

Constitutional Law II—Spring 2025

Kern County College of Law (Prof. Bennett)
& San Luis Obispo College of Law (Prof. Wagner)

Final Exam

Instructions:

Read each question carefully. This exam tests your understanding of the material covered in Con Law II. You do not need to include any matter from Fall (Con Law I).

Question 1 is a 1-hour question, worth 100 points.

Question 2 is a 1-hour question, worth 100 points.

Question 3 consists of four short answer questions, each worth 25 points, and you should spend one hour on all four, that is, approximately 15 minutes each.

Be sure to discuss both sides of the argument—do not be conclusory.

Question #1

The Daley City Star newspaper reporter, Megan Kind, received a voice mail from a disguised voice, “Hey Megan, I know you cover the courts. You need to know that Charlotte Brown is hiding evidence that Winnie Adams killed Beau Diddley. I have proof.”

Charlotte Brown was the District Attorney, Winnie Adams was the owner of a well-known local restaurant, and Beau Diddley was a local rock ‘n roll guitarist and a member of Beau’s Backstreet Boys—the headliner every weekend at the biggest nightclub in town.

Beau’s body had been found days before in the middle of a downtown intersection at 2 a.m. and the coroner determined he had died from multiple stab wounds. Megan knew that Charlotte and Winnie were best friends and had been since kindergarten. Megan also knew that Winnie and Beau had been dating for several years, but the rumor was that Beau had a new girlfriend.

Megan was intrigued and saved the voicemail. The next day, she received another voicemail from the same disguised voice, “Hey Megan, if you’re interested in what I called you about, meet me at the city parking garage, level C-1 tonight at 10.” When she arrived, Megan saw a darkly clad figure riding a scooter, who drove toward her and tossed an envelope at her feet. Inside were investigation reports, including one reporting that Winnie had confessed to killing Beau in a fit of rage over his new girlfriend. Another report indicated Charlotte had read the confession but was discounting it. At a press briefing the next morning, the police chief and Charlotte agreed they had no suspects in Beau’s murder.

Megan immediately drafted a story for the front page. The editor was intrigued but concerned, so he sent the story, the envelope and its contents, and the two transcribed voicemails to you—the attorney for the Daley City Star.

What constitutional concerns arise, if any? What legal advice do you give the editor and Megan? Discuss.

Constitutional Law

Spring 2025

Professors C. Bennett (KCCL) & S. Wagner (SLO)

Question #2

Mary is a devout Roman Catholic. She attends mass every day and believes the Roman Catholic Church, headed by the Pope in Rome, is the only true Christian church. She refuses to go to weddings, baptisms, funerals or any other activity in any church but a Catholic church.

Debbie and Darrell are high school sweethearts who married while in college. Both are seeking theology degrees and upon graduation will become licensed United Methodist ministers.

Mary owns a bakery and makes cakes for all occasions. Debbie and Darrell and their extended families have always purchased baked goods from Mary, including beautifully decorated cakes for many family events, including Debbie and Darrell's wedding.

The state in which Debbie, Darrell, and Mary live and in which Mary does business has an anti-discrimination statute, which among other things, covers religion: "All persons within the jurisdiction of this state are free and equal, and no matter what their ... religion... are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever."

Debbie and Darrell are planning a large reception to celebrate their ordinations. The party will be for friends and family, as well as their parishioners at the local United Methodist Church where they currently serve as youth ministers.

Debbie went to Mary's bakery and discussed having elegant cake prepared for the celebration. When Debbie told her the Bible verse she wanted on the cake and gave Mary a picture of the "Cross and Flame"—the United Methodist Church logo—to pipe onto the cake, Mary refused the order. She told Debbie, "The only true church is the Roman Catholic Church. If you do not follow the Pope, it is a sacrilege. I cannot support anyone who supports any reform ideology. I will not support the United Methodist Church."

Mary's words stung Debbie. She left the bakery, went to another bakery and placed the order. When she got home, she told Darrell about her experience. They agreed she should sue Mary for religious discrimination.

What are Debbie's claims? Discuss

What are Mary's defenses? Discuss

Question #3

#3-A.

