

MCL – HYBRID JD PROGRAM

CONSTITUTIONAL LAW II – Section 1

FINAL EXAMINATION

SPRING 2025

PROF. DAVE KING

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 four short answer 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.

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CONSTITUTIONAL LAW II  
Prof. King  
Final Examination Spring 2025

Question No. 1

Hopewell Township Public School District offers its Hopewell High School students a Music class that students can take as an elective. Students are encouraged to choose an instrument and receive instruction from the faculty teaching the class each semester. At the end of each semester, the Music teacher and each student taking the class conducts an end of semester concert that takes place after school hours in the High School's theater. Other students of Hopewell High, as well as other students in the school district, and family members of the students performing in the concert comprise the majority of the audience for the end of semester concert. Mr. Beauregard, this year's Music teacher, put on the concert as usual on the stage of the High School theater. After the big finale, Mr. Beauregard took the podium, thanked the audience, encouraged them to stay for refreshments, and directed them to the back of the theater where tables were set up with cookies and punch. As the students gathered up their instruments and the audience members stood up and began filing to the back of the theater, Mr. Beauregard picked up an acoustic guitar, sat on a chair in the center of the stage and began to play the Christian ballad, "Amazing Grace." Though the guitar was not amplified and the microphones had been cut off following the concert, Mr. Beauregard also began to sing the first verse to accompany his guitar playing. He sang,

"Amazing grace/ how sweet the sound/ that saved a wretch like me/ I once was lost/ but now am found/ was blind but now I see"

Several audience members heard Mr. Beauregard's song and returned to their seats to listen. Other audience members became angered by the display. Some shouted loudly at the stage, saying phrases such as, "what is this?," "who do you think you are?," and "I didn't come here for this!" One of the audience members shouting at the stage rushed at the stage, but was tripped by one of the audience members who had taken a seat to listen to Mr. Beauregard. A scuffle between the two audience members quickly turned into a brawl as other audience members joined the fray. Following the concert, the school district fired Mr. Beauregard for violating the school district's policy against employees undertaking religious acts at school events. Mr. Beauregard has filed suit claiming violation of the First Amendment to the United States Constitution.

Analyze each of the issues Mr. Beauregard is likely to raise in his First Amendment claims and any arguments that the Hopewell School District is likely to raise regarding Mr. Beauregard's actions and its response thereto. State how the U.S. Supreme Court is likely to rule on each issue raised, and why.

Question 2

A local independent theater operating in the City of Magaville has for over thirty years shown lesser known films and documentaries. These films are often not run by the larger theater chains but they are films that the theater owner, Ms. Eberta Siskelson, believes have serious artistic and social merit. Though her theater is not often full, she manages to make a living between the meager ticket sales and the sizeable Arts grant she gets from the City. Without the Arts grant from the city, she would be unable to afford to keep her theater open. Though the films Ms. Siskelson runs in her theater are rarely sexual in nature, she has decided to show, for the last month, a documentary about the lives of sex workers in a nearby U.S. State where prostitution has been legalized. She decided on this film because it has received success among critics and film reviewers, and has also won awards at various film festivals in other U.S. States. Though the film focuses on the plight of the sex workers, it contains graphic depictions of sex, graphic language, and copious nudity.

The City of Magaville has the following zoning ordinance: “[n]o adult theaters in the City of Magaville may operate within 1,000 feet of any church, park, school, single- or multiple-family dwelling unit.” Ms. Siskelson’s theater is located in downtown Magaville’s historic quarter across the street from a City park. When the city was founded in 1947, the park was beautifully landscaped with playgrounds and benches. In the last ten years, however, the city has fallen into disrepair and its playgrounds serve to house the City’s unhoused population.

When the mayor of Magaville discovered that the theater was showing the film, he ordered the cancellation of the theater’s Arts grant. In an interview with the local Arts magazine, the mayor stated, “[t]he City of Magaville should not be in the business of bankrolling smut masquerading as Art. If Ms. Siskelson thinks sex workers need more rights, she can peddle her smut somewhere else.” He then ordered local law enforcement to enforce the City’s adult theater zoning ordinance against Ms. Siskelson’s theater. Ms. Siskelson received notice that her permit to operate her theater would be revoked for violation of the City’s adult theater zoning ordinance. Ms. Siskelson brought suit citing the First Amendment to the U.S. Constitution.

