FINAL EXAMINATION
CONSTITUTIONAL LAW, FALL 2013
PROF. RUDNICK
DECEMBER 17, 2013

This examination is divided into three 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 55 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 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 use a #2 pencil and darken the correct circle on the scantrons.

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.
Section One-Directed Short Answer- (55 pts total)

I. In 1974, Congress passed the National Manufactured Housing Construction and Safety Standards Act. The statute covers so-called “manufactured housing,” which is more often known as mobile homes. The findings acknowledge that this type of residence (also referred to as a “unit”) plays an important part in the affordable housing industry, but notes also that these homes are particularly susceptible to damage or destruction by forces that might not harm more traditional residential building such as water or wind. The statute empowers the Secretary of Housing and Urban Development (HUD) to promulgate rules and regulations governing safety and durability in the manufacture of manufactured housing and its components. For example, regulations govern room dimensions, fire-safety requirements, and thermal protection in the unit’s plumbing, heating, cooling and electrical systems. According to the regulations, the mobile homes must be constructed of any metal or composite that can withstand a certain amount of pressure per square inch, and must be equipped with windows that can withstand winds up to gusts of certain miles per hour. At least one window must be large enough to accommodate a person (exact dimensions are specified in the regulations), and be easily removed so an inhabitant can gain access to the outdoors if the only entrance is blocked.

The Act also contains the following provisions:

a) Whenever a Federal manufactured home construction and safety standard established under this chapter is in effect, no State or political subdivision of a State shall have any authority either to establish, or to continue in effect, with respect to any manufactured home covered, any standard regarding the construction or safety applicable to the same aspect of performance of such manufactured home which is not identical to the Federal manufactured home construction and safety standard.

b) No State or locality may establish or enforce any rule or regulation or take any action that stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.

c) Compliance with any Federal manufactured home construction or safety standard...does not exempt any person from any liability under common law.
A. Discuss which, if any of the following state or local ordinances or actions are likely to be preempted by the federal law and why or why not. In discussing your answers, as to each, if any, part you say is preempted, please state the type of preemption that precludes operation of the state or local law or action.

1. (2 pts) A local building ordinance that requires all residences located within a particular zone must withstand winds of up to 110 miles per hour, while under the HUD regulations mobile homes need only withstand winds of up to 97–99 miles per hour.

2. (2 pts) A local city zoning ordinance that restricts placement of mobile homes to a ten acre piece of land in an undesirable area on the outskirts of town.

3. (5 pts) An extremely large man was inside his mobile home one day, when someone started a fire outside the unit. Seeing smoke, and believing the fire was inside, he tried to exit the residence, but was unable to get out the front door, because it was blocked by a truck. He removed the “man window” as described in the facts above but could not fit through the opening because of his size. He died of smoke inhalation. His estate sued against the mobile home manufacturer in state court, under state tort and products liability law, alleging negligence and defective design. The window complied with the federal dimension specifications. The manufacturer moves to dismiss on the grounds preemption.
B. Assume that City A (not one of the governmental entities involved in the preemption questions above) decides to create a neighborhood of affordable housing. Rather than building conventional multi-unit dwellings, the Housing Authority decides to designate a piece of land as a trailer park and to purchase 100 mobile homes all manufactured in accordance with federal standards. City’s Housing Authority has so many applications for these new and up-to-date units, that it cannot handle the swell of applications. So it enacts a by-law requiring that all applicants be residents of City for a minimum of 365 consecutive days before being eligible to lease one of the mobile homes. A family of four ("Family") who recently moved into City after living in another state meets all the qualifications for city government supported housing except for the durational residency requirement. Family sues City and its Housing Authority in federal court claiming that the requirement violates the US Constitution.

3. (2 pts) What is the strongest Constitutional argument that family can make, and what level of scrutiny will the court apply?
C. Assume that City B (not one of the not one of the governmental entities involved in the preemption questions above) decides that the federal standards are so comprehensive and up-to-date, that it adopts them verbatim. However, it also enacts a by-law that restricts the granting of a permit to place of any mobile home within the city limits to ones manufactured within the past ten years. City says that such mobile homes are more likely to be manufactured according to the most recent regulations, which underwent significant revision in 2003. Harry Homeowner wishes to locate his eleven-year-old mobile home in City B. Harry can prove that his home meets all current federal (and therefore city) regulations. City B denied the permit to locate Harry’s home in the City limits. Harry can locate his mobile home in neighboring cities that do not have the 10-year limit, but he does wants to reside in City B. Harry brings suit in federal court against City B alleging the 10-year-old restriction violates Equal Protection and constitutes a taking under the Fourteenth Amendment.

