FALL, 2008
DECEMBER 16, 2008

This examination is divided into two parts. The Exam is worth a total of 80 points. The remaining 20 points come from the two quizzes. The first part of the exam is worth 50 points total, and is comprised of short answer fact patterns, with one or more questions which follow relating to the fact pattern. The value of each sub-question appears at the beginning of that sub-question. READ THE FACT PATTERNS AND QUESTIONS CAREFULLY. The questions are, more often than not, very limited and some direct you to the precise constitutional issue to be addressed. Others are more open ended, and require you to determine, for example, the best argument, that is the one most likely to succeed. Some questions actually contain more than one subordinate question. IF THAT IS THE CASE, MAKE SURE YOU ANSWER EACH “SUB-QUESTION” OF EACH NUMBERED QUESTION. You will NOT receive credit for non-responsive answers. You must write your answers on the exam itself. If you find yourself needing to go beyond the number of lines provided, the likelihood is that you are WAY off the correct track. You should be able to answer the questions in the space provided. You may use the reverse side of the page so long as you make it clear which numbered question you are responding to.

YOU MUST PUT YOUR SOCIAL SECURITY NUMBER ON THE TOP OF EACH PAGE OF PART I OF THIS EXAM.

The total value of each of the questions (including subordinate questions) is stated before the question itself.

Essay Questions I and II are typical essay questions. The answers must be written in the blue book, on only one side of the page. YOU ARE LIMITED TO ONE BLUEBOOK. In discussing the issues consider the arguments and counter-arguments and the likelihood that any particular claim will succeed. If you think additional information is required to analyze the issue, or you are making factual assumptions, state the information required and/or the fact(s) assumed, and what bearing this has on your answer to the question.

THIS IS A CLOSED BOOK EXAM—Do not start until told to do so. You may have nothing with you in this exam except writing implements. Please place all your books, coats, bags and pocketbooks at the front of the room. You may keep valuables (wallets, etc.) with you ON TOP OF THE DESK IN FRONT OF YOU.

YOU MUST WRITE ON ONLY ONE SIDE OF THE PAGE, EVERY LINE, AND YOU MUST LEAVE A MARGIN ON THE LEFT HAND SIDE FOR MY NOTES AND CORRECTIONS. YOU MUST WRITE LEGIBLY, I WILL NOT READ ANY PORTIONS OF THE EXAM NOT IN COMPLIANCE WITH THESE RULES, AND THUS, YOU WILL RECEIVE NO CREDIT FOR THOSE PORTIONS. YOU HAVE THREE HOURS FOR THIS EXAM.
A. Congress has recently passed a law that provides it is a federal criminal offense for any person to: "willfully fail[] to pay a past due support obligation with respect to a child who currently resides in another State, or at the time of the issuance of the order, resided in another state." According to the statute, a "past due support obligation" is any sum ordered pursuant to a state law requiring payment for the support and maintenance of a child (or a child and parent living together) that is either greater than $5,000 or has been unpaid for more than one year.

1. (4 pts.) Daddy Delinquent is indicted under the statute for failing to pay child support for more than one year. If you were representing Daddy, what argument(s) would you make that the law is beyond the power of Congress to enact?

2. (3 pts.) Congress wants to require each state to create a computerized data bank of all child support orders and to create an interstate network to facilitate the recording of orders throughout the United States and the tracking of payments so as to identify individuals who might be liable under the statute. Pursuant to what Congressional power should the statute be enacted in order to avoid successful Constitutional challenges and why is this power preferable to others?
3. (2 pts) Assume that Congress takes your advice and enacts such a law pursuant to your answer in Q. 2. If a party having standing brings a suit against a proper party in federal court alleging the statute is unconstitutional, what factors, standard or test will the court use to ascertain if the statute is, in fact, constitutional?