Analyze the Constitutional issues presented by the City’s zoning ordinance, the mayor’s revocation of the theater’s Arts grant, and the arguments each party is likely to make. State how the U.S. Supreme Court is likely to rule on each issue raised, and why.

Question 3

Write a short answer to questions A, B, C, and D; Each question is worth 25 points.

- A. The State Department recently issued a foreign travel restriction to the small foreign country of Grayskull citing dangerous conditions due to local unrest and rioting. Though Mr. Cringer has since become a U.S. Citizen, he was born in Grayskull and had already purchased a flight to visit family there when the State Department issued its travel restriction. Mr. Cringer discovers that his flight has been canceled and brings suit claiming that the government has violated his fundamental rights. What level of scrutiny will the reviewing court apply and how is it likely to rule on Mr. Cringer's fundamental right claim?
- B. The U.S. State of Franklin, unable to fund its statewide elections due to low volunteer turnout, issues a poll tax of \$.25 for each of its 30 million residents to raise the money it needs to fund its elections. Each voter must either pay the poll tax at the time of voting, or provide proof of having paid the poll tax as a precondition to voting. A local resident forced to pay the poll tax brings suit to challenge the State of Franklin's poll tax. How is the court likely to rule on Mr. Cringer's lawsuit?
- C. An incarcerated person in the State of Whiteacre was severely injured when an officer was escorting him down a flight of stairs and failed to catch the incarcerated person after the incarcerated person slipped on the first step. The incarcerated person sued claiming that the officer's negligence deprived him of life, liberty, and property in violation of his due process rights. How is the court likely to rule on the incarcerated person's claim and why?
- D. A Blackacre city ordinance prohibits three or more persons gathering in any public place and there conducting themselves in an annoying manner. One of its senior residents, annoyed by the sound of a group of skateboarding youths in the park next to her house, called the police to complain about the skateboarders. Though the police could not hear the skateboarders until they were standing very close to them, they cited the skateboarders under the city's ordinance based on the senior resident's complaint. One of the skateboarders challenges the citation, claiming that the ordinance is unconstitutional. How is the court likely to rule and why?

## Constitutional Law Final Exam Answer Outline Spring 2025

### Question 1

1. Religious free speech's double protection under Kennedy- content-based restriction? viewpoint discrimination?, hostile audience reaction? Speaking as part of his government duties? Balancing of interests analysis.
2. Free exercise under Kennedy- private or public religious exercise? Did the district burden his sincere religious practice pursuant to a policy that is not neutral or generally applicable? Directed toward a religious practice?
3. Establishment clause under Kennedy-students will cite the historical practices and understandings test (whatever that means), but should discuss whether there was coercion and is coercion still prohibited after Kennedy?

### Question 2

Zoning- City of Renton/Young and the "secondary effects" doctrine and whether the zoning ordinance is content-neutral or content-based (even clearly content-based ordinances have been upheld when low value sexual speech is involved, or considered not to be "content-based" but instead directed toward the secondary effects. The ordinance is fairly analogous to City of Renton, but will there be secondary effects when the park is already run down?) is one film enough to qualify as an "adult theater?"

General discussion of rules governing low-value sexual speech, obscenity (is there serious artistic/political value? Is it a local or national standard?), Siskelson's arguments re: viewpoint discrimination and whether that overcomes the low value given to sexual speech- does the film qualify? If not, what scrutiny applies and why?

### Question 3:

Q 3 A tests students' knowledge of the fundamental right to travel and, specifically, that only rational basis applies to foreign travel claims. Cringer will almost certainly lose on rational basis.

