted to limit the scope of the livery dispatch system. To this end it confined the right to use the booths to dispatchers for suburban livery services because the principal demand for livery service among "walk-up" passengers was for service to suburban destinations rather than to destinations in the city.

Ten livery companies licensed by the City of Chicago have now sued the City, complaining that the ability of suburban livery companies, but not city livery companies, to use dispatchers' booths at O'Hare Airport constituted discrimination.

40. Which one of those categories/classifications that you identified in your answer to Question 36 applies to the facts presented here?

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41. Who maintains the burden of proof in regard to this action? (Please circle one).

City of Chicago

The Livery Companies

42. What will the result be of applying the category/classification identified in your answer to Question 40? Explain your conclusion.

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**Questions 43 through 45 are based on the following facts:**

Lynn, the ninth-largest city in Massachusetts, has faced significant racial imbalance in its school system since the 1970s. Predominantly nonwhite schools suffered disproportionately from resource shortages, overcrowding, discipline problems, and teacher apathy. The school system was plagued by high absentee rates, racial tension, and low test scores.

In September 1989, the Lynn School Committee adopted a Plan to try to ameliorate these racial imbalances. The Lynn Plan begins with the premise that every child is entitled to attend his or her neighborhood school. Race is taken into account only when a student seeks to transfer to a school other than his or her neighborhood school. Schools are placed in one of three categories. A "racially balanced" school is one in which the percentage of nonwhite students falls within a set range of the overall proportion of minorities in Lynn's student population. In the 2001-02 school year, nine of Lynn's elementary schools, one of its middle schools, and all three of its high schools were racially balanced. If a school's nonwhite population falls below the racially balanced range, it is deemed "racially isolated." Conversely, a school whose nonwhite population rises above the racially balanced range is considered "racially imbalanced." In 2001-02, five of Lynn's elementary schools and one of its middle schools were classified as racially isolated, while four elementary schools and two middle schools were racially imbalanced.

The transfer policy is straightforward. Space permitting, a student whose neighborhood school is racially balanced may transfer to another racially balanced school without regard to race. Because all three of Lynn's high schools are currently racially balanced, for example, students may transfer freely among them. Students are also permitted to make "desegregative" transfers. That is, a white student may transfer out of a racially isolated school and into a racially imbalanced school (i.e., to a school with a lower percentage of white students), and a nonwhite student may transfer out of a racially imbalanced school and into a racially isolated school (i.e., to a school with a lower percentage of nonwhite students). By contrast, students may not make "segregative" transfers. A segregative transfer is one that would exacerbate racial imbalance in the sending or receiving school (i.e., a white student may not transfer to a racially isolated school, and a nonwhite student may not transfer to a racially imbalanced school).

But the Lynn Plan sometimes can result in unequal treatment based on race. For example, if two children, one white and one African-American, who are initially assigned to the same

neighborhood elementary school for the 2001-02 school year seek to transfer from a racially isolated school to a racially imbalanced school, only the white student will be permitted to transfer.

Parents whose children were denied transfers on such race-conscious grounds have challenged the transfer provisions of the Lynn Plan, claiming that they are discriminatory.

43. Which one of those categories/classifications that you identified in your answer to Question 36 applies to the facts presented here?

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44. Who maintains the burden of proof in regard to this action? (Please circle one).

Lynn

The Parents

45. What will the result be of applying the category/classification identified in your answer to Question 43? Explain your conclusion.

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**Questions 46 and 47 are based on the following facts:**

The University of Washington Law School, a state institution of higher education, received 1,601 applications for admission to its first-year class beginning in September 1971. There were spaces available for only about 150 students, but in order to enroll this number the school eventually offered admission to 275 applicants. The Admissions Committee assessed candidates by assigning an index called the Predicted First Year Average (Average). That Average was calculated for each applicant on the basis of a formula combining the applicant's score on the Law School Admission Test (LSAT) and his grades in his last two years in college. On the basis of its experience with previous years' applications, the Admissions Committee concluded that the most outstanding applicants were those with averages above 77; the highest average of any applicant was 81. By the final conclusion of the admissions process in August 1971, 147 applicants with Averages above 77 had been admitted. Those with Averages below 74.5 were generally categorically denied absent extraordinary mitigating circumstances.

The law school considered 37 minority (non-Caucasian) applicants under this procedure. Of these, 36 had Averages below 77 and 30 had Averages below 74.5, largely because they failed to score well on the LSAT. The law school admitted only five of the minority applicants.

Several of the minority applicants who were denied admission sued the University of Washington Law School, asserting that statistics demonstrated that minorities scored considerably lower on the LSAT than non-minorities. They claimed that the law school's use of the LSAT was therefore discriminatory.

