Constitutional Law I
Mock Exam

Prof. Pi • Spring 2025

Instructions

- This exam consists of ~~eleven~~ multiple-choice questions.
- You will have ~~*three hours*~~ to complete it.
- In your exam document, list each question number followed by your selected answer, separated by commas. For example:

  "1. A, 2. C, 3. D, 4. E, […]"

- You may only select one answer per question.
- Each answer will be assigned a point value from 0 to 10.
  - 0 is the worst possible answer.
  - 10 is the best possible answer.
  - If you leave a question blank or input an invalid answer (for example, "1. Z, […]," where "Z" is not a valid option), then you will be awarded 4 points by default.
- Your final exam score will be the sum of the points you receive for all your answers.
- The exam is open-book / open-internet.
- If you have any concerns about errata or apparent inconsistencies in the exam, you may note these in your exam document (after the enumeration of your answer choices).
- **The use of LLMs (e.g., ChatGPT, Gemini, Claude) is *not* permitted on this exam.**

Fact Pattern

Early in 2024, the sleepy hamlet of Bayou La Batre, Alabama, awoke to a bizarre sight: dozens of nutria—twenty-pound, orange-toothed swamp rodents native to South America—were paddling across the Mississippi state line, devouring sugarcane shoots and undermining levees. Local shrimpers swore they saw the creatures ride into town on floating plywood palettes, "like Viking berserkers—only smaller and furrier." Alabama's Commissioner of Agriculture convened an "Emergency Rodent Summit" at the Mobile Cruise Terminal, where reporters enjoyed complimentary crawfish étouffée as U.S. Army Corps of Engineers biologists presented grim slides: if nothing changed, 120,000 nutria would overrun the Mobile–Tensaw Delta within a year, gnawing through bulkheads that protect the Port of Mobile.

On February 1, the Alabama Legislature enacted the Nutria Defense and Security Act ("NDSA"), which imposed a $500 "Category-A Wildlife Inspection Fee" on every truck, railcar, or barge entering from another state, payable at roadside kiosks staffed by college interns in HAZMAT gear. The Legislature insisted the fee was not protectionist because Alabama companies returning empty trucks also had to pay it (the House sponsor referred to the fee as an "equal-opportunity nuisance"). Money flowed into an Invasive Species Trust earmarked for (i) a $20-per-carcass bounty paid only to hunters holding Alabama sportsman licenses and (ii) equipping the volunteer State Border Rodent Militia ("SBRM")—a unit commanded by the Lieutenant Governor's cousin, a retired bass-fishing social media influencer, who has vowed to wear full camouflage "except on Sundays."

Louisiana produce-growers, furious that the new fee had wiped out their razor thin margins on okra, lobbied the U.S. Congress. Sen. Franklin "Dock" Rivet (D-LA) brandished a stuffed nutria on the Senate floor, declaring, "These swamp rats are menacing, but state tariff wars are worse." On June 15, Congress responded with the Interstate Faunal Transit Act ("IFTA"), which declared that invasive nutria "substantially affect interstate and foreign commerce" and ordered the U.S. Fish & Wildlife Service ("FWS") to build and staff federal checkpoints on every state border by January 1, 2025. Section 3 flatly prohibited any "state fee, tax, or regulatory burden" on the interstate movement of Category-A species, while Section 4 preserved "state measures that do not

impede, delay, or add cost." Section 5 appropriated $750 million but gave the Interior Secretary "complete discretion" over timing, staffing, and spending.

President Jackson Tweed, a former professor of "constitutional folkways," signed IFTA in the Rose Garden but released a signing statement calling it "rodent socialism." On October 1—the same day he pardoned the White House Thanksgiving turkey six weeks early "to set a humane precedent"—Tweed ordered the Department of the Interior to shelve all IFTA funding "pending structural review." In a press gaggle he declared, "Alabama's right to guard its borders is older than nutria and probably older than the Constitution." The Interior Secretary posted a two-sentence press release at 11:59 p.m. Friday, "Implementation paused. States encouraged to cooperate voluntarily."

