Federal Courts and the Federal System

Professor Salamanca — Practice Test — ninety-four minutes

Please read the following instructions before you begin:

1. You are on your honor.

2. Please put your books and notes away. You should have only a clean copy of the Constitution.

3. Please write your number above, on your blue book(s), if any, and on your Constitution.

4. Please write your number on the back of your scansheet, in the boxes and circles for "student number." Please put your number at the right end of these boxes and circles.

5. The examination consists of approximately 94 points. The stated allocations of time and points are approximate.

6. Please state any assumptions.

7. Please indicate your answers to the objective questions on the scansheet.

8. If you are writing, you may use as many blue books as you like, but please remember to write all your answers to the essays in your blue books. You may write on both sides of the paper. Please write legibly.

9. Please assume that all references to the “Constitution,” “Supreme Court” or “Chief Justice” are to the federal versions thereof, unless specified otherwise, that “Cineplex,” “Briar,” “Bloomingdale” and “Macy” are states of the Union, and that the “Kingdom of Nutria” is a foreign country.

10. Please confine your answers to material we have covered in this course.

11. Please return your exam, your scansheet, your blue book(s) (if any), and your Constitution when you finish. It is very important that you return your copy of the exam, because otherwise I cannot confirm which version you have.

Thank you and good luck!

Part I (Multiple-Choice) — 18 questions— 42 minutes, 42 points
(two minutes and twenty 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.
Questions 1 and 2 are based on the following facts:

On November 5, 2002, Marston, a member of the Paper Clip Party, is elected sheriff of Cineplex County. Shortly after taking office, Marston fires her deputy, Aspinwall, a member of the Staple Party. Aspinwall sues Marston in federal court under 42 U.S.C. § 1983, arguing that Marston violated the federal Constitution by firing him because of his political affiliation.

1. Assume for this Question 1 only that Aspinwall sues Marston in her official capacity for reinstatement and back pay. Marston moves for dismissal of the case, asserting sovereign immunity. With regard to Aspinwall’s request for back pay, the court will:

A. Grant Marston’s motion, if the county is an instrumentality of the state.

B. Grant Marston’s motion, if the county is a subdivision of the state.

C. Deny Marston’s motion, because Marston is “stripped” of official status to the extent she acts outside the law.

D. Deny Marston’s motion, because § 1983 applies to all acts performed under color of state law and does not turn on the identity of the defendant or the capacity in which the defendant is sued.

2. Assume for this Question 2 only that Aspinwall sues Marston in her personal capacity for damages under § 1983. Marston moves for summary judgment, asserting official immunity. The court will:

A. Grant Marston’s motion, because all public officials sued in their personal capacity under § 1983 are entitled to immunity from liability for damages.

B. Grant Marston’s motion, because executive officials sued in their personal capacity under § 1983 are entitled to absolute immunity from liability for damages.

C. Grant Marston’s motion, because, as sheriff, she was performing a quasi-judicial function when she decided to fire Aspinwall.

D. Grant Marston’s motion, if a reasonable person would not have known that firing a deputy sheriff because of that person’s political affiliation violates the federal Constitution.
Questions 3 and 4 are based on the following facts:

On May 15, 2003, Dionysus, the leader of a radical religious group, applies for a permit to march down Main Street in Cineplex City. He wants to march on July 15 of that year. The chief of police denies his application because Dionysus has not paid the fee of $250 required under a municipal ordinance for a permit. Dionysus brings an action in equity in federal court under 42 U.S.C. § 1983 against the chief and the city, arguing that the requirement violates both the federal Constitution and a state law that authorizes municipalities to charge a “nominal” fee for the use of public facilities. Defendants move for a stay of proceedings.

3. Which of the following is the defendants’ strongest argument in favor of a stay?

A. Dionysus does not need access to federal court to vindicate his rights, because the state courts are open.

B. If a state court decides that $250 is not a “nominal” fee for use of a public facility, the federal court will not have to decide whether the requirement is constitutional.

C. The city should be given ample opportunity to decide whether to revise its ordinance.

D. Dionysus should have named the attorney general of the state as the defendant in the case.

4. Which of the following is Dionysus’ strongest argument against a stay?

A. Federal courts have an “unflagging obligation” to exercise the subject-matter jurisdiction Congress gives them.

B. The federal court is perfectly capable of deciding whether $250 is a nominal fee.

C. There is not enough time for a state court to decide whether $250 is a nominal fee and for a federal court to decide whether the fee violates federal law before Dionysus wants to march.

