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: THREE AND ONE HALF (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 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 ONE 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 TWO (2) PARTS:

   - **PART I** of the examination contains THREE (3) QUESTIONS and is worth a combined total of ONE HUNDRED EIGHTY (180) POINTS.
     
     - QUESTION 1 consists of TWO (2) SUBPARTS and is worth a total of SIXTY (60) points.
     - QUESTION 2 is worth a total of SIXTY (60) points.
     - QUESTION 3 consists of TWO (2) SUBPARTS and is worth a total of SIXTY (60) points.

      **YOU MUST ANSWER ALL THREE QUESTIONS IN PART I.** I suggest you allot approximately 3 HOURS to PART I.

   - **PART II** of the examination consists of ONE SHORT ANSWER QUESTION. Your response is worth TWENTY (20) points.

      **YOU MUST ANSWER THE QUESTION IN PART II.** I suggest you allot approximately 20 MINUTES to PART II.
5. Please use a blue exam book or books or a computer to answer all of the questions in PARTS I and II. 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.

NOTE: IF FOR SOME REASON YOU FEEL THAT ADDITIONAL FACTUAL INFORMATION IS NECESSARY TO COMPLETE ANY OF YOUR ANSWERS ON THIS EXAM, PLEASE IDENTIFY THAT INFORMATION AND EXPLAIN HOW IT WOULD AFFECT YOUR ANALYSIS.

END OF INSTRUCTIONS

GOOD LUCK AND HAVE A GREAT SUMMER!
The State of Fennario has one state-owned hospital (the “Fennario State Hospital”). The Fennario State Hospital is located in Fennario’s capital city of Deep Elem. The State of Fennario has a number of “cryogenic freezing facilities,” including the Fennario State Hospital, that offer cryogenic freezing services. Cryogenic freezing involves preserving the body of a recently deceased person by subjecting it to extreme cold in a specialized storage facility. It is a highly technical process that requires intricate preparation of the decedent’s body in order to be effective. Preparation for cryogenic freezing is done at independent, specialized “preparation centers.” Preparation is not performed at any of the cryogenic freezing facilities.

On January 1, 2008, the Fennario state legislature passed a new law pertaining to cryogenic freezing titled the Fennario Freezing Act (“FFA”). The FFA stated, in pertinent part:

**FENNARO FREEZING ACT**

§ 1. **Purpose:** The cryogenic freezing industry in Fennario includes a wide variety of facilities that employ a multitude of freezing methods. The industry is highly lucrative, and as such has been a popular source of new business development in Fennario. Recently, concerns have been raised as to whether some of the freezing methods currently in use are effective or reliable in preserving the decedents’ bodies in ways that are duly respectful of their bodily integrity, their personal wishes, and their basic human dignity. In response to those concerns, this Act is designed to ensure that the citizens of Fennario will retain access to freezing facilities and preparation centers that display the highest measure of scientific quality and respect for human dignity.

§ 2. Cryogenic freezing services shall only be performed in the Fennario State Hospital in Deep Elem. Moreover, preparation for cryogenic freezing at the Fennario State Hospital shall only be performed at preparation centers within the State of Fennario. Bodies prepared at preparation centers outside of Fennario are not eligible to receive cryogenic freezing services at the Fennario State Hospital.
§ 3. Due to sharply increasing demand for cryogenic freezing services and limited capacity at cryogenic freezing facilities, the overall quality of such services has decreased. As a result, cryogenic freezing services at the Fennario State Hospital shall not be available to citizens of other states. Only citizens of Fennario may receive cryogenic freezing services at the Fennario State Hospital.

§ 4. This Act only applies to human cryogenic freezing. The cryogenic freezing of animals is not prohibited.