B. State has recently passed a law that requires all women seeking an abortion to receive:

A statement in writing providing the following information:

(a) The name of the physician who will perform the abortion;
(b) That the abortion will terminate the life of a whole, separate, unique, living human being;
(c) That the pregnant woman has an existing relationship with that unborn human being and that the relationship enjoys protection under the United States Constitution and under the laws of South Dakota;
(d) That by having an abortion, her existing relationship and her existing constitutional rights with regards to that relationship will be terminated;
(e) A description of all known medical risks of the procedure and statistically significant risk factors to which the pregnant woman would be subjected, including:
   (i) Depression and related psychological distress;
   (ii) Increased risk of suicide ideation and suicide.

Patient, who is 10 weeks pregnant, brings suit to challenge the statute on the grounds that it interferes with her right to obtain an abortion.
4. (1 pt) What standard will the Court apply to evaluate Patient’s claim?

C. Every year, New York City’s Parking and Traffic Control Authority (“Authority”), a municipal entity, is deluged with requests for handicapped or disability parking permits, for the thousands of disabled persons who travel in and around the City each day. A disability parking permit allows a vehicle displaying such permit to park in restricted spaces and/or areas, in certain construction and/or hospital zones where general parking is not permitted, and at expired meters. Until recently, the Authority had been granting permits to anyone upon proof of a qualifying disability, but it has been receiving so many complaints from New York City residents and business owners concerning the lack of available spots, that it has decided that starting January 1, 2009 (permits are for one year and expire on January 1 of the calendar year), it will grant permits only to persons who are legal residents of or own property or businesses in New York City.

Manny Motorist suffers from an incurable disease that severely weakens his muscles. He cannot walk long distances, and frequently must use a wheelchair to get around. When he drives, he must use a van large enough to accommodate the wheelchair. He travels to New York City to receive medical treatment and to pick up prescriptions at the city-owned and operated Manhattan Medical Center. He also visits New York City to take advantage of some of its many cultural offerings. Motorist resides in New Jersey, and has a New Jersey State disability parking permit, but because he does not reside, own property or a business in New York City, he does not qualify for the City's Special Vehicle Permit. Without a Special Vehicle Permit, Motorist often must pay for private parking. Even then, he encounters difficulties because his customized van is so large that it does not fit into the entrances of some indoor parking garages. And when a private parking facility can accommodate his van, Motorist often pays an extraordinarily high parking fee due to the van’s size.

Manny went to the Authority’s office last week to renew his permit for 2009, and was told that he would not be issued a disability parking permit.

5. (2 pts.) Assume the Americans With Disabilities Act prohibits any governmental entity from discriminating against anyone with respect to governmental services, programs or facilities. The statute permits any person aggrieved by any governmental entity to bring suit in federal court for damages. Manny brings suit in Federal District Court for the Southern District of New York against the Authority. The Authority moves to dismiss on the grounds that the suit violates the Eleventh Amendment. How should the Court rule and why?
6. (2 points each, total 4 points) Assume the Motion to Dismiss is denied, and the case proceeds on the merits. Manny's attorney claims that the Authority's policy violates the dormant commerce clause and the privileges and immunities clause of Article IV. What are the standards or tests that the Court will apply to each of these claims, and why? What is the likely outcome of each of these claims?

Dormant Commerce Clause:

Privileges and Immunities Clause:
D. The NCAA is a voluntary, nonprofit association which regulates college athletics, defines eligibility rules for players and imposes sanctions for violations of its rules. NCAA rules limit a student-athlete to four seasons of intercollegiate competition within five calendar years. The five-year eligibility rule begins to run when a student-athlete initially registers and attends the first day of classes in a regular term of an academic year for a minimum full-time program of studies. NCAA rules allow a member school to grant a waiver of the five-year eligibility rule if the reason the student exceeds the maximum enrollment time is for factors beyond his/her control. In addition, a member school may grant “a one-year extension of the five-year period of eligibility for a female student-athlete for reasons of pregnancy.”