Beth suffers from an incurable disease that will cause her death within the next two years. A new drug could provide a cure. The drug is currently in animal testing; if those tests are successful, human testing will begin, but not for at least three years. Beth has petitioned the various federal agencies responsible for the testing protocols to obtain permission to receive the drug now. She is willing to waive all legal rights and provide informed consent. The agencies have all denied her request because of safety concerns. She sued the federal government for permission to take the drug. What is Beth's best constitutional argument? What result?

#3-B

In response to a series of studies in federal prisons showing that prisoners who engage in weekly worship are less likely to re-offend, the Attorney General sends an administrative order to the wardens that they are not to burden religious worship or practices by inmates in any way. Several wardens are troubled by this order because of certain religious practices they see in the institutions including a group who claims White Supremacist views are a religion. The wardens fear prison violence as a result. The wardens ask the Attorney General to repeal the order. What should the AG do and why?

#3-C

City has a series of municipal ordinances. One restricts loud music that interferes with peaceful enjoyment anywhere in City. And yet another restricts speeches in the business district to between 6:00 p.m. and 8:00 p.m. David opposes the mayor of City. He decides to paint a sandwich-type sign reading, "The Mayor is a dumb fraud. Kick him out!" with a caricature of the mayor as an elephant being kicked in the rump as he rolls down a hill. Can the mayor stop David's protest (in whole or in part, why or why not), if David protests by wearing his sign, while singing "The Times They Are a' Changin'" and playing his electric guitar and harmonica on the street in front of city hall during business hours?

#3-D

For many years, during the month of December City Hall has hosted a 20 foot tall Christmas Tree (sponsored by the local interfaith council), a similarly sized Menorah (sponsored by the local Jewish temples), and a 6 foot diameter Earth with a banner reading "Mother Earth Fellowship wishes you a happy Winter Solstice" (sponsored by the Mother Earth Fellowship, a neopagan religious group). The newly elected Mayor believes the symbols are all unconstitutional. The Mayor asks you, a prominent local attorney, if he should allow the symbols this December. What advice do you give and why?

ANSWER OUTLINE

CONSTITUTIONAL LAW – KCL & SLO

Profs. Bennett & Wagner

Q1:

- I. Students may be tempted to run directly to *Times v. Sullivan*, but they need to explain why they get there. The first issue is what is the editor's concern? It is truth or falsity of the story and what happens if it is false.
- II. Libel
 - A. ***False and unprivileged; writing, printing, other fixed representation; exposing someone to hatred, contempt, ridicule, or causing them to be shunned or injured in their occupation.***
 - B. ***Application***
 1. *Don't know if it is false but intended to be printed in newspaper.*
 2. *Shunned or injured in occupation (Charlotte)—can anybody trust this DA. Hatred, contempt, or ridicule (Winnie)—murderer.*
 3. *Real issue is privilege*
- III. First Amendment issue is "privilege"
 - A. ***Why is there possibly a privilege?***
 1. *Freedom of speech and press*
 2. *Matter of public concern (murder)*
 - B. ***About a public figure or private figure?***

Students need to discuss *NY Times v. Sullivan*.

 1. **Charlotte—is she a public figure?**

Charlotte is the District Attorney, typically an elected official, therefore a public official (public figure). This affects the Burden of Proof.
P must prove "actual malice" by clear and convincing evidence—knowledge of falsity or reckless disregard of its truth or falsity.
What facts tend to show malice? No evidence it is actually false.
Reckless disregard: Unverified reports received from an anonymous source, not from police or DA's office. Charlotte and police chief say no suspects, which contradicts reports.
 2. **What should Megan do to avoid actual malice—advice re Charlotte?**

Call Charlotte and report consequences: Charlotte's denial or her failure to respond
 3. **Winnie—is she a public figure?**

Winnie is a business owner. Popular restaurant. Girlfriend of local celebrity guitarist. Does that make her a public figure—no. So what's her burden of Proof
P must prove negligence in publishing the false statement, meaning D failed to use reasonable care to determine its truth or falsity.
What facts tend to show Negligence: Unverified reports received from an anonymous source, not from police or DA's office. Charlotte and police chief say no suspects, which contradicts reports.
 4. **What should Megan do to avoid negligence—advice re Winnie?**

Call Winnie and report consequences: Winnie's denial or her failure to respond. Might take more than that because negligence is a lower standard than recklessness. May need to seek corroboration.

