Question #1 – Equal Protection Analysis

In order to foster an environment conducive to learning, a school board enacted a dress code that prohibited all public high school students from wearing in school shorts cut above the knee. Because female students at the school considered it un时尚able to wear shorts cut at or below the knee, they no longer wore shorts to school. On the other hand, male students at the school regularly wore shorts cut at or below the knee because they considered such shorts to be fashionable.

Female students sued to challenge the constitutionality of the dress code on the ground that it denied them the equal protection of the laws.

Should the court uphold the dress code?

(A) No, because the dress code is not necessary to further a compelling state interest.

Incorrect. The court should uphold the dress code, because the code is rationally related to the state's legitimate interest in fostering a proper educational environment. The dress code should not trigger heightened judicial scrutiny, because there are no facts to suggest that the purpose of the code is to discriminate against female students.

(B) No, because the dress code is not substantially related to an important state interest.

Incorrect. The court should uphold the dress code, because the code is rationally related to the state's legitimate interest in fostering a proper educational environment. The dress code should not trigger heightened judicial scrutiny, because there are no facts to suggest that the purpose of the code is to discriminate against female students.

(C) Yes, because the dress code is narrowly tailored to further an important state interest.

Incorrect. While the court should uphold the dress code, it should do so because the code is rationally related to the state's legitimate interest in fostering a proper educational environment. The dress code should not trigger heightened judicial scrutiny, because there are no facts to suggest that the purpose of the code is to discriminate against female students.

(D) Yes, because the dress code is rationally related to a legitimate state interest.

Correct. The court should uphold the dress code, because the code is rationally related to the state's legitimate interest in fostering a proper educational environment. The dress code should not trigger heightened judicial scrutiny, because there are no facts to suggest that the purpose of the code is to discriminate against female students.

Question 2 – Dormant Commerce Clause

A fatal virus recently infected poultry in several nations. Some scientific evidence indicates that the virus can be transmitted from poultry to humans.

Poultry farming is a major industry in several U.S. states. In one such state, the legislature has enacted a law imposing a fee of two cents per bird on all poultry farming and processing operations in the state. The purpose of the fee is to pay for a state inspection system to ensure that no poultry raised or processed in the state is infected with the virus.

A company that has poultry processing plants both in the state and in other states has sued to challenge the fee. Is the fee constitutional?

(A) No, because although it attaches only to intrastate activity, in the aggregate, the fee substantially affects interstate commerce.

Incorrect. Having a substantial effect on interstate commerce does not make the fee unconstitutional. The fee in this case is constitutional, because it does not violate the negative implications of the commerce clause: it does
not discriminate against interstate commerce, and its burden on interstate commerce is not clearly excessive in relation to the legitimate public health benefit the inspection system will bring to the state.

(B) No, because it places an undue burden on interstate commerce in violation of the negative implications of the commerce clause.

Incorrect. The fee does not violate the negative implications of the commerce clause, because it does not discriminate against interstate commerce, and its burden on interstate commerce is not clearly excessive in relation to the legitimate public health benefit the inspection system will bring to the state. The fee is therefore constitutional.

(C) Yes, because it applies only to activities that take place wholly within the state, and it does not unduly burden interstate commerce.

Correct. The fee does not violate the negative implications of the commerce clause, because it does not discriminate against interstate commerce, and its burden on interstate commerce is not clearly excessive in relation to the legitimate public health benefit the inspection system will bring to the state.

(D) Yes, because it was enacted pursuant to the state's police power, which takes precedence over the negative implications of the commerce clause.

Incorrect. The fee was enacted pursuant to the state's police power, but the supremacy clause of the Constitution prohibits state laws that violate federal constitutional limits on state authority. The fee is constitutional, nonetheless, because it does not violate the negative implications of the commerce clause: it does not discriminate against interstate commerce, and its burden on interstate commerce is not clearly excessive in relation to the legitimate public health benefit the inspection system will bring to the state.

Question #3 – First Amendment Analysis

Congress enacted a statute that made it illegal for "any employee, without the consent of his or her employer, to post on the Internet any information concerning the employer." The purpose of the statute was to prevent employees from revealing their employers' trade secrets.

Is the statute constitutional?

(A) No, because it is not narrowly tailored to further a compelling government interest.

Correct. The statute violates the freedom of speech protected by the First Amendment. The statute targets speech based on its content, because it prohibits employees from posting only "information concerning the employer" on the Internet. Because the statute is a content-based restriction on speech, it is subject to strict judicial scrutiny. Speech restrictions rarely survive strict scrutiny; the government must prove that the restriction is necessary to further a compelling government interest. Even if the government's interest in preventing employees from revealing trade secrets were deemed compelling, Congress could enact legislation utilizing less speech-restrictive means to protect trade secrets.

(B) No, because it targets a particular medium of communication for special regulation.

Incorrect. The statute does target one medium of communication—Internet postings—and this focus may cause a court to look more closely at the restriction when evaluating its constitutionality. However, a statute does not violate the First Amendment simply because it targets a particular medium. In this case, the statute violates the freedom of speech protected by the First Amendment because it targets speech based on its content; it prohibits employees from posting only "information concerning the employer" on the Internet. Because the statute is a content-based restriction on speech, it is subject to strict judicial scrutiny. Speech restrictions rarely survive strict scrutiny; the government must prove that the restriction is necessary to further a compelling government interest. Even if the government's interest in preventing employees from revealing trade secrets were deemed compelling, Congress could enact legislation utilizing less speech-restrictive means to protect trade secrets.

(C) Yes, because it leaves open ample alternative channels of communication.
Incorrect. The statute leaves open channels of communication other than the Internet, but this fact does not save
the statute. The availability of ample alternative channels of communication is an element of the First Amendment
test for evaluating speech restrictions that are content-neutral, but it is not as important with respect to content-
based restrictions. In this case, the statute violates the freedom of speech protected by the First Amendment
because it targets speech based on its content; it prohibits employees from posting only "information concerning
the employer" on the Internet. Because the statute is a content-based restriction on speech, it is subject to strict
judicial scrutiny. Speech restrictions rarely survive strict scrutiny; the government must prove that the restriction
is necessary to further a compelling government interest. Even if the government's interest in preventing employees
from revealing trade secrets were deemed compelling, Congress could enact legislation utilizing less speech-
restrictive means to protect trade secrets.

(D) Yes, because it prevents employees from engaging in unethical conduct.

Incorrect. The statute may prevent employees from engaging in unethical conduct, but this fact does not save the
statute. The statute violates the freedom of speech protected by the First Amendment because it targets speech
based on its content; it prohibits employees from posting only "information concerning the employer" on the
Internet. Because the statute is a content-based restriction on speech, it is subject to strict judicial scrutiny.
Speech restrictions rarely survive strict scrutiny; the government must prove that the restriction is necessary to
further a compelling government interest. Even if the government's interest in preventing employees from
revealing trade secrets were deemed compelling, Congress could enact legislation utilizing less speech-restrictive
means to protect trade secrets.