



FINAL EXAMINATION
in
CONSTITUTIONAL LAW

April 22, 1998
2:00 p.m. to 5:30 p.m

Professor Shanor

INSTRUCTIONS

This exam contains four 45 minute questions which will be weighted approximately equally. In order that you may outline and review your answers, or to give you a more leisurely time to answer the questions, you are provided an additional half-hour in which to complete the exam.

This exam is **open book** and may be taken only in rooms assigned for taking this exam. The exam is governed by the Honor Code. If you believe additional information is needed to analyze any question, state what you think is needed and why it makes a difference.

Read, think and organize before you write.

WRITE ALL YOUR ANSWERS IN THE SPACE PROVIDED ON THE ANSWER SHEETS HANDED OUT WITH THIS EXAM. (THREE PAGES PER QUESTION).

WRITE YOUR EXAM NUMBER ON EACH PAGE OF THE ANSWER SHEETS AND ON THE COVER OF THIS EXAM. YOU MUST RETURN BOTH THE EXAM AND THE ANSWER SHEETS TO RECEIVE CREDIT FOR THE COURSE.

GOOD LUCK AND HAVE A WONDERFUL SUMMER!

Question I
(45 Minutes)

Concerned about “run-amok” reproductive technology, the United States Congress passed the following statute:

THE ANTI-CLONING ACT OF 1998

1. FINDINGS:

- (a) Human reproduction heretofore has occurred only through processes in which each individual is created by a unique combination of genetic material from a male and a female;
- (b) Biomedical advances have, for the first time, enabled scientists to clone a genetic duplicate of a human being from the cells of a donor by introducing the donor’s genetic material into an egg or ovum whose own genetic material has been destroyed;
- (c) Unlike natural processes which create genetically-identical twins of the same age, clonors and clonees may be separated in age by a period of years or even decades;
- (d) Reproduction of human beings through cloning poses profound religious and ethical questions for human beings and limits the genetic diversity of the human species;
- (e) Cloning creates difficult legal problems (e.g. “Who is the clonee’s family?”; “Is the clonor-clonee relationship a sibling or parent/child relationship?”; “Is a clonee a ‘person’ or ‘human being’ under United States law?”); and
- (f) The states cannot prohibit cloning on a nationwide basis and have not exercised their powers to prohibit cloning.

2. THEREFORE:

- (a) No state which permits its funds or facilities to be used to facilitate the cloning of human beings shall receive any federal financial assistance related to medical research or health care delivery;
- (b) Any person who knowingly contributes genetic material intending that this genetic material be cloned, any person who contributes an ovum intending it to be used in cloning, and any person who knowingly permits her uterus to receive such genetic material in such an ovum shall be punished by imprisonment not to exceed one year.

Questions:

- 1. Is the Anti-Cloning Act a valid exercise of Congress’s Article I powers?
- 2. Does the Anti-Cloning Act violate the Due Process Clause of the Fifth Amendment (excluding its equal protection component)?

Question II
(45 Minutes)

Camp Spring Lake is a Georgia nonprofit corporation that operates a summer camp for children with disabilities on 300 acres of mountains, valleys, and a lake fed by pure cold spring water. Special facilities, carefully-designed activities, and appropriate medical support services are provided for the campers, 70% of whom are nonresidents of Georgia. Financially, the camp is supported by tuition of about \$400 per week per camper, contributions from private donors, donation of time by volunteers, and income from a modest endowment. In recent years, the camp has operated with a small deficit.

Each year, Camp Spring Lake pays over \$20,000 in real estate taxes to Oglethorpe County, in which it is located. Georgia exempts from local real estate taxes all charitable organizations incorporated within the state “except organizations that charge more than \$100 per week for their services conducted principally for the benefit of persons not residents of Georgia.” The legislative history of this provision shows that the legislature considered the exemption justified as a reduction of social services that state and local entities would have to bear were it not for charitable activities aimed at the state’s needy citizens. Camp Spring Lake, because of its tuition and camper composition, is ineligible for this exemption.

Questions:

1. Do Jack and Jill Hill, residents of Georgia and parents of two Camp Spring Lake campers, have standing to sue Georgia in federal court for not giving the charitable exemption to Camp Spring Lake?
2. Assuming standing exists, does Georgia’s failure to extend the exemption to Camp Spring Lake violate the dormant commerce clause and/or the Hills’ constitutional privileges or immunities?
3. Does the Eleventh Amendment bar the Hills’ suit?

Question III
(45 Minutes)

Assume that in response to public health concerns about tobacco, the United States Congress passes and President Powell signs legislation creating a special commission to investigate health problems caused by tobacco. This Tobacco Health Policy Commission (THPC) is composed of six members, selected as follows: two are chosen by the President of the United States; two are chosen by the Speaker of the United States House of Representatives; and two are chosen by the majority leader of the United States Senate. The authorizing statute states that the THPC is to make policy recommendations to Congress and the President and that Congress and the President must “seriously consider and act with all deliberate speed” in response to the THPC recommendations.

After a year of careful study, the THPC issues a report identifying smoking by those under 18 as presenting the most pressing health problem. The THPC recommends various measures, including a ban on the sale of tobacco to teenagers and restrictions on advertising.

Relying on the THPC report, Congress enacts legislation banning the sale of tobacco products to anyone under 18 years of age. President Powell then issues Executive Order 123 banning the advertising of any tobacco product on any television program whose primary target audience consists of those under 18 years of age.

Questions:

1. Does the THPC violate the separation of powers?
2. Does the President have authority to issue Executive Order 123? [**Note: ignore other issues, such as whether EO 123 violates the First Amendment.**]

Question IV
(45 Minutes)

Assume that the United States Congress recently enacted the following legislation:

SEXUAL ORIENTATION ANTI-DISCRIMINATION ACT OF 1998

1. FINDINGS:

- (a) **Discrimination against gays and lesbians has historically been pervasive, profound, and irrational, and such discrimination continues today;**
- (b) **Because of this history of discrimination and the irrationality of discrimination against gays and lesbians, gays and lesbians constitute a suspect class that merits heightened constitutional protection;**
- (c) **Discrimination by state and local governments is particularly pervasive and sets an improper example for society as a whole; and**
- (d) **Whatever the supposed purposes, governmental actions that discriminate against gays and lesbians generally reflect irrational animus.**

2. (b) THEREFORE:

No state or local government may discriminate in any manner, including employment and contracting, against any person on the basis of sexual orientation.

Question:

Is the Sexual Orientation Anti-Discrimination Act of 1998 a valid exercise of Congress' powers under section 5 of the Fourteenth Amendment?