

QUESTION 1
(90 Minutes)

California enacted a law automatically registering persons to vote after they obtain a drivers license. At the time of enactment, 1,000,000 drivers licenses had been issued to so-called illegal aliens. In accordance with the new law, notices were sent to all known addresses of California drivers advising them about voting in California. 300,000 notices were sent to addresses in Mexico, Honduras and El Salvador with information about absentee voting.

Flanked by the Speaker of the Assembly and leader of the State Senate, the Governor announced that “our State has now guaranteed that the true, native majority will be heard in the halls of government. The unjust taking of California from its rightful rulers over a hundred and seventy years ago has finally been remedied.” The crowd contained three quarters of the elected members of the State legislature, who unanimous stood, cheered and applauded.

Joaquin was a native of Central America of Spanish heritage and a naturalized citizen of the United States living and registered to vote in California. He published a website called “La Reconquista,” dedicated to criticizing California’s pro-illegal immigration and pro-illegal immigrant policies. La Reconquista’s activities were funded by subscribers, donors and advertisers. In the past few years, Joaquin had become a prominent opponent of the State’s immigration-related policies and his publications attracted numerous readers and advertisers.

California passed the Internet Protection Act, which declared the internet a public resource. The law required licensing of internet websites based on satisfaction of standards set forth in 2,000 pages of regulatory text. An advertiser tax was also imposed, payable by advertisers, amounting to 20 percent of the cost advertisers paid to place ads. The text of the law indicated that its purpose was to bring order to the “chaotic” internet, “assure that the internet is not abused by those who promote false claims” and distribute “offensive and dangerous fake news,” and also to prevent the “disrupting of social harmony” and “provocation of the public to act in reckless and anti-social ways.” The tax portion of the law was supposedly designed to fund the law’s administration, though the revenue raised went straight into the State’s general fund. The chief sponsor of the law in the State Senate declared that he expected the Attorney General to use the law to aggressively stamp out on-line hate directed at immigrants and other “minorities.”

Two months before the State’s general election, upon which Joaquin’s publications had been aggressively commenting, Joaquin received notice that his current license to publish on the internet was being suspended for violation of the law— specifically for publishing “false claims” and distributing “fake news” about voting by non-citizens and persons illegally in the country. Apparently, no pro-illegal immigration websites were being targeted for violation of the law.

One of Joaquin's advertisers was a company called AlienFree. It provided a search service that accessed publicly available information in order to allow customers to determine whether a vendor of goods or services was owned by illegal aliens, or employed illegal aliens, or supported pro-illegal alien office holders via campaign donations. Joaquin and AlienFree received notice of an action filed by the State Attorney General seeking a court order barring them from advertising AlienFree's services in Joaquin's publications on the grounds that the advertisements promoted the violation of the privacy of business owners and aliens, was harmful to free enterprise, disrupted social harmony and threatened the incitement of reckless and anti-social attitudes and conduct directed toward immigrants and "other minorities."

With their answer to the Attorney General's suit, Joaquin and AlienFree filed and served cross-complaints that alleged violation of their rights pursuant to the Due Process and Equal Protection Clauses and First Amendment.

Discuss only **four** of the following issues:

1. Violation by the State of California of Joaquin's Fourteenth Amendment rights to due process and vote (and the government's response).
2. Violation by the State of California of Joaquin's right to be free of racial and/or other types of discrimination (and the government's response).
3. Violation by the State of California of Joaquin's First Amendment Speech and Press rights (and the government's response).
4. The violation of AlienFree's First Amendment Right to engage in commercial speech (and the government's response).
5. Whether the Internet Protection Act is a valid time, place and manner restriction on First Amendment rights, both on its face and as applied.

**QUESTION 2
(90 Minutes)**

Reverend Righton is the head of a religious organization that he founded in San Francisco during the hippy era (late 1960s). He has a long history of criminal arrests and convictions for such things as drug possession, pandering, public intoxication, and public indecency. Reverend Righton's group is currently based in Sonoma County, California. According to his website, his group's beliefs merge Christian ideas with historic pre-Christian fertility cults, and interpret Jesus to be a version of the Iron and Bronze Age ceremonial king who entered into a mystical union with the earth, was sacrificed in winter and was reborn in the spring.

Each year, at Easter time, Reverend Righton and his group stage a "passion play," recreating the last days of Jesus, including his torture by the Romans, death on the cross and resurrection.

The play was not well known to the general public until around 2016, when a cell phone video went viral. As depicted in the video, Jesus-- played by the Reverend Righton-- was stripped naked, mocked, whipped and beaten by partially clothed female "Romans." After various sexually suggestive torture routines, the Reverend Righton was strapped to an elevated cross. While the Reverend Righton screamed from the cross, a crowd of actors started dancing, chanting, screaming, fighting and engaging in what appeared to be simulated sexual acts. This chaos of the actors spread into the audience, who were involuntarily made participants in the drama, some of whom seemed to resist and fight back. At one point, the Reverend Righton seemed to defecate while hanging on the cross and urinate on the crowd below. One of the "Romans" gathered a brown substance from the base of the cross and declared it to be a holy relic. She then smeared it on the naked bodies of cast members who appeared to become ecstatic. It later turned out that what was smeared on the actors was mud.

In March of 2018, the Reverend Righton received a copy of a temporary restraining order and a notice of a hearing for a permanent order prohibiting him from performing the "passion play." The order and notice cited the State's public disorder statute, which imposes punishment for "unlawfully fighting, or challenging another person to a fight, in a public place, disturbing another person by loud and unreasonable noise, if this is done wilfully and maliciously, and/or using offensive words in a public place." He was also charged with violation of the State's obscenity statute, which the Courts had construed to conform with *Miller v. California*.

A hearing was set for the day after Easter. Rather than challenge the government's action, the Reverend Righton went ahead with the performance. Half-way through, police arrived, stopped the performance and arrested the Reverend Righton and many of his fellow performers. He was charged with violating the order, as well as the State's public disorder and obscenity laws.

Discuss only **five** of the following issues:

1. The Reverend Righton's argument that the government's action violated his right to engage in expressive conduct.
2. The Reverend Righton's argument that the government's action violated his free association rights.
3. The Reverend Righton's argument that the government's action violated his right to freely exercise his religion.
4. Whether the government's action was justified as an attempt to combat obscenity.
5. Whether the government was justified in prosecuting the Reverend Righton on the grounds that his play constituted fighting words.
6. