CONSTITUTIONAL LAW I:
JUDICIAL REVIEW AND CONSTITUTIONAL INTERPRETATION
POLITICAL SCIENCE 307
FINAL EXAM

Bring this sheet, several blue books, and your course pack to class on MONDAY April 29 at 10:15 AM. You will then have TWO HOURS to answer FOUR of the following SEVEN questions. Only answers written out by you during the exam will be accepted for credit. The four questions to be answered will be chosen at random on Monday morning.

Be sure to define carefully any key terms and use the claim, objection, rejoinder format. Make claims using because clauses, make the reasoning explicit, and follow with evidence. Citations to relevant texts can simply be page numbers to the course pack at the sentence, for example: (32). Use ellipses to cut down on quotation length (but keep the sentences that remain readable). All questions are open and contested; they can be answered rationally either way.

1. Justice Alito focuses on tradition to defend his holding in *Dobbs v. Jackson*. Sunstein finds that reliance unpersuasive; he would take a broadly ethical approach. Who has the better approach to constitutional interpretation and why?
2. Justice Chase uses all six modes of constitutional interpretation in his opinion in *Calder v. Bull*. Write an essay outlining all six and debating which mode, textual or ethical, is more important to the holding.
3. Write an essay explaining Justice Holmes' doctrinal "test" in *Missouri v. Holland*, and determining which modality, the structural or prudential, is more important in justifying the need for the test.
4. In *McCulloch v. Maryland*, Justice Marshall emphasizes that the framers left out the word "expressly" from the 10th Amendment. This might be construed as using either a historical or a structural mode of constitutional interpretation. Write an essay assessing which of the two modes Marshall relies on in interpreting the enumerated powers.
5. Who has the better doctrinal approach to the commerce clause in the *Sebelius* case, Justice Roberts or Justice Ginsberg?
6. Chemerinsky thinks the counter-majoritarian difficulty is a red herring because the framers never intended the US Constitution to set up a majoritarian democracy. Hart Ely argues that the nature of the US Constitution is that it attempts to achieve substantive justice by specifying procedures. Write an essay explaining the logic of each view and determining which is more persuasive.
7. Justice Rehnquist worries that protecting "discrete and insular minorities" will turn the federal judiciary into a "roving commission" Dworkin argues that the framers used general language to signal they wanted due process and equal protection to be understood as concepts not conceptions. Write an essay explaining the logic of each view and determining which is more persuasive.

Bonus question: (2 pts): Explain the tension that exists in the logic of representational democracy and the purposes of judicial review set out in paragraphs two and three of the *Carolene Products* footnote four.