

CONSTITUTIONAL LAW  
FINAL EXAMINATION  
Spring 2023

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EXAM INSTRUCTIONS

You will have three hours to complete this exam. There are two essay questions to be answered in Questions 1 and 2; Question 3 consists of two short answer questions and 10 Multistate Bar Exam-type (MBE) questions. Each question will count for 1/3 of your exam grade.

Unless expressly stated, assume that there are no Federal or State statutes on the subjects addressed.

Your answer should demonstrate your ability to analyze the facts in the question, to tell the difference between material facts and immaterial facts, and to discern the points of law and fact upon which the case turns. Your answer should show that you know and understand the pertinent principles and theories of law, their qualifications and limitations, and their relationships to each other.

Your answer should evidence your ability to apply the law to the given facts and to reason in a logical, lawyer-like manner from the premises you adopt to a sound conclusion. Do not merely show that you remember legal principles. Instead, try to demonstrate your proficiency in using and applying them.

If your answer contains only a statement of your conclusions, you will receive little credit. State fully the reasons that support your conclusions, and discuss all points thoroughly.

Your answer should be complete, but you should not volunteer information or discuss legal doctrines that are not pertinent to the solution of the problem.

Question No. 1

In its 2021-2022 term the United States Supreme Court held in *Dobbs v. Jackson Women's Health Organization* that there is no fundamental right to an abortion under the U.S. Constitution and that *Roe v. Wade* and *Casey v. Planned Parenthood*, which confirmed that a Constitutional right to privacy includes abortion, should be overruled. Immediately after that decision, the Sunstate legislature enacted and the Governor signed a statute:

- a) Prohibiting all abortions, with no exceptions.
- b) Prohibiting the use, possession or sale of any abortion medications, devices, or methods.
- c) Prohibiting any person from leaving Sunstate with the intent to obtain an abortion or to procure abortion medications or devices.

The constitutionality of the statute was challenged by Doctor Anton, the Director of a Planned Parenthood clinic in Sunstate which performs abortions, dispenses medication for abortions and uses devices, and by her patient Betty who is seeking an abortion because she suffers from a condition in which a pregnancy endangers her life and there is no chance that her fetus will be born alive. If she cannot obtain services in Sunstate, Betty would leave Sunstate to obtain an abortion, but she is prohibited by the statute from doing so. The court determined that Betty has standing, but Sunstate has challenged the standing of Dr. Anton.

1. Analyze the Constitutional arguments that Dr. Anton will make in her lawsuit, including her standing, and Sunstate's arguments in response. How is the U.S. Supreme Court likely to rule and why?
2. Analyze the Constitutional arguments Betty will make in her lawsuit and Sunstate's response. How is the U.S. Supreme Court likely to rule and why?

Question No. 2

School Board meetings have become contentious affairs, and a recent school board meeting in Anytown proves the point. During “public comments” (this is the portion of the meeting in which the public may address the Board) Dan, an angry parent, called the Board President, Paul, a “pedophile” for approving a sex education curriculum for middle school students. There is no evidence that Paul is, or has ever been, a pedophile.

In response, Paul sued Dan for defamation under a recently amended State law, which provides the following:

“In an action for defamation, the fact finder shall presume actual malice when the defamatory allegation is inherently improbable or implausible on its face. Truth is an affirmative defense, and the burden shall be on the defendant to prove the truth of the allegation by clear and convincing evidence.”

Dan has moved to dismiss the complaint by challenging the law on First Amendment grounds. How should the judge rule?

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Question No. 3

Please write a short answer to questions A and B. Each question is worth 25 points.

A. Columbia Public High School sponsors a Mock Trial team as one of its regular school activities. Before each trial in the Mock Trial competition the Mock Trial Coach gathered the students in the Courthouse Hallway for final instructions and preparation. At the end of the gathering the Coach knelt beside the Courtroom Door and offered a prayer for the team, inviting students to hold hands and bow their heads. One student objected to the prayer and left the gathering in protest, but the others remained. The Mock Trial then went forward as scheduled. When the school superintendent learned that the Coach had offered a prayer before the Mock Trial, the coach was suspended. The coach sued the School District for violating his First Amendment rights to free exercise of religion and freedom of speech. How should the court rule in the lawsuit and why?

