

CONSTITUTIONAL LAW II  
FINAL EXAMINATION

SPRING 2024

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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.

Question No. 1

Suncity School District maintained a policy of allowing use of its public school facilities by student clubs and activities during non-school hours provided that the club or organization comply with the District's Policy prohibiting use by any club or organization that denies membership or discriminates against any student or adult participant on the basis of race, national origin, religion, disability, sex, sexual orientation, gender, or gender identity. Several clubs regularly use school facilities including several athletics clubs, a chess club, a puzzle club, a robotics club and an environmental club. All clubs recruit members throughout the school year. A religious club applied for use of school facilities. The club requires all members to profess a belief in God, and to commit to evangelism by recruiting at least 2 students each week to attend the club's on-campus worship services, except that gay, lesbian, or self-identified "LGBTQIA" students, who are considered immoral under the religion's doctrine, are ineligible for membership. The School District denied the club's application to use school facilities, citing the club's violations of the District's nondiscrimination policy and concern that the recruitment of students for worship on campus violates the Establishment Clause of the U.S. Constitution. A student organizer of the religious club and their parents sued the school District asserting that their fundamental rights as parents, and the student's free speech rights, free exercise rights and association rights were violated by the denial of use of school facilities by the religious club.

1. Assuming justiciability and standing, analyze the Constitutional issues presented in the student's challenge to the School District's denial of use of school facilities by the religious club. State how the U.S. Supreme Court is likely to rule on each issue raised by the student, and why.
2. Assuming justiciability and standing, analyze the issues presented in the Parents' challenge to the denial of use of school facilities by the religious club. State how the U.S. Supreme Court is likely to rule on each issue raised by the Parents in this case, and why.

Question 2

The “Holy Rollers,” a local group of avid bowlers and like-minded Christians, were looking to recruit members in hopes of joining local tournaments sanctioned by the City Parks & Recreation Department. It had been a few years since the Holy Rollers had competed in tournaments and they were looking to boost their membership and they figured that the Christmas and New Year season would be the optimal time to recruit. Holy Rollers received permission from City’s Parks & Recreation Department to temporarily display a bronze statue in the perfect form of a bowler in motion delivering a ball down the lane. The statue was placed in the lobby. In a makeshift pocket of the statue, flyers were inserted with the message, “Holy Rollers Bowling Team Beckons You” followed by a contact phone number and the email address [holierthanthou.com](mailto:holierthanthou.com).

Last year the director of City Parks & Recreation adopted a new “Policy on Symbols and Seasonal Displays,” which states: “Displays and symbols that depict or promote religion are not permitted in any City Parks & Recreation facilities.”

Prior to the adoption of the new policy, City Parks & Recreation had allowed access to a wide variety of public and private speakers and artists who were allowed to feature displays in the lobby. Based on the new policy, however, it denied Holy Rollers a permit for the placement of the statue without any explanation.

After it was informed by the City Attorney that the courts treat Christmas trees as secular symbols, rather than religious symbols, Parks & Recreation decided to erect a Christmas tree in the lobby of all their facilities, while continuing to prohibit Holy Rollers to display their statue.

Holy Rollers has filed suit claiming violation of the First Amendment to the United States Constitution

What arguments may Holy Rollers reasonably raise in support of its claim and what is the likely result or ruling? Discuss.



Question 3

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

- A. A popular candidate for the office of Mayor was prosecuted for accepting bribes in violation of state law. After the second day of his trial on the bribery charges he held a press conference on the sidewalk in front of the courthouse where he told a large crowd of his supporters his prosecution was a political “witch-hunt” and that the District Attorney prosecuting the case is a “known embezzler and crook and should be removed from office immediately”. This statement was false and there was no evidence that the District Attorney had ever been an “embezzler” or charged with any theft. The District Attorney filed a suit for defamation against the candidate. What burden of proof will apply in the District Attorney’s case and why? How is the court likely to analyze and rule on the issues raised in the District Attorney’s lawsuit?
- B. A gardener doing business in Sunstate advertised that her services included design and implementation of gardens and landscaping to enhance the unique environment of each customer. A newly-wed African American couple contacted the gardener to design a garden for their new home in Sunstate. The gardener refused, stating that her rights and religious beliefs would be violated by designing a garden for an African American couple. The couple sued the gardener for violating Sunstate law prohibiting discrimination in public accommodations on the basis of race. How is the court likely to analyze and rule on the issues raised by the couple’s lawsuit?

