FINAL EXAM INSTRUCTIONS: PLEASE READ CAREFULLY

This final examination consists of SEVEN (7) pages. Please be sure NOW that you have all of the pages.

Put your exam number on all of the exam books you will be submitting NOW. You do not need to put any other information on the exam books. Do not write your name on the examination or on any of the exam books.

All answers are to be written in the exam books. You may write or otherwise make notes on the examination. Do not use any scratch paper; use only the exam books for this purpose and turn in all exam books used in this manner with the exam books in which you have written your answers. Please write on every other line and leave the backs of the pages blank. Please write as legibly as possible; illegible answers will not receive credit.

This is a limited open book exam. You may have with you the following: (i) FARBER, ESKRIDGE & FRICKEY, CASES AND MATERIALS ON CONSTITUTIONAL LAW: THEME’S FOR THE CONSTITUTION’S THIRD CENTURY (2nd Ed. 1998); and (ii) FARBER, ESKRIDGE & FRICKEY, CASES AND MATERIALS ON CONSTITUTIONAL LAW: THEME’S FOR THE CONSTITUTION’S THIRD CENTURY (Supplement 2002), all of which may contain such handwritten notes as you are able to squeeze onto them. NO ADDITIONAL NOTES, OUTLINES, OR REFERENCES OF ANY KIND WILL BE ALLOWED. If you have any questions about what you may use during the examination, please ask. A violation of this restriction is a violation of the honor code.

The final examination consists of SIX (6) essay questions. NONE OF THE QUESTIONS HAVE ANY SUBPARTS. The suggested time to complete each question is as follows: Question 1 30 minutes Question 2 30 minutes Question 3 30 minutes Question 4 30 minutes Question 5 30 minutes Question 6 30 minutes

Instructions on answering the essay questions are underlined and are found at the end of each question. Follow these instructions carefully and discuss the issues presented fully. BE SURE TO ANSWER ONLY THE QUESTION ASKED OF YOU.
Indicate your answer clearly in the exam books. YOU DO NOT HAVE TO ANSWER THE QUESTIONS IN ANY PARTICULAR ORDER, AS LONG AS YOU IDENTIFY THE QUESTION YOU ARE ANSWERING.

Plan and organize your answers before starting to write them out. If you begin to run out of time and have not finished an answer to a question, or otherwise do not have time to finish writing an answer, present the points you wish to make in outline form in order to obtain partial credit.

Please keep the following in mind as you write your answers. The most important thing you can remember is this: **answer the question asked and only the question asked.** A good rule to follow is to read the question before reading the facts presented. Do not discuss legal doctrines that are not pertinent to the questions asked; likewise long introductory paragraphs which are not directly responsive to the questions asked; likewise long introductory paragraphs which are not directly responsive to the questions asked will receive no credit. Points will be deducted for erroneous statements of law. Please be sure to apply the law to the facts of the question as presented. If you think additional facts are necessary for a complete answer, state those facts and the reasons you believe such additional facts are necessary. An answer containing only a statement of your conclusions will receive no credit. Where this may be helpful to support your arguments, refer to specific cases by name (complete names and citations are not required) and to the Constitution and statutes by number (Bluebook form citations are not required).

You will have 3 hours to complete this exam (LLM students will have FOUR (4) hours to complete the exam). The **SUGGESTED TIME ALLOTTED and RAW SCORE POINTS are indicated on the top of each question.** You may leave the examination at any time during the exam, however, you will not be permitted to take anything out with you.

I suggest that you budget your time according to the suggested time allotments and relative percentage value of each question.

When time is called, **stop writing immediately,** and put your exam books and all other exam books you have used inside the front cover of the exam book you have number “1”. You will then turn your exam and exam books in as directed. If you finish early, please follow the same procedure. As you leave, please initial the roster located at the front desk.

Your grade will be based on this final examination, subject to decreases for excess absences.

I have enjoyed this fall semester with all of you. I look forward to seeing many of you again in the next two years when we will have even more fun(!!). **GOOD LUCK! I wish you all well.**
QUESTION 1
(suggested time 30 minutes; 30 points)

Abele Aru was a spiritual leader and Secretary of the Interior for the Province of Hausaland, a subsidiary unit of the Republic of Nigeria. Hausaland is home to a variety of peoples with distinct religious traditions. During the years 1998-2000, as part of a plan to eliminate this diversity, the governing officials of Hausaland, including, so it is alleged, Mr. Aru carried out a plan in which gangs financed and controlled by the provincial government murdered a large portion of people belonging to minority religious traditions. After an international outcry, the Nigerian central government sent in the Nigerian army, which reestablished order, and the Nigerian central government established an International Tribunal for the Prosecution of Mass Murder (the “Tribunal”) in Pagos. The Tribunal was recognized as vested with authority over criminal law matters relating to the events in Hausaland. Mr. Aru, along with other leaders of Hausaland, have been charged with genocide and murder. In the meantime, Mr. Aru fled to the United States and became the owner of a butcher shop in Carlisle, Pennsylvania.

