Multiple-Choice — 36 minutes — 20 questions
(one minute and forty-eight seconds per question)

On your scansheet, please indicate the best answer to each of the following questions. There is no penalty for wrong answers. No credit will be given for explanations.
1. By law, Congress vests power to appoint clerks of the various federal courts in the chief judge of each court. These clerks maintain records and dockets and supervise personnel other than the judges themselves. This power to vest is:

I. Unconstitutional, because the President must nominate all officers of the United States.

II. Unconstitutional, because a majority of the Senate must confirm the nomination of all officers of the United States.

III. Unconstitutional, because two-thirds of the Senate must confirm the nomination of all officers of the United States.

IV. Constitutional, provided Congress enacted the law in conformance with the procedural requirements of the Constitution.

A. I only.
B. I and II.
C. I and III.
D. IV only.

2. In what case did the Supreme Court hold that the State of New York could not exclude steamboats operated under a federal license from its waters?

A. Gibbons v. Ogden.

B. Cooley v. Board of Wardens of the Port of Philadelphia.

C. The Prize Cases.

Questions 3, 4, 5 and 6 are based on the following facts.

3. Many horses are bred and raised on farms in the State of Cineplex. In March 2015, a highly contagious venereal disease breaks out in the breeding sheds at three of these farms. Although the disease does not appear to have long-term effects, it does appear to prevent mares from becoming pregnant for an entire year. Given the immense value of many mares’ offspring, the losses arising from this disease threaten to disrupt the entire industry. In response, Cineplex’s Commissioner of Agriculture imposes the following four requirements. Which of these requirements would be most likely to violate the Dormant Commerce Clause?

A. Any farmer having custody over a horse in Cineplex that displays the symptoms of this disease must put the horse in quarantine.

B. All breeding of horses in Cineplex must cease until the disease appears to have run its course.

C. All farmers in Cineplex must allow specialists in equine health to examine their horses — whether symptomatic or not — for evidence of the disease.

D. Any horse slated for shipment outside Cineplex (whether symptomatic or not) must be put in quarantine for 30 days. If the horse shows no sign of symptoms during that period, it may be shipped out of state.

4. Please consider the requirement that “any horse slated for shipment outside the state (whether symptomatic or not) must be put in quarantine for 30 days. If the horse shows no sign of symptoms during that period, it may be shipped out of state.” If someone attacked this requirement, a court would most likely:

A. Uphold the requirement, provided no effective means has been discovered to prevent the spread of the disease.

B. Strike down the requirement, because it discriminates against interstate commerce in practical effect.

C. Strike down the requirement, because it impairs interstate commerce much more than it promotes the health, welfare, safety, or morals of the population.

D. Strike down the requirement, because it discriminates against interstate commerce on its face.
5. Please consider again the requirement that “any horse slated for shipment outside the state (whether symptomatic or not) must be put in quarantine for 30 days. If the horse shows no sign of symptoms during that period, it may be shipped out of state.” Which of the following parties would most likely have standing to attack this requirement?

A. A sportswriter who covers races in Miami, Florida, many of which typically include horses raised in Cineplex.

B. A farmer who breeds horses in Cineplex.

C. A broker who purchases horses in Cineplex and ships them to customers in various parts of the state.

D. A broker who purchases horses in Cineplex and ships them to customers around the country.

6. Once again, please consider the requirement that “any horse slated for shipment outside the state (whether symptomatic or not) must be put in quarantine for 30 days. If the horse shows no sign of symptoms during that period, it may be shipped out of state.” To attack this requirement in federal court as violating federal law, a plaintiff with standing should:

A. Sue the Commissioner of Agriculture for prospective injunctive or declaratory relief.

B. Sue the Chief Justice of the State to restrain all enforcement of the requirement.

C. Sue the State of Cineplex for prospective injunctive or declaratory relief.

D. Sue the State of Cineplex for damages attributable to the requirement.
Questions 7 and 8 are based on the following facts.

7. A law of the State of Cineplex prohibits trains from blocking a grade crossing for longer than five minutes, unless it is moving, in which case it may block a crossing for up to seven minutes. As a matter of physics, this limits the length of trains or imposes a minimum speed for trains, because a train that is long, slow-moving, or both cannot move through a grade crossing in seven minutes or less. If this prohibition violates the Dormant Commerce Clause, it would most likely be because:

A. It discriminates against interstate commerce on its face.
B. It discriminates against interstate commerce in practical effect.
C. It impairs interstate commerce much more than it promotes the health, welfare, safety, or morals of the population.
D. It discriminates against individuals on the basis of their state of citizenship.

