

MONTEREY COLLEGE OF LAW

CONSTITUTIONAL LAW II

FINAL EXAMINATION

SPRING 2025

PROF. K MIGDAL

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.

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CONSTITUTIONAL LAW II
Prof. Migdal
Final Examination Spring 2025

Question No. 1

Hopewell Township Public School District offers its Hopewell High School students a Music class that students can take as an elective. Students are encouraged to choose an instrument and receive instruction from the faculty teaching the class each semester. At the end of each semester, the Music teacher and each student taking the class conducts an end of semester concert that takes place after school hours in the High School's theater. Other students of Hopewell High, as well as other students in the school district, and family members of the students performing in the concert comprise the majority of the audience for the end of semester concert. Mr. Beauregard, this year's Music teacher, put on the concert as usual on the stage of the High School theater. After the big finale, Mr. Beauregard took the podium, thanked the audience, encouraged them to stay for refreshments, and directed them to the back of the theater where tables were set up with cookies and punch. As the students gathered up their instruments and the audience members stood up and began filing to the back of the theater, Mr. Beauregard picked up an acoustic guitar, sat on a chair in the center of the stage and began to play the Christian ballad, "Amazing Grace." Though the guitar was not amplified and the microphones had been cut off following the concert, Mr. Beauregard also began to sing the first verse to accompany his guitar playing. He sang,

"Amazing grace/ how sweet the sound/ that saved a wretch like me/ I once was lost/ but now am found/ was blind but now I see"

Several audience members heard Mr. Beauregard's song and returned to their seats to listen. Other audience members became angered by the display. Some shouted loudly at the stage, saying phrases such as, "what is this?," "who do you think you are?," and "I didn't come here for this!" One of the audience members shouting at the stage rushed at the stage, but was tripped by one of the audience members who had taken a seat to listen to Mr. Beauregard. A scuffle between the two audience members quickly turned into a brawl as other audience members joined the fray. Following the concert, the school district fired Mr. Beauregard for violating the school district's policy against employees undertaking religious acts at school events. Mr. Beauregard has filed suit claiming violation of the First Amendment to the United States Constitution.

Analyze each of the issues Mr. Beauregard is likely to raise in his First Amendment claims and any arguments that the Hopewell School District is likely to raise regarding Mr. Beauregard's actions and its response thereto. State how the U.S. Supreme Court is likely to rule on each issue raised, and why.

Question 2

A local independent theater operating in the City of Magaville has for over thirty years shown lesser known films and documentaries. These films are often not run by the larger theater chains but they are films that the theater owner, Ms. Eberta Siskelson, believes have serious artistic and social merit. Though her theater is not often full, she manages to make a living between the meager ticket sales and the sizeable Arts grant she gets from the City. Without the Arts grant from the city, she would be unable to afford to keep her theater open. Though the films Ms. Siskelson runs in her theater are rarely sexual in nature, she has decided to show, for the last month, a documentary about the lives of sex workers in a nearby U.S. State where prostitution has been legalized. She decided on this film because it has received success among critics and film reviewers, and has also won awards at various film festivals in other U.S. States. Though the film focuses on the plight of the sex workers, it contains graphic depictions of sex, graphic language, and copious nudity.

The City of Magaville has the following zoning ordinance: “[n]o adult theaters in the City of Magaville may operate within 1,000 feet of any church, park, school, single- or multiple-family dwelling unit.” Ms. Siskelson’s theater is located in downtown Magaville’s historic quarter across the street from a City park. When the city was founded in 1947, the park was beautifully landscaped with playgrounds and benches. In the last ten years, however, the city has fallen into disrepair and its playgrounds serve to house the City’s unhoused population.

When the mayor of Magaville discovered that the theater was showing the film, he ordered the cancellation of the theater’s Arts grant. In an interview with the local Arts magazine, the mayor stated, “[t]he City of Magaville should not be in the business of bankrolling smut masquerading as Art. If Ms. Siskelson thinks sex workers need more rights, she can peddle her smut somewhere else.” He then ordered local law enforcement to enforce the City’s adult theater zoning ordinance against Ms. Siskelson’s theater. Ms. Siskelson received notice that her permit to operate her theater would be revoked for violation of the City’s adult theater zoning ordinance. Ms. Siskelson brought suit citing the First Amendment to the U.S. Constitution.

