Final Examination
Constitutional Law, Professor Leslie Griffin
University of Houston Law Center
December 13, 2003
9 A.M. to 1:30 P.M.

THESE EXAMINATION QUESTIONS MUST BE RETURNED AT THE END OF THE EXAM.

This examination is CLOSED BOOK, NO NOTES. You may consult only the copy of the Constitution that is provided with this examination. You may not consult any other materials or communicate with any other person. You are bound by the Law Center’s Honor Code. Don’t forget that it is a violation of the Honor Code to discuss the exam’s contents with any student in this class who has not yet taken it.

Write your examination number in the blank on the top of this page. If you are handwriting your examination, write your examination number on the cover of each of your bluebooks. If you are using the computer, write your examination number on each diskette and at the beginning of your response to each question. At the end of the exam, you MUST turn in the examination AND the Constitution along with your answers. Please do not write your name, social security number or any other information that provides me with your identity.

This exam is four pages long, with THREE questions. Question I is worth 50 points. Question II is worth 30 points. Question III is worth 20 points. You have four hours and thirty minutes. I recommend that you spend 120 minutes on Question I, 60 minutes on Question II, and 45 minutes on Question III. You have an extra 45 minutes to use at your discretion.

Read carefully. Think before you write. Accurate reading of the question is essential. Good organization, clear statement and avoidance of irrelevancies all count in your favor. In your answers, you should cite to any applicable provision of the United States Constitution and to the governing case law that is relevant to the question. If the questions are similar to current events, you should draft your answer based on the facts as they are set out in the question and not on outside reading.

If you write your exam, use ONE SIDE of a page only, and SKIP LINES. If you type, DOUBLE SPACE, and leave wide margins.

Honor Code. It is a violation to use ANY aid in connection with this examination; to fail to report any such conduct on the part of any other student that you observe; to retain, copy, or otherwise memorialize any portion of the examination; or to discuss its contents with any student in this class who has not yet taken it. By placing your exam number in the PLEDGE blank below, you are representing that you have or will comply with these requirements. If for any reason you cannot truthfully make that pledge, notify me as soon as possible. Sign your number and not your name.

PLEDGE: _________________________________
Question 1
(50 points, 120 minutes)

Gloria, sixty years old, and Linda, fifty-five years old, have been in a committed relationship for thirty years and have a fifteen year old son. Gary, thirty-five years old, and Richard, thirty-seven years old, have been in a committed relationship for thirteen years and live with their eight year old daughter and Richard's mother. All four live in State. Each of the four attests a desire to marry his or her partner in order to affirm publicly their commitment to each other and to secure the legal protections and benefits afforded to married couples and their children.

Both of the couples attempted to obtain a marriage license from State Clerk's office. As required under State law, they completed notices of intention to marry on forms provided by the Clerk, and presented these forms to the State Clerk, together with the required health forms and marriage license fees. In Gloria's and Linda's case, the Clerk refused to accept the notice of intention to marry when they presented it at the Clerk's office. In Gary's and Richard's case, the Clerk denied a marriage license to the couple on the ground that State does not recognize same-sex marriage.

All four individuals filed suit in federal district court alleging that the denial of a marriage license violated their federal constitutional rights.

(1) Some Members of Congress heard about the district court case and resolved to do everything they could to prevent gay marriages. Identify and analyze the actions that Congress should consider undertaking in order to prevent gay marriage. (These Members of Congress are eager to prevent gay marriage, so be sure that you are thorough in reviewing all possible options that Congress may consider.)

(2) After the district court and a federal appeals court ruled against them, the couples appealed to the U.S. Supreme Court. What argument should the parties make in the Supreme Court? Will they win or lose? Why?
Question II

(30 points, 60 minutes)

StateOne Lobster Law includes the following provisions:

1. Any person domiciled within the state may take and land lobsters from the waters of the state upon first obtaining a permit from the department. There shall be two classes of permits: a non-commercial permit, the fee for which shall be ten dollars, and a commercial permit, the fee for which shall be one hundred fifty dollars. A non-commercial permit shall allow the holder to set no more than five lobster pots and to take or land in any one day no more than six legal lobsters. Holders of non-commercial permits shall not sell, offer for sale, trade or barter, or otherwise traffic in lobsters so taken. A commercial permit shall allow the holder to set any number of pots and use any other legal method for taking lobsters with no restriction on the number of legal lobsters that may be taken, landed or possessed.

