EXAM INSTRUCTIONS

Note to student: This exam is for Constitutional Law in the Summer 2015 Term. If you are not taking Constitutional Law in the Summer 2015 term, please contact Administration immediately (866-584-2005).

1. This is a two (2) hour examination.

2. The exam is to be completed on your computer and submitted in the same fashion as you did during the school year. The exam file must be submitted by the time indicated in the exam schedule. The interface that allows submissions will close fifteen minutes after the ending time of the exam, as indicated in the exam schedule. If your exam is not received or we are not contacted before the deadline, your exam will be subject to penalties up to and including non-acceptance of the entire exam. As a precaution, you must have immediate access to a fax machine while taking your exam to ensure your ability to submit your essay in time. Concord Law School of Kaplan University’s fax number is 866-562-7035. Please contact Administration if you have any questions about your exam by telephone at 866-584-2005 or email administration@concord.kaplan.edu. The Tech Center can be reached at 866-577-0436.
Multiple Choice Answer Sheet

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1. Sarah paid Llama Farm $200,000 for ten unique llamas, to be delivered in thirty days. The llamas are a very rare breed of llama, and thus each llama cost $20,000, for a total of $200,000. Thirty days later when the time for performance came due, Llama Farm refused to deliver the llamas to Sarah. Llama Farm told Sarah that due to an unanticipated virus, Llama Farm had only seven healthy llamas of the unique breed and needed Sarah to pay an extra $15,000 to cover the cost of extensive interstate travel to find three more healthy llamas.

Both Llama Farm and Sarah were located in State X. If Sarah brings suit in Federal District Court in State X to rescind the contract and to collect the $200,000 she paid Llama Farm for the llamas, what is the probable result?

A. The case will be dismissed because Sarah’s complaint is not within the court’s Article III jurisdiction under the Constitution.

B. Judgment for Llama Farm, because Llama Farm could not be compelled by a court to engage in extensive interstate travel caused by an unforeseen virus.

C. Judgment for Sarah, because she was caused direct economic injury by the actions of Llama Farm and she is seeking an appropriate remedy.

D. Judgment for Sarah, because this is a ripe controversy capable of adjudication.

2. Betsy was a civil rights activist. She planned a one-person peaceful demonstration to be held outside Anytown Town Hall, and secured all of the appropriate types of permits for such a demonstration. On the day of her one-person demonstration, the Anytown police refused to allow Betsy to demonstrate outside the Anytown Town Hall and threatened to arrest her if she did not leave immediately. Betsy did not want to bring suit against Anytown without some assurance that she would prevail. Betsy petitioned the Federal District Court for declaratory relief asking the court to issue an opinion as to whether the actions of the Anytown police were unconstitutional.

If the Federal District Court denies Betsy’s petition, is will most likely be because:

A. Betsy has not suffered injury in fact, financial or otherwise.

B. The Federal District Court has no authority to issue an advisory opinion.

C. The controversy creates a nonjusticiable political question.

D. The issue is moot.
3. Congress passed a new federal statute requiring that all companies that manufacture blue jeans register their brand names and types of fabric used with a national registry. The purpose of the law is to provide law enforcement officials reliable evidence with which to prosecute counterfeit jean sellers. No fee is charged for the registration. It has been found that many counterfeit jeans are being sold throughout the country. Jean manufacturers support the legislation, claiming that the sale of counterfeit jeans is causing them to lose a substantial and increasing amount of revenue each year.

Is this federal statute constitutional?

A. No, because regulation of the jean industry is not one of the specific enumerated powers of Congress.

B. No, because this is an impermissible encroachment of the police powers of each state.

C. Yes, because Congress can regulate matters that have a substantial effect on the national economy.

D. Yes, because pursuant to the investigatory power of Congress and other enumerated powers, Congress may enact legislation to provide for the general welfare.

4. A federal statute authorized the appropriation of $10 million in federal funds to solicit public input regarding the redesign of the design of the penny, nickel and dime coins. The express purpose of the statute was to stimulate interest in collecting U.S. coins by improving the design of each coin. The plan created a great deal of controversy and protest from coin collectors and other members of the public concerned about preserving the current design of the coins and the value of their coin collections.