# CONSTITUTIONAL LAW

Professors Welsh, Somers, Wagner, Ruskell, King

Final Examination Spring 2024

C. A small Public Water District changed its voting procedures for electing members of the Water District Board to allow only property owners in the Water District to vote. This resulted in eliminating the voting rights of 70% of the Latino/Hispanic voters who do not own property but who live in the Water District. Two Mexican-American voters who rent a residence in the District filed a lawsuit alleging violation of their voting rights and their rights to equal protection of the laws. How is the court likely to analyze and rule on the issues raised by the voters' lawsuit?

D. The Starburst City Water District board, a government body with duly elected board members, has for 50 years since its creation begun each of its annual water policymaking sessions with the following invocation:

"Oh Lord, bless and watch over these proceedings and everyone in this room, lest we turn wayward and sinful and fall into damnation."

The annual sessions are open to the public and the chairperson of the board invites any and all attendees to join the board in the prayer prior to beginning the invocation. Two local adherents of the Wiccan religion attend the board's latest session and thereafter file suit complaining that the board's prayer violates the establishment clause of the U.S. Constitution. How would a court likely analyze and rule on the issues raised by the Wiccans?

## Question 1

Question 1 raises issues about:

1. free exercise of religion and the proper analysis under *Empl. Division v. Smith* (if nondiscrimination Policy is a neutral Law generally applicable) or *Sherbert v. Verner* (if a fundamental right of Parent is being violated, or if the policy is not neutral or generally applicable);
2. Establishment clause and whether evangelizing recruitment of students to worship in public schools violates the establishment clause and secondly whether that is a compelling reason for the District to impose a Policy prohibiting it (*Kennedy v. Bremerton S.D.* case, among others, says avoiding Establishment clause violations is not a compelling gov't interest);
3. Fundamental right to parental upbringing of children : does it extend to compelling public schools to accommodate their religion by granting exemptions from nondiscrimination Policies and laws?
4. Freedom of association: can school district deny a benefit to a religious club that refuses to associate with unwanted members who disagree with its doctrine because it violates a nondiscrimination policy? (*Boy Scouts v. Dale*, etc. )
5. Free speech: does denial of use to a religious club constitute unconstitutional violation of free speech based on content and viewpoint? (*Good News Club v. Milford Central*; *Christian Legal Society v. Hastings* ).

## Question 2

Issue outline / comments

Students would be expected to briefly cite to the "state action" requirement as a threshold issue and note that "parks & rec" is part of city's municipal government.

Next, the action turns to first amendment / freedom of speech and a discussion of "content-based" restrictions. It would be noted that the setting is a "public forum" (open to the public).

Content-based restrictions in a public forum setting would trigger strict scrutiny. Is this in fact a "content-based" regulation? Holy rollers position will be that this is a form of "symbolic speech" and that the regulation has the net effect of stifling there speech and viewpoint/expression. City will counter that their goal is to avoid the appearance of endorsing religion.

There is also room for a "prior restraint" challenge that holy rollers would advance. This may be coupled with a procedural due process argument.

A facial attack re overbreadth or vagueness would also be advanced by holy rollers

Students would be expected to introduce "free exercise" as an issue. This would be followed by the application of the "lemon" test in connection to the argument that the regulation does in fact promote/establish religion. Students may also cite to *Kennedy v. Bremerton S.D.*: is the "lemon test" or factors still considered, post *Bremerton*?