Q2:

- I. This question requires the students to grapple with competing first amendment rights. Students should talk about the fact that the cake and website cases concern state statutes that protect fundamental, but unenumerated rights. Here, the statute is applied to protect an enumerated right.
- II. Debbie's claim is violation of discrimination act.
 - A. **Debbie cannot make a 1st A claim—Mary is not a government actor.**
 - B. **State prohibits businesses from discriminating on the basis of religion**
 1. *Mary expressly said she would not accept the order because of Debbie's religion*
 2. *Students might discuss that Debbie, as a minister, should be conscious of 1st A issues, not want to burden another person's free exercise.*
- III. Mary's defenses
 - A. **1st A – Congress shall make no law respecting establishment of religion or interfering with the free exercise thereof.**
 - B. **14th A – applied to the states**
 1. *State antidiscrimination statute interferes with Mary's free exercise rights*
Mary has a right to practice her religion as she sees fit
Smith test
Court is moving away from Smith test – Masterpiece, 303—Strict Scrutiny?
 2. *State antidiscrimination statute interferes with Mary's free speech rights*
Freedom to avoid speech
Freedom from compelled speech
 3. *But isn't Mary's refusal interfering with Debbie's rights of religion and free speech? How should the court handle the direct competition between enumerated rights?*

Q3-A:

Is there a fundamental Right? What is the fundamental right? Is there sufficient justification for the infringement? (animus, state's interests). Is the infringement sufficiently related to the state's purpose? No court case has ever concluded that people have a fundamental right to medical care, a particular form of medical care, or a right to take any drug they desire.

Q3-B:

While government may not interfere with free exercise absent a legitimate governmental interest, the government has a legitimate interest in the safety of prisons. The AG's order is too broad ("in any way")—oversteps what the cases say about free exercise. The Wardens have raised a legitimate concern about what that might mean for safety. The AG should rescind the order. Rescinding the order would not change the inmates' rights to freedom of religion.

Q3-C:

1st A, through the 14th.

A. Are the restrictions content based?

1. *Music—no, doesn't matter what kind of music or where and not outlawed.*
2. *Speeches—maybe, why that restriction in the business district? Maybe legit for businesses to operate, but also restricts political speech to a time when not very many people are around.*

B. If content neutral, is it legit time place manner restriction?

1. *Loud music at anytime, probably because of the injury to persons that can result—hearing, can't think or function. No rule against music, only how loud it is. So maybe the Mayor can make him stop playing the guitar?*
2. *Speeches during business hours? Make him come back at 6? But if not neutral?*

Q3-D:

I. **Students should recognize the Lemon Test would apply but for Kennedy and discuss both.**

A. Under Lemon: 1. secular purpose; 2. neither advances nor inhibits religion; 3. avoids excessive entanglement.

1. *Secular? Traditional with both religious and secular interpretations (tree & menorah), earth is secular. All put up together, similar size, no focus on particular dogma/doctrine.*
2. *Neither advances/inhibits: Nothing tells people to go to a particular church nor believe anything in particular.*
3. *Entanglement: Administrative support/government location. Admin may constitute excessive entanglement, so maybe unconstitutional. But case where creche was included with other symbols met the test. So unlikely.*

B. Under Kennedy: Does conduct conform to historical practices and understandings?

1. *Conforms to historical practices: city has historically included all 3; similarly sized;*
2. *question whether celebration of Winter Solstice is historical practice/understanding, but the symbol and message are secular. So unlikely to be unconstitutional.*

85

1)

To: Editor

From: Attorney for the Daley Star

Re: What Constitutional concerns arise in the story about DA Brown and the Murder of Guitarist/Legal advice to the editor?