Lawsuits erupted. The Louisiana Produce Guild sued in federal court in Montgomery, alleging the $500 fee violated the Dormant Commerce Clause. The district judge upheld the fee but the Eleventh Circuit remanded for fact-finding on how many trucks just turned around. Meanwhile, Alabama petitioned the D.C. District Court for mandamus compelling release of IFTA funds. The D.C. District Court dismissed, finding no "clear, ministerial duty" because Section 5 vested cabinet discretion. Meanwhile, in Alabama, the Invasive Species Trust ran dry. By March 2025 SBRM volunteers had delivered 450,000 carcasses, receiving $9 million—but accountants warned that without new cash the bounty program would be exhausted by the summer.

In February 2025 the National Shippers Association (representing railroads and barge lines) asked the Alabama Supreme Court whether paying bounties only to Alabama license-holders violated the Dormant Commerce Clause "as applied." The court certified that question to the U.S. Supreme Court, remarking dryly that "nutria lack standing in this court, but plaintiffs may possess it." On April 15, 2025—Tax Day—the Supreme Court granted *certiorari* and consolidated three dockets: (i) *Guild v. Alabama* (the facial Commerce Clause fee challenge); (ii) *Alabama v. Interior* (mandamus and spending); and (iii) *Shippers v. Alabama* (the asapplied bounty challenge). The Chief Justice quipped, "We've dabbled in fish (*Pike*), milk (*West Lynn Creamery*), and pork (*National Pork*). We should've expected it'd attract rodents sooner or later."

Questions

1. **Choose the strongest argument (Alabama's $500 inspection fee):**

    a. The fee should be upheld under the market participant exception. Alabama is spending its own Inspection-Trust funds to "purchase" rodent-eradication services from bounty hunters and to maintain checkpoints; when a state acts as a buyer, *Reeves v. Stake* allows it to favor local economic interests. The statute does not compel private entities to do anything beyond paying a price for a government-provided service, and all downstream economic choices about nutria pelts or produce routes remain free. Because the payment scheme looks like a proprietary purchase program rather than regulatory compulsion, Dormant-Commerce limits do not apply. Accordingly, the inspection fee is valid under the market-participant doctrine.

    b. The fee must be struck down. It operates exactly like a tariff on inbound commerce. The triggering event is entry from another state. Hence, it "discriminates against articles of commerce coming from outside" in the sense condemned in *Philadelphia v. New Jersey*. Alabama labels it a "Wildlife Inspection Fee." Yet the sterilized label does not change the fact that Louisiana shippers must pay the charge while purely internal Alabama hauls do not. Empty Alabama trucks having to pay the fee when reentering the state does not obviate this concern. Token intrastate coverage cannot cure facial discrimination. Alabama must prove the measure is the *only* workable approach, and nothing in the record shows every reasonable nondiscriminatory alternative—e.g., federal partnership, electronic manifests, or post-arrival inspections—would have failed. It is not plausible they can do this, therefore strict scrutiny likely fails. The inspection fee is unconstitutional and must be invalidated.

    c. The fee survives strict scrutiny under *Maine v. Taylor*. U.S Army Corps of Engineers biologists claimed that unchecked nutria could undermine levees protecting the Port of Mobile within months, and that early, resource-intensive screening at the state line would be the only effective way to slow the invasion. The Court in *Taylor* allowed a discriminatory bait fish ban where the state showed ordinary inspection would miss parasites; here Alabama argues ordinary cursory inspections of trucks would miss stowaway nutria. Other possibilities, such as post-entry eradication, were rejected because delay multiplies infestation costs. Where no workable nondiscriminatory substitute exists, a discriminatory measure may be upheld. Accordingly, the fee withstands Dormant-Commerce scrutiny.

    d. The fee is preempted. IFTA § 3 directly forbids "any state fee, tax, or regulatory burden" on interstate movement of Category-A species. Congress responded to "state tariff wars," so the statutory text plus its rapid enactment show an unmistakable intent to displace parallel state regimes. Even if IFTA's checkpoints are not yet staffed, federal preemption turns on congressional purpose, not the pace of administrative rollout. Because Alabama's charge is exactly the type of

fee the statute identifies and rejects, the Supremacy Clause nullifies it. Thus, the fee is unconstitutional.

