



**The University of New Mexico**

---

School of Law Library  
MSC11 6080  
1 University of New Mexico  
Albuquerque, NM 87131-0001  
Telephone (505) 277-0939  
FAX (505) 277-0068

This document was scanned pursuant to the express permission of its author and rights holder.

The purpose of scanning this document was to make it available to University of New Mexico law students to assist them in their preparation and study for Law School exams.

This document is the property of the University of New Mexico School of Law. Downloading and printing is restricted to UNM Law School students. Printing and file sharing outside of the UNM Law School is strictly prohibited.

#### **NOTICE: WARNING CONCERNING COPYRIGHT RESTRICTIONS**

The copyright law of the United States (Title 17, United States Code) governs the making of photocopies or other reproductions of copyrighted material.

Under certain conditions specified in the law, libraries and archives are authorized to furnish a photocopy or other reproduction. One of these specified conditions is that the photocopy or reproduction is no to be "used for any purpose other that private study, scholarship, or research." If the user makes a request for, or later uses, a photocopy or reproduction for purposes in excess of "fair use," that user may be liable for copyright infringement.

This institution reserves the right to refuse to accept a copying order if, in its judgment, fulfillment of the order would involve violation of copyright law.

Exam/Paper No. \_\_\_\_\_

## 501 INTRODUCTION TO CONSTITUTIONAL LAW

Semester I, 2002-2003

Final Examination/Paper  
UNM School of Law  
Three Credits

Professors Browde, Ellis and Kovnat  
December 11, 12, or 13, 2002  
8:00 a.m. to 4:00 p.m.

### INSTRUCTIONS

This is a 1-day take-home examination/paper. You have no more than 8 hours to complete your answer.

The examination consists of a single question involving multiple lawsuits. The raw material for successful answers will be drawn from both the fact pattern and the data contained in the appendix. Grading will be on the basis of the percentages allocated among the lawsuits as indicated in the body of the question..

Please pick up your packet from Janet Cox's office on any one of the three days when the exam is offered (Dec. 11, 12, or 13) any time after 8:00 a.m., but before 8:45 a.m.

It shall be a violation of the Honor Code to consult with any other person about the subject of this course anytime after you have picked up your packet.

In preparing your answer you may consult the textbook, supplement, handouts, hornbooks, your notes, or any other materials you might find helpful. You may use a word processor, and are encouraged to do so, because typed/printed final products will be much appreciated.

Your answer may not exceed 3,600 words (approx. 14 typed pages). It may, of course, be shorter than that, and we are certain that an excellent exam can be written in fewer pages. Please count the words in your answer and write the total on the first page of your answer; you may do so by counting the words on a few representative pages, and multiplying the per/page average by the number of pages. (Running the spell-checker in WordPerfect for DOS will do an automatic count; WordPerfect for Windows will do a count from "File, Document Info"; and MS Word does it from "Tools, Word Count.")

Be sure to put your exam number, the course number and name, and the instructor's name on each page of your answer. Also, please number each page of your answer.

Return your answer to Janet Cox's Office by 4:00 p.m. on the same day you pick up the packet.

[EXAMINATION BEGINS ON PAGE 2]

## QUESTION

In the 108<sup>th</sup> Congress (which convened in January of 2003), there was a widespread belief among the new leadership that while the USA-PATRIOT Act had been “a good first step,” there was oh so much more to do in fighting terrorism at home. Therefore, committees in both houses began hearings to determine what should be the next step.

The first hearings were held by the Senate Subcommittee for the Preservation of the American Republic (known on the Hill as SUBPAR), which was told by expert witnesses on domestic terrorism (many of whom had appeared on cable news channels, and therefore had the kind of credentials that no Senator was willing to question) that a principal problem in fighting the War On Terrorism was that terrorists refused to limit their activities to a single state. It was pointed out, and illustrated with a chart, that each of the 19 September 11<sup>th</sup> hijackers had lived in more than one state prior to the devastating attacks, and that some had lived in states as far apart as Washington and Florida. As the Attorney General of the United States testified, “How can you expect us to combat the terrorists if they won’t stay put?” Once this fact had been pointed out, the committee unanimously approved a resolution absolving the FBI and the Department of Justice from any responsibility for failing to prevent the 2001 attacks, and then proceeded to the more serious business of helping protect the country from future evildoers.