B. State X passes a law prohibiting holding a parade, assembly or demonstration without a permit. A permit application must be approved by the county Review Board, made up of the local sheriff, district attorney and chief of police of each city or law enforcement jurisdiction. Each permit application is presumed valid, unless good cause is found to deny it. Good cause is not defined in the law, being left to the decision of each local board. Mr. Jones applies for a permit, saying he is organizing a protest of gun violence after the latest school shooting. The Board denies his application based on his ten-year-old arrest for resisting a police officer who was breaking up a demonstration in protest of a Police shooting which Jones had also organized. That charge was filed against him, but ultimately dismissed with no conviction. The Board states that it considers him a threat to law enforcement because of that arrest. What constitutional issues will Jones likely raise in a lawsuit challenging the denial of a permit, and how do you believe the court should rule? Briefly discuss.

C. Please answer the Multistate Bar Exam (MBE) embedded in Exemplify. Read each question carefully and choose the best answer even though more than one answer may be "correct". Review your answers for accuracy before you finish.

QUESTION 1 - OUTLINE ANSWER

- I. Does Dr. Anton have standing and will she prevail in her lawsuit against Sunstate for violation of the constitutional right to privacy?
- A. Standing:
- Injury: Loss of income from occupation, interference with right to practice profession;  
Causation: state statute prohibiting abortion and possession of devices/medication caused injuries to Dr. and patient;  
Redress: Court injunction can prevent injuries and redress harm  
Plus 3<sup>rd</sup> party standing on behalf of patients seeking abortion: close Dr. Patient relationship, etc.
- B. Conclusion re standing?
- C. Violation of Constitutional right to perform an abortion on a patient with life-threatening pregnancy and no surviving fetus: see below (same analysis as Betty)
- II. Betty v. Sunstate: (standing given in facts, no need to address)  
Constitutional challenges and Responses to Statute: Prohibition of abortion
- A. Violation of Right to an abortion
- 1) Plaintiff argues: fails rational basis test per *Dobbs* case:  
No legitimate state interest in prohibiting abortion of fetus not capable of being born alive; No rational relationship to any legitimate state interest; It is irrational to require patient (Betty) to endure risk of death, pain and further injury by carrying fetus to term only to die before birth.
- 2) Government argues: Legitimate state interest in preserving life of unborn fetus as long as possible, and in regulating medical procedures; prohibition of abortion is rationally related to interest in prolonging life of unborn, protecting woman from psychological injuries caused by abortion and injuries caused by abortion process.
- 3) Conclusion?
- B. Ban on Travel to obtain abortion: Violation of Betty's Fundamental Right
- 1) Plaintiff argues: Supreme Court has held that U.S. residents have a



fundamental right to travel interstate Saenz v. Roe). This is violated by Sunstate's ban on leaving the state to obtain an abortion. Saenz v. Roe should not be overruled based on Stare Decisis.

2) Government arguments: The Right to travel established in Saenz v. Roe should be overruled as applied to abortion restrictions based on *Dobbs* case: Criteria used in *Dobbs* leads to this result: Saenz v. Roe was egregiously wrong because....; the quality of its reasoning is exceptionally weak to obtain abortions because...., Saenz holding is unworkable because....; Saenz has negative effects on other areas of law because...; and there is insufficient evidence of reliance on the right to travel to obtain abortions because abortions are unplanned. Therefore, Saenz v. Roe should be overruled.

Rational basis test applies to the prohibition on leaving Sunstate to obtain an abortion.

C. Rational basis test analysis applied to Travel restriction:

1) Plaintiffs: No legitimate interest in banning travel outside of state for any purpose; Not rational to allow one state to restrict abortion access in another state where abortion is legal.

Furtherers no legitimate government interest to ban travel.

2) Government: Legitimate interest in regulating abortion access to protect life of the fetus and safety and health of the mother. Rationally related to state's legitimate interest in banning all abortions and ensuring competent medical treatment for health of mother and baby.

Deference to Government is needed when legislature acts within states' authority .