D. The ordinance is patently and flagrantly unconstitutional.
Section 1 of the Federal Educational Act authorizes “any parent of a child with a disability” to bring suit in federal court to compel a state that accepts money under the Act to provide special education appropriate for that child, and to reimburse the parent for the cost of any education that the state should have provided. Second 2 of the Act provides that “any state that accepts federal funds under this act must consent to suit under Section 1 of this act in federal court for all forms of appropriate relief.” Phlox, a ten-year-old with a disability, needs special education that the State of Cineplex refuses to provide. Her mother, Marigold, brings suit under Section 1 against the State’s Department of Education to compel the state to provide the education Phlox needs, and to reimburse Marigold for costs incurred for Phlox’s education. The Department moves to dismiss, asserting sovereign immunity. Which of the following is Marigold’s best response to this assertion?

A. Because the state itself is not a party of record in the case, sovereign immunity does not apply.

B. Congress has power to abrogate the sovereign immunity of the states when it appropriates money and attaches conditions to those appropriations.

C. The state constructively waived any claim that it might have to sovereign immunity when it accepted funds under the program.

D. Sovereign immunity is available only when a federal court sits in diversity.

Which of the following concerns drove the “Madisonian Compromise”?

I. Concern that federal judges would be loyal to an unfamiliar, distant sovereign.

II. Concern that state judges would be reticent in enforcing federal law.

III. Concern that state judges would show favor to local litigants.

IV. Concern that federal judges would be unaccountable to the local population.

A. I only.

B. I and IV.

C. II and III.

D. All of the above.
7. On April 15, 2003, Wallace, the director of the Eastern Branch of the Cineplex City Public Library, demotes Xavier, on the ground that Xavier has failed to perform the duties of his office competently. Xavier brings suit in federal court against Wallace and the city under 42 U.S.C. § 1983, arguing that Wallace demoted him because of his race. Xavier seeks reinstatement and back pay. The city moves to have itself dismissed as a defendant. Which of the following facts, if true, and if assessed in isolation from the others, would best support the city’s motion?

A. The Revised Statutes of Cineplex provide that “All municipal libraries shall be governed by a board of trustees, which shall be responsible for all matters pertaining to such facilities.”

B. The Eastern Branch is the second largest branch of the library.

C. Xavier sued Wallace in his personal capacity, and the city will indemnify Wallace for any monetary judgment against him.

D. A reasonable person would know that demoting personnel because of his or her race violates federal law.

8. In 2002, the Postal Service, part of the federal government, enters into a lease with Diana, under which it will occupy a building that Diana owns for a period of ten years at a rent of $24,000 per year. After eight years of occupancy, the Service tells Diana that the building needs new paint and that Diana should pay for this. Diana refuses; the Service pays someone $2000 to perform this work; and it then deducts $2000 from its rental payments. Diana brings an action against the Service in federal court under a statute that authorizes federal courts to hear any case by or against the Service. She prays for unpaid rent or ejectment. Under the law of the state where the building is located, a landlord has no obligation to repaint a building and ejectment is a proper remedy for failure to pay rent. The Service argues, however, that a uniform rule of federal common law, under which landlords have such a duty, should apply. The court will:

A. Apply a uniform rule of federal common law, because such rules control in cases involving the rights and duties of the United States in its proprietary relations.

B. Apply a uniform rule of federal common law because the local law regarding a landlord’s duties is aberrant.

C. Apply the law of the state, because the Service could certainly have taken local rules into account when it negotiated the terms of the lease.

D. Apply the law of the state, because the United States does business on business’ terms.
Pursuant to an act of Congress, brokers who arrange for the shipping of goods from one state to another must post a bond guaranteeing that the goods will be shipped. In addition, the broker must submit to a federal agency a completed Form XYZ providing certain information about the bond, including exactly who will pay if the bond is forfeited. On March 15, 2003, Odysseus Corp., a broker, and Ceres, Inc., a grocer, enter into a contract, pursuant to which Odysseus will arrange for the shipment of 30,000 pounds of bananas from Ceres’ warehouse in the Cineplex to one of its stores in Briar. Odysseus then arranges for Agamemnon Trucking, Inc., to haul the bananas and for Calchas Insurance Co., Inc., to issue the bond. Odysseus dutifully submits a completed Form XYZ to the appropriate agency. On March 20, 2003, Ceres delivers $10,000 to Odysseus to handle the shipment. This represents payment in full. On March 25, 2003, Odysseus delivers $250 to Calchas as premium for the bond. This too represents payment in full. On March 30, 2003, Agamemnon hauls the bananas to Briar.