4. (3 pts) On the Equal Protection claim, what level of scrutiny will the court apply, who has the burden of proof and what will that party have to prove to succeed in the suit?

5. (3 pts) On the takings claim, identify the three kinds of per se takings.

6. (3 pts) Is City B’s ordinance a per se taking? If you answer yes, identify which of the three categories above it falls into. If not, identify what test the court will use to determine if it is a non per se taking.
II. The Arkansas River rises in Colorado and flows through Kansas and several other States before emptying into the Mississippi River. Many years ago, Congress approved the Arkansas River Compact (Compact), which Colorado and Kansas negotiated, and which provided that, *inter alia*, future development of the river basin could not materially deplete the usable quantity or availability to other users of the river's waters. The Compact provided that the signatories would "[e]quitably divide and apportion" those waters and the benefits arising from construction and operation of the federal project known as the "John Martin Reservoir."

Kansas filed a complaint in the United States Supreme Court alleging that Colorado violated the Compact by secretly pumping ground water into the state to supply irrigation for farms located close to the Kansas border. Kansas sought money damages calculated by the pecuniary loss suffered to Kansas residents and property from the diversion of the ground water into Colorado in violation of the Compact.

A. The State of Colorado files a Motion to Dismiss on two grounds.

7. (1 pt) First, Colorado claimed that the *Supreme Court* has no jurisdiction over the case. How should the Supreme Court rule on the Motion and why?

8. (1 pt) Second, Colorado claims that no *federal court* has jurisdiction over Kansas' claim because of the Eleventh Amendment. How should the Court rule on the Motion and why?
III. Title IX of the Education Amendments Act of 1972 ("Title IX") was enacted in order to equalize access to and participation in school sponsored sports activities by both male and female students. Prior to enacting this legislation, Congress heard extensive evidence that public and private colleges and universities had long refused to make available to female students any meaningful sports participation or access to recreational facilities. Although literally millions of state dollars were poured into all sorts men’s sports, virtually nothing but tennis, softball, and volleyball were historically open to women, and then, only on an intramural level. A portion of Title IX requires state universities and four-year state colleges to increase significantly the funding and availability of competitive varsity intercollegiate women’s sports. A provision of Title IX specifically states that any state college or university that violates that statute will be liable in damages in any suit brought in federal court by any party or parties aggrieved by the violation.

The flagship campus of University of State ("State U") was slow in complying with Title IX. Although groups of female students had for many years been clamoring for a women’s rowing team that would be proficient enough to compete nationally and internationally, both State U’s President and Director of Athletics repeatedly refused to establish one, despite the fact that State U’s men’s rowing team received significant support. In 2008, a group of women students at State U formed a club which they financed on their own, and began competing in intercollegiate rowing events.

In 2009, they formed a class action and sued State U in federal court requesting an order that it commit funds and other resources to forming a competitive rowing program, and for damages amounting to the out-of-pocket expenses they spent in forming and conducting their own association.

9. (4 pts) State moves to dismiss alleging the Eleventh Amendment bars the suit. Plaintiffs claim that the Eleventh Amendment does not prevent the suit. Does the Eleventh Amendment apply? Why or Why not? Where should plaintiffs’ claim that Congress derives its power to enact the statute, how should the court rule on the Motion and why (in other words, is the statute a valid exercise of whatever power you claim is the basis. Please set forth all factors or tests the court will use in evaluating the constitutionality of Title IX).
10. (2 pts) Assume that the above motion is denied, but while the case is pending in the trial court, the named party in the class action graduates. State again moves to dismiss the case. What is the most likely ground that State will assert as a basis to dismiss the case this time, how should the Court rule and why?

