

CONSTITUTIONAL LAW

Question 1

A 15-year-old sophomore high school student became pregnant, and the school board required her to attend a special program for pregnant students instead of her regular classes. The girl did not want to attend a special program; rather, she wanted to attend her regular classes.

She sued the school district in federal district court, demanding that she be allowed to attend her regular classes. Before her case came to trial, the girl gave birth to the child. Subsequently, the district reinstated her in her regular classes.

When her suit comes before the federal district court, the court should:

- (A) Dismiss, because she is no longer pregnant.
- (B) Dismiss, because she is no longer required to attend the special classes.
- (C) Hear the case on the merits, because she may get pregnant again before she graduates from the high school.
- (D) Hear the case on the merits, because it impacts the right to privacy, which is an important federal issue.

Question 9

During summer months, thousands of tourists regularly visited a state's capital to see its many sites. Because the city had few outdoor water fountains, a number of vendors had taken advantage of the situation by selling water out of coolers set up on the sidewalks of the city.

After receiving several complaints regarding the clutter associated with the water vendors, the city council passed an ordinance, effective immediately, prohibiting persons from selling bottled water out of coolers on the sidewalks between the hours of 8 a.m. and 6 p.m., Monday through Friday.

A vendor had been selling water on the sidewalks of the city for the past three years. He sold his water for \$1 less per bottle than other water vendors because his water bottles were adorned with religious messages, and his reduced price helped the dissemination of his religious message. Sixty percent of the vendor's sales were made on weekdays between 8 a.m. and 6 p.m. On learning of the ordinance, the vendor sought to enjoin its enforcement in federal district court on the basis that it is unconstitutional.

In this suit, the court will probably:

- (A) Reach the merits of the vendor's challenge to the ordinance, because it interferes with his right to earn a living under the Privileges and Immunities Clause of Article IV.
- (B) Reach the merits of the vendor's challenge, because enforcement of the ordinance will interfere with his business, and the rights of the public are linked to the vendor's rights.
- (C) Decline to hear the case, because the ordinance has not yet been enforced against him.
- (D) Decline to hear the case, because the ordinance constitutes a reasonable time, place, and manner restriction on speech and association.

Question 50

A group of doctors filed suit in federal court against the United States government to challenge a new statute that places caps on the amount that doctors, hospitals, clinics, and other medical facilities may charge patients to perform specifically enumerated procedures. The government filed a motion to dismiss the doctors' suit, arguing that the doctors lack standing to pursue their case.

Which of the following is *least* relevant in determining whether the doctors have standing?

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Which of the following is *least* relevant in determining whether the doctors have standing?

- (A) A ruling in the doctors' favor would result in removal of the price caps.
- (B) Enforcement of the price caps would reduce the doctors' profits by an average of 4%.
- (C) The statute placing the caps on the enumerated procedures provides that doctors shall have standing to challenge the price caps.
- (D) Eighty percent of all doctors charged more for the specified procedures than the price caps allow.

Question 59

Congress enacted a statute imposing an additional 2% national retail sales tax on all goods sold in the United States. The purpose of the tax was to fund unemployment payments during the recession. An association of newspaper and book publishers sued to remove the tax from newspaper and book publications, claiming that the tax placed an unconstitutional burden on the freedom of speech and press.

Assuming that the association has standing, it:

- (A) Wins the lawsuit, because only states have the taxing authority over retail sales.
- (B) Wins the lawsuit, because Congress may not impose taxes that chill the freedom of expression.
- (C) Loses the lawsuit, because Congress has plenary power to tax.
- (D) Loses the lawsuit, because a tax imposed to fund unemployment payments during a recession serves a compelling interest of the federal government.

Question 29

As part of a deal to raise the federal debt limit, Congress passed a statute by a greater

than two-thirds vote in both houses giving the President authority to cancel particular spending provisions that are contained within legislation that he signs into law. The statute provided that Congress could override the President's decisions only by a three-fourths vote. As soon as the statute went into effect, a Senator who had voted against the statute filed suit in federal district court, challenging its constitutionality.

Is the Senator likely to succeed in her lawsuit?

- (A) Yes, because the President does not have the constitutional power to exercise a line item veto.
- (B) Yes, because the statute requires a vote of three-fourths of Congress to override the President's decisions.
- (C) No, because the Senator lacks standing to challenge the statute.
- (D) No, because the statute passed by more than a two-thirds vote in both houses of Congress.

