

INSTRUCTIONS

Directions on how to take and submit the exam using the Exam4 software have been posted to Canvas. You are responsible for following those directions.

This is an open-book, open-notes, open-Internet exam. You can consult any and all resources, subject only the restriction that you may not discuss the exam, or subjects related to the exam, with any other person, whether enrolled in the class or not, through any form of communication, until the administration of this exam is closed for all students.

If any portion of your answer would depend on information not provided, indicate what other information you would need to answer definitively, and how that information would bear on your answer.

START OF EXAM

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Background

By fall 2021, COVID-19 infection rates in the United States have plummeted thanks to a successful vaccination program, and the President declares victory over the pandemic. Looking ahead to the future, Congress passes and the President signs a far-reaching new piece of legislation, the Pandemic Preparedness, Protection, Healthcare, Treatment & Hospitalization Act (“PPPHTH Act” or “the Act”), to reduce the risk of future pandemics and to improve national preparedness for handling pandemics.

The PPPHTH Act

The Act is a massive piece of legislation with many provisions. A few, however, become the subject of legal controversy:

- § 421 imposes a “Public Health Contribution Tax” of \$5000 on any person found to have engaged in conduct specified in § 425 or § 426.
- § 425 provides that “no person shall engage in the sale” of animals specified in § 430.
- § 426 provides that “no person shall engage in the consumption” of animals specified in § 430.
- § 430 lists several species of wild animals, including most kinds of bats, possums, and racoons found in the continental U.S.
- § 506 authorizes the payment of federal funds to states to support the construction of more Intensive Care Units (ICUs) for respiratory patients. § 506 provides that, in order to receive those funds, state Departments of Health must share with the federal

government any data that they already collect on the number patients hospitalized in the state with respiratory conditions.

The record compiled by Congress while deliberating the Act sheds light on some of these provisions:¹

Congress acted against the sale and consumption of wild animals because evidence shows that many viruses are passed to humans from wild animals, and that the sale and consumption of wild animals increases the risk of transmission by increasing contact between people and wild animals. The record further shows that there was at least some commerce in the wild animals designated in § 430, and that those who catch and kill wild animals for their own consumption buy less meat commercially as a result. Congress does not expect to earn revenue from the Public Health Contribution Tax, which is to be collected by federal law enforcement officers (U.S. Marshalls) instead of the Internal Revenue Service: Congress anticipates that people will stop consuming and selling the designated wild animals to avoid having to pay such a steep tax. The federal funding for ICUs in § 506 is equivalent to around 5% of most states' budgets.

Legal Challenges

Soon after the Act took effect, two legal challenges to it were raised in federal court.

Flora Buckman, of Bellefonte, Pennsylvania, traps possums on her property both for her own consumption and for sale to others. She brings three claims:

1. Nothing in the Constitution grants Congress the power to regulate the sale or consumption of wild animals.
2. The Act violates her right to substantive due process by depriving her of the liberty to consume and sell possums.²
3. The Act violates the right to equal protection: the statute regulates people who sell or consume some wild animals, but not others, such as deer.³

The State of Pennsylvania brings a challenge to § 506. Owing to a problem with PACER (the federal courts' electronic filing system), the full text of Pennsylvania's complaint is not immediately available, however.

Both complaints are filed in the United States District Court for the Middle District of Pennsylvania, and assigned to Judge Edward Tulane.

¹ Assume, for purposes of this exam question, that all of the facts in the following paragraph are true.

² You can also assume for purposes of this question that all of the Fourteenth Amendment substantive due process doctrine covered in this course applies to the federal government through the Fifth Amendment.

³ You can also assume that all of the equal protection doctrine covered in this course applies to the federal government. (Although by its terms, the Fourteenth Amendment's Equal Protection Clause applies only against the states, under the doctrine of "reverse incorporation," the right to equal protection also applies to the federal government. *See, e.g., Bolling v. Sharpe*, 347 U.S. 497 (1954)).

Question 1

You are a law clerk to Judge Tulane. "Write me a memo discussing the legal issues raised by Buckman's challenges," he tells you. "While you're at it, go ahead and tell me what basis Pennsylvania might have for challenging the statute, and whether the law is on Pennsylvania's side." Write the memo.