The DA may file a defamation suit against the paper for reporting on the issue of the DA's alleged cover up on the murder of the guitarist. Below is a legal analysis of defamation as it intersects with the first amendment protections of freedom of speech. Ultimately, the DA will be unsuccessful in a defamation suit for the reasons set forth below. If Winnie Adams files a defamation suit, she will also be unsuccessful because the murder is a matter of public concern and she is arguably a public figure based on her ownership of the local well-known restaurant and dating the band member of a popular band.

STATE ACTOR/PLAINTIFF'S INJURY

The Constitutional limitations on individual rights only apply to government actors. There must be a state actor for Constitutional protections.

Here, the state likely (most/all states) has laws allowing a plaintiff to recover for defamatory statements that cause harm to the plaintiff's reputation. This is a state actor, thus constitutional protections apply.

FIRST AMENDMENT: FREEDOM OF SPEECH and Freedom of the Press

The Freedom of Speech is an individual right enumerated in the constitution. It limits government interference with private speech. Content-based regulations--those aimed at regulating the topic or viewpoint ideology message are subject to strict scrutiny and must be narrowly tailored to achieve a compelling government interest. Content-neutral regulations--those aimed at regulating something other than the message are subject to intermediate scrutiny and must be narrowly tailored to achieve an important government interest. Unprotected or less protected speech must meet rational basis scrutiny. Facial challenges can be made to challenge regulations for overbreadth, vagueness, prior restraint, and licensing unfettered discretion. Vague and overbroad regulations are entirely void.

LESS PROTECTED SPEECH: DEFAMATION

Defamation is a category of less protected speech. Defamation is a false statement that causes injury to the plaintiff and plaintiff's reputation. In private matter involving a private individual, the standard for defamation is

libel here right?

negligence. However the Court has ruled that the burden is greater for matters of public concern or involving public figures. *Ny Times v. Sullivan* sets for the criteria of actual malice for a defamation suit involving public figures and public matter. Plaintiff's recovery for a suit requires plaintiff show actual malice. Actual malice requires malice by the defendant and the knowledge of falsity of the statement or reckless disregard for the truth, such as failing to do due diligence to determine the truth of the information.



PUBLIC FIGURE

DA

Here, the reporter initially received anonymous information from a source with a disguised voice claiming that the elected official in the highest public justice office--the DA--is hiding evidence in a murder. The DA is the highest elected official in the Justice department. She is both an elected official and in a high profile public job. Thus the DA is without question, a public figure.



Winnie Adams

Jan

Winnie Adams is arguably a public figure for two reasons. First, she is the owner of a well-known restaurant business in town. Second, she is/was dating the band member of a popular band. Business owners are influential in a community. Band members have a celebrity appeal in a community and bring the community together for music. Who rock band members date is often a matter of public interest. And the court has rules that matters of public interest are fairly broad. Thus, Winnie Adams is a public figure.

Best to treat as close-chik

POZ

MATTER OF PUBLIC CONCERN

The subject of the anonymous tip is a local murder. This is a matter of public concern for several reasons. First, the alleged killer is the owner of a well-known restaurant. Second, the victim is a guitarist of a local band that plays as a headliner every weekend at the biggest nightclub in town. This suggests a lot of local support for the band and a favorite entertainer being murdered would be a matter of public concern because he is beloved by the local townspeople because he is popular enough to be headlining every weekend. Third, the location of the murder was in the middle of a very public place--the downtown intersection. It might be the most public place in town and many people frequent that intersection in the daytime and are likely to be thinking about the murder every time they are downtown. Fourth, the manner of the murder is brutal and very personal because the victim was stabbed several times. The brutality of the murder mean that the townspeople are going to be thinking about this all of the time until the killer is caught because they will be afraid until someone is brought to justice for this crime.

1-P-A-C (+)

FIA (+)

Thus, this is a matter of public concern.

1-P-A-C (+)

Privilege
discussion?
press?