46. Which one of those categories/classifications that you identified in your answer to Question 36 applies to the facts presented here?

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47. What will the result be of applying the category/classification identified in your answer to Question 46? Explain your conclusion.

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**Questions 48 through 50 are based on the following facts:**

The City of Tehuacana, Texas has a population of approximately 300 to 350 people and occupies a small geographical area in Limestone County, Texas. In 1993, Smith Crushed Stone, Inc. (SCS) leased limestone quarry rights on three contiguous tracts of land, some of which were within the Tehuacana's City limits. In October 1997, Vulcan Materials Co., Inc. (Vulcan) purchased the assets of SCS in Limestone County, including the limestone quarry rights leased by SCS. This leasehold interest allows Vulcan to prospect, explore, mine, operate and produce "by strip mining or open pit mining all rock, stone, limestone and similar rock like materials," and grants Vulcan the right to exclude all other uses of the Tracts as necessary to enable the quarrying.

Before its acquisition of SCS's assets Vulcan hired local attorney, Bobby Reed, to determine whether any ordinances would prevent Vulcan from quarrying, including those tracts located within the City. Reed attested that both the Mayor and City Secretary advised him that no ordinances existed nor were in the planning stages that would prevent Vulcan from pursuing quarrying operations within the City.

In early 1998, Vulcan began planning active quarrying on tracts within the Tehuacana's City limits. It determined access points and ramp sites, determined where in that area it wanted to quarry, cleared land, stripped overburden, and otherwise prepared the tracts for physical use. In October 1998 Vulcan sought and obtained permission from the Texas Railroad Commission to construct berms on those tracts. Vulcan also prepared the quarry floor and removed overburden on one of the tracts to prepare for a blast ("shot") to loosen limestone in the quarry.

City residents, however, began to express opposition to the proposed operations and soon the City Council began to consider adopting an ordinance to regulate Vulcan's quarrying activities.

On December 8, 1998, the City Council passed an "Ordinance Forbidding Quarrying or Blasting Operations within the City Limits." The effect of the Ordinance was to prevent Vulcan from engaging in any mining activities on the land it was leasing in Tehuanca. Vulcan alleges that there is no other economically viable use for that land.

Vulcan has filed a complaint in the federal district court alleging that the Ordinance is an unconstitutional taking of its property in violation of the Fifth Amendment.

48. Please list the three categories of takings that we discussed this semester:

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_

49. Please state which one applies to this action:

\_\_\_\_\_

50. What will the result be of applying the category/classification identified in your answer to Question 49? Explain your conclusion.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**END OF PART ONE**

Part Two is on the next page.



## PART TWO

### ESSAY QUESTION

**SUGGESTED TIME: THIRTY (30) MINUTES**  
**PERCENTAGE OF EXAM POINTS: 17.5%**

### INSTRUCTIONS FOR PART TWO:

This part consists of one (1) short essay question. Please put your answer in a blue book entitled "Part Two," and not into this examination booklet. Please limit your answer to four (4) single-spaced bluebook pages.

### QUESTION:

In the Long Island Landfill Law of 1983, the New York Legislature set deadlines for Babylon, New York and neighboring towns to shut down their municipal dumps, which were contaminating the aquifer that serves most of Long Island. The town began to consider building a garbage incinerator at that time. At around that time, the New York State Legislature passed a law specifically authorizing Babylon to enter into contracts to build a garbage incinerator. Babylon solicited proposals from more than sixty-nine companies in eighteen states and Canada to construct and operate the incinerator. Ogden Martin Systems, Inc. ("Ogden"), a New Jersey company, was awarded the contract.

To finance construction of the incinerator, the Town of Babylon Industrial Development Agency (the "Agency"), a "public benefit corporation" created under New York law and controlled by the Town, issued \$88.9 million in tax-exempt bonds. The land on which the incinerator was built is owned by the Town, leased to the Agency, and subleased to Ogden. The incinerator itself is owned by the Agency and leased to Ogden, which operates the facility. Although Ogden controls the day-to-day operations of the incinerator, the company is required to process whatever garbage the Town accepts for disposal.

In 1987, the Town created Commercial Garbage Collection District No. 2 (the "District") in 1987, which covered most commercial real estate in town. The idea was to employ a uniform municipal collection and disposal of waste system in the District to replace the multitude of contracts between individual commercial garbage generators and the seventeen haulers licensed to collect commercial waste in Babylon. Babylon concluded that this system could provide better garbage service to commercial property at an overall savings of \$7 million to \$8 million per year to town consumers. The Town then entered into a five-year Service Agreement with Babylon Source Separation Commercial, Inc. ("BSSCI") to provide garbage hauling services to all improved commercial property within the District. Under the Service Agreement, the Town agreed to grant BSSCI an exclusive license to collect commercial garbage within the District.

