This examination is divided into three parts. The Exam is worth a total of 75 points. The remaining 25 points come from the two quizzes. The first part of the exam is worth 40 point 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 MSL ID # NUMBER ON THE TOP OF EACH PAGE OF PART I OF THIS EXAM.**

Part II is one Essay Question. The answer 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.

Part II is comprised of 5 multiple choice questions, each worth one point. Please circle the correct answer in the exam package.

**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.**
I. Short/Directed Answers (40 pts. Total)

A. New Jersey wants to construct a liquefied natural gas terminal on the banks of the Delaware River, which is estimated to generate enough fuel to provide electricity for all the homes in three states, and $1 billion in revenues for New Jersey. Sounds like a no-brainer, except that in order to build the LNG terminal, a pier that juts several hundred feet into the Delaware River must be constructed, and the state of Delaware, which opposes the terminal on safety and security grounds, claims it owns that part of the River under a 1682 land grant from the Duke of York. Delaware files suit in the Supreme Court against the State of New Jersey, claiming that the latter’s proposed LNG terminal trespasses on Delaware’s property and interferes with its riparian rights.

1. (1 pt) New Jersey moves to dismiss the case on the ground that the Supreme Court has no jurisdiction over the case. Should the Court allow or deny the Motion and why?

2. (1 pt) New Jersey also moves to dismiss the case on the grounds that the suit violates the 11th Amendment. Should the court allow or deny the Motion, and why?
B. Penny Prisoner was tried and convicted in state court of State A for assault and battery on her husband, who she claimed had been battering and abusing her mentally and physically for years. She was sentenced in August to 18 months in state prison. Penny has just learned that her teen aged daughter, Dawn, has been acting up—skipping school, dating boys way older than she. Dawn never behaved like this when Penny was at home. According to statutes and regulations of State A, prisoners are eligible to go to half-way houses (where inmates are released during the day and must return to the facility only to sleep) when 90% of the sentence has been served, or when 6 months remains to be served, whichever comes first. In Penny’s case, she would be eligible to go to a half way house in 8 months, but she is afraid by that time, Dawn may have slipped too far to be saved.

Penny learns that State A’s Bureau of Prisons (BOP) has a regulation that permits early release to a half-way house when the prisoner proves “exceptional circumstances” exist warranting the privilege. As applied by the BOP through its Commissioner, gainful full-time employment will generally constitute “exceptional circumstances” but family issues do not. As a result, virtually all those prisoners who are awarded early designation to a half-way house are men who claim they are supporting families and need to return to work to keep their families from going on government support.

3. (1 pt) Penny files suit in federal court alleging State A’s early designation policy violates the Equal Protection Clause of the United States Constitution. (a) In order to avoid dismissal under the Eleventh Amendment, who must Penny sue and (b) what relief must she request?
4. (2 pts) Assume the Court proceeds to adjudicate the case on the merits. What level of scrutiny will the most likely apply, why, who has the burden of proof and what does that party have to prove to win the case?

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C. The Governor and Legislature of Massachusetts wish to attract more industrial business to the Merrimack Valley, and away from southern New Hampshire, where land and the cost of living are cheaper than in Mass. So, the Massachusetts Legislature passed, and the Governor signed into law, a statute that would grant tax credits to any corporation incorporated under the laws of Massachusetts that locates or relocates to or expands an existing facility in the Merrimack Valley (as defined in the statute), which location, relocation or expansion will increase the corporation's net number of employees in the Valley by more than 300 persons. A group of taxpayers, concerned that the proposal would decrease overall tax revenues and draw businesses to the Valley and away from other areas of the Commonwealth that are also suffering financial setbacks, brought suit in federal court against the Massachusetts Tax Commissioner, challenging the statute on the grounds it violates the dormant commerce clause.

5. (1 pt) The Tax Commissioner moves to dismiss the case on the grounds that the plaintiffs have no standing. How should the court rule and why?

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D. In order to deal with the extraordinary federal deficit, Congress recently passed amendments to the Federal Deficit Reduction Act (FDRA). Among the provisions of the amendments is the creation of the National Commission on Fiscal Responsibility and Reform, which is charged with studying the overall problem and coming up with recommendations for the President on how to reduce the deficit, while maintaining long and short term fiscal stability and reducing unemployment at the same time. According to the legislation, the Commission shall be comprised of seven members, no more than 4 from any one political party. All members are to be appointed by the President, serve a term of 3 years, and are removable only for cause by the President with the advice and consent of the Senate. The Commission reports its recommendations directly to the President.

