

Question I (Channing River Bridge Resident Discount) (56 points)

P & I-prelim hurdles-discrim ag nonres, flesh & blood, rt essential to interstate harmony(4) _____
 Test-MM applies-sub'l reason for dif in treatmt, degree of discrim related to sub'l obj---(4) _____
 Test-city applies-sub'l reason for dif in treatmt, degree of discrim related to sub'l obj----(4) _____
 DCC-discrim on face, legit purpose?/no less discrim alts? less discount, volume discount(6) _____
 DCC- Pike balancing test-burden-extra toll costs vs. benefits-\$ for operation of bridge---(4) _____
 MPE-city operating bridge-market partic, but monopoly so may be deprived of defense--(6) _____
 Preemption - valid fed'l law?, commerce power, category 1 - reg of channel of IC?----- (3) _____
 State autonomy arg by city-forcing it to adopt or administer fed program? But Condon---(4) _____
 Express Preemption-states can't discriminate-but terms access and discrim not defined---(4) _____
 Conflict - Impossible to Comply w/both; conflict in purpose, what is purpose of fed law-(5) _____
 Occupation of Field-did Congress intend to fully occupy field, what field?----- (3) _____
 EP-nature of classification, resident vs nonresident, apply test----- (3) _____
 DP-nature of rt, rt to travel?, apply test to facts----- (3) _____
 Miscellaneous _____ (3) _____

Question II (Federal Ban on Sexual Devices) (Due Process & Commerce Clause) (56 points)

Due Process - nature of the right? Is it fundamental or nonfundamental?----- (2) _____
 Argue fund'l rt - history/tradition, precedent (Griswold, Lawrence), personal identity---- (6) _____
 Argue nonfund'l rt-no history/tradition, no cases, not central to personal identity----- (6) _____
 DD vs EE - DD sales are eco so perhaps she can only assert eco rt, but EE has personal rt(2) _____
 standard of review-minimum rationality-health or morality, related to----- (4) _____
 strict scrutiny-comp'g int?, least restrictive alt?, ban phthalates, educ program----- (5) _____
 absolute ban so amounts to an undue burden and so less strict test does not apply----- (2) _____
 Com Clause-as to DD- feds argue category 1 or 2 so fed'l power is plenary/DD argues 3-(2) _____
 As to EE, gov argues category 3-eco activity - comprehensive regulatory scheme - Raich(3) _____
 if eco-could congress rationally conclude reg'd activity has subl eco effect on interst com(4) _____
 EE argues noneconomic activity-focus on possession aspect of statute-like Lopez----- (3) _____
 If Lopez factors - findings-no findings linking reg'd activity to interstate com, not nec'y-(2) _____
 jur'l element-FBSD has jur'l elements, but are they sufficient to limit reach of statute?--- (5) _____
 Link between reg'd activity and interstate commerce - attenuated or sufficiently direct?-- (4) _____
 Necessary and Proper Clause to regulate possession as Scalia argued in Raich----- (3) _____
 Miscellaneous _____ (3) _____

Question III (segregation of homosexual prisoners) (Equal Protection) (32 points)

Classif-LL argues homosexuals vs. heterosexuals----- (1) _____
 State-homosexuals vs those not identified as homosexuals, homosexuals in both groups-(3) _____
 Nature of Class-traits of suspect cl-history, unalterable, not ability, inferior, pol power--- (3) _____
 LL-Suspect Cl-apply traits-history, unalterable, not ability, inferior, under-represented--- (6) _____
 State-not Susp Cl-like Clebourne-not a class, range of sexual orientations, recent laws--- (4) _____
 Standards of Review - Minimum Scrutiny - applied by State & LL-rational basis?----- (4) _____
 Intermediate/Strict Scrutiny-applied by LL (if know violence by cellmate - alts available)(4) _____
 Intermed/Str Scrut-applied by PP(comp'g int/narrow-1 prison/only in IC,tried alt means)(4) _____
 Miscellaneous _____ (3) _____