

Exam Number: _____

University of Utah College of Law

FINAL EXAMINATION

Constitutional Law I

Professor Matheson

Spring Semester 2001

Monday, May 7 - 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 and on this page.

You will be graded on seven of the eight questions. You may answer all eight questions and have your lowest score excluded, or you may choose simply to answer seven questions. The seven 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.

Assume that in early December 2000, while Bush v. Gore was pending in the Supreme Court, Congress passed and the President signed legislation which provided that the Supreme Court shall have no jurisdiction to review judgments of any state court on any issue regarding any election for presidential electors. Would such a law be constitutional on its face? As applied to Bush v. Gore? Would your answer be different if the legislation instead provided that state law shall govern any issues regarding any election for presidential electors, including any elections conducted before the legislation was passed?

II.

Suppose that shortly after President George W. Bush was inaugurated, the House of Representatives impeached and the Senate removed him from office on the ground that an accurate recount of the Florida vote would have shown that Al Gore carried Florida and that Mr. Gore accordingly should have been President. Could George W. Bush challenge these actions in federal court, relying in part on Bush v. Gore?

III.

Assume that Congress conducted hearings and received evidence that wood fires in residential dwellings cause substantial particulate air pollution during the winter months in many metropolitan areas of the country and thereby create a health hazard. Based on this information, the Congress passed and the President signed legislation that bans all residential wood fires during the months of December, January, and February. Assess the constitutionality of this legislation.

IV.

Assume you have graduated from law school, passed the bar, and started a private law practice. A friend comes to see you. This person is concerned about developing skin cancer because of the “ozone hole” in the atmosphere and about the federal government not taking adequate steps to limit or ban the production of substances that cause ozone depletion. Your friend, who has adequate resources to finance litigation, has asked you about suing United States agencies and officials to address this issue. What is your advice about pursuing such action in federal court?

V.

In Brown v. Board of Education (1954), the Supreme Court held that the Equal Protection Clause of the Fourteenth Amendment prohibits the states from maintaining racially segregated public schools. In Bolling v. Sharpe (1954), the Supreme Court held that segregation in the public schools in the District of Columbia is unconstitutional under the Due Process Clause of the Fifth Amendment, explaining that due process and equal protection are not mutually exclusive. Justice Black voted with the Court in both cases. Based on Justice Black's long-held position about the scope of constitutional protection under the Fourteenth Amendment, how would he explain his position as consistent in these two cases? Or would he?

VI.

The following are excerpts from The Salt Lake Tribune of April 27, 2001:

The House handed abortion opponents a victory Thursday with the blessing of President Bush by approving a bill that would make it a crime when a fetus is harmed or destroyed in an assault against a pregnant woman.

Lawmakers who support abortion rights said the bill was a smokescreen to erode a woman's reproductive rights by elevating a fetus to the status of a person, thereby gutting *Roe v. Wade*, the Supreme Court case that legalized abortion.

Supporters of the bill disagreed. "The only people who have to fear this bill is [sic] criminals who engage in violent acts against women and

their unborn children. . . .”

Federal law recognizes only the woman as a victim of a violent act; a fetus has no legal status. But Utah is among 23 states that consider it murder or manslaughter when an “unborn child,” as defined by state law, is destroyed, according to Planned Parenthood and the National Right to Life Committee.

The House passed the bill, which includes an exception for medical abortions, and the Senate has not yet voted. Assume you are a legislative aide to Senator Bennett of Utah. He asks you to analyze the relationship between this legislation and the Roe v. Wade and Planned Parenthood v. Casey cases. Write a memorandum in response to this request.

VII.

Article 36(1) of the Vienna Convention on Consular Relations requires that foreign nationals who are charged with a crime be advised that they have a right to contact their consulates. The United States is a party to this treaty. If a foreign national is charged with a state crime (for example, a violation of the Utah criminal code) in the United States, state police officials must notify the defendant’s consulate and inform the defendant of his or her rights under this provision. The National Association of State Attorneys General has passed a resolution that this requirement violates the Constitution. What is your analysis of this issue?

VIII.

The Louisiana Legislature, acting with the purpose of protecting its citizens from harmful results of gambling, passed the following statute:

Whoever designs, develops, manages, supervises, maintains, provides, or produces any computer services, computer system, computer network, computer software, or any server providing a Home Page, Web Site, or any other product accessing the Internet, World Wide Web, or any part thereof offering to any client for the primary purpose of the conducting as a business of any game, contest, lottery, or contrivance whereby a person risks the loss of anything of value in order to realize a profit shall be fined not more than twenty thousand dollars, or imprisoned with or without hard labor for not more than five years, or both.

What is your assessment of the constitutionality of this law?