IV. 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 be the nominee of 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 appears on the statewide election primary ballot. Those seeking to represent other 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 this law because of the growth in the number of minor parties. She claimed that verification of thousands of signatures for numerous minor parties is very time consuming, some of the parties are not genuine, and signatures must be verified in order to prevent fraud. The minor parties assert 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 Reform 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.
V. In the early 1990s, the United States and Canada entered into a treaty concerning tuna fishing off the Pacific Coast. The treaty allows only a limited number of boats registered in one country to fish in the other’s waters, and sets limits for the number of fish each licensed vessel can catch in a given month. The treaty is set to expire at the end of December, 2013. For many years, the countries and its commercial fishermen worked amicably, but over the past year or so, American fishermen have reported more and more unauthorized Canadian boats venturing into American waters catching tuna. The United States Department of Marine Fisheries, who oversees the treaty has reported that a decrease in the number of tuna in Canadian waters has forced Canadian fishermen south.

After lengthy and unsuccessful negotiations to renew the treaty on terms more favorable to the Americans (which would please America’s tuna fishermen), the President issued an executive order extending the treaty on its current terms for another year, while negotiations continue.

12. (1 pt.) A group of American Pacific tuna fishermen brought suit against the President in federal court alleging that extending the treaty is beyond his executive power. The President moves to dismiss the case, alleging that the case is non-justiciable. What is the strongest basis for the President’s motion?

13. (3 pts) Identify three factors the Court will apply in determining whether the motion should be granted or denied under the basis identified above.
VI. On a warm summer day in August, a group of young men and women were riding around in a flatbed truck through the Castro District in San Francisco. The Castro District is known as a predominantly gay neighborhood. A group of gay males ("subjects"), who had just gotten off work and were planning to eat breakfast at a neighborhood restaurant heard male and female voices yelling anti-gay epithets in a "hateful" sounding tone as they walked from their place of employment into the restaurant. One of the subjects saw the flat bed truck pull up and park next to the sidewalk across the street from the restaurant. He saw four individuals ("suspects"), two males and two females, exit the truck and sit on the curb near the restaurant. One of the women was wearing a leather dog collar, army boots and a ring through her nose. As the subjects approached the restaurant, the suspects continued to shout anti-gay epithets, threatening to "beat up" the gay men. However, none of the suspects ever left their seats on the curb.

All four suspects were charged under the following "hate crimes" statute.

(a) No person, whether or not acting under color of law, shall by force or threat of force, willfully injure, intimidate, interfere with, oppress, or threaten any other person in the free exercise or enjoyment of any right or privilege secured to him or her by the Constitution or laws of this state or by the Constitution or laws of the United States in whole or in part because of one or more of the actual or perceived characteristics of the victim listed below.

(b) "Hate crime" means a criminal act committed, in whole or in part, because of one or more of the following actual or perceived characteristics of the victim:
   (1) Disability.
   (2) Gender.
   (3) Nationality.
   (4) Race or ethnicity.
   (5) Religion.
   (6) Sexual orientation.
   (7) Association with a person or group with one or more of these actual or perceived characteristics.
14. (2 pts) If the suspects defend the criminal charges on the grounds that they were merely engaging in First Amendment protected expression, what is the State's strongest legal argument that the speech was not protected, and what will the state have to prove in order to succeed?

VII. A federal statute makes it a crime to set fire to any owner-occupied private dwelling by means of an explosive or incendiary device. Andy Arsonist set fire to his dwelling in order to prevent his wife (with whom he was engaged in a bitter divorce) from getting it as part of the divorce decree. Assume Andy made no claim on the insurance and had no mortgage on the property. Andy is charged with violating the above statute. He defends on the grounds that Congress had no power to enact this statute as it is applied to him, and moves to dismiss the prosecution.

15. (1 pt) Where should the government contend Congress obtained its power to pass the statute?

16. (2 pts) What is the likely result of Andy's Motion to Dismiss and why?
VIII. Following hearings at which testimony was taken supporting the contention that teenagers are consuming massive quantities of so-called "energy drinks," which contain large amounts of caffeine and other stimulants, Massachusetts enacted a law that requires all energy drinks, as that commodity is defined by the statute, to contain a label that reflects the percentage of caffeine contained in the beverage. The Massachusetts legislature heard evidence that one teenager consumed so much she went into cardiac arrest and died. Thus, the containers must also bear a warning, conspicuously placed and readable, stating that excessive consumption of the contents could have long or short term health effects on the consumer, including damage to the heart, kidney and other organs. The Director of the Department of Health is charged with enforcing the statute. Massachusetts is one of only a handful of states to enact such legislation.