Question 91

Congress created a seven-member safety commission to investigate and make recommendations to Congress for new fireworks safety laws, to make further rules for establishing safety and performance standards, and to prosecute violations of these safety standards. The chairman of the commission was appointed by the President. Three members were selected by the Speaker of the House of Representatives, and three members were selected by the President pro tempore of the Senate. An organization with proper standing seeks to enjoin enforcement of the commission's rules.

Which of the following presents the strongest constitutional argument that the organization can make against the validity of the commission?

98. SIMULATED FINAL EXAM

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Which of the following presents the strongest constitutional argument that the organization can make against the validity of the commission?

- (A) The commerce power does not extend to activities occurring solely within a state.
- (B) Legislative power may not be delegated by Congress to an agency in the absence of clear guidelines.
- (C) The organization is denied due process of law because it is not represented on the commission.
- (D) The commission lacks authority to enforce its standards because some of its members were appointed by Congress.

Question 20

A state enacted a gross receipts tax on all businesses operating in that state. The tax was a proportional tax based on revenue derived by businesses in the state. A leading manufacturer of widget assembly devices had its corporate headquarters and most of its manufacturing plants in the state. Its products were sold to widget users throughout the country.

If the company challenges the constitutionality of the state's assessment of the tax against it, what is its strongest argument?

- (A) Eighty percent of its revenue is derived from purchases of its products by the federal government.
- (B) The tax applies to revenue derived from all of the company's manufacturing plants, including those not located in the state.
- (C) The state also imposes a use tax on component parts purchased by the company outside of the state to make its widget assembly devices that is equivalent to the state's sales tax for similar purchases within the state.
- (D) Sales taxes are imposed by other states on the company's widget assembly devices sold in those states.

Question 75

A state passed a law prohibiting liquor manufacturers from falsely advertising or misrepresenting facts about alcohol to the public. A brewery's advertising in the state claimed that its beer had only 45 calories per bottle and was great for individuals trying to lose weight. After performing tests on the beer and finding that it had 145 calories per bottle, the state filed suit against the brewery for violating the state law. The brewery filed a motion to dismiss the state's action, claiming that the state law is unenforceable because it is preempted by the Federal Liquor Labeling Act, which was passed by Congress to inform the public of the health risks of intoxicating liquors and provided that no prohibition based on alcohol and health may be imposed under state law with respect to the advertising or promotion of alcoholic beverages.

The motion should be:

- (A) Denied, because a violation of the state statutory duty not to deceive has nothing to do with the health risks regulated by federal law.
- (B) Denied, because the states have special power to enact liquor regulations under the Twenty-First Amendment.
- (C) Granted, because a valid act of Congress or federal regulation supersedes any state or local action that actually conflicts with the federal rule.
- (D) Granted, because Congress intended to occupy the entire field of alcohol regulation, thus precluding any state regulation.

Question 98

A state located in the southern half of the United States experienced a strong influx of retirees, due in part to its mild winters and in part to the generous health benefits that the state historically provided to its elderly residents who fell below the federal poverty line. The state's Office of Budget Management determined that

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the influx of retirees would bankrupt the state's health care benefit fund within five years. To preserve the fund and ensure the health of its citizens, the state revised its health care statute to make persons ineligible for coverage until they have lived in the state for at least one year.

If a retiree who was denied benefits because she just moved to the state challenges the constitutionality of the statute in federal court, is she likely to prevail?

- (A) No, because the state has a compelling interest in maintaining the fiscal integrity of its health care fund.
- (B) No, because the states do not have a constitutional duty to provide health care benefits to retirees even if they fall below the federal poverty line.
- (C) Yes, because the requirement improperly burdens the right of interstate travel in violation of the Equal Protection Clause of the Fourteenth Amendment.
- (D) Yes, because the requirement deprives some retirees of certain privileges and immunities in violation of the Privileges and Immunities Clause of Article IV.

Question 35

The police department of a small city has jurisdiction within the city limits and over a defined portion of the surrounding rural communities within the county. A farmer lives in one of the rural communities receiving police protection from the city. The farmer does not pay any tax to the city directly, but a portion of the farmer's county property tax is turned over by the county to the city in order to support the city's police department.

