



Exam Number _____

FINAL EXAMINATION
IN
CONSTITUTIONAL LAW

May 3, 2000
2:00-5:30 P.M.

Professor Shanor

This **three and one-half hour exam** contains three fact patterns and questions related to each fact pattern. The points allocated to each question are provided next to the question.

The exam is **open book**. It may be taken only in **rooms assigned** for taking this exam. The **Honor Code** governs this exam. 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!

Handwritten answers must be written in the **space provided (two lines per point allocated)**.

Computer written answers must be typed using **not more than two typed lines per point allocated** using **12-point or larger type** and **side margins of at least 1 inch**.

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
(60 Minutes)

A. Several large cities sued a number of national handgun manufacturers and local handgun dealers. The complaint, by what the media referred to as “City Governments for Handgun Safety” or “CGHS”, alleged that the manufacturers’ failure to include safety devices on their products and the dealers’ failure to run background checks on prospective purchasers caused the governmental units to incur unnecessary expenses. The alleged expenses from shooting deaths and injuries in their jurisdictions, included salaries of extra police officers to respond to shootings, costs for emergency room services, and welfare support payments to victims of shootings and their families.

During this litigation, all parties stipulated that: (1) handguns and handgun component parts are generally shipped in interstate commerce; (2) the addition of safety locks is expensive but slightly reduces accidental handgun-related deaths and injuries; (3) background checks of potential customers’ criminal records reduce sales of handguns (some do not pass the checks; others change their minds during the delays); (4) none of the CGHS cities has a handgun manufacturing facility in its borders or its state; and (5) all the cities have local handgun dealers within their borders.

CGHS recently settled this lawsuit with the largest handgun manufacturer in the nation, Jones & Westin. The settlement provided that, within one year, Jones & Westin would (1) add safety locks to all its handguns and (2) sell handguns only through dealers who agreed to conduct stringent background checks of prospective purchasers of its products. Further, the agreement provided that CGHS would only purchase weapons for their law enforcement units from Jones & Westin and other manufacturers who agreed to the same safety lock and background check provisions contained in the settlement. CGHS also agreed to become more aggressive in enforcing applicable handgun control statutes and ordinances in their jurisdictions. Trial of the other handgun manufacturers and the dealers is scheduled for September 2000

No sooner had the ink dried on this settlement than a coalition of the National Rifle Association, several handgun manufacturers and dealers (some of whom were defendants in the GHS suit), and several individuals who alleged they used or might use handguns for target shooting and hunting, filed suit against GHS and Jones & Westin. These plaintiffs, promptly dubbed the “Handgun Freedom Coalition” or “HFC” by the media, alleged in their complaint that the settlement violated federal antitrust law and various provisions of the United States Constitution.

Does the settlement violate the dormant commerce clause? (20 points)

B. Assume that Congress has on several occasions considered bills concerning various aspects of handgun safety, including safety locks and background checks, but that none has been signed into law (other than the Brady Bill, which was ruled in relevant part unconstitutional in *Printz v. United States*). Immediately after announcement of the settlement of the CGHS suit with Jones & Westin, President Clinton, a strong supporter

of safety locks, background checks, and other handgun control measures, signed the following Executive Order, #007:

“All federal executive departments and agencies, exclusive of the United States uniformed services (Army, Navy, and Air Force), shall henceforth purchase handguns exclusively from manufacturers and dealers who certify, pursuant to certification provisions to be implemented by the Attorney General, that they will abide by the safety lock and background check provisions of the settlement of the CGHS suit. Any manufacturer or dealer who, once certified, violates the conditions of certification, shall thereafter be debarred from further contracts with any federal executive department or agency.”

Does EO #007 violate the separation of powers? (20 points)

Question II (30 Minutes)

Ames is a state in the United States. Because of its wide sandy beaches and its good weather, Dale Beach, a city in Ames, has become a popular destination for college students on spring break. Many of the residents of Dale Beach have become concerned that during spring break, their community becomes a haven for students who wish to engage in conduct, including sexual conduct, that residents of Dale Beach consider immoral. Many residents have concluded that Dale Beach would be better off if the students went elsewhere for spring break.

After substantial debate, the Dale Beach City Council, “in order to discourage disease, extramarital birth, and immoral conduct, as well as to encourage marriage,” passes an ordinance making it a misdemeanor, punishable by fine of up to \$5,000 and imprisonment not to exceed two weeks, for people who are not married to each other to engage in sexual intercourse within the city limits. The ordinance has been enforced, following plea bargain or trial, several times when individuals came forward to report violations.