III. Likely Rulings of Supreme Court?

QUESTION 2 - OUTLINE ANSWER

1. **Issue:** does this statute violate the First Amendment Free Speech Clause because public officials have too low a burden to prove defamation?

2. **Rule:** Under *NY Times v. Sullivan*, public officials must prove actual malice by clear and convincing evidence to prevail in a defamation case, and presumed liability violates the First Amendment Free Speech Clause.

3. **Analysis:**

a. As a civil matter, not involving a challenge to state action, it would seem that the Constitution would pose no barriers. But the Supreme Court has held that torts between private parties may implicate the Constitution because litigation of these claims requires state action in the form of court involvement. (*See Shelley v. Kraemer*)

b. A school board president is a public official, so *Sullivan* applies.

c. Under the law, actual malice is presumed, so that violates *Sullivan* which requires that public officials prove malice by clear and convincing evidence.

d. There is also no intent requirement. "Inherently improbable or implausible statements" are presumed malicious. That, too, violates *Sullivan*, which requires a showing that the defendant knew or acted in reckless disregard of the falsity of the statement.

e. There's also a vagueness problem because what exactly is an inherently improbable or implausible statement? Even if the burden of proof is upheld, how can speakers assess whether what they're saying is inherently improbable or implausible? This will chill speech. (I

a. see this as a tangential issue, but if a student addresses it and applies strict scrutiny, I would give credit here).

b. *Sullivan* further rejects putting the burden on the defendant to prove the truth of the allegation because of the Court's insistence that the First Amendment be given some "breathing space." This statute flips that on its head, and it is even more likely to chill speech as a result.

c. Furthermore, the burden on the defendant is to prove the truth by clear and convincing evidence. In *Sullivan*, the C&C burden is on the plaintiff, and that serves to protect speech. Placing this heightened burden on the defendant will further chill speech.

2. **Conclusion:** The Court should grant the motion and dismiss the complaint.

Constitutional Law – ALL CAMPUSES

ANSWER OUTLINE

SPRING 2023

Professors Welsh/Zulfa/Schrier/Sommers/Miranda/Wagner/Ruskell

A full outline answer will be prepared, but in summary here are the issues raised:

Question 1: Requires analyzing abortion bans under the rational basis test after Dobbs (is it rational to have no exceptions to the ban, even when mother's health and safety are at risk and the fetus cannot survive? What is the state's legitimate interest?), and the right to travel as a fundamental right using Dobbs analysis;

Question 2: Requires students to address challenging the New York Times v. Sullivan rule for 1st amendment analysis of a public official's defamation claim. Justice Thomas and other conservative justices have advocated for overruling NY Times to allow greater liability and many states are legislating broader liability. Also, Should an enumerated right (free speech) be analyzed based on "original meaning" as the Court ruled in the NY Rifle v. Bruen case? (see Prof. Schrier's more complete Outline attached).

Question 3: (A) tracks Kennedy v. Bremerton School District re public employee's free exercise and free speech rights to pray at official school settings and events.

(B) Requires analysis of a licensing system requiring a permit to engage in free speech activities, applying the test for prior restraints and unconstitutional burdens on free speech.



## QUESTION 3 - OUTLINE ANSWER

- A. Following *Kennedy v. Bremerton School District*, the court would probably strike down the actions of the District Superintendent to suspend the Mock Trial coach as an unconstitutional violation of both the coach's freedom of speech and his right to free exercise of his religion. The prayer is not government speech; though it is at a school sponsored activity it is still private speech not endorsed by the school district (per *Kennedy*). The court has held that avoiding establishment of religion is not a compelling government interest sufficient to justify regulating speech based on its religious content. Also, the coach's suspension and any regulations authorizing suspension of the coach for praying at school are not neutral laws because they single out religion and are not generally applicable because they apply only to religion and not other actions, so the *Smith* test does not apply and strict scrutiny is required. Strict scrutiny cannot be met as analyzed above. The *Lemon* test has been discredited, but still cannot be met since the effects of district's action inhibit religion, and a historical analysis as now required by *Kennedy* does not support discriminating against religion in schools.
- B. A license or permit requirement to engage in free speech activities requires the government to prove an important reason, clear criteria with little official discretion, and procedural safeguards. Here a permit must be approved by a review board with no definition of "good cause" to deny it, leaving unfettered discretion in the Board members and no clear criteria to give notice to the public. The board here denied Jones's permit application based on a 10 -year -old arrest after which the charge was dismissed, and arguably violates Jones's right to free speech in order to prevent him from organizing a protest of gun violence; no evidence proves Jones was a threat to law enforcement. Finally, there are no procedural safeguards provided in the permit statute, and it will be held to be an unconstitutional prior restraint on free speech.