Analyze the Constitutional issues presented by the City’s zoning ordinance, the mayor’s revocation of the theater’s Arts grant, and the arguments each party is likely to make. State how the U.S. Supreme Court is likely to rule on each issue raised, and why.

Question 3

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

- A. The State Department recently issued a foreign travel restriction to the small foreign country of Grayskull citing dangerous conditions due to local unrest and rioting. Though Mr. Cringer has since become a U.S. Citizen, he was born in Grayskull and had already purchased a flight to visit family there when the State Department issued its travel restriction. Mr. Cringer discovers that his flight has been canceled and brings suit claiming that the government has violated his fundamental rights. What level of scrutiny will the reviewing court apply and how is it likely to rule on Mr. Cringer's fundamental right claim?
- B. The U.S. State of Franklin, unable to fund its statewide elections due to low volunteer turnout, issues a poll tax of \$.25 for each of its 30 million residents to raise the money it needs to fund its elections. Each voter must either pay the poll tax at the time of voting, or provide proof of having paid the poll tax as a precondition to voting. A local resident forced to pay the poll tax brings suit to challenge the State of Franklin's poll tax. How is the court likely to rule on Mr. Cringer's lawsuit?
- C. An incarcerated person in the State of Whiteacre was severely injured when an officer was escorting him down a flight of stairs and failed to catch the incarcerated person after the incarcerated person slipped on the first step. The incarcerated person sued claiming that the officer's negligence deprived him of life, liberty, and property in violation of his due process rights. How is the court likely to rule on the incarcerated person's claim and why?
- D. A Blackacre city ordinance prohibits three or more persons gathering in any public place and there conducting themselves in an annoying manner. One of its senior residents, annoyed by the sound of a group of skateboarding youths in the park next to her house, called the police to complain about the skateboarders. Though the police could not hear the skateboarders until they were standing very close to them, they cited the skateboarders under the city's ordinance based on the senior resident's complaint. One of the skateboarders challenges the citation, claiming that the ordinance is unconstitutional. How is the court likely to rule and why?

Constitutional Law Final Exam Answer Outline Spring 2025

Question 1

1. Religious free speech's double protection under Kennedy- content-based restriction? viewpoint discrimination?, hostile audience reaction? Speaking as part of his government duties? Balancing of interests analysis.
2. Free exercise under Kennedy- private or public religious exercise? Did the district burden his sincere religious practice pursuant to a policy that is not neutral or generally applicable? Directed toward a religious practice?
3. Establishment clause under Kennedy-students will cite the historical practices and understandings test (whatever that means), but should discuss whether there was coercion and is coercion still prohibited after Kennedy?

Question 2

Zoning- City of Renton/Young and the "secondary effects" doctrine and whether the zoning ordinance is content-neutral or content-based (even clearly content-based ordinances have been upheld when low value sexual speech is involved, or considered not to be "content-based" but instead directed toward the secondary effects. The ordinance is fairly analogous to City of Renton, but will there be secondary effects when the park is already run down?) is one film enough to qualify as an "adult theater?"

General discussion of rules governing low-value sexual speech, obscenity (is there serious artistic/political value? Is it a local or national standard?), Siskelson's arguments re: viewpoint discrimination and whether that overcomes the low value given to sexual speech- does the film qualify? If not, what scrutiny applies and why?

Question 3:

Q 3 A tests students' knowledge of the fundamental right to travel and, specifically, that only rational basis applies to foreign travel claims. Cringer will almost certainly lose on rational basis.

Q 3 B payment of fee/poll tax as precondition to vote violates the EP clause/fundamental right to vote

Q 3 C negligence will not suffice to state a claim under the DP clause

Q 3.D the ordinance is unconstitutionally vague (Coates v. City of Cincinnati)

1)

1.

1st Amendment: The first amendment provides that the government shall not abridge the establishment of religion, or free exercise thereof, it shall not abridge the freedom of speech, and that of the press, and the right of the people to petition the government for redress of grievances.

Here, Mr. Beauregard will likely raise a Freedom of Speech issue.

Free Speech

Whether Mr. Beuregard's ("Mr. B") right to Freedom of Speech under the 1st Amendment was violated.

