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HOWARD UNIVERSITY SCHOOL OF LAW  
CONSTITUTIONAL LAW I SECTION I

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PROF. STEVEN D. JAMAR

## Spring 2019 Final Exam Instructions

April 29, 2019

### 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 two (2) questions worth 90 points and 70 points respectively for a total of 160 possible points.
5. If you are not typing your exam, write legibly and clearly in blue or black ink.
6. 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.
7. Some constitutional law issues raised in the problems 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, the policies and principles at stake are particularly appropriate to discuss. Even if you consider the resolution of one issue dispositive of the issue, normally it is best to consider other issues raised as well.

### 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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# HOWARD UNIVERSITY SCHOOL OF LAW

## CONSTITUTIONAL LAW I SECTION 1

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Professor Steven D. Jamar

SPRING 2019 FINAL EXAM

APRIL 29, 2019

**Question 1. 90 points. Estimated time: 90 minutes.**

In 1976 Congress enacted and the president signed into law the Emergencies Powers Act (“Act”). The Act purports to give the president extraordinary powers to be exercised to meet emergencies. The Act does not define what constitutes an emergency nor does it provide standards for determining when an emergency exists. It vests broad discretion to make that determination in the president.

In February 2019 the president declared an emergency under the Act with respect to immigration along the United States’ southern border with Mexico. Among the powers the president claims as a result of the declaration of this emergency are the powers (1) to build a more extensive wall along the southern border to control the illegal importation of drugs, the illegal entrance of immigrants, and the influx of those seeking refugee status under U.S. laws regulating who is a refugee, and (2) to divert funds from other programs as provided by the Act when an emergency is declared so that he can build the wall along the southern border. In 2019 Congress has twice refused the president’s requests for funding for the wall.

Assume the Emergency Powers Act includes the following provision:

A Declaration of Emergency by the President may be overturned by a majority vote in both Houses of Congress in a Joint Resolution. In the event such a Joint Resolution is passed by both Houses of Congress, the affected Emergency Declaration shall be immediately null and void.

Assume that in early March 2019 both houses of Congress passed a joint resolution against the president’s declaration of emergency with respect to immigration along the United States’ southern border with Mexico.

As you consider the following situations (which blend fiction and fact), keep in mind that you are to address only the constitutional law issues we have studied this semester. For example, one of the issues that may be raised below is whether the courts have the power to decide whether an emergency declaration is proper under the statute or whether the vesting of discretion in the president makes that issue unreviewable by the courts. If such an issue is raised by facts, you would not discuss whether the facts support the declaration of the emergency under the statute, but rather whether courts have the constitutional power to review such an issue at all.

- i. The National Butterfly Center sits on the U.S. side of the Rio Grande. The Department of Homeland Security, pursuant to its enabling statute, waived

- requirements of 28 environmental laws and regulations (including portions of the Endangered Species Act and Clean Air Act) in order to push ahead with building a wall through the National Butterfly Center without the sorts of studies and deliberate processes those laws require. The National Butterfly Center is a private entity that owns the land. The Department of Homeland Security has brought in heavy equipment and started preparing the land to build the wall.
2. The Texas Native Species Foundation, a private foundation, is dedicated to ensuring that native flora and fauna of Texas have proper natural habitat to enable them to survive. It contends that building the wall will divide sensitive natural habitat in such a way that it will adversely affect interdependent species to the extent that some species could become extinct if the wall is built.
  3. Military Home Construction, Inc., a private company that builds housing for members of the military on military bases, has had \$2 billion worth of contracts cancelled in order to provide funding for other companies to build the wall.
  4. The House and Senate passed another Joint Resolution, this one authorizing Congress to sue to stop the president from acting on this emergency declaration on the grounds that Congress overturned the declaration of emergency when it voted to void the declaration of emergency in early March 2019. This joint resolution authorizing suit was not presented to the president for his signature.

All four of the noted entities have sued the President, the Department of Homeland Security (DHS), and the Director of the Department of Homeland Security to stop the diversion of funds and the construction of the wall.

The President, the Department of Homeland Security, and the Director of the Department of Homeland Security have moved to dismiss all claims of all parties on various grounds including: the claims are not justiciable, presidential immunity, executive immunity, and possibly other constitutional grounds.

**Evaluate the justiciability issues, the immunity issues, and other constitutional issues (if any) with respect to the motions to dismiss the lawsuits, and then rule on the motions to dismiss.**

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

Five counties in the State of Agrisun have entered into a pact to develop wind and solar panel farms to generate electricity for the five counties. The Five County Pact (the "Pact") recites that the aim of the five counties in the pact is that by January 1, 2019 they were all to be 100% energy independent for all governmental

and private uses of power in their respective counties. The Pact provides in part as follows:

1. The counties participating in this Pact agree not to use any electrical power generated from non-Pact sources after January 1, 2019.
2. The counties will each adopt ordinances that require all businesses and residences in the counties to purchase electrical power from the Five County Pact Power Company, Inc., (known as “5CPPC”), a company created under the Five County Pact by the five counties to develop and provide the power, and no other companies or entities.
3. The counties will each adopt ordinances that require that, as of January 1, 2019, all private companies doing business in the Five County Pact area, including companies without offices in the Five County Pact area, must drive only electric vehicles within the five counties. The ordinances are to exempt transportation and shipping companies with trucks and delivery vans which are just passing through the five counties on state or federal highways. Anyone using local county, city, or town highways, streets, or roads must only drive electric vehicles or get a special permit allowing use of non-electric vehicles according to the terms provided in the permits.

On July 1, 2004 the Pact became effective and all of the required ordinances had been duly and properly adopted by each of the five counties. The State of Agrisun allows such pacts and has not otherwise taken a position with respect to the Five County Pact nor with respect to the ordinances adopted pursuant to the Pact.

Lee Bertie, a Gaia county resident, doesn't like the laws and believes the Five County Pact and its requirements and the requirements of the ordinances enacted in Gaia County pursuant to the Pact are unconstitutional. He refuses to convert his house to electric heat (he uses an oil furnace now) and refuses to give up his gasoline-powered car.

Ace Moving Company, Inc., a trucking company that specializes in moving people's home furnishings across country, believes the law is unconstitutional and refused to get a special permit in February 2019 when it moved the Smith family's furnishings into a house in Gaia County.

**Gaia County sued Bertie and Ace Moving Company for violating its ordinances. Assume that procedurally and jurisdictionally the suit is proper in all respects including justiciability and proper plaintiffs and defendants.**

**Identify and evaluate the substantive constitutional defenses covered in Con Law I that available to either Bertie or Ace Moving Company or both.**

**End of Exam**