

### **QUESTION NUMBER ONE**

Congress enacted an Amendment to the Affordable Care Act. The revisions entailed by the Amendment were comprehensive. One of the revisions provided as follows:

*“Sec. 401.05. Maternal Health Grants. Pregnant women and mothers of children under the age of 6 months who are enrolled in qualified health plans shall be entitled to receive educational services relating to pre-natal health, post natal health and childbirth, as follows: fetal nutrition, breast feeding orientation for new mothers, birthing classes, and post-natal care.”*

Sylvia was a 35 year old resident of California. She was born a man, but had undergone hormone therapy and sex reassignment surgery. She was legally classified as female pursuant to California law (but not Federal). She had just been approved for adoption of an infant (who was not yet born). Sylvia was enrolled in a qualified health plan that provided cash vouchers to use to pay for privately provided 401.05 educational services. She applied through her health plan for benefits under Sec. 401.05. In accordance with Federal rules, her health plan denied the application.

Relying on a Federal Civil Rights statute, Sylvia sued the Federal Government and her health plan, alleging that the law either unfairly excluded her from benefits, or was wrongly applied against her in a discriminatory way. She sought an order requiring the government and the health plan to provide her with the subsidies and damages for violation of her civil rights.

The Amendment to the Affordable Care Act also included the following provision:

*“Sec. 600.10. Hospital & Health Organization Grants. Participating private hospitals and private health organizations shall be entitled to receive grants up to 30 percent of their operating budget to fund general services provided by said private hospitals and health organizations.”*

“Participating private hospitals and health organizations” were limited to only such organizations operating in municipalities that were “rural,” as opposed to “urban.” The Congressional Committee that formulated this provision explained that special support for “urban” hospitals was necessary “to better serve the poor, non-white communities that inhabit many of the nation’s cities, and overcome the unique health challenges faced by those communities in the form of higher incidents of untreated ailments and contagious diseases.”

Dr. Bob was of European heritage. His patient Karen needed carpal tunnel surgery. The surgery was necessary in order for Karen to both communicate and make a living: she was mute and worked as a sign language interpreter. Karen’s heritage was also European. The closest hospitals were in “rural” areas, as defined by the aforementioned law. Due to budget cuts, these hospitals could not accommodate Karen. The next closest hospital was “Maria de la Luz,” which was located in an “urban” area. Its staff and the patients it served were almost entirely Hispanic or Latino in origin. Ramos, the CEO of the Hospital, was a well known Latino rights activist, who

had once publicly declared Latinos to be the “superior race.” Dr. Bob requested hospital privileges at Maria de la Luz in order to perform surgery on Karen. Ramos declined the request. “I have to look after my people,” he said.

Relying in part on a Federal Civil Rights law, Dr. Bob and Karen sued the Hospital and the Federal Department of Health & Human Services.

Discuss the following:

1. Does Sec. 401.05, as written, and as applied to Sylvia, have the effect of depriving her of the Equal Protection of Law, or was the limitation on grants by Congress and Sylvia’s public health plan legally permissible?
2. What arguments can Dr. Bob and/or Karen raise in support of their contention that Sec. 600.10 and/or Ramos have subjected them to a violation of the Equal Protection Clause?

## **QUESTION NUMBER TWO**

Dr. Bob was a surgeon. He operated a for-profit surgery center. He performed all kinds of surgical procedures, including deliveries (of babies). One procedure he refused to perform was abortion. He believed abortion was the killing of a human being. His view was partly rooted in his religious faith. On his building he erected a sign that proclaimed, “Choose Life! Choose Bob!” Occasionally, he posted large photographs of what appeared to be a preemie baby, with the Bible verse: “You formed my inward parts; you knitted me together in my mother’s womb. Rev 21:8.” For several years he had been receiving grants from the Federal Government pursuant to a program to provide pre-natal, non-abortion related care. A term of the grant was that he was not to discriminate in ways that impaired the Constitutional rights of persons seeking care. He used some of the grant money to create his large signs.

Bill W was a nationally known abortion rights activist. He organized a protest outside of Dr. Bob’s clinic in a public park immediately adjacent to the clinic. Dr. Bob applied for a permit to conduct a counter-demonstration in the park. His request was denied. He later learned that Bill W had never even applied for a permit. Police never responded to his complaints about the unpermitted protest. Dr. Bob went ahead with his counter demonstration. He addressed the crowd of pro-abortion protestors, quoting the Bible: “‘all who draw the sword will die by the sword.’ Do you hear that Bill W? You will die by the sword!” Looking angry, Bill W ran toward Dr. Bob. Police intervened. While one officer restrained Bill W, another officer placed Dr. Bob under arrest. Dr. Bob was charged with violating the permit ordinance and with disturbing the peace “by directing offensive words toward another.” In a cable news interview, Bill W denounced Dr. Bob as a “terrorist,” whose “hate-filled crusade against freedom must end.”

Later, Jane Roe walked into Dr. Bob’s clinic and asked for an abortion. Bill said he didn’t perform abortions, but he’d be happy to handle her baby’s delivery (for free). Relying on a law that permitted civil suits against persons who impaired any right protected by the Constitution, Jane filed suit against Dr. Bob. She also challenged the grant Bob received as government support for religion. She included in her complaint a cause of action for infliction of emotional distress stemming from the large photographs on Dr. Bob’s building. She sought damages and an order compelling Dr. Bob to perform the abortion and remove the signs from his building.

1. Were Dr. Bob’s First Amendment infringed when Dr. Bob was denied a permit to stage a counter demonstration?
2. What First Amendment based defense or defenses to the charges against him for protesting without a permit and “disturbing the peace” can Dr. Bob raise?
3. In an action for defamation brought by Dr. Bob, what First Amendment defense or defenses can be raised by Bill W?
4. In the action brought by Jane Roe, what First Amendment based arguments or defenses can be raised by Dr. Bob? Please discuss, *among other things*, commercial and symbolic speech.