A United States taxpayer filed suit in federal district court challenging the statute on constitutional grounds. In this suit, the court will most likely find that the statute

A. Is unconstitutional, because it improperly delegates a power of Congress to the Executive branch.

B. Is unconstitutional, because it is beyond the power of Congress to spend money for the general welfare.
C. Is constitutional, because it has some rational connection to the general welfare and the delegation of power is sufficiently limited.

D. Is not subject to challenge because the lawsuit involves a sensitive political topic and therefore a nonjusticiable political question.

5. Congress enacted a statute intending to prohibit housing discrimination. The statute provided that “any two or more persons who enter into an agreement for the purpose of denying housing to a person based on his or her race will be considered unlawful.” Subsequently, two real estate agents entered into an agreement not to show available housing in their area to African American citizens. The real estate agents were prosecuted under the federal statute.

Which of the following would provide the best constitutional support for this federal statute?

A. The Fourteenth Amendment Equal Protection Clause.

B. The Thirteenth Amendment.

C. The Impairment of the Obligation to Contract Clause.


6. The legislature of Anystate enacted legislation that restricted the ability of people moving to Anystate from out-of-state, to vote in state or local elections. Specifically, the statute provided that new residents must be residents of Anystate for at least one year before they would be allowed to vote in state or local elections in Anystate. The legislative intent of the statute was to help qualify each resident’s bona fide intent to become a citizen of Anystate, before such resident would be allowed to vote. The statute did not, however, restrict the right for each resident to maintain the state citizenship he or she had secured before moving to Anystate. Some soldiers who had been stationed on a military base in Anystate for six months brought an appropriate court action challenging the validity of the statute.

Is the new statute restricting voting rights in Anystate likely to be deemed constitutional?

A. No, because a less restrictive means could be used to achieve Anystate’s legislative goals.

B. Yes, because states have a compelling need to determine whether residents are bona fide residents to eliminate voter fraud and the residency requirement is a narrowly tailored means of achieving that goal.

C. No, because voting is a fundamental right under the Constitution, and thus voting rights cannot be restricted by state action.

D. Yes, because Anystate has an interest that is sufficiently compelling to justify the exclusion from voting of
newly stationed soldiers on military bases for one year.

7. Morgan was a firefighter in the state of Anystate. According to Anystate state statute, all fire department employees acting in the capacity of a "firefighter" (as opposed to an administrative position) were to retire at the age of sixty. The legislative intent of the statute was to maintain a fire department that would at all times be responsive to the needs of the citizens of Anystate. The legislators of Anystate felt that any person older than sixty years of age would present a serious risk of not being able to properly discharge the firefighter duties in a fire or other similar emergency. Morgan thought himself to still be very vibrant as he reached the age of sixty. He petitioned the fire department to allow him to remain in his position as a firefighter. The fire department refused Morgan's petition, and advised him to accept reassignment to an administrative position offering equal pay and benefits or to resign his current position because he had reached retirement age.

If Morgan brought an appropriate suit challenging the validity of the retirement age statute under the Equal Protection Clause of the Fourteenth Amendment, which of the following statements would the court most likely consider important to deciding the case?

A. Whether Morgan could show that the retirement age statute was not reasonably related to any legitimate government interest.

B. Whether Morgan could show that the retirement age statute was not necessary to advance any compelling interest of Anystate.

C. Whether Anystate could show that the retirement age statute was reasonably related to an important government interest.

D. Whether Anystate could show that the retirement age statute was necessary to advance a compelling interest of Anystate.

8. In order to reduce traffic congestion on its major streets and expressways, a statute in State Blue prohibits all delivery trucks and commercial vehicles from using the roadways within three identified major metropolitan areas of State Blue between the hours of 6am-9am and 3pm-7pm on Monday through Friday. Several commercial vehicle company owners located in neighboring state Red brought suit challenging the State Blue statute. At trial, the challengers introduced uncontested evidence that: (1) over 90% of the delivery trucks and commercial vehicles operating in State Blue have origins or destinations in other states and, (2) over 95% of the traffic congestion during the prohibited hours was caused by regular passenger vehicles driven by private parties commuting to work, school or for other non-commercial purposes.

