



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

FINAL EXAMINATION  
IN  
CONSTITUTIONAL LAW

April 23, 1999  
2:00-5:30 P.M.

Professor Shanor

This is a **three and one-half hour exam**. It contains **four fact patterns** and questions related to the fact patterns. The points allocated to each question are provided next to the question.

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.

Read, think, and organize before you write!

**Handwritten answers** must be written in the **space provided** (two lines per point allocated).

**Computer written answers** must be typed using not more than **two typed lines per point allocated to the question** using 12-point or larger type and side margins of at least 1".

**WRITE YOUR EXAM NUMBER ON EACH PAGE OF THE ANSWER SHEETS AND ON THE COVER OF THIS EXAM. YOU MUST RETURN BOTH THE EXAM AND THE ANSWER SHEETS TO RECEIVE CREDIT FOR THE COURSE.**

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

**QUESTION I**  
**(60 minutes)**

Medical technology allows doctors to transplant human organs, such as lungs, kidneys, and livers. The organs are “harvested” from people after death and transplanted into recipients whose own organs are not functioning properly. The transplants must generally take place within a short period of time following death of the donor. The need for transplanted organs greatly exceeds the supply, and many people die while awaiting transplants. Consent for transplant must be obtained in advance from the potential donor or from that person’s family after his or her death. Many organs suitable for transplant are not transplanted because the potential donor fails to consent in advance, family cannot be located in time, and family may be reluctant to consent. To address these problems, the Georgia General Assembly recently enacted this legislation:

**GEORGIA ORGAN DONATION ACT**

**1. Findings:**

- (a) Georgia should strongly encourage potential donors to consent in advance to transplant and encourage families to consent to transplant following the death of a potential donor.
- (b) It is fair and appropriate for Georgia citizens to benefit from Georgia’s expenditures to encourage its citizens to become organ donors.
- (c) Organ donations are more likely to be successful if there is the shortest time possible between harvesting and transplanting organs into recipients. When organs are removed in Georgia, transplantation will likely be quicker if the recipient is a Georgia citizen.
- (d) Organ donations are more likely to be successful if the donor and recipient have a similar genetic make up. It may be time consuming to perform a comprehensive genetic screening of potential organ donors and potential organ recipients. People of the same races or ethnic backgrounds are more likely to have a similar genetic make up.

**2. Therefore:**

- (a) \$10 million is appropriated for a public education campaign to encourage Georgia citizens to become organ donors.
- (b) To further encourage organ donations, Georgia shall pay \$1000 to the family of any person who dies in Georgia, if the person consents in advance to become an organ donor.

- (c) All organs harvested in Georgia must be transplanted in accordance with a "recipient priority" list drawn up by the Georgia Health Department and it shall be unlawful to transplant organs harvested in Georgia except in accordance with this list.
- (d) In determining the "recipient priority" list, the Georgia Health Department shall give preference to citizens of the state of Georgia and recipients who are of the same race as the donor.

**Assume** that (i) the Federal Government does not regulate organ transplants, and (ii) African Americans are 28% of the population of Georgia and 14% of the population of the United States; in Georgia, 28% of those in need of organ transplants are African Americans, but only 20% of the organs harvested in Georgia come from African American donors.

### Questions

- (A) Does the Georgia Organ Donation Act violate the dormant commerce clause? **(15 points)**
- (B) Does the Georgia Organ Donation Act violate the equal protection clause of the Fourteenth Amendment? **(15 points)**

### **QUESTION II** **(40 minutes)**

The Georgia General Assembly recently passed the Grandparents Visitation Enactment (GRAVE). This statute finds that "children under age 16 benefit emotionally and socially from contact with their grandparents" and gives grandparents "visitation rights of not less than five hours per week to visit any offspring of their children." In the event that any parent prohibits such visitation by a grandparent, the statute provides that the Georgia courts must enter an order requiring the parent to grant visitation rights. Violation of such an order is punishable as a contempt of court.