Does the ordinance violate the Due Process Clause of the Fourteenth Amendment? (20 points)

**Question III
(90 Minutes)**

In the wake of several highly publicized incidents in which gays and lesbians were the targets of violent acts, Congress held hearings on the problem of crime motivated by anti-gay and lesbian bias. At the hearings, several witnesses testified that state and local police forces did not provide adequate protection for gays and lesbians. The witnesses suggested that the police officers, themselves, often had anti-gay and lesbian feelings and that because of these feelings, the police officers did not adequately patrol areas prone to anti-gay and lesbian violence and did not adequately investigate violent acts against gays and lesbians. After the hearings, Congress enacted and the President signed the following legislation on January 1, 2000.

EQUAL POLICE PROTECTION ACT OF 2000

1. Findings:

- (a) Gays and lesbians are disproportionately the targets of violent crime throughout the United States.
- (b) Because of bias against gays and lesbians, state and local police forces often do not provide adequate protection for gays and lesbians.
- (c) Violent crime against gays and lesbians interferes with the ability of gays to work, shop, transact business and otherwise engage in commerce, including interstate commerce.

2. Therefore:

- (a) In performing their law enforcement functions, including crime-prevention activity and criminal investigation, state and local police forces shall not discriminate based on the sexual orientation of the victim or intended victim of the crime.
- (b) Any person who suffers injury because a state or local police force violates section 2(a) of this Act shall have a cause of action for damages not to exceed \$250,000 against that state or locality.
- (c) In any action brought to enforce this Act, the state or locality may not assert a defense of sovereign immunity.

New Hope is a state in the United States. The National Gay and Lesbian Coalition ("NGLC") organized a weekend symposium at Woody Hollow, a state park in New Hope, for March 17, 2000. The New Hope State Police are the police with jurisdiction over Woody Hollow. A week before the symposium, the NGLC notified the New Hope State Police that it had received threats that anti-gay and lesbian violence

might occur at the symposium. The NGLC also notified the New Hope State Police that some of NGLC's prior events have been disrupted by violent attacks.

The New Hope State Police generally provide police protection for events at state parks. However, no police protection was provided for the NGLC symposium. The symposium events were disrupted by violent anti-gay and lesbian protests, and several of the participants were severely injured. A seminar participant who was injured has threatened to sue NGLC and the symposium organizer, Patrice Robberson.

Invoking the Equal Police Protection Act ("EPPA"), Patrice files suit against New Hope in state court seeking compensatory damages of \$250,000.

- A. Is the EPPA a valid exercise of Congress's powers:**
- (1) To regulate interstate commerce (20 points); or**
 - (2) To enforce the Equal Protection Clause of the Fourteenth Amendment. (20 points)**
- B. Do (1) standing or (2) sovereign immunity bar Patrice's suit? (20 points)**

11/2000

U.S. The statute cannot withstand the requirements of Equal Protection as made applicable to the U.S. govt by the 14th Amendment and Article IV of the U.S. Constitution. The school in Texas may reinstate the courses taught in Spanish that it discontinued as a result of this legislation.

(Mediocre Answer)

The constitutionality of this legislation is dependent upon the equal protection clause and the Court's interpretations of that clause. In this case the court must first decide if a suspect class is addressed by the legislation or if it addresses a fundamental right. The courts have held in the past that there is no fundamental right to education, and they are not likely to find it to be a fundamental right here.

The Court must next look to see if there is a specific class defined by the legislation. It seems to focus on a class of non-standard - English - speakers rather than on any particular suspect class. It is under inclusive as to aliens (some speak English well) and is over inclusive (includes aliens, as well as all others who don't speak standard English, i.e. NAPBE). The result here is a DeFacto discrimination against some Blacks and some Aliens. If same intent to target these groups could be found in the text of the legislation or records of debate then the ct. could find De Jure discrimination and apply strict scrutiny.

Absent a fundamental right, a suspect class, or De Jure discrimination, the Court will have to look to minimal scrutiny to judge the validity of the legislation under equal protection. Minimal scrutiny requires that the court look to see if a legitimate state objective existed for the legislation. The modern view of this has been for courts to accept almost any given objective as legitimate under minimal scrutiny. The court in this case won't look to 1st Amendment objections and will probably accept the objective of making English the official language. The court then must decide if there is a rational relation between the objective and the means the legislation uses to implement it. Here the means is rationally related. The legislation does not have to deal with all aspects of the problem at once and thus, can start by implementing at school level.

If the court were to decide that the legislation did affect a suspect class, either Aliens or Blacks, it would then have to revert to using strict scrutiny to evaluate the validity of the legislation. Both alienage and Race have been held to merit strict scrutiny in investigation when treated as a class (There is a minimal scrutiny exception for alienage when involved in governmental matters but that does not apply here).

Under strict scrutiny the court must find an important objective being pursued by the legislation. Establishing English as an official language will probably face some trouble as for as being important enough to support the restrictions it causes. It must also be decided whether the classifications created and affected by the legislation are necessary for the implementation of it. Questions such as: "Must English be the exclusive language in order to be the Official Language?" "Are there alternative less restrictive methods of