

Con Law Spring 2000(Harpaz) Exam # \_\_\_\_\_ Raw Score \_\_\_\_\_ Final Grade \_\_\_\_\_

Question I (Federal Protection of Women Prisoners Act) (POWPA) (80 points)

Commerce Power - regulation of local activity(abuse of prisoners, hiring of prison guards) that has a substantial economic effect on interstate commerce (IC) & not reg of IC itself; could Congress have rationally concluded that local activity has substantial eco effect on IC?--(3) \_\_\_\_\_  
yes-findings-damage awards & loss of prison worker productivity in aggregate------(3) \_\_\_\_\_  
No - women prisoners who have been abused even in the aggregate are not a significant part of the workforce so no substantial eco effect on interstate commerce------(3) \_\_\_\_\_  
Lopez - is activity being regulated an economic or noneconomic activity?------(2) \_\_\_\_\_  
arguments - abuse is noneco vs. employment of guards is eco------(3) \_\_\_\_\_  
if noneconomic-challengers argue no jurisdictional requirement attached to the law------(2) \_\_\_\_\_  
Congress made findings of effect on IC thru findings on worker productivity------(2) \_\_\_\_\_  
traditional subj of state control-safety of state prisoners is a subject of trad'l state control(2) \_\_\_\_\_  
gov't arg on effect on IC is a limitless argument-virtually anything can effect worker productivity (Lopez) vs. this is direct reg of workers & related directly to worker productivity------(3) \_\_\_\_\_  
application of law to fed'l prisons - Nec'y & Proper Cl-right to create fed prisons to incarcerate persons who violate fed'l laws nec'y to enforce fed reg programs & hiring fed'l workers is nec'y to running prison------(3) \_\_\_\_\_  
Spending Power-grants to states based on this power-w/in gen welfare & no coercion-----(4) \_\_\_\_\_  
State Sovereignty -app to state workers-general reg of workers (who state can hire) (like FLSA) and not a 10<sup>th</sup> A prob since overruled NLC in Garcia vs. prisons exclusively gov't activity so can't say just gen'l worker reg & more like ordering states to enforce federal reg prog-----(5) \_\_\_\_\_  
reporting requirement - ct suggested in recent cases that reporting alone may be acceptable vs. reporting requirement is feds telling states they must cooperate in fed regulatory efforts--(3) \_\_\_\_\_  
Due Process - suit by woman prisoner claiming DP violation - fund'l vs. nonfund'l right-(1) \_\_\_\_\_  
right to privacy-woman's privacy in not having to expose body to males without consent(2) \_\_\_\_\_  
history & tradition-tradition of nudity in private & performing bodily functions in private (anti-public nudity laws support this tradition), sex segregated bathrms etc. vs. no tradition of privacy for prisoners (guards traditionally male)-depends on which tradition one looks to------(4) \_\_\_\_\_  
analogy-e.g.-bodily integrity-Griswold-police in bedroom, privacy in intimate moments-(4) \_\_\_\_\_  
analogy-e.g.-no cases protect nudity per se, just decisionmaking in childbearing-not issue here-more like Bowers-no tradition of privacy for prisoners------(3) \_\_\_\_\_  
strict scrutiny and application to the facts------(4) \_\_\_\_\_  
minimum scrutiny and application to the facts------(3) \_\_\_\_\_  
Equal Protection - discrimination against male guards - classification based on gender--(1) \_\_\_\_\_  
benign discrim-help women;reinforcing archaic stereotypes or overbd generalizations?--(3) \_\_\_\_\_  
test -intermediate scrutiny-sub'l relationship betw use of gender classification & imp obj(2) \_\_\_\_\_  
imp. objective - protection of women prisoners from sexual abuse------(2) \_\_\_\_\_  
sub'l relationship - evid. that culprits are male & not female guards, but like Craig-punishmt of all male guards for the behavior of a few but more than a few based on statistics------(4) \_\_\_\_\_  
over and underinclusive------(2) \_\_\_\_\_  
gender neutral alternative means-training and supervision-but experts say ineffective-----(3) \_\_\_\_\_  
prospective application only so no adverse impact on current employees------(1) \_\_\_\_\_  
Miscellaneous \_\_\_\_\_ (3) \_\_\_\_\_