On April 5, 2003, Agamemnon sends Odysseus a bill for $7500 for hauling the bananas. At this time, Odysseus finds itself in financial disarray for reasons unrelated to the foregoing transactions. Because of this disarray, Odysseus cannot pay Agamemnon. On April 10, 2003, Agamemnon demands that Calchas pay on the bond, but Calchas refuses, arguing that the bond is payable only to the originator of the shipping order, i.e., Ceres. On April 15, 2003, Agamemnon sues Calchas in the United States District Court for the District of Cineplex, arguing that it (Agamemnon) is a third-party beneficiary with enforceable rights under the contract of surety between Odysseus and Calchas. Both Agamemnon and Calchas are Cineplex corporations.

Calchas moves the court to dismiss the case for lack of subject-matter jurisdiction.

9. Which of the following is Calchas’ best argument in support of its motion?

A. The United States has no interest in Agamemnon’s right to compensation for hauling the bananas from Cineplex to Briar.

B. An action for breach of a contract of surety arises under the law of the state in which the contract is formed, or under the law of the state in which the contract is breached, but not under the laws of the United States.

C. Absent diversity, no private entity may sue another in federal court.

D. Agamemnon has no basis for referring to the federal statute in its complaint.
10. Which of the following is Agamemnon’ best argument in opposition to this motion?

A. Federal courts have an “unflagging obligation” to exercise the subject-matter jurisdiction that Congress gives them.

B. Agamemnon’s cause of action is a creature of federal law.

C. If a federal issue appears on the face of a plaintiff’s well-pleaded complaint, the case necessarily arises under the laws of the United States.

D. Congress has expressed an interest in ensuring that agreements to transport goods between states are enforced and that the appropriate parties are compensated for their efforts.
11. In November 2008, six children in Cineplex County fall ill with infections attributable to the bacterium E. coli. Their parents notify the director of the county hospital, Ashgate, about the outbreak, but he does nothing in response. On November 20, the county’s Director of Public Safety, Ramirez, fires Ashgate. A month later, Ashgate brings suit against the county under 42 U.S.C. § 1983 for depriving him of property without due process of law. The county moves for summary judgment in its favor. Under the law of Cineplex, the authority to make final policy for all matters pertaining to the county lies with its Board of Commissioners, to whom Ramirez reports. Which of the following facts, if true, and if assessed in isolation from the others, would best support Ashgate’s response to the county’s motion?

A. Ashgate tried to meet with the Board at its regular meeting on November 30 and was willing to explain why he did not investigate the situation, but the Board refused to include him in its agenda.

B. On deposition, Ramirez admits that she “never thought much of Ashgate.”

C. There is not much a doctor can do about an outbreak of E. coli, other than prescribing antibiotics to people who become infected.

D. At the Board’s regular meeting on November 30, one of the Commissioners opined that “only we can fire Ashgate.” A second disagreed, but “for closure’s sake” was willing to put the matter to a vote. By a vote of two to one, the Board resolved that Ashgate “shall no longer serve as director of the hospital.”

12. Between the states of Bloomingdale and Macy lies a wide river that runs into the sea. In 2011, a huge storm causes it to change course, such that an island that once lay on Macy’s side and which had always been part of Macy is now connected to Bloomingdale. In 2012, Macy’s legislature resolves that the island remains part of Macy. Bloomingdale promptly brings an original action against Macy in the Supreme Court, asserting that the island is now part of Bloomingdale. As per the Constitution and as per statute, such cases originate in the Supreme Court, but Congress has enacted no substantive rules to govern their disposition. The Court will:

