

Question Number One (90 minutes)

Susie moved to California from Bloomington, Indiana. Bloomington has a population of 67,000. It was *not* within 25 miles of any town of greater size. Susie was Caucasian, as is almost 90 percent of the population of Bloomington.

Omar also moved to California. He moved from Framingham, Massachusetts. Framingham is the same size as Bloomington, but is within 19 miles of Boston. Boston's population is over 600,000. While Framingham's population is mostly white, Boston's white population is only 47 percent of the whole. Unlike Susie, Omar is not white. Moreover, he is a native of Kenya.

Just before Susie and Omar moved to California, California's Legislature passed a law. The law was called the "Save Our Cities Act." The law provided the following statement of Legislative findings and intent:

*California in recent years has suffered an economic downturn coupled with the influx of immigrants from other States and from other nations. The destination of the overwhelming majority of these new residents has been the metropolitan areas centered in Los Angeles and San Francisco Bay. Most of the new residents come from heavily urbanized regions, hence their predilection for California's largest metropolitan areas. The material resources of the affected portions of California have been overwhelmed by this influx of new residents, while the State's overall environment worsens due to the increase in green house gases emitted by the vehicles these residents bring with them into the State. Compounding the problem is the fact that the new residents are both ignorant of their adverse impact and insensitive to the values of the communities wherein they settle. This State is now in crisis. In order to overcome this crisis, the Legislature hereby enacts the Save Our Cities Act.*

The Save Our Cities Act included the following provisions:

- (a) *Any person who was born in a country other than the United States, or who is from any municipality within the United States containing a population in excess of seventy-thousand, or is from a municipality within twenty-five miles of a municipality with a population in excess of seventy-thousand, and who takes up residence in the metropolitan areas of either Los Angeles and San Francisco [defined elsewhere in the law, but including Sonoma County], may not own a motor vehicle, or lease a motor vehicle for more than three consecutive days, prior to the completion of their first year of residency within this State.*
- (b) *To ensure that all new voters are properly informed regarding issues of local concern, and have established a meaningful association with their communities, no person shall cast a vote in any municipal or local election during their first year of residence within this State.*

(c) *The prohibitions set forth in sub-sections (a) and (b) are inapplicable upon payment of a \$ 5,000 fee.*

When the Governor signed the law, he was overheard to say: “this will keep *those people* from dragging us all down.”

The next day, on a talk radio program, Assemblyman Victor said that the reason why a lot of his colleagues supported the law was because they are racists and hate immigrants.

Coincidentally, Omar and Susie both settled in Sonoma County. Unlike Susie, Omar was not allowed to take part in any local election until after he had resided in the State for at least a year. Omar went to the polls anyway in order to protest the unfairness of the law. Through a bullhorn, he announced he owned a car and would keep on driving it until the unjust law was repealed. He was subsequently cited for violation of sub-section (a) of the *Save Our Cities Act*. While his criminal case was pending, he sued to enjoin enforcement of sub-sections (b) and (c) of the law.

*Discuss how the Save Our Cities Act may violate the Equal Protection Clause of the Fourteenth Amendment. Identify any suspect, quasi-suspect or non-suspect classifications and discuss these in accordance with the appropriate level of scrutiny. Moreover, please determine whether the Save Our Cities Act violates any fundamental rights, either directly or as a result of the classifications established by the law.*

Question Number Two (90 minutes)

The United States Congress recently enacted the “*Health Care for All Act.*”

One provision of the law required employers who provided health care insurance to their employees to include in the plan coverage for “reproductive services,” including abortion.

Another provision of the law forbade general health care providers from denying medical care to any person unless the desired medical care, treatment or service was unlawful.

The law also provided a right of private action for persons whose rights under the law are violated.

Dr. Josef operates an outpatient surgery center, providing all variety of outpatient surgical services. He employs 30 people in his business and provides health care coverage for all of them. He is a self-described “observant Jew.” He opposes the first provision of the *Health Care for All Act* because he believes that human life is given by God and that life commences at conception. To abort an unborn child is to destroy a living human creature of God. One of his employees is now suing him for failing to provide the mandated insurance coverage.

Dr. Josef also opposes the Act’s second provision. He is being sued by a would-be patient for refusing to provide a lawful abortion.

Following the filing the two lawsuits against him, Dr. Josef was interviewed on television and stated that the law should have provided him with an exemption. In response, Senator Barbara Boxer, who was also a guest on the program, stated that an exemption would have represented an impermissible “establishment” in violation of the Constitution.

Meanwhile, Dr. Josef’s home had become the site of a pro-choice protest over the doctor’s refusal to abide by the *Health Care for All Act*. The protestors obtained a permit and conducted demonstrations at certain times on the sidewalk outside Dr. Josef’s home. In response, Dr. Josef posted on the exterior of his home extremely graphic depictions of what appeared to be aborted fetuses. On the second day of the protest Dr. Josef came out of his home, stood in the driveway, pointed at the depictions, clenched his fists and yelled at the protestors: “this is what you would have me do! I would sooner kill myself! You people are foul! You disgust me!” One of the protestors, whose name was Omri, surged toward him yelling “more lies from a Jew!” and “I’ll prove it!” Before any physical contact could occur, a nearby policeman arrested Dr. Josef and charged him with violation of the State’s anti-harassment (or fighting words) statute and for violation of the State’s law prohibiting public display of “disturbing and offensive images.” The next day, Dr. Josef applied for a permit to hold his own counter-demonstration on the sidewalk outside his home.

The City Manager— an outspoken supporter of abortion rights— denied the application on the grounds that access to the public thoroughfare was already taxed by the protests against the doctor and that the doctor’s proposed counter protest posed the threat of causing further violence.

At the time Dr. Josef was arrested, Omri was arrested, too. He was charged with assault pursuant to state law, with an enhancement due to the assault being motivated by animus to another on the basis of race, ethnicity, or religion. As he was being loaded into the police sedan, Omri yelled “but I’m Jewish, too!”

Discuss the following:

1. Do the two provisions of the *Health Care for All Act*, and the lawsuits based thereon, violate the Free Exercise Clause of the First Amendment?
2. Is Senator Boxer correct that the granting to Dr. Josef of an “exemption” would represent an impermissible Establishment in violation of the Constitution?
3. Is the prosecution against Dr. Josef for use of fighting words permitted by the First Amendment?
4. Does the First Amendment protect Dr. Josef’s graphic displays?
5. Does the First Amendment prohibit refusal by the City to grant Dr. Josef a permit to protest?
6. Is the enhanced charge against Omri prohibited by the First Amendment?