### Question 3:

Q 3 A , 3 A asks for analysis of tort of defamation under *NY Times v. Sullivan* rule for 1<sup>st</sup> amendment as applied to the DA. Is DA a Public figure or private person? Depending on their analysis NY Times applies or not; also note NY Times public official analysis has been criticized by Justice Thomas and other members of current Supreme Court and may be overruled at some point.

Q 3 B is based on the *303 Creative v. Elenis* case re 1<sup>st</sup> amendment free speech analysis finding an exemption to the state's nondiscrimination laws for a website designer who refused to do work for a gay couple because it would compel her to engage in expression contrary to her moral or religious views. This question bases the refusal on race, a challenging question left open by *303 Creative*.

Q 3 C. Voting rights: requiring property ownership as a condition of voting violates fundamental rights so analyze under strict scrutiny applies, unless denial is analyzed as not a substantial burden on voting rights; equal protection analysis requires strict scrutiny for voting system that discriminates on the basis of race and national origin;

Q 3.D: This tests the exception to the general rule that official-led prayer prior to government-run events violates the establishment clause that applies to legislative sessions. Is a water district board policymaking meeting enough like a City board meeting to meet the *Town of Greece* rule? Students will also be expected to catch the "damnation" language as falling outside of what the Court in *Town of Greece* defined as the limits of the content of legislative sessions prayers. Specifically, the court noted that "threatening damnation" falls outside of what would be permitted. Does the prayer "threaten damnation?"



1)

**1. Student's Challenge to the School District's Denial of Use of School Facilities by the Religious Club.**

Freedom of religion is a First Amendment limitation on Congress's action and is applicable to the states through the Fourteenth Amendment. There are two governing clauses, which is: the free exercise clause and the establishment clause. Here, the students will argue that the denial of school facilities to host their religious club meetings are a violation of the free exercise, establishment clause.

**Free Exercise Clause**

The free exercise clause bans laws that prohibits or seriously burdens the free exercise of religion, unless there is a compelling government interest. A law of general applicability that does not intentionally prohibit religious benefits and advances a public interest is allowable. Under the Religious Freedom Restoration Act, a person can challenge a federal law of general applicability if it substantially burdens religious exercise and the government must meet strict scrutiny. This means the action must be necessary to achieve a compelling government interest.

Here, the students will argue that the denial of the facilities is a violation of their First Amendment rights. Under the free exercise clause, the district's policy violates the free exercise clause because it prohibits their ability to exercise their religion on campus. They will argue that all the other clubs are allowed a space to discuss their passions and interests and that it should be no different for them. By not allowing the students to exercise their religion on campus, the students will argue that they are depriving them of their fundamental rights. The students will argue that is part of their religion to live and associate with heterosexual individuals. Under the law of general applicability, the school will argue that the school's nondiscrimination policy is generally applicable for the public interest of the students as a whole. The policy does not only prohibit clubs and organization that deny membership or discrimination based on gender, but also race, national origin, religion, disability, sex, sexual orientation, and gender identity. By denying membership to those associated with the LGBTQIA community, the students are clearly violating the policy. The school will argue that this action by the school is necessary to achieve a compelling government interest because there is an interest in ensuring harmony in school. A way of creating harmony in the school system is by ensuring that students feel safe and supported when exploring their passions and interests through clubs and



organizations. The students could challenge the school's discrimination policy under the Religious Freedom Restoration Act and assert that the school's policy creates a substantial burden on their religious exercise because they are devote to their religion and it is important to them that they be able to practice at school. However, this is unlikely to be agreed upon by the court because the club intends to exclude members of a protected class under the policy.

Therefore, the U.S. Supreme Court is likely to dismiss the student's challenge to the school's district denial of use of school facilities by the religious club because the school's policy achieves a compelling government interest.

