

Constitutional Law Examination

December 7, 2018

6:00 p.m. - 9:00 p.m.

Josh Blackman

Instructions:

You will have three hours to complete this exam. There are two essay questions. Each question is worth 50% of the final score. Each question has a 1,000-word limit. Anything you write past 1,000 words will not be read. Both answers combined should not total more than 2,000 words.

Please use the word-count (not the character count) feature to check the length of each answer. The **character count** for the exam will be visible just above the formatting icons on your screen. By clicking on the document icon, you may view the **word count**. If you hand-write the exam, or can't utilize the word-count feature, please do a manual word count.

The exam is completely open-book. You can use anything you wish, so long as that it was created *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!

Part 1 (50%)

Instructions: The year is 1867. Against all odds, President Abraham Lincoln survived an assassination attempt two years earlier. However, his popularity soon plummeted. Members of Lincoln's own party turned against him, for failing to aggressively promote Reconstruction in the South. Soon the House of Representatives approved four articles of impeachment against Lincoln. Now, the Senate is holding a trial over those four articles. You are a law clerk for Chief Justice Salmon Chase, who presides over the impeachment trial of the President. First, Chief Justice Chase asks you to assess the strengths and weaknesses of the four articles of impeachment. Second, he asks you to address a fifth issue that arose outside of the impeachment trial. Your memorandum, addressing all five issues, should not be more than 1,000 words.

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Article 1

Abraham Lincoln, President of the United States, on the 27th day of April, in the year of our Lord, 1861, at Washington, in the District of Columbia, in violation of the Constitution and laws of the United States, authorized his subordinates to suspend the writ of habeas corpus if the public safety required it. Pursuant to this authorization, General George Cadwallader unlawfully detained an American citizen. Subsequently, the President approved the violation of a court order. Unmindful of the high duties of his oath of office and of the requirements of the Constitution, that he should take care that the laws be faithfully executed, and his duties as Commander in Chief, Abraham Lincoln hereby violated the Constitution.

Article #2

Abraham Lincoln, President of the United States, on the 1st day of January, in the year of our Lord, 1863, at Washington, in the District of Columbia, in violation of the Constitution and laws of the United States, issued the Emancipation Proclamation. This executive order declared "that all persons held as slaves" within the rebellious states "are, and henceforward shall be free." Unmindful of the high duties of his oath of office and of the requirements of the Constitution, that he should take care that the laws be faithfully executed, and his duties as Commander in Chief, Abraham Lincoln hereby violated the Constitution.

Article 3

Abraham Lincoln, President of the United States, in violation of the Constitution and laws of the United States, ordered the seizure of all railroads. This executive order declared that the “Secretary of War is hereby authorized and directed to take possession of all or such of the railroads, trains, and other property, or any part thereof, as he may deem necessary in the interests of national defense; and to operate or to arrange for the operation thereof and to do all things necessary for, or incidental to, such operation.” Unmindful of the high duties of his oath of office and of the requirements of the Constitution, that he should take care that the laws be faithfully executed, and his duties as Commander in Chief, Abraham Lincoln hereby violated the Constitution.

Article 4

Abraham Lincoln, President of the United States, in violation of the Constitution and laws of the United States, commanded a war against the Confederate States of America. Congress never issued a declaration of war against the Confederate States of America. Unmindful of the high duties of his oath of office and of the requirements of the Constitution, that he should take care that the laws be faithfully executed, and his duties as Commander in Chief, Abraham Lincoln hereby violated the Constitution.

Question #5

After the conclusion of the trial, the Senate votes to convict President Lincoln on all four articles of impeachment. He is removed from office. However, Lincoln maintains his innocence, and argues that he did not violate the Constitution. The Secretary of the Treasury suspends payment of the President’s compensation. In response, Lincoln sues the Secretary of the Treasury for his salary in the Court of Claims. The Court of Claims dismisses Lincoln’s suit because Lincoln is no longer President. Lincoln, who maintains that he is still the lawful President, appeals that judgment to the Supreme Court.

Chief Justice Chase confides in you that he did not think Lincoln violated the Constitution, and that the Senate got it wrong. He is on the fence whether he should write an opinion finding that Lincoln remains the President. The Chief Justice asks you to write about the pros *and* cons of such a decision.

Part 2 (50%)

Instructions: It is now December 2018. A group of migrants from Central America—known as “The Caravan”—is traveling through Mexico en route to the United States. They seek entry to the United States to claim asylum—that is protected status because of the oppressive conditions in their home countries. In anticipation of the arrival of the Caravan, the Trump Administration, Congress, and the Texas state government take several actions. Write a memorandum of no more than 1,000 words addressing these five issues.