KNOWLEDGE OF FALSITY/RECKLESS DISREGARD FOR THE TRUTH

Here, if the reporter would have printed a story with just the initial voicemail as evidence "Charlotte Brown is libel hiding evidence that Winnie Adams Killed Beau Diddley. I have proof" this would be an issue for the paper because this alone is not the standard the courts require to show the reporter attempted to research the truth before recklessly printing a story. However, the reporter met with the tipster, read reports and investigations that both showed there's some truth that Winnie confessed to the murder and that the DA had knowledge of this, but then did a press conference and declared to the public that there were no leads in the case. If the reporter prints a story with this evidence, it satisfies that she did not print the story recklessly and did due diligence to determine the truth of the initial accusations about the DA and who the killer is.

Thus, reporter's speech will be protected for her belief that the information is true and that she made every effort to determine the info was true before she goes to print.

in the form of corrob?

MALICE

There is no evidence to suggest malice on the part of the reporter.

Conclusion: Defamation suits by the DA and the public figure Winnie Adams are not likely to succeed because the reporter's statement are protected by Free Speech, actual malice required.

END OF EXAM

2)

ISSUE: Is there a State Actor?

STATE ACTOR/PLAINTIFF'S INJURY

The Constitutional limitations on individual rights only apply to government actors. There must be a state actor for Constitutional protections.

Here, the state anti-discrimination indicates all persons within the jurisdiction are free and equal and with regard to religion "are entitled to full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever." This statute is a state action.

Here, Debbie was harmed by a violation of this statute by the bakery owner because the bakery owner is denying her right to have a cake for her religious ordination celebration. The statute can be used by Debbie to claim a statutory and civil rights violation by Mary's refusal to make the cake.

Debbie's Claims?

EQUAL PROTECTION

The Equal Protection Clause is applied to state and local governments through the Due Process Clause of the Fourteenth Amendment protects individuals from unreasonable discrimination and prohibits the government from treating similarly situated people differently. Reasonableness depend upon the classification scheme (suspect or quasi suspect) or fundamental right (enumerated and unenumerated). Suspect classifications and fundamental rights are subject to strict scrutiny--narrowly tailored to achieve a compelling govt interest, in the least restrictive means. Quasi suspect classifications are subject to intermediate scrutiny--narrowly tailored, important government interest. All others are rational basis.

Here Debbie will argue that her civil rights are being violated by the bakery owner if the state allows the bakery owner to refuse to make a cake for Debbie based on her religious beliefs. Assuming the statute is used by the baker to justify the refusal to make the cake, and the government agrees with that justification, Debbie can claim she is being treated unequally on the basis of religion. Religion is a fundamental right, and subject to strict scrutiny. The government has a compelling interest in not violating the free exercise of religion because it is an enumerated right worthy of the highest protection in the Constitution and it promotes diverse religions in the community. The problem with this statute is that is is so broad with this language that it fails to be narrowly tailored: "are entitled to full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever." For the same reason, it cannot be least restrictive. Therefore Debbie will prevail in an argument

how is this violated statute is sweeping - broad

in the potential suit vs. m?

that her civil rights are being violated if the government tries to use the statute as a shield to allow the baker to deny making the cake.

FIRST AMENDMENT: FREEDOM OF RELIGION

vs. m?
m = state actor?

The Freedom of Religion protects an individual right to practice religion and limits government interference with the right to practice religious beliefs. There are two clauses under the Freedom of Religion: Free Exercise Clause and Establishment Clause.

FREE EXERCISE

The Free Exercise Clause is an individual right that protects an individual's right to practice their religious beliefs and limits government interference with the practice of religion. Religion is a sincerely held belief that occupies a place in a person's life parallel to that of an orthodox religion. (Seeger) The government cannot challenge the validity of the religious belief. However the government may scrutinize the sincerity of that belief. The government may not target religion with its regulations. However, neutral laws of general applicability that incidentally burden religion are permitted. (Smith) Neutral laws of general applicability must be content neutral are subject to intermediate scrutiny.

Religion

Sincere

✓ Here, Debbie's religious belief appears to hold a place in her life parallel to an orthodox religion because she is becoming an ordained minister in that religion and has a theology degree. Thus this is a religious belief.

