Bio-Tech Corp. of Carlisle, Pennsylvania has acquired a national reputation in the fields of bio-medical genetic research. Its president has convinced state officials that if it were to be able to analyze the medical records of a population sample the size of Pennsylvania, it could make great strides in genetic and medical research. It has convinced the State of Pennsylvania to enact the following statute:

Pennsylvania Medical Independence Act: Whereas this Commonwealth finds that it is in the best interests of its citizens to determine the medical conditions of all citizens of the Commonwealth; whereas genetic research has reached the point where it may provide valuable information respecting the genetic vulnerability of the citizens of Pennsylvania to certain conditions, such as heart disease, cancer, stroke, diabetes, kidney disease, sickle cell anemia and other inherited conditions, and whereas medical research can more effectively determine the link between lifestyle choices such as drinking or sexual activity and disease . . . . NOW THEREFORE, be it enacted that

A. The ownership of all the information in the medical records of all residents or citizens of Pennsylvania shall be vested in the State of Pennsylvania. A copy of all of the medical records of each resident of Pennsylvania (the “Records”) shall be deposited with the Secretary of Human Services of the Commonwealth; the Records shall be available for use of the Residents at all times.

B. The Commonwealth may license the use of the Records may it deems advisable, but only for the purpose of medical research and only if the purchaser of such use takes adequate steps to protect the confidentiality of the Records. The licensee of such Records may sub-license use of the Records or the results thereof to others, including, without limitation, insurance companies and hospitals. However, in the event of a sub-license, the Commonwealth shall be entitled to 10% of the gross revenues received by the licensee as a result of such sub-license.

Your clients, Angela and Bobby Clone, residents of Carlisle, have been clients of a fertility client. In the course of their treatment, a series of tests were conducted that revealed that Bobby, but not Angela, carried the gene for Sickle Cell anemia. Angela had also revealed to the doctor that she had undergone an abortion five years before and had been taking prescription contraceptives for ten years before she married. Both clients have read about the passage of the Medical Independence Act, and became quite agitated when they later
learned that upon the passage of the Medical Independence Act, the Commonwealth had entered into an agreement with Bio-Tech, selling them all of the medical records of the citizens of Pennsylvania. Angela works for the Catholic Archdiocese of Philadelphia and is concerned that her employer not find out about her medical past. Bio-Tech has indicated that it is now negotiating a series of contracts with national medical insurance providers for the sharing of information respecting the results of Bio-Tech’s research. When Bobby and Angela called their fertility clinic to retrieve their records, they were told that the records now belonged Bio-Tech, but that they could have a copy.

They want to know whether it is possible to challenge the validity of this statute. Write them a memo describing all of the bases for challenge. Be sure to discuss all arguments that can be made in support of as well as against the validity of the Medical Independence Act.

QUESTION 2
(suggested time 30 minutes; 30 points)

The President of the United States is unhappy. She believes that the states have not been sufficiently attentive to international trade issues. She wants to make sure that the American people are prepared for the coming century. To make some progress in this respect she proposes, and the Congress passes, the following act:

An Act to Create Incentives Grants for Hungarian Language Study. Whereas it is imperative for the people of the United States to develop language proficiency in languages other than English and whereas the Congress finds that the Hungarian language will provide a useful bridge to the peoples of the world, now, therefore, there is hereby created a Hungarian Language Studies Incentive Grant Act. A state that wishes to participate in this program shall (i) create an Executive Office of Hungarian Studies which shall oversee, subject to regulations to be enacted by the U.S. Department of Education, (ii) a program requiring that all instruction in the public schools be conducted in the Hungarian language. Participating states shall receive a block grant for the purpose of implementing such a legislative program in an amount equal to 100% of all federal funds for education to which said state is currently entitled.

The state of Vermont has decided to participate in this program and has created the Executive Office of Hungarian Studies and has enacted legislation, signed by the Governor, requiring all instruction in Vermont public schools to be conducted in Hungarian.

Trang Son, a recent immigrant from Laos, has two children in Vermont public elementary schools. They arrived about one year ago. The family’s English is not very good. They are
unhappy about this change in the Vermont public schools. They want to have their children instructed in English. They come to see you, a lawyer just admitted to the Vermont bar.

