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HOWARD UNIVERSITY SCHOOL OF LAW  
CONSTITUTIONAL LAW I SECTION 2

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## Spring 2015 Final Exam Instructions

April 21, 2015

### 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 45 points, 50 points, and 50 points respectively for a total of 145 possible points.
5. If you are not typing your exam, write legibly and clearly in blue or black ink.
6. Even though one or more of the fact patterns may be based on a problem or problems discussed during the semester, the call of the question may be different and the facts may have been revised.
7. Respond to the question asked, not to questions that might have been asked. 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 the course.
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) exam books are allowed.

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SPRING 2015 FINAL EXAM

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**Question 1. 45 points. Estimated time: 45 minutes.**

Congress passed a law that prohibits states from banning cities from creating their own broadband fiber optic networks or over-the-air wifi-like networks for people to access the internet. The State of Kansouri had a law that prohibited cities from providing such services directly as opposed to having such services provided by cable companies or communications companies like Verizon, Comcast, Cox Cable, Time Warner, or Sprint or AT&T. Because the neither the cable company nor the communications companies were providing high speed service, the City of Ispede created such a system itself. If the federal statute is constitutional, the state law is preempted.

**Evaluate the constitutionality of the federal statute.**

**Question 2. 50 points. Estimated time: 50 minutes.**

Private information about a person is protected under the substantive due process clause of the 14th Amendment as an aspect of liberty. Private information includes, among other information, medical information and financial information.

The State of Otuckio enacted a law requiring doctors, nurses, pharmacists, and others involved in the provision of medical treatment, drugs, or devices to report all such provision of medical treatment, drugs, or devices for certain categories to the Otuckio State Health Department (OSHD). OSHD uses the information to spot and evaluate health trends and to plan and adjust the provision of OSHD medical services to those who qualify. OSHD is the state agency that administers the federal spending programs of Medicare and Medicaid through which it pays for the medical care of many people in Otuckio.

This collection and use by OSHD of the private medical information is constitutional.

In order to raise additional money to carry out its mission, OSHD sells this valuable medical information to private insurers, private researchers (including

private university medical researchers), drug companies, and companies that create, manufacture, and sell medical devices.

A United States Senator, Senator Alice Tripplin has learned of this activity by OSHD in Otuckio and is considering proposing federal legislation that would ban the sale of such private medical information by state agencies nationwide and would abrogate state sovereign immunity in favor of any person whose information was disclosed contrary to federal law.

**Senator Tripplin has assigned you to evaluate her proposed legislation under the 14th Amendment. In doing so, advise her as to what should be done to maximize the likelihood that such a law would be held constitutional under the 14th Amendment grant of power to Congress.**

**Question 3. 50 points. Estimated time: 50 minutes.**

A military force has rapidly taken over parts of four countries. It has declared itself to be an independent, sovereign nation, calling itself the Religious Peoples Republic (RPR). Its rapid military success could mean that it may expand quickly and conquer more territory—indeed all four countries are at risk of being conquered completely.

RPR poses no immediate threat to the United States or to vital U.S. interests. Nonetheless, RPR has taken United States' property and the property of United States' nationals that was located in the area conquered by RPR's military forces. Congress has not passed a law authorizing intervention against the RPR. The RPR is not a terrorist organization and thus action against it could not be justified under the Authorization for the Use of Force Against Terrorism.

United States President Mallori Bucli was requested to intervene by the four countries that lost territory to RPR as well as by International Mining Company (IMC) which lost a large mine that mined rare minerals used in the electronics and telecommunications industries. IMC is a corporation incorporated in the State of Delaware and owns and operates mining operations in a dozen countries around the world, including in the United States.

Passa Fye has sued President Bucli seeking a declaratory judgment that the use of force against RPR would be unconstitutional. Fye is the executive director of Stop War, a non-governmental organization dedicated to ending United States involvement in military action in foreign countries.

President Bucli has moved to dismiss Fye's lawsuit as not justiciable.

**Evaluate the likelihood of success of President Bucli's motion.**

**End of Exam**