2. A person not domiciled within the state but who is domiciled in a state that provides reciprocal permits or licenses to persons domiciled in StateOne may, upon first obtaining a permit from the department, take and land lobsters only from the waters of the state westerly and southerly of a straight line drawn from the Flashing Green Light Number 9 Whistle Buoy at Cerebus Shoals (located approximately seven miles northwesterly to Montauk Point) northwesterly to Race Rock and thence due north to the interstate boundary line; and may land lobsters taken outside StateOne waters. In other words, a person not domiciled within the state may not take lobsters from the Restricted Area. The fee for such lobster permit shall be two hundred twenty-five dollars. Such permit may allow the holder to set no more than three lobster pots and to take or land in any one day no more than five legal lobsters.

Vicki is a StateTwo resident and a commercial lobsterman. State Two provides reciprocal permits or licenses to persons domiciled in StateOne. Since 1978, Vicki has been licensed to take and land lobsters in StateTwo. Pursuant to the StateOne Lobster Law, Vicki obtained a permit in to take and land lobsters in the vast majority of StateOne waters other than the Restricted Area. But she thinks the best lobsters are found in the StateOne Restricted Area, and so she takes lobsters from the Restricted Area when she can get away with it.

StateOne lobstermen are angry when nonresidents take lobster from the Restricted Area. They met with StateOne officials to demand stricter enforcement of the StateOne Lobster Law. Vicki heard about the meeting and challenged the constitutionality of the StateOne Lobster Law by suing StateOne.

What arguments will she make about the law's constitutionality? What will StateOne respond? Will Vicki win or lose in the U.S. Supreme Court?
Question III

(20 points, 45 minutes)

In order to protect federal funds, Congress passed a law regulating "Theft or bribery concerning programs receiving Federal funds." The statute provides, in relevant part, that:

(a) Whoever, if the circumstance described in subsection (b) of this section exists,

(1) corruptly gives, offers, or agrees to give anything of value to any person, with intent to influence or reward an agent of an organization or of a State, local or Indian tribal government, or any agency thereof, in connection with any business, transaction, or series of transactions of such organization, government, or agency involving anything of value of $5,000 or more; shall be fined under this title, imprisoned not more than 10 years, or both.

(b) The circumstance referred to in subsection (a) of this section is that the organization, government, or agency receives, in any one year period, benefits in excess of $10,000 under a Federal program involving a grant, contract, subsidy, loan, guarantee, insurance, or other form of Federal assistance. 18 U.S.C. § 000.

The City Neighborhood Revitalization Program is an agency created by the City that provides funding for the economic revitalization of City neighborhoods. It receives $250,000 a year in federal funds. Sam is a City developer and landlord who was pursuing a commercial real estate project within the City. Harry served on the City Council and also served on the Board of Commissioners overseeing the Revitalization Program's budget.

Sam gave Harry $5000 in an attempt to obtain Harry's assistance in receiving regulatory approval from the City to commence Sam's proposed real estate project. Sam also offered to give Harry $80,000 as a 10% kickback in return for his assisting Sam to obtain $800,000 in community economic development grants for the proposed real estate project.

A federal prosecutor heard about Sam's actions. The government alleged that Sam violated 18 U.S.C. § 000 and the grand jury indicted Sam with three counts of bribery. Sam filed a motion to dismiss the indictment on the ground that the statute was unconstitutional. Provide Sam's constitutional argument. Will Sam win or lose in the U.S. Supreme Court?
Constitutional Law Exam  
Fall 2003

The issues on this exam were straightforward. The range in grades among exams was based primarily on issue-spotting. There was a big difference among exams; the totals ranged from 10 to 90 points. If you neglected to mention key issues or cases, you missed a lot of points.