Fred Footballer, who, after being a star for three years on the varsity football team at State University (“SU”), a state-owned and operated university, was forced to leave school for one year when his GPA fell below acceptable levels and he was academically suspended. Fred claimed that the reason his grades fell below acceptable level was that his girlfriend gave birth to their daughter, and he had to take time off to attend to the child. Fred’s girlfriend, Sandy Swimmer, a member of the SU varsity swim team, was granted an extension of the five-year period under the pregnancy exception. Fred, who was readmitted to SU after one year, on the other hand, was held to the five-year limit, and could only play ball for one more year.

7. (2 pts.) Fred brings suit against the President and Athletic Director of SU requesting an injunction ordering that his eligibility be extended, claiming the “pregnancy exception” policy violates the Equal Protection Clause of the Fourteenth Amendment. What class will Fred claim is the subject of the discrimination, and what level of scrutiny applies to that class?

8. (2 pts.) What is the defendants’ STRONGEST defense on the merits of the equal protection claim (what class will they claim is the basis for the discrimination)? What level of scrutiny will the defendants claim should apply and why?
E. Dewey Chemicals ("Dewey") manufactures, among other things, insecticides. Peter Plaintiff operates a peanut farm in Georgia. He and other members of the Association of Georgia Peanut Farmers (Association) purchased thousands of pounds of a new insecticide, Bugaway, manufactured by Dewey specifically to deal with insects known to destroy crops in the legume family, for example beans and peanuts. The sacks specifically said "Proven effective against insects in peanut growing." Following the directions on the sacks of Bugaway, they applied the insecticide to the peanut plants at the appropriate time. As the product represented, there were no insects, but unfortunately, there were no crops either. Bugaway burned the plants' root systems considerably, resulting in brown plants that yielded no peanuts. The Association brought suit for damages under state law in federal court against Dewey Chemicals, including lost profits resulting from the destruction of the plants.

Bugaway was approved for sale by the Environmental Protection Agency under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), which contains the following provision:

States "shall not impose or continue in effect any requirements for labeling or packaging in addition to or different from those required under this subchapter."

Turns out the pesticide should not have been used in locations where the soil pH is greater than 7, which is just about all of Georgia.

9. (2 pts.) Dewey moves to dismiss on the ground that the Association is merely a trade association and it has no standing. What does the Association have to prove to defeat the motion (what factors will the court look at in determining if the association has standing)?
10. (5 pts.) Dewey also moves for summary judgment on the basis that the federal statute precludes the common law suit. What is the constitutional basis for this Motion, and what issue will the judge have to decide in order to rule on the motion (note: An answer that sets forth the standard for summary judgment is NOT acceptable)?

F. The State of Certainty recently amended its election laws to provide that certain candidates for state-wide office must file their nomination papers 120 days before the primary election. Candidates running to represent a “major party,” that is, one that received no less than 10% of the total vote cast in the most recent gubernatorial or presidential election automatically qualifies to appear on the statewide election primary ballot. Parties that did not receive this quantity of votes must file nomination papers no fewer than 120 days before the primary election. The papers must contain a certain number of signatures of registered voters—no fewer than 1% of the number of votes cast in the last state-wide election. The Secretary of State, who is charged with overseeing all state-wide elections, requested a change in the law because of the growth in the number of minor parties. She claimed that verification of thousands of signatures for as many as 3-5 minor parties is very time consuming, and signatures must be verified in order to prevent fraud. The minor parties claim that 120 days is an unreasonable time period, as many of these parties cannot afford to start up signature collection more than three months before an election. Interest in candidates from these parties is virtually non-existent more than 3 months before an election, and therefore, they can rarely get the required number of signatures.
Connie Candidate, who wished to run for Governor on the Socialist Party ticket brought suit against the Secretary of State in federal court, claiming that the Certainty law violated the right to vote for the candidate of one’s choice, and discriminated against minor parties, all in violation of the Fourteenth Amendment. She asked for a declaration that the Certainty law was unconstitutional, and an injunction prohibiting the Secretary of State from enforcing the 120 day requirement.

