STETSON UNIVERSITY COLLEGE OF LAW

Gulfport, Florida

GENERAL INSTRUCTIONS

THE ATTENTION OF ALL STUDENTS IS CALLED TO THE FOLLOWING INSTRUCTIONS:

1. The answers and the pledge are to be identified by examination number only. DO NOT WRITE OR TYPE YOUR NAME ON ANY BLUEBOOKS, SCANTRON SHEETS, OR ANYWHERE ON THE EXAMINATION; USE YOUR EXAMINATION NUMBER INSTEAD.

2. During the course of the examination, ABSOLUTELY NO EXAMINATION MATERIALS MAY BE REMOVED FROM THE EXAM ROOM. This includes the exam, any Scantron sheets, bluebooks, or examination answers.

3. This examination ends at the expiration of the time indicated, or when the examination is turned in, whichever comes first.

4. The professor will be permitted to grade only answers that have been submitted during the examination, in the method indicated by the professor.

5. At the conclusion of the time prescribed for the examination, students are forbidden from communicating with the professor with reference to the final examination until the grades have been turned in to the Registrar’s Office except that students may communicate with the professor at any time concerning matters related to the Code of Student Professionalism and Conduct or the Academic Honor Code.

TIME: 3.5 HOURS
SPECIAL INSTRUCTIONS

1. This is a LIMITED OPEN BOOK examination. You have previously been advised as to which materials you may use during the examination. You may bring to the exam the required books for the course, any of the three charts posted in the “Charts/Diagrams” section of the course’s TWEN page, and any notes or outlines you prepare yourself, but you may not bring any commercial outlines, study aids, or any other non-required materials that are not of your own making, including any past exams and/or exam answers.

2. This examination consists of ELEVEN (11) PAGES. You should check now that you have all the pages. You have THREE AND A HALF (3.5) HOURS to complete the exam.

3. The point values and suggested times for answering each question are noted at the beginning of each Question. Although each Question may take you more or less time than suggested to complete, you should be conscious of the overall time allotted for the exam (3.5 hours) and budget accordingly.

4. The examination is in THREE (3) PARTS.
   
   - **PART I** of the examination contains TWO (2) QUESTIONS and is worth a combined total of ONE HUNDRED (100) POINTS. QUESTION 1 consists of TWO (2) SUBPARTS and is worth a total of FIFTY (50) points. QUESTION 2 also consists of TWO (2) SUBPARTS is worth a total of FIFTY (50) points. **YOU MUST ANSWER BOTH QUESTIONS IN PART I.** I suggest you allot approximately ONE (1) HOUR AND FIFTY (50) MINUTES to PART I.
   
   - **PART II** of the examination consists of ONE QUESTION. Your response is worth EIGHTY (80) points. **YOU MUST ANSWER THE QUESTION IN PART II.** I suggest you allot approximately ONE (1) HOUR AND TWENTY (20) MINUTES to PART II.
   
   - **PART III** of the examination consists of TWO (2) SHORT ANSWER QUESTIONS. **YOU MUST ANSWER ONLY ONE (1) OF THE QUESTIONS IN PART III.** Your response is worth TWENTY (20) points. I suggest you allot approximately 20 MINUTES to PART III.
5. Please use a blue exam book or books or a computer to answer all of the questions in PARTS I, II, and III. Make sure to write or type your exam number on your answer, including on each blue exam book you use. You may use as many exam books or type as many pages as you would like.

6. If you handwrite your answers in blue books, please write on every other line and only on the front of each page (i.e. do not write on the backs of pages).

7. In forming your essay answers, you should not feel compelled to include case names or citations, but should make clear which doctrine, statutory provision, or rule and which of the given facts you are relying on to support your analysis. Your answers should be limited to the question(s) asked, and should be organized accordingly. **Organization is an important factor in the quality of your answer, so take care in structuring your responses.** I suggest outlining your answer (however briefly) before writing. This is not required, and scratch paper will not be considered as part of your answer for grading purposes, but it can be a useful tool in structuring your response.

END OF INSTRUCTIONS

GOOD LUCK AND HAVE A GREAT BREAK!
Maine is very proud of its native fish, the Potato Trout. The Potato Trout lives in Maine’s lakes and rivers and is not only native, but exclusive to the State; there are no known sightings of Potato Trout outside of Maine. The Potato Trout is a delicious alternative to tuna, and thus there is a vibrant commercial Potato Trout fishing industry in Maine—Potato Trout fishermen market and sell their catch all over the United States.

In order to balance the desire of commercial fisherman to catch and sell Potato Trout with that of recreational fisherman and environmentalists, Maine has long regulated Potato Trout fishing. In 1999, Maine enacted the Potato Trout Act (PTA), which states, in pertinent part:

§1. In order to become a licensed commercial Potato Trout fisherman in Maine, applicants must either (a) demonstrate continuous Maine residency for the last 5 years, or (b) pass a rigorous test on the geography and wildlife of Maine’s lakes and rivers. “Applicant” is defined herein as only the specific entity seeking a license.