The 1st Amendment provides that the Government shall not restrict an individual's right to free speech. Speech can be symbolic and expressive conduct that is not traditionally thought of as speech. Laws that restrict the content of speech (content-based) "on its face", must serve a compelling government interest and be narrowly tailored to serve that interest. Laws that do not restrict the content of speech (content-neutral), are viewpoint neutral and subject matter neutral, must be substantially related to a legitimate government interest.

Here, Mr. B was fired by the school district for performing "Amazing Grace", a christian ballad, at the end of the semester concert when all attendees were leaving. As such, he will try to raise a Free Speech violation.

In order to address whether an person's 1st Amendment rights were violated under this issue, Mr. B will need to meet the State Action element.

State Action

To bring forth a free speech violation, there must be state action. State action simply means government action, i.e., it can be local, state, or federal, etc. Here, the school district fired Mr. B for violating their school policy. The school district is part of the the local government. As such, this element is met.

Content-Neutral or Content-Based

Here, the school district fired Mr. B for violating their school policy against employees undertaking religious acts at school events. A school policy that violates religious acts at school events would be a restriction on its face for any actions that are religious.

Moreover, this could be seen as being a subject matter restriction, restriction on a certain topic of a message, because it restricts religious acts. As such, the court will likely review this under strict scrutiny, the policy must serve a compelling government interest and be narrowly tailored to serve that interest.

Compelling Government Interest - Here, Mr. B will argue that the district does not have a compelling government interest to restrict religious acts at school events. He will contend that in the school concert had ended and he was just strumming to Amazing Grace when the audience had already gotten up to leave and were filing out. However, the school will argue that that they have a compelling interest because they are trying to prevent the endorsement and support of religion. However, the prior is not a compelling enough reason as seen in *Kennedy v. Bremerton* (2022). Trying to prevent the endorsement and support of religion by the school would be discriminatory to Mr. B's right to Free exercise (addressed below).

Narrowly Tailored to Serve that Interest - Here, the school will argue that the policy is narrowly tailored to serve their interest because it only restrict employees from under

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taking religious acts and because they limited it to religious acts at school events. Based on such, the school will argue that their interest in refraining from endorsing and supporting religion is narrowly tailored to serve such an interest based on who it applies to and where it is applied. However, the court will find that the policy is not narrowly tailored because it restricts religious acts in ALL school events.

Thus, the school district policy does not meet strict scrutiny is a violation of Mr. B's free speech rights.

Unduly Vague and Overbroad - A law cannot be unduly vague or overboard or else that would also be a violation of Mr. B's constitutional rights. It is unduly vague if a reasonable person cannot determine what is being prohibited. A law is overbroad if it restricts more than what it is trying to restrict.

Here, the school policy restricts employees from undertaking religious acts at school events. As noted above, this policy would be found to be vague because it can restrict ALL school events. Moreover, it states that employees are restricted, employees is a vague term that can mean anything from volunteers to librarians to teachers. It will likely be found to be overbroad because generally states that it states "religious acts", which can mean anything from wearing a T-shirt to whistling a hymn.

As such, the court will find the policy to be unconstitutional because it is unduly vague and over broad.

Prior Restrain - Mr. B can try to raise a prior restraint argument. A prior restrain on speech, meaning a restriction that restricts speech before it occurs is unconstitutional if it is not reasonable and serving an important government interest.

Here, Mr. B can try to argue that the restriction restricts his speech prior to it occurring because it restricts any religious act on its face. However, this is a far stretch argument.

Forums: Generally there are four different types of forums, i.e., public forums, designated public forum, limited public forum (LPF), and non-public forum. A limited public forum is a forum that is has a limited use for certain groups of people or discussions on certain subjects. Restrictions in a LPF must be viewpoint neutral and have an important government interest, and leave alternative open channels of communication.

Here, the school would be a LPF because it is using its theater for an end of semester concert that takes place during the after school hours. As such, it is only available for limited use, during after school hours, to a certain group of people, the students, faculty, and their invitees. As noted above, the restriction is not view point neutral because it restricts a certain ideology, that is the ideology of religion. The school's important government interest in not endorsing/supporting religion is not compelling; Mr. B will state that they were discriminating against him when he was simply strumming and singing Amazing Grace. Mr. B will also likely try to argue that the school didn't leave him alternative open channels of communication. However, the school can state that Mr. B can go sing his Christian ballad at his church or in an open field somewhere. Mr. B will argue that the audience could have simply walked out, just as they were doing, and they did not have to stay to hear him sing. Moreover, the amplifier was not on and the microphone had been cut off.