11. (1 pt) Assume that by the time the case is ready for trial, the primary has already been held. The Secretary of State moves to dismiss the case, urging that the court should not consider the merits of the case. What is the strongest basis for the motion?

12. (2 pts) How should the court rule on the motion and why?

13. (2 pts.) Assume the court denies the motion and hears the merits of the case. How will the court determine what level of scrutiny it will apply to the argument that the right to vote has been violated? What level of scrutiny would you argue should be applied?

G. New York Senator Hillary Clinton’s recent nomination to be Secretary of State has raised the issue of whether she is constitutionally permitted to serve in that capacity. Article I, Section 6, clause 2, known as the “emoluments clause,” prohibits any Senator or Representative from serving in any civil office of the United States (Secretary of State) the pay or benefits (emoluments) of which that person voted to increase. Congress raised the pay of all cabinet secretaries last year. Clinton was among those who voted to raise the salaries.
14. (2 pts.) Several taxpayers brought suit in federal district court to enjoin Senate approval of Clinton as the Secretary of State on the grounds that their tax dollars should not be used to pay a government official serving in violation of the Constitution. Clinton’s legal representative filed a motion to dismiss the action, claiming the case was non-justiciable. What is the strongest argument in support of the motion, how is the judge likely to rule and why?


H. 15. (2 pts) The Supreme Court has held that two factual circumstances constitute, as a matter of law, a “compelling state interest” satisfying the first prong of the so-called “strict scrutiny test.” What are the two circumstances?


I. New York state law gives telecommunications companies the right to erect, construct and maintain the necessary fixtures for its lines upon, over or under any of the public roads, streets and highways; and through, across or under any of the waters within the limits of this state, and may erect, construct and maintain its necessary stations, plants, equipment or lines upon, through or over any other land, public or private...

In the suburbs, where residences are detached, and streets usually have sidewalks or other public lands between the street and the private land, the telephone company installs “central feeder boxes” on telephone poles located on public ways, and strings the wires from the box to the individual customers in the individual residences. In Manhattan, and various other boroughs of New York City, residential customers reside in apartments or town houses, many of which are attached or semi-attached. Most streets are separated from private property only by sidewalks, which are not suitable for telephone poles. Therefore, in order to adequately service the literally tens of hundreds of customers per city block, the phone company attaches the “central feeder box” to the rear of a centrally located building, and then strings wires from that box to all the other buildings in which customers are located, including the residents of units in the building on which the central feeder box is located. The box is approximately 12” x 12” and is painted to match the building’s material, so it is barely visible. Neither placement of the box nor the wires interfere with the operation of any of the building’s services, or the residents’ activities.
Larry Landlord owns one of the apartment buildings on which the “central feeder box” is located. Larry was unaware that the box was even there until he went around to the rear of the building to see if the garbage had been picked up. Nonetheless, he feels put upon, and thinks that the tens of wires emanating from the box to other buildings on the block looks hideous.

16. (2 pts.) Larry wants damages. What constitutional doctrine provides Larry the best chance to obtain money damages? Under what theory should he proceed, and what is the likelihood of success of his claim?

