



UNIVERSITY OF MIAMI
SCHOOL of LAW

**Constitutional Law I(D)
Spring 2026
Professor Schnably**

**Practice Question I
(75 minutes)
(Open Book)**

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Write an essay that comments upon the following statement using concrete illustrations and critically analyzing its assumptions. Please note that the views expressed in this Question don't necessarily represent my own, and in any event you may agree or disagree with them as you like. What would determine your grade on an actual exam would be how well you defended the positions you took. You should be careful to comment on all the assumptions and assertions made in the statement.

“There is a basic tension between judicial review and democracy. When courts find a statute approved by the legislature unconstitutional, they override the will of the people’s elected representatives. Compounding this difficulty, the claim that the U.S. constitution actually authorizes judicial review is extraordinarily weak, as the many flaws in Chief Justice Marshall’s reasoning in *Marbury v. Madison* (CB 22) reveal. Still, one thing is for certain: There is no point in having a written constitution if the courts lack the power to enforce it. And for anyone who’s worried about a runaway Supreme Court abusing its power of judicial review, Congress has plenty of easy ways to deal with that problem.”