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Question #1

As the Caravan continue to travel towards the southern border, President Trump publishes three tweets:

- “There are a lot of CRIMINALS in the Caravan. We will stop them. Catch and Detain!”
- “There are some bad hombres [men] from Guatemala, Honduras and El Salvador in the Caravan. We’re going to get them out.”
- “The Caravan is full of SOCIALISTS who will suck dry welfare programs in our country. Go back home, Communists!”

Pursuant to 8 U.S.C. § 1182, President Trump issues the following proclamation:

“I hereby proclaim that the immigrant and nonimmigrant entry into the United States of aliens from Guatemala, Honduras and El Salvador through the Southern Border, would be detrimental to the interests of the United States, and I hereby suspend entry into the United States, as immigrants and nonimmigrants, of such persons for 90 days from the date of this order. Specifically, I’ve found that the United States is unable to determine the identity of such aliens crossing the border, and there is a substantial risk that they will pose a threat to homeland security.”

8 U.S.C. § 1182 provides, “Whenever the President finds that the entry of any aliens or of any class of aliens into the United States would be detrimental to the interests of the United States, he may by proclamation, and for such period as he shall deem necessary, suspend the entry of all aliens or any class of aliens as immigrants or nonimmigrants, or impose on the entry of aliens any restrictions he may deem to be appropriate.”

U.S. Citizens, who are related to members of the Caravan, challenge the constitutionality of the proclamation because it violates the First and Fifth Amendments. The family members argue that they are injured because their close relatives are being denied entry to the United States. The government defends the proclamation as a reasonable method to protect national security.

1. How would the Supreme Court resolve this dispute?

Question #2

Under federal immigration laws, “All persons, baggage and merchandise arriving in the Customs territory of the United States from places outside thereof are liable to inspection by a Customs and Border Protection officer.”

Citing this statute, President Trump issues a new executive order:

“All female members of ‘The Caravan’ who seek entry to the United States will be administered pregnancy tests. If they are pregnant, they will be given a choice: have an abortion, or be detained at a facility in Mexico for ten months, or until they give birth, whichever happens first. The purpose of this policy is to prevent children of the Caravan members from claiming birthright citizenship, and placing a greater strain on the American welfare system.”

A U.S. Citizen living in Texas is related to a pregnant member of the Caravan who is denied entry to the United States. The citizen challenges the constitutionality of the executive order as a violation of the Fifth Amendment.

2. How would the Supreme Court resolve this dispute?

Question #3

The Texas legislature also expresses a concern about the Caravan. Specifically, they are concerned that the migrants will marry U.S. citizens, as a way to obtain citizenship. If the migrants can remain in Texas, they would place a strain on the state’s social welfare system.

Therefore, Texas enacts two laws. (The first law is at issue in Question #3. The second law is at issue in Question #4). The first law provides that everyone who signs up for a dating service (including mobile applications, such as Tinder) are required to indicate their immigration status on profile pages. Violations of this statute result in a \$100 fine.

In response, Congress enacts the *Securing Websites for Immigrants and People seeking Empathy Act*. The SWIPE Act, as it is known, prohibits states from imposing a substantial burden on access to dating services. Injured parties can sue states that violate the law in federal court. The findings provide that the SWIPE Act is premised solely on Congress’s powers under Section Five of the 14th Amendment, and does not rely on any enumerated power in Article I, Section 8.

A Texan who uses the dating service Tinder refuses to disclose his immigrant status. In response, the Texas Attorney General threatens to indict him for violating state law. The Texan sues the Attorney General in federal court, citing the SWIPE Act. The Texas Attorney General moves to dismiss the suit, arguing that the SWIPE Act is unconstitutional.

3. How would the Supreme Court of the United States resolve this dispute?

Question #4

In response to the Caravan situation, the Texas legislature enacts a second law: the state will only issue marriage licenses where both partners are lawfully present in the United States. Immigrants with green cards, tourist visas, and all other forms of federal documentation, will be eligible for marriage licenses. Aliens who lack any federal documentation, and are not lawfully present cannot apply for licenses. The statute includes a finding: the state is implementing this new law because it cannot verify the authenticity of documents from foreign marriage applicants who lack official records from the U.S. government. However, the state will still recognize marriages performed in other countries, regardless of citizenship.

A U.S. citizen living in Texas seeks to marry a member of the Caravan from Honduras. She challenges the constitutionality of the Texas law as a violation of the Fourteenth Amendment. The state responds that the couple could get married in Honduras, and then Texas would recognize the marriage.

4. How would the Supreme Court of the United States resolve this dispute?

Question #5

In certain places, the Constitution protects the rights of “persons” and “people.” In other places, it only secures the rights of “citizens.” The Constitution speaks of forming a “more perfect union,” but it does not concern the rights of those who are not part of the union.

5. How should the courts scrutinize actions by the federal government that impact non-citizens?