Shanor Folder 5
Shanor
Constitutional Law I
Final Exam Spring 1996

EMORY UNIVERSITY

Exam Nur

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FINAL EXAMINATION
in
CONSTITUTIONAL LAW

May 3, 1996

Professor Shanor

This 3½ hour exam contains three one-hour questions which will be weighted approximately equally. The extra half-hour is provided to enable you to outline and review your answers, or to give you a more leisurely time to answer the questions.

The exam is closed book (except that you may refer to the copies of the Constitution handed out with the exam); it may be taken only in this room. If you believe you need additional information to analyze any question, state what you think is needed and why it makes a difference!

Read, think, and organize before you write!

Write all your answers in the space provided on the exam (four pages per question).

Write your exam number on each of the exam pages and in the space provided below for the Honor Code pledge.

GOOD LUCK!

I acknowledge that in this, as in all other Law School activities, I am bound by the Honor Code.

Exam Number:_____

I
(One-hour)

Assume that Congress passed and the President signed into law a "line-item veto" statute which authorizes the President to prevent a portion of a bill enacted by Congress from becoming law, while allowing the rest of the bill to become law.* The line-item veto statute provides that Congress may "override" a line-item veto by a two-thirds vote of each chamber of Congress.

Under longstanding law, American arms manufacturers are prohibited from selling weapons to foreign countries. When Congress wishes to permit sales of weapons to particular countries, it passes legislation specifically authorizing sales of specified weapons to those countries.

After the line-item veto statute was enacted, Congress passed a large foreign affairs bill, containing dozens of provisions. As part of the foreign affairs bill, Congress included a provision permitting American arms manufacturers to sell the F-99, an advanced fighter plane, to Bosnia.

Invoking her line-item veto authority, the President "vetoed" the portion of the bill permitting the sale of the F-99 fighter plane to Bosnia. The President then signed the bill into law, attaching to the bill a "signing statement" specifying that she was "signing" the bill except for the provision allowing the sale of the F-99 to Bosnia. Stating that she wanted to "avoid any possible ambiguity with regard to a very delicate matter of foreign relations," the President then issued Executive Order 1234, specifically prohibiting the sale of all weapons to Bosnia.

The F-99 is manufactured exclusively by Douglas, Inc., an American company. Douglas filed a lawsuit in federal district court, challenging Executive Order 1234 and the President's purported veto of the provision authorizing the arms sale to Bosnia.

Write a memo discussing (1) whether Douglas has standing to bring the suit, and (2) whether Douglas will succeed on its contentions (a) that the line-item veto violated Art. I, § 7 and the separation of powers, and (b) that the President had no authority to issue Executive Order 1234.

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*This legislation varies in significant ways from the actual line-item veto legislation recently enacted. Please base your answer on the legislation described in the question, not on the actual legislation.

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II
(One-hour)

The city of Morlando, Florida is divided into two main sections -- a northern section which is principally Hispanic, and a southern section which is principally Caucasian. A river divides the two sections of the city. Four bridges cross the river, and each day they are badly clogged with rush hour traffic.

Eager to relieve the traffic flow, the Morlando City Council decided to have two large new bridges constructed -- at a total cost of $100 million. The Council was able to appropriate $90 million from its general tax revenues and collected the remaining $10 million by charging a special tax assessment to Morlando residents whose household income exceeded $60,000. Virtually all such households were located in the southern section of the city.

After an open bidding process, the Council contracted with Big Uma's Bridge Builders of Alabama (known as BUBBA) to construct the bridges -- on two conditions, which were clearly stated in a published city ordinance. First, BUBBA had to agree that at least 30% of all subcontractors they engaged resided in the southern section of Morlando, and 30% of all subcontractors they engaged resided in the northern section of Morlando. According to the city ordinance, this would "minimize any further traffic congestion in Morlando caused by the construction." It turns out that the most qualified and cost-effective subcontractors were located in the northern section of Morlando; subcontractors from the southern section were, according to the BUBBA foreman, "very expensive and very sloppy." Second, BUBBA had to agree to purchase all of its building supplies for the bridge construction from Florida retailers. According to the city ordinance, this would minimize "unnecessary truck and rail transportation on Florida arteries and in the city of Morlando." The cost of local supplies was much higher than supplies shipped from BUBBA's suppliers in Alabama -- in part because of Morlando's 12% sales tax.

After losing money in the first weeks of construction, BUBBA executives decided they would try to cut their losses. A $30 million liquidated damages clause made simple breach of contract impossible. BUBBA thus wishes to have the constitutionality of Morlando's two conditions challenged in court. What are the strongest constitutional arguments that can be made against Morlando? What are the strongest constitutional obstacles to BUBBA winning its suit? Explain.

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III.
(One-hour)

Following a late 1990's revival based on the revelations of Joseph Smith, the nineteenth century founder of the Church of Jesus Christ of Latter-Day Saints, the State of Utah enacted in the year 2000 a statute permitting polygamy (marriage of a man to two or more women at a time). There is no official legislative history to this statute ("The Millenial Matrimonial Multiplicity Act"), but various Utah legislators said they voted for the legislation because of their religious convictions, a need to populate the state more densely, and a desire to enhance human freedom concerning marital relations. All Utah laws inconsistent with this statute were repealed.

The United States Congress' swift reaction to the Utah statute, the "Polygamy Prohibition Act," signed by President Pat Robertson, reads as follows:

> Sec. 1. Findings. Congress finds that the practice of polygamy is inimical to the progress of civilization, creates discord both within marital units which practice it and disharmony within societies which permit it, demeans the status and independence of females, and has adverse economic effects on societies which permit it.
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> Sec. 2. Prohibition of Polygamy. The practice of polygamy is a felony punishable by (a) imprisonment of not more than two years and (b) nullification of all purported marriages subsequent to and concurrent with the first marriage.
>
> Sec. 3. Denial of Funding. No state which permits polygamy shall receive any federal highway funding.
>
> Sec. 4. Judicial Jurisdiction. No court in the territory of the United States shall have jurisdiction to consider the constitutionality of this statute.

Brigham Younger and Sarah Youngest, devout residents of Utah who believe Joseph Smith's teachings to be the revealed word of God and who desire to marry each other despite the fact that they are already married to others, seek your advice concerning a challenge to the "Polygamy Prohibition Act." Advise them of all constitutional problems raised by the statute but OMIT ANY CONSIDERATION OF FIRST AMENDMENT ISSUES (which you have not yet researched).

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