Question I, on gay marriage, gave you the opportunity to discuss the basics of constitutional law as well as the law of privacy. In Part 1, Congress’ ability to change the law, you should have considered all the things that Congress might do, namely: pass legislation (using either its Commerce Clause or Section 5 of the Fourteenth Amendment power); strip the courts of jurisdiction; use Full Faith and Credit (as it did in the Defense of Marriage Act) or amend the Constitution. Part 1 tested whether you understood the powers of Congress and the courts. In Part 2, you needed to discuss Equal Protection and Substantive Due Process, and the case law on those subjects, especially *Romer, Loving* and *Lawrence*. You also had to analyze whether the parties had standing to bring the lawsuit.

For Question II, you should have analyzed both the Dormant Commerce Clause and Article IV Privileges and Immunities. Some of you discussed one but not the other. You also should have considered whether the Eleventh Amendment barred the lawsuit.

I read Question III to you in class and told you that the Supreme Court had granted certiorari on this case. The central question in the case is if Congress can use its spending power in this manner. You should also have considered the other powers of Congress, but considering spending was the key to a good answer.

There are student model answers that will show you how the best students answered these questions. No one, however, spotted all the issues!
Question I

(1) Preventing Homosexual Marriage

Congress has a number of options to prevent homosexual marriage. The strongest option would be to amend the constitution. Such amendment could provide for any one of the following: (i) marriage may only be recognized (by a state or the federal government) between a man and a woman; (ii) the full faith and credit clause does not extend to recognizing unions/marriages from other states, except for those between a man and a woman; or (iii) equal protection and due process extend only to the treatment of the law to a particular person, not to groups of persons.

Amending the constitution to define marriage and its recognition, and prohibiting other recognition by states or the federal government, would avoid many of the potential legal challenges to other methods of preventing the legalization of homosexual marriage. A well-written amendment would avoid further challenges, because a constitutional amendment is legally superior to both judicial precedent and previous amendments.
Nationalizing the Definition of Marriage

Under the Article 14, section 5 power, Congress can enforce equal protection and due process by appropriate legislation. In the name of supporting equal protection of all persons to marry, Congress could enact a law guaranteeing all unmarried persons the right to marry any unmarried member of the opposite sex, regardless of race, creed, national origin, sexual orientation, etc, (subject to being of legal age). The legislation could expressly prohibit the marriage of members of the same sex as not covered by the equal protection clause of the 14th amendment. Further, the legislation could limit the definition of due process, with regard to marriage, as limited to the provisions of the act. Since the federal government is not regulated under the 14th amendment, and, indeed, gets additional legislative power under the amendment, this would be a decent solution.

The problem with attempting to prevent homosexual marriage with legislation, instead of an amendment, is that the Supreme Court could interpret its power under the 14th amendment as allowing it to continue deciding cases relating to the 14th amendment, and ignore Congress's mandate. Further, the court could decide that the 5th amendment guarantee of "due process of law" prior to deprivation of "life, liberty or property" could be interpreted by the court to allow homosexual marriage as a "liberty" removed without due process.

Abolish Civil Marriage

The Congress could, under the 14th amendment power, abolish civil recognition of marriage. There would be no equal protection issue because there would be nothing to benefit equally from.
This would require mammoth changes to everything from tax laws, to inheritance laws, to housing codes, and is not a particularly practical solution. It would also probably not be received well by the constituencies of Congressmen. Simply introducing such legislation, however, may be enough to convince other members of Congress and the state legislatures of the need for an amendment.

Reducing Jurisdiction of Federal Courts

Congress has the power to regulate the jurisdiction of the federal judiciary. Congress could pass a law, limiting the jurisdiction of the federal judiciary of equal protection and due process claims. For instance, the jurisdiction could be limited to claims related to race, religion, and national origin. Other claims under the 14th amendment would then have to tried in state courts. As such, a decision by one state to permit homosexual marriage would not automatically extend nationwide.