In 2001, the President entered into an executive agreement (the “Surrender Agreement”) with the Tribunal in which the President agreed to "surrender to the Tribunal ... persons ... found in its territory whom the Tribunal has charged with or found guilty of a violation or violations within the competence of the Tribunal." Surrender Agreement, art. 1. The Surrender Agreement was neither presented to nor ratified by Congress. However, Congress enacted legislation in 2002 giving the federal district courts the authority to surrender to “any competent international organizations or States with whom the United States has entered into Treaty arrangements for this purpose” anyone charged or indicted for a “grave violation of national law.” 300 U.S. C. Section 1(a). The Act also requires state police officers to arrest and detain any person subject to surrender under the provisions of the Act. 300 U.S.C. Section 2(b). In 2003, the American federal Government sought to have Mr. Aru arrested and extradited to Nigeria for trial before the Tribunal. The state police, however, refused to house Mr. Aru in the county jail (security too expensive) and insisted that he be housed in federal facilities.

You are the Federal District Attorney for the Middle District of Pennsylvania. The Attorney General is worried that Mr. Aru’s lawyers will challenge the surrender on Constitutional grounds. The Pennsylvania governor is also mad. He has threatened to forbid use of local police or facilities in the Aru surrender. **Write the Attorney General a memo discussing completely all bases for any constitutional issue that might be raised.**
A series of scandals rocked the Department of the Treasury, after it was discovered that the Secretary of the Treasury and his staff had been secretly changing the face of the currency by substituting pictures they had made while sitting on a copy machine for those traditionally found on $20 bills. In response, Congress passed the Bad Underlings Responsibility Protection Act (“BURPA”). BURPA provides, in part, that:

1. All persons employed in or by the Treasury Department, other than the Secretary of the Treasury (hereafter, the “Employees”), shall be appointed by the Chief Justice of the United States or such other judicial officers as the Chief Justice shall empower for that purpose.

2. Employees may only be removed after petition therefor has been filed with, and approved by, the Catburt Personnel Commission (the “CPC”).

3. The CPC shall be composed of three members, one each appointed by the Chief Justice of the Supreme Court, the President of the United States, and the Speaker of the House of Representatives.
Nasty Foods, Inc. (“NFI”) is a manufacturer of packaged food throughout the United States, under such nationally known brand names as “Yechy Flakes” and “Healthy Sugar Death Stars.”

Recently, the State of Wyoming enacted a Truth in Packaging Act (“TPA”), which requires country food inspectors to periodically test the weight of packaged foods in randomly selected grocery stores to check the weight of the product against the label weight. Where the inspectors find any sample to be less than the weight on the label, they are required to test all of the items in the store. If more than 5% of them test lower than the label weight, then the inspector is required to have the grocer remove all of the packages from the shelf and pay a fine. Fines are assessed only against grocers and never against manufacturers like NFI. The grocer usually then send the packages back to NFI (along with an invoice for the fine) for replacement. The TPA applies to all packaged food products wherever manufactured. There are no manufacturers of packaged foods operating in Wyoming.

NFI already complies with federal packaged food labeling and weight laws. The Food, Drug and Cosmetics Act ("FDCA") regulates labeling and packaging procedures for manufacturers of packaged food sold in interstate commerce. The provisions apply only to manufacturers. Under the FDCA, a manufacturer is in compliance with the “truth-in-labeling” portion of the FDCA if the average per package weight of a production run (which can total several thousand individual packages), is equal to or greater than the weight on the label. Generally, this requires the manufacturer to weigh the production run, and divide the weight by the number of packages in the run. As a result there will be differences in product weight and the manufacturer cannot guarantee that the average weight of packages sent to fulfill any individual grocer order will meet or exceed the label weight. As a result, it is possible for one grocer to receive packages, a majority of which are under weight, and for another grocer to receive packages, a majority of which are overweight. The U.S. Department of Agriculture has been given exclusive authority to enforce the provisions of the FDCA.

