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HOWARD UNIVERSITY SCHOOL OF LAW  
CONSTITUTIONAL LAW I SECTION 2

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## Spring 2013 Final Exam Instructions

April 25, 2013

### 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 three (3) pages long, excluding this instructions page.
4. There are three (3) questions worth 60 points, 70 points, and 40 points respectively, for a total of 170 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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SPRING 2013 FINAL EXAM

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**Question 1. 60 points. Estimated time: 50 minutes.**

Assume that Congress enacted (and the President signed) a law seeking to reduce greenhouse gas emissions in the United States. The law, Clean Energy/Reduced Emissions (CERE), provides in part as follows:

101. Every homeowner is required to reduce electrical power consumption in each home owned in part by him or her by at least 15% by three years from the effective date of this law. The baseline is to be average energy consumption by the home for the 10 year period prior to the effective date of this law.

102. Homeowners who burn fossil fuels for heat, including natural gas, propane, oil, or wood products must reduce their consumption of those products by 15% and must document that reduction in such manner as determined by the DoE.

103. Homeowners who generate at least 15% of their energy consumption from on-site photovoltaic solar power panels or solar water heating systems or passive solar heating are exempt from this law.

104. The method of calculation, taking into account factors such as heating degree days, cooling degree days, and the like is to be developed by the Department of Energy (DoE), such that energy use amounts are to be adjusted to account for mild or harsh winters or summers and other relevant factors.

105. Subject to section 103, this statute applies to all homeowners including those who are "off grid," i.e., those who do not get their electrical or heating and cooling from any external provider such as a power company.

106. A person who violates this law by not reducing power consumption or by not reporting usage is guilty of a felony and may be fined an amount equal to three times the market cost of the power consumed in an equivalent home in the same area per year.

Assume the reporting requirements and the methods of calculation developed by the DoE are constitutional, provided the underlying substantive provisions of the law as enacted by Congress are themselves lawful.

Liberty T. Parte lives on a 40 acre wooded area in the mountains of the State of Forestiana. He is completely off the grid and generates all of his heating from wood he himself cuts and splits from his own property. He generates electricity from a steam generator that is powered by burning wood and from a small windmill he built himself.

Parte refused to comply. Three years after the effective date of the law, Parte was duly arrested, charged, tried, and found guilty under Section 106 and fined \$18,000. (The average market cost of energy per year in his area for homes of his size was \$2000.) Parte's defense that the law is unconstitutional as applied to him was rejected by the Federal District Court for the District of Forestiana. Parte appealed to the appropriate circuit court.

**You are a clerk for Judge Wisdom of the Circuit Court. Judge Wisdom has asked you to evaluate the Parte's claim that the law is unconstitutional as applied to him. Do so.**

**Question 2. 70 points. Estimated time: 60 minutes.**

Assume the President has authorized the CIA to use drones to kill known terrorists outside of the United States. Assume that Congress decides that killing people who are not engaging in state-sponsored terrorism, but rather who are associated with (and typically leaders of) non-governmental terrorist organizations is contrary to foundational beliefs and principles of the United States. In an attempt to restrain the executive's use of drones to kill foreigners who have not been tried and convicted and who are not affiliated with a state with which the U.S. is at war, assume Congress passes the following law:

Neither the President nor anyone in the executive branch can authorize the use of deadly force or the killing of anyone either inside or outside the borders of the United States or its territories unless:

1. The person is actively participating as a member of the military of a state with which the United States is at war duly authorized by Congress; or
2. The killing is pursuant to a resolution adopted by Congress authorizing the use of the U.S. military against another state; or
3. The killing is pursuant to a resolution adopted by Congress authorizing the use of force against a non-state terrorist organization specified in the Congressional resolution; or
4. The targeted person has been duly convicted of a capital crime and sentenced to death by a competent United States Court and that person is beyond the reach of apprehension by normal means.

The President vetoed the bill, claiming it unconstitutionally infringes on the President's authority.

**Is the President correct? Explain.**

**Question 3. 40 points. Estimated time: 45 minutes.**

Assume the same facts as in Question 2 plus the following information.

Congress did *not* override the veto.

Sim Pathizer was targeted by a drone attack in Farawayistan. Farawayistan is a remote, isolated poor country with few natural resources, a small population, and little engagement with other countries. A terrorist group calling itself "Destroy Imperialist Power" (DIP) is dedicated to attacking multi-national corporations and those it perceives as imperialist countries including (but not limited to) the United States.

Sim Pathizer was not killed in the attack, but did suffer serious injuries, including the loss of one arm. Sim was later captured and brought to the United States.

Since he is now in the United States, Sim sues the President in U.S. federal court for assault and battery and for violating his federal statutory and federal constitutional rights. Assume subject matter jurisdiction and venue are proper.

**You are a new hire in the Office of the General Counsel (OGC) of the White House. The OGC functions as the legal advisor to the president on matters of the president's authority and legal power of the president. The President wants the claim dismissed without consideration of the substance of the merits of the claim. You have been asked to evaluate only the justiciability of Sim Pathizer's claim. Do so.**

**End of Exam**