The court will most likely rule that the State Blue statute is:
A. Constitutional, because the streets and expressways located inside the major metropolitan areas of State Blue and, therefore, are exclusively within the regulatory authority of State Blue.

B. Constitutional, because the statute prohibits the use of all delivery trucks and commercial vehicles during the proscribed hours and, therefore, it does not discriminate against interstate commerce.

C. Unconstitutional, because the statute unduly burdens interstate commerce by imposing restrictions on the use of State Blue streets and expressways without sufficient justification.

D. Unconstitutional, because the fact that over 95% of the congestion is caused by other vehicles demonstrates that the statute is not a rational means of solving any legitimate government interest.

9. Steven was an employee of the State X Department of Health and Welfare. His superiors at work decided that he was not doing adequate work, and Steven was fired without procedural due process. Steven contested the discharge from employment in Federal District Court. The decision of the court was that Steven held a property right to continued employment at the State X Department of Health and Welfare. Additionally, the court ruled that Steven could not be fired without procedural due process. The court then went on to discuss what procedural due process protections Steven should be given.

Which of the following statements would the court be least likely to consider in establishing the appropriate procedural due process protections Steven should be given?

A. The level of importance of the governmental interest at stake.

B. The performance level and job evaluations of Steven.

C. The value of specific safeguards to protect Steven’s constitutionally protected property right.

D. The governmental interest in fiscal and administrative efficiency.

10. Harry worked under contract with the City Police Department. Harry had worked for more than five continuous years before his contract was not renewed. Harry had been given satisfactory performance reviews at each of his performance evaluations. He asked the City Police Department for a hearing and a statement of the reasons for the non-renewal of his contract. The City Police Department refused to meet Harry’s request. Next, Harry brought suit in Federal District Court to compel the City Police Department to give Harry due process as regards Harry’s contract nonrenewal.

Of the following choices, which would be Harry’s best argument to assert that he was owed due process protections before the non-renewal of his contract?
A. Every other City Police Department employee in the past who had received satisfactory personnel evaluations at every job performance review over five years had been rehired.

B. City Police Department regulations established five consecutive years as the time period in which job tenure and related employment rights would be earned.

C. Harry sincerely thought that he would have his contract renewed, and went out and bought a new motorboat in reliance on future contract renewal.

D. Harry was a governmental employee, and thus was assured of proper due process protections from officials acting under color of state law who acted to deprive Harry.

11. Laura is a woman who applied for employment in the Rural County Fire Department. One of the requirements for being an employee of the Rural County Fire Department, as expressly stated in Rural County Fire Department employment qualifications, was that the job applicant be a man. After her application for employment was denied, Laura decided to contest the regulation and brought a court action against Rural County Fire Department.

If Laura brings suit against Rural County Fire Department for a violation of the Equal Protection Clause of the Fourteenth Amendment, what is the most probable result?

A. The court will decide whether there is a compelling state interest for the regulation, and whether the regulation, as applied, has a disproportionate impact on women.

B. The court will decide whether there is a substantial state interest for the regulation, and whether the regulation, as applied, has a disproportionate impact on women.

C. The court will decide whether there is a compelling state interest for the regulation, and whether the regulation is intentionally discriminatory on its face.

D. The court will decide whether there is a substantial state interest for the regulation, and whether the regulation is intentionally discriminatory on its face.

12. The Town Officials of Smalltown decided to put up a holiday display in December on the town square. Some Smalltown residents protested, saying that the display was religious in orientation. These residents demanded that Smalltown Town Officials take the display down. Smalltown Town Officials refused to take the display down, saying that they (Smalltown Town Officials) felt that the display was constitutionally appropriate. The residents did not believe that the display was constitutional, and they brought an appropriate court action to challenge the display.
What is the most probable response by Smalltown Town Officials in this action?

A. Under the First Amendment Free Speech Clause, Smalltown Town Officials have a constitutionally protected right to express themselves through a holiday display.

B. Under the First Amendment Establishment Clause, Smalltown Town Officials are free to establish religious displays that are secular in purpose and effect, and which do not promote excessive entanglement of government with religion.

