

Constitutional Law - Midterm

February 16, 2016

12:20-1:50

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Instructions:

You will have ninety minutes to complete the midterm examination. There is one essay question, with a 1,000-word limit. Anything you write past 1,000 words will not be read. Please use the word-count feature to check the length of each answer. You can access it by clicking Tools > Word Count. Do not use the character count feature. If you hand-write the exam, please do a manual word count.

The exam is completely open-book. You can use anything you wish, so long as that it was printed *before* the distribution of this exam. Obtaining any new information from anyone or anything *after* the exam is prohibited.

Please don't turn the page until the proctor signals that the exam has begun.

Good luck!

Instructions:

The year is 2017. You are a law clerk for the Chief Justice of the United States. He has asked you to prepare a memorandum of no more than 1,000 words addressing five issues affecting several major cases pending before the Court.

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The year is 2017. After his landslide electoral victory, President Donald J. Trump—as promised—rips apart an agreement that was negotiated with Iran by President Obama. President Trump then accuses the Iranian ambassador to the United States of using the Iranian embassy in Washington, D.C. as a terrorist training camp. Trump announces that he plans to no longer recognize the Iranian ambassador, who was previously received by President Obama in the waning days of 2016.

Congress swiftly enacts *The Ambassador Removal Act of 2017*, which states that “The President shall receive the advice and consent of the Senate before rejecting a previously-recognized ambassador from a country that the United States has a commercial relationship with.” President Trump vetoes the bill, but the Congress overrides it. President Trump argues that he cannot be bound by the statute, and then formally rejects the credentials of the formerly-recognized Iranian ambassador.

After his credentials are revoked, the FBI executes a search warrants of the Iranian embassy, and discovers a nuclear bomb in the basement. The FBI arrests the ambassador, and charges him with material support of terrorism. As he is being hauled away in handcuffs, the ambassador announces that that he wants the Justices of the Supreme Court to review his case.

In response, Congress enacts *The Judiciary Act of 2017*, which states that “No court of the United States, with the exception of the District Court for the District of Columbia, shall have original jurisdiction for terrorism prosecutions.” The ambassador is then indicted in the District Court for the District of Columbia. The attorneys for the ambassador filed a motion to dismiss the indictment, charging that this case must be heard in the original jurisdiction of the United States Supreme Court. The district court denies the motion to dismiss the indictment. A jury convicts the ambassador, and the court sentences him to life in prison. The D.C. Circuit Court of Appeals affirms the conviction. The ambassador files a petition for certiorari with the United States Supreme Court, which is granted.

After the conviction of the ambassador, an investigation reveals that Iranian agents smuggled the nuclear bomb across the Southern border from Mexico. President Trump calls on Congress to enact *The Border Security Act of 2017*, which states that “The President shall have all powers that are necessary and proper to secure the southern border with Mexico.” With the fear of domestic terrorists rising, Congress swiftly enacts the law. President Trump announces that he will use the power of eminent domain to seize all of the private property within five miles of the Southern border, so he can use it to construct a *huge* wall. Under the comprehensive plan, President Trump offers what he deems “just compensation” to the property owners. He justifies this action by citing the authority vested in him by *The Border Security Act of 2017*, as well as Article II of the Constitution. A group of ranchers who own property along the southern border in Texas file suit, claiming that President Trump lacks the authority to use eminent domain against their land. The district court dismisses the case, and the Fifth Circuit Court of Appeals affirms. The ranchers file a petition for certiorari, which is granted.

President Trump announces a new policy, known as Deferred Action for Tax Evaders (DATE). Trump explains that the Internal Revenue Service lacks the resources to prosecute all people who fail to file accurate tax returns. (Congress only appropriates enough money to audit 400,000 people per year, and there are an estimated 11 million people who do not file accurate tax returns). Under DATE, taxpayers who owe less than \$1 million in back-taxes can register with the IRS, and receive an assurance that they will not be audited or prosecuted. Hillary, who owes only \$500,000 in back taxes, registers with the IRS under DATE. After receiving a letter indicating that she would not be audited, Hillary is audited, and then indicted on federal charges for tax evasion. She moves to dismiss the indictment, citing the assurance given to her under DATE. The district court rejects her argument, and she is convicted of tax evasion. The court of appeals affirms. Hillary files a petition for certiorari with the Supreme Court, which is granted.

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The Chief Justice asks you to prepare a memorandum of no more than 1,000 words addressing the following five issues affecting these cases:

1. Did *The Ambassador Consent Act of 2017* violate the President's executive authority, and the separation of powers? In your answer, be sure to cite any relevant provisions of the Constitution.
2. Was the ambassador correct that his case *could* have been heard in the original jurisdiction of the Supreme Court? In your answer, please address the impact of *The Judiciary Act of 2017* on the ambassador's claim, and whether that statute was constitutional.
3. Did President Trump have the authority to use eminent domain to seize the properties near the southern border? In your answer, please address the authority Congress delegated to the President pursuant to *The Border Security Act of 2017* as well as Article II of the Constitution.
4. Was DATE a constitutional exercise of the President's authority? In your answer, please address the President's duty to take care that the laws are faithfully executed.
5. In consideration of questions one through three, discuss what weight, if any, the Court should give to the fact that the United States faces a serious domestic terroristic threat.