1)

## **1. Dr. Anton**

### **Standing**

Third party standing requires that the third party have a close personal relationship with the party in question, and that the first party not be able to assert their rights.

Here, Dr. Anton has a close relationship with Betty and any other patient of hers that would like an abortion, since she is their doctor and they are her patient. Betty might have the ability to assert her rights in court, but other patients might not, through fear of being put in the spotlight or lack of means to challenge. The state will argue that Dr. Anton does not have standing since all of her patients are allowed to challenge the statute on their own, and they will have the ability too since Betty is doing that. Most likely the court will find Dr. Anton's arguments more persuasive.

Dr. Anton has standing to challenge the statute.

### **Fundamental Right**

If a fundamental right is infringed there must be a strong justification for the infringement subject to strict scrutiny, which means the government has the burden of showing that the statute is necessary and the least restrictive means of achieving a compelling government interest. If the right infringed is not a fundamental right, the rational basis test applies, meaning the statute only has to be rationally related to a legitimate government interest. Fundamental rights no longer include the right to an abortion. However, the right to freely travel is still a fundamental right.

Dr. Anton will be losing a lot of her business if she is unable to provide abortions. However there is no fundamental right to having a job or employment, and the right to travel is not really in reference to her, since she is not the one seeking an abortion. There is no fundamental right of Dr. Anton's being infringed.

### **Procedural due process**

If the government deprives someone of life, liberty, or property, they must first have given the person due process. Due process includes notice, a meaningful opportunity to be heard, and a neutral decisionmaker, at minimum. Loss of a job can be a property right that is infringed, if it is a government job that is contracted, or there is history of being allowed to keep the job.



Here, Dr. Anton will argue that she will lose her job since she cannot perform abortions anymore, which is what she does at her job. The government will argue that she can still do other things at her clinic, since as a doctor she is licensed to do other healthcare. The statute going into effect will be sufficient notice, since the legislature enacted it, which means it had to be announced and then go through the proper process to be enacted. Dr. Anton is getting her meaningful opportunity to be heard by initiating this lawsuit, which she has standing to do. The decisionmaker will be neutral since it is in court. Even though the type of job that Dr. Anton has is not a protected one, she still had all the process due to her.

## **2. Betty**

### **Fundamental Right**

If a fundamental right is infringed there must be a strong justification for the infringement subject to strict scrutiny, which means the government has the burden of showing that the statute is necessary and the least restrictive means of achieving a compelling government interest. If the right infringed is not a fundamental right, the rational basis test applies, meaning the statute only has to be rationally related to a legitimate government interest. Fundamental rights no longer include the right to an abortion. However, the right to freely travel is still a fundamental right, and the right to make medical decisions is a fundamental right.

Here, abortion is no longer a fundamental right. As such the standard is the rational basis test. As for the first two parts of the statute, Betty will say that the government does not have a legitimate interest in what women do with their bodies, and so any statute preventing abortions is not rationally related to a legitimate interest. The government will argue that there is a legitimate interest in ensuring that children are born and not aborted, perhaps to ensure that the state has a continuing tax base. This is a legitimate government interest and the statute is rationally related.

The right to make medical decisions is a fundamental right. Betty will argue that getting an abortion is for her health, since she has a condition that will endanger her life. And she has the right to make decisions that will protect her life. The government will argue that abortion is not healthcare, and so Betty doesn't have a fundamental right. The right to make medical decisions to protect one's life is a fundamental right, and most likely the court will find that way as well. If so, then the state must go through strict scrutiny. The government has a compelling interest in ensuring the health and wellbeing of their citizens, including unborn children that will become citizens. However, it does not make sense to force someone who might die from childbirth, and the child dying as well, to go through with it. The compelling interest doesn't work if two people die instead of one. There is no

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compelling interest in forcing Betty to go through a life threatening birth with no hope of a healthy child being born. The statute will fail strict scrutiny based on the right to make medical decisions.

