Final Examination
Constitutional Law, Professor Leslie Griffin
University of Houston Law Center
August 14, 2008
6 to 10 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 also a violation of the Honor Code to discuss the exam’s contents with any student
in this class who has not yet taken the exam.

Write your student examination number in the blank on the right side of the top of this
page. If you are handwriting your examination, write your examination number on the cover of
each of your bluebooks. Number your bluebooks by indicating the book number and total of
books (e.g., 1/5, 2/5, 3/5, 4/5, 5/5). If you are using the computer, write your examination
number on each diskette and at the beginning of your response to each question. If you are
handwriting, please do not use pencil. 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 six pages long, with THREE questions. Question I is worth 35 points.
Question II is worth 40 points. Question III is worth 25 points. You have four hours. I
recommend that you spend 65 minutes on Question I, 75 minutes on Question II, and 60 minutes
on Question III. You have an extra 40 minutes to use at your discretion, to organize and think.

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
on a typewriter, DOUBLE SPACE, and leave wide margins. If the exam software fails, you
should immediately start writing in your bluebooks. Do not try to double space in the exam
software; it will automatically double space when we print your exam.

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: ___________________________
Outraged by persistent violence against children across the nation, Congress passed legislation establishing a required registry for sex offenders and creating a new federal offense for failure to register. The Sex Offender Registration and Notification Act defines the term “sex offender” as “an individual who was convicted of a sex offense.” Sex offenses include criminal offenses that have an element involving a sexual act or sexual contact with another and certain specified offenses against minors. The statute provides:

**Registry requirements for sex offenders**

(a) In general

A sex offender shall register, and keep the registration current, in each jurisdiction where the offender resides, where the offender is an employee, and where the offender is a student. For initial registration purposes only, a sex offender shall also register in the jurisdiction in which convicted if such jurisdiction is different from the jurisdiction of residence.

(b) Initial registration

The sex offender shall initially register--

(1) before completing a sentence of imprisonment with respect to the offense giving rise to the registration requirement; or

(2) not later than 3 business days after being sentenced for that offense, if the sex offender is not sentenced to a term of imprisonment.

(c) Keeping the registration current

A sex offender shall, not later than 3 business days after each change of name, residence, employment, or student status, appear in person in at least 1 jurisdiction involved pursuant to subsection (a) of this section and inform that jurisdiction of all changes in the information required for that offender in the sex offender registry. That jurisdiction shall immediately provide that information to all other jurisdictions in which the offender is required to register.

(d) State penalty for failure to comply

Each jurisdiction shall provide a criminal penalty that includes a maximum term of imprisonment that is greater than 1 year for the failure of a sex offender to comply with the requirements of this subchapter.

(continued on next page)
New Federal Offense

Whoever-

(1) is required to register under the Sex Offender Registration and Notification Act;

(2)(A) is a sex offender as defined for the purposes of the Sex Offender Registration and Notification Act by reason of a conviction under Federal law (including the Uniform Code of Military Justice), the law of the District of Columbia, Indian tribal law, or the law of any territory or possession of the United States; or

(B) travels in interstate or foreign commerce, or enters or leaves, or resides in, Indian country; and

(3) knowingly fails to register or update a registration as required by the Sex Offender Registration and Notification Act;

shall be fined under this title or imprisoned not more than 10 years, or both.

Larry Loser was convicted in Homebody State of three sexual offenses that require him to register as a sex offender under the terms of the statute. Larry was humiliated by his most recent conviction, and has undergone therapy and counseling to help him solve the problem and stop his abusive conduct. As part of his therapy, he has moved back home with his mother, living in his childhood home in Homebody State, and he has resolved never to leave home again. All he wants is to live with his mother and to grow plants in their nice backyard. He never registered as a sex offender because he wanted to protect his and his mother’s private home life from the neighbors’ scrutiny.

Federal officers arrested Larry Loser for failure to register, and he was convicted and sentenced to ten years in prison. He appeals his conviction, challenging the constitutionality of the Sex Offender Registration and Notification Act. Assume for purposes of this question that he has standing to raise any and all possible constitutional deficiencies in the statute, including any objections that Homebody State may have to the statute’s constitutionality.

What arguments should Larry make? How should the United States defend the statute? Who will win in the Supreme Court of the United States? Why?
New York City has a Special Vehicle Permit Law. A Special Vehicle Permit allows its holder to park at expired meters and in spaces designated only for authorized vehicles. To qualify for this permit, an applicant must have a severe handicap and must live, work, or attend school in New York City.

Traffic in New York City is very congested, so congested that recently the Mayor proposed raising tolls at the bridges and tunnels surrounding New York City and raising the prices at the parking meters and garages.

