

Exam Number _____

FINAL EXAMINATION
IN
CONSTITUTIONAL LAW

May 3, 2006
2:00-5:00 P.M.

Professor Shanor

This is a **three hour exam**. It contains **three fact patterns** with questions related to each fact pattern (two for the first, one for the second, one for the third). The amount of time allocated will reflect the approximate credit for each question.

This exam is **open book** and may be taken only in **rooms assigned** for taking the 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 or type your answers!

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

GOOD LUCK AND HAVE A WONDERFUL SUMMER!

I.
(100 minutes)

Gambrell is a State in the U.S. The Gambrell legislature approved funding for a public high school intended to serve the “special needs of the State’s gay, lesbian, bisexual, and transgender teens.” At a news conference, Governor Frank Barney stated, “these students have a hard time in the regular schools. They get harassed. Studies show that gay teens have a high rate of depression and suicide. They need a place where they can feel safe and secure so that they can learn. Every young person – gay and straight – deserves an equal educational opportunity in this great State.” The Gambrell Learning Brings Transformation (GLBT) High School opened with an initial enrollment of 100 students. The school’s facilities, staff, and materials were excellent.

Sally Student was an eighth grade student who attended an inner-city Gambrell middle school infamous for its run-down facilities, lack of adequate materials, and large class sizes. Sally’s parents submitted an application for Sally, a heterosexual female, to attend GLBT High. Despite her excellent academic performance, Sally was rejected. The principal of GLBT High wrote to Sally and her parents that the school “reserves its few spaces for gay, lesbian, bisexual, and transgender students.” Sally’s parents sued Gambrell, claiming that GLBT High violates the Equal Protection Clause.

GLBT High proved extremely controversial. Many local and national leaders protested that the school gave “special treatment” to homosexuals and “promoted a homosexual lifestyle.” After legislatures in several other states opened schools similar to GLBT High, Congress passed, and the President signed, this statute:

Values in Education Act (“VEA”)

1. Findings and Purpose:

- (a) Heterosexuality, a tradition of our nation, should be fostered by public schools;
- (b) Children and teens respond to suggestion and pressure about lifestyle choices;
- (c) Schools based on sexual preference injure educational performance, harm the national economy, and undermine the nation’s commitment to equality; and
- (d) The psychological health of children and teens requires exposure to diverse views on the morality of homosexuality, not insulation in segregated schools.

2. Therefore:

- (a) No public school shall employ a student’s sexual preference or orientation as a factor in admission; and
- (b) No federal school funding shall be provided to any state that employs a student’s sexual preference or orientation as a factor for admission to any public school.

(1) Did Gambrell violate the Equal Protection Clause of the 14th Amendment when it funded GLBT High? (20 minutes)

(2) Did Congress have the power to enact the Values in Education Act under (a) the commerce clause, (b) the spending clause, or (c) the 14th Amendment? (80 minutes)

II.
(45 minutes)

New Hope is a state in the United States. The New Hope Health Department recently issued a report entitled "Sex-Selection Abortion in New Hope," which stated that abortions were being used in New Hope to decrease the number of female babies born. Normally, 105 male babies are born for every 100 female babies. However, the Report found that in New Hope the number of male babies per female babies has been rising and that 115 male babies are now born for every 100 female babies. According to the Report, the cause for this deviation from normal gender balance is sex-selection abortion, since no pre-conception technology exists to increase the chance of having a male fetus. The Report further noted that many men prefer having boys rather than girls, that women generally have no systematic preference for male or female children, and that, in other societies, an increase in the ratio of men to women has led to increased violence and social instability. In response to this Report, the New Hope legislature enacted the following statute:

SEX-SELECTION ABORTION PREVENTION ACT ("SAPA")

1. Before a fetus is viable, no medical professional may reveal its probable gender to anyone except the mother of the fetus.
2. No medical professional may reveal the probable gender of the pre-viable fetus unless the mother executes a sworn affidavit asserting (1) that she will not seek to have the fetus aborted and (2) that she understands it is a crime for her thereafter to seek an abortion.
3. Every medical professional who reveals the gender of a pre-viable fetus to the mother must submit a Gender Disclosure Report to the state verifying that the gender has been revealed and the provisions of Section 2 of this Act satisfied.
4. No one may perform an abortion unless the mother of the fetus signs an affidavit stating that she did not learn the gender of the fetus. The abortion provider must ensure that no Gender Disclosure Report has been filed concerning the fetus whose abortion is sought.
5. After fetal viability, no abortion may be performed unless it is necessary to preserve the life or health of the mother.
6. Violation of this act is a felony punishable by up to 10 years in prison.

Suits challenging SAPA have been filed by two New Hope residents, Paula Pound and Lori Lasker. Paula, excited when she became pregnant with her third child, asked the fetus's gender and executed the SAPA affidavit. She knew that, under SAPA, she would no longer be able to abort her fetus. Early in her pregnancy, following several personal and professional calamities, Paula now wishes to abort her not-yet-viable fetus. Lori Lasker and her husband have four daughters and want a son. Lori is pregnant and wishes to know the gender of her fetus. However, she wants to keep the option of aborting the fetus before viability, and knows that once she learns the gender of her fetus, SAPA will prohibit her from having an abortion. **Does SAPA violate the due process rights of Paula Pound and Lori Lasker? (45 minutes)**

III.
(35 minutes)

The Florida Everglades extends from Lake Okeechobee on the north to Florida Bay on the south and was once bordered by Big Cypress Swamp on the west and the Atlantic Coastal Ridge on the east. Called the River of Grass because of the slow flow of water from Okeechobee southward and the predominance of sawgrass, some 50 percent of the original Everglades has been lost to agriculture. Most of the rest is now protected as a state and national treasure in park, wildlife refuge, and water conservation areas.

The Everglades faces an ongoing threat from the melaleuca tree, a plant in the myrtle family native to Australia. The thirsty melaleuca tree was introduced to the Everglades in the 1950's to suck up water and make the "land" of the Everglades suitable for development. The melaleuca tree is a highly invasive and difficult to eradicate species that threatens the ecology of the Everglades. It drains water, crowds out native plants, and, because the oils in the trees are flammable, leads to increased danger from wildfires. Oil extracted from the melaleuca tree (sometimes called "tea tree oil") is a valuable and highly effective topical antibacterial and antifungal. Many products containing this oil are manufactured, advertised, and sold in the United States.

Florida owns several hundred thousand acres of land in the state, over one hundred thousand of which have melaleuca trees growing on them. Florida has passed a statute, the Melaleuca Control Act ("MCA"), which reads as follows:

- "1. No person may bring melaleuca seeds, seedlings, or trees into the State of Florida.
2. Melaleuca trees that are already in the State of Florida may be cultivated for their oils.
3. Melaleuca trees on land owned by the State of Florida shall be cultivated and harvested exclusively by citizens of the State of Florida.
4. All oils extracted from melaleuca trees on land owned by the State of Florida shall be processed by Florida Melaleuca, Inc., a company owned by the State of Florida which employs Florida citizens exclusively."

Discuss whether the Melaleuca Control Act ("MCA") violates dormant commerce clause principles. (35 minutes)