### **Establishment Clause**

The establishment clause prohibits laws respecting the establishment of religion. The government cannot endorse or favor a specific religious group over another. Incidentally favoring a specific religious group in an attempt to benefit a wide variety of people is allowable. If there is sect preference, strict scrutiny applies and the action must be necessary to achieve a compelling government interest. If there is no sect preference, the *Lemon Test* applies and there must be: (a) have a secular purpose; (b) have a primary secular effect, which neither prohibits or inhibits religion, and (c) not foster excessive government entanglement with religion. Under a modern view, the courts focus more primarily on the first two prongs of the *Lemon Test*. Here, the school will argue that the school's discrimination policy is neutral and that it protects a wide variety of people and does not favor one non-religious/religious group over another. The school's policy has secular purpose which is that it protects a wide variety of individuals and this protection neither prohibits or inhibits religion. Additionally, the school is a public school, not a private one, and therefore has to appeal to the diversity of the students.

Therefore, the U.S. Supreme Court is likely to rule in favor of the school district.

### **Freedom of Speech**

The First Amendment protects an individual's right to freedom of speech. There are two types of speech, which are: (a) content-based speech, and (b) content-neutral speech.

### **Content-Based vs. Content-Neutral Speech**

Content-based speech regulations forbids those of the communicative impact of an expression. Strict scrutiny applies to content-based speech, which means the government action must be necessary to achieve a compelling government interest. Content-neutral speech regulations are regulations aimed at something other than the communicative impact of an expression. Content-neutral speech must (a) serve a significant/important government interest, (b) be narrowly tailored to achieve that interest, and (c) leave open alternative channels of communication. Here, the student's communicative conduct is that members are professing a belief in God and to committing to evangelism, by recruiting students to attend worship, and excluding members of the LGBTQIA community. This communicative conduct is content-based speech because the substance of the conduct is to exclude a specific group of people and alleging an allegiance to a religion that not everyone subscribes to. Students will argue that this speech does not need to be regulated because it is only meant to attract individuals that believe in the same values as the religious club. However, it excludes members that might be longing for a relationship with God but are also a member of the LGBTQIA community in some capacity or another. There is a compelling government interest in ensuring that school maintains a neutral position, especially because this is a public and not private school.

Therefore, the U.S. Supreme Court is likely to rule in favor of the school district and regulate the communicative conduct of the student.

### **Time, Place, and Manner Restrictions**

Time, place, and manner restrictions seeks to restrict speech based on external factors such as the time, place, and manner in which the speech or communicative conduct is held. Designated public forums are those that are at large open to the public but a specific purpose. These forums must be: (a) content-neutral and viewpoint neutral, (b) they serve a significant/important interest, (c) are narrowly tailored to serve that interest, and (d) leave open alternative channels of communication. Here, the school is a public school, not a private one. Therefore, the speech held on campus must be content-neutral.

### **Freedom of Association**

First Amendment case law recognizes that the government cannot prevent individuals from freely associating with other individual's or groups. The government cannot deprive a person a public benefit or job based on who they free associate with. The government may prevent freedom of associations or require an individual to associate when it is necessary to achieve a compelling



government interest. Here, the students will argue that the government cannot prevent them from associating themselves with other like-minded religious folks. They will argue that their religion requires them to associate with heterosexual individuals only and by opening up their club to members of the LGBTQIA would be an infringement on this freedom. However, as established above, there is a compelling government interest in ensuring that school maintains a neutral position, especially because this is a public and not private school. If the students are truly interested in hosting this religious club, with these particular membership rules, they are able to still have them outside of public school grounds.

Therefore, the U.S. Supreme Court is likely to rule in favor of the school district.

## **2. Parents' Challenge to the Denial of Use of School Facilities by the Religious Club.**

### **Due Process**

Due process is applicable to the states through the Fourteenth Amendment, and the federal government through the Fifth Amendment. There are two types of due process, which are: (a) substantive due process (SDP), and (b) procedural due process (PDP).

### **Substantive Due Process**

Substantive due process protects fundamental rights pertaining to certain areas of human life, such as life, liberty, and property. The court will analyze these fundamental rights under strict scrutiny, which means the government action must be necessary to achieve a compelling government interest. Non-fundamental substantive due process pertains to everything else, but not typically social and economic regulations. The rational basis test is applied to non-fundamental substantive due process. This means the government action must be rationally related to a legitimate government objective. In this case, the challenger will have the burden of proof. Here, the parents will argue that their ability to their child's ability to attend school and practice their religion is a fundamental right and part of their right to raise religious children. However, the court will rule that their SDP was not violated because the government's interest in maintaining school's neutral outweighs the parent's interest in having their children's religious club be heard out.