Q 3 B payment of fee/poll tax as precondition to vote violates the EP clause/fundamental right to vote

Q 3 C negligence will not suffice to state a claim under the DP clause

Q 3.D the ordinance is unconstitutionally vague (Coates v. City of Cincinnati)

1) *Separate these out and IRAC each one. It doesn't do the reader any favors to have a wall of legal rules without any context.*

1st amendment: government cannot infringe on free speech and the 14th amendment applies it to the states. Speech is words, conduct or symbols that convey a message. There is a right to not be compelled to speak and a right not to be prevented from speaking (prior restraints).

Here, there is a 1st amendment free speech issue because the teacher is trying to sing and play on the guitar the christian ballad amazing grace. The school is trying to limit this by firing him and saying this is not allowed because it is a religious act against school policy.

Content based speech: are restrictions that are subject to strict scrutiny where the government must prove a compelling interest that is narrowly tailored to be the least restrictive means. The government has the burden. A law is content based if law applies to particular speech due to the topic or message being portrayed.

Viewpoint based: are subject to strict scrutiny. This is where the law restricts one viewpoint but not another.

Content neutral: are ordinary time place manner restrictions that don't consider content and are allowed as long as intermediate scrutiny is satisfied. It must be narrowly tailored to serve an important government interest.

Here, there is content based regulation because the speech is limited due to the sole reason of being religious. Thus, strict scrutiny applies because it only limits employees religious speech.

The school will argue that this is neutral because it is generally applicable to everyone and doesn't allow any religious speech. However, this is viewpoint bias because it is only for no religion.

No. No particular viewpoint is addressed - just religion in general. So, yes, content-based, but probably not viewpoint discrimination. You get strict scrutiny either way though.

Does it meet strict scrutiny?

government must prove a compelling interest that is narrowly tailored to be the least restrictive means.

Here, the policy is made to ensure that there is no endorsement of religion which is important to not violate the endorsement clause. Further, it is to ensure safety of the kids and people to not incite any fights and is to allow for efficient school purposes like learning and all other school activities. The P will argue a compelling interest in the right to free speech, right to freedom of religion. That there is a big burden on the speech of religion because they cannot express it at any time, place, manner as an employee at school. The school will argue that they can do it outside of school but not inside. Thus, there is a compelling government interest.

However, P will argue this policy is not the least restrictive means because they should not have it over broad and vague since it prohibits all religious activity. Instead they can limit by stating they have to go to the side of the auditorium stage to play it to themselves. Or can limit other reasonable time, place, manner restrictions instead of all religious activity.

Thus, this policy does not meet strict scrutiny because it doesn't meet least restrictive means and thus violates Free speech cl.

Good content analysis, but organization could use some work (IAC each issue)

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Overbreadth: law regulates substantially more speech than the constitution allows.

Here, the P will argue that the policy is overbreadth because it limits all religious speech but the constitution allows for <sup>religious</sup> free speech when it is private. Here, they limit all but its over broad because instead they can limit where it can occur, the time or the manner instead of just all.

Good

Thus, the court will hold there is an overbreadth violation.

Vagueness: the law is unconstitutional if a reasonable person can't tell what is prohibited or allowed.

P will argue that this is a vague policy because the reasonable person wouldn't know when they can conduct their speech. This overbroad policy of prohibiting all employee religious speech will create censorship of employees not knowing when or where they can conduct the speech so they will end up restricting themselves due to not wanting to violate the policy.

Thus, the court will hold there is a vagueness violation.

Incitement of illegal activity: government can adopt rules that punish speech intended and substantially is likely to cause imminent illegal activity.

The government will argue that the policy is in place because they need to ensure neutrality and ensure that there is no imminent threat of illegal activity. Here, the school will say

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that if religious speech is allowed, then people who hear the speech and not agree with it will create disruption of the school and cause people to fight. They will say that this actually happened as seen the audience members actually got mad by stating "what is this? Who do you think we are? I didn't come here for this!" Then, the audience became angry, tripping people, and starting a brawl. The school will argue that this shows that the school was right that the inclusion of religion would cause a riot to start. However, the courts are not looking to what actually occurred. Instead they look to see if the conduct would cause imminent illegal activity to the reasonable person. Here, this wouldn't cause imminent threat because the teacher excused the audience to go eat and drink and it was after the concert was over that he then got his guitar and sang. Further, the guitar and mic was not amplified so he was only singing to himself. The words he sang further wouldn't incite activity to fight because his words are amazing grace how sweet the sound that saved a wretch like me i was lost but now im found was blind but now I see. This is not calling for people to commit a brawl or do any illegal activity.