Question II (Oregon Death With Dignity Act) (80 points)

Privileges & Immunity Clause of Article IV, Section 2------(2)\_\_\_\_  
discrimination between residents and nonresidents (brought by JB who is a nonres)------(2)\_\_\_\_  
flesh and blood challenger to whom protections of P& I Clause are available------(2)\_\_\_\_  
right essential to interstate harmony?- Right to life ending drugs is not recreation but also not eco  
activity of patient (not like Piper & Camden) vs. eco activity for hospital-treatment of patients &  
prescription of drugs-freedom to engage in business of provision of medical services is essential  
to interstate harmony, but P& I claim is brought by patient, hospital not flesh & blood, but can dr  
bring on behalf of his patients------(6)\_\_\_\_  
test-does state have an imp reason for dif in treatmt (nonres a peculiar source of evil)-----(1)\_\_\_\_  
does degree of diiscrimination bear a sub'l relationship to the important objective------(1)\_\_\_\_  
application of test to the facts-imp reason, sub'l relationship------(5)\_\_\_\_  
are there less restrictive alternatives available------(3)\_\_\_\_  
Dormant Commerce Clause (brought by doctor and hospital)------(2)\_\_\_\_  
eco protectionism-did state exclude nonres to protect own eco interest?(state lost revenue out of  
respect for policy of other states & possible crim'l liability of res and nonres-not eco protec vs.  
protected itself from eco liability from lawsuits if provided drugs-virtually per se invalid(4)\_\_\_\_  
discrimination between in state and out of state commerce-only applies to instate medical  
facilities, but state can't regulate medical facilities outside the state; discriminates between res  
and nonres patients but are patients engaged in IC when they seek medical care?------(3)\_\_\_\_  
if discrim, legit purpose & no alt means------(4)\_\_\_\_  
analogy to state hoarding resource-but med care not nat'l resource;available in all states-(2)\_\_\_\_  
balancing test - substantial eco burden on IC (substantial % of business of hospital is out-of-state  
and may be true of other in-state medical facilities) vs. benefit to be achieved(preservation of life  
of OOS residents and avoidance of liability)(more than slight or problematical?)------(4)\_\_\_\_  
no market partic exc-state reg medical profession(including private hospitals & drs)------(2)\_\_\_\_  
Equal Protection - classifications-residents vs. nonresidents------(2)\_\_\_\_  
other classifs-patients who are terminally ill vs. those that aren't, those with more than six  
months to live vs. those with less but challenger is not discriminated against on any basis other  
than residency so can't raise these other classifications created by the law------(3)\_\_\_\_  
is residency suspect classif?(1)history of discrim; 2)not immutable characteristic-mobility of  
population;(3) politically powerless-no voting power in state that discriminates; (4) stigma of  
inferiority-just legal classif w/o stamping as inferior? (5) does it relate to ability to contribute -  
relates to whether person has contributed (as taxpayer) & whether person has a close relationship  
to state for purposes of jurisdiction etc & entitlement to protection of the state------(10)\_\_\_\_  
standards of review(strict, intermediate, minimal rationality)------(3)\_\_\_\_  
application of standard(s) to facts------(5)\_\_\_\_  
Due Process - no fundamental right to die with doctor assistance (Glucksburg)------(2)\_\_\_\_  
no fund'l right to treat patient by prescribing life-ending drugs; doctors claim is eco right(2)\_\_\_\_  
test - rational basis (minimal rationality) review------(2)\_\_\_\_  
applic of facts - rational relationship between means and ends------(3)\_\_\_\_  
legitimate vs. illegitimate end------(2)\_\_\_\_  
Miscellaneous------(3)\_\_\_\_