Uppidy-Do, a successful energy drink manufacturer, brings suit against the Director, in federal court, requesting an injunction against enforcement of the statute, on the grounds that it violates a provision of the United States Constitution other than the First Amendment. Assume that there are no federal statutes or regulations that govern energy drinks.

17. (4 pts) What is Uppidy's strongest argument in support of its contention that the state statute is unconstitutional? What standard or test will the court use to determine whether the statute violates this provision and why? Apply the facts to the test and discuss the likely result.
IX. Long a subject of controversy and sometimes violence restrictive, abortion laws are back in the news. Texas recently enacted a law that requires physicians who perform abortions to have admitting privileges at hospitals within 30 miles of any clinic where the procedure is performed. North Dakota has banned abortions at any time after a fetal heartbeat can be detected which is at about the 6th week of pregnancy. Several states have outlawed or restricted so-called “medication abortions,” that is abortions caused by chemical reactions from pills taken orally, rather than by a medical procedure that physically separates the embryo or fetus from the uterine wall.

18. (3 pts) What standard(s) or test(s) will a court apply in determining whether any of these statutes violate a woman’s right to obtain an abortion, how does the court define the standard(s) or test(s)?

19. (3 pts) Congress passes a law that restricts receipt of federally issued food stamps to citizens of the United States. If an alien lawfully in the United States challenges the law in federal court as a violation of equal protection, what level of scrutiny will the Court apply, who has the burden and what will that party have to prove to succeed?
X. According to the provisions of the Comprehensive DNA Database Act, passed by Congress several years ago, any person arrested for and charged with a felony, whether under state or federal law, must submit to a blood sample taken by medically trained law enforcement official, which shall be sent to the appropriate governmental body (state or federal) for DNA analysis. For persons charged under state law, 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 is maintained by the Justice Department, under the auspices of the US Attorney General. According to the federal law, each state’s database of the results of the tests on each sample must include specified information obtained through DNA analysis, and must be in a particular electronic form, so that information belonging to the both the federal government and that of any state is accessible by the chief law enforcement officer of any the other states and federal government under particular circumstances. Information in the federal database contains the same information and is maintained in the same forum.

20. (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, claiming that the federal law interferes with its sovereignty. What constitutional provision or doctrine provides the strongest support for its provision, who is likely to win and why?
XI. While President, George W. Bush created the Office of Faith Based Initiatives, to allow faith based (religious) programs to receive federal funds to support programs designed to address the problems of at risk youth. Pursuant to the rules of the Executive Office, programs applied for grants given from discretionary, otherwise untargeted funds in the Executive Office’s treasury. The Freedom From Religion Foundation, a non-profit entity comprised of taxpayers devoted to the strict separation of church and state, brought suit against the director of the office, alleging the expenditure of funds from the Executive Branch for such use violated the Establishment Clause of the First Amendment. The Director moved to dismiss on the ground that the group has no standing. How should the Court rule on the motion and why?
Part Three Essay Question (20 points)

Fred Foreigner and Connie Citizen have been dating for several years. Fred came here on a student visa, to study biotechnology at MIT, which expired years ago. By the time the visa had expired, Fred was already working at a very lucrative biotech job, which he hated to give up, so he just never went back to Guatemala, his homeland or took any steps to get the visa extended. Connie and Fred decided to get married, so they went to the Town Clerk of Hometown, in the State of Disarray where they both reside, to apply for a marriage license. Disarray’s laws provide that any individual applying for a marriage license must present a photographic ID as well as proof of citizenship, or proof that the individual is legally in the country. Fred had a driver’s license, but since his visa had expired, he could not provide proof that he was legally in the country. Hometown’s Town Clerk denied Connie and Fred a marriage license. The Town Clerk said that the legislature had determined that documents reflecting citizenship or legality in the country were the only ones that Disarray should rely on as proof that the persons applying for the license are who they say they are.