Mickey, a New Jersey resident, suffers from Type I Neurofibromatosis, a genetic disorder of the nervous system that causes tumors to grow around the nerves. Because of this disorder, Mickey cannot walk long distances and generally depends on a specialized wheelchair for his mobility. He also uses a customized van in order to travel with his wheelchair. Mickey regularly travels to New York City to receive medical treatment and to pick up prescriptions at World Class Cancer Center. (New Jersey has no World Class Cancer Centers.) He also visits New York City to take advantage of some of its many cultural offerings, especially to attend baseball games at the architecturally distinctive Shea Stadium. Mickey holds a New Jersey State disability parking permit, but because he does not live, work, or attend school in New York City, he does not qualify for New York City's Special Vehicle Permit. Without a Special Vehicle Permit, Mickey often must pay for private parking. Even then, he encounters difficulties because his customized van is so large that it does not fit into the entrances of some indoor parking garages. And when a private parking facility can accommodate his van, Mickey often pays an extraordinarily high parking fee due to the van's size.

Because of these difficulties, Mickey has resorted to parking illegally and has received parking tickets. Mickey contends that if he had a Special Vehicle Permit, he would be able to find a suitable parking space and would not have received any parking tickets.

Mickey met his wife, Minnie, three years ago at New York’s World Class Cancer Center. Minnie is a native New Yorker. After they married she moved to New Jersey, where she lived with Mickey for two years. She suffers from the same Type I Neurofibromatosis, but her disease is progressing faster than Mickey’s. She decided to return home to New York City to live permanently with her parents so that she will have easier access to New York’s medical facilities. After she moved back to New York City and applied for a Special Vehicle Permit, city officials told her that, due to city traffic congestion, new residents of the City could not receive special vehicle permits until they had lived in the City for nine months.

Mickey and Minnie went back to the Cancer Center one day to visit their friend Donald, who is terminally ill and suffering from unbearable pain that cannot be
ameliorated by any medication. He asked the Cancer Center doctors to help him end his life, but they told him that they could not act because New York State has a law that prohibits assisted suicide.

Mickey and Minnie want to know what constitutional challenges they can raise to New York City’s laws. Please identify their potential claims, the City’s best responses, and then decide whether they would win these arguments in the Supreme Court of the United States.

Mickey and Minnie also want to know if there is anything they can do in the legal system to help their friend Donald raise a constitutional challenge to the New York law. Please tell them what they should do and whether Donald’s lawsuit will be successful.

Do not discuss the Eleventh Amendment.
Question III

(25 points, 60 minutes)

Remember that you should treat the facts as given in this question and not as you read them in the newspaper. Salim Ahmed Hamdan, the petitioner in Hamdan v. Rumsfeld, was recently convicted by a military commission of providing material support for terrorism. The military jury, however, acquitted him of a conspiracy charge. Hamdan was a driver for Osama bin Laden and received a salary from bin Laden for his work as a chauffeur.

At Hamdan’s trial before the military commission, the judge admitted into evidence numerous statements that Hamdan made to his prison guards during his first two years at Guantanamo Bay, as well as statements made about him by his fellow prisoners. The judge also admitted into evidence transcripts of notes made by U.S. Army personnel in Afghanistan at the time they captured Hamdan. The Military Commission Evidence Rules allow the military commission to hear any words spoken by Hamdan during his captivity at Guantanamo Bay and any comments made about him by his fellow prisoners. The Evidence Rules also admit the army’s records into evidence.

During his first three years at Guantanamo, Hamdan had no access to lawyers. During that time his prison guards used physical force to coerce Hamdan to give statements about his work with bin Laden. Many of those statements were heard by the military jury at Hamdan’s trial. Assume for purposes of this question that these statements would not be admitted into evidence in a U.S. criminal trial because they violate Miranda and other constitutional protections.

Hamdan’s jury sentenced him to 66 months, but, with credit given for the years he has already spent at Guantanamo, it is possible that Hamdan’s sentence will end by December 2008, and that he should therefore be released from prison at that time. Some Bush Administration officials have already suggested, however, that they will continue to hold Hamdan as an enemy combatant even after his sentence is complete.

If Hamdan wants to appeal his conviction, what arguments should he make? What should the government argue in response? Do you think Hamdan would win these arguments in the Supreme Court of the United States? Why or why not?

If Hamdan is held as an enemy combatant after his sentence ends, what steps, if any, should he take to appeal his imprisonment? What arguments should he and the government make? Do you think Hamdan would win these arguments in the Supreme Court of the United States? Why or why not?

END OF EXAM. CONGRATULATIONS ON FINISHING YOUR FIRST SEMESTER OF LAW SCHOOL.
Exam Memo, Constitutional Law, Summer 2008  
Professor Griffin, UHLC

The law school grading curve for large J.D. classes requires that the class average fall between 2.9 and 3.1. The class average for your exam was 3.1. Look at the point total written on your exam and then find the letter grade assigned to it by studying the following list. The number in parentheses is the number of students who received that grade.

