

Question Number One – 1 ½ Hours

Anti-abortion groups staged protests simultaneously throughout the country on “National Life Day.” One protest occurred in Santa Rosa, California. In Santa Rosa and two other places in the country, doctors who performed abortions were physically assaulted. A fourth doctor suffered a heart attack when engaged in a heated verbal argument with an anti-abortion protestor. He later died.

An outcry against anti-abortion protests went up. Without conducting any hearings, Congress passed a law in response to the outcry. The law was called the Reproductive Privacy Rights & Safety Act. The language of the law commenced with the statement: “*Whereas public protests of abortion in this country are increasing, and violence is frequently associated with said protests, and as the violence and the threat thereof causes many women in need of abortion and other women’s health related services to avoid clinics under protest, the following provisions are necessary to ensure the safe availment of reproductive rights.*”

Among other things, the federal law required all persons who wished to engage in anti-abortion protests to register with the United States Department of Justice beforehand. Registration included providing one’s name, address, social security number, phone number, employer contact information and the name and address of any anti-abortion organizations to which one belonged. Once registered, the would-be protestor received a registration card. Any person who protested in violation of this law, or who failed to produce their registration card when protesting, would be subject to Federal prosecution and possibly fine and imprisonment.

As a compromise measure, the Congress included in the law a ban on commercial advertizing of abortion services. Generic commercial advertisement of “women’s health services” was not subject to the ban.

A number of *municipal* governments also passed laws in response to the outcry about violence said to be associated with anti-abortion protestors. One such municipal government was Sebastopol. The Sebastopol ordinance was titled: “an Ordinance to further regulate public places and prevent public violence.” The Sebastopol ordinance imposed certain requirements and restrictions on public anti-abortion protests, including the following:

A permit to protest abortion must be obtained 30 days prior to the protest date.

No more than 25 anti-abortion protestors could protest at the same location at the same time.

Discarding anti-abortion protest signs or literature on the ground would be punishable by a \$ 100 fine. The normal fine for littering was \$ 50.

Persons causing extreme offense to others while engaged in public protest are subject to jail for not more than 30 days and a fine of up to \$ 500.

Frito was an anti-abortion protestor. He and twenty (20) other people attended a protest march against a clinic within the city limits of Sebastopol. Frito and his fellow protest marchers were upset that the clinic was running ads for abortion in several local newspapers. Neither Frito nor his colleagues had obtained a protest permit pursuant to the *municipal* ordinance. Nor had Frito registered in accordance with *Federal* law. During the march, Frito carried a sign that read: "God loves babies." Sebastopol police broke up the march. One officer observed Frito drop his sign and run. The officer tackled him from behind. While Frito was being tackled, a bystander yelled "yeah, get him, so we don't have to!" Frito was charged with violating the *municipal* ordinance. He was also charged (by Federal authorities) with failing to comply with the Reproductive Privacy Rights & Safety Act.

Following an investigation, Federal authorities also initiated a criminal prosecution of the clinic for violating the federal abortion services advertizing ban.

Read carefully and analyze the following issues:

What First Amendment defenses can Frito raise against the State's prosecution of him for violating the municipal Ordinance? What would the State argue in response?

What First Amendment defenses can Frito raise against the Federal government's prosecution of him for violating the registration requirement of the Reproductive Privacy Rights & Safety Act? What would the government argue in response?

What First Amendment and Due Process defenses can the clinic raise against the Federal government's prosecution of the clinic for its violation of the commercial advertisement ban? What would the government argue in response?

Question Number Two – 1 ½ Hours

A sensational news story broke. The F.B.I. uncovered an alleged prostitution ring organized and operated by officials of seven closely affiliated mosques (i.e. Islamic or Muslim worship sites) located in seven different states. The ethnic origin of the membership of the seven mosques was Arab. The “prostitutes” used in the operation were all minor boys. Each of the seven mosques was also implicated in the funneling of money to known Arab and Muslim terrorist organizations worldwide. The government alleged that the prostitution operation was used to fund terrorist operations around the world.

In response to the story, Congress passed a law. The law created special inspectors to be employed by the Department of Homeland Security. These inspectors had authority to inspect the financial records of all mosques and Muslim religious organizations belonging to The Pan-American Society of Islam, or PASI. The seven mosques implicated in the child prostitute/terror funding scandal belonged to PASI. No mosque whose membership was non-Arab in ethnic origin was subject to the law, including mosques operated by the Nation of Islam—a predominantly African American Muslim organization— or mosques comprised of persons of Eastern European extraction (e.g. persons from Albania, Bulgaria and what used to be Yugoslavia and the Soviet Union).

Within a month of the law taking effect, federal investigators began appearing at mosque doors. Several mosques refused investigators access to their records and sought injunctive relief in Court.

State governments also expressed concern about what was going on in mosques. One of these States was Nevada. One of the mosques implicated in the boy prostitute/terror funding scandal was actually located in Nevada. Nevada had long legalized prostitution. The State’s age of consent was 16. The state received a large amount of revenue from legal prostitution. To protect the “integrity” of its sex industry, the State Legislature passed a law called the Commercial Sexual Relations Act, or CSRA. The CSRA essentially raised the age of consent for a male prostitute to 18. In other words, the CSRA made it a crime for an adult to have *commercial* sexual relations with a male who was under 18. Commercial sexual relations with a 16 or 17 year old girl was perfectly legal. *Non commercial* sexual relations by an adult with a 16 or 17 year old male was similarly legal. Any adult who violated the law was subject to fine and imprisonment.

Harvey was arrested in a sting operation in Reno, Nevada and charged with attempted commercial sexual relations with a male aged 17.

Read carefully and analyze the following issues:

If the mosques raised Equal Protection as a defense against enforcement of the law, what specifically would they argue, and what would the Federal government argue in response?

Is the Federal Law a violation of any clauses found in the First Amendment? Is so, which ones, and what justification for violation of these clauses would the government propose.

Has Harvey suffered a substantive due process or equal protection violation?