8. Assume for purposes of this Question 8 only that the Federal Railroad Safety Act authorizes the Secretary of Transportation, an officer in the executive branch of the government of the United States, to promulgate regulations governing the safety and operation of railroads that are connected to the interstate network. Also assume that the Secretary has issued regulations that allow railroads to run freight trains of up to 150 cars, and that allow engineers to slow down their trains in urban areas to permit periodic testing of air brakes. In light of these assumptions, which of the following arguments would a railroad most likely make in opposition to the state’s prohibition?

A. Congress lacks the power to regulate grade crossings located entirely within one state.
B. Compliance with Cineplex’s law would frustrate the purposes underlying the Federal Railroad Safety Act (and the regulations promulgated thereunder).
C. Compliance with Cineplex’s law and with the Federal Railroad Safety Act (and the regulations promulgated thereunder) is physically impossible.
9. How long is a single term of a member of the Senate?

A. One year.
B. Two years.
C. Four years.
D. Six years.

10. Which of the following is a true statement about the original jurisdiction of the Supreme Court of the United States?

A. The Court has the original jurisdiction that Congress confers upon it.
B. The Court has the original jurisdiction set forth in Article III of the Constitution.
C. The Court has the original jurisdiction set forth in Article III of the Constitution, plus whatever original jurisdiction Congress chooses to add.
D. The Court has the original jurisdiction set forth in Article III of the Constitution, minus whatever original jurisdiction Congress chooses to take away.
11. Bloomingdale and Dillard are adjacent states. The drinking age in Dillard is 22, because people there are acutely anxious about this issue. The drinking age in Bloomingdale, however, is 21. As a result, many young people drive from Dillard to Bloomingdale to buy alcohol, which they often drink while driving. On May 1, 2011, Bloomingdale’s legislature adopts a minimum age of 22 strictly for people from Dillard. This legislation:

A. Will not survive scrutiny, because it discriminates on the basis of state of citizenship.

B. Will not survive scrutiny, because young people from Dillard are not the peculiar source of the evil.

C. Will survive scrutiny, because the distinction it draws is substantially related to a substantial public interest.

D. Will survive scrutiny, if and only if the state itself is selling the alcohol.

12. Under the National Railroad Act, the owner of any railroad track that is part of an interstate network must pay $50 per day to the owner of any railroad car (such as a boxcar) that sits on or moves over that track. (The theory is that the owner of the track is essentially “renting” the car.) In January 2012, a dispute arises between the Uptown Railway Co., Inc., a Cineplex corporation, and the Acme Meat Packing Co., Inc., also a Cineplex corporation, about who owns a side-track that connects Uptown’s main line to Acme’s warehouse. Each claims that the other owns the siding (and therefore must maintain it). To resolve this dispute, Uptown sues Acme in federal court under the Act, claiming that Acme owes it $500 because: (1) one of Uptown’s cars sat on the siding for ten days during 2011; and (2) Acme owns the siding. Acme answers that the car did sit on the siding for ten days in 2011, but that Uptown owns the siding. After a trial, the court finds that Uptown owns the siding. On appeal, it becomes apparent that there was never a car on the siding in 2011, and that, in fact, neither Uptown nor Acme has used the siding in years. Moreover, it becomes clear that both Uptown and Acme have known all along that the “car” was fictitious. Upon learning this, the court of appeals will:

A. Affirm or reverse the decision below as to who owns the siding, because the case presents a justiciable case or controversy.

B. Affirm or reverse the decision below as to who owns the siding, to promote the purposes of the National Railroad Act.

C. Affirm or reverse the decision below, because of the amount of time the court below has invested in the case.

D. Remand with orders to dismiss for lack of a justiciable case or controversy.
13. Piraeus, Inc., is a quasi-public corporation with a federal charter that lends money to students in college and graduate school. The United States owns 60% of its shares and private investors own the other 40%. In 2012, Piraeus decides to expand its share of the market by offering to buy comparable entities owned and operated by states. Pursuant to this decision, on May 1, 2014, it buys the assets and liabilities of the Cineplex Higher Educational Assistance Authority (“CHEAA”), an agency of the state that lends money to students in higher education. On June 1, 2014, one of CHEAA’s former borrowers, whose lender is now Piraeus, brings suit against the appropriate defendants in federal court, arguing that the Tenth Amendment prohibits the transaction. Assuming the court would treat Piraeus as part of the federal government for all purposes material to this question, the borrower’s best argument is:

A. That Piraeus “commandeered” the state’s regulatory authority.
B. That the federal government lacks authority to establish a corporation.
C. That Piraeus’ decision to purchase CHEAA was “judicial in nature” and therefore violated separation of powers.
D. That Cineplex would not have sold CHEAA to Piraeus had the amount offered not been so high that the state had no meaningful choice but to accept the offer.