A. Resolve the case according to an appropriate rule of federal common law.

B. Resolve the case, if and only if the law of Macy and the law of Bloomingdale point to the same result.

C. Dismiss the case, because it may not exercise jurisdiction unless Congress provides a rule of decision.

D. Dismiss the case, because states may not be parties defendant in a federal court.
13. Hazlit, a citizen of Cineplex, dies on September 1, 2014, leaving everything to his wife Trudy, who is also a citizen of Cineplex. The estate consists primarily of a ranch, the “L-Snore,” with an assessed value of $2,000,000. Trudy then marries Hazlit’s brother Claude. Meanwhile, Hazlit’s son, Haz-lite, receives nothing. Haz-lite promptly brings an action against his mother in federal court in Cineplex, on the ground that his father lacked testamentary capacity when he made his will. Haz-lite is a citizen of Briar. Trudy moves to dismiss for lack of subject-matter jurisdiction. The court will:

A. Grant the motion, because Hazlit and Trudy were not diverse.
B. Grant the motion, because of the subject-matter of the case.
C. Deny the motion, because Haz-lite and Trudy are diverse, because the amount in controversy exceeds $75,000, and because federal courts have an “unflagging obligation” to exercise their statutory jurisdiction.
D. Deny the motion, because only public servants may assert official immunity.

14. Hugo, a citizen of Ohio, dies in a wreck, leaving an estate of $1 million. Maurice, also a citizen of Ohio, and Victor, a citizen of Iowa, each suffer $800,000 in injuries from the wreck, which is attributable solely to Hugo’s negligence. Both sue Hugo’s estate for damages, Maurice in state court and Victor in federal court. Victor seeks an injunction from the federal judge presiding over his case barring the state court from awarding relief to Maurice until after the federal court has reached judgment. The federal judge will:

A. Grant the injunction, because money constitutes a form of tangible property.
B. Grant the injunction, provided Victor can demonstrate a substantial likelihood that the state court will award more than $200,000 to Maurice.
C. Refuse to grant the injunction until the state court actually decides that Hugo’s estate is liable to Maurice for more than $200,000.
D. Refuse to grant the injunction.
15. Brussard, a private in the army, is formally charged with the murder of a fellow soldier. A general court martial is convened. He moves to dismiss, however, arguing that he should be tried in a court organized as per Article III. The presiding officer of the court martial:

A. Will grant his motion, because “[t]he Trial of all Crimes, except in Cases of Impeachment, shall be by Jury.”

B. Will grant his motion, unless the alleged murder took place overseas.

C. Will deny his motion, because the Constitution recognizes that military jurisdiction is distinct.

D. Will deny his motion, because of Congress’ broad power to regulate the military.

16. On July 1, 2020, Art Vandalay, a broker, meets in Cineplex City with the President of the Nutrian Export Co., Inc., a corporation organized under the laws of the Kingdom of Nutria, most of whose stock is owned by citizens of the United States. That day, they enter into a contract under which Nutrian Export will deliver 100,000 tons of sugar to Vandalay on August 1 and Vandalay will pay Nutrian Export $300 per ton in Cineplex City when he receives proof of delivery. (This amounts to $30 million.) On July 15, however, Congress authorizes the President of the United States to reduce the quota of Nutrian sugar that may be imported into the United States, provoking Nutria nationalize Nutrian Exports’ capital stock and inventory (e.g., sugar) on the same day. On August 1, after the sugar is loaded onto a ship as per the contract, the Nutrian government informs Vandalay that it will not allow the ship to leave port unless he executes a new contract with the Bank of Nutria, an instrumentality of the kingdom. Under this contract, Vandalay will pay $30 million to the Bank, not Nutrian Export. Vandalay executes the contract and the sugar leaves for a third country. That same day, several citizens of the United States whose stock in Nutrian Export has been expropriated serve notice upon Vandalay that the Bank is not the rightful owner of the sugar. As a result, Vandalay refuses to pay when the Bank tenders proof of delivery. On September 1, the Bank brings an action for conversion against him in federal court. Among other things, the Bank argues that, under the “act of state doctrine,” no one may question the validity of Nutria’s nationalization of Nutrian Export’s assets. Although Cineplex recognizes this doctrine, its version has exceptions. Its version also varies from that of other jurisdictions. The court will most likely:

A. Apply the law of Cineplex, because the contract was executed there and because Vandalay agreed to pay Nutrian Export there.

