

This is an ungraded 75-minute midterm exam consisting of two parts. Complete each part as instructed below. I recommend that you spend approximately 10 minutes on Part I, 60 minutes on Part II, and five minutes reviewing your answers.

PART I

Choose the best answer.

1. The federal Support Green Businesses Act (“SGB Act”) aims to provide support for American businesses that rely on renewable energy in the form of tax credits. Businesses that meet 100% of their energy needs through renewable sources automatically qualify for the tax credit. Businesses that supply at least 50% of their energy needs through renewable sources presumptively do, but their tax credit can be cancelled if a finding is made that their business generates significant air or water pollution. Under the statute, this finding can be made either by the Secretary of Commerce or the House of Representatives’ Subcommittee on Energy and the Environment. Which feature(s) of the statute is/are unconstitutional?
 - (A) The cancellation of the tax credit by the Secretary of Commerce is unconstitutional, but the cancellation of the tax credit by the House Subcommittee is not.
 - (B) The cancellation of the tax credit by the House Subcommittee is unconstitutional, but the cancellation of the tax credit by the Secretary of Commerce is not.
 - (C) The cancellation of the tax credit by both the Secretary of Commerce and the House Subcommittee is unconstitutional.
 - (D) The cancellation of the tax credit by neither the Secretary of Commerce nor the House Subcommittee is unconstitutional.
 - (E) None of the above.

2. It is rumored that, in the year before his election, the President of the United States fathered a child with the Governor of Iowa, a close political ally. After his election, the President directed the Department of Agriculture to take a number of policy actions favoring the production of ethanol, an environmentally friendly fuel of which Iowa produces more than any other state. The House of Representatives’ Committee on Agriculture subpoenas all electronic communications between the President and the Governor of Iowa in the year prior to his election. The Committee asserts that this information is necessary to understand the reasons behind the administration’s ethanol policies. The President resists the subpoena in court. Which of the following factors would a court NOT consider in determining whether to grant the subpoena?

- (A) Whether the subpoena is broader than is reasonably necessary to support Congress's legislative objective.
- (B) Whether Congress had adequately identified its aim and explained why the President's information would advance its consideration of the possible legislation.
- (C) Whether courts have historically enforced subpoenas against the President seeking the kind of information sought in this case.
- (D) Whether the asserted legislative purpose warrants involving the President and his papers.
- (E) A court should consider all of the above.

PART II

In March 2026, a scientific breakthrough unlocks the possibility of a next generation artificial intelligence (AI) technology that is substantially more advanced than what preceded it. It's widely believed that the nation that leads the world in this next generation AI will dominate the twenty-first century economically. Moreover, there is a national security dimension to the technology as well, since new weapons systems will rely heavily on AI technology. However, the new technology requires powerful computer chips containing one of the rarest materials on earth, fictivium.

Only 5% of the world's fictivium lies under U.S. soil. Concerned that the United States might be unable to compete in the race to develop next generation AI, in April 2026 Congress passes the Maintaining America's AI Advantage Act ("the MAAA Act"). The provisions of the MAAA Act include the following:

- Section 101 creates the International AI Evaluation Board ("the Board") within the Department of Commerce. The Board consists of three Board members appointed by the Secretary of Commerce to five-year terms. Board members may be removed by the Secretary of Commerce for "inefficiency, neglect of duty, or malfeasance in office." (The Secretary of Commerce may be removed by the President of the United States at will.)
- Section 201 requires the Board to monitor the scientific and commercial development of AI technologies around the world. A factual finding from the Board that the United States is in danger of losing its position as the global leader in AI ("endangerment finding") triggers an export ban on fictivium.
- Section 301 lays out the penalties for violating the export ban triggered by an endangerment finding. Specifically, if the export ban is triggered, selling domestically produced fictivium to purchasers outside U.S. borders is a felony punishable by a \$1,000,000 fine and up to 18 months imprisonment.

- Section 401 further declares that selling fictivium in violation of a § 201 export ban “disqualifies” a person from serving as a member of Congress.

The original draft of the MAAA Act included a provision that gave the President the authority to impound any fictivium in transit across the United States or found in U.S. coastal waters, including fictivium originating outside of the United States. This provision met with opposition in the congressional debates, however, and was dropped from the final version of the bill.

President Flora Purim believes the U.S. is falling behind in the race to develop next generation AI. Two members of the Board, however, see it differently, and over a period of months repeatedly vote against an endangerment finding. “I’ve had enough!” President Purim finally exclaims. She sends Bill Evans, one of the two Board members voting against an endangerment finding, a letter that states “you are hereby terminated from your position on the Board by virtue of my Article II powers as President.” The Secretary of Commerce appoints a replacement member to the Board, and the Board immediately makes an endangerment finding by a vote of two to one.

President Purim also seizes a massive shipment of fictivium in transit from Mexico to Canada along U.S. highways. President Purim justifies the seizure as necessary to U.S. national security, given the importance of next generation AI to modern weapons systems and the importance of fictivium to next generation AI.

Soon after the export ban is imposed, Cassandra Wilson is charged with selling fictivium to an international buyer in violation of the ban and convicted. Wilson then runs for an open seat in the House of Representatives and wins. However, relying on § 401, the House excludes her from taking her seat by a vote of 334 to 100.

Analyze the constitutional issues likely to arise in the following lawsuits:

- Keith Jarrett, an American whose contract to export fictivium to an international buyer was canceled after the export ban, sues to challenge the validity of the export ban and the composition and structure of the Board.
- Bill Evans, the fired Board member, sues the United States for back pay, alleging that his removal was unlawful.
- Cassandra Wilson sues the Speaker of the House of Representatives, alleging that her exclusion from Congress was unlawful.
- J.J. Johnson, owner of the fictivium seized in transit from Mexico to Canada, sues for its return, claiming that the President’s seizure was unlawful.

If your answers depend on information not contained in the problem, indicate what information you need and how it bears on your answer.