§2. The Clerk of the Maine Environmental and Wildlife Department shall make the final decision on all licensing applications. That decision is final. Licenses may only be revoked for failure to meet the requirements in §1.

The PTA’s stated purpose is to regulate commercial Potato Trout fishing in a way that helps maintain an appropriate balance between the interests of commercial fishermen, recreational fishermen, and the environment, and to promote safety within the commercial fishing industry.
In the legislative history of the PTA, some state lawmakers were quoted as saying “the Potato Trout is one of our most valuable possessions; it should be benefitting Maine’s sons and daughters,” while others argued that because Potato Trout season is in the late fall, adequate knowledge of Maine waters is “crucial to ensuring safety in cold and rapidly changing marine conditions, and newer residents are unlikely to have this knowledge.”

Of approximately 1000 commercial Potato Trout fishing licenses Maine has issued since the PTA was enacted, about 800 of them were granted pursuant to §1(a)’s residency requirement. Nobody who applied for a license and was found to have met the residency requirement was denied a license. The remaining 200 were issued to applicants who did not meet the residency requirement but who passed the exam described in §1(b). The pass rate for that exam is 40%, which means that there were 500 requests from applicants that did not meet the residency requirement of §1(a), and that of those 500, only 200 passed the exam.

Marty McGrupp is the sole shareholder of McGrupp Fishing, Inc., a commercial fishing corporation that has resided and operated in Maine for 2 years. For 4 years prior to founding the corporation, Marty resided in Maine and worked at various non-fishing jobs. On his application, Marty claimed residency of 6 years and was granted a commercial Potato Trout license. Shortly after receiving the license, however, he was contacted by the Clerk of the Maine Environment and Wildlife Department and informed that his license was being immediately revoked due to his failure to report that the actual applicant, McGrupp Fishing, Inc., has only resided in Maine for 2 years.

Instead of trying his hand at the geography and marine wildlife exam, Marty decided that McGrupp Fishing, Inc. should sue. He set up an appointment with Tela, Reba, and Forbin, a law firm specializing in constitutional litigation to discuss his options. After the meeting, the senior partner contacted you, her bright young associate, to analyze both of the following questions:

A. What is the likelihood of McGrupp Fishing, Inc. successfully challenging §1 of the PTA for violating the Dormant Commerce Clause?
(Note: If there are additional facts you think may be useful, note them in your analysis.)

B. What constitutional challenges, if any, may McGrupp Fishing, Inc. present under §2 of the PTA regarding the Clerk’s revocation of its commercial fishing license?
(Note: If there are additional facts you think may be useful, note them in your analysis.)
PART I - QUESTION 2

Suggested Time: 55 Minutes
Possible Points: 50

On January 31, 2009, President Obama signed the Fish Improvement and Sustainable Habitat Act (FISH ACT), which reads in pertinent part as follows:

**Purpose:**
This Act is designed to ensure the integrity and survival of the Potato Trout, a species of fresh water fish native and exclusive to the rivers and lakes of Maine, by regulating recreational fishing for Potato Trout.

§1 Starting immediately from the effective date of this Act (January 31, 2009), all recreational Potato Trout fishing is prohibited for a period of one year. Recreational fishing is defined as the catching of Potato Trout for personal consumption, not for sale to another.

§2 At the end of this one-year period (January 31, 2010), representatives designated by Maine’s Environment and Wildlife Secretary (“Secretary”) shall report to Congress regarding the current Potato Trout stocks and general health of the Potato Trout population, and shall issue a recommendation to Congress as to whether to extend the Act’s prohibition on recreational fishing for another year. Congress is not bound by the Secretary’s recommendation; it is purely advisory.

**Findings:**
Recreational Potato Trout fishing has expanded significantly in recent years to the point where it has a substantial effect on interstate commerce. Although the overwhelming majority of Potato Trout fishermen are Maine residents (approximately 95%), sport fisherman from many of the coastal Atlantic and even some western States have begun to arrive in Maine during Potato Trout season with increasing regularity.
Although currently only about 5% of all recreational Potato Trout fishermen are not Maine residents, there is reason to believe that number is growing as word spreads throughout the outdoor sporting community of the excitement and rewards of Potato Trout fishing.

Visiting recreational fishermen contribute to the depletion of Potato Trout stocks, which in turn has economic consequences for commercial Potato Trout fishermen and for the ecological tourism industry in Maine, which depends on its pristine and unspoiled landscape to attract tourists interested in camping, hiking and boating on its rivers and lakes.

Congress estimates that Maine’s commercial fishing industry loses approximately $1,000,000 annually due to recreational fishing for Potato Trout, and that its eco-tourism industry loses about $100,000. The total annual revenues for the commercial fishing and eco-tourism industries are approximately $100M and $10M, respectively.

