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HOWARD UNIVERSITY SCHOOL OF LAW  
CONSTITUTIONAL LAW II SECTION I

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## Fall 2016 Final Exam Instructions

December 1, 2016

### 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 100 points, 30 points, and 50 points respectively, for a total of 180 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 or more of the hypothetical problems discussed or distributed 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.
8. One or more of the issues or sub-issues may have a clear answer. For such items you should provide a brief explanation that is sufficiently complete such 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 analogizing to other cases and the use of relevant policies and principles 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. 100 points. Estimated time: 90 minutes.**

The state of Selit gathers information through the state Department of Revenue (DoR) for tax purposes, through the state Department of Motor Vehicles (DMV) for licensing purposes, through the Department of Natural Resources (DNR) for managing recreational activities as well as commercial exploitation of state parks and the like, through the state Medical Licensing Bureau (MLB) for licensing physicians and other health professionals, and through the state Drug Administration Agency (DAA) to track the prescription and use of drugs.

The Selit Information Agency (a state agency) gathers information from all of these sources and sells it to commercial and other interested parties including drug companies, insurers of all types (health, life, accident, etc.), car manufacturers and vendors, real estate agents, discount stores, and more. When the Selit Information Agency combines the information, it modifies it somewhat. For example, it only discloses gross reported income, not actual taxes paid, deductions, and the like from the information it obtains from the DoR. It does not modify the DMV information which contains not only a person's name and address, but information concerning the person's car insurance, driving record (including among other information arrests for driving under the influence of alcohol or drugs (DUI)), home address, and other contact information. Selit Information Agency gathers information from the MLB about the person's education, license granted, and any complaints received about that person. From the DAA Selit Information Agency receives information about the prescriptions issued by particular physicians including what drugs, dosage, when, and how often, and quantities, as well as information about to whom they were prescribed and for what purpose.

One person about whom Selit Information Agency sold information was Dr. Hadi Nuff. Dr. Nuff was an expert in treating chronic pain and in the

course of her work she often prescribed pain killers including opiates. She also was an avid outdoors person who liked to hunt big game including bear and elk. Once when out hunting she was accidentally shot by another hunter (not someone in her hunting party—they never found out who it was). The injury was severe. At the time she was shot she self-administered morphine that she carried in her emergency medical kit. She continued to prescribe herself morphine for pain for a long enough time that she became addicted to it. After two years when she realized she was addicted, she went through drug rehab, and is now clean.

A local television news station obtained this information about her and made a big splash as an investigative report about how her pain clinic was engaged in improper behavior and was just a cover for her to get and use drugs illegally. They touted her use and addiction. They did not explain how it happened nor that she had since gotten clean.

She wants to sue the Selit Information Agency and the State of Selit. (Assume the state has waived sovereign immunity with respect to any and all claims a person may have against it and so there are no Con Law 1 issues to consider.)

Evaluate any constitutional claims she may have against the State of Selit and the Selit Information Agency.

**Question 2. 30 points. Estimated time: 40 minutes.**

The legislature of the state of Amoran enacted a law that prohibits discrimination in terms and conditions of employment by private employers on the basis of sexual orientation or gender identity. ConserValue a big box store akin to a Walmart or Target store refused to hire Pat Angé on the grounds that Pat Angé was genetically a male but self-identified as a female and had undergone surgery and hormone therapy to become female.

Pat Angé sued ConserValue for employment (hiring) discrimination in violation of state law. ConserValue admits that it excluded Pat on the grounds of gender identity and has violated the statute. However, ConserValue defends itself on the grounds that the statute as applied to it violates its United States Constitutional First Amendment right of Free Exercise of Religion. Bob and Mandy Trotz, dba as ConservValue, describe their company as being operated “for the glory of God.” The Trotz’s religion

teaches that such gender-modification is a sin and that members of the religion are not to associate with people who are transgender.

Evaluate the Trotz's Free Exercise argument.

**Question 3. 50 points. Estimated time: 40 minutes.**

Relig State University has many academic departments, including a nationally known Department of Religion. It also has an institute called "Church and State Institute" known as "CSI." CSI publishes an academic journal on matters relating to the interactions and interrelationships of religions and religious organizations and civil governments worldwide. In the past it has published articles written by students, professors, other academics, members of think tanks, government officials, clergy and even on occasion lay people. The authors are mostly from the United States, but a fair number have been from people in foreign nations.

A man going by the name of John Q Public submitted an article entitled "The Obligation of Christians To Take Up Arms Against Non-Believers." In the article Public liberally references the Bible, especially the Book of Revelations for the proposition that we are in the end times and it is the obligation of every Christian to choose sides and fight against evil, which he identifies as everyone who doesn't join his crusade.

CSI rejected the article for publication on the grounds that the viewpoint expressed in it is anathema to what CSI, the Department of Religion, the Relig State University, and the State of Relig itself stands for and on the grounds that it could potentially lead to violence if someone accepted the arguments in the article. The article was in all other respects erudite, well researched, and well written and would have met the standards for publication by CSI.

Consider the constitutional issues raised.

**End of Exam**