This law could potentially be overturned however, especially if the judiciary really wanted to hear such claims. Currently, federal law limits the jurisdiction of federal courts in various manners (for instance, controversies between citizens of different states have to be above $75,000). Such restrictions have been upheld, so it is possible that such a law could stand.
As Franklin D Roosevelt pointed out, there is no constitutional provision providing for a specific number of Supreme Court justices. Congress determines when the Supreme Court is in session, so Congress could delay the session of the Supreme Court and to allow the president time to appoint additional justices who are not in favor of homosexual marriage. Such a procedure could solve the current problem, but would be a potentially be precedent for future controversies between the branches of government, and could lead to the Supreme Court getting additional members frequently.

Removing Funding from States

Congress could refuse to allow federal funding to states that permit homosexual marriage. This is not a great solution to the problem, however, since the state in the facts is not in favor of homosexual marriage. Should the Supreme Court go against the state, it would then be in the awkward position of having to disobey a court order or lose federal funding.

Impeach Justices

Article III section 1 provides that justices hold their offices during "good behaviour." As such, the House could issue articles of impeachment against any justices voting in favor of homosexual marriage. At their Senate trial, it could be argued that deviating so far from the norms of society and Anglo-American law constituted something other than good behavior. After the offending justices were removed, a new case could be litigated and a more reasonable court might hear the case. This approach is fraught with problems, though, because of the horrible precedent for future overrides by Congress, and because it might allow the main case to succeed, since it would
be next to impossible to bring the impeachment against justices who had not yet voted.

(2) Arguments of the Parties and Results

Plaintiff (Appellant) Arguments

Plaintiffs will present arguments that their rights to equal protection under the law and substantive due process (both under the 14th amendment) have been violated. Plaintiffs will argue that under Lawrence v Texas, equal protection (Article 14 section 1) means that state statutes which discriminate against homosexuals are subject to 'heightened scrutiny' and that a 'discrete and insular minority' cannot be singled out. Further, plaintiffs will argue that their substantive due process rights to marriage have been violated. Marriage can be considered to be such a fundamental right that the states cannot erect barriers to it. For instance, a statute prohibiting issuing marriage licenses to parties delinquent in their child support is not permissible. Also, statutes prohibiting inter-racial marriages (Loving v Virginia) were violations of substantive due process. The combination of Loving and Lawrence are going to be the plaintiff's strongest arguments.

Appellant could further argue that non-traditional marriages go back to Roman times (which most consider to be the ultimate foundation of Anglo-American law). The emperor Caligula, for instance, married his horse. An expanded definition of marriage could go a long way to allowing persons with different tastes to be more socially accepted and recognized in society and at law.

Defense (Respondent) Arguments
The defense's strongest argument avoids the equal protection and substantive due process issues. It is based on the common law and historical definition of marriage, namely a legally recognized union between a man and a woman. There is no denial of equal protection or substantive due process if the person asking for government recognition lacks the requisite standing to request it. (For instance, one cannot demand a license plate if one does not have a car. Similarly, one cannot demand a marriage license if one lacks a qualified spouse).

The state will also be able to argue that states have always had the ability to regulate who is qualified to get married. For instance, most states prohibit incestuous marriages (between siblings or close cousins), marriages of people who are still married to another (bigamy or polygamy), and marriages of mentally incompetent (or at least permit annulment based on incompetency).

The state statute does not deny marriage licenses to homosexuals. It affirmatively provides the requirements for a marriage license. As such, it does not deny homosexuals the right to marriage. They have the same rights to get married to a member of the opposite sex as anyone else does. Even on the ground of equal protection, the state would only have to show a legitimate state interest in denying marriage licenses to members of the same sex that is not founded on discriminating against a 'distinct and insular group.' The state has an interest in providing a legal status to a man and a woman who are interested in having a life together and depending on each other and raising children together. The state does not have an interest in providing recognition to deviant lifestyles (homosexuality, polygamy, bestophilia, etc.) that
violates societal norms.

Defense will also argue that Gloria and Linda lack standing to bring suit, because their license was not denied, since the notice of intention to marry was never filed.