In mid-December 1994, USA Recycling, Inc., a company incorporated out-of-state, and other out-of-state garbage haulers who were displaced by the creation of the District, sued the Town claiming that its new system unconstitutionally discriminates against them and harms interstate markets.

Please discuss the rights and liabilities of the parties.

### PART THREE

#### **ESSAY QUESTION**

**SUGGESTED TIME: THIRTY (30) MINUTES**  
**PERCENTAGE OF EXAM POINTS: 17.5%**

#### **INSTRUCTIONS FOR PART THREE:**

This part consists of one (1) short essay question. Please put your answer in a blue book entitled "Part Three," and not into this examination booklet. Please limit your answer to four (4) single-spaced bluebook pages.

#### **QUESTION:**

In 2000 the Idaho Legislature passed a statute requiring minor females to obtain parental consent in certain circumstances before obtaining an abortion. The law establishes civil and criminal penalties for persons who perform abortions other than as permitted. The law requires either written, informed consent from the minor and her parent; written, informed consent from the minor along with proof of her emancipation; a court order; or the presence of an urgent medical emergency. The law further provides that an abortion may be performed pursuant to the medical emergency provision only if the attending physician certifies the existence, in his medical judgment, of an emergency so urgent as to require performance of the abortion sooner than parental consent or a court order could be obtained. If an emergency abortion has been performed, the operating physician must provide immediate notice to the minor's parent. If immediate notice is not possible, the physician must take responsibility for the minor's postoperative care, diligently attempt to notify her parent, and eventually provide actual notice to her parent that the abortion was performed and why. Should the physician believe notification of a parent would endanger the minor, or if the minor is homeless or abandoned, he can discharge his duty by making a report to law enforcement to that effect.

The statute defines the term "medical emergency" as: "a sudden and unexpected physical condition which, in the reasonable medical judgment of any ordinarily prudent physician acting under the circumstances and conditions then existing, is abnormal and so complicates the medical condition of the pregnant minor as to necessitate the immediate causing or performing of an abortion:

1. To prevent her death; or
2. Because a delay in causing or performing an abortion will create serious risk of immediate, substantial and irreversible impairment of a major physical bodily function of the patient.

The term "medical emergency" does not include:

1. Any physical condition that would be expected to occur in normal pregnancies of women of similar age, physical condition and gestation; or

2. Any condition that is predominantly psychological or psychiatric in nature.

A section of the statute specifies that a "minor may file a bypass petition in the county of her residence or in the one in which the abortion is to be performed. The minor may assert in her petition either that she is sufficiently mature to provide her own consent to the procedure or that, notwithstanding her lack of maturity, the procedure would be in her best interest. If the minor requests aid in completing the petition, Idaho must provide it, through a guardian ad litem (who must be an attorney) or through some other person."

Planned Parenthood of Idaho has challenged the statute as being unconstitutional. Please discuss the rights and liabilities of the parties.

**END OF EXAMINATION**

**HAVE A NICE HOLIDAY**

**CONSTITUTIONAL LAW, 2005**  
**MALAGUTI & WINIG**  
**ANSWERS TO PART ONE**

1. Commerce clause
2.
  1. Channels
  2. Instrumentalities
  3. Substantially effects interstate commerce
3. Raich loses. This is the actual Supreme Court case that came down this year. “Our case law firmly establishes Congress' power to regulate purely local activities that are part of an economic "class of activities" that have a substantial effect on interstate commerce.” “Congress can regulate purely intrastate activity that is not itself "commercial," in that it is not produced for sale, if it concludes that failure to regulate that class of activity would undercut the regulation of the interstate market in that commodity.” “[A] primary purpose of the CSA is to control the supply and demand of controlled substances in both lawful and unlawful drug markets.”

I would give the students credit if they say that Raich wins, and support the answer with Lopez and/or Morrison (or what they say without citing the cases by name): Congress has no power to regulate purely local matters. 10<sup>th</sup> Amendment adds support.