On the House side, the focus was on concerns related to personal identification. More experts from the terrorism-prevention cottage industry testified that terrorists had no difficulty obtaining drivers’ licenses under false names, and that these fraudulent documents impeded the ability of law enforcement and the airlines to assure the security of the American people in transportation, public buildings, etc. These experts also testified that (1) some States’ licenses are considerably easier to forge than those of other States; (2) differences in the format and layout of different States licenses and license plates were confusing to airport security screeners and to law enforcement officials in other States, thus increasing the likelihood that a terrorist would go undetected and therefore be able to do evil. Other witnesses testified that the differences in drivers’ licenses and auto license plates emphasized differences among the States and created envy, rivalry, and tension. As one witness put it, “How can we be one Nation, under God, and indivisible if our licenses and license plates look different?” Other witnesses protested the particular details of their own State’s license plates. As one of the younger witnesses put it, “I have to drive around with ‘Famous Potatoes’ on my bumper. How lame is that? I mean it’s embarrassing.” Deeply moved by all this testimony, wanting to pander to younger voters, and desperate to avoid casting a vote that could be characterized by a future opponent as “pro-terrorist,” the House members crafted their own legislation.

The bills passed in their respective houses, and in a conference committee, the principal features of both were crafted into a single bill, with some additional provisions tacked on at the urging of lobbyists. The resulting bill, the Promotion of American Unity and Loyalty Act (PAULA) was then passed, and signed by the President in a ceremony that Ari Fleischer claimed

had featured more flags than had ever been present at a signing ceremony in American history. (Few were willing to dispute his claim.) **The relevant sections of the final Federal legislation are included in the Appendix to this exam, as are the relevant portions of the regulations issued pursuant to the Act.**

Politicians at the State level were busy as well. In New Jersey, Governor McGreevey denounced the Federal statute because it would require the State to omit the slogan “The Garden State” from its license plates. As the Governor observed, “that slogan on our plates is one of the few tools we have to change the image of our State from an unsightly collection of refineries and the domicile of Tony Soprano. It is also uniquely capable of carrying our message to citizens of our neighboring States, particularly New York and Pennsylvania, since so many of our citizens drive to work in those States. Our neighbors’ impression of us will greatly influence the success of our State’s own commercial enterprises, particularly our state parks. Revenue from admission to our parks constitutes a substantial portion of our State budget, and any loss of such funds will have to be made up by increasing taxes.” Responding to the Governor’s message, the State Legislature refused to change its license plates to conform to the Federal regulations. On the theory of “in for a penny, in for a pound,” the Legislature also continued the previous State practice of permitting applicants for driver’s licenses to wear headscarves, yarmulkes, or New Jersey Nets caps (forward or backward) in the pictures on their licenses, and refused to declare driver’s licenses to be the property of the State. It also declared that the New Jersey Department of Motor Vehicles was forbidden to provide records to the U.S. Department of Homeland Security.

In Hawaii, Governor Lingle expressed quite different concerns. She noted that fewer than 1/10 of 1% of automobiles registered in the State are ever driven, with Hawaiian tags, in any other State, and concluded that, “Our license plates pose no threat to homeland security.” She therefore urged that the State refuse to conform to the Federal regulations, and that they enter into a commercial agreement with the Noriega Pineapple Company (NPC) instead. (The proposal to deal with NPC was controversial because of NPC’s prominent and outspoken opposition to affirmative action. Nonetheless, the legislature enacted her proposal.) Under the resulting contract, NPC was given the exclusive right to design, manufacture, and distribute the State’s license plates, and was free to include an advertisement for their delicious canned fruit products on each plate. In return, the State was able to eliminate the \$20,000,000 expense of the previous license plate operation, in which the State maintained the files and made decisions about the issuance of license plates, but the actual manufacture of the plates (without a commercial logo) had been contracted out to Tiny Bubbles Inc. (TBI), a private company that manufactured license plates for the governments of twelve States. TBI, which had eighteen months remaining on its contract with the State, objected to being terminated, but Governor Lingle responded that the enactment of the new Federal statute had so altered the situation that the State was free to seek a better deal with Noriega.

