QUESTION 1
(suggested time 30 minutes; 30 points)

Hans and Franz, two law students in Prof. Backer’s constitutional law class, were recently overheard arguing about Garcia v. San Antonio Metropolitan Transit Authority, 469 U.S. 528 (1985). Hans insisted that *Garcia* was still good law in all respects. Franz insisted that *Garcia* was not good law in any respect.

You want to make a good impression on Professor Backer. Write him a memo explaining whether Hans or Franz, or neither, is right. Discuss all issues thoroughly.

QUESTION 2
(suggested time 30 minutes; 30 points)

A United Nations Commission has concluded, after 20 years of testimony, that the availability of nuclear, chemical and biological weapons near schools promotes worldwide terrorism. In light of this conclusion, and in the context of a terrible rash of acts of terrorism by youths throughout the U.S. and Russia, the U.S. President and the Russian head of state executed an Executive Agreement by which both agreed to suppress the availability of nuclear, chemical and biological weapons to school-age children. On the basis of this agreement, Congress passed the Terrorism Free School Zones Act of 2002. The Act criminalizes the possession of nuclear, chemical or biological weapons by any person within 1000 feet of a school. There is no legislative history available for the Act, other than the Executive Agreement. The Act was passed by a vote of 51 to 49 in the Senate. Arlen Spector, one of the senators voting against the Act files suit in U.S. court seeking to declare the Act unconstitutional.

You are a young lawyer in the Justice Department. Your boss, the Attorney General, wants to know whether there is any basis for dismissing the lawsuit and whether there is any basis for defending the constitutional validity of the Act assuming a court was willing to consider an attack on such grounds? Discuss all issues raised thoroughly.

QUESTION 3
(suggested time 30 minutes; 30 points)

The Terrorism Free School Zones Act creates a new agency – the Terrorism Commission. The Terrorism Commission is empowered by the Act to create regulations implementing the Act, including the power to define the meaning of certain
terms used in the Act, for example (i) weapon; (ii) nuclear, (iii) biological; and (iii) chemical. There is no legislative history with respect to the creation of the Commission. The Act requires that all regulations must be sent to Congress for approval before they are enacted. Either House of Congress may, by a majority vote, disapprove the regulation. If a regulation is disapproved by either House, it cannot be further considered by the Commission or enacted.

The Commission is made up of six members – two appointed by the President, two appointed by the President from the sitting members of the U.S. Supreme Court, and two appointed by Congress. Members of the Commission serve 4 year terms and may only be removed for good cause.

One of your clients, the Nuclear, Chemical and Biological Weapons Producers Association (NCBWPA), wants to challenge the statute. Assume that NCBWPA will be directly and adversely affected by the Commission’s regulations. Write a memo to your clients discussing whether and on what basis the statute creating the Commission can be attacked on federal Constitutional grounds. Be sure to discuss ALL arguments that can be made.

QUESTION 4
(suggested time 30 minutes; 30 points)

The Governor of Pennsylvania has hailed the wisdom of the Terrorism Free School Zones Act of 2002. She also wants to contribute to the national counter-terrorism effort. Through her efforts, the Pennsylvania legislature passes and she signs the People Are Not Welcome in Pennsylvania Act (PANWIPA). The Act permits the state to set up roadblocks at every point of entry into Pennsylvania and deny entry into Pennsylvania to any person found to be carrying nuclear, chemical or biological weapons. For purposes of PANWIPA, “biological weapons” is defined as any organism that might be transmitted to others with the potential to cause death.” Pennsylvania maintains a list of organisms which are presumed to fall within the meaning of the statute. Carrying” is defined as any sort of possession whether or not intentional.

Wishy Washy, a citizen of Oregon, was driving from New Jersey to Ohio to visit her relatives. She was stopped at a checkpoint at the New Jersey/Pennsylvania border by Pennsylvania State Troopers. An examination there revealed that she had a case of influenza. It turned out that influenza was on the list of biological weapons maintained by the State of Pennsylvania. She was not permitted to enter Pennsylvania and had to find another way to Ohio.

Wishy Washy is furious. She believes she was unfairly excluded from the State. 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 5
(suggested time 30 minutes; 30 points)

Recently, on a road trip with his daughters, the President was incensed to discover that in some states it was still possible for people to have Vietnamese potbellied pigs as pets. Worse, these potbellied pigs are permitted to stay in motel rooms with motel guests. On a recent trip to Wagamama, Mississippi, the President spent a sleepless night in the Presidential Suite of the local Motel 6 because, the President assumed, a potbellied pig was allowed to stay in the room and the staff had done a lousy job cleaning up. The smell was terrible.

After some politicking, Congress passed and the President signed the Pot Bellied Pig Interdiction Act. The Act prohibits all persons from keeping pot bellied pigs as pets, whether at home or in hotel/motel rooms. It also requires all states to enact legislation that would change the definition of “household pets” to exclude Vietnamese pot bellied pigs.

You represent Ellie Mae Klampit, the daughter of a wealthy oil baron from Beverly Hills California. She was on her way to Dickinson Law School to start class when she was cited for keeping a Vietnamese potbellied pig in her motel room in Pittsburgh. She believes the law is unconstitutional.

Write Ellie Mae a memo discussing all possible constitutional challenges to the Pot Bellied Pig Interdiction Act.

QUESTION 6
(suggested time 30 minutes; 30 points)

Handy and Andy were watching TV the other day. Handy turns to Andy and says – “I think Professor Backer has been reading too many philosophy books. There is no difference between functionalism and formalism. Under either approach, the Supreme Court would have had to reach the same result in Brown v. Board of Education (TEXT at 50), and Hans v. Louisiana (TEXT at 851).”

You are Andy. Is Handy right? Write Prof. Backer a memo explaining whether or to what extent the differences between formalism and functionalism would affect the results in Brown and Hans. Discuss all issues thoroughly.