Thus no violation.

Good

Fighting words: within the context of the speech does it amount to fighting words? These are true threats directed at individuals that would reasonably convey that the speaker would harm the receiver.

These are not fighting words because they aren't directed at anyone in the audience. Even if they were directed at the audience, the words he sang further wouldn't be directed to infer that he would want to inflict harm to another because his words are amazing grace how sweet the sound that saved a wretch like me i was lost but now im found was blind but now I see.

Good

Thus no violation.

Limited public forum: government property not historically for speech but opens it for a limited purpose. Occurs when the government opens it for an intended purpose. Rational basis must be met which means the government must have a rationally related interest and the law can't be viewpoint biased.

Non public forums: These are non historically open for speech. And can regulate speech to reserve the property for its intended use but must be viewpoint neutral and rationally related to a legitimate government interest. Schools are non public forums. They can have viewpoint neutral speech regulations and can punish for disrupting school activity.

Here, the school is a non public forum because its not historically used for speech but the school opened up for a limited purpose of doing the school concert. That there is no intent to open for any other message or intent so they can restrict other types of speech. Further, that they can regulate to ensure the purpose of running the school is fulfilled. Thus, the school can have viewpoint neutral regulations as long as they are rationally related to an important government interest.

Thus, it is a nonpublic forum.

Free exercise clause: individuals have the freedom to believe what they want and the freedom to act (but this is not absolute). A neutral law that is generally applicable to all

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doesn't violate free exercise if it affects religion. The law must be designed to interfere with religion in order to have a violation.

Religious belief must be sincerely held and genuine and occupy the life of the believer.

Here, P will argue that his free exercise to religious freedom is violated because he is being restricted to not do any religious activity at school. He will argue that it is not generally applicable because it relates to the Kennedy case where there the school wouldn't allow the coach to kneel and pray on the field after the football games. There, the courts held that Kennedy could kneel because it was on his own private behalf off to the side, not with other students, silently and after the game. Here, is the same because it is after the concert, after he excused all the students and audience to go get food and drinks. Only after did he to himself pick up the guitar and sing Amazing grace. He will argue that this is similar because he is exercising his own beliefs and not coercing it on anyone else because it is privately to himself.

However, the government will argue that this is similar to the Santa Fe case where they wouldn't allow the student led prayer over the football game speakers even if it was voted in by the majority because then it is viewpoint based since only the majority religion gets to speak. Even though it was after school and voluntary attendance, it was perceived as if the school, the minority players and everyone there endorsed the speech. Here, the D will argue it is similar because although the students and audience attending is voluntarily there, they did not reasonably believe there would be Christian songs being played. Further, this is generally applicable because it is a policy to not allow any religious activity at school.

Thus, the court will likely hold the policy violates the free exercise clause because it is overbroad because there should just be some time, place, manner restriction.

*why?*  
*Concluding*

Establishment clause: Government can't promote, endorse, affiliate itself with religious beliefs. The Lemon test used to be used but now we use the historical traditions test. The government may not coerce individuals to engage in religious acts. They must be neutral to religions and not favor or disfavor one. The courts look to the historical practices like the intent of displays, is there a long period of time, is there a new meaning, would removing it no longer be neutral, and we look to the overall message.

Here, the government will argue that this is similar to the santa fe case where they wouldn't allow the student led prayer over the football game speakers even if it was voted in by the majority because then it is viewpoint based since only the majority religion gets to speak. Even though it was after school and voluntary attendance, it was perceived as if the school, the minority players and everyone there endorsed the speech. Here, the D will argue that the school can regulate the religious activity because they cannot endorse, affiliate or promote religion. They will say that the song is historically a christian song and that by playing it after the concert while everyone is there eating and drinking, it will be perceived like the audience, non christians, the school, and the students all endorse its christian message. The overall message would be perceived as endorsement of the song because it seems like it is played as part of the choir concert, like a song for the the after dinner/ refreshments.