B. Apply the law of Nutria, because the sugar was delivered there.

C. Apply a rule of federal common that varies from state to state, barring aberrations.

D. Apply a uniform rule of federal common law, because of the strong federal interest in comity among nations.
17. Three of the following scenarios reflect the same basic concept. The fourth reflects a distinctly different concept. Please identify that fourth scenario.

A. The Supreme Court holds that the First Amendment generally protects an individual’s right to burn the flag.

B. A number of years after Congress authorizes federal courts to grant writs of habeas corpus to people in federal custody, the Supreme Court holds that state courts have no comparable power.

C. The Supreme Court holds that the United States may not use evidence obtained in violation of an individual’s rights under the Fourth Amendment in a prosecution of that individual.

D. The Supreme Court holds that a state may not refuse to accept garbage from another state, even in the absence of controlling federal legislation.

18. In 1970, Congress reorganizes the postal service. As part of this reorganization, it defines the sending of “unordered merchandise” through the mail as an “unfair trade practice” as per the Federal Trade Commission Act (FTCA) and declares that “[a]ny such merchandise may be treated by the recipient as a gift, who shall have the right to retain, use, discard or dispose of it as he or she sees fit without obligation to the sender.” The FTCA itself authorizes the Federal Trade Commission to respond to alleged unfair trade practices by seeking injunctions or civil fines. On May 1, 2015, Nellie receives in the mail from Diderot the first volume in a set of unsolicited encyclopedias, “Aardvark to Aesop,” together with a bill for $45, which she pays because she assumes she has no choice. On June 1, after speaking with an attorney, she sues Diderot under the act of 1970 on behalf of a class of individuals who received “Aardvark to Aesop” and who paid the $45. Diderot moves to dismiss on the ground that the act confers no private right of action. Which of the following is Nellie’s best response to this motion?

A. Nellie is obviously a member of the class for whose especial benefit Congress enacted this legislation.

B. Allowing Nellie to sue Diderot directly would promote Congress’ obvious purposes in enacting this legislation.

C. When Congress enacted this legislation, it no doubt assumed that the courts would recognize a private right of action in someone like Nellie.

D. 42 U.S.C. § 1983 confers a private right of action upon any person whose federal rights are invaded.
Part II
(approximately 12 minutes, approximately 12 points)

On May 15, 2014, Myrna Minor, the Attorney General of Cineplex, decides that something is amiss at Acme Insurance Company, Inc. (“Acme”), whose principal place of business is in the state. A shady character, Chagrin, seems to have taken over Acme by purchasing a controlling interest in its shares. This same Chagrin has used his influence over Acme’s board of directors to cause 85% of its investments to be made through another company, Stealth Investors, Inc., which Minor believes is also dominated by Chagrin. That day, she tells her staff to begin looking into Chagrin and his relationship with Acme. A day later, Chagrin flees the country and almost all of Acme’s investments with Stealth disappear. On May 17, Acme goes into receivership and Minor is appointed as receiver.

As Minor looks over Acme’s books, she soon sees that Chagrin routinely used Pinstripe Bank, N.A., a national bank, as a conduit for her apparently fraudulent transactions. On May 20, Minor sets up a meeting with Pinstripe’s general counsel, Asa Bascomb. At this meeting, which takes place on May 22, Minor advises Bascomb that, in her opinion, Pinstripe may be liable for negligence in not “knowing its customer” better and in thereby facilitating Chagrin’s apparent fraud. At the same meeting, Bascomb asks Minor for a pledge that she will not initiate litigation until June 22, so the parties might settle the case. She agrees. Bascomb also asks Minor if she will give him a draft of her complaint, so he can explain her position to his client. Minor agrees to this as well and sends him a draft on May 29. A week later, on June 5, Bascomb calls Minor and asks her for some details about the extent of Acme’s losses through Stealth, and Minor agrees to provide this data by June 12. She does so, but, without warning, Pinstripe brings an action for injunctive and declaratory relief against her in federal court on June 10, arguing that any action for negligence against Pinstripe in connection with “The Chagrin Affair” would be pre-empted by “Regulation J,” a regulation of the Federal Reserve Bank, a federal agency that governs Pinstripe. The next day, June 11, Pinstripe moves for a preliminary injunction to restrain Minor from initiating any action against Pinstripe in connection with these matters. On June 22, before the federal court acts on Pinstripe’s motion, Minor sues Pinstripe in Cineplex state court for negligence. The same day, she asks the federal court to dismiss Pinstripe’s federal action. What arguments will Minor and Pinstripe make in regard to this motion? How will the court most likely resolve them? Why?
Part III
(approximately 40 minutes, approximately 40 points)