Connie and Fred went directly to Larry Lawyer, an attorney who specializes in Immigration Law. While they were in the waiting room, Fred saw Andy Allen, a former college classmate who was from New Hampshire. They rekindled their relationship and began talking about the legal problems that brought them to Larry’s office. Andy introduced Fred to his son, Pascal, age 21. Andy told Fred that he was unaware that Pascal even existed until 6 months ago. Andy told Fred he was the product of a fling he had during his junior year abroad with a lovely French student in Paris.

Andy was trying to get Pascal citizenship. He was told that Pascal was ineligible for the “shortcut” available to non-marital children born of American citizen fathers outside the United States. Federal law requires that such children be acknowledged or legitimized before the child reaches the age of 18. Andy was particularly upset when he learned that non-marital children born outside the United States claiming citizenship through the citizen mother need only provide proof that the putative mother is the applicant’s mother, that she is an American citizen, and that she resided for two consecutive years at some point before the child applies for citizenship.

Andy said it was particularly critical that Pascal get American citizenship soon, because he had applied to be a police officer in the town where Andy and Pascal were living, but the town only hires American citizens for its police force.

Fred and Connie met another couple in the lawyer’s waiting room (you know lawyers, you always have to wait for them; they are almost worse than doctors). This couple had a little boy, about 6 years old. They introduced themselves as Irma and Irwin Immigrant. Both confided that they entered the country illegally, along with their son, then an infant. They said they recently tried to get their son enrolled in a comprehensive
after school program (academic, athletic and social activities) at the local public school, but were told since they could not demonstrate that they were lawfully in the country, their child could not participate in the programs. The administrator told Irma “Our after-school resources are limited and we can’t waste them on people who break the law.”

Fred and Connie met a third couple, Harry and Winnie, in the waiting room. Harry had just received news that he was going to be sent back to Lebanon, from which he had emigrated several years ago. Harry related that the Attorney General had confirmed a recommendation of the Immigration judge, that even though he was subject to deportation, the deportation would not be ordered because Harry fit into one of the hardship exceptions the federal law provides. However, the law allows one house of Congress to overrule the decision of the Attorney General by a majority vote. The House of Representatives did just that, and Harry is scheduled to be returned to Lebanon next week.

Discuss the Constitutional issues raised by the above fact patterns.
Part Four-Multiple Choice (5 points total—1 each)

1. Congress expressed interest in protecting the environment and seeking to become less reliant on foreign oil. In order to further those purposes, Congress enacted a federal statute which requires that any individual or entity that owns more than 20 cars, must maintain no fewer than two electric-powered cars in the fleet. The definition of entity in the statute expressly includes states and subdivisions of a state such as municipalities and towns.

   City, which had a fleet of cars it owned for various purposes, filed suit in federal district court against the federal official who is charged with enforcement of this requirement. The city sought an injunction prohibiting enforcement of the statute on the ground that it unconstitutionally infringes on its sovereignty.

   Should the court grant the injunction?

   (A) No, because the statute is valid under the commerce clause and does not violate the Tenth Amendment since it treats the state in the same manner as private entities and individuals.

   (B) No, because the federal government has sovereign immunity and cannot be sued without its explicit consent.

   (C) Yes, because the statute violates the reserved rights of the states under the Tenth Amendment because it regulates property owned by the state.

   (D) Yes, because unless the federal government can prove the vehicles actually travel(led) in interstate commerce, the statute is beyond Congress’ Commerce Clause power.
2. A city zoning ordinance contains provisions restricting places of "adult entertainment" to two commercially zoned blocks at the outer edges of the inner city. The ordinance defines "adult entertainment" as "live or video-recorded exhibitions by individuals who are nude or partially nude, or any individual who is depicted engaging in sexual activity." City claims that adult entertainment establishments create an environment which attracts other criminal activities such as drug dealing and prostitution. Owner wishes to open an adult movie theater in an area of town other than within the designated two blocks. He wants his establishment to be classy and upscale, and appeal to a more sophisticated and well-off clientele than existing adult theaters. He believes that the designated location is not suitable for his kind of establishment, so he petitions the city council for a license to operate his establishment in a more upscale, but still commercially zoned, part of the city. He is denied the license. Owner files suit in federal court against the city council, asserting that the restrictive zoning ordinance violates the First and Fourteenth Amendments.

What is the most likely result of Owner's challenge?