e. The fee violates the extraterritoriality principle. Whether a trucker pays the $500 hinges entirely on a routing decision made in Louisiana (or another state) before the vehicle enters Alabama. By imposing a substantial cost on decisions made wholly beyond its borders, Alabama regulates commerce outside its jurisdiction. The Constitution withholds such power. Therefore, the fee is unconstitutional and must be set aside.
f. The fee should be upheld. All carriers—out-of-state, in-state, or merely transiting—pay the same $500. The money is deposited in a trust, which the statute earmarks for checkpoints and the bounty program, i.e., purposes directly tied to safe entry. Because the amount of the charge is reasonably related to funding those inspection activities and no surplus is being spent elsewhere, the fee clearly functions as a toll rather than a tariff. User fees fall outside the Dormant-Commerce prohibition. Therefore, the inspection fee should be sustained.

2. Choose the strongest argument (Nutria-carcass bounty—as applied):

a. The bounty program is unconstitutional. Restricting the $20 payment to holders of Alabama sportsman licenses economically favors in-state residents and excludes equally qualified out-of-state trappers. No ecological justification exists for distinguishing between resident and nonresident sellers; the state could simply verify carcass counts at drop-off sites open to all. Because a residency condition burdens interstate commerce and Alabama offers no narrowly tailored reason, strict scrutiny fails. Hence the bounty violates the Dormant Commerce Clause.
b. The bounty survives despite *West Lynn Creamery*. The funding mechanism and the discrimination cancel each other out: the inspection fee that underwrites the trust is paid primarily by incoming out-of-state carriers, while the bounty shifts some of that money back into Alabama. Whatever competitive edge residents gain from the subsidy is offset by the fee's burden on in-state businesses that import goods. Because the overall scheme neither clearly benefits nor clearly penalizes interstate commerce, it does not create the protectionist tilt *West Lynn* condemned. Hence the bounty passes Dormant-Commerce review.
c. The bounty is unconstitutional under *Pike v. Bruce Church* balancing. By tying payments to state hunting licenses, Alabama creates an economic incentive that distorts interstate trade in nutria pelts. Louisiana trappers receive a lower effective price and thus ship fewer pelts across state lines. Alabama's asserted justification—administrative simplicity—could be achieved by issuing temporary tags to nonresidents or paying at certified weigh-stations without requiring resident status. A discriminatory approach therefore imposes a burden on commerce that is clearly excessive relative to the local benefit. The as-applied bounty condition is thus unconstitutional.
d. The bounty survives scrutiny. Alabama is acting as a proprietary purchaser of carcasses, essentially paying to have a nuisance removed. A state may prefer its own residents when spending its own money to buy environmental services. The program does not regulate the market for nutria pelts or require nonparticipants to

do anything; it simply selects whom the state will pay. Dormant-Commerce limitations yield when the state occupies the role of market participant rather than regulator. Accordingly, the bounty is constitutional.

e. The bounty is preempted. IFTA's bar on "state measures that add cost" to interstate movement encompasses subsidies payable only to locals, because denying payment to out-of-staters effectively raises their cost of doing business. Congress sought a uniform national policy in which invasive-species control would not depend on fifty different bounty schemes. Alabama's license-based payment contradicts that objective and therefore stands as an obstacle to federal purposes, triggering frustration preemption. Thus, the bounty condition is invalid.
f. The bounty is unconstitutional under the Foreign Commerce Clause. The fact pattern notes that fashion houses abroad monitor carcass supply, and Alabama's in-state-only payment injects a price distortion that ripples into export markets. The Supreme Court applies heightened scrutiny where state action risks retaliation or undermines the nation's single voice in foreign trade. Alabama's scheme, by favoring local sellers, invites precisely that Balkanization of international commerce. Therefore, the bounty condition violates the Foreign Commerce Clause and must be struck.