4. Garcia: “[T]he Commerce Clause did not give Congress the authority to regulate the "States as States." “In other words, Congress could "not exercise [Commerce Clause] power so as to force directly upon the States its choices as to how essential decisions regarding the conduct of integral governmental functions are to be made. But, in *Garcia* and its progeny, Congress may “subject the States to legislation (FLSA) that is also applicable to private parties. . . if the law is one of generally applicability.”
5. Printz/Lopez: Fighting fires in Waco is a purely local matter that bears no relationship to interstate commerce. Here, Congress is essentially interfering with the city’s ability to deal with a purely local issue.
6. Dormant Commerce Clause (Negative Commerce Clause)
7. Strict Scrutiny
8. Maine should lose. “It is not necessary to look beyond the text of this statute to determine that it discriminates against interstate commerce. The Maine law expressly distinguishes between entities that serve a principally interstate

clientele and those that primarily serve an intrastate market, singling out camps that serve mostly in-staters for beneficial tax treatment, and penalizing those camps that do a principally interstate business. As a practical matter, the statute encourages affected entities to limit their out-of-state clientele, and penalizes the principally nonresident customers of businesses catering to a primarily interstate market." "For over 150 years, our cases have rightly concluded that the imposition of a differential burden on any part of the stream of commerce--from wholesaler to retailer to consumer--is invalid, because a burden placed at any point will result in a disadvantage to the out-of-state producer."

9. Dormant (Negative) Commerce Clause. Also accept Privileges & Immunities under Article IV.
10. The actual case ignores Dormant Commerce Clause and goes straight to Privileges and Immunities. It seems to use a rational basis standard under P & I. So, if the student goes with P & I, use rational basis.

I think there is a good DCC argument as well. There, the standard is strict scrutiny since the statute facially discriminates.

11. P & I: A statute will survive a **Privileges and Immunities** analysis if a State can demonstrate a "substantial" interest that is, as variously described, "reasonably to the discriminatory means employed." Under P & I, Bach loses because: New York's interest in monitoring gun licensees is substantial and that New York's restriction of licenses to residents and persons working primarily within the State is sufficiently related to this interest.

DCC: Apply strict scrutiny. Which ever way the student argues is fine if s/he chooses strict scrutiny. It may or may not be that public safety from guns is a compelling state interest.

12. 11<sup>th</sup> Amendment
13. Illinois will probably lose in arguing that it is immune. A state's immunity, is not absolute; "Congress may abrogate the State's Eleventh Amendment immunity when it both unequivocally intends to do so and acts pursuant to a valid grant of constitutional authority." The Supreme Court has recognized that "the Eleventh Amendment, and the principle of state sovereignty which it embodies, are necessarily limited by the enforcement provisions of § 5 of the Fourteenth Amendment." Congress, "may subject nonconsenting States to suit in federal court when it does so pursuant to a valid exercise of its § 5 power." The Supreme Court allows this Congressional waiver of 11<sup>th</sup> Amendment immunity in cases of historical discrimination and usually where strict scrutiny would be the standard. Given that Nanda is claiming

discrimination on race and national origin, it is likely that Congress can waive immunity.

14. Article VI of the Constitution makes the Constitution the 'supreme Law of the Land.' In 1803, Chief Justice Marshall, speaking for a unanimous Court, referring to the Constitution as 'the fundamental and paramount law of the nation,' declared in the notable case of *Marbury v. Madison*, that 'It is emphatically the province and duty of the judicial department to say what the law is.' This decision declared the basic principle that the federal judiciary is supreme in the exposition of the law of the Constitution, and that principle has ever since been respected by this Court and the Country as a permanent and indispensable feature of our constitutional system. It follows that the interpretation of the Fourteenth Amendment enunciated by this Court in the *Brown* case is the supreme law of the land, and Art. VI of the Constitution makes it of binding effect on the States 'any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.' Every state legislator and executive and judicial officer is solemnly committed by oath taken pursuant to Art. VI, ¶3 'to support this Constitution.'
15. Standing
16. Michigan will prevail because the attorneys did not represent any *specific* indigent clients and therefore have no right to assert third party-standing. They need to represent *actual* clients, not *hypothetical* ones. If most of the students miss this, I would give them credit if they properly introduce the concept of third-party standing, but merely draw the wrong conclusion.
17. Ripeness
18. The court's "role is neither to issue advisory opinions nor to declare rights in hypothetical cases, but to adjudicate live cases or controversies consistent with the powers granted the judiciary in Article III of the Constitution. there must be an actual dispute between adverse litigants and a substantial likelihood that a favorable federal court decision will have some effect. Here, the case concerns a hypothetical, rather than an "actual," legal dispute concerning proposed contract terms that may or may not be executed in the future. The question of whether a favorable resolution will have any effect hinges on the same contingencies. Thus, the case would appear to seek nothing more than an advisory opinion."
19. Political Question.
20. [1] a textually demonstrable constitutional commitment of the issue to a coordinate political department; or  
[2] a lack of judicially discoverable and manageable standards for resolving it;  
or

[3] the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or [4] the potentiality of embarrassment from multifarious pronouncements by various departments on one question.