(A) City will win because the activity regulated in the ordinance is not protected by the First and Fourteenth Amendments.

(B) City will win because the regulation is aimed at the secondary effects of adult entertainment, its limitation on such expression furthers a substantial interest, and alternative channels of communication are left open.

(C) Owner will win because the ordinance is content based and is not narrowly tailored to achieve a compelling governmental interest.

(D) Owner will win so long as the entertainment is not obscene.
3. In order to combat the proliferation of political signs which cause extreme visual blight and litter around election time, City has enacted an ordinance, which bans the posting of political signs favoring or opposing a candidate or issue on the ballot on public streets or sidewalks except during the period extending from seventeen days prior to any primary, general or special election until forty-eight hours following the closing of the polls. A candidate, who is running for election to City Council, has concluded she needs a minimum of one month’s visibility in order to overcome the name recognition possessed by her opponent. The first five violation(s) of the ordinance in one election period are each punishable by fines. Any additional violations carry the possibility that the Town Clerk could order the candidate’s name removed from the ballot.

If Candidate challenges the ordinance as a violation of the First Amendment, the most likely result will be:

(A) The ordinance will be held unconstitutional because, as a content based regulation, it will not pass strict scrutiny.

(B) The ordinance will be held constitutional because a state has express power under the Constitution to regulate the time place, and manner of elections.

(C) The ordinance will be held unconstitutional because it the law infringes on the fundamental right to vote.

(D) The ordinance will be held constitutional because it is content neutral and only regulates signs during a particular period of time.
4. A city owns and operates a large public auditorium. It leases the auditorium to any group that wishes to use it for a meeting, lecture, concert, or convention. Each user must post a damage deposit and pay rent, which is calculated only for the actual time the building is used by the lessee. Reservations are made on a first come, first served basis.

A private organization that permits only males to serve as officers or directors rented the auditorium for its national convention. The organization does permit women to be members. The organization planned to install its new officers at that convention. It broadly publicized the event, inviting members of the general public to attend the installation ceremony at the city auditorium.

An appropriate plaintiff sues the private organization seeking to enjoin it from using the city auditorium for the installation of its new officers. The sole claim of the plaintiff is that the use of auditorium by the organization for the installation ceremony in unconstitutional because the organization disqualifies women from serving in its highest offices. Will the plaintiff prevail?

(A) Yes, because the Fourteenth Amendment prohibits such an organization from discriminating against women in any of its activities to which it has invited members of the general public.

(B) Yes, if the Court finds that there is a sufficient connection between the state and the private entity to subject the latter to the Fourteenth Amendment.

(C) No, because the women are only excluded from being officers and directors and are not precluded from being members of the organization.

(D) No, because a private organization can never constitute a state actor for purposes of the 14th Amendment.
5. Lucille Bluth has been employed as a creative arts teacher for the town of Rockford for since 2007. She is in the middle of a five year contract which allows for termination for cause only. However, Lucille has been out of work for the past two years due to a diagnosis of breast cancer. When she was initially diagnosed, she was given chemotherapy that rendered her frail and unable to consume any food. On a friend's suggestion, Lucille was referred to a doctor in a neighboring state that prescribed her tetrahydrocannabinol (THC) pills. THC is the active psychedelic ingredient found, exclusively, in marijuana plants. Lucille took the medication which aided her in her recovery and subsequent remission of her cancer. After Lucille returned to her teaching job in Rockford, the newly appointed superintendent required all teachers submit to drug testing following the surfacing of meritorious accusations regarding drug use by faculty. Lucille submitted a hair sample to the medical examiner and was later informed that she tested positive for THC in her system. As a result, the superintendent suspended her immediately, with pay, and scheduled a termination hearing for ten days following the suspension. Assume no federal law applies.

If Lucille brings suit before the hearing claiming that the town of Rockford violated her right to procedural due process, what is the likely result?

(A) Lucille will win because a government can never suspend an employee without a pre-deprivation hearing.

(B) Lucille will win because her fundamental right to employment has been violated without a showing of strict scrutiny.

(C) Rockford will win if the scheduled hearing is adequate under the factors established by Mathews v. Eldridge.

(D) Rockford will win because the right to govern its employees is protected by the Tenth Amendment.