6. (3 pts) Assume a party with standing sued the Commission alleging that it violates the Constitution. (a) What is the strongest argument against its constitutionality (what constitutional provision or doctrine should the plaintiff allege is violated) and (b) What is the likely result of the case and why?
E. 7. (3 pts) Please state three categories of unprotected speech.

F. 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 the homelands of most of the terrorists who threaten the security of our country, and in general, the loyalty of these individuals to the United States cannot be presumed. Three Russian-born immigrants, all legally in the United States possessing work-study visas, 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.

8. (1 pt) If the group with standing challenges the citizenship restrictions as violations of equal protection, what level of scrutiny will the court apply and why?
G. 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 State;
(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 constitutionally protected right to obtain an abortion.

9. (2 pts) What standard will the Court will apply to evaluate Patient’s claim?

10. (1 pt) Patient lost the case in the District Court. By the time the case reached the Court of Appeals, Patient had already given birth to the baby. The state moved to dismiss the case. (a) On what ground is the state most likely to base its motion; (b) what is the most likely result and why?
H. The Federal Motor Safety Act ("Act"), enacted in 1995, imposes requirements on motor vehicle manufacturers, which Congress believed would increase automobile safety. Federal Motor Vehicle Safety Standard ("FMVSS") 216 is a federal government standard specifying minimum strength requirements for passenger compartment roofs. The purpose of the standard is to reduce deaths and injuries that result from roofs collapsing into passenger compartments during rollover accidents. The standard requires that a vehicle's roof not move more than 127 millimeters when a force equal to 1.5 times the unloaded vehicle weight is applied to the roof. It applies to all vehicles manufactured after 1996.

The federal statute also contains the following provision:

When a motor vehicle safety standard is in effect under this chapter, a State or a political subdivision of a State may prescribe or continue in effect a standard, statute, rule or law applicable to the same aspect of performance of a motor vehicle or motor vehicle equipment only if the standard is identical to the standard prescribed under this chapter.

Sammy Schultz flipped his car over on Rte. 93 after celebrating the end of his law school finals. The roof on his ’02 Speedy Wagon, which complied with FMVSS 216, caved in, putting undue pressure on his head and neck, crushing several vertebrae and leaving him a paraplegic. He and his wife brought suit in federal district court alleging that Speedy was negligent in its design and/or manufacture of the ’02 Wagon under applicable state law. Speedy moves to dismiss.

11. (1 pt) What constitutional doctrine provides the strongest support for Speedy’s Motion to Dismiss?
12. (5 pts) Summarize Speedy’s arguments in support of its Motion under the doctrine set forth in the answer to the previous question, and evaluate the success of the Motion under all possible approaches to this doctrine. (In other words, discuss the issue, applying the facts to the law.)

1. Recent statistics collected by the National Safety Council demonstrate that as much as 28% of all serious motor vehicle accidents is caused by a driver’s using a cell phone or electronic communication device while operating a motor vehicle. Some states have banned driving while texting or talking on anything but a hands free phone, but many have not acted at all. Obama, by Executive Order has already banned all cell phone use by federal employees operating government motor vehicles. The Secretary of Transportation is urging members of the House and Senate Transportation Committees to act on the crisis and many in Congress see this as a very serious nationwide issue.
13. (3.5 pts) If Congress decides to draft legislation prohibiting the use of cell phones by any person operating a motor vehicle licensed by state or federal authorities, and the statute’s Constitutionality is challenged on the basis that it exceeds Congress’ power to legislate: (a) where should Congress claim its power is derived; (b) what categories of activities has the Supreme Court held is subject to regulation by Congress pursuant to this power?

14. (1 pt) Assume the federal statute that is ultimately passed provides that no state may permit texting and talking on the phone while operating a motor vehicle on a public way. State feels that the statute infringes on its sovereignty. What constitutional provision or doctrine provides the best support for the State’s argument?

J. Under Colorado law, unaffiliated candidates for partisan public offices in general elections must be nominated by a petition signed by eligible electors. The petition must be filed no later than 140 days before the general election. No person, however, may be nominated by petition as an unaffiliated candidate “unless the person was registered as ... unaffiliated [not registered to vote as a member of any political party] ... for at least twelve months prior to the last date the petition may be filed.” Consequently, a person must have registered as unaffiliated at least one year and 140 days before the upcoming general election, i.e., sixteen-and-three-fifths months.