**Write a memo to the General Counsel of NFI, for whom you work, discussing whether and on what basis this statute can be attacked on federal Constitutional grounds, including all arguments that can be made.**
The Supreme Court has really been a very conservative force in American legal development. It has uniformly and without exception grounded all of the decisions we studied first and foremost in the text of the Constitution itself, and then interpreted that text in light of original understanding. But it is always clear that text is supreme and that original understanding serves a secondary and subordinate role in constitutional interpretation. I can think of no area of constitutional law that we studied this semester where this is not so.

Moreover, the Supreme Court has never subscribed to interpretive principles other than textualism and originalism. Both are required by the Constitution.

You are Prunella; write a memo to your diary responding fully to Rotisserie’s assertions.
QUESTION 5
(suggested time 30 minutes; 30 points)

Zest and Woolite, citizens of Pennsylvania, both suffer from a series of debilitating medical conditions. Recently research has discovered that Gannabis, a naturally occurring substance found in the Gemp plant, is particularly useful in alleviating the symptoms of many painful medical conditions. After Zest and Woolite heard about the medicinal effects of Gannabis, they decided to try it themselves. Zest began cultivating small amounts of the Gemp plant which she used exclusively to alleviate the symptoms of her medical condition with some success. Because Woolite lived in an apartment, he asked his friends Hydee and Hoe, who lived in the country, to grow a few Gemp plants for him. Hydee and Hoe now grow Gemp solely for the use of Woolite. They do not charge Woolite for the use of the Gemp they grow. In both cases, growth consists of planting 2 to 4 plants in the ground outside the back door of the house. No equipment or anything else is used in the cultivation of the plants. Both Zest and Woolite’s doctors are willing to state for the record that as a result of their Gannabis use, Zest and Woolite can now function symptom free.

Unfortunately, Gannabis has a long history of abuse in the United States. Several decades ago, the federal government enacted the Controlled Substances Act (“CSC”). The CSA prohibits the manufacture, distribution, possession with intent to deliver, and even simple possession of Gannabis. In enacting the CSA Congress made findings related to the issue of controlled substances and their effect on interstate commerce, findings that are embodied in the statute itself. These include Congressional findings that:

(A) The illegal importation, manufacture, distribution, and possession and improper use of controlled substances have a detrimental effect on the health and general welfare of the American people.
(B) A major portion of the traffic in controlled substances flows through interstate and foreign commerce. Incidents of the traffic which are not an integral part of the interstate or foreign flow, such as manufacture, local distribution, and possession, nonetheless have a substantial and direct effect upon interstate commerce because-
   (I) after manufacture, many controlled substances are transported in interstate commerce,
   (II) controlled substances distributed locally usually have been transported in interstate commerce immediately before their distribution, and
   (III) controlled substances possessed commonly flow through
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interstate commerce immediately prior to such possession.
(C) Local distribution and possession of controlled substances contribute to swelling the interstate traffic in such substances.
(D) Controlled substances manufactured and distributed intrastate cannot be differentiated from controlled substances manufactured and distributed interstate. Thus, it is not feasible to distinguish, in terms of controls, between controlled substances manufactured and distributed interstate and controlled substances manufactured and distributed intrastate.
(E) Federal control of the intrastate incidents of the traffic in controlled substances is essential to the effective control of the interstate incidents of such traffic.

In 2003, Pennsylvania enacted the Medicinal Cannabis Act (“MGA”). Under the MGA, persons who cultivate, possess, or distribute, small amounts of Cannabis solely for medicinal purposes are protected from liability under the civil and criminal law. Persons coming within the protection of the MGA must have the written opinion of a medical doctor that medicinal Cannabis is necessary for the health of the person.

Zest and Woolite want to file a declaratory judgment action to affirm the validity of the MGA in the face of the possible applicability of the CSA. You represent Zest and Woolite.

Write your clients a memo discussing whether and on what basis this statute can be attacked on federal Constitutional grounds, including all arguments that can be made.
Catullus and Solon are studying for the Constitutional Law final. Catullus insists that the following is true:

   The President cannot declare or make war without first obtaining from Congress a formal declaration of war. All military activities undertaken without a formal declaration of war exceed the President’s powers under the Constitution and constitute an impeachable offense. As such, no provision of the War Powers Resolution violates the Constitution.

You are Solon. Is Catullus right?

Write Prof. Backer a memo discussing thoroughly all constitutional law issues raised by Catullus.