

University of Utah College of Law

FINAL EXAMINATION

Constitutional Law I

Professor Matheson

Spring Semester 2000

Friday, May 12 - 8:30 a.m. to 12 noon

Instructions

This examination is “open book” -- there are no restrictions on materials you may consult during the test. Do not write or type your name anywhere on your examination paper. Do type or write your exam number on your exam.

You will be graded on eight of the nine questions. You may answer all nine questions and have your lowest score excluded, or you may choose simply to answer eight questions. The eight answers that determine your grade will all be weighted equally.

You have a half hour to read the exam and three hours to write your answers. If your answers require additional facts, state what they are and their significance.

I.

In Lochner v. New York, Justice Harlan and Justice Holmes each wrote dissenting opinions. Which of the two dissents most closely approaches modern economic substantive due process analysis? Why? Is there any suggestion from the Supreme Court in recent years that there may be circumstances in which economic regulation would be invalidated on substantive due process grounds?

II.

Seven of the fifty states do not have state constitutional protection for a right to bear arms. Assume that one of those seven states enacts a law that prohibits anyone other than law enforcement personnel from owning or possessing a firearm. How would you develop an argument against the constitutionality of this law?

III.

Assume a federal appropriations law is enacted that provides funding to repair dilapidated school buildings. States are eligible to receive such funding by meeting several criteria, which include passage of a state law that prohibits the possession of a firearm in a school zone, enforcement by local police officers of a new federal law that prohibits anyone from bringing a dangerous weapon into a school, and limiting the size of each school district to include no more than 5,000 students and no fewer than 1000 students. Assess the constitutionality of this law.

IV.

Assume the Congress passes the following spending bill: “The President may choose to spend \$1 billion or nothing on a new aircraft carrier, \$3 billion or nothing to extend Medicare coverage to prescription drugs, and \$5 billion or nothing to build more federal prisons. The President shall make these decisions within 10 days of signing the bill.” The President signs the bill and then proceeds to decide whether to spend the appropriated money on the listed items. Is this law constitutional? How is it different in terms of its constitutionality from the law at issue in Clinton v. New York?

V.

In Planned Parenthood of Southeastern Pennsylvania v. Casey, the Supreme Court decided differently on the constitutionality of the spousal notification provision and the 24-hour waiting provision. Can you reconcile these conclusions? Why or why not? Based on Casey, how would you decide the constitutionality of a state law that prohibits abortion when a woman is under 18 years old unless at least one parent has been notified 24 hours in advance or a court waives the requirement of parental notification?

VI.

Apart from the First Amendment issue, is there any constitutional obstacle to the enactment of a federal statute that would prohibit flag burning? Explain.

VII.

Assume Congress passes and the President signs the “Human Life Act,” which states: “Congress finds that scientific evidence demonstrates a significant likelihood that human life begins at conception. Pursuant to Section 5 of the 14th Amendment, Congress declares that human life exists from the moment of conception.” Is this law constitutional?

VIII.

How does Justice Scalia think that state economic regulation should be analyzed under the Commerce Clause? Do you agree with his position? Why or why not? You should draw upon case examples to explain and support your answer.

IX.

The False Claims Act, 31 U.S.C. § 3729, was enacted in

1863 to address the problem of a party making a fraudulent claim to obtain money from the federal government. This law has been used, for example, to recover funds from government contractors. Rather than leave sole responsibility with federal government attorneys to recover the money that was fraudulently obtained, the Act allows individual private citizens to sue for fraud on behalf of the federal government and collect part of the government's recovery. The United States can but is not required to intervene as a party in such litigation. The Act has been challenged as violating the Take Care Clause, U.S. Const., art. II, § 3, and the separation of powers doctrine. What Supreme Court decisions provide the strongest support for this challenge? What is your analysis of this issue?