Connie Candidate was a member of the Democratic Party until March, 2010, when she became so disillusioned with Nancy Pelosi and the Democrats’ approach to National Health Care that she reregistered as unaffiliated. She obtained the requisite signatures to run for State Treasurer in the November 2010 general election, but the Secretary of State refused to place her name on the ballot because she did not meet the requirement that she be unaffiliated for 12 months plus 140 days.
15. (2 pts) Connie filed suit in Federal Court against the Secretary of State claiming the statute violates her rights and the rights of voters to vote for the candidate of their choice. What level of scrutiny will the court use to evaluate Connie’s claim and why?

K. Johnny Walker is 21 years old, has a high school education, but has been unemployed since January, 2008. He claims he is disabled on account of a chronic history of alcohol abuse, hospitalizations, detoxifications and relapses, which have plagued him since early teens. He is a severe alcoholic, and drinks constantly. This problem makes it virtually impossible for him to hold gainful employment. The chronic drinking has taken its toll on his body and minds, so even if he could refrain from imbibing, he has difficulty concentrating.

In 1996, Congress amended the Social Security Act to exclude from the definition of compensable disability (eligible for SSI benefits) any condition, a contributing factor of which is alcoholism or drug addiction.

The Congressional record reveals that debate on this issue was spurred on by Republicans as part of their “Contract with America,” because they do not believe that America’s limited resources should be wasted on people whose disabilities are caused by their own voluntary conduct, rather than by disease or accident.
Johnny’s lawyer wishes to challenge the constitutionality of the amendment as a violation of equal protection. After all, alcoholism is acknowledged by the medical community as a disease, no different from the many diseases which are compensable disabilities. And, many disabilities are the result of voluntary conduct—Johnny’s friend Jim dove head first into the shallow end of a pool and ended up a paraplegic. Johnny cannot understand why Jim collects SSI and he cannot.

16. (2 pts) What level of scrutiny is the court likely to apply to Johnny claim and how will it respond to Johnny’s arguments as articulated above?

L. In 2009, Congress passed the Comprehensive DNA Database Act. According to the provisions of the statute, any person arrested for and charged with a felony, whether under state or federal law, must submit a blood sample which shall be submitted to the appropriate governmental body for DNA analysis. For persons charged in state court, the results of the analysis must be entered in a DNA database, maintained by the chief law enforcement officer (Attorney General, as a rule) of each state, as designated by the chief executive officer (Governor). For those charged under federal law, the database will be maintained by the Justice Department, under the auspices of the US Attorney General. According to the federal law, each state must maintain a database of the results of the tests performed on individuals charged under its laws. The statute sets forth the information that must be obtained through DNA analysis, as well as the manner in which it must be maintained (what electronic form), so that information belonging to the federal government and any state are accessible by the chief law enforcement officer of all the other states and federal government.
17. (2 pts) State already tests and maintains a state-wide database, though not in accordance with the federal law, and does not wish to spend money to comply with the federal requirements, so it brings suit in federal district court against the United States. What constitutional provision or doctrine provides the strongest support for its provision, who is likely to win and why?

M. Surprisingly, through recent hearings, Congress discovered that many states do not require that public schools have kindergarten programs for children under 6 years old, or if such programs are available, attendance at the programs are voluntary not mandatory. Chris Congressperson, a proponent of early childhood education and a member of the House Committee on Education desires that states provide a structured educational experience for children under the age of 6. However, her chief legislative aide is concerned that the Constitution would not permit Congress to directly order the states to have mandatory kindergarten programs.

Chris ultimately decides that she will propose legislation that provides that any state that fails to require cities, towns or school districts to establish and maintain mandatory public kindergarten programs for children from 4-6 years old will lose 3% of federal matching funds that states receive for construction of elementary and secondary schools.

State A does not wish to establish mandatory kindergarten, but does not want to lose federal funds either, so it brings suit against the Secretary of Education (who is charged with enforcing the law) claiming that the federal law violates the Constitution.
18. (2 pts) How will the court (what factors will it use) evaluate the constitutionality of the federal law and what is the most likely result?

N. New York state law gives telecommunications (phone and internet) 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 in that state; through, across or under any of the waters within the limits of this state, and they may erect, construct and maintain any 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 companies install “central feeder boxes” on communication poles (formerly known as telephone poles) located on public ways, and string 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 to each other. Most streets are separated from buildings situation on private property only by sidewalks, which are not suitable for the installation of such poles, as that would unduly restrict the flow of pedestrian traffic. Therefore, in order to adequately service the potentially thousands of customers per city block, the state law authorizes companies to attach the “central feeder box” to the rear of a centrally located building on the block, 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 with 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 one day 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 attached to his property and running to other buildings on the block looks hideous.