The farmer's property was vandalized several times over the past several months, and the farmer became unhappy with the police protection that the city was providing. After his complaints to the police department and city hall did not improve the situation, the farmer wanted to vote against the mayor in the next election,

but a city ordinance provides that only residents of the city may vote in city elections.

If the farmer brings a suit to compel the city to allow him to vote in the city's mayoral election, is he likely to prevail?

- (A) No, because the resident voting limitation appears to be rationally related to a legitimate government interest.
- (B) No, but only if the city can prove that the resident voting limitation, which affects a fundamental right, is necessary to a compelling interest.
- (C) Yes, because the resident voting limitation violates the Privileges or Immunities Clause of the Fourteenth Amendment.
- (D) Yes, because the resident voting limitation constitutes an instance of taxation without representation.

Question 69

A state statute provided that only residents of the state can be granted a license to practice medicine within the state. The statute was passed after a series of well-publicized mistakes by a nonresident physician led to a public consensus that nonresidents were less likely to be familiar with the medical standards followed in the state, making them more likely to commit malpractice. A respected surgeon who lived and was licensed in a neighboring state was offered and accepted the position of chief surgeon at a hospital in the state with the residency statute. Because he lived only 20 minutes away from the hospital, he did not wish to move. He filed an action in federal court challenging the residency requirement, alleging that the statute discriminated against nonresidents in violation of the Privileges and Immunities Clause of Article IV.

The federal court is likely to find that the statute is:

- (A) Constitutional, because the state has a substantial justification for the discriminatory treatment.

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The federal court is likely to find that the statute is:

- (A) Constitutional, because the state has a substantial justification for the discriminatory treatment.

- (B) Constitutional, because a license to practice medicine is not a “privilege” under the Privileges and Immunities Clause.
- (C) Unconstitutional, because the state does not have a substantial justification for the discriminatory treatment.
- (D) Unconstitutional, because the discrimination is not necessary to promote a compelling state interest.

Question 15

A city has a permanent display of passages from various political and religious documents on plaques along the side of its municipal building, including the Declaration of Independence, the Ten Commandments, and the lyrics to the Star Spangled Banner. The city has added the documents over time when they have been donated by various civic groups. Members of a religious organization that worships the planet Mars donated to the city a plaque containing their basic creed and requested that the plaque be displayed along with the other plaques on the side of the municipal building. The city refused to display the plaque, and the organization that donated the plaque brought suit against the city, claiming that its rights to freedom of speech were being violated by the city’s refusal to include the plaque along with the others.

How should the court rule?

- (A) For the city, because the plaque would constitute government speech and the city may pick and choose among messages it wishes to convey.
- (B) For the city, because of the religious basis of the organization’s message.
- (C) For the organization, because the city allowed other religious messages to be displayed.
- (D) For the organization, because the city’s decision was based on the content of the plaque, unless the city has a compelling reason for its refusal.

Question 85

Congress declared war on a nation in Asia. Congress also passed a statute making it a crime to make public statements in support of the Asian nation and against the United States. A United States citizen subsequently spoke out against the war at a rally in front of a federal building. During her speech, the citizen urged people to “smash the windows of the federal building like U.S. troops are doing” in the Asian nation. Several members of the frenzied crowd did as the speaker urged. The speaker was immediately arrested and charged with violating the statute.

Can the speaker successfully defend by asserting that the statute violates her First Amendment speech rights?

- (A) Yes, because the statute is substantially overbroad.
- (B) Yes, because her speech involved core political speech.
- (C) No, because she incited imminent lawless action.
- (D) No, because the ongoing war constitutes a compelling interest that justifies the statute.

Question 40

A young prosecutor was assigned to a widely publicized murder case in which many people believed that the police might have arrested an innocent person for the crime. After interviewing the defendant and reviewing the files, the prosecutor agreed with that opinion, and told her supervising attorney that she thought that the defendant was innocent. The supervisor instructed the prosecutor to keep her opinions to herself, put on the best case she could, and let the jury decide the issue of guilt. At the first hearing of the case, the prosecutor told the judge that, in her opinion, the defendant was innocent. Immediately after the hearing, the supervising attorney fired the prosecutor for insubordination. After exhausting all administrative remedies available to her, the prosecutor filed suit in

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