3. Choose the strongest argument (IFTA versus NDSA—preemption):

a. Frustration preemption applies. Even if IFTA does not wholly occupy the field, Alabama's inspection fee directly frustrates Congress's objective of eliminating state-imposed costs on interstate shipments. *Pacific Gas*. Accordingly, NDSA is preempted for creating an obstacle to IFTA.
b. No preemption occurs. IFTA § 4 expressly preserves state measures that do not "impede, delay, or add cost," and Alabama argues its fee finances rapid inspections that actually speed cross-border transit. If the state's program shortens wait times, it does not impose the type of "cost" Congress meant to outlaw. Congress thus carved out room for complementary state action. Therefore, NDSA remains valid.
c. Preemption is premature. Section 5 vests execution in the Interior Secretary, who has not yet built the checkpoints. Federal law is not fully operative, so simultaneous compliance is currently possible: shippers can pay Alabama's fee until a checkpoint replaces it. Once the checkpoints open, the fee might be preempted, but not before. For now, NDSA survives.
d. Presumption against preemption controls. States have long policed agricultural pests and invasive species under their police powers. Because IFTA does not speak with unmistakable clarity about existing state quarantine fees—its focus is future checkpoints—the traditional assumption that state law remains in force tips the scale. Courts require a "clear and manifest purpose" to displace such historic powers, and that clarity is lacking. NDSA is therefore not preempted.
e. Even if IFTA would preempt, the President's suspension renders the federal scheme dormant. The Supremacy Clause disables state law only when federal law is in force; if the Executive has lawfully paused implementation, the conflict is academic. Courts have declined to preempt where a federal program is "on hold"

and not currently regulating the field. Until Interior actually enforces IFTA, Alabama's law can coexist. Therefore, NDSA is not preempted at this moment.

f. IFTA field-preempts NDSA. Congress crafted a single, nationwide system of checkpoints and explicitly prohibited "any state fee" on Category-A species. That sweeping command, coupled with a generous federal appropriation and a fixed completion date, shows an intent to occupy the field of cross-border nutria control. Under *Arizona v. United States*, when federal law leaves "no room for the states," a conflicting state regime must yield. Alabama's $500 charge falls exactly within the category Congress barred. Therefore, NDSA is preempted in its entirety.

4. Choose the strongest argument (Congress's power to enact IFTA):

a. IFTA exceeds Congress's authority. The statute primarily addresses environmental protection, traditionally reserved to the states, and forces the Interior Department to erect physical infrastructure—a form of federal commandeering for local purposes. Under *Lopez* and *Morrison*, laws directed at non-economic, intrastate harms must be struck. The mere fact that rodents might affect commerce is too speculative. Accordingly, IFTA is unconstitutional.

b. Even if the checkpoints mandate fails, the appropriation is valid under the Spending Clause. Congress may "provide for the general welfare" by offering funds on conditions; states remain free to decline. *South Dakota v. Dole*. Nothing in IFTA threatens to withdraw existing funds or coerce the states. Thus, the funding component is constitutional—even if other parts falter.

c. IFTA violates anti-commandeering principles. It assigns federal officers the task of policing state borders, effectively turning the Interior Department into Alabama's game warden. Unlike cooperative-federalism schemes where states may choose to administer a federal program, IFTA leaves states no comparable option and therefore commandeers federal resources for a local end. Such one-way commandeering exceeds Congress's enumerated powers. Therefore, IFTA is invalid.

d. IFTA is constitutional under the Commerce Clause. Congress found that invasive nutria jeopardize levees protecting a major seaport and threaten the flow of goods across state lines—an effect squarely within the "substantial relation" test of *Lopez* and *Raich*. Regulating the interstate movement of the rodents is manifestly "economic" because it targets the channels of commerce. The Supreme Court has upheld similar quarantine and inspection laws addressing livestock disease and plant pests. Hence, the IFTA is valid.

e. IFTA is constitutional under the Necessary and Proper Clause coupled with the Foreign Commerce power. Protecting infrastructure that facilitates export shipping is a legitimate means to safeguard foreign trade. Even if rodent transit is not itself *interstate* commerce, Congress may adopt measures "plainly adapted" to preserving the channels through which such commerce flows. This logic fits within *McCulloch* and later cases upholding incidental federal authority. Therefore, the Act falls clearly within Congress's legislative power.

f. IFTA is not geographically neutral. By singling out nutria and Gulf-Coast states, Congress legislates for a narrow constituency, raising the same federalism concerns noted in *NFIB v. Sebelius* when statutory burdens fell almost entirely on one region. National legislation should serve genuinely national concerns, not regional lobbying squabbles. Therefore, the Act is unconstitutional.