→ really only applies to prayers @ school events

However, the p will argue although its historically christian song it has a long passage of time from when it was made and this is a choir class so it is appropriate to sing the song.

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That this has a different meaning of just a nice choir song that is used a lot for choir due to its nice melodies. Further, that the guitar and mic was not amplified and he waited until after the concert finale, thanking the guests, and letting them go get food. Thus, it would be perceived as just a private session that he was conducting by his own behalf because if it was part of the dinner then the equipment would be on so everyone can hear it clearly.

Thus, the court will likely hold that it not violating the establishment clause because it is generally neutral. - free exercise rule - don't mix those up.

very good on context and issue - spotting. organization could use some work. Analysis is solid.

90

2)

**freedom of speech:**

Congress shall make no law abridging the right to freedom of speech, made applicable to the states through the 14th Amendment. however, not all speech is protected speech.

Mrs. Siskelton v. Magaville

**unprotected speech/less protected speech;**

unprotected/less protected speech is speech that can be regulated by the government. this speech includes, fighting words. words of incitement, defamation, obscenity, and nudity. we will address obscenity here. for a claim of obscenity/sexual conduct to be unprotected and therefore unconstitutional the content must be: (1) of a purulent nature, (2) have no artistic value, scientific value, educational value, and social merit (3) judged on a <sup>community standard</sup> ~~community~~ standard of the state.   
 natural

here, Mrs. Siskelton (Ms) will argue that the documentary that she is showing is for artistic value because it has won numerous awards and success among critics and film reviewers. she will also argue that the movie has social merit because it is a documentary about the plight of the sex worker, arguing that this is important information that society can benefit from because they will learn about what they would have to do as a sex worker and what risks and rewards are involved. she will also argue that she has a reputation for showing movies that have serious artistic and social merit and this movie is no different. Magaville will argue that the graphic nature of the film with the depictions of sex, the graphic language and copious nudity crosses the line from artistic and that the content is purelent in nature and based on the community standard this is no social value in showing this movie. and that it and that the ordinance does not violate MS first amendment constitutional rights to speech because this speech unprotected by the

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constitution. here, the court will likely agree with the city that this unprotected speech because of the obscenity and sexual conduct along with the copious amount of nudity that have no artistic value to the [community or society].

*Really? It's a documentary about an imperfect social issue...*

City's Zoning Ordinance:

*natural*

**Content based regulation:**

*standard when evaluating artistic/scientific literary merit. It has won awards.*

a content based regulation is a regulation that attempts to regulate speech for its subject matter. for the state to regulate content based speech it must prove that it has a compelling state interest in achieving that goal must be narrowly tailored to achieve that interest.

here, MAGA will argue that it has a compelling state interest in keeping sexual conduct and obscenities, along with nudity out of family neighbor hoods. Ms will argue that the neighborhood Maga is trying to protect is no longer the beautiful place that it used to be and that it is severely run down. MS will also argue that the only reason the city is enforcing the ordinance is because it offensive to the mayor. Ms will be able to back this up because of his interview in the local arts magazine. MAGA will argue that this the ordinance is for the secondary effect of keeping the unprotected speech that involves nudity and sexual conduct away from the schools. the court will likley rule in MAGAs favor because this ordinance even though the ordinance may be content based the regulation is for the secondary effect of protecting the children and families in the neighborhood from the effects that this type of movie content will bring.

*isn't the mayor's statement viewpoint discrimination?*

*(good)*

revocation of the theater arts grants:

the permit:

permits for use in a public forum should have clear guidelines, the denial of the permit must have a detailed reason for the denial, and the applicant should have the right to appeal the denial within an appropriate timeframe.

here, the fact pattern is soft on whether or not MS had clear guidelines for the permit and what she could or could not show in her movie theater. she will argue that she that she has maintained her permit for the past 30 years and Maga has not given her due process to convince the court why she should not lose her permit that also revokes the finding of her business denying her basic right a living. she will also point out the the mayor is a city official and should no be the person who decides that she gets to keep her permit or not. the mayor and MAGA will try and argue that MS movie selection is considered non-protected speech and the law doesn't apply here. however, the court will find that because Ms did not hve due process when it came to the permit, the revocation of the permit is unconstitutional.

