**Constitutional Law I**

**Spring 2022**

**Professor Mike Ramsey**

**Writing Assignment 2 (Federalism)**

**Instructions:** *Answer the question below in a clear, well-organized essay of 1500 words or less. No research outside of the course materials is expected or permitted (although you may use associated commercial study aids if you wish). You may take as much time as you like, but under exam conditions a question of this nature would likely be accorded about 1 hour to complete. At this point in the course, I recommend allowing 1.5 hours. With respect to some issues there may be relatively clear answers; other parts have been deliberately written so that arguments are available on both sides, and your goal should be to identify and explain the best arguments on each side. If you think additional facts are necessary or helpful to answer the question, you may include them in the discussion (but do not consider unlikely scenarios, scenarios which substantially alter or undermine the premise of the question, or facts contrary to those given).*

*Your essay must be submitted to me via email prior to* ***10:00 am*** *on Monday, March 21, 2022.*

*This is a non-graded, credit/no credit assignment. I expect everyone to complete it, and I may impose substantial penalties, including ultimately a failing grade in the course, for failure to complete it.*

***Note****: This was an essay question on the 2012 exam in Constitutional Law I.*

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Historically all states in the U.S. have criminalized assisted suicide (that is, helping other persons kill themselves). However, assisted suicide in cases of painful terminal illness is legal in some parts of Europe, and a number of states are rethinking their laws. In 2012 California partially repeals its ban, allowing assisted suicide in specified cases under supervision of a licensed doctor. Dr. Chillingworth, who has spent many years working with terminally ill patients, decides to open a clinic in California to provide suicide counseling and assistance to the extent permitted by California law. The clinic will be free of charge and rely on natural organic home-grown poisons that provide what Chillingworth calls “a painless escape from unendurable pain.” Although Dr. Chillingworth does not charge for his services, of course he pays rent for the building where the center is located, and pays the salaries of a few employees and for basic supplies for his office.

Newly elected U.S. President Rick Santorum is upset by developments in California, believing this is a first step to widespread euthanasia of elderly and disabled members of society. He asks the U.S. Justice Department to prepare draft legislation to recommend to Congress to overturn California’s repeal of its assisted suicide law. An initial study for the Department identifies four possible strategies:

1. Congress could pass a law directing California to overturn its partial repeal and enforce its prior assisted suicide law.

2. Congress could pass a law criminalizing assisted suicide and have federal law enforcement prosecute Dr. Chillingworth.

3. Congress could impose a very high tax on assisted suicide clinics of the type operated by Dr. Chillingworth.

4. Congress could use its control over the large amount of money it gives California to “encourage” California to change its law.

As the constitutional law expert in the President’s office of legal policy, your task is to assess these ideas, identify which are the most and least likely to be found constitutional, and recommend a course of action. To the extent there are substantial constitutional uncertainties associated with some of the strategies, identify the contending arguments and assess the government’s likelihood of success if the law is challenged in court. If there are additional facts that would help or hurt your position, identify them and explain why they are relevant.

[Note: you need not consider any possible First Amendment objections to the proposed federal laws.]