

QUESTION 1
(One hour)

California enacted an amendment to its Civil Rights/Public Accommodation Law. The amendment was known as AB 1000. AB 1000 expanded rights to obtain public college scholarships to persons who identified as female and non-white. The law expressly stated that biological or genetic sex and race were not determinative of eligibility. The law also provided a process whereby non-genetic women and non-genetic non-white persons could obtain medical certification of their sexual or racial identity.

One purpose of the amendment was “to eliminate well documented and historic discrimination at California colleges against women and other minorities,” including Native Americans.

All money granted pursuant to AB 1000 was limited to persons 25 years old and younger. The limitation was based on the Legislature’s finding that persons 25 and under had more time to benefit from higher education than older persons, and because “the future belongs to the young.”

Lars was a 40 year old person who was born a woman, but who was “stereotypically” masculine in dress, mannerisms and habits, and who was also married to a woman. Though she applied for a scholarship, she was denied on the grounds that her true identify was male and thus did not qualify for AB 1000 benefits. She was told that she might qualify if she obtained medical certification of her sex and sexual identity.

Phyllis was a person who was born male but identified as a woman. Though Phyllis attempted to obtain gender identity medical certification, both doctors who were consulted refused to sign off on certification on the grounds that Phyllis’ gender identity was, in their view, the result of “mental illness” and because Phyllis was biologically male. Consequently, Phyllis was unable to qualify for financial aid under AB 1000.

Ted was of nordic heritage but identified as a Native American person of the Pomo tribe. Ted was granted financial aid under AB 1000. He was the last person to receive aid for the year.

Georgette was a member of the Pomo tribe and was of genetic Pomo heritage. She was denied financial aid under AB 1000 due to the exhaustion of available funds for the year.

Discuss each of the following issues:

1. Was the Equal Protection Clause violated by the requirement that Lars obtain medical certification of her sex and sexual identity?

2. If age was the basis for denial of financial aid to Lars, was the Equal Protection Clause violated?
3. Does the medical certification requirement violate Phyllis' rights under the Equal Protection Clause?
4. Did the preference shown to Ted cause or contribute to a violation of Georgette's rights under the Equal Protection Clause?

QUESTION 2
(One hour)

California's legislature enacted a law that required religious organizations to perform the wedding of any person seeking to marry, and prohibited denial of membership in and employment by those organizations on the basis of sexual orientation and sexual identity.

The law also established that weddings performed by a religious organization would entail a cost of \$2,000, with 75% of the amount going to the religious organization (as a financial incentive to accept the law) and 25% going to the State (to cover the cost of administering the law).

The law also specified that State officials would be responsible for posting on the exterior of all religious facilities notice of the law, including the price for marriage ceremonies. Posting was for the purpose of informing the public that weddings were performed at particular locations. Removal or destruction of the notice constituted a misdemeanor.

The "Tremblers" were a religious organization founded in 1873. They were famous for their relief work among the urban poor. They charged a \$50 fee for marriage services, which were performed exclusively for members of their sect. Homosexuality was considered sinful in accordance with the Tremblers' religious precepts and was grounds for exclusion from membership and employment.

Huldah was a member and employee of the local branch of the Tremblers. She planned to marry her female fiancée. She informed her employer, Pastor Jehosadruel, of her desire to marry in the Trembler temple, with Pastor Jehosadruel presiding. He declined to allow the marriage and informed her that her employment and membership were terminated.

When Jehosadruel learned that the State had posted the provisions of the new law on the exterior of the temple, he took the posting down. He scheduled a meeting of the members in the town square to discuss the law. Town authorities denied him a license due to his reported intent to call for civil disobedience. The meeting went ahead as planned. At the meeting, Jehosadruel lit the document on fire and said "this law belongs in Hell, along with those who promote it." As the document burned, Huldah's enraged fiancée ran up to Jehosadruel and slapped him.

Discuss only 5 of the following 7 issues:

1. The law's possible violation of the Free Exercise Clause.
2. The law's possible violation of Freedom of Expressive Association.
3. The \$2,000 marriage fee as a possible impairment of the Right to Marry.

4. The marriage fee posting requirement as a possible impairment of Commercial Speech.
5. The town authorities' denial of the Tremblers' access to the town square.
6. The law's possible impairment of the right to engage in Expressive Conduct.
7. The State's prosecution of Jehosaruel for "disturbing the peace" by burning the notice and saying "this law belongs in Hell, along with those who promote it."