

Examination number _____

UNIVERSITY OF MISSOURI SCHOOL OF LAW
Constitutional Law, 5220L
Section 1

Professor Carl H. Esbeck

Fall Semester 2013

Directions to Part I -- Essay
(1 hour and 20 minutes)

Do not start the examination until instructed to do so by the proctor. However, you may read the instructions on this first page.

Place your examination number in the upper right-hand corner of this examination.

Answer only the questions asked. Do not raise or answer questions not asked.

Arrange your answers including subparts in sequential order. That is, put your answer to Question 1 first, then your answer to Question 2, and etc. If you want to skip over a question and come back to it later, leave a page or two blank and begin the next question.

When finished, return these essay examination questions and submit your essay answers.

You are encouraged to use your laptop to complete Part I. It is to be taken in the Closed Laptop Mode

If you do not use your laptop, write your answer in the bluebook provided. Use a pen with blue or black ink. Write on only one side of each page. Do not write in the left-hand margin. Do not tear pages out of the bluebook.

You may bring with you into the examination room your casebook, 2013 casebook supplement, TWEN downloads, your own classroom notes (not borrowed notes), and a copy of the Constitution marked-up by you.

You may also bring a course outline which is entirely your own work product. Copying the outline of others or copying the work of another is not permitted. Your outline is subject to being collected at the end of the examination. This would be done only to ensure that the outline you use is entirely your own work product. It is an Honor Code violation to have any other materials with you during the examination.

*** * * Part I Begins on the Next Page * * ***

PART I -- ESSAY (1 HOUR AND 20 MINUTES)

Question 1 (15 minutes): Notwithstanding the individual mandate, assume that in 2014 and the first ten months of 2015 very few young adults are purchasing health insurance policies. Therefore, in late 2015 the Affordable Care Act is amended to increase the fine on individuals not purchasing health care plans from 1% of their adjusted gross income to 10% of adjusted gross income. The amendment is effective January 1, 2016. Is this constitutional? Explain.

Question 2 (5 minutes): In a meritorious case of substantial overbreadth, will the law be invalidated as applied or on its face? Explain.

Question 3 (10 minutes): What is the origin of a Brandeis Brief? With respect to what constitutional subject(s) would such a Brief be of use today? Explain.

Question 4 (25 minutes): The U.S. Senate has passed and the House has under active consideration the Employment Nondiscrimination Act (ENDA). ENDA prohibits employment discrimination on the basis of sexual orientation and gender identity (transgender). It applies to private sector employers with 15 or more employees. It also applies to all State and local governments. If intentional employment discrimination is found, then the plaintiff is entitled to appropriate relief, including compensatory damages.

Subpart (A): Is it constitutional for ENDA to require State and local governments to govern their own internal affairs in this manner? Explain.

Subpart (B): Is it constitutional for ENDA to provide for damage awards against State and local governments in this manner? Explain.

Question 5 (10 minutes): The U.S. Supreme Court followed its contraception decision in *Griswold v. Connecticut* (1965) with another contraception decision in *Eisenstadt v. Baird* (1972). Did it make any difference that *Eisenstadt* was decided under the Equal Protection Clause? Explain.

Question 6 (15 minutes): Reproduced below is a news article appearing in the Columbia Tribune on October 27, 2013. Assume the article is accurate. The article refers to “a 1996 federal law that generally shields website operators [like Craigslist and Backpage.com] from liability for content posted by users.” (a) What is the likely constitutional authority to enact the 1996 law? Explain. (b) What is the likely constitutional authority to enact the exceptions sought by the State Attorneys General? Explain.

*** END OF PART I ***

Turn in both the examination Questions and your answers.

After a break, all students will begin Part II together.