* *

In July 2022, the world faces a new public health crisis in the form of the Pamplona Virus, so named both because it originated in Pamplona, Spain, and because if you catch it, you feel like you've been run over by a bull.⁴ Like the Coronavirus, the Pamplona Virus spreads through respiratory droplets, and with an infection fatality rate of 2%, it is somewhat deadlier than the Coronavirus.

Federal and State Responses

Congress immediately begins considering legislation to address the situation, but lockdowns are unpopular in many parts of the country, and many members of Congress are opposed to an aggressive federal response. Bills proposing some mandatory quarantines and the closure of stores and restaurants go down to defeat. Ultimately, the only measure enacted into law is a 90-day ban on commercial flights between different states.

Some states take measures of their own to protect their populations against the spread of the virus.

Rhode Island passes a statute requiring all persons in the state to quarantine for two weeks after traveling fifty miles or more. Because Rhode Island is only 48 miles long at its longest point, in practice the mandatory quarantine applies only to people traveling to Rhode Island from out of state.

Legal Challenges

Mercy Watson of Boalsburg, Pennsylvania has already made a nonrefundable reservation at a bed-and-breakfast in Narragansett, Rhode Island, when she learns about the mandatory quarantine. "This ruins my vacation!" she cries. "Surely it's not okay for a state to treat out-of-staters so badly and interfere with tourism like this, especially when Congress has decided for a more limited response to the virus."

She complains to her neighbor, Ulysses Despereaux. Ulysses is not planning to go to Rhode Island himself, but he is the President and sole member of the Boalsburg Freedom Defenders, a group dedicated "to guarding Americans' precious liberties against tyrannical government interference." "You ought to sue," Ulysses tells Mercy. "In fact, I think I might sue, myself. Rhode Island is harming all Americans with this unconstitutional law. It is offensive to all lovers of liberty."

⁴ See https://en.wikipedia.org/wiki/Running_of_the_bulls.

Question 2

You are an attorney in Boalsburg. Mercy Watson and Ulysses Despereaux ask what constitutional challenges, if any, can be brought against the Rhode Island law, and how they would likely fare in court. They also want to know whether it would make any difference to the outcome of the case whether it was Mercy or Ulysses who brought the suit. Provide your legal analysis.

* * *

In August 2022, the Pamplona Virus is still spreading in the United States at an alarming rate. New medical data suggest that some persons infected with one variant of the virus, PaVir-23, can remain contagious for up to four months. (Persons who remain contagious for so long are called “super-duper-spreaders.”) What is more, no test can detect that some of these super-duper-spreaders are infected at all. Congress declines to enact further restrictions, however.

Presidential Action

“Enough is enough,” says President Adele LaVaughn. “I have to act to save this country.”

President LaVaughn issues Executive Order (EO) 14,445. EO 14,445 instructs the Attorney General of the United States to confine to minimum security federal prison camps for a period of four months all persons reported to have been in direct contact with identified Pamplona Virus patients. The EO provides no procedure for challenging the confinement.

Legal Challenges

Several months later, three complaints are filed in the United States District Court for the Middle District of Pennsylvania and assigned to Judge Tulane:

- Francine Poulet is currently being held at a federal prison camp in Huntington, Pennsylvania because she was reported to have contact with a Pamplona Virus patient. She alleges that the President lacks the authority to order her confinement, and that her confinement also constitutes a deprivation of the right to habeas corpus.
- Eugenia Lincoln was confined at the same camp for a period of four months and then released. She is bringing a suit for damages against President LaVaughn, alleging that by issuing EO 14,445, LaVaughn violated Lincoln’s constitutional rights in contravention of clearly established law.
- Bartok Wynn was a business partner of Adele LaVaughn before LaVaughn ran for President. He is bringing a breach-of-contract claim, alleging that LaVaughn never paid him money he was entitled to receive under their contract.⁵

⁵ You can assume this claim is not barred by the statute of limitations, even though it accrued before LaVaughn’s presidency.

Question 3

You are a law clerk to Judge Tulane (again). “I am assuming the President is going to move to have all of these suits dismissed. Write me a memo on what legal arguments the President is likely to make, and whether those arguments have a strong basis in law.”
Write the memo.

END OF EXAM