<table>
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<th>Point Total</th>
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<td>Below 50</td>
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In grading your first law school exam, I focused first on whether you could spot the legal issues involved in each question. If you missed a lot of issues, you missed a lot of points and received a lower grade. Once you spotted the issues, I distinguished sloppy, conclusory answers from those that analyzed the facts, cited the cases, and paid attention to how the current Court would decide the issue.

I am happy to speak with you about your exam and your grade. Before you ask me questions, however, please read through this memo and your answers. If you still do not understand why you lost points, please feel free to e-mail me or to set up an appointment to go over your answers. In the paragraphs below, I explain how you should have set about answering the three questions on the exam.

**Question I.** You should have found Question I to be straightforward, as it examines something I emphasized all semester, namely Congress’s enumerated powers. As soon as you saw a federal statute—Congress is in the first sentence!—you should have started to think about enumerated powers. Most of you talked about the Commerce Clause. If you did so, you needed to include *Lopez, Morrison* and *Raich* in your answer. *Morrison* should have reminded you of another important source of congressional power—Section 5 of the Fourteenth Amendment—and you lost many points if you did not talk about Section 5. Once you were onto the Commerce Clause, you should have done the second step of the two-step: was there any constitutional provision barring Congress’s action in these circumstances? That question should have taken you immediately to the Tenth Amendment and to the commandeering line of cases of *Printz* and *New York*. There was a big hint to the Tenth Amendment when the question told you that Larry had standing to raise any of the state’s objections to the statute. States = Tenth Amendment.

You received most of the points if you talked about Commerce, Section 5 and the Tenth Amendment. You received more points if you referred to the cases mentioned in the preceding paragraph. You received the most points if you argued about the meaning of those cases and compared them to the facts in the question.

Many of you raised Larry’s substantive due process and equal protection challenges to the statute. You did not lose points for doing so, but it was no replacement for enumerated powers. If you were thinking clearly you should have started with Congress’s enumerated powers and not with SDP and EP. It is a stretch to find a protected privacy right under *Griswold* on these facts, and Congress would seem to have a rational basis to distinguish sex offenders from others.
Always try to start with the best arguments available to your client Larry, here the enumerated powers.

**Question II.** There were lots of issues in this question. Mickey and Minnie required you to keep straight those three very confusing issues: the Dormant Commerce Clause, Article IV Privileges and Immunities, and Fourteenth Amendment Privileges or Immunities. First, you needed to keep your facts straight. Mickey is out-of-state, so he should have the Article IV claim of *Piper* and other cases. Minnie is in-state, so she should have the Fourteenth Amendment claim discussed in *Saenz*. Both Mickey and Minnie could raise the DCC issue, arguing that the statute was either per se invalid or burdened interstate commerce. You got a lot of points if you knew the difference among the three claims and applied them in the right circumstances. You received more points if you talked about the governing cases and compared the facts of those cases to the facts in the question.

Some of you may have gone home disappointed that the exam didn’t cover two big topics from the syllabus, namely Equal Protection and Substantive Due Process. Wrong. Others properly saw that, because the New York vehicle law had classifications, you could appropriately analyze the law under EP, asking if the city had a rational basis for its actions or if it displayed any animus toward out-of-staters or the handicapped.

Donald also had an EP claim: as identified in the *Vacco* case, does it violate EP to allow some terminally ill patients to refuse medical treatment and die while Donald cannot get help to die? Donald also had the more obvious SDP issue whether he had a fundamental right to die protected by the Fourteenth Amendment. Too many of you were conclusory about *Glucksberg*, saying that it conclusively held that Donald had no claim. But four justices in *Glucksberg* suggested that an as-applied, rather than facial, challenge to an assisted suicide law might succeed, so you should have considered Donald’s as-applied challenge to New York’s law.

**Question III.** The terrorism cases are hard, so I tried to write a question that was fairly straightforward. Some of you were confused that there was a Military Commission in the question because of *Hamdan*’s holding that the president did not have the authority to create such tribunals. Congress in the MCA, p. 290, however, authorized the military commissions. Once that was clear, on the *conviction* part of the question, you should have focused on all the problems with the trial and saw in them a question about due process. Recall that *Hamdi* recognizes that the prisoners are entitled to some form of due process, and *Mathews v. Eldridge*, p. 484, is the famous test that helps you figure out just what process is due. The three-part test examines the private interest that will be affected; the risk of an erroneous deprivation of that interest and the probable value of further procedures to safeguard it; and the government’s interest. I did not expect you to talk about all the constitutional provisions we had not studied; you should have combined all the violations to ask whether Hamdan had received due process under *Hamdi* and *Mathews*.

If Hamdan is held after his sentence ends, he should file a writ of habeas corpus challenging the government’s authority to hold him. And that would lead you to the substantive question: does the government have the authority to hold him? And you would be back at presidential powers and *Steel Seizure*. If you spent time in your answer on procedural due process, habeas, and presidential power, you got most of the points.

**Do not panic!** You can receive a low grade and still survive in law school. If you are having doubts about that, please stop by to see me. Or just stop by for no reason at all. Good luck with the new semester.