As to the third part of the statute, the right to travel freely between states is a fundamental right. The government has the burden of showing that preventing people from going to other states for an abortion is necessary and the least restrictive means of achieving a compelling interest. Here the government will argue that they have a compelling interest in ensuring that no abortions are done by their citizens, but there is rarely a compelling reason to prevent someone from leaving your state. Betty will argue that her right to travel supersedes any government interest, compelling or not, even if it is specifically to get an abortion.

The court will uphold the first two parts of the statute, but strike down the third part.

### **Equal Protection**

If a suspect or quasi suspect class is denied a fundamental right based on their classification then the infringement must be subject to either strict or intermediate scrutiny depending on the classification. Suspect classifications include race or national origin. Quasi suspect classifications include gender and legitimacy. Intermediate scrutiny requires that the government show the statute is substantially related to an important government interest.

Here, the statute prohibits abortions, which Betty will argue in effect are discriminatory to women. The government will argue that the statute applies to everyone equally, so there is no equal protection issue. Most likely there is an EP issue, since there is a discriminatory effect on women. As a quasi suspect class, the standard for the government is intermediate scrutiny. The government has the burden of showing that the statute is substantially related to an important government interest. The government will argue they have an important interest in ensuring that all children are born in their state. They will say that it is important to have children, and that abortion will negatively affect the population, and the mental and physical health of its people. This is an important interest. Betty will argue that the government does not have any important interest that is served by banning abortions, since abortion is a private thing for women. The statute is substantially related to the government interest in the health and wellbeing of its citizens, since abortion can have deleterious effects on both physical and mental health.

Most likely the government will win on the equal protection question.

### **Procedural Due Process**

### Rule Supra.

Here, Betty has a liberty interest in being able to move freely around the country, which is being infringed by the statute. The government will use the arguments supra as to Dr. Anton's job, that Betty had all the due process afforded to her. Betty will argue that since her freedom to travel is a fundamental right, there must be strict scrutiny. As analyzed above, the government will fail strict scrutiny when trying to prohibit someone from traveling freely.

The government violated Betty's due process rights.

### **Substantive Due Process**

Fairness of a law must be subject to strict scrutiny if it implicates a fundamental right.

Here, the right to travel is being infringed, so the government is bound by strict scrutiny. As discussed above, they will fail the test.

The government violated substantive due process.



2)

**Does Paul's suit under state law violate Dan's First Amendment rights?**

The First Amendment protects the freedom of expression, including the freedom of speech, freedom of assembly, and freedom of the press. Restrictions regarding speech are split into two categories: content-based and content-neutral. Content-based restrictions limit some speech due to its substance and are required to pass strict scrutiny (law must be narrowly tailored to serve a compelling government interest with no less restrictive alternative). Content-neutral restrictions limit speech regardless of its substance and are required to pass intermediate scrutiny (law must serve an important government interest). Laws restricting speech cannot be vague or overly broad; the law must only include what is necessary and must give notice so that a reasonable person will know what is prohibited under the law.

Some speech is not protected under the First Amendment, such as incitement (words that have a likelihood of inciting imminent lawless activity), fighting words (words that tend to cause an immediate disturbance of the peace), true threats, and obscenity (sexual content analyzed under the three-part Miller test). The Miller test requires a showing that (1) a person applying the reasonable community standards finds the work appeals to the prurient interest, (2) the work depicts sexual content in an offensive way as defined by state law, and (3) work lacks serious literary, artistic, political, or scientific value.

The law appears to be facially content-neutral because it is applicable to the public at large, but what is being prohibited must be considered: negative statements. Plaintiffs only sue for defamation when their reputation is at stake due to negative comments from the defendant. The state statute requires the factfinder presume actual malice in cases of defamation, which means any negative comments against the plaintiff are presumed to be malicious. This makes the statute a content-based restriction that targets criticism or other negative comments made by others. Thus, the statute must pass strict scrutiny.

