

**University of Utah College of Law**

**FINAL EXAMINATION**

**Constitutional Law I**

**Professor Matheson**

**Spring Semester 1999  
Wednesday, 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 your name anywhere on your examination paper. Do write your exam number on your exam.

You will be graded on seven of the eight questions. You may, for example, 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.

**Questions**

I.

You have the opportunity to rewrite history, or, more specifically, rewrite a famous Supreme Court opinion. Using the same constitutional and statutory provisions that Chief Justice Marshall analyzed in Marbury v. Madison, write an opinion for the Supreme Court that reaches the same result -- dismissal for lack of original jurisdiction -- but without the exercise of judicial review to invalidate an Act of Congress.

II.

The Bill of Rights proposed by Congress in 1789 contained 12 amendments, not ten. Two of the proposed amendments failed to receive a sufficient number of state ratifications in 1790-91 to become part of the Constitution. Beginning in 1978, state legislatures, in part to protest the federal budget deficit, resurrected one of those proposed amendments, which prevents members of Congress from raising their own pay during the current congressional session. In 1992, the requisite thirty-eighth state ratified it, and the Congress adopted a concurrent resolution (Senate vote: 99-0; House vote: 414-3) declaring “valid . . . as part of the Constitution

**Final Examination**  
**Constitutional Law I**  
**Spring 1999**  
**Page 2**

of the United States” the Twenty-Seventh Amendment.

Is that the end of the matter? Assess the viability of a challenge in federal court to the new Twenty-Seventh Amendment.

III.

What are the constitutional arguments, both for and against, that the President should be held to the same standard for impeachment and removal from office as (1) a cabinet official, or (2) a federal judge?

IV.

The federal Driver’s Privacy Protection Act forbids a state motor vehicle department from “knowingly disclosing” certain “personal information about any individual” contained in state motor vehicle records. The Act authorizes the Attorney General to assess a civil fine of up to \$5,000 a day against any state motor vehicle department that “has a policy or practice of substantial noncompliance” with the Act. The Act also provides for criminal fines and civil damages against any person who knowingly violates its provisions. This law was enacted to limit criminals and direct marketers from access to such information. Analyze whether the Act is constitutional.

V.

John and Jane Doe, a married couple, have been convicted on multiple counts of aggravated child abuse involving their children. The court has imposed a sentence of two years imprisonment followed by ten years of supervised probation. A condition of probation is that the Does both practice birth control under the care and direction of a court-approved physician. As with any probation condition, violation of it can result in the offender being returned to prison. On appeal, the Does have challenged the probation condition aspect of their sentences as unconstitutional. If you were the judge assigned to the Does’ appeals, how would you decide this issue? Would it make any difference to your analysis if the sentencing judge had decided to impose a shorter prison term because of the probation condition?

VI.

The Federal Rules of Civil Procedure and the Federal Rules of Evidence have been promulgated pursuant to the Rules Enabling Act, 28 U.S.C. § 2072. Section 2072(a) provides that “[t]he Supreme Court shall have the power to prescribe general rules of practice and procedure and rules of evidence for cases in the United States district courts . . . and courts of appeals.” Section 2072(b) provides that “[s]uch rules shall not abridge, enlarge or modify any substantive right. All laws in conflict with such rules shall be of no further force or effect after such rules have taken effect.” In 1988, some members of Congress tried to remove the second

**Final Examination**  
**Constitutional Law I**  
**Spring 1999**  
**Page 3**

sentence of § 2072(b), the “supersession clause.” One of them criticized it as “unwise and potentially unconstitutional.” The House repealed the supersession clause, but the Senate would not go along. Do you think this provision is “potentially unconstitutional?” Why or why not?

VII.

Justice Blackmun’s dissent in *Exxon v. Governor of Maryland* contended that the *Exxon* case could not be distinguished from *Hunt v. Washington State Apple Advertising Commission*:

[The] unconstitutional discrimination in *Hunt* was not against all out-of-state interests. [The] provision imposed no discrimination on growers from States that employed only the United States Department of Agriculture grading system. Despite this lack of universal discrimination, the Court declared the provision unconstitutional because it discriminated against a single segment of out-of-state marketers of apples, namely, the Washington State growers who employed the superior grading system. In this regard, the Maryland divestiture provisions are identical to, not distinguishable from, the North Carolina statute in *Hunt*. Here, the discrimination has been imposed against a segment of the out-of-state retailers of gasoline, namely, those who also refine or produce petroleum.

How would you reconcile the Court’s decisions in the two cases?

VIII.

The Dehli Sands Flower-Loving Fly exists in one tiny locality in a single state. This insect meets the criteria for protection under the federal Endangered Species Act. The Act thereby blocks plans for construction of a hospital and a power plant in the area designated as Fly habitat. Those wishing to proceed with the construction projects have asked a federal court to decide whether this application of the Act is constitutional. Assume the case is justiciable. What constitutional arguments could be made to preclude this application of the Act? What arguments could be made in response?