Supreme Court Holding

All justices will agree that Gloria and Linda had standing to sue, since the clerk was acting under color of law by refusing to file the notice, resulting in the substantial same result as had the license been filed and denied.

The Supreme Court opinion will hold 7-2, that the definitional meaning of marriage is sufficient to overcome challenges to equal protection and substantive due process. In the decision, Chief Justice Rehnquist will write for the majority that the definitional meaning of marriage is sufficiently entwined in our law that no equal protection is violated. The decision will distinguish the Loving case as still involving a man and a woman, since inter-racial marriage has been considered marriage throughout our law, even though it was not always permitted under various racist statutes. The decisions will note that states can regulate marriage for reasons of important state interest (including preventing incest or polygamy) and consider that affirming a common law definition of marriage is within the right of the states.

In a concurrence, Justices O'Connor and Kennedy, and Souter will, in dicta, support the equal protection and due process rights of homosexuals, noting the decision in Lawrence, and affirming
that statutes taking rights from homosexuals are prohibited by equal protection, but agreeing that the definition of marriage as being between a man and a woman is sufficiently engrained within American law as to establish that there was no animus toward homosexuals in the drafting of the statutes, and that the definition of marriage is sufficient to decide the appeal in favor of the state.

In a dissent, Justices Ginsberg and Breyer will attempt to frame the issue as equal protection issue and a denial of substantive due process. The dissent will argue that the fact that homosexuals can still get marriage licenses, so long as they marry a member of the opposite sex, is a farce, and a de facto denial of equal protection rights, even if it is not de jure. They will say that strict (or at least heightened) scrutiny on the enforcement of any such law, should be the standard. They would argue that, if they were in the majority, marriage should be opened to any combination of people that show up and ask for a license.

Note to ExamSoft:

ExamSoft crashes whenever you highlight a string of text by going back to the beginning of the line with <shift>-<home> or the beginning of the page with <shift>-<ctrl>-<home> or <shift>-<ctrl>-<end> and start to type over it. Whoever reads this exam might want to pass this on to the IT people at the law school.
Chief Justice Rehnquist wrote for a United Court: Today

We invalidate State One's Location Law under the Dormant Commerce Clause and the Privileges and Immunities Clause found in Art. IV, § 2, Cl. 1.

VIII argued that the Location Law is discriminatory against out-of-state on its face and that it should be overturned. The DCC is the negative duplication of the Commerce Clause (Art. I, § 8, Cl. 3).

We have held that laws which burden commerce and discriminate against out-of-state are invalid unless:

The DCC unless they have a legitimate local purpose and no other (better) means of accomplishing that purpose is available. C+A Commerce. In particular, facially discriminatory
Laws are almost always invalid. Phila. v. New Jersey. The only significant exception is for quarantine laws, which are not present here, and the laws protecting the state's ecosystem. Maine.

Because the state's lobster law is facially discriminatory, as to both the cost of getting a permit ($725 vs. $140 vs. $150) and the amount of lobsters allowed to be caught (e.g., per community vs. out-of-state). Lobster people. The discrimination is unlimited vs. 5, and because the state has not put forth any credible arguments that it's law.

StateOne v. StateTwo got the quarantine or ecosystem exceptions, and for State Two arguments are restricted. The law is invalid under the DCC. Other DCC exceptions. For the state acting as a market participant and as with Congress's approval are also absent. Although the state is selling something (i.e., licensed), i.e., there is no market.

For licenses, they are merely a means of regulation.

Note: The state could argue that it wants to keep out-of-state bait out of the restricted area to use the Maine case. However, lobstermen caught with traps, not bait, and the state offered no proof that they baited that was used by out-of-state was.
The law also fails under Art IV, §2, cl. 1. The

PARDONED, IMMUNIZED CLAUSE THEREIN PREVENTS ONE STATE

FROM DENYING CITIZENS OF OTHER STATES THE PRIVILEGES AND IMMUNITIES

THAT IT GRANTS TO ITS OWN CITIZENS. A TWO STEP ANALYSIS OF

VIRIK'S CLAIM IS REQUIRED. UNITED BUILDING v. MAYOR OF CLEVELAND,

First, does the lobster law burden one of Virik's

RIGHTS OR IMMUNITIES? WE HAVE FOUND THAT ECONOMIC RIGHTS,

PARTICULARLY THE RIGHT TO EARN A LIVING, IS WITHIN THE PTJ.