14. On March 1, 2025, a committee of the House of Representatives meets to consider adopting articles of impeachment against the President. On March 6, it propounds a subpoena duces tecum to the President, requiring the production of certain documents. On March 15, the President responds, delivering half the documents and invoking executive privilege with respect to the rest. In a letter to the committee, the President states: “I am invoking executive privilege with respect to the withheld documents because they pertain to sensitive matters of domestic policy and include candid references to prominent individuals.” On March 18, a member of the House moves to hold the President in contempt. The President immediately brings an action in federal court for a declaration that the privilege holds. The court will:

A. Refuse to exercise jurisdiction, because the conflict presents a non-justiciable political question.
B. Resolve the case in favor of the President, because the President has the last word on the scope of executive privilege.
C. Resolve the case in favor of the committee, because the Constitution does not recognize executive privilege.
D. Compare the strength of the committee’s need for the documents with the strength of the President’s ground for privilege and resolve the case accordingly.
15. The City of Grizzly is located in a remote, mountainous corner of Cineplex. Many people travel to Grizzly to hunt in forests surrounding the city, which therefore boasts a thriving business in taxidermy (the cleaning, dressing, stuffing, and mounting of animals). On September 1, 2009, Grizzly’s municipal council adopts the following ordinance: “Because the transport of animal carcasses over long distances is a threat to health, no game [hunted animal] killed or brought within the confines of Grizzly shall be taken outside the city before it has been cleaned and dressed.” Two days later, a taxidermist operating in a city near Grizzly brings an action against the appropriate defendant seeking to have the ordinance declared invalid. Which of the following is the city’s best argument in response to this action?

A. The ordinance is the only way to protect against an acute threat to public health.
B. Cities, towns, and counties are permitted to control the movement of goods in ways that states may not.
C. The plaintiff cannot properly allege injury in fact arising from the ordinance.
D. Wild animals are not part of commerce.

16. In the State of Briar, people may only purchase alcoholic beverages (other than beer or wine) at stores owned by the state. The state does, however, allow adults to taste samples of hard liquor at markets that “devote themselves exclusively to food or beverages grown or produced in the county where they are located.” Harvey Corp., a distiller located in Cineplex, brings an action against the appropriate defendant, arguing that Briar’s policy violates the Constitution. The court will:

A. Hold for Harvey, because the policy discriminates against interstate commerce on its face and serves no legitimate public purpose.
B. Hold for Harvey, because the policy hurts interstate commerce far more than it promotes Briar’s interest in promoting local products.
C. Hold for Briar, because the policy promotes Briar’s interest in promoting local products more than it hurts interstate commerce.
D. Hold for Briar, because the policy does not draw a line at the border of the state.
17. In which of the following cases did the Supreme Court hold that mining is a local activity and therefore not part of interstate commerce?

A. *A.L.A. Schechter Poultry Corp. v. United States.*

B. *Carter v. Carter Coal Co.*

C. *Wickard v. Filburn.*

D. *United States v. Lopez.*

18. A federal criminal statute subjects any person who “owns, pays for, or controls,” an “illegal gambling operation” to up to five years’ imprisonment. Which of the following facts, if true, and if assessed in isolation from the others, would most support the constitutionality of this statute?

A. The statute only applies if the operation has a gross revenue of $2,000 in any single day.

B. The statute only applies if five or more persons “own, pay for, or control” the operation.

C. The statute only applies if the operation “has been or remains in substantially continuous operation for a period in excess of thirty days.”

D. The statute only applies if the operation is illegal under the laws of the state in which it is conducted.
19. Congress appropriates $1 billion for public universities that agree to teach bioethics to undergraduates. Any such university that agrees to provide at least one course per year in this subject may apply for and receive a grant of up to $100,000. In exchange for this grant, the university must certify that it will use this money solely for the teaching of this subject, and that it will submit an annual report to the Comptroller General of the United States explaining exactly how the money was spent. These two requirements are:

A. Constitutional, because Congress may attach whatever conditions it pleases to the receipt of federal money.

B. Constitutional, because bioethics is an important subject that should be taught as much as possible in public universities.