Hawaii’s nonconformity did not occasion protests from her sister States, but New Jersey’s did. Pennsylvania politicians in Harrisburg were outraged when they learned of New Jersey’s decision. Governor Rendell asked (rhetorically), “Why should Jersey be able to proclaim itself

“the so-called ‘Garden State,’ when we are forbidden from calling ourselves ‘The Keystone State,’ which I might add, is a slogan that has been a hallowed tradition so long that nobody remembers what it means.” But proposals by some State legislators to insist on the old Pennsylvania license plate design were defeated out of a concern that the State would lose the reimbursement funds provided by Section 4 of the statute, in addition to the prospect of expensive litigation against the Federal government. In its place, Pennsylvania adopted an “entry fee” of \$10.00, to be collected at the tollbooths on all Pennsylvania turnpikes from the driver of any car with license plates that include any State slogan. This special “entry fee” for state-sloganed cars was in addition to the normal toll charged for all other cars. (The proponents of this fee justified it as reimbursing the State for the greater expenses of tracking down evildoers whose license plates were more difficult for state troopers to read.) Critics of the new fee noted that the projected amount to be realized from the fee was exactly the same as the revenue previously collected from a “commuter tax” on people who worked in the State but resided elsewhere. (That commuter tax had been invalidated by the State Supreme Court, and the State’s leaders had been casting about for a way to replace that revenue without raising taxes on Pennsylvania’s citizens.) Pennsylvania had long been proud of its turnpike system, which had been constructed at State expense to provide transportation opportunities to its citizens while realizing a profit that reduced the citizens’ tax burden (especially if they were not drivers). **The relevant sections of the Pennsylvania law are also included in the Appendix to this exam.**

You will not-be surprised that litigation resulted from all this as follows:

1. The Attorney General of the United States sued the Governors of Hawaii and New Jersey for failing to comply with the Federal statute and seeks both injunctive relief and damages. Both States moved to dismiss the lawsuit, claiming that Congress lacked the authority to mandate the changes in their State’s practices required by PAULA. In a separate lawsuit Dr. Jennifer Melfi, a citizen and taxpayer of New Jersey, sued her home State complaining that its failure to comply with PAULA increased her risk of being a victim of a terrorist attack since she is a Christian. She seeks damages for the emotional distress (a remedy provided under state common law) suffered because of the State’s refusal to comply with the federal law. (60%)
2. Dr. Melfi also sued Pennsylvania seeking an injunction against the collection of its entry fee, complaining that as a citizen of New Jersey, she has been subjected to discrimination when she was required to pay the entry fee to drive on the Pennsylvania Turnpike on a recent vacation in that State devoted to recreational hunting with a firearm she had found in her waiting room. (25%)
3. TBI has sued the State of Hawaii to prevent the State from terminating its existing contract to produce Hawaii license plates. Consolidated with that law suit is a suit by Dawn Ho, a file clerk who had previously worked for the Hawaii State Motor Vehicle Department, against Noriega for refusing to hire her in the same position she had held before the privatization. Her complaint alleged that Noriega discriminated against her by refusing to

continue the Department's previous affirmative action policy. [*Please* do not address the merits of her Equal Protection claim; that will be next semester.] (15%)

Implausibly [because of venue], these various lawsuits have found their way to the same Federal District Court. **You are a law clerk, and Judge Paul Walnuts has asked you to analyze the constitutional issues raised by these cases and to make a recommendation for the resolution of each issue.** You are quite aware of the judge's insistence on clarity of organization and expression, and you would prefer not to confront the consequences of his disfavor.

---

## **STATUTORY AND REGULATORY APPENDIX**

### **PROMOTION OF AMERICAN UNITY AND LOYALTY ACT** (Federal)

#### **Section 1. Congressional findings.**

- America is one Land inhabited by one People. National unity is essential as our Nation fights for its life in the War On Terrorism (WOT). Policies and insignia that emphasize differences among the States are an impediment to the unity our land so desperately needs as we combat the Forces of Evil (FOE). Giving up "the license plate game" on long road trips with our children is a small price to pay for national security and unity.
- Terrorists have cunningly hidden themselves from our law enforcement agents and have taken advantage of differences among the states, particularly regarding personal identification and documentation, which make their detection and apprehension and righteous punishment more difficult.
- Commerce among the States is impaired by the effects of terrorism, and therefore the eradication of the FOE is necessary to assure our Nation's continued prosperity. Our states have become unwitting facilitators of terrorist acts by maintaining inconsistent and easily forged licensure documentation.
- The fear of terrorism prevents some citizens from participating fully in our Democracy. In addition, it is increasingly clear that terrorists are singling out Jews and Christians as victims, thus affecting their civil rights disproportionately.