Fish Hunters is an organization of outdoor sportsmen that organizes hunting and fishing trips around the country for its members. It is based in St. Louis, MO and has members from every state in the union. It has three members from Maine, only one of which is a fisherman. He has never been fishing for Potato Trout, but did suggest at the last Fish Hunters meeting that the organization consider organizing a trip to Maine for the next Potato Trout season in the Fall of 2009. Plans for that trip are currently underway, and travel reservations have been made. When Fish Hunters heard of the FISH ACT ban on recreational Potato Trout fishing, they filed suit challenging Congress’ authority to pass the Act.

Fish Hunters also hired Tela, Reba, and Forbin to represent them. Your senior partner has again asked you to analyze the constitutional issues in their case. In particular, she has asked you to answer the following questions:

A. Does Fish Hunters have standing to bring this suit?
(Note: If there are additional facts you think may be useful, note them in your analysis.)

B. What is the likelihood that Fish Hunters’ challenge to congressional authority to pass the FISH ACT will be successful?
(Note: If there are additional facts you think may be useful, note them in your analysis.)
The city of South Gamehendge passed the Family Protection Ordinance (FPO) in 2007 in response to what was perceived as a growing juvenile delinquency problem in the city. The pertinent parts of the FPO read as follows:

**Purpose:** To combat juvenile delinquency in South Gamehendge by encouraging the development and persistence of strong family units.

§1. Any married couple that has been married longer than 5 years must complete the following steps before being eligible for a legal divorce in South Gamehendge:

a. File for a divorce with the Clerk of Family Court at least one year prior to the date on which the couple would like the divorce to take effect;

b. Participate in at least 6 months of marital counseling; and

c. Jointly complete a “marital status questionnaire” provided by the Clerk of Family Court every three months after filing for divorce and file that questionnaire with the Clerk.

§2. Provided the above steps are complied with, and after the effective date on the couple’s application in §1a above, the applicants will be granted a divorce upon their request.
Findings:¹

Juvenile arrests have been steadily rising in South Gamehendge over the last 5 years. The overwhelming percentage of juveniles arrested are between the ages of 12 and 18 and are from divorced or otherwise broken homes. By decreasing the number of single-parent homes in the city, the instances of child delinquency will likewise decrease.

Although there is no statistical data to support this proposition, it stands to reason that couples married longer than 5 years are more likely to have children and, more specifically, are more likely to have children in the 12-18 age group most prone to juvenile crime than unmarried or more recently married couples.

South Gamehendge is a diverse, lower-middle class community with a population mix of roughly 50% African-American and 45% Caucasian²

Despite this relatively even racial mix, African-American children ages 12-18 are 3 times more likely to commit juvenile offenses than Caucasian children.³ In its history, South Gamehendge has experienced some painful racial issues. About 35 years ago, it experienced a tense racial clash when the City Council was accused of frustrating efforts at school integration. About 10 years ago its police department was the subject of a racial profiling lawsuit by a number of African-American residents who claimed they were targeted for prosecution by police based on their race. These conflicts were resolved peacefully in the courts.

Since its passage, approximately 80% of the applicants for a divorce under the FPO (couples seeking a divorce after being married more than 5 years) have been African-American and 20% have been Caucasian.

In that same time frame, the total number of divorces in the city (including couples married for less than 5 years) were split more evenly; 55% of the total number of divorces involved African-American couples, while 45% involved Caucasian couples.

¹ These findings are entirely fictional and are presented solely for purposes of this exam.
² The remaining 5% of the population consists of too many different demographics to be represented statistically.
³ As explained in note 1, supra, these findings are fictional and are presented solely for exam purposes.
Legislative History:

In public debates about the FPO, City Councilmember X noted that “too many kids from South Gamehendge are getting locked up, and it always appears to be the same group of kids.” Councilmember Y commented that “this part of our community has to be helped by keeping families together.” Councilwoman Z argued that divorce is immoral and disruptive to the traditional notion of the family, and should be discouraged at all times, not only after a predetermined number of years.”

Suzy and Harold Wilson are African-American. They live in South Gamehendge and have been married for 12 years. They have decided to seek a divorce. They do not have any children. Rather than participate in the regime required by the FPO, they brought suit in Federal District Court seeking to invalidate the Ordinance on the grounds that it violates their constitutional rights.

You are the Wilson’s lawyer. Draft an informal memo analysis of all of their constitutional claims in opposition to the FPO.

(Note: If there are additional facts you think may be useful, note them in your analysis.)
PART III
SHORT ANSWER QUESTION
Suggested Time: Twenty (20) Minutes
Possible Points: 20

State whether you agree or disagree with ONLY ONE of the following statements and why:

1. “Gonzales v. Carhart marked a shift in the standard of review for abortion cases that will significantly limit the maternal health and safety protections afforded in Roe v. Wade and reaffirmed in Planned Parenthood v. Casey.”

2. “Justice O’Connor’s concurrence in Lawrence v. Texas is a more powerful tool for advocates of a constitutional right to gay marriage than Justice Kennedy’s majority opinion.”

ON MY HONOR, I HAVE NEITHER GIVEN NOR RECEIVED AID ON THIS EXAMINATION.