C. Constitutional, because the conditions are conceptually related to the purpose of the appropriation.

D. Unconstitutional, because Congress may not attach conditions to the receipt of federal money.

20. Three of the following quotations reflect the same perspective. The fourth reflects a different perspective. Please identify the fourth quotation.

A. Unless we can find through democracy a way to efficiency, justice, and liberty, we shall get dictatorship — and we shall deserve it.

B. If one asks a large enough number of people to guess the number of jelly beans in a jar, the averaged answer is likely to be very close to the correct number.

C. In some possible worlds . . . autocracy wins by the best results test and should be installed.

D. [P]ublic equality is a minimal requirement of justice . . . .
Answers

1. D The clerks of the federal courts are not principal officers of the United States. Therefore, Congress may vest power to appoint them in “the Courts of Law.” See U.S. CONST. art. II, § 2, cl. [2]. D is correct (IV only). The proviso in IV simply recognizes that all acts of Congress must conform to the procedural requirements of the Constitution, as noted in INS v. Chadha. A (I only) is incorrect because I is incorrect. Although Congress may vest power to appoint inferior officers in the President, it is not required to do so. (In addition, separation of powers might dictate that the President not have power to appoint clerks of the courts.) B (I and II) is incorrect because it reflects the procedural requirements for the appointment of principal officers of the United States. C (I and III) is incorrect because it reflects (obliquely) the procedural requirements for the United States to enter into a treaty.

2. A

3. D This requirement would be most likely to violate the Constitution because it overtly discriminates against interstate commerce by imposing a restriction on individuals’ ability to ship horses outside the state. It is not dispositive that the requirement does not impose an absolute ban. Although such a ban would also implicate the Commerce Clause, a requirement of quarantine would provoke similar analysis. The other three requirements could, in theory, violate the Commerce Clause, but this would be unlikely. In any case, they are distinguishable from the requirement set forth in D because they do not discriminate against interstate commerce overtly or in practical effect.

4. A This answer reflects the standard for laws that overtly discriminate against interstate commerce. It also reflects the fact that Cineplex’s requirement would withstand scrutiny if no reasonable non-discriminatory alternative were available to the quarantine. See Maine v. Taylor. (Please note that this requirement may actually hurt local industry, thus undermining any argument that the state has a protectionist motive for the quarantine. Presumably farmers in the state would want to be able to export horses — particularly infected ones.) D is second best. It identifies the applicable standard, but it reaches a conclusion that is most likely incorrect on the facts given. B is incorrect because this requirement does not discriminate against interstate commerce in practical effect — it does so on its face. C is incorrect because it sets forth the standard for even-handed laws.

5. D A broker who purchases horses in the state for shipment elsewhere would most clearly have injury in fact attributable to the requirement. The other individuals identified in the answers may well be affected by the requirement, and some might
even have cognizable injuries in fact, but none would be affected by the requirement to the same degree as the interstate broker.

6. A This answer reflects the “stripping doctrine” of *Ex parte Young*. B is incorrect because, under *Young*, one should bring suit against the officer of the state charged with enforcing the law in question, not the officer of the state charged with interpreting the law in question. C and D are incorrect because the Eleventh Amendment, as interpreted by the Supreme Court of the United States, would preclude an action against a state in federal court in either of these contexts.

7. C This prohibition probably interferes with interstate commerce more than it promotes health or safety. See *Southern Pacific Co. v. Arizona*. A and B are incorrect because the prohibition applies to both interstate and intrastate trains. D is incorrect because the prohibition applies to all trains, without regard to the state of citizenship of a train’s owner.

8. B Complying with Cineplex’s law would prevent railroads from taking advantage of the opportunities provided by the regulations promulgated under the federal legislation. A is incorrect because it’s an argument that the state would make, not a railroad. (It’s also incorrect because it’s a bad argument, precluded by such cases as *Gibbons v. Ogden* and the *Shreveport Cases*.) C is incorrect because a railroad could physically comply with both Cineplex’s law and the regulations. The regulations don’t impose a requirement; they simply allow certain activities. D is incorrect because the federal statute, as described in the question, does not expressly pre-empt anything.