J. Although it is the federal government that funds Medicaid, states administer the programs disbursing the funds, and states have a fair amount of latitude in doing so. One of the Medicaid programs that is administered by the state of Tightwad pays for “medical assistance to low-income persons who are age 65 or over, blind, disabled, or members of families with dependent children or qualified pregnant women or children.” This program includes funding for long-term care for persons unable to care for themselves. Donna Duffy is 17 years old, and severely disabled. She is blind and suffers from a severe form of autism. Donna has been living with her parents, but it is now clear that some form of institutional living arrangements must be made, as they are no longer able to adequately care for their daughter. Duffy’s parents have been residing in New Jersey, where Medicaid will pick up at most 75% of the cost of such residential care. Vermont, on the other hand, will pay 100% of the costs for qualified persons. After investigating facilities in that state, Donna’s parents decide that she will be best served by taking up residence in a long-term residential care facility in Burlington. They decide they will live in a hotel while they get Donna settled, and then will return to New Jersey. Once Donna is settled in, they will drive up to Vermont once a month for a couple of days to visit their daughter. However, when they speak to the director of the facility, he says that they cannot accept Donna, because, under Vermont Medicaid law, funding for disabled persons seeking placement in a residential treatment facility is open only to persons who have been residents of Vermont for ninety days.
17. (1 pt.) Donna's parents sue the proper party in federal court on her behalf, alleging that the Tightwad Medicaid program is unconstitutional. What constitutional basis provides the parents' best argument?

K. In the early 1990s, the United States, Mexico and Canada entered into negotiations concerning the flow of goods between and among the three nations. The negotiations ultimately resulted in the North American Free Trade Agreement (NAFTA), an agreement signed by the leaders of the three nations. Congress passed legislation shortly after NAFTA was ratified, effectuating the provisions of the agreement. After NAFTA and the legislation went into effect, a group of businesses that (i) manufacture and service products made and sold only in the United States, and (ii) promote the manufacture and purchase of goods made wholly within the United States, known as the "Made in America Foundation" (Foundation), brought suit against the United States, contending that NAFTA is unconstitutional. The Foundation alleges that it should have been created through the executive's treaty power, which requires Senate ratification, rather than by executive agreement, which does not require any Congressional action. The Foundation can prove that its members will lose business because NAFTA permits and encourages goods to be manufactured and sold at lower cost by Mexican and Canadian companies than by competing American businesses.

18. (1 pt.) The United States moves to dismiss the case, alleging that the case is non-justiciable. What is the strongest basis for the motion?

19. (3 pts) If the United States argues the answer to question 21 above, identify at least three factors that the court will apply to determine if the United States will prevail on its motion.

1. 

2. 

3. 


L. The Transportation Security Administration, part of the Homeland Security Department, a cabinet-level department, was created shortly after 9/11 to deal with security at our nation’s airports and other hubs of interstate travel, such as bus and train stations. Congress decided when it created TSA that because of the sensitive nature of its responsibilities, the positions at airports should be only open to persons who have been United States citizens for a minimum of five years, and who, if naturalized (meaning not-native born), were not previously citizens of Iran, Iraq, Saudi Arabia or Afghanistan. The stated purpose of the country of origin restriction is that the excluded countries are ones from which most of the terrorists have come. A group of Russian-born American citizens, who became citizens in 2005 applied for a number of recent openings at Baltimore Airport. They had responded to an ad seeking TSA employees who spoke Russian. Apparently, the influx of Russian-speaking immigrants into the United States has necessitated that TSA employ persons who are fluent in that language.

20. (1 pts.) If the group challenges the citizenship restrictions as violations of equal protection, what level of scrutiny will apply?

M. You may be aware that last month, a home located on Northern Boulevard on Newbury’s Plum Island was demolished after it became uninhabitable because erosion under the foundation caused it to fall of its foundation, leaning into the adjacent beach. The building had been the residence of Gabriella Rizzotta for 43 years. Gabriella is now homeless, lost all her possessions, and is temporarily living with relatives in Everett. The Newbury Building Inspector has stated that there are several other homes on the same block which are in equally precarious situations as that of Ms. Rizzotta. As the adjacent beach has eroded over the last ten years, the homeowners have repeatedly petitioned the state and federal governments for permits to nourish the beach and to stabilize their properties. The permits have all been denied on various grounds. The federal government has declined, saying the beach is the home to the endangered “Piping Plovers,” and under environmental laws, its nesting areas cannot be disturbed. The state has said that the building repairs and improvements would be impossible unless a substantial amount of the beach is paved over, something it will not allow. Mrs. Rizzotta has been told by the town, city and state it will not permit her (or anyone else for that matter) to rebuild (her property is too small to satisfy zoning requirements anyway).
21. (3 pts.) Ms. Rizzotta wants to bring a claim for damages, and asks you, a land-use attorney, for advice. You suggest she might have a constitutional claim. What constitutional doctrine would provide Ms. Rizzotta with the best chance of recovering damages, and under what theory would you proceed?