The State of Terrapin borders Fennario. Terrapin has no cryogenic freezing facilities. As a result, prior to the FFA, Terrapin residents frequently made arrangements to have their remains frozen in cryogenic freezing facilities in Fennario. In fact, just prior to the enactment of the FFA, Jack Straw, a 30-year-old Terrapin resident in good health, started a company called “Freeze-It Inc.” Freeze-It Inc. is a cryogenic preparation center in Terrapin that provided preparation services for people wishing to be frozen at facilities in Fennario. In addition to founding Freeze-It Inc., Jack Straw drafted a last will and testament for himself in which he requested that his remains be “cryogenically frozen at the Fennario State Hospital” upon his death.

Shortly after the FFA was enacted, Jack Straw brought suit on behalf of both Freeze-It Inc. and himself in his personal capacity seeking an injunction against Fennario State Hospital. The suit claimed, in general, that the FFA was unconstitutional and, therefore, could not be grounds for the hospital to refuse to provide any Terrapin residents, including Jack Straw, with postmortem freezing services. More specifically, Jack claimed that the FFA violated the dormant commerce clause and the privileges and immunities clause of Art IV.

A. Does Jack Straw have standing as an individual to bring his suit challenging the constitutionality of § 3 of the FFA? Explain your answer fully.

*Note:* you should not address the merits of Jack’s claim, nor should you discuss whether Freeze-It Inc. has standing to sue.

B. Does § 2 of the FFA violate the Dormant Commerce Clause? Explain your answer fully.
On January 1, 2009, August West was sworn in as the new Governor of Fennario. West ran on a platform of ending the “narcissistic, disrespectful” practice of cryogenic freezing in Fennario. Under Governor West’s leadership, the Fennario legislature passed the Death with Dignity Act (DDA). The DDA superseded the FFA. The DDA prohibited any cryogenic freezing of humans in Fennario. It also prohibited the freezing of dogs on the grounds that “man’s best friend deserves the same respect in death as man himself.” The DDA did not prohibit cryogenic preservation of any other animals.

In floor debates about the DDA prior to its passage, one supporter of the DDA suggested that the bill was necessary because “we are creating a postmortem caste system, where people of privilege and means can take advantage of the hope of extended life due to cryogenic freezing, while the poor cannot because they cannot afford it.” A second supporter stated that “80% of all cryogenic freezing customers in Fennario are male. Women are not nearly as self-centered and narcissistic as men. The last thing we should be doing is encouraging men to think they can cheat death.” A third supporter received loud applause for her comment that “cryogenic freezing just isn’t natural; it is immoral to try and delay Mother Nature’s designs for us all.” Finally, the sole legislator to comment on the ban on cryogenically freezing dogs explained that “nearly all of the pets that are frozen are dogs; cat, bird and other pet owners simply don’t seem interested, so there is no reason to regulate problems that don’t exist.”

In the first six months after the DDA’s passage, statistics indicate that no humans or dogs were cryogenically frozen in Fennario. A number of cats and other animals were frozen during that period, in accordance with the DDA. Statistics also indicate that of the group of individuals that would have chosen to be cryogenically frozen were it permitted, 80% were indeed male.

Bobby McGee is a male resident of Fennario. Bobby and his wife Althea own a golden retriever named Cassidy. Bobby’s last will and testament states clearly that he would like to be cryogenically frozen at the Fennario State Hospital when he dies, and that he would like to have the same for Cassidy. Bobby and Cassidy both passed away about a year after the DDA took effect. As executrix of Bobby’s estate and co-owner of Cassidy, Althea sought to have both Bobby and Cassidy cryogenically frozen. Under the DDA, however, her attempts failed. Althea then brought suit against Fennario on the grounds that the DDA represents an unconstitutional infringement of Bobby and Althea’s rights under the Fourteenth Amendment to the Constitution.
Assume for purposes of this question that Althea has standing to sue on behalf of Bobby to have his remains cryogenically frozen as executrix of his estate, and to sue on her own to have Cassidy frozen.