19. (1 pt) Larry wants money 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?

O. Numerous members of Congress are concerned by what appears to be a crisis in the state criminal justice system across the Country. The economic downturn has cut state budgets for public defenders, and consequently the resources of already overburdened public counsel are strained even thinner. Some Congresspersons see the situation as headed for a collision course with the fundamental right to an adequate defense in state court criminal cases, as guaranteed by the United States Constitution. These federal legislators are preparing legislation which requires all states to provide adequate, competent and conflict free counsel in any criminal case in state court in which incarceration is a possible sentence. In order to create an incentive for states to comply, the statute will also contain a provision creating a civil right of action, for damages, that can be brought against a state, or any state
department or agency, including the court system, in federal court, for violations of the federal statute.

One of the legislative aides to a Congresswoman from New York who wants to sponsor the legislation is concerned about the role of the Eleventh Amendment in enforcement of the federal law.

20. (2.5 pts) Where should Congress claim it obtained the power to enact such legislation, what factors, standards or tests will the court use to determine whether the law is a proper exercise of that power, and how is the court likely to rule if there is a challenge based upon the Eleventh Amendment?

P. Tony’s Tavern is a combination restaurant and bar located in City, which is located in State. Tony’s clientele includes persons from all walks of life. It is situated in City’s downtown section, close to many hospitals and doctors’ offices, so it attracts medical professionals during the week and blue collar workers who live nearby on weekends. Tony’s does a very good business because of its location, and because it serves light meals along with the alcohol.
According to State’s law, liquor and common victualer’s licenses are granted for one year periods, and are automatically renewed on the establishment’s yearly anniversary unless there is good cause for failure to renew. Among those circumstances that constitute good cause are: violation of any criminal law on the premises, violation of any rules or regulations of the State Alcoholic Beverages Commission concerning conduct of the owner, servers or patrons on the premises, or failure to execute the necessary renewal papers. The licensing statute also allows the local licensing board to immediately suspend a license where an emergency situation exists that brings into immediate question the fitness of the license holder to operate an establishment where food and alcoholic beverages are sold.

One night, a fight broke out in Tony’s Tavern. Two doctors got into it over whether one was responsible for the untimely death of a patient. The fight turned into a no-holds-barred brawl, Tony and his staff were unable to control the melee, and the local police had to be called. Several patrons were injured (luckily there were lots of medical personnel around, but several customers had to go to the emergency room). Both doctors were arrested. The following morning, Tony received notice that the Tavern was being closed pursuant to the local board’s emergency powers, until further notice.

21. (2 pts) Tony brings suit against the local licensing board alleging violations of his constitutional rights. What is the strongest constitutional argument that Tony can advance, how will the court evaluate his claim, and what is the likely result?
Essay Question (20 pts)

You are all aware of the need for healthy transplant organs. Patients in need of a transplant so greatly outnumber donor organs that each year, many people die simply because they do not receive a transplant in time. Legislators in the state of Concern (which recently lost a gubernatorial candidate because a lung donor could not be found timely) decided to do something about it. The legislature enacted the organ Donor Preference Law, which contains two important provisions.

First, the law makes it easier for a resident of Concern who is a potential donor ("donor"), while still living, to agree to donate organs. If a prospective donor executes an Affidavit of Intent to Donate ("Affidavit") and files it with the newly created state Office of Organ Donation ("OOD") which administers the law, that request is binding on the donor’s heirs and the state. This means neither the heirs, the donor’s estate nor the state can challenge the donation on any ground, except that the request was withdrawn by the donor, by filing an affidavit of withdrawal prior to death with the OOD. OOD maintains a bank of potential qualified recipients along with relevant medical and non-medical data.

Second, the law provides that the organs of: (1) any individual who is a resident of the state of Concern at time of death or (2) any person who dies in the state of Concern, which are donated either by the donor or the donor’s next of kin, must first be made available to United States Citizens who are
also residents of the state of Concern, and have been residents of concern for no fewer than 6 continuous months immediately preceding the transplant. For the purpose of this law, persons incarcerated in the State of Concern are not residents under the statute.