N. Because the recent economic downturn has resulted in a spate of foreclosures, as well as skyrocketing unemployment in the state of Despair, the list for state-owned public housing is growing by leaps and bounds. Despair’s Secretary of Housing, who is empowered to make regulations concerning eligibility, decides that one way to decrease the number of eligible persons waiting for residences is to restrict eligibility to citizens of the United States. Verna Visitor, who is here from her native Australia on a work Visa, and who would otherwise qualify for housing, has been told she is no longer eligible because she is not an American citizen. She brings a suit against the proper party in federal court claiming that the regulation violates her rights under the Fourteenth Amendment.

22. (3 pts.) What should Verna claim is the basis for her Fourteenth Amendment claim, what level of scrutiny should be applied, and who has the burden of proof?

23. (2 pts) Assume Verna wins her suit based on your response to the above question. Despair is still faced with a backlog of persons eligible for public housing. So the Housing Secretary decides to raise the annual family income level from $15,000 for a single person such as Verna, to $30,000. Again, Verna is told she is ineligible for public housing. She again brings suit against the proper party in federal court alleging her Fourteenth Amendment rights have been violated. What should Verna claim this time is the basis for her Fourteenth Amendment claim, and what level of scrutiny should be applied, and who has the burden of proof?
ESSAY QUESTIONS

I. (10 points) In order to deal with the portion of the economic crisis caused by lending institutions' giving mortgages to persons they knew or should have known would be unable to keep current on payments as the rates escalated, Congress created the Mortgage Review Commission ("Commission"). According to the statute, the Commission's duties will be to oversee the mortgage industry by monitoring and regulating mortgages issued on residential property in interstate commerce. That is, it will apply only to companies that operate in more than one state, or to mortgages on property located in one state granted by companies located in another state, where relevant state law allows that to happen. The Commission will be comprised of 5 members, 3 appointed by the President, and one each by the Secretary of Housing and Urban Development and the Secretary of the Treasury. Each member will serve a term of three years, and is removable only by the President, with the advise and consent of the Senate, for misfeasance, malfeasance or dereliction of duty.

Because Congress is wary of the way the Commission under the Bush administration is likely to exercise its authority (given the administration's apparent allergy to regulation, and its intent to do as much damage as possible in the waning days of the administration), Congress decided that any regulations passed by the Commission must be sent by the Commission to the Senate and the House, and either one or both of the bodies may reject the regulations by a majority vote. Following such a vote, the rejected regulations will not go into effect, but will be returned to the Commission with a statement concerning the chamber or chambers' objections. No regulation will go into effect until all objections of both chambers have been satisfied, and the chambers have signed off.

The statute was passed in October, to become effective November 1, 2008. However, President Bush, when signing the bill into law, issued one of his now famous signing statements, claiming that portions of the bill were unconstitutional, and he would not enforce them.

Discuss the constitutional issues raised by the above fact pattern.

II. (20 pts.) The federal Food and Drug Administration (FDA) has adopted regulations that impose a lengthy and complicated process for approving new drugs. Before a drug can be prescribed to a patient, the manufacturer has to go through a three-step process involving clinical trials. In clinical trials, the manufacturer administers the drug to human beings, and scrutinizes, for a period of time, the effectiveness and observable negative side effects of the drug on the patient. The number of participants in the trials increases throughout the process until Phase III, which involves thousands of subjects. The FDA has determined that persons who are suffering from a terminal illness, that is one that is
likely to result in death within 6 months, are not qualified to participate in Phase III trials. For some of these individuals, there is no hope of extending life through any known treatment other than the experimental drugs involved in the trials.