Mack and Molly Malone are the parents of two young children. Molly's parents disinherited her when she married Mack, a boy from the "wrong side of the tracks." Because of deep resentment toward Molly's parents, Mack and Molly have prevented Molly's parents from having any contact with their children. Molly's parents have obtained a visitation order under GRAVE.

Advise Mack and Molly whether the GRAVE visitation order violates their rights under the due process clause of the Fourteenth Amendment. **(20 points)**

**QUESTION III**  
**(50 minutes)**

Following a highly-publicized competition in which Houston and Los Angeles each tried to outdo each other with tax and other incentives designed to lure a professional football team to their cities, Congress passed the following statute:

**THE INTERCITY COMPETITION ACT OF 1999**

**1. Findings:**

- (a) The Congress finds it is economically wasteful for cities to expend scarce public funds to attract major league sports teams to their cities;
- (b) Cities that provide tax breaks for athletic teams are diverting scarce resources from programs that would alleviate poverty and provide more expansive social services;
- (c) The diversion of energy and talent to professional athletics has a disparate and adverse impact on racial minorities; and
- (d) Many cities have proven incapable of managing their resources responsibly when faced with pressure from rabid sports fans to provide public funding for sports franchises in their jurisdictions.

**2. Therefore:**

- (a) It shall be a crime for a person to solicit a city to spend money as an inducement to attract a professional sports team, whether such solicited expenditures take the form of grants, tax incentives, or other monetary benefits; and
- (b) For every dollar that a city spends to attract a professional sports team, whether through grants, tax incentives or other monetary benefits, the city shall forfeit a dollar of the federal funds that it would otherwise receive for educational or social service programs.

Jane Bigbucks would like to bring a professional soccer team to Atlanta. Jane believes Atlanta would be delighted to provide a rich package of financial incentives to attract the team were it not for the Intercity Competition Act, but she has been reluctant to bring a team to Atlanta without such funding.

Joe Sixpack is a member of the Atlanta Rabid Soccer Fans, a local nonprofit club that promotes soccer.

Questions

**(A) Does Joe have standing to challenge this statute? (10 points)**

**(B) Does Congress have the power to enact this statute? (15 points)**

**QUESTION IV**  
**(50 minutes)**

Congress recently enacted a foreign aid bill that provides for grants to dozens of countries around the world. Because of concern with the problem of terrorism directed at the United States, Congress included a provision in the legislation that requires the President to determine whether countries that receive foreign aid from the United States are terrorist nations. The legislation defines a "terrorist nation" as a nation that "supports, harbors, or encourages persons or organizations that use or support the use of violence against citizens of the United States." The foreign aid legislation authorizes (but does not require) the President to cancel foreign aid that would otherwise go to a nation that the President determines is a terrorist nation.

The legislation further provides that before a cancellation takes effect, the President must inform the chairs of the foreign affairs committees of the United State Senate and the United States House of Representatives of his or her intent to cancel. Cancellation does not take effect until two months after this notification. During the two-month interval, Congress may enact legislation (through the usual legislative process) re-authorizing the foreign aid and exempting it from presidential cancellation. If no legislation is enacted within two months, the presidential cancellation takes effect.

President Powell believes international narcotics trafficking poses as great a threat to the United States as international terrorism and "fosters violent crime in the United States." Accordingly, he issues an Executive Order canceling foreign aid for nations that harbor or support individuals who smuggle narcotics into the United States. With regard to these cancellations, the Executive Order sets out the same procedures that the foreign aid legislation provides for terrorist nations: informing the foreign affairs committee chairs of intent to cancel the expenditure and waiting two months before actual cancellation.

Questions:

- (A) Does the "terrorist nation" cancellation provision violate the separation of powers? (12 points)
- (B) Does President Powell have the authority to cancel foreign aid to nations that harbor or support drug traffickers? (12 points)