Write a memo to Mr. Son explained whether the federal Hungarian Studies Incentive Grant Statute can be challenged. Discuss all bases of challenge and all arguments that can be made.

QUESTION 3
(suggested time 30 minutes; 30 points)

The President is still unhappy. This time she proposes and the Congress passes the following statute:

Federal Clean Streets Act: Congress hereby finds that litter has a direct adverse effect on commerce between the states. People who travel from state to state who find dirty and littered street and byways will be less likely to stop and transact business in that place. Therefore, any person who drops litter on any street or byway shall be liable for a fine of $1,000 or one year in jail. Any property owner who does not remove litter within 24 hours of its deposit on her property shall be liable for a fine of $5,000 or one year in jail. Every state shall cause, by appropriate legislation, all state and local police officers to enforce this act.

Your firm’s client, Sonia Lopez, owns a beauty parlor in Carlisle. She has recently cited for violation of the Federal Clean Streets Act. The county prosecutor has told her that he will seek a $1,000 fine and jail time. She cannot believe this act is constitutional.

You are an associate at Backer & Backer, LLC, a large Carlisle law firm. Write your boss a memo discussing whether and on what basis this statute can be attacked on federal Constitutional grounds, including all arguments that can be made.

QUESTION 4
(suggested time 30 minutes; 30 points)

Pennsylvania is concerned about the loss of graduates of its institutions of higher education to states like California and Florida. In an effort to retain its talent, Pennsylvania has passed an affirmative action program called the “Hire PSU Now” Act. Under this Act, applicants for state public employment who are graduates of the Pennsylvania State University will be given priority. If all candidates are otherwise equally qualified, the State might give the job to the graduate from Pennsylvania State University.
Patty and Quoola Sing have come to see you in your law office in Carlisle, Pennsylvania. Patty is a graduate of the University of Pittsburgh Law School. Patty is a resident of Pennsylvania and Quoola is a graduate of Yale Law School and a resident of New Jersey. They both applied for a job at the Pennsylvania Attorney General’s Office for a staff attorney. Three applicants shared identical qualifications – Patty, Quoola and Yasmin Odeur. Yasmin, a graduate of the Pennsylvania State University Dickinson School of Law was offered the job on the basis of the Act.

Patty and Quoola want to know if there are any bases for challenging this Act. Write a memo to Patty and Quoola explaining what bases, if any, exist for challenging the Hire PSU Now Act. Be sure to describe all arguments.

QUESTION 5
(suggested time 30 minutes; 30 points)

Pennsylvania has been very busy. A number of lamps exploded in homes over the course of the last several years. The fires resulting from the explosions have been very bad. To reduce this problem, Pennsylvania enacts a statute requiring that all lamps imported into Pennsylvania for sale be tested for safety at one of three designated laboratories located within the state of Pennsylvania. Manufacturers selling lamps within Pennsylvania must submit samples to one of these laboratories at specified time periods.

You represent Lampomatic, a company that manufactures lamps in Florida. Lampomatic has no problem having its lamps tested, but objects to having to send their lamps for testing in Pennsylvania. There are a number of laboratories in Florida where the same testing can be done. Indeed, four of the laboratories in Florida are operated by the same companies that run the laboratories designated for testing in Pennsylvania.

The President of Lampomatic wants to know if there are any grounds for challenging the statute. Please draft a memo describing all such based, discussing all arguments

QUESTION 6
(suggested time 30 minutes; 30 points)

The President thinks that too many people are mean to each other in the U.S. At his urging, the Congress has passed, and the President has signed into law, a statute establishing a Commission on Nice Thoughts. Though the statute does not define “nice thoughts” the Commission is charged with establishing rules regulating being nice. It has the authority to levy civil penalties for violations of these rules. The Commission is composed of seven persons, three to be appointed by the Congress, three to be appointed from the members of the Supreme Court, and one to be appointed by the President. The Commissioners serve
for five years and can be removed only for good cause.

The Senior senator from Pennsylvania, Arlen Spector does not like to be nice. He voted against the creation of the Commission and thinks the statute is a terrible idea; he also thinks it is not valid. You are on the Senator’s legal staff. He wants you to prepare a memo explaining for him all of the bases for challenging the statute as well as the impediments to the Senator bringing the action in his own name.