Claus's point, because Virik is a commercial lobster fisher

WHO EARN HER LIVING BY CATCHING LOBSTERS AND WOULD BE

BETTER ABLE TO DO SO IF SHE COULD AVAIL HERSELF OF ALL

STATE ONE'S WATER AND COULD CATCH UNLIMITED LOBSTERS THERE,

HAR ECONOMIC RIGHTS AND PRIVILEGES AND IMMUNITIES.

Second, does the State One of 1995 have a substantive
REASON FOR ITS LOBSTER LAW? The answer is NO. The state asserts that its interest in preventing the depletion of its lobster population and in reducing the destructive environmental effects of too many lobster boats within the restricted area, these reasons are not valid because they are inconsistent with the state's treatment of its own commercial lobster people who are allowed to catch lobster with limitation both inside and outside the restricted area. The only national state interest, protection of its local lobster industry, is not a valid one.

Because Vicke's privileges are impaired and the state's interest in doing so is invalid, the lobster law violates Art. IV, §2, U.1.
Justice O'Connor, writing for the Court. The Chief Justice, Justices Scalia, Thomas, Kennedy join this opinion.

Our Government is one of enumerated powers. McCulloch v. Maryland, 18 U.S.C. 6000 is beyond the reach of those powers, it must fall.

The Solicitor General's first claim is that the law is *valid* under the Spending Clause (Art I, 8, (1)).

That clause allows Congress to provide for the General Welfare of the United States. By the SG seeks to use the Necessary and Proper Clause to *require* that Congress can put conditions on its grant of federal funds. In short, we have found that conditional grants are valid only under certain circumstances. See South Dakota v. Dole.

The four requirements for a valid conditional grant are.
THAT (1) IT BE EXERCISED IN PURSUIT OF THE GENERAL WELFARE;

(2) IT BE CLEAR AND UNAMBIGUOUS, (3) BE IT REASONABLY REVIEWED

IN A FEDERAL INTEREST ON A NATIONAL PROGRAM, AND (4) IT NOT BE

BANNED BY ANOTHER CONSTITUTIONAL PROVISION. SOUTH DAKOTA,

(In my notion) I ADOO A FIFTH REQUIREMENT THAT THIS

COURT NOW ADOPTS, THAT THE CONDITIONAL GRANT ONLY DIRECT

HOW THE GRANTS FUNDS BE SPENT. IF IT GOE BEYOND THAT,

THE GRANT BECOMES AN INVALID REGULATION. SOUTH DAKOTA,

(O'CONNOR, J., PRESENTING). 18 USC §3010 IS NOT

A CONDITIONAL GRANT BECAUSE IT DOES NOT DIRECT HOW

THE MONEY SHOULD BE SPENT BY THE AGENCY RECEIVING IT.

INSTEAD, IT REGULATES THE BEHAVIOR OF PERSONS WHO ARE

NOT EVEN MEMBERS OF THE AGENCY RECEIVING THE FUNDS.

THEREFORE, THE SUBVERSIVE CLAUSE DOES NOT PROVIDE A BASIS FOR
Congress's Act

§ 5 of the 14th Amendment also cannot support this Act.

Although it is difficult to imagine how the 14th Amendment could be implicated here, our decision in Morrison makes the exercise moot. Congress can only use §5 to act

upon the States, not citizens. Morally.

Finally, we turn to the Commerce Clause (Art I, §3, cl. 3).

That clause allows Congress to regulate: (1) the channels of

interstate commerce; (2) the instrumentalities of interstate

commerce, including objects and people moving through interstate commerce

and (3) activities that are substantially related to interstate commerce.