Sincerely Held Belief

✓ Here, Debbie's believe in her religion appears to be sincere because she an ordained minister in that religion and has a theology degree and plans to dedicate her life to this religion because she has also married a person with the same religious background.

Debbie's religious beliefs are sincerely held and her fundamental right to exercise her United Methodist religion are being infringed upon if the government allows the baker to refuse service to Debbie based on her religious beliefs.

Mary's Defenses?

good

✓ Here, Mary is potentially being forced to create a message on the cake and compelled speech even in the creation of such a personal cake. This violates Mary's right to Free Speech and Free Exercise of her religious beliefs. Both

are solid defense for Mary. However the stronger argument is the Free Speech violation and she should focus on that Constitutional violation.

FIRST AMENDMENT: FREEDOM OF SPEECH

The Freedom of Speech is an individual right enumerated in the constitution. It limits government interference with private speech. Content-based regulations--those aimed at regulating the topic or viewpoint ideology message are subject to strict scrutiny and must be narrowly tailored to achieve a compelling government interest. Content-neutral regulations--those aimed at regulating something other than the message are subject to intermediate scrutiny and must be narrowly tailored to achieve an important government interest. Unprotected or less protected speech must meet rational basis scrutiny. Facial challenges can be made to challenge regulations for overbreadth, vagueness, prior restraint, and licensing unfettered discretion. Vague and overbroad regulations are entirely void.

F/A
⊕

FacIAL ATTACK: Vagueness, Overbreadth = statute entirely void

A statute is vague when an ordinary person of reasonable intelligence cannot interpret its meaning. An vague statute is completely void because it chills speech and does not meet due process. A regulation is overbroad if it prohibits a substantial amount of protected speech.

Here, Mary has a good argument that this statutory language is so vague and overbroad that no one can understand how to comply. This language could mean anything..."are entitled to full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever." What are advantages? And it applies to all business establishments; does this mean religious bookstores that offers prayer service must comply and provide prayer service in another religion to a patron of a different faith? Does it mean that ordained ministers of one faith taht provide a business service of performing ceremonies must provide ceremonial services to a person of a different faith that they have a religious diagreement with? This statute as written will likely be struck down by the court as being overbroad and too vague.

COMPELLED SPEECH/FREEDOM NOT TO SPEAK/EXPRESSIVE CONDUCT

Here, if the government forces Mary to make this cake for a religious celebration that she religiously fundamentally disagrees with the message, the government is compelling speech in two ways. First the written Bible words on the cake are literal speech and Mary woudl be forced to write the words. Second, the cake itself is a unique creation for a religious celebration, Celebration cakes are often integral to the celebration itself. Even if it did not have a written religious message, just having to design a personal and cake with religious symbols liek the

Best Arg.

⊕

F/A
⊕

Q: isn't
m's refusal
interfering with
d's pt.s?

cross and flames and the logo of the united church are compelling Mary to speak through her personal and beautiful creations.

Thus this is compelled speech and MARY's right not to speak is protected by the first amendment.

FIRST AMENDMENT: FREEDOM OF RELIGION

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FREE EXERCISE

The Free Exercise Clause is an individual right that protects an individual's right to practice their religious beliefs and limits government interference with the practice of religion. Religion is a sincerely held belief that occupies a place in a person's life parallel to that of an orthodox religion. (*Seeger*) The government cannot challenge the validity of the religious belief. However the government may scrutinize the sincerity of that belief. The government may not target religion with its regulations. However, neutral laws of general applicability that incidentally burden religion are permitted. (*Smith*) *Neutral laws of general applicability must be content neutral are subject to intermediate scrutiny.*

Mary may be able to challenge the law based on being compelled to step foot into a church that is not her church of faith--an action that is fundamentally against her religious beliefs--to make a cake and set it up at the religious celebration.

Religion

Here, Mary has a religious believe because she is a devout catholic and does not step foot in to any other type of church. Going into another place of worship for a different religion is against her faith/beliefs. Being a catholic is also a recognized orthodox religion. Thus her believe is religious.

