

Exam Number \_\_\_\_\_

**FINAL EXAMINATION  
IN  
CONSTITUTIONAL LAW**

**April 24, 2013  
Professor Shanor**

This is designed as a **three hour exam**. Read, think, and organize before you write!

This exam contains **three fact patterns**. The first fact pattern contains two questions; the other two have one question apiece. The suggested time for answering the questions, which will approximate the amount of credit given, is provided at the beginning of each fact pattern. Please be concise, using the cases and concepts you have studied in this course.

The exam is **open book** and may be taken only in **rooms assigned** for taking this exam.

The exam is governed by the **Honor Code**.

If you believe additional information is needed to analyze any question, state what you think is needed and why it makes a difference.

**YOUR EXAM NUMBER SHOULD APPEAR ON EACH PAGE OF YOUR ANSWERS (or each blue book cover) AND ABOVE ON THE COVER OF THIS EXAM.**

**YOU MUST RETURN THESE EXAM QUESTIONS AND RETURN OR UPLOAD YOUR ANSWERS TO RECEIVE CREDIT FOR THIS COURSE!**

**GOOD LUCK AND HAVE A WONDERFUL SUMMER!**

**I.**  
**(90 minutes)**

The Boston Marathon bombing of April 15, 2013, which killed three people and wounded scores more, occurred just as Congress was considering the most wide-ranging immigration reform in a generation.

The bombers, labeled “terrorists” by President Obama, were two brothers who immigrated to the United States from the Chechen region of Russia in 2002. The older brother, Tamerlan Tsarnaev, a lawful resident of the United States, had spent three months in the Chechen region of Russia a year prior to the bombings. Though he allegedly went to visit relatives, Tamerlan became radicalized by a Chechen Islamic affiliate of al Qaeda while in Russia. The younger brother, 19-year-old Dzhokhar Tsarnaev, was a naturalized American citizen. To radicalize and train his younger brother, Tamerlan used Islamic jihadist indoctrination videos and bomb making instructions obtained from the internet.

The comprehensive immigration reform bill generally reflected the view that immigration, despite this tragedy, was good for the country. However, in exchange for their support of the bill, a group of Senators successfully demanded that a group of homeland security protections be inserted, citing data showing that all virtually all terrorism threats in the past decade were from radicalized Islamists. Referred to as the Save the Homeland from Immigrant Terrorists (SHIT) provisions by detractors, these provisions were enacted by Congress as part of the broader bill. President Obama signed the bill despite these provisions, three of which follow:

*§ 1300. Blood samples shall be drawn from all Islamic immigrants immediately after entry to the United States. The biometric data from such samples shall be entered into the National Biometric Database (NBD). [The NBD currently contains only data from persons arrested in the United States]*

*§ 1301. Each high school principal shall certify to the Secretary of Homeland Security, for each Islamic immigrant student graduating from the school, that the student has demonstrated his or her loyalty to the United States and has renounced terrorism. Certification shall be provided only after such student has successfully completed a course, Values in American Democracy (VAD). The curriculum for VAD shall be provided in regulations issued by the Secretary of Education, with the consent of the Speaker of the House of Representatives, not more than six months following passage of this Act. The federal district courts shall order deportation of each Islamic immigrant student who has graduated from high school without being so certified.*

Using the concepts and cases you have studied in Constitutional Law, answer the following questions:

**(1) Does § 1300 violate Fifth Amendment rights of Muslim immigrants not to be “deprived of life, liberty, or property, without due process of law”?**

**(2) Does § 1301 violate separation of powers and federalism concepts?**

**II.**  
**(40 minutes)**

California law prohibits optical companies from offering prescription eyewear in the same location in which eye examinations are provided. Optical companies cannot lease space to, or share a location with, licensed optometrists to provide eye exams in their eyewear stores. Optometrists unaffiliated with optical companies, by contrast, may sell prescription eyewear at facilities they own, and at which they provide eye exams. Over 90% of such optometrists do so, deriving 50% of their revenue from such sales. All these optometrists are California residents and work exclusively in California. No optical company is headquartered in California and virtually all such companies compete in a nationwide market with locations in many states. California's statute, therefore, keeps optical companies from offering "one-stop shopping" for customers and thereby competing against optometrists. An expert for California at a trial concerning the constitutionality of the California statute conceded that the statute was "an effort to prevent out-of-state optical companies from coming to California and undercutting dispensing optometrists on price." The district court upheld the statute because California treats optometrists as "health care providers" and optical companies as "commercial interests." Having "different purposes and different business structures, optical companies are not the same as optometrists, and therefore there is no discrimination" said the court.

**You clerk for an appellate judge assigned this case. Write the judge a memo on whether California has violated dormant commerce clause principles.**

**III.**  
**(50 min.)**

Paul Beebe and Jesse Sanford, members of the White Nazi Party of America (WNPA) and part-time firemen in Page, Oklahoma, assaulted and tied up a developmentally disabled Native American man in the firehouse. The two men then branded their victim with a swastika and the words "Property WNPA." Beebe and Sanford were indicted for violating the Hate Crimes Prevention Act (HCPA), which makes it a crime to "willfully cause bodily injury to any person because of the actual or perceived race, color, religion, national origin, or disability of any person." Violation of HCPA involves criminal punishment of up to life in prison. When it passed the Hate Crimes Prevention Act, Congress explicitly premised its authority on both the Thirteenth and Fourteenth Amendments. Legislative history shows that Congress was concerned about hate crimes against all persons, and documented numerous instances of hate crimes against gays and African-Americans in the decades prior to the passage of the HCPA.

**Before trial, defendants moved to dismiss the indictments on the theory that HCPA exceeds Congress's Thirteenth and Fourteenth Amendment enforcement powers. Advise the judge how she should rule, using concepts and cases from your constitutional law course.**