9. D

10. B B is the rule. A, C, and D are incorrect because they would let Congress restrict or enlarge the Court’s original jurisdiction. We know from *Marbury* that Congress may not add to this jurisdiction, and separation of powers would preclude Congress from reducing it. The Court has permitted certain parts of its original jurisdiction to be conferred concurrently on other courts, however.

11. C This legislation would probably survive review. A is incorrect because, although the law does discriminate on the basis of state of citizenship, it also draws a substantively defensible distinction. That is, young people from Dillard really are a “peculiar source of the evil” Bloomingdale is seeking to eradicate. B is incorrect because it is simply not accurate. D is incorrect because the Privileges and Immunities Clause of Article IV has only a contextual market participant exception. This makes C a better answer. Please note as well that the “privilege” of being able to purchase alcohol may not be “privilege” for purposes of the
clause. This may be the best answer to this question, but it is not one of the options. This leaves C as the best answer available.

12 D This is a feigned case. The Constitution will not permit a federal court to resolve such a case. Therefore, the court would have to remand the case with orders to dismiss for lack of a justiciable case or controversy. A is incorrect because it is simply inaccurate. B and C are incorrect because neither the purposes of the act nor the understandable concern for judicial efficiency can justify the exercise of jurisdiction over a feigned case.

13 D This is a difficult question. B is incorrect because we know from *McCulloch v. Maryland* that Congress does have power to establish a corporation. C is wrong because it’s simply not accurate. Piraeus’ decision was probably deliberative, but not every deliberative decision is judicial. In any case, Piraeus is obviously not a court of law. A is a pretty good answer, and is probably correct, but D is better. Congress did not literally compel Cineplex to sell its agency (CHEAA) to Piraeus. Instead, it proposed a transaction to Cineplex that Cineplex felt obliged to accept — or at that’s the borrower’s best argument. D is better than A because D is more specific than A. If A is correct, that would only be because A is an abstract way to stating what D says precisely.

14. D D states the rule of *United States v. Nixon*. One compares the strength of the committee’s need for the documents with the strength of the President’s ground for privilege. A is incorrect because the Court specifically held in that case that the scope of executive privilege in fact did present a justiciable question. B is incorrect because the Court specifically rejected President Nixon’s argument in that case that the President has the last word on the scope of executive privilege. C is incorrect because the Court specifically rejected the Special Prosecutor’s argument in that case that the Constitution does not recognize executive privilege.

15 A This is the city’s best argument. Please note that it may not be strong enough for the city to prevail, but that is not the question. B is incorrect because the Dormant Commerce Clause applies in full force to subdivisions of states. See *Dean Milk v. City of Madison*. C is incorrect because the taxidermist has a classical form of injury in fact — a pecuniary injury, and in fact a threat to his or her livelihood. D is incorrect because the Court specifically held that wild animals are articles of commerce in *Hughes v. Oklahoma*.

16 A The state’s “sampling” exception operates exclusively to the benefit of local economic interests and is therefore protectionist. “Protectionism” in this sense does not qualify as a “legitimate public purpose.” B and C are incorrect because they assume, incorrectly, that the exception does not discriminate against interstate commerce on its face. D is incorrect because a law that draws a line at
the borders of counties is just as vulnerable to attack under the Dormant Commerce Clause as a law that draws a line at the border of a state. See Dean Milk v. City of Madison.

17. B

18. A This answer best reflects the requirement in United States v. Lopez that Congress may use its powers under the Commerce Clause only to regulate intrastate phenomena that have: (1) a substantial relation to interstate commerce; and (2) some commercial significance. There is no similar connection between interstate commerce and the number of people working for an operation, the duration of an operation, or the legality of an operation under state law.

19. C Congress may attach conditions to the receipt of federal money, but its power to do so is not limitless. A and D are incorrect, because Congress’ power is neither all-encompassing nor non-existent. B is incorrect because the wisdom of the appropriation — just as the wisdom or lack thereof of most any law — is usually irrelevant to the question of whether Congress has power to enact it. C is correct because it reflects the test for conditional federal spending of South Dakota v. Dole. Note that C does not replicate the entire test of Dole, but this answer is clearly more correct than any of the others.

20 D This is an example of a theoretical question. A, B and C all assume that democracy is only justified if it serves some instrumental purpose, i.e., if it promotes “efficiency, justice and liberty” (A), if it helps us guess the number of jelly beans in a jar (B), or if it achieves “the best results” (C). Only D justifies democracy for its own sake.