C. Under the Fourteenth Amendment Due Process Clause, Smalltown Town Officials have a constitutionally protected right to have a holiday display, which may not be infringed upon without appropriate due process protections.

D. Under the Fourteenth Amendment Equal Protection Clause, Smalltown Town Officials are not to be treated unfairly as a class of people when deciding upon a holiday display.

13. City enacted an ordinance requiring all building permit applicants to demonstrate that all new construction projects will have adequate automobile parking for the number of expected users of the project once completed. The ordinance also allowed the planning department of City to waive the parking requirement for good cause. The Church of the New Way (Church) applied to City for a building permit to construct a meeting facility to hold religious services in City on a vacant lot owned by Church. According to the building plans, there would not be adequate land on the lot for parking for the expected number of automobiles once the meeting facility was constructed as planned. Church applied to the City planning department for a waiver, but the request was denied without explanation. If Church challenges the denial of the request for a waiver of the parking requirement on constitutional grounds, what will be the likely result?

A. Church will prevail, because insuring adequate parking is not a compelling state interest necessary to justify this direct interference with Church and its members’ rights to free exercise of religion.

B. Church will prevail, because City’s interest in adequate parking is not sufficient to overcome Church’s interest in free exercise of religion.

C. City will prevail, because the denial of a building permit is only an incidental interference with freedom of religion.

D. City will prevail, if the request for waiver was denied for reasons unrelated to the religious beliefs or practices of Church.
14. Both the House of Representatives and the Senate passed a bill. The Senate then sent the bill to the President for approval or veto, and then Congress ended its session. The President was abroad meeting with foreign leaders on the day the bill was sent to the White House for her review. She did not return to the White House until nine days after the bill had arrived at the White House. The President looked at the bill but she decided to take no action on it before the expiration of ten days (excepting Sundays). Congress was not in session after the bill was delivered to the White House.

Which of the following statements is most accurate?

A. The bill will become law, because the President did not specifically veto it.

B. The bill will become law, because both the House of Representatives and the Senate initially approved it.

C. The bill will not become law, because even though the President did not specifically veto it, Congress was not in session.

D. The bill will not become law, because the President did not specifically sign the bill into law nor did Congress override any presidential veto.

15. Amy was a student of City High School. Immediately after taking attendance each morning, City High School students were required to state the pledge of allegiance to the United States. Amy felt that any pledge which she did not voluntarily choose to take on her own was against her moral rights. She therefore refused to state the pledge of allegiance to the United States each morning at City High School. School administrators, upon hearing that Amy was not stating the pledge, held a hearing for Amy within a reasonable time and in a reasonable manner. Amy was allowed to state why she refused to state the pledge, and Amy was given prior warning by school administrators that her continued refusal to state the pledge would result in her expulsion from school. School administrators felt that it was important for students to recite the pledge to make them better citizens. For two weeks following the hearing, Amy refused to state the pledge. At that point, Amy was expelled from City High School. Amy brought an appropriate court action contesting her expulsion.

What would be the probable result of Amy’s court action?

A. The expulsion was proper, because Amy was given appropriate due process protections under the Fourteenth Amendment.

B. The expulsion was proper, because Amy was not punished for speaking her views under the First and Fourteenth Amendments.

C. The expulsion was improper, because Amy was punished for exercising her right not to speak under the First and Fourteenth Amendments.
D. The expulsion was improper, because Amy should have been given another due process hearing under the Fourteenth Amendment before being expelled.

16. The “Baby Boomers” are a religious group in Anystate that feels that the principles and morals espoused by the Civil Rights and anti-Vietnam War activists of the 1960’s are the correct manner in which to live in a religious manner. One of their bona fide religious beliefs is that heroin can help a person relate better to her inner soul. Therefore, at certain religious ceremonies, the Baby Boomers pass out heroin to all members who wish to partake of it. Those members then smoke the heroin in a special religious pipe. The use of the heroin is strictly regulated by the Baby Boomers to be used only in special religious ceremonies. When state officials heard of the use of heroin in Baby Boomer ceremonies, they warned the members that any future use of heroin or other controlled substance would result in arrest and prosecution. Heroin is an illegal drug throughout the state of Anystate.