Sincerely Held Belief

Here, Mary's religious beliefs appear to be sincerely held because she has historically refused to go to weddings, baptisms, funerals, and any type of activity not in a catholic church. Thus her belief is sincerely held.

Government Targeting Religion

Here, the government anti-discrimination statute is not specifically targeting religion because it states that all people in the state are equal and only later mentions religion. However, Mary can probably argue that it's a bit

hostile toward religion because it specifically mentions religion as a category and mentions no other categories such as race or gender.

On balance, the court will find Mary has a sincerely held religious belief and likely find that Mary's free exercise rights are being violated if she is compelled to set up a cake inside the UNited church if she can successfully argue hostility in the statute/singling out religion.

Bal. competing interests - 2 enumerated rights

ESTABLISHMENT CLAUSE

The Establishment Clause prohibits the government from sponsoring or supporting religion. The government cannot favor one religion over another. Government activities that incidentally benefit religion are permitted. In the past, the Court used the *Lemon* test (secular purpose, secular effect, government entanglement) to evaluate Establishment Clause violations. Modernly, after *Kennedy v. Bremerton* the court has determined violations will be decided based on factors such as whether there is government coercion, and whether the government action is aligned with the historical practices, tradition and historical context of the Framers' intent with respect to religion.

Mary may be able to argue that with mentioning only religion in the anti-discrimination statute the state is effectively and actively promoting a religion. Even though it does not promote a specific religion, Mary can argue that it is state sponsorship and endorsement of religion because it is coercing people into compliance--in Mary's case a coercion into going against her faith in support of the United Methodist religion.

Thus, Mary might also have an argument that the statute violates the establishment clause.

blc statute to forces her to comply?

END OF EXAM

3)

A. Due Process - The government may not deny life, liberty or property without due process of the law.

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Fundamental rights are those enumerated in the constitution and unenumerated. They include First Amendment rights, the right to vote, the right to travel, and the privacy rights: child rearing, contraception, marriage, procreation, and the right to refuse medical care. Fundamental rights are subject to strict scrutiny.

Beth's best argument is that she is being denied life and liberty because she will die without the experimental medication. However, there is no fundamental right to experimental medications, especially those that have not made it to the human testing phase, so only rational basis will apply. Therefore, Beth probably doesn't have a viable argument.

yes

B. Freedom of Religion - Free Exercise Clause

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The free exercise clause bars any law that prohibits or seriously burdens the free exercise of religion. However, laws of general applicability that do not intentionally burden religion and advance important public interests are allowable. Any other restriction is subject to strict scrutiny. To be protected, religious beliefs must be sincerely held and of parallel nature to an orthodox belief in God.

It is not the governments role to examine whether religious beliefs are legitimate. For this reason, it is likely that claiming white supremacist views are a religion will succeed.

Strict Scrutiny requires the regulation to be narrowly tailored to a compelling government interest by the least restrictive means available. The prison has a compelling interest in avoiding violence, so the issue is whether the the repeal of the order requiring no religious burdening in any way is narrowly tailored and the least restrictive means. It seems that the prison could find a way to manage the white supremacist group without having to burden everyone else's religious freedom. Perhaps they could post an extra guard before, during, and after the group met.

Or they could make sure the group didn't discuss violence. For these reasons, the A.G. should not repeal the order and instead should ask the wardens to find alternate ways to avoid violence.

AG order too broad? (in any way)

how burdensome?

C. Free Speech - Time, place, manner restrictions

25

The government may enact time, place, and manner restrictions on speech that depend on the forum used for the speech. Public Forums (e.g. sidewalks, parks) and Designated Public Forums (e.g. school classrooms after school hours) may be regulated if: 1. They are content and viewpoint neutral; 2. narrowly tailored for an important government purpose; 3. and there are available alternative channels of communication. Limited public forums (e.g.

community space open for candidate forums) and non-public forums (e.g. jails, post office sidewalks) may be regulated if they are viewpoint neutral and are reasonably related to a legitimate government interest.

a. The city's restriction on loud music that interferes with peaceful enjoyment anywhere in the city likely covers all types of public forums as well as private property.

