
HOWARD UNIVERSITY SCHOOL OF LAW
CONSTITUTIONAL LAW I SECTION 2

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Spring 2012 Final Exam Instructions

May 1, 2012

General Instructions

1. You have three (3) hours for the exam.
2. Times noted for the questions reflect the amount of time I estimate it would take to answer each question. Please note that although the time noted for each question does relate somewhat to the points for that question, it does not do so in a strict one-to-one fashion.
3. The exam is two (2) pages long, excluding this instructions page.
4. There are three (3) questions worth 120 points, 60 points, and 60 points respectively, for a total of 240 possible points.
5. If you are not typing your exam, write legibly and clearly in blue or black ink.
6. Use substantive headings as appropriate.
7. Respond to the question asked, not to questions that might have been asked. Even though the fact pattern may be based on one of the hypothetical problems discussed during the semester, the call of the question may be different and the facts may have been revised. In your responses, do not spend time on matters that are not relevant just to show me how much you know. This exam tests professional judgment as well as knowledge of the material we covered in Constitutional Law I.
8. One or more of the matters you are asked to assess for constitutionality may have a clear answer. For such matters you should provide as complete an explanation as is appropriate so that the reader will understand your analysis and why the matter is not a close one. Other matters may be less certain of outcome and may depend upon filling a gap in the current legal doctrine. For such issues policies and principles at stake are particularly appropriate to discuss.

Permissible exam materials

The exam is closed book. No materials other than the exam itself, blank scratch paper, the laptop with the exam software, and (for those not using the exam software) bluebooks are allowed.

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Question 1. 120 points. Estimated time: 80 minutes.

Assume that in fall 2010 Congress enacted (and the President signed) a comprehensive health care reform law (HCRL), which provides the following (among many other provisions not relevant here):

1. All residents of the United States with an income above 150% of the poverty level are required to obtain health insurance starting in 2013.
2. Pre-existing condition clauses in individual insurance contracts are illegal and void.
3. Pre-existing condition clauses in employer-provided, or union-provided, or other group insurance contracts are illegal and void.
4. Certain basic health insurance coverage as specified in other parts of this statute must be provided to all employees or union members. Additional coverage can be provided to be paid for by the employer or union or employee.

Assume the statute is silent about severability, but the Conference Committee that reconciled the House and Senate versions of the bill included the following in its report.

“The mandate is the linchpin for several key provisions of the bill, including in particular paragraph 2. Otherwise people will frustrate the way insurance works by waiting until they are sick and then buying insurance. This particular provision is less important for group insurance that simply must be provided to all members of the group. Nonetheless, for group insurance the mandate would be important if enough people opted to not buy coverage until they were ill.”

Consider all constitutional issues reasonably raised.

Question 2. 60 points. Estimated time: 45 minutes.

Harold and Hannah like wilderness camping in their favorite wilderness area, the Boundary Waters Canoe Area (BWCA) in northern Minnesota. They use it regularly—usually three times per year. Hannah and Harold particularly liked getting away from the noise and odors of motors. Until

recently, motorized vehicles (motor boats in the summer, spring, and fall; and snowmobiles in the winter) were prohibited from the BWCA. However, a month ago the National Park Service changed the regulation to allow motorized boats in the BWCA starting in June 2012. The National Park Service controls access to the BWCA and promulgates the regulations governing it as a federally regulated wilderness.

Protect BWCA is a non-governmental organization (NGO) dedicated to protecting the wilderness characteristics of the BWCA including a wilderness experience free from noise, chemical, and odor pollution caused by motors. Members of Protect BWCA, including Harold and Hannah, regularly participate in BWCA service weekends to clear trails and campsites after major storms. Harold and Hannah have consulted Protect BWCA to see if anything can be done to roll back the new regulation.

Discuss the procedural constitutional defenses the U.S. government and the National Park Service would have if Hannah and Harold and Protect BWCA sue to contest the regulation.

Question 3. 60 points. Estimated time: 45 minutes.

Minnesota has decided that it did not like the new National Park Service regulation for the BWCA (as explained in Question 2—incorporate all facts from Q. 2 for this question—and so it passed a law which states: “No motorized vehicles are allowed in the BWCA without a valid Minnesota Department of Natural Resources (DNR) permit for using a motorized vehicle in the BWCA.” In its first year of enforcement, in practice only law enforcement and emergency agencies were granted such licenses by the Minnesota DNR. No one else, including sport fishermen, was ever granted such a license.

The BWCA is entirely within the boundaries of Minnesota. Minnesota regulates some aspects of the BWCA. For example, no one can legally fish in the BWCA without a Minnesota fishing license and all boats in the BWCA must have a Minnesota boat registration (or be registered in another state). But regulations as to camping, logging, motors, and other wilderness aspects (e.g., you can’t bring in cans or bottles) are regulated by the National Forest Service.

A Minnesota forest ranger arrested a sport fisherman, Arne Hakala, for fishing within the BWCA in a motorized boat without a proper permit from the DNR. Hakala was duly charged with a misdemeanor for operating a motorized boat in the BWCA without a Minnesota DNR permit.

What constitutional defense(s) should Hakala raise and how likely is he to succeed on the merits of it (them)? Explain.

End of Exam