The statute provides the procedure to be followed in the event of the death (1) of any resident of the state of Concern at time of death or (2) of any person whose death occurs in the state of Concern:

Any hospital, medical facility, medical examiner or funeral home, wherever located throughout the United States, which possesses the body a deceased person who is (a) a resident of the state of Concern at time of death or (b) who has died in the state of Concern, must notify OOD to determine if that person has filed an Affidavit with the office. If such Affidavit is on file, then the hospital, medical facility, medical examiner or funeral home shall follow the directions of the OOD, or, if located outside the state of Concern, shall arrange for the transportation of the deceased’s body to a facility in the state of Concern. If no Affidavit is on file, then any hospital, medical facility, medical examiner or funeral home which possesses the body a deceased person who is (a) a resident of the state of Concern or (b) who has died in the state of Concern, shall inquire of the next of kin whether they wish to donate any of the deceased’s organs. If the next of kin agrees, the OOD is again notified. OOD then checks its file to determine whether a match exists within the qualified US citizens/state residents. If no match is found or the organ is not needed by any of Concern’s residents, then the OOD shall notify an international organ donor network.

Because all organ donations where the donor (a) is a resident of the state of Concern or (b) has died in the state of Concern must first go through OOD, the statute effectively wipes out all private organ donation or transfer agreements, (which are lawful in most every state), if a qualified Concern resident is a match for the organ.

Sorry Palin, a resident of Concern, died suddenly in a car crash in that state, and her family offered her organs for donation. Pursuant to Concern’s Organ Donor Preference Law, they were first offered to Citizens of the United States who are also residents of Concern. None of Palin’s organs, except her kidneys, could be used by Concern residents.
The OOD first found a match with Fell Oney, who was awaiting a kidney transplant. Problem was, he was also serving 5-10 in the maximum security prison for mugging old ladies on their way home from church, and was thus ineligible for the transplant.

The OOD then found a match in Concern with Tony Transplant, a who received the kidneys.

Che Dickney, a prominent resident of Washington, D.C. suffers from Saddamitis, which has destroyed his kidneys (some may say it has also affected his brain). He needs a transplant badly. He has been on the donor list for many, many months without a match. Dickney’s doctors think Palin’s kidneys would have been a perfect match for Che, but alas, he lost out to a resident of the State of Concern, who under the Donor Preference Law, had first crack at the organs. Palin’s kidneys were snapped up by a Helton Cheston, a resident of the State of Concern and a United States’ Citizen.

Che’s family is outraged. His wife has contacted a lawyer who is researching the case.

Fell Oney isn’t too happy either, because he may die before his sentence is up.

Both wish to file suits challenging the constitutionality of the Concern state law. What Constitutional issues are raised by the above facts?
III. Multiple Choice (1 pt. each)

Question 1. Following an investigation into fraud and incompetence in the funeral industry, State A recently passed the Consumer Protection in Funeral Services Act. The statute requires that funeral homes, as well as any entity providing related mortuary services in State A must be owned and operated by an individual licensed by State A. Licensing requirements include: (a) the individual must be a resident of State A; and (b) the individual must have completed no fewer than 55 hours of training in the mortuary business at a college or professional school accredited by State A. The statute went into effect on December 1, 2010.

Brad Burial, a resident of State B, a state that boarders State A, owns several funeral homes in State B. In September 2010, he entered into a contract to purchase a funeral home located in State A. When Brad learned about State A’s new law, he notified the seller that he would be unable to go through with the purchase.

Brad decides to challenge the constitutionality of the law, by suing the appropriate party in federal court.

Which of the following is Brad’s strongest argument that the statute is unconstitutional?

(A) State A’s statute constitutes a taking of his property—the funeral home in State A he contracted to purchase—without just compensation.

(B) State A’s statute violates the equal protection clause because it singles out a particular kind of business for regulation when other businesses are also subject to fraud.

(C) State A’s statute violates the Privileges and Immunities Clause of the Fourteenth Amendment.

(D) State A’s violates the Privileges and Immunities Clause of Article IV.
**Question 2.** One section of the "No Child Left Behind" law makes federal funds available to states which have enacted an approved uniform testing requirement for public school students similar to Massachusetts' MCAS test. The section provides: (1) any state which has in force, by January 1, 2008, a standardized test approved by the United States Secretary of Education, to evaluate the achievement of all students enrolled in public schools will receive federal education funds to assist in the administration of the test; and (2) all disagreements between the United States and a state over the funds shall be settled by the state's filing of a suit in the federal district court in the affected state. The disagreement resolution provision further states: "The judgment of the federal court shall be transmitted to the Secretary of Education, whose office dispenses such funds. If the Secretary is satisfied that the judgment is fair and lawful, the Secretary shall execute the judgment according to its terms."