### **Procedural Due Process**

Procedural Due Process requires a fair process when the government intends to deprive an individual of their life, liberty, or property. For judicial procedures, this requires the right to a trial, counsel, call of witness, and appeal. For non-judicial proceedings, the court will have to balance and weigh: (a) the individual's interest, (b) additional procedures, and (c) the government's interest.

Here, the parents will argue that their children have the right to a non-judicial proceeding and that the court must analyze their the individual interest in having this club occur on school grounds, additional procedures that the school can take, and the government's interest in not allowing that this club to occur. The students will argue that by the school district flat out denying their application, the school is intentionally depriving the parent's children of their right to be heard without a hearing or discussion on the merits of the denial.

However, the court will rule that their PDP was not violated because the government's interest in maintaining school's neutral outweighs the parent's interest in having their children's religious club be heard out.



2)

What arguments may the Holy Rollers reasonably raise in support of its claim, and what is the likely result of the ruling?

**Did the city violate the Holy Rollers' Constitutional right to procedural due process?**

Through the 14th Amendment, the People have the right to due process under the Due Process Clause, and equal protection under the Equal Protection Clause. Procedural due process rights include (1) the right to notice within a reasonable amount of time with adequate explanation and decription of the denial, (2) the right to a fair and impartial hearing, and (3) the right to appeal a denial.

In this case, the City denied the Holy Roller's permit to place the statue in the lobby. The facts are not clear on when the denial notice was given to the Holy Rollers, so depending on when the Holy Rollers recieved a denial notice, the Holy Rollers can argue inadequate notice time was given. The Holy Rollers did however have prior permission from the City to display the statue; that means there was a taking becuae they were originally afforded that ability, and had it taken from them. Further, the Holy Rollers can argue that their procedural due process rigths were violated becuae they were not given an explanation of why their permit was denied. The Holy Rollers can argue that they were not given an opportunity for a fair and impartial hearing, and were not afforded a right to appeal the denial.

The Holy Rollers can successfully argue that their procedural due process rights were violated.

### **Establishment Clause**

The First Amendment prohibits the governement from establishing a religion for the United States.

Here, the Holy Rollers are not establishing a religion, even though they are Christians. They were looking to boost membership by placing a statue of a bowler in the lobby. The statue's bowler character is not a religious symbol. The statute had a pocket, with pamphlets advertising their bowling team, but it was not expressly religious in nature; at most, perhaps an incidental connection could be made to it's religious purpose, but religion

is not its primary purpose. By comparison, "In God we trust" inscribed in many city council auditoriums are acceptable, and the statue of a bowler who happened to have a pocket with bowling team advertisements comes nowhere near an establishment clause violation.

The statue's presence in the City's lobby would not violate the Establishment Clause.

**Lemon Test**

To assess whether a government action violates the Establishment Clause, the U.S. Supreme Court uses the "Lemon Test." To pass the Lemon Test, a regulation concerning government/ religious activity will be ruled constitutional if it (1) is non-secular, (2) neither advances nor inhibits the freedom of religion, and (3) is not excessively entangled with government's purpose.

In this case, the bowler statue is considered "non-secular" because it does not promote one single religion. It's arguably promoting a bowling team, and incidentally has a pocket of pamphlets recruiting bowlers to their team. It could be different if it had a sign saying "Take these advertisements about joining our Christian Church," but instead had an obscure pocket where people would have to reach into, retrieve, open, and read the existing advertisement. Either way, it's non-secular, it does not advance nor inhibit any particular religion, and does not excessively entangle itself with the city's lobby's purpose. By comparison, common signs (such as the Christmas Tree on display), and nativity scenes are allowed just as much as Santa Clause statues are common place.