Section 2. Drivers' Licenses.

- a. Each State shall issue a National Identification Card to any citizen of the United States who lawfully resides within that State and who requests one.
- b. A photostatic copy of every such card issued by the State shall be forwarded to the United States Department of Homeland Security.
- c. The National Identification Card may also serve as a driver's license for that State if the applicant meets the requirements of the State's motor vehicle code. No other driver's license shall be recognized by any State.
- d. Every other State is required to give Full Faith and Credit to the identity card/driver's license issued by any other State, and the National Identification Card/driver's license issued by each State shall conform to the specifications established by regulations promulgated by the Secretary of Homeland Security.

Section 3. License Plates.

The license plates for all motor vehicles issued by every State shall conform to the requirements of regulations issued by the Secretary for Homeland Security.

Section 4. Grants to States.

Every State that complies with the regulations described in Sections 2 and 3 of this Act shall receive a grant in the amount of one cent for each Identification Card and each license plate issued in compliance with the regulations. This grant shall be deemed full reimbursement for any costs incurred in complying with this Act, but may be spent by the State on any program it selects.

Section 5. Enforcement.

If a State does not comply with any provision of this Act or any regulations promulgated pursuant to this Act, the Department of Justice may bring suit in U.S. District Court to seek compliance and damages. Individual taxpayers of any State are also authorized to bring suit against their own State seeking compliance with the Act or the regulations promulgated pursuant to the Act. Taxpayers bringing such a lawsuit may seek either injunctive relief or damages allowed by the common law or both.

U.S. DEPARTMENT OF HOMELAND SECURITY REGULATIONS

Section 911. Identity cards (and driver's licenses) must measure exactly two (2) inches by three (3) inches. Each card shall include a color photograph of the person applying for the license.

The photograph must not include any hat or headgear. The card shall include a legible replica of the applicant's signature. The name of the issuing State may appear on the card, but cannot be in type larger than 1/8 inch tall. The card must also include the name and replica signature of the U.S. Secretary of Homeland Security at the time of issuance. The card shall remain the property of the State that issued it, and it shall be the responsibility of that State to retrieve the card and forward it to the Secretary of Homeland Security if the individual to whom it is issued is convicted of a crime or has his or her driving privileges revoked for any reason.

Section 1984. License plates shall be issued by the issuing State in pairs, and the State must require that one plate be displayed on the front of every vehicle registered in the State and one on the rear of every such vehicle. Each plate shall be reflective white with red and blue letters, and shall include prominent display of the patriotic and tourism-promoting slogan "Let's Roll." Each plate shall clearly identify the name of the issuing State but may not include any other graphic design, slogan, website address, or identification of county of issuance.

COMMONWEALTH OF PENNSYLVANIA  
PATRIOTIC DRIVING AND REVENUE ENHANCEMENT ACT

Section 1. Legislative Findings. WHEREAS:

- As the Birthplace of American Liberty, Pennsylvania stands second to no State in its citizens' patriotism and commitment to America's national security;
- Pennsylvania agrees fully with the patriotic purposes of the Federal PAULA enactment;
- The difficulty of Pennsylvania's law enforcement officers' duties in combating terrorism is increased by the necessity of more closely scrutinizing nonconforming license plates from cars registered in States that do not comply with the requirements of PAULA;
- The costs of those additional law enforcement expenses should be borne by citizens whose States are not in compliance;

THEREFORE the Legislature of Pennsylvania does enact this statute.

Section 2. Entry Fee. Any automobile seeking to travel on a Pennsylvania turnpike that does not bear a license plate in full conformance with PAULA shall, in addition to the regular toll for such travel, also pay a fee of \$10.00.

[END OF EXAMINATION]