

Con Law-Spring,2002 Exam No. \_\_\_\_\_ Raw Score \_\_\_\_\_ Final Grade \_\_\_\_\_

Question I (Marriage Protection Act) (75 points)

Commerce Power-does Congress have power to enact under Commerce Clause(CC)?----(1) \_\_\_\_\_  
Lopez Category 3-reg of local activity w/ subst'l eco effect on interstate commerce(IC)--(2) \_\_\_\_\_  
commercial vs. noncommercial-marriage has eco consequences but not eco transaction--(3) \_\_\_\_\_  
jurisdictional element-couple needs to cross state lines & continue to live together----- (4) \_\_\_\_\_  
economic effects on IC-lower earnings, less stability, but many social problems will have such an effect and so can argue this is the sort of limitless argument ct rejected----- (3) \_\_\_\_\_  
traditional area of state control-marriage, but incorporates doesn't preempt state law----- (3) \_\_\_\_\_  
Cong'l findings-no formal findings, but testimony at hearings & less imp after Morrison(2) \_\_\_\_\_  
Due Process (DP)-is the statute a violation of the 5<sup>th</sup> Amendment Due Process Clause?--(1) \_\_\_\_\_  
right- live together in intimate relationship, but remain unmarried, to choose not to marry(5) \_\_\_\_\_  
Mark & Paula (MP) argue it is a fund'l rt-Griswold, Moore, Roe, history & tradition----(5) \_\_\_\_\_  
Fed (F) argues it is a nonfundamental right-Bowers, Michael H., history and tradition----(5) \_\_\_\_\_  
if fund-strict scrut-F-compell'g, nec'y, no alts;MP-no compelling ends, necy means, alts(5) \_\_\_\_\_  
if nonfund'l-minimum scrutiny review-test, F argues rat'l/legit; MP argue not rat'l/legit-(4) \_\_\_\_\_  
Equal Protection (EP)-is statute a violation of the EP component of 5<sup>th</sup> Amendmt DP CL(1) \_\_\_\_\_  
classif-5+ interstate unmarried couples (IUC)who may marry vs 5+IUC who can't marry(2) \_\_\_\_\_  
nature of discrim-yrs, interst, unmarried, may marry(overt), gender/sex orient?(covert)---(3) \_\_\_\_\_  
suspect class?-overt - yrs, interstate, may marry all nonsuspect classes----- (3) \_\_\_\_\_  
covert discrimination-gender/sexual orientation, statistics, testimony, no state law allows(3) \_\_\_\_\_  
but it is heterosexual not homosexual couples that are discriminated ag under the law----(2) \_\_\_\_\_  
married v. unmarried-not classif, behavior req'd by law-the DP arg. restated as EP classif(2) \_\_\_\_\_  
gender is intermediate, arg. re 5 traits for suspectness if sex orient or unmarried couples--(6) \_\_\_\_\_  
intermediate scrutiny-F-imp, sub, no alts; MP not imp, sub, alts----- (4) \_\_\_\_\_  
minimum scrutiny-F-use of classif is rat'l/legit; MP not rat'l/legit----- (3) \_\_\_\_\_  
Miscellaneous \_\_\_\_\_ (3) \_\_\_\_\_

Question II (ShooBug for Kids insect repellent) (75 points)

Preemption (P)- is fed'l law valid under CC? (ShooBug(S) says Y, Colorado(C) says N-(4) \_\_\_\_\_  
Express P- sale or use, floor not ceiling on safety & no P if that is relevant provision----(4) \_\_\_\_\_  
But labeling provision says no add'l reqs - does it mean no add'l lang on label (C-no P-doesn't add language); or no add'l reqs (S-adds add'l req of no safety claim to label & there is P)(8) \_\_\_\_\_  
Implied P-conflict-not impossible to comply w/both-remove safety claim or 2 versions--(6) \_\_\_\_\_  
conflict-state law undermines purpose of fed law-C says N-reinforces fed safety purpose(4) \_\_\_\_\_  
S says Y-fed law balances safety & availability,by req'g more safety interferes w/balance(4) \_\_\_\_\_  
Field P- C-hasn't fully occupied safety field; S-has fully occupied safety in labeling----- (8) \_\_\_\_\_  
Dormant Commerce Clause - economic protectionism(BugBeGone campaign vs safety)-(7) \_\_\_\_\_  
discrimination ag interstate commerce (IC)-on face (no) vs. in effect (BugBeGone)----- (6) \_\_\_\_\_  
absence of alternatives that don't discriminate ag IC(2)-S says alts(4); C says no alts(2)--(8) \_\_\_\_\_  
undue burden on IC-balance burdens vs. benefits(2)-S-no safety bens(4);C- + safety(4)-(10) \_\_\_\_\_  
no market participant exception since acting as a market regulator----- (3) \_\_\_\_\_  
Miscellaneous \_\_\_\_\_ (3) \_\_\_\_\_