What claim(s) does Althea have against Fennario under the Fourteenth Amendment? Are they likely to be successful? Explain your answer(s) fully.
The movement in America to find alternative sources of energy has had a variety of ramifications, including the development of new forms of recreation. Recently, jet-propelled personal vehicles—vehicles powered by forcing air out of the back at high speeds—have become increasingly popular. One of the most popular of these jet-propelled recreational vehicles is the rocket scooter, a vehicle modeled after foot-propelled scooters in which the rider stands on a platform resembling a skateboard with four wheels underneath it and a vertical pole sticking up in the front that has horizontal handlebars on top of it. While foot-propelled scooters require the rider to push off the ground with one foot while holding onto the handles and leaving the other foot on the platform, the rocket scooter allows the rider to leave both feet on the platform and simply push a button on the handlebars, at which time a powerful burst of air is forced out of the back of the scooter, causing it to “rocket” forward at speeds up to 20 miles per hour.

After much debate and numerous hearings on the issue, Congress recently passed the federal Scooter Safety Statute (“SSS”). The relevant portions of the SSS read, in pertinent part:

§ 1. The issue of jet-propelled scooter accidents has become an important issue of public health and safety. Injuries to minor children resulting from jet-propelled scooter use have risen steadily in all 50 States since the introduction of the product into the market.

§ 2. The use of jet-propelled scooters by children under the age of 18 years is prohibited.

§ 3. All state law enforcement officers are required, upon witnessing or otherwise identifying a violation of § 2 of the SSS, to immediately report said violation to federal law enforcement authorities.
In conjunction with passing the SSS, Congress made the following factual findings:

- Injuries to children from jet-propelled scooter accidents result in increased health care costs nationwide, as well as lost school time, which in turn leads to diminished educational and, ultimately, career opportunities for America’s children.

- Jet-propelled scooters are not designed to travel long distances and the Congress, in its research into the matter, was unable to identify a single instance of a jet-propelled scooter being used in interstate travel.

- Children under the age of 18 years old suffer injuries from the use of jet-propelled scooters three times more often than adults.

A. Members of the Jet-Propelled Scooter Youth Racing League filed suit in federal court challenging the constitutionality of §§ 2 and 3 of the SSS on the grounds that they are outside the bounds of congressional power.

Please analyze whether the League’s claims have merit. Explain your answer fully.

Note: For purposes of this question, assume the League’s claims are justiciable.

Soon after the passage of the SSS, the issue of jet-propelled scooter safety arose again, this time on a broader scale, as the scooters experienced a surge in popularity among adult riders, in large part due to the success of the hit film “Scooter Death Match 3: Devil Wheels.” In response, Congress again sprung into action with Amendments to the SSS designed to “promote health and safety among all jet-propelled scooter riders.” The “New SSS” read, in pertinent part:

§ 4. The problem of increasingly severe injuries to riders of jet-propelled scooters has permeated society, affecting all age groups in every part of the country.

§ 5. In conjunction with the preexisting sections of the SSS, this New SSS seeks to promote overall public health and safety by offering additional federal funds for the development of public parks and recreation facilities to those States that enact constitutional or statutory bans on the use of jet-propelled scooters by any of their citizens within 120 days of the enactment of this provision.
After the enactment of the New SSS, the President of the United States issued Executive Order 3.14159 (“Order Pi”), in which he required the immediate closure of every jet-propelled scooter factory in every State that had accepted federal parks and recreation funds under § 5 of the New SSS.

In response to the passage of the New SSS, the State of Fennario enacted a statute outlawing the use of jet-propelled scooters over the objection of Fennario’s lone jet-propelled scooter company, ScooterMania, and accepted federal parks funds under § 5 of the New SSS.

B. After Order Pi was issued, ScooterMania filed suit in federal court, challenging (1) the constitutionality of the New SSS on the grounds that Congress did not have authority to enact it, and (2) the constitutionality of Order Pi on the basis that it is not a valid exercise of Presidential authority.

Please analyze the merit of ScooterMania’s claims. Explain your answer fully.

*Note: For purposes of this question, assume ScooterMania’s claims are justiciable.*
PART II

SHORT ANSWER QUESTION

Suggested Time: 20 minutes
Possible Points: 20

Please explain in no more than a few paragraphs whether you agree or disagree with the following statement and why:

“Stare Decisis is an independently defensible method of constitutional interpretation.”