

**Final Examination
Constitutional Law**

**Professor Power
Closed Book
3 ½ Hours**

This is a 3 ½ hour, closed book exam. It consists of 4 essay questions, weighted equally. Spend 50 minutes on each question. That will leave you 10 extra minutes on each question. I recommend that you take that time now to read the whole exam before beginning to outline or write.

The exam contains 4 pages. Be certain that you have the entire exam. You must hand in your copy of the exam along with your exam books. Please write your exam number where indicated on this page and on each of your exam booklets. On each booklet, please indicate both the number of that book in the series of books you write and the total number in the series, e.g, Book 2 of 3.

Your writing must be legible. You will not receive credit for illegible answers. Please write on 1 side of the page only, and if your handwriting makes it necessary, on every other line.

If you find it necessary to make any assumption as to law or fact in writing your answer, please state the assumption and explain why you are making it. If you believe additional information is necessary to answer a question, explain what information is necessary and how it might affect your answer.

Exam Number

I. (50 minutes)

Assume that, in response to the growing concern about the inadequacies of public school education in the United States, Congress passes the Education Aid Act of 1988. The Act provides in general that schools whose students improve their standardized test scores are eligible to receive additional federal funds for educational programs. The Act applies to private as well as public schools and works as follows. Every school receiving federal financial support in any form (which means virtually all schools) must require all of its students to take standardized tests designed by the federal Department of Education every year. Schools that show an overall improvement in test scores from one year to the next shall be eligible to receive additional grants. The grants are to be used to supplement teacher salaries, to buy library books and lab equipment, and to support enrichment programs, such as guest lectures and field trips. All schools receiving federal support (again, virtually all schools) must give the tests, even if they do not intend to apply for additional grants. Schools intending to apply for grants must meet the following additional requirements: 1) they must provide instruction in English, social studies, math and science to all students, and 2) they may not permit students who perform below the median level on the tests to participate in time-consuming extracurricular activities such as sports or music.

You are an attorney in Bridgeport, Connecticut. You have been consulted by Viola Stringer, an 11th grader in a private school that receives federal funds. Stringer is fretting because she fears she will score below the median on the federal test for 11th graders. This would render her ineligible to play in the school orchestra during her senior year. She is counting on a music scholarship to college and she cannot even apply for the scholarship without being a member of the school orchestra.

Advise Stringer whether you could bring an action on her behalf in federal court. Then explain what arguments you can make that the Act is unconstitutional.

II. (50 minutes)

You are an assistant attorney general in the state of Flux (one of the United States; the name has been changed to protect the innocent). Bertha Agee, head of the State Department of Personnel has come to you for advice concerning 2 provisions of state law that she believes may be unconstitutional. They are:

- 1) A requirement concerning the physical fitness and retirement of state police officers.

Every state police officer must pass a comprehensive physical exam every other year. Each officer over 40 years of age must pass an even more rigorous exam every year. Uniformed officers must retire at the age of 50.

2) A requirement concerning pregnant state employees. This requirement provides that employees may not work full-time after the beginning of the 8th month of pregnancy. Such employees may use any sick leave that they have accrued to cover the period beginning on the 1st day of the 8th month of pregnancy and ending 6 weeks after giving birth. At that time, each such employee must return to work or take an unpaid maternity leave for up to 6 months after the child's birth.

Ms. Agee wants to propose that the state legislature abolish these laws. Tell her what constitutional arguments are available.

III. (50 minutes)

A recurring dilemma, and the sort of thing that keeps constitutional law professors busy writing law review articles, is the tension in constitutional adjudication between giving meaning to fundamental rights and avoiding undue judicial usurpation of policymaking. The problem may be restated as follows: The Constitution seems to mandate judicial protection of enumerated and unenumerated fundamental rights, yet it provides generally for decision-making by popularly elected legislative bodies; how then should courts determine when to step in and when to leave legislative decisions alone?

Needless to say, there is no "one true answer" to this problem. Nevertheless, discuss the problem briefly, drawing on themes developed in the casebook and discussed in class. "Briefly" is an important component of this question. Do not attempt to discuss every aspect of this course that relates to the problem. Pick no more than 2 or 3 and discuss them clearly and coherently.

IV. (50 minutes)

The punk rock group Frog Vomit is now touring American cities and college campuses. Much of the tour's success is attributed to the popularity of the group's newest single and video, "Eat Shit and Die," which concerns the harm to the environment caused by toxic waste and inadequate sewage treatment. The chorus of the song repeats the refrain "March on Dow, March on Du Pont, Stop the shit, Stop the garbage, Stop them all, Stop them all." The video portrays groups of young people chaining themselves to the gates of a factory, thereby preventing trucks from entering or leaving the grounds.

One of the concerts took place in Wilmington, Delaware, home of the Du Pont Corporation. As usual, the concert ended with a stirring rendition of “Eat Shit and Die.” This time there was a difference. After the music ended, the leader of Frog Vomit, Kermit Rivet, took the microphone and shouted: “Du Pont is poisoning you!! What are you going to do?” The audience roared back: “Stop them all!” Rivet continued: “Shut them down! Do it now.”

The next day 400 people marched on Du Pont’s corporate headquarters. There was no violence. A local TV reporter interviewed Rivet about the event. Rivet said: “More power to them. That’s what our song is all about. If we can make these companies lose money poisoning us, maybe they’ll smarten up and stop poisoning us.”

A larger crowd marched on Du Pont the next day. Twenty-seven demonstrators chained themselves to the main gate. They were not dislodged for 4 hours and this cost Du Pont nearly \$25,000 by disrupting its operations. One of the demonstrators who chained themselves to the gate, Sylvia Forrest of Woodcliff Lake, New Jersey, hit a Du Pont truckdriver on the head with a sign bearing the inscription “STOP THEM ALL”. Fifteen stitches were required to close the wound.

The U.S. Attorney for Delaware brought criminal charges against Rivet and Forrest. Rivet was charged under the Federal Anti-Syndicalism Law, which makes it a crime “to travel interstate to advocate or encourage the commission of crimes or acts of force as a means of accomplishing a change in industrial policy.” Forrest was charged under a federal statute that makes it a crime “to commit a crime of violence that affects interstate commerce or after traveling interstate.”

You are the judge. The attorneys for Rivet and Forrest have moved to dismiss the charges, arguing that the statutes are unconstitutional both facially and as applied to these facts. Write an opinion ruling on the motions.