

Question One

The President of the United States is the son of a Shiite Muslim immigrant father. He was given Arabic first and middle names, including the name of the grandson of the founder of Islam. When he was eight years old, the President was adopted by his step-father, who raised him in a Muslim country. There, the President attended a Muslim religious school. He later reported that despite his background, he was not a Muslim himself. After being elected to the Presidency, he gave an address to the United Nations. In the address, he said, among other things, “*the future must not belong to those who slander the prophet of Islam.*” On another occasion, he extolled “*the many achievements and contributions of Muslim Americans to building the very fabric of our nation and strengthening the core of our Democracy.*” On yet another occasion, he casually referred to “*my Muslim faith,*” but then corrected himself by saying “*my Christian faith.*”

When the President took office, 70 percent of *legal* immigrants to the United States were either Christian or Buddhist. Six years into the President’s term, 70 percent of *legal* immigrants were Shiite Muslims from Arab countries. The nation’s immigration laws allowed the President broad discretion as to which foreign nationals to allow into the country.

During the President’s time in office additional *illegal* immigrants also entered the country. These immigrants were largely from Central America, who practiced the Christian faith. The President, for unknown reasons, had essentially halted any serious effort to prevent *illegal* entry into the country, or to apprehend *illegal* entrants and return them to their nations of origin.

Arshad was a native of Malaysia who lived in New York City. He had immigrated *legally* as a child from his native land. He was a Sunni (not Shiite) Muslim of Chinese heritage. [Like Catholics and Protestants, Sunnis and Shias had a long history of mutual acrimony]. Hoping to start a family, he travelled to his homeland and married a Malaysian woman, who was also a Sunni Muslim of Chinese heritage. Arshad’s wife’s application for immigration to the United States was subsequently denied. Meanwhile, the flow of Arab Shiite Muslims into the Country continued.

Arshad later learned of a little known provision of the Naturalization Act that automatically allowed the foreign born wives of *natural born* citizens to enter the United States. No automatic immigration allowance existed with respect to the foreign born wives of *naturalized* citizens.

Arshad sued the Federal Government on First and Fifth Amendment Grounds.

*Discuss whether the Nation’s immigration laws, or the President’s administration of those laws, violated the following:*

1. *any Equal Protection rights of Arshad;*
2. *any Due Process Clause protected rights of Arshad or his wife;*
3. *Arshad’s First Amendment Free Exercise rights;*
4. *the Establishment Clause.*

Question Two

Ted is a politically active fellow who owns three sporting good stores. Among other things, the stores sell guns. Ted ran a commercial on television starring himself. The commercial advertized various items for sale, including a variety of guns. At one point during the commercial, Ted posed with a hunting rifle and quoted Thomas Jefferson, saying: “*the tree of liberty must be refreshed from time to time with the blood of patriots and tyrants*” and “*whenever any form of government becomes destructive...it is the right of the people to alter or to abolish it, laying its foundation on such principles and organizing its powers in such form as to them shall seem most likely to effect their safety and happiness.*” Ted was then shown taking aim at something off-screen. Almost at once the screen flashed to a series of images with targets superimposed on them. The images progressed from inanimate objects, to deer and ducks, and then to a police officer and some soldiers. Shooting sounds accompanied the images. At one point Ted is heard to say “*take that, bad guys!*” The very last image was one that sort of resembled the local police chief, whose agency had arrested Ted during several recent and very well publicized political protests. Finally, the commercial ended with a reference to a big sale coming soon. Ted’s commercial ran during the commercial breaks of *The Walking Dead*— a violent and gruesome television show about a group of post-apocalypse survivors who spend the balance of their days shooting and stabbing zombies.

Among the criminal laws enacted by the State where Ted lives are the following: (a) a law that prohibits the brandishing of guns in public (the law was designed to discourage *unlawful* use of guns); (b) a prohibition against encouraging public disorder of a “dangerous” nature, or causing “offense” to others in public; and (c) a total ban on television and radio advertisement of guns for sale (this last law was expressly designed to prevent gun violence).

Shortly after the commercials aired, Ted was charged with violating all three laws.

Discuss the following:

1. *Assuming that Ted asserts that “brandishing a gun” in his commercial is expressive conduct (or symbolic speech), what are the arguments for and against that assertion?*
2. *Does any action of Ted’s constitute either Incitement or Fighting Words?*
3. *Assess whether the prohibition on television and radio advertisement of guns for sale passes muster under the Central Hudson test.*

Question Three

Sam and Dave are a same sex couple. They own a bakery in the “bakery district” of the city where they live. There are 15 bakeries within a quarter mile radius in the “bakery district.” Sam and Dave’s bakery is a special business organization in which the State is a minority partner. While the business is not taxed, it must give a share of all profits to the State. Some State appellate level courts had held that such organizations are state agencies.

One day, a Muslim customer named Reza made an inquiry and found out that pig fat is often used in Sam and Dave’s pastries. Sam and Dave used pig fat, or other types of cooking fat, depending on what type of cooking fat was cheapest at the time. Reza attempted to order pastries that were not cooked in pig fat. Sam and Dave refused, saying they didn’t run their business to cater to the dietary or religious preferences of their customers. They said they ran their business to make money for themselves.

Around the same time, a lesbian couple named Peggy and Sue stopped in and requested a wedding cake for their upcoming wedding party, with the names of the couple and the figurines of two women in wedding dresses on top. Sam and Dave informed the couple that while they themselves were gay, they believed in the traditional view of marriage, not “gay marriage.” They said that “the law of Moses prohibits such marriages.” For that reason they declined to be in any way associated with the couple’s celebration, even for pay.

Reza sued Sam and Dave for denying him service due to their religion-based discrimination, and for intentionally impairing the free exercise of his religion.

Peggy and Sue sued Sam and Dave for denying them service on the basis of their sexual orientation and for intentionally impairing their right to marry.

Discuss the following:

1. *What are the arguments for and against Reza’s contention that his First Amendment religion clause-based rights have been violated?*
2. *In the context of their lawsuit, what exactly would Peggy and Sue argue, and what Constitution-based defenses might Sam & Dave raise?*