

UNIVERSITY OF MARYLAND
SCHOOL OF LAW

CONSTITUTIONAL LAW I
(3-1/2 Hours)

Professor Young
Day Division, §§ D1, G, H

Friday, May 13, 1994
9:10 a.m. - 12:40 p.m.

No. _____

Signature: _____

Printed Name: _____

INSTRUCTIONS:

Sign and print your name in the blanks above. Put the number found above on each of your blue books on the outside cover and on the envelope. If you write more than one blue book (e.g., two), put on the cover of the first: "1st of 2," and on the second, "2nd of 2," etc. **Do not put your name on the blue books or on the envelope at any place.** When you turn in your blue books, return the questions.

Each student is responsible for ensuring that all the completed examination papers (usually blue books) and the examination question sheets are handed in to the examination administrator. No examination papers will be accepted after the examination administrator has collected the materials.

Upon completion of the examination, put your answers to the examination in the envelope, fasten the flap with the clasp, and hand in the envelope to the exam administrator. Be sure to enclose all of your answers -- you will be graded only on what is inside the envelope. Do not put the exam questions in the envelope. Hand in the questions separately to the exam administrator. Do not put your name anywhere on the envelope or on your answers. Both the envelope and your answers should contain your exam number, the course name, and the instructor's name.

SPECIAL INSTRUCTIONS:

You may use your casebook, supplement, any materials that I distributed to you, personal notes, any outline prepared by you or a study group you participated in, and a Xerox copy of any page of your casebook or supplement.

You may not use any commercially prepared material.

I have made the exam three and- a half hours long principally so that you can have an extra ten minutes for reading the questions. As a result, the time allocations below reflect an allocation of 200 minutes (three hours and twenty minutes) of the full 210 minutes. In other words, if you spend the time I have suggested on both of the exam questions, you will have ten minutes left over.

There are no page limits, but longer is not necessarily better. You will do better if you carefully organize your thoughts before writing, and if you write clearly and concisely.

I

45% -- One hour and thirty minutes

You are a Legislative Assistant to a Congressperson who proposes a law which makes it a federal crime, mandatorily punishable by life in federal prison and prosecutable in federal court, for any person to violate any state felony law appearing on the "List of Federally Enhanced Third Time Felonies" (hereafter the "List"), if:

a. the perpetrator of the crime had been convicted of any two prior felonies, whether under state or federal law; and

b. the perpetrator or any victim of the crime had ever been a consumer of goods which moved in interstate commerce.

The law also creates the Commission of Federally Enhanced Third Time Felonies, consisting of one Commissioner whose duties, under the statute, consist solely of determining "which state felonies have sufficient negative effect on the well being of the United States that they will be included on the [List]". The Commissioner is appointed by the Chief Justice of the United States Supreme Court from five names approved by the National Association of Governors and he or she may be removed only by the President and then only for "cause." After proposing the inclusion of any category of state crimes on the List (e.g. armed robbery), the Commissioner holds an informational hearing and then decides whether to include it. Once such a category of felony is included, a person's conviction of a- felony in that category, as a third felony offense, leads to the mandatory life sentence described above.

Your Congressperson asks you to analyze the Constitutionality of the proposed law and its consistency with current patterns of American federalism and separation of powers. Discuss the arguments pro and con. How might the law be redesigned largely to accomplish your boss's purpose in less troubling ways?

II.

55% -- One hour and fifty minutes.

(The statutes and the history presented below are fictional.)

100 U.S.C. section 1 was passed in the early 1980's when HIV was viewed as much more infectious than it is now. It was never reauthorized under subsection (s) below. One hundred million dollars was appropriated for its implementation; it was never spent and that sum is still available. That section reads in relevant part as follows:

a. Upon finding that a National Health Emergency exists, the President is authorized to so declare and take any or all of the following steps:

(1) impose a quarantine on any area in which a deadly or permanently injurious, highly infectious and currently incurable disease is prevalent, in order to prevent its spread while measures are devised to deal with it in other ways;

(2) take needed steps to create federal facilities necessary to manage a National Health Emergency, including those necessary to treat infected persons and to develop methods of cure and prevention;

[subsections b-r omitted as not relevant]

s. Unless reauthorized by a majority vote of both the House of Representatives and the Senate, the authority granted by this measure will lapse on January 1, 1993.

* * *

On January 1, 1994 the legislature of West Kadota, a Western state possessing some of the finest public and private medical facilities in the United States (e.g., the Kadota Clinic), passed the following measure, West Kadota Session Law 1994-14:

WHEREAS there is so little HIV infection in West Kadota and because our hospitals are already crowded with patients from across the United States, therefore: (1) no state-owned hospital or medical facility shall provide non-emergency treatment to non-state residents for HIV or for diseases stemming from HIV and (2) private hospitals providing such non-emergency treatment to non-residents shall collect a tax of 25 % on the cost of all goods and services provided in the course of such treatment and remit it to the state treasury.

In response to this statute, the President issues Executive Order 1400 "based on 100 U.S.C 1 and other Presidential powers," purporting to: (a) nullify the West Kadota statute in its entirety, (b) take control of all West Kadota state hospitals until the state has repealed Session Law 1994-14 and passed a statute making clear that its hospitals are open to all regardless of domicile, and (c) temporarily make West Kadota Public Health Service Employees federal officers receiving federal pay and subject to orders of the President and his delegates.

West Kadota sues the United States and the President, in Federal District Court, to enjoin enforcement of the executive order, and the defendants counterclaim for an injunction against the operation of the West Kadota law.

The following plaintiffs also file suits, in Federal District Court, to enjoin enforcement of West Kadota Session Law 1994-14: (1) An East Kadota resident claiming exclusion from treatment in West Kadota public hospitals and a prohibitively expensive twenty-five percent (25%) increase in the cost of treatment at West Kadota private hospitals, and (2) a New York City Organization whose members are a diverse group of HIV infected New York City residents, claiming that the state law stirs up prejudice nationwide against those who are HIV positive.

In detail, please discuss the law and arguments bearing on the fate of these law suits.

END OF EXAMINATION