Paul will argue the statute is narrowly tailored to serve the compelling government interest of maintaining the peace of society and preventing malicious slandering of others. However, Dan will rebut this by saying the law requires the factfinder in *all* alleged defamation cases to presume actual malice, which is overly broad. The court will likely agree that the statute is overly broad and, thus, does not pass strict scrutiny.

However, Paul will argue Dan's insult is unprotected under the First Amendment because it constitutes obscene words. Under the Miller test, Dan's "pedophile" insult towards Paul could potentially be considered overly prurient because a pedophile is usually someone with a sexual attraction to children, which a reasonable person would find to be offensive and overly sexual. The state statute in this case requires the allegation be "inherently improbable or implausible", and there is no evidence of Paul ever being a pedophile, so the



statement is offensive in the way defined by state law. Finally, using the word "pedophile" in this particular instance has no literary, artistic, or scientific value. Dan could argue it has political value, but that is a far fetched argument.

In conclusion, the court is likely to find that the statute does not pass strict scrutiny and Dan's speech constitutes unprotected speech under the First Amendment.

**Does Paul qualify as a public figure or public official for purposes of a defamation claim?**

A public official or public figure can only recover in a defamation case if they can prove with clear and convincing evidence the falsity of the statements and the actual malice of the defendant. (*New York Times v. Sullivan*.) Actual malice means the defendant knew of the falsity of the statements or acted in reckless disregard of the truth. Private individuals are given more protection, so the burden of proof in a defamation case involving a private citizen is lower.

A public official is someone such as the president, who holds an office that places them in the public eye. A public figure is someone who holds themselves out in the public eye, such as Kim Kardashian or the president of a particular organization that frequently interviews on the news, whether for a specific purpose or in general. Here, because Paul holds the position of president on the school board, it can be assumed this was a position he was elected to be in. He most likely had to participate in an election, potentially campaign, and meet with some people who could vote for him. Paul will argue this is insufficient to establish him as a public official. Dan will refute this by arguing that Paul put himself in the public eye by (1) running for the position; (2) becoming elected; and (3) holding board meetings with "public comments" portions. As Dan will successfully argue, Paul literally invited the public to speak with him and the rest of the board. It is likely Paul qualifies as a public figure.

Because Paul is a public figure, he will have to prove Dan acted with actual malice, meaning Dan either knew of the falsity of the statements or acted in reckless disregard of the truth. There is no evidence that Paul was or ever had been a pedophile, so Paul will argue Dan acted in reckless disregard of the truth. Dan will argue it is true because "sex" and "middle school students" do not ever belong in the same sentence, but he neglected to understand that it is sex *education* to teach them about their changing bodies, and not literal sexual acts with children.

Thus, Paul is likely to succeed in a defamation claim because Dan acted in reckless disregard of the truth.

3)

**ANSWER A**

**FREEDOM OF SPEECH**

The first amendment protects the freedom of speech, expression, press, and association.

**PROTECTED SPEECH-Two Restrictions: Content Based (Strict Scrutiny) and Neutral Based (Intermediate Scrutiny)**

Content Based is at issue when govt seeks to restrict speech because of its content, subject matter or viewpoint. Strict Scrutiny places the burden on govt to seek legislative action when it is necessary for govt to achieve such interest, narrowly tailored, and is the least restrictive means to achieve that interest.

Neutral Based is at issue when govt seeks to restrict all expression regardless of its content and viewpoint. Intermediate Scrutiny places the burden on the govt to seek legislative action that is substantially related to a govt important issue and relates to less protected speech such as, commercial speech and defamation.

Here, based on the facts provided, this issue will be analyzed under the Content Based Restriction and Strict Scrutiny analysis because the issue presented deals with violations of Freedom of Speech and the Free Exercise Clause.

All burden shall fall on the govt to prove a compelling state interest.

**FREE EXERCISE CLAUSE**

Protects an individuals right to lawfully practice their own personal religious beliefs and are free from govt punishment in doing so. Constitution may not mandate nor permit that the govt suppress religious expression.

Lemon Test is replaced with historical practices and understandings.