On May 25, 1624, James I reluctantly gives his assent to an act of Parliament whereby “all . . . lettres patentes . . . and the force and validitie of them and every [one] of them ought to be, and shall be for ever hereafter examyned heard tried and determined by and accordinge to the Cômon Lawes of this Realme & not otherwise.” Parliament enacts this law out of a concern that the Crown is too free in granting patents (which operate as a form of monopoly) to its friends and supporters. It seeks to ensure that an entity not beholden to the Crown — the jury — has the final say on validity. As a consequence of this law, if the validity of a patent becomes an issue in any English legal proceeding, the question is typically, although not always, referred to the King’s Bench (a court of law) and put to a jury. This includes actions in equity to restrain an alleged infringement, if a defendant attacks the validity of a plaintiff’s patent, as well as petitions for a writ of scire facias (“make known”), where a party moves for an order to show cause why a patent should not be revoked.

Over a century and a half later, and an ocean away, the Constitution gives Congress “Power To . . . promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries . . . .” Congress first exercises this power on April 10, 1790, enacting a law that authorizes the Secretary of State (among others) to grant patents of fourteen years’ duration for new inventions, and allowing owners thereof to bring an action at law in federal court for infringement. This statute expressly allows for “damages as shall be assessed by a jury.” Another section of this statute authorizes the functional equivalent of scire facias, but refers only to the bench. The following year, the Seventh Amendment becomes part of the Constitution. It provides that: “In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.” Some twenty-eight years later, on February 15, 1819, Congress authorizes federal courts to grant injunctions to restrain alleged infringements. As with scire facias, however, it refers only to the bench.

Over the years, Congress occasionally alters the standards and procedures for awarding patents, sometimes making them easier to obtain, sometimes harder. In 2011, however, it becomes convinced that the federal agency now responsible for awarding patents, the Patent and Trademark Office (“PTO”) is far too generous in doing so, and far too lax in its scrutiny of applications. In particular, Congress concludes that many patents do not reflect novel, non-obvious, useful ideas (these being the main statutory criteria), enabling firms that hold them to improperly restrain (or extract payment from) people whose work is truly creative. In the opinion of Congress, this has a severe negative effect on innovation. On September 16, 2011, therefore, it enacts a law that authorizes “inter partes review” ("IPR") of patents. ("Inter partes" means “between the parties.”) Under IPR, a party that doubts the validity of a patent may institute review before panels of civil servants who are appointed by the Secretary of Commerce upon the advice of the Director of the PTO. (Both the Secretary of Commerce and the Director of the PTO are appointed by the President, subject to confirmation by the Senate.) IPR bears many of the indicia of trial, including the taking of evidence and the submission of opposing memoranda.
The people who make up these panels are promoted, evaluated, given raises and made subject to discipline according to the usual rules of the federal civil service. They are also expected to attend regular seminars on the PTO’s policy. These include such topics as “A Novel Approach to Novelty” and “Is Obviousness Obvious?” According to the statute, IPR facilitates the “correction of errors” that the PTO may make from time to time in its initial award of patents. The statute further provides that, although a panel’s decision on the validity (or invalidity) of a patent is subject to review in the Federal Circuit, a federal court of appeals, it is otherwise self-executing and binding. In the Federal Circuit, the standard of review on matters of law is *de novo*. On matters of fact, however, the standard is whether the panel’s decision is supported by “substantial evidence” in the record.

On May 1, 2016, Falcon, who holds a patent for a gas-powered widget, writes a letter to Magpie and several of Magpie’s customers, asserting that Magpie is selling a device that infringes Falcon’s patent. In this letter, Falcon also states its intention to bring suit against Magpie and its customers if they do not cease this alleged infringement. Magpie promptly seeks *inter partes* review of Falcon’s patent, arguing that it is invalid. Falcon responds that such review violates the Constitution. The panel rejects this argument and holds in Magpie’s favor. On appeal, Falcon renews its constitutional objection. Please assess the merits of this claim.

*End of Exam.*