Content and viewpoint neutral: This is not content neutral because it only restricts music, not other types of speech. It is viewpoint neutral because it doesn't make determinations based on what kind of music it is.

Narrowly tailored for an important government purpose: Peaceful enjoyment is an important government interest because citizens want to be able to relax and enjoy the city. However, it is not narrowly tailored. Restricting "loud" music anywhere in the city at all hours and all days goes beyond what is necessary. Instead the city could instead restrict loud music after certain hours, say 10pm. By not narrowly tailoring the ordinance, they may be defeating the purpose of the ordinance if citizens want to listen to music as part of their peaceful enjoyment.

Alternative channels: By banning loud music at all times and in all places, there are not alternative channels available without leaving the city which seems unreasonable.

Therefore, the restriction on loud music is unconstitutional.

Facial attacks on regulation include vagueness and overbreadth, unfettered discretion, and prior restraint. A law is unconstitutionally vague if a person of average intelligence would have a difficult time understanding what is required. A law is unconstitutionally overbroad if it prohibits both protected and unprotected speech and basically casts too wide a net.

The ordinance is impermissibly vague and overbroad which is unconstitutional. It is unclear exactly what it means by loud and what would interfere with peaceful enjoyment so will have a chilling effect on this type of speech. Someone wanting to play music would not understand what is needed to comply with the law and could easily include more music than is needed to achieve "peaceful enjoyment." Therefore, the ordinance is also unconstitutional for vagueness and overbreadth.

b. The city's limitations on speeches in the business district to the hours of 6pm to 8pm most likely involve a public forum because it likely involves public sidewalks and other open spaces.

Content and viewpoint neutral: this regulation is content and viewpoint neutral because it covers all speeches, not just political speech or religious speech for example.

Narrowly tailored for an important government purpose: It is difficult to determine what the government purpose is for limiting speeches to these particular hours in this particular part of the city. It is likely that there is a limited

audience at this time because people generally go home from work by 6pm. If the government purpose is to limit the speech to when it won't "bother" anyone by removing a potential audience, that is not an important purpose. It is not even a legitimate one. If the interest is important, say to limit congestion on the sidewalks, it must also be narrowly tailored. It is likely that another way could be found besides limiting the allotted time to only two hours.

Alternative channels: Allowing speeches between the hours of 6pm and 8pm is not a legitimate alternative channel. If the only time people are allowed to make speeches is when there is likely no audience, this ordinance will fail the test.

Therefore, the restriction on speeches is unconstitutional.

Because both ordinances are unconstitutional, the mayor will not be able to prevent David from protesting.

D. Freedom of Religion -

no

Free Exercise Clause

✓ The free exercise clause bars any law that prohibits or seriously burdens the free exercise of religion. However, laws of general applicability that do not intentionally burden religion and advance important public interests are allowable.

Establishment Clause

The establishment clause prohibits laws regarding the establishment of religion. The government may not promote or endorse one religion over another. If a regulation is facially discriminatory, it will face strict scrutiny. If not, the court will weigh in with other considerations. Previously, the court used the Lemon test which asked if a regulation had a secular purpose, secular effect, and if it improperly entangled the government with religion. Although the court hasn't brought forth another clear test, it will consider the history and traditions and any coercive effect of the monument, symbol, or practice.

good!

Here, the mayor is trying to eliminate all symbols in the month of December--the Christmas tree, the menorah, and the mother earth with a winter solstice message. Some of the things the mayor should consider are whether the displays are government speech or private speech. Does it look like the government is promoting these symbols and messages, or is it clear that they are sponsored by other groups. The mayor should also consider how it will look to remove them--it might appear that the town is disparaging the religions when it removes their symbols. The town could instead make sure that it is clear who is sponsoring the displays or post some sort of disclaimer. If the displays have been allowed for many years, the displays likely fall under the history and traditions test.

Entanglement?
I-P-A-C?

Additionally, if the town has made the city hall a designated public forum during the month of December, free speech concerns (symbolic speech, T, P, M regulations) might be raised by denying the ability to use the space now.

END OF EXAM