*Kennedy* is governing law today. US Supreme Court ruled that Kennedy's Free Speech and Free Exercise rights were violated for kneeling for prayer after a game.

Here, the facts resemble much as to the Kennedy case. The facts indicate that Coach only offered/invited the team to a prayer AT THE END of instructions and preparation and the

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competition proceeded on schedule. The student who objected simply left the gathering and did not participate. The facts do not indicate that said student was punished nor was student REQUIRED to join Coach for prayer. Additionally, the facts indicate that the Mock Trial Team is a REGULAR school activity and before EACH TRIAL Coach gathers/invites the team to join him in prayer this triggers the Historical practices and Understandings element necessary for Coach to prevail on this issue. Because the Lemon Test is no more and Kennedy is the new governing case, Coach will likely prevail and win against the School District for VIOLATING his First Amendment rights to free exercise of religion and Freedom of Speech.

Thus, for all the reasons mentioned above, the court will rule in favor Coach.

### **ESTABLISHMENT CLAUSE**

The govt may not establish a religion.

Not Applicable Here but necessary to mention.

### **PROCEDURAL DUE PROCESS**

1) Notice 2) Meaningful opportunity to be heard 3) Neutral decision maker.

Here, it may also be argued as to whether Coach received procedural Due Process.

Therefore, for all the reasons mentioned above, the court will rule in favor Coach.



## **Jones v. State X**

### **(1) Content-Based Restriction**

Content-based regulations prohibit some speech on the basis of its subject-matter/viewpoint and is subject to strict scrutiny.

Here, the facts show that State X passed a law prohibiting holding a parade, assembly, or demonstration without a permit. This is not considered a content-based regulation because the facts do not show that there is a specific subject-matter or viewpoint that is being communicated.

### **(2) Content-Neutral**

Content-Neutral regulations refer to laws that apply to all expression without regard to the substance or message of the expression. It is subject to intermediate scrutiny.

State X passed a law prohibiting holding a parade, assembly, or demonstration without a permit. They were not specific in the type of specific expression or substance that is being prohibited. As such, the law will be deemed content neutral because it is prohibiting parades, demonstrations, and assemblies broadly. The facts are not clear as to their reasoning, but State X will have to show that

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their law serves an important government interest that is substantially related to what they are trying to accomplish.

### (3) Prior Restraint

A prior restraint is an order (such as an injunction) or a licensing scheme that seeks to prohibit speech before it has occurred. It will be invalid unless justified by a societal harm or pursuant to a contract.

Here, State X required parades, assemblies, and demonstrations to take place after a permit has been acquired. This is considered a prior restraint because State X is prohibiting speech before it occurs. Mr. Jones will argue that this is an infringement on his freedom of speech and that no permits should be allowed to host parades, demonstrations, or assemblies. However, State X will argue that they have a valid justification for requiring permits because they may want to stop multiple parades from taking place or they may want to keep track of demonstrations and assemblies so that no two groups conflict at the same time.

As such, the prior restraint will be held to be valid.

### (4) Procedural Due Process

Under the 14th Amendment Due Process clause, no person shall be deprived of life, liberty, or property without due process of law. This requires a showing that (1) there was a deprivation of a protected interest; (2) without due process protections (notice and meaningful opportunity to be heard); and (3) without a neutral decisionmaker/process.

Here, the facts show that Mr. Jones applied for a permit but was denied because of his history with resisting a police officer. However, the facts further state that the charge was ultimately dismissed with no conviction. Without evidence, the Board considered Mr. Jones a threat to law enforcement. Mr. Jones' procedural due process was violated because he was deprived from communicating his application request -- as the facts state that his application was just denied because of his "history". Further, he had no notice and meaningful opportunity to be heard regarding his application. State X may argue that the decision was made by a neutral process - permit applications are approved by the county Review Board, made up of diverse community members. As such, they will argue that Mr. Jones' permit was denied in a justified manner. However, the facts state that each permit application is presumed valid, unless good cause is found to deny it. There was no good cause in



this case as Mr. Jones' history with police was dismissed without charges but the Board still considered Mr. Jones a threat.

As such, Mr. Jones will be able to show that his procedural due process rights were violated.

**END OF EXAM**