United States v. Lopez. Because 18 USC §5000 does not

regulate either the channels or instrumentalities of interstate

commerce, we consider only the third area of regulation.
An action is "substantially related to interstate commerce" if it "substantially affects" commerce. For a substantial effect to be present, the activity must be an economic activity. Lopez v. Morrison. Also relevant to our analysis is whether Congress imposed a jurisdictional definition limiting the law to interstate commerce. Lopez v. Morrison.

The amount of congressional findings supporting the law is not a significant factor. Morrison. But cf. Lopez.

Although the prohibited activity, regulation of governmental officials of the state, is tangentially related to an economic activity, the prohibited activity is not itself economic in nature under our traditional understanding of that word. While it is true that a person is paying another person's services, the transaction is not really commercial in nature.
Two factors lead us to that conclusion as well.

Second, regulating the bribes of state government officials falls within the state’s police powers. First, Congress failed to impose a jurisdictional requirement of the type discussed in Lopez. Therefore, the law is not limited to interstate commerce, but rather it extends to transactions made entirely within a particular state. This is particularly troublesome because the insurance being purchased is not limited to extend across state borders because it is tied to one state’s government. We have repeatedly held that the commerce clause cannot be used to enjoin the separation between the federal and state government respective domains. Lopez (Kennedy, J., concurring). The genius of the dual sovereigns guarantees individual liberty.
AND MUST NOT BE COMPROMISED.

CONGRESS DID NOT HAVE AUTHORITY TO PASS

18 USC §2001 UNDER ANY OF ITS ENUMERATED POWERS.

ACCORDINGLY, THAT STATUTE IS INVALID. McCULLOCH.

JUSTICE THOMAS CONCERNING:

I WRITE SEPARATELY TO STATE, ONCE AGAIN, MY OPINION

TO THE "SUBSTANTIALLY AFFECTS" TEST UTILIZED BY THE MAJORITY. BECAUSE I BELIEVE WE SHOULD LOOK TO THE MEANING OF "COMMON" THAT WAS INTENDED BY THE FOUNDERS.

I CANNOT ACCEPT THE "SUBSTANTIALLY AFFECTS" TEST.

JUSTICE STEVENS, DISSENTING, HERS JOINS BY J. SCOTUS, GINSBURG, AND BREYER.

ONCE AGAIN, THE MAJORITY MOVES TOWARD THE DAYS THAT THIRD THE NEW DEAL, IN ITS COMMON

CLAIM JUSTICIA. AT ITS CURRENT PACE, WE...

...
BE MAKING SEMANTIC DISTINCTIONS BETWEEN FORMALIST.

ALTERNATIVES (e.g., DIRECT IMPACT VS. INDIRECT IMPACT) IN

NO TIME, IF WE ARE NOT DOING SO ALREADY.

APPROPRIATE

THE TEST FOR COMMERCE CLAUSE STATUTES REMAINS

THAT THE REGULATED ACTIVITY MUST SIGNIFICANTLY AFFECT

INTRASTATE COMMERCE WHEN CONSIDERED UNDER THE

CUMULATIVE EFFECTS DOCTRINE. WICKMAY: CLEARLY,

BARRING STATE OPERATIONS TO OBTAIN BUSINESS OBJECTIVES

HAS AN EFFECT ON INTRASTATE COMMERCE, AND A SIGNIFICANT

CONGRESS’S END IS VALID UNDER THE

ONE AT THAT. THIS THE COMMERCE CLAUSE

CONGRESS HAD A LEGITIMATE INTEREST

CONGRESS’S MEANS OF REACHING THAT END IS ALSO VALID.

BY COMMUNICATING BARRIERS, IT IMPOSES A RULE THAT IS

RATIONAL AND NEEDED TO DO OBJECTIVE. WHEN CONGRESS ACTS
Rationally related to that end, the Act is valid, McCulloch.

There is considerable opinions to believe that Batton's

state governmental officials impacts interstate commerce, demanded

of whether Congress ever held to document them.


This Court must allow Congress to respond to the

changing demands of the nation. After all,

It is a Constitution that we are expounding.

McCulloch.

Good answer!