I'd consider giving credit if they get a couple of them right.

21. Yes. There is historic deference due to the Executive in the conduct of the foreign relations of the United States. This would likely invoke at least # 1 and # 3 above.
22. Preemption
23.
  1. Express
  2. Conflict
  3. Field
24. Although the Court in the case actually said that the California law was not preempted, I think, given the relatively short facts here, that most well-informed students will say that the California statute is either expressly preempted or preempted due to conflict preemption. I'd mark those answers correct.
25. Tax and Spend (or just the spending power in this case)
26. They are set forth in *South Dakota v. Dole*:
  1. The power must be in pursuit of "the general welfare"
  2. The condition must be stated unambiguously
  3. Any conditions in the federal grant must be related to the particular federal interest in the program at issue
27. Dieckman will probably lose because the USDA is attempting to pursue the general welfare in preserving wetlands, the condition appears to be stated unambiguously, and the condition appears to be related to the federal goal of preserving wetlands.
28. That, as a private actor who has not engaged in "state action," it is not liable for constitutional deprivations or violations.
29. There are several exceptions to the notion the private actors are not liable for violations of the federal constitution. The most common are: (1) the private entity is engaged in a traditionally public function; (2) the otherwise private conduct is "entwined" with that of government; (3) the otherwise private conduct is encouraged or coerced by a government; and (4) there is joint action between the government and the private actor in regard to the complained-of conduct.

Whether the student argues for or against the imposition of the state action doctrine, I would give credit if s/he raises at least one of the exceptions and makes a cogent argument. The actual case applied the “public function” and “entwinement” standards to find state action.

30. Economic/substantive due process. I would also consider accepting equal protection (disparate treatment) as a correct answer.
31. The facts are substantially similar to *Williamson v. Lee Optical*, a seminal substantive due process case we did in class. Since no fundamental right is implicated, the standard is rational basis, and the government (which is entitled to substantial deference) will prevail.
32. Contracts clause.
33. This is set out in *Energy Reserves Group v. Kansas Power and Light Co.*, a case that we covered in class:
  1. Inquire whether the statute or ordinance in question in fact operates as a substantial impairment of existing contractual relationships.
  2. Inquire whether the government has a significant and legitimate public purpose justifying the statute or ordinance.
  3. Inquire whether the effect of the statute or ordinance on contracts is reasonable and appropriate given the public purpose behind the law.
34. The conclusion doesn't matter. I'd mark the answer correct if the student uses any of the above-referenced criteria to make a cogent argument either way. I'd also consider it correct if the student fails to use any of the criteria, but mentions that it is extremely difficult today to prevail against a government under a Contract Clause argument.
35. Equal protection.
36.
  1. Strict Scrutiny (I'd also accept “compelling state interest,” or the like)
  2. Intermediate Scrutiny (I'd also accept “important government interest,” or the like)
  3. Rational basis (I'd also accept “deferential,” or the like)

I think the important thing is that they show they know the three rather than that they know the exact language.

37. Intermediate Scrutiny



38. The plaintiffs should win. The burden of proof is on the MHSAA to demonstrate an important governmental interest in scheduling girl sports during off seasons. The only governmental interests I can think of to justify this classification are administrative or fiscal in nature and, given the Supreme Court cases we considered this semester, neither rises to the level of "important."
39. MHSAA
40. Rational Basis
41. The Livery Companies
42. The City's conduct has not been irrational, let alone patently, wildly, totally irrational, as the cases seem to require.
43. Strict Scrutiny
44. Lynn
45. Lynn wins under current jurisprudence. The U.S. Supreme Court, in its affirmative action cases, has determined that maintaining a diverse student body constitutes a compelling state interest. That is what Lynn is attempting to achieve here.
46. Rational basis
47. University of Washington wins. This is like *Washington v. Davis*, in which a test that had a discriminatory effect, but which was not necessarily conceived to purposely discriminate, was viewed under the rational basis test. The use of a standardized test, even one that has flaws, is not completely irrational. In order to invoke a higher level of scrutiny, the plaintiffs would have to show discriminatory motivation on the part of the University of Washington, which they cannot do.
48.
  1. Physical invasion or occupation
  2. Deprivation of all economically beneficial use
  3. Regulatory taking.
49. The ordinance causes a deprivation of all economically beneficial use of the land.
50. The result is a categorical (per se) taking. The City will have to pay just compensation.