Therefore, the court will find that the policy is unconstitutional.

Authoritarian Environments

There are particular places where the government can restrict speech, some of these places are jails, prisons, military bases and airports and schools. Per Tinker, public school students don't just leave their constitutional rights at the school house gate. As such, there should be a legitimate pedagogical interest.

Here, the school district will assert that because they are a school, they can limit the speech on their school grounds. They will state that that restricting religious acts at school by employees is an important government interest because they want to prevent any possible disturbances that this can cause during school events. The school district will state that even though the event happened after school hours for a Music elective class, Students are still receiving performing a school related event and as such they have a legitimate pedagogical interest in preventing employees from performing religious acts.

Therefore, the court will likely find that their policy did not violate Mr. B's Free Speech rights under this issue.

Unprotected Speech - There is certain speech that is unprotected, this includes incitement. Under Brandenburg test, speech can be restricted if it is likely to produce imminent harm, likely to produce illegal action, and likely to incite imminent illegality.

Here, the school will likely try to raise the argument that Mr. B's singing was likely to produce imminent harm because he was singing in a public school, where his actions led to illegal action, in the form of parents and audience members rushing in and shouting at him loudly. Moreover, it was likely to incite imminent illegality because the singing led to audience members fighting each other. However, Mr B will argue that the school had no way of knowing that his actions had a likely of producing what it did on that day.

As such, the court will find that this does not apply.

Establishment Clause (EC)

The Establishment clause provides that government shall not establish or endorse/support religion. There are three theories that can be used to determine whether the establishment clause was violated, e.g., strict separation, neutrality, and the accommodation theory.

Strict Separation (SS): Under the SS theory, the Lemon test is applied. The lemon test was overruled in 2022 by *Kennedy v. Bremerton*. However the lemon test required three prongs: (1) law has a secular purpose (2) whose primary effect neither advance nor inhibits religion, and (3) it does not foster excessive government entanglement.

Here, the court will find that the law does not have a secular purpose because it outright denies religious acts. Moreover, its primary effects is to restrict religious acts and will foster excessive government entanglement because it requires school district supervision as to who is violating the policy.

Thus, it would be an establishment clause violation.

Accommodation theory: This is the modern law theory that is now applied. Courts recognize the important role that religion has played and continues to play in U.S. and government, as such it will not be an EC violation unless government is actually trying to establish a religion, coercing religious participation, or favoring one religion over another.

Here, the court will find that religion has traditionally been something that is restricted on school ground throughout history in public schools. However, the goverment, school district, is not trying to coerce or establish religion. As such, the court will recognize that the audience members could have left but didn't and Mr. B was playing at the end of the show.

Therefore, it would be an establishment clause violation.

Free Exercise

Whether Mr. B's right to Free Exercise under the 1st Amendment was violated. Per *Oregon v. Smith*, the law must be of neutral and general applicability and meet rational basis. This scrutiny is applied in order to embrace greater religious freedoms.

Here, Mr. B will argue the school district policy is not neutral because it applies to only school district employees. The school district will state that it is neutral because it covers all religious activity which is rationally related to the districts important interest in not endorsing religion. However, the court will find this does not meet rational basis and or the Smith Test.

As such, the U.S. Supreme Court will likely rule that Mr. B's EC was violated however his free speech rights were not.

Question Two

Free Speech

City's Zoning Ordinance Ordinance

Laws that are not intended to restrict expression but rather address the secondary effects of less protected speech, such as sexual or pornographic (not obscene), may be regarded as constitutional so long as they serve a substantial government interest and are no less restrictive than is essential to serve such an interest.

Here, the ordinance does not allow adult theatres within 1000 feet of churches, parks, schools, dwellings. If goal of the zoning ordinance is to address negative secondary effects of adult theatres, it will likely be regarded as constitutional.

The owner, however, could potentially argue that because the degradation of the nearby park pre-dates her showing of the film there have been no negative secondary effects caused by the theatre and she should be allowed to remain in operation.

Mayor's Revocation of the Grant

In order to succeed on a free speech

or freedom of expression claim the owner of the theater must show that there has been some state action which infringed her right to freedom of expression.