5. Choose the strongest argument (President Tweed's funding "pause"):

a. The pause is lawful separation of powers practice. Congress may appropriate money, but it cannot dictate exactly when or where agencies build checkpoints; those logistics belong to the Executive. Tweed's hold preserves flexibility in deploying personnel and ensuring safety. The Constitution forbids Congress from micromanaging such executive details. Therefore, the pause is constitutional.
b. The pause is invalid under *Youngstown*. Congress clearly intended the funds to be spent in 2025; Tweed's categorical freeze nullifies that command. With Congress on record and the courts silent, Tweed's unilateral halt violates the separation of powers. Therefore, the pause must be set aside.
c. The pause is unconstitutional. The President cannot withhold funds which Congress directed to be spent unless Congress itself authorizes the deferral. Section 5 may grant implementation discretion, but not the blanket power to halt an entire program adopted over state objection. Tweed's action squarely contradicts the statute's objective timetable and thus places him in *Youngstown* Category 3, where his power is "at its lowest ebb." Since the Constitution does not accord the President such discretion independently, the pause is unconstitutional.
d. The pause is permissible managerial discretion. Section 5 says funds "shall be available … in the Secretary's discretion," leaving timing to agency judgment. No deadline in IFTA requires immediate obligation of all $750 million; Interior may sequence spending for planning, contracting, and environmental review. Tweed merely directed a temporary delay pending "structural review," not a permanent cancellation. Hence the pause is lawful.
e. The pause is justified because the President believes IFTA is unconstitutional. Presidents have historically withheld enforcement of statutes they viewed as unconstitutional pending court guidance. This is consistent with the Presidential Oath Clause, requiring the President to "preserve, protect and defend the Constitution." Tweed invoked anti-commandeering doubts; exercising that constitutional doubt canon, he may avoid entrenching a potentially invalid framework. Courts generally defer to such temporary constitutional holds. Therefore, the pause is permissible.
f. The pause exceeds Article II authority. Section 5 commits discretion to the Interior Secretary, not the President personally. While Tweed can remove the Secretary, he cannot substitute his policy judgment so long as she remains in office exercising statutory discretion lawfully. His directive overrides the agency's delegated choice. It is thus *ultra vires*. The freeze is invalid.

6. Choose the strongest argument (Alabama's suit for mandamus/funding):

a. Alabama lacks standing. Its alleged harm—future budget trouble if federal money never arrives—is speculative. The Interior Secretary could approve funding tomorrow, and mere planning uncertainty is not a concrete injury under *Lujan*. Until denial becomes final, the case is unripe. The case must be dismissed.
b. Alabama has standing. The state's Invasive Species Trust is projected to run out by summer, a concrete fiscal injury directly traceable to Interior's funding freeze. A court order releasing appropriations would redress that pocketbook loss. *Massachusetts v. EPA* recognizes such sovereign fiscal harms as sufficient. Standing exists.
c. The claim is a political question. Allocation of federal infrastructure dollars involves policy judgments and prioritization better left to the Executive. *Baker v. Carr* factor 1 bars courts from second-guessing such textually committed choices. The suit is nonjusticiable.
d. Alabama enjoys "special solicitude" standing. *Massachusetts v. EPA* affords states latitude when they seek to safeguard territory and resources. The nutria threat implicates Alabama's quasi-sovereign interest in protecting its wetlands, and the federal freeze aggravates that threat. This relaxed standard suffices to clear the standing hurdle. The suit may proceed.
e. The court can hear Alabama's Tenth Amendment coercion theory. By withholding funds, the federal government effectively forces the state to finance nutria control itself. *NFIB v. Sebelius* warns that conditional spending cannot become unconstitutionally coercive. Judicial intervention is appropriate to police that boundary. Jurisdiction is proper.