

**Constitutional Law
FINAL EXAMINATION
Prof. Hodas
Fall 1999**

This is a 4 hour closed book examination. The exam is 5 pages long and consists of 2 parts.

Part I consists of 11 short answer questions. Your best 10 answers will count as 25% of your examination grade. It is suggested that your answers to the short answer questions be confined to a short paragraph of one to four sentences. Allow approximately 60 minutes for Part I.

Part II is two essay questions. Question 1 will count for 37½% of your examination grade and Question 2 will count for 37½%. You should allocate your time for each part proportionally. Please take the time to read the questions carefully before answering. You should analyze the problems, identify issues and points of law and briefly outline your answer before starting to write. Allow approximately 90 minutes for Question 1 and 90 minutes for Question 2.

Please write legibly, using every other line of your blue book.

Good luck on the exam and enjoy your semester break and holidays.

PART I

- (1) What is the difference between original understanding theory of judicial review and Republicanism?
- (2) What is the rule governing defamation actions by public officials?
- (3) What constitutional proposition does *Yick Wo v. Hopkins* stand for?
- (4) According to *Edmonson v. Leesville Concrete*, what is the test for determining whether a private party charged with depriving a person of due process rights can be described as a state action for purposes of state action requirement under the 14th Amendment?
- (5) How does one determine whether an act of Congress is valid under the enforcement power of the 14th Amendment.
- (6) Who said “. . . it is a *constitution* we are expounding,” and what did the author mean by that phrase?
- (7) What is the doctrine of preemption?
- (8) Which component of the right to travel was at issue in *Saenz v. Roe* (the California Welfare Benefit Limitation law) and what is the constitutional source of the right?
- (9) What is the “Take Care” clause?
- (10) Where does the power of impeachment reside in the Constitution, what is the standard for conviction, and what penalty is imposed upon conviction?
- (11) What is the “rough proportionality” test?

PART II

Essay Question #1

Over the past decade, Congress has become increasingly concerned about violence against women and minorities motivated by prejudice or bias—hate crimes, and with the increasing lack of privacy of computerized information that enables potential assailants to learn about their victims. After holding lengthy hearings, Congress found that rape and hate crimes of violence “substantially affects interstate commerce” in that the psychological reaction of victims of violent rapes and other hate crimes renders a substantial portion (up to 50% of the rape victims and 25% of the other victims) totally or partially disabled from work for at least 18 months after the crime. In addition, domestic violence interferes with the productivity of women, can force women into poverty where they and their dependent children will need government benefits; violence against women and minorities can also significantly interfere with college and graduate education. Congress found that states tend to treat these kind of crimes less seriously than other crimes, and many states provide little or no civil remedies. Congress further found that gender and hate (ethnic/race/religion) motivated violence deters victims from traveling interstate, engaging in employment in interstate business, and from transacting with businesses involved in interstate commerce. This crime diminishes national productivity, increases medical costs, and decreases the supply and demand for interstate products. Congress also found that many states allow public access to private information, such as drivers license and motor vehicle data; that such information is used by stalkers and other perpetrators of gender and other hate crimes; and that the release of this private information makes it difficult for victims to hide from assailants.

Congress believed that to protect the civil rights of victims and to promote public safety, health, the general welfare and activities affecting interstate commerce, it must

- (a) establish a federal civil rights cause of action for victims of gender and hate-based crimes of violence and
- (b) bar all state agencies from releasing motor vehicle information about any person without that person’s consent, except to courts and law enforcement authorities.

Therefore, Congress enacted and the President signed into law the American Hate Crimes and Violence Against Women Prevention Act (the Act), which provides in relevant part:

1. All persons within the United States have the right to be free from crimes of violence motivated by gender, religious, race, or ethnicity based animus.
2. No state department of motor vehicles shall knowingly disclose or otherwise make available to any person personal information about any individual obtained by the department in connection with a motor vehicle record, unless the individual waives such right to privacy. Disclosure to law enforcement agency and courts is permitted.
3. Any person who commits a crime of violence motivated by gender, religious, race or ethnicity based animus and any person (including a state) who obtains or discloses personal motor vehicle information in violation of the Act, and thus deprives another of the rights declared above, shall be liable to the party injured in an action in federal or state court for the recovery of compensatory and punitive damages, injunctive and declaratory relief, and such other relief as a court may deem appropriate.

The implementation of the privacy provisions of this statute will cost states substantial sums of money, particularly those states that sell this information commercially.

Analyze the constitutional issues raised by this statute.

Essay Question #2

In response to concerns about the constitutionality of affirmative action programs for African Americans, Hispanics, and other minorities at state universities, a number of states have adopted a so called "10% plan." Under the 10% plan any in-state student in the top 10% of her or his graduating high school class will be guaranteed a seat in the state university system. The ranking is to be based solely on report card grades, unweighted by course difficulty (for instance, an Advance Placement course get the same weight as any other course). Although students will take SAT tests, those scores will be used diagnostically only, and will not affect state college admission for top 10% students. Students not in the top 10% of their class, and out-of-state students may be accepted (using standard competitive criteria) only if seats remain after the 10% students are accommodated.

In the state of Texnizona, the plan has become wildly successful. Virtually the entire top 10% of every inner city school in the state now go to the University of Texnizona even though their SAT scores, school programs, and other "objective" credentials are lower than many of the non-10% students from private schools and affluent public schools. Because the number of seats has not expanded, these students are no longer being admitted into the University.

A white male student from an affluent suburban high school recently was rejected from the University where he had dreamed of going since he was a little boy. Although he was a varsity athlete, president of the honor society, took several difficult advance placement courses, and won many honors, because of a "D" in one class from a "rotten" teacher, he was 1/100 of a point short of the top 10%. Even though he was just below the top 10% of his school, his grades would have placed him in the top 2% of all of the inner city schools in the state. His SAT scores were among the best in the state. He has asked the law firm, where you are a young associate, to sue the University to eliminate the 10% plan generally or as to him in particular so he can attend. But for the plan he would have been accepted.

Draft a memorandum analyzing the constitutional issues at stake. If there is any further information you might need to aid your analysis, identify what it is and why it would be useful/relevant. Based on your analysis, what recommendations do you have?