**Question 2** The disagreement resolution provision is:

(A) Constitutional, because disagreements over federal education funds necessarily involve federal questions within the judicial power of the United States.

(B) Constitutional, because the spending of federal monies necessarily includes the authority to provide for the effective settlement of disputes involving them.

(C) Unconstitutional, because it violates Article III of the Constitution.

(D) Unconstitutional, because it vests authority in the federal court to determine a matter prohibited to it by the Eleventh Amendment.
Question 3. In order to raise money to supplement a sagging public transportation budget, County’s Regional Transportation Authority (a public entity) decided to sell advertising space on its benches located at various bus stops throughout the numerous routes the Authority maintains. However, because it did not wish to become embroiled in political controversies or perceived as taking a stand on controversial issues or candidates, the Authority’s regulation governing the sale of space provides that only ads for commercial establishments that do business in County can purchase space. The Authority decided that, given the limited number of benches available for advertising, the smartest allocation of space would be to allow businesses that would benefit from the exposure to travelers in the geographic area served by the businesses to buy the space.

Discounts Are Us, a nation-wide chain of discount clothing stores, that does not now do business in County, but is investigating whether that market would support its presence, wants to purchase space on several benches but is told it cannot. It brings suit alleging the County’s regulation violates the business’s First Amendment rights.

Which of the following is the most likely result of the suit:

(A) The regulation will be held unconstitutional because it is not narrowly tailored to achieve a compelling governmental interest.

(B) The regulation will be held unconstitutional because it impermissibly discriminates against political speech.

(C) The regulation will be held constitutional because businesses have no First Amendment rights.

(D) The regulation will be held constitutional because it is reasonable and viewpoint neutral.
Question 4. The recent explosion of microbreweries throughout the United States has caused some regulatory problems. In the U.S, the "Brewers Association" use a fixed maximum limit of 15,000 US "beer barrels" a year to define microbrewery. Since the quantities of beer produced by many of these breweries is under the threshold amount many states set for facilities requiring state inspections, the beer produced by microbreweries may pose a health risk to consumers. In order to maintain quality control over beer brewed by the recent explosion of these smaller more specialized breweries, State A enacted legislation that prohibits the sale of beer, wholesale or retail, in State that is brewed by any brewery producing fewer than 15,000 US beer barrels per year.

Bab’s Brewery, a small brewery located in State B that produces 10,000 US "beer barrels" per year wishes to sell its beer in State A. State B’s alcohol production laws require even small breweries such as Bab’s to be regularly inspected for compliance with health and safety laws, so Bab’s thinks that State A’s statute is unnecessary and unfair. Bab’s brings suit against the proper party in federal court requesting that it issue an injunction against enforcement of the law, alleging the statute violates the dormant commerce clause.

What is the most likely result of the suit?

(A) The statute will be held unconstitutional because the burdens of commerce outweigh the benefits to the state.

(B) The statute will be held unconstitutional because there are less restrictive alternatives to achieve the compelling interest of health and safety than the outright ban on sale of beer from microbreweries.

(C) The statute will be upheld because the 21st Amendment gives states the power to regulate the sale of alcohol within its borders.

(D) The statute will be upheld because the Tenth Amendment gives states the right to legislate for the health and safety of its citizens.
Question 5. When President Obama was the Senator from Illinois, he resided in a townhouse in Washington DC with Michelle and his family. He leased the townhouse from Larry Landlord. The Obamas decided to rent rather than purchase the property because they already owned a home in a Chicago neighborhood and were somewhat strapped for cash to use as the down payment. Shortly after Obama was sworn in, Landlord sued the President for damages, alleging that when Obama was elected President, and moved to the White House, he left the property in shambles. The dishwasher and wine bar didn’t work, the wood floors were destroyed, and there were kitchen cabinet doors coming off their hinges. The Obamas did not have to include a security deposit, so Landlord is stuck with approximately $5,000 in repair bills.

Obama’s lawyer moves to dismiss the lawsuit. On the Motion, the court will most likely:

(A) Rule for Obama because the doctrine of Executive Immunity prevents private parties from suing the President for damages while the President is in office.

(B) Refuse to dismiss the case, but grant a stay until Obama leaves office.

(C) Deny the motion because the conduct on which the lawsuit is based occurred before Obama took office.

(D) Deny the motion because the doctrine of Executive Immunity does not apply to contract cases.