The court would find that the statue's presence passes the Lemon test, and therefore should not be prohibited.

**Free Exercise Clause**

The First Amendment prohibits the government from preventing the People from exercising their freedom of religion.

The Holy Rollers have a freedom to exercise their religion. Although prohibiting the statue's presence does not overtly prevent the Holy Rollers from exercising their religion, it is a minor intrusion.

The court will likely find that the City did not violate the Free Exercise Clause.

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## **Freedom of Expression**

The First Amendment prohibits Congress from making any laws prohibiting the freedom of speech. Speech is considered any words (written or spoken), or conduct made for the purpose of communicating a message. Prayer is allowed on public property if persons present are not compelled to join in the prayer.

Here, the Holy Rollers's advertisements in the statue's pocket constitute expressive speech.

The Court will find that the statue's advertisements are considered speech.

### **Which level of scrutiny applies?**

When assessing the constitutionality of fundamental rights restrictions, the court will use one of three standards of review. They are (1) Strict scrutiny, (2) intermediate scrutiny, and (3) rational basis review. For a government restriction to pass strict scrutiny, the regulation must be narrowly tailored, and necessary to achieve a compelling government interest, by using the least restrictive means. For a government restriction to pass intermediate scrutiny, the restriction must be narrowly tailored, and substantially related to an important government purpose. For a restriction to pass the rational basis review, the restriction must be rationally related to a legitimate government purpose. Freedom of religion is a fundamental right, and any law restricting the freedom of religion will be analyzed under strict scrutiny, unless it is content neutral (*supra*).

The Holy Rollers will argue that the government's regulation restricting their statue and pamphlets violated their fundamental right to speech and religious expression, therefore strict scrutiny will apply. A law or government restriction will be ruled unconstitutional under strict scrutiny if it is not narrowly tailored. Here, the city did not have a narrowly tailored policy; they simply continued to keep a Christmas tree erected in the lobby of all their facilities. Secondly, the prohibition was not necessary. There were no facts asserted to argue the necessity of not having a bowler statue with incidental pamphlets in its pocket. Third, the city fails to show how and why their interest in prohibiting the statue is "compelling." Lastly, the City failed to explore less restrictive means of accomplishing whatever their goal really was. If the City's goal was to restrict religious symbols, a less restrictive means of accomplishing that would have been to remove the statue's pocket or pamphlets.

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The court will find that strict scrutiny applies, and that the city's prohibition on the statue is unconstitutional.

END.



3)

A. A public figure or official is entitled to recover damages in an action for defamatory falsehood if she proves by clear and convincing evidence that the statement was false and it was made with actual malice - that is, the tortfeasor either knew the statement was false or acted with reckless disregard for the truth. Here, the District Attorney would have to prove her case by clear and convincing evidence that the statements made against her were false and were made with actual malice. The court will likely rule in her favor, as the statements made about her being an embezzler and a crook were false, so long as the district attorney can prove that the statements were made with actual malice. It is likely she will prevail, given the circumstances, as she may have been prosecuted by her office for accepting bribes in violation of state law; he would have the requisite mental state to act with actual malice.

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**Question #2 re: The Gardener's Religious Beliefs**

Freedom of religion is a First Amendment limitation on Congress's action and is applicable to the states through the Fourteenth Amendment. There are two governing clauses, which is: the free exercise clause and the establishment clause. Here, the gardener will argue that by designing a garden for African-American it would be a violation of the free exercise and establishment clause.

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## **Free Exercise Clause**

The free exercise clause bans laws that prohibits or seriously burdens the free exercise of religion, unless there is a compelling government interest. A law of general applicability that does not intentionally prohibit religious benefits and advances a public interest is allowable. Under the Religious Freedom Restoration Act, a person can challenge a federal law of general applicability if it substantially burdens religious exercise and the government must meet strict scrutiny. This means the action must be necessary to achieve a compelling government interest. Here, the gardener will argue that the by making the garden for African-American couple it would violate her ability to freely exercise religion because it is against her religion to do so. Under the freedom restoration act, doing the garden would cause a substantial burden on her practice of religion. She will also argue that she is not the only gardener in town that can do the job and that the couple is not limited to just her work. Although the African-American couple is discriminated by race, there is compelling government interest in protecting the free exercise of religion as well.