There are some exceptions for terminally ill patients not in clinical trials whose diseases are life threatening, and whose doctors can demonstrate that “no comparable or satisfactory alternative drug or other therapy.” The CTEC (Clinical Trial Exception Certificate) may be granted by the FDA provided it finds (1) the agency believes there is a “reasonable basis” to conclude that the drug is effective; or (2) granting the request “[w]ould [not]. . . expose the patient[ ] . . . to an unreasonable and significant additional risk of illness or injury.”

Patients who agree to be part of a clinical trial must sign a document agreeing they will abide by the protocol of the trial concerning the treatment (where, when it will be administered, how frequently, follow up testing etc.), and will not leave the trial unless the FDA permits, upon certification by a physician that complications from the drug are furthering endangering the life of the participant.

Several terminally ill persons who wish to be subjects in Phase III clinical trials bring suit in federal district court against the FDA Commissioner challenging the constitutionality of the FDA regulation. They are joined in their suit by the Alliance for Better Access to Developmental Drugs, a non-profit organization that seeks increased access to experimental drugs on behalf of doctors and patients in need of such drugs. Members of the association include terminally ill patients and their doctors, as well as individuals who are philosophically opposed to what they believe is FDA policy—to artificially prolong the testing process for drugs that treat life-threatening diseases when their safety and effectiveness is really irrelevant, as the alternative is certain death.

Of the terminally ill patients bringing the suit, two of them (both gay males) are suffering from AIDS related lymphoma, a disease in which malignant (cancer) cells form in the lymph system of AIDS patients. They each applied for CTECs but the FDA denied their requests. They learned that during the Bush administration no person has ever received a CTEC for an AIDS related drug, and in fact, clinical trials for drugs treating serious life-threatening complications from AIDS had virtually come to a standstill since 2003.

Three of the remaining individuals suffer from Sickle-Cell anemia, which is a disease prevalent among the African-American Community, although it is found in small numbers in persons of Mediterranean and Middle-Eastern heritage. This genetic disease causes red blood cells to “sickle” and lose the capacity to carry hemoglobin throughout the body. As a result, tissues and organs become damaged, patients suffer chronic pain, and often go blind. A website describes other side-effects as follows: “An additional and less recognized problem is that sickle cell patients live under considerable psychosocial stress. Not only do they experience stresses common to other painful chronic illnesses, but they must also cope with the unpredictable nature of their illness. The recurrent and unpredictable nature of the disease can adversely affect both school and work attendance
and has the potential of reducing the patient’s sense of self-esteem.” The FDA has a stage III clinical trial ongoing, but none of the three plaintiffs (all African Americans) who applied for CTECs were granted permission to join in. In fact, only 10% of those in the clinical trial are of African American descent.

None of the remaining patients applied for CTECs, claiming that the process is a farce and will take up too much time. They go directly to court.

1. The FDA moves to dismiss all the Plaintiffs’ claims on Article III grounds. Address the merits of the motion as it pertains to each plaintiff.
2. Assume that the motions are denied and the case continues. Two of the patients die before trial. The FDA moves to dismiss their claims on Article III grounds. Address the merits of the motion.
3. Address the merits of the constitutional claim(s), including the constitutional basis for the claim.
4. A member of a clinical trial occurring in Boston on a new colon cancer drug has recently been reassigned to a new job in San Francisco. The FDA will not allow the participant to leave the trial, and insists that he continue the protocol in San Francisco under the auspices of the FDA office there. The FDA says that if participants randomly leave the trial, results will be unreliable, and new participants cannot be substituted once a trial has passed the initial phase. This participant sues the FDA in federal court. Address the merits of this constitutional claim(s).