Here, the revocation of a charitable grant which the city was not obligated to give the theatre in the first place, will likely not be regarded as state action for the purposes of infringement.

Zoning Ordinance Continued

Vague: A ~~law~~ law may be regarded as unconstitutionally vague if a reasonable person cannot determine what conduct is permitted and what conduct is prohibited.

The city's ordinance does not define what an "adult theater" is for the purpose of enforcement. The owner may argue that showing a single sexual ~~film~~ film in over thirty years of operation should qualify her ~~business~~ business as an "adult theater", and since the ordinance does not define this by its language it is unconstitutionally vague.

Obscenity: Speech/Expression that is

sexual, serves prurient interests, and has little redeeming literary, artistic, or scientific merit is not protected under the 1st Amendment.

The city ~~will~~ will argue that the film is obscene and not protected speech. The owner will argue that the film has artistic and documentary value and does not fall within the definition of obscenity.

The court will likely find that because the film's content highlights a socially relevant issue that it has significant artistic value and is protected speech.

The fact that the ~~film~~ film has received awards at various film festivals further supports this claim.

Expressive Conduct

Conduct under the Spence test is conduct that is intended to convey a message ~~and~~ or idea and that an audience is likely to understand.

The owner's showing of the film in her theater will very likely be regarded as a form of expression for purposes of 1st Amendment protection.

3)

a) The US Supreme Court recognizes that the right to travel is a fundamental right but treats international travel differently than domestic traveling between the States. The right to travel between States is considered a fundamental right and is protected under the constitution. However, the right to travel abroad is not a fundamental right due to international travel not being a fundamental right and the court will apply intermediate or rational basis test rather than strict scrutiny. Due to Mr. Cringer's claim involving restriction of international travel to Grayskull due to national security concerns will require the use of rational basis review. When the court reviews Mr. Cringer's case they will likely use rational basis and determine if the restriction is reasonably related to a legitimate government interest with the examples being national security and public safety. Under rational basis, the government will most likely win with the state department using dangerous unrest and rioting in Greyskull being the main reason for public safety in not letting people travel to a destination that is foreign and dangerous. And in preventing US citizens from traveling to places that are unstable and dangerous, it is rational that the restriction is pertaining to citizen protection and further avoiding international incidents. Eventhough Mr. Cringer has family that are living in Grayskull and had a pre purchased ticket, the reviewing court will use rational basis and determine the right to international travel i not deemed a fundamental interest. This is due to the government legitimate interest in protecting US citizens and having to maintain order with foreign affairs. The court will uphold the travel restruaction and rule that the rejection of Mr. Cringer's constitutional challenge.

b) The court will likely rule that the poll tax is unconstitutional. This is due to the ruling in Harper v. Virinia Board of Elections where the court ruled that making the payment of a poll tax as a condition for voting would violate the equal protection clause that is in the 14th amendment. No matter the amount that is required to pay, voting is a fundamental

right and the states cannot impose any restrictions of access to voting on the basis of wealth or payment fee. As a result, the courts will rule that the \$.25 fee poll tax is unconstitutional as it places a burden on the right to vote.

c) The court is likely to reject the incarcerated person's due process claim due to only negligence by a government officer as this does not amount to be a constitutional violation. Negligent conduct by government officials does not violate the due process clause of the 14th amendment. Since the officer did not catch the in prisoner will be seen at most as negligent but not in a reckless sense or deliberate. The courts will rule that the incarcerated person's claim is not a constitutional violation and the lawsuit would fail the due process claim.

d) The court is likely to rule that Blackacre's ordinance is unconstitutional due to being vague and overbroad being in violation of the due process clause of the 14th amendment. The laws that regulate speech or conduct in a public place must give a clear notice of what behavior is prohibited and must not give excessive discretion to law enforcement. Blackacre's ordinance states the prohibition of acting in an annoying matter is not a clear definition to what the ordinance is trying to prohibit and can lead to arbitrary enforcement based on any individual's complaints. It can be stated that the ordinance is also overbreadth by being overly broad on what can be constituted as annoying behavior. With no clear distinction to what makes one's conduct annoying can result in the over excessive use of the ordinance due to the behavior the ordinance is trying to prohibit not being clearly defined. The court will rule that Blackacre's ordinance is unconstitutional due to vagueness.

END OF EXAM