If the Baby Boomers contest the constitutionality of the ban on their use of heroin by Anystate in an appropriate court action, which of the following would be the probable result?

A. The ban on heroin use is unconstitutional, because the Baby Boomers are practicing a bona fide religious belief in which they sincerely believe.

B. The ban on heroin use is constitutional, because Anystate has a compelling interest in upholding the criminal statutes of general applicability of the state.

C. The ban on heroin use is unconstitutional, because the use by the Baby Boomers is confined to only special religious ceremonies.

D. The ban on heroin use is constitutional, because Anystate has a right to use the police powers of the state in the manner in which they see fit, as long as there is no conflict with the Supremacy Clause.

17. Homer was a Senator from State Z in the United States Congress. As part of Homer’s reelection campaign, he gave a number of speeches throughout State Z. During one of his speeches while in State Z, he made negative remarks about Ginger. Ginger was an automobile mechanic in town who was a citizen member of a rival party to Homer’s party. Ginger was not directly a public official, but she was active in her party’s efforts to defeat Homer. The remarks made by Homer about Ginger during Homer’s speech were remarks that Homer knew to be false, and which adversely affected Ginger’s subsequent work as an automobile mechanic. This was the only instance in which Homer made negative remarks concerning Ginger. Ginger then brought suit in defamation against Homer.

If Homer asserts immunity from suit due to his status as a United States Senator, would his assertion of immunity stand up in court?
A. Yes, because under Article I of the Constitution, members of Congress have absolute immunity from liability based on any speech or debate they participate in.

B. Yes, because Homer was acting within the scope of forwarding his reelection campaign when he made the comments regarding Ginger.

C. No, because speeches made outside of Congress do not enjoy immunity.

D. No, because the statements he made about Ginger were patently defamatory.

18. Penelope fundamentally enjoyed water skiing. She would often travel from Maple City to Walnut City and enjoy the public water skiing that Walnut City provided. For a nominal fee of $5, people could water ski while being pulled by boats supplied by Walnut City. One summer, however, Walnut City officials decided to raise the cost of water skiing from $5 to $25, through a town ordinance. The purpose of the raise in fees was to offset the increase in insurance fees that Walnut City needed to pay for operating the water skiing service. This town increase in fees was applicable only for nonresidents of Walnut City. There was no proof that residents from areas outside of Walnut City were more likely to get injured or sue Walnut City for accidents occurring as a result of water skiing in Walnut City. Penelope’s ability to water ski was drastically reduced by the increase in fees that she had to pay. Penelope brought an appropriate suit challenging the constitutionality of the fee.

If the court considers the constitutionality of the fee increase for nonresidents only under the Privileges and Immunities Clause of Article IV, which of the following would be the most likely result?
A. The town ordinance is violative of the Privileges and Immunities Clause of Article IV, because the higher fee for nonresidents discriminates against nonresidents.

B. The town ordinance is not violative of the Privileges and Immunities Clause of Article IV, because no right protected by this clause has been asserted in this action.

C. The town ordinance is violative of the Privileges and Immunities Clause of Article IV, because there is no proof that nonresidents of Walnut City are responsible for the increased insurance liability fees.

D. The town ordinance is not violative of the Privileges and Immunities Clause of Article IV, because there is no substantial reason why nonresidents of Walnut City should be charged more than residents of Walnut City are charged.
19. Cindy was a legal advisor to the Eco Town Board. The Eco Town Board sought to prevent members of the group called Save the Lilies from speaking in Eco Town Park regarding their (Save the Lilies members) stance on conservation issues. Save the Lilies members believed that even the protection of one wild lily was preferable to any further development within the town of Eco. However, the Eco Town Board felt that the development of land within the confines of Eco was essential to the prosperity of the town, and they needed the support of Eco citizens to continue with such development. Eco Town Park is a traditional public forum.

If Cindy is asked to advise the Eco Town Board about the constitutionality of the Town Board’s proposed action to limit the speech of Save the Lilies members within Eco Town Park, which of the following points would most likely not be included in Cindy’s advice?

A. The proposed regulation was reasonably related to an important government interest in that the regulation sought to protect the interests of Eco citizens as a whole.