Conclusion:

the court will consider MS claim to the violation of her first amendment rights is not valid because the movie content is considered unprotected speech. however the court will rule in Ms favor against MAGA for revoking her permit without due process.

excellent on content (although see national standard vs. community standard), though I would have liked to have seen a specific discussion of the viewpoint discrimination and whether that would be enough to overcome the secondary effects.

85

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3)

A.

**Rule:** Right to Travel: The right to travel throughout the United States is a fundamental right. Citizens have the right to (1) travel freely between all states, (2) be welcomed as a visitor when visiting those states, and (3) be treated as any other resident of the state upon deciding to permanently reside there.

Yes,  
100

The right to travel is a fundamental right, where the government must meet strict scrutiny when they infringe on this right, However, the right to foreign travel is not a fundamental right and is therefore analyzed under rational basis, where the court gives the government extreme deference to what is rationally related to a government interest. Here, the government has an interest in keeping their citizens safe. The foreign country has dangerous conditions of local unrest and rioting. The government preventing citizens from traveling to that country is rationally related to the government's interest in keeping their citizens safe.

The court will review under the rational basis test and will hold that this foreign travel ban is constitutional.

B.

Yes,  
100

**Rule:** Right to Vote: The right to vote is a fundamental right. A state cannot impose poll taxes for any federal election ever.

Here, this is a statewide election, not a federal election. The protection from poll taxes under the fundamental right to vote does not apply to statewide elections, only federal elections. This is because a federal election affects the nation as a whole, and therefore if certain states implement poll taxes, that could have an effect on the voting outcome of

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the entire nation. However, the Constitution is not prevent individual states from issuing poll taxes for statewide elections.

The court will likely rule that the State of Franklin's poll tax is constitutional because it is a statewide election, rather than a federal election.

C.

**Rule:** Procedural Due Process: (1) Was there a Deprivation? (2) Was it a deprivation of Life, Liberty, or Property? (3) Was it without due process of law?

Yes.  
100

When analyzing if there is a deprivation, the government's acts must be more than negligent, and must be intentional or reckless. Here, the incarcerated person is admitting the officer, a government employee, was negligent in allowing him to slip and fall. The officer was not intentional or reckless, and therefore there is no deprivation. Secondly, the incarcerated person will argue that there was a deprivation of liberty, as he was severely injured and therefore cannot freely move around. This argument may stand. Lastly, in order for there to be due process of law, the incarcerated person must be afforded a notice and a hearing. Here, he is suing the officer in court, and therefore he has been provided due process.

Because the officer's acts were negligent rather than intentional or reckless, there is no deprivation and therefore his right to due process has not been infringed upon. The court will rule in favor of the government.

D.

Yes.  
100

**Rule:** Vagueness/Over-Breadth: A law is considered vague when a reasonable person would not be able to tell what speech is permitted and what speech is not permitted. A law is over-breadth if it regulates substantially more speech than the constitution allows.

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Here, the statute prohibits three or more people from gathering in any public place and conducting themselves in an annoying manner. "Annoying manner" would be considered a vague term. What may be considered as annoying to some people may not be annoying to others. The term annoying is too vague to be constitutional because there is not one clear definition of what all people would find to be annoying. The law also prohibits people from gathering in groups of three or more people. This is considered over-breadth. The constitution does not allow the government to limit how many people can gather in public. The Free Speech clause does not allow government to prevent speech by limiting how many people can gather.

This law will fail on both vagueness, and over-breadth and will be held as unconstitutional. The court will rule in the favor of the skateboarders.

**END OF EXAM**

$$100 + 100 + 100 + 100 = 100$$

Exam:

$$\begin{array}{l} Q1: 90 \\ Q2: 75 \\ Q3: 100 \end{array} \left. \vphantom{\begin{array}{l} Q1: 90 \\ Q2: 75 \\ Q3: 100 \end{array}} \right\} = 95$$

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