Therefore, the U.S. Supreme Court is likely to rule in favor of the gardener.

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### **C. PWD v. MA Voters**

*What issues may the MA voters bring forward and what is the likely outcome?*

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### Substantive Due Process

Under substantive due process, a person may not be denied life, liberty, or property. Fundamental rights, such as marriage, procreation, right to parent your children, etc. all fall under strict scrutiny. The strict scrutiny standard is the government has a burden to show that restriction is necessary for a compelling government interest. All other non-fundamental rights fall under the rational basis test (objecting party must show the law is rationally related to a government interest).

The right to vote is a fundamental right to any American citizen, over the age of 18. Here, two MA voters were denied the right to vote, because the PWD allowed only property owners to vote. The MA voters may argue that this violated their fundamental rights, because they were no longer able to vote on any water district matters. PWD may argue that the restriction was necessary in order to limit the 70% of non-homeowners voting on laws that apply to homeowners. However, the MA voters may argue that, while they are yet to be homeowners, they may be in the future and the laws affect them. Further, they are still being prohibited to vote, which is a fundamental right.

The MA voters will win under SDP.

### Equal Protection

A person may not be discriminated against based on race, color, creed, religion, gender, illegitimacy, etc. Under Equal Protection, there are different suspect classes. First, there is the suspect class that fall under strict scrutiny; which includes race and nationality. Then, there is a quasi-suspect class, which applies intermediate scrutiny to classes, such as age or gender.

Here, strict scrutiny applies, because they MA voter are being discriminated against based on race. Here, PWD enacted a law that impacted 70% of Latino/Hispanic voters. The PWD, not only violated their fundamental rights, but deny them equal protection under the law, as they are so grossly withheld from voting. PWD may argue that the law was against all homeowners and a lower scrutiny applies. However, the law still effects 70% of people based on race. This percentage would have been known at the time of the act, and yet it was still enacted, which shows that race was a factor in the decision.

The MA voters are entitled to Equal Protection.

## **Establishment Clause**

The establishment clause prohibits laws respecting the establishment of religion. The government cannot endorse or favor a specific religious group over another. Incidentally favoring a specific religious group in an attempt to benefit a wide variety of people is allowable. If there is sect preference, strict scrutiny applies and the action must be necessary to achieve a compelling government interest. If there is no sect preference, the *Lemon Test* applies and there must be: (a) have a secular purpose; (b) have a primary secular effect, which neither prohibits or inhibits religion, and (c) not foster excessive government entanglement with religion. Under a modern view, the courts focus more primarily on the first two prongs of the *Lemon Test*. Here, the invocation in the Water District's board members meeting was not neutral and had a strong religious undertone that would be unconstitutional given the nature and purpose of the board meeting. Members of the board meeting are not there to pray to Lord or ask the meeting be blessed and prayed over. Requiring that members of the board join the board in prayer prior to invocation is a violation of the establishment clause because the meeting should be neutral venue and it should not be coercive. Requiring that the members join the prayer is a form of coercion because members have a strong interest in policies and discussion that the water district will be conducting, and one them does not include prayer.

## **Time, Place, and Manner Restrictions**

Time, place, and manner restrictions seeks to restrict speech based on external factors such as the time, place, and manner in which the speech or communicative conduct is held. Designated public forums are those that are at large open to the public but a specific purpose. These forums must be: (a) content-neutral and viewpoint neutral, (b) they serve a significant/important interest, (c) are narrowly tailored to serve that interest, and (d) leave open alternative channels of communication. Here, the water district's board meeting is held to public for the specific purpose of discussing water

policymaking only. The prayer does not serve an important govt. interest and by requiring people to join it is coercive and does not leave open alternative channels of communication.

Therefore, it is likely that the court will rule in favor of the Wiccans.

**END OF EXAM**