B. The proposed regulation was an impermissible content-based regulation of free expression in a public forum.

C. The proposed regulation was not narrowly tailored to serve a compelling government interest.

D. The proposed regulation would be considered void for overbreadth if challenged in a court action, because it would prohibit a substantial amount of constitutionally protected speech.

20. Sophia was a citizen of the United States and Anystate. She was also an enthusiastic proponent of the use of force in the establishment of an independent state called Ourland within the boundaries of Anystate. Sophia opposed many of the political aims of Anystate, and was willing to take up arms in her fight to establish Ourland. She held a rally at a park, which was a traditional public forum. Many other supporters of Ourland attended the rally. At the rally, Sophia vehemently denounced the political policies of Anystate, and Sophia advocated not only the establishment of Ourland, but also the dismantling of the political structure of Anystate. Sophia fervently asked Ourland supporters to join her, that afternoon, in physically wrestling to the ground identified politicians of Anystate as they left the Anystate legislative building. Sophia’s objective was to show that Ourland proponents were both politically and physically superior to the politicians of Anystate. The park in which the rally was held was 200 yards from the Anystate legislative building. Just after Sophia issued her call to action, asking supporters to wrestle Anystate politicians, she was arrested by Anystate police officers, and prosecuted for violation of the Anystate criminal assault statute.

If Sophia asserts in an appropriate court action that she was arrested
and punished in violation of her Constitutional right to speak freely, which of the following would be the most probable result?

A. The arrest and prosecution of Sophia violated her right to free speech, because as long as Sophia was still a United States and Anystate citizen she had a fundamental right to freely and publicly express her political views.

B. The arrest and prosecution of Sophia violated her right to free speech, because no substantial governmental interest was involved in punishing the content of her speech.

C. The arrest and prosecution of Sophia did not violate her right to free speech, because the advocacy of the formation of an independent state is treasonous behavior and not constitutionally protected.

D. The arrest and prosecution of Sophia were not violative of her right to free speech, because she posed a clear and present danger of imminent lawlessness because she advocated the undertaking of lawless actions.
The Feathery Swallowtail is a very small white and brown bird which once inhabited many of the forests throughout at least half of states in the upper northern part of the United States. The Feathery Swallowtail has a unique symbiotic relationship with white-tailed deer, a common deer species in the US. The bird will sit atop the deer (perfectly camouflaged) and eat parasites and insects living in white-tailed deer fur. Unfortunately the Feathery Swallowtail only lays one egg a season and the bird is now verging on extinction due, in large part, to the hunting of white-tailed deer and the inadvertent killing of the bird during the hunting season.

In response to concerns that game hunters have been inadvertently killing an endangered bird species in the US during hunting season, Congress passed the Hunting Rifle Ban Act pursuant to the Commerce Clause which banned the possession or use of a popular semi-automatic hunting rifle called the “Faloozi”. Congress has made findings that the Faloozi is capable of firing multiple rounds of ammunition with the single pull of the trigger which renders it almost impossible for hunters to avoid killing the Feathery Swallowtail while lawfully hunting the game animal. Congress has also found that the Faloozi is one of the most popular hunting rifles in the US and has generated more than $10 million dollar in sales a year since production began five years ago. The rifle can be bought and sold in all 50 states. Accordingly, the law also requires that state game and wildlife officials enforce the federal ban on the Faloozi by tracking down each and every owner of the rifle in their own state and confiscate the rifle.

The NHA (“National Hunters Association”), an advocacy group promoting hunting rights comprised of hunters and hunting enthusiasts, has filed a lawsuit in Federal District Court, in the Western District of Wishwash (a big hunting state) seeking to enjoin the enforcement of the Hunting Rifle Ban Act.

QUESTIONS:

1. Does NHA have standing? Discuss.

2. Has Congress exceeded its constitutional authority under the Commerce Clause in enacting the Hunting Rifle Ban Act? Discuss.

3. Are there any other constitutional limitations on Congress's ability to enact the Hunting Rifle Ban Act under the Commerce Clause? Discuss.

**DO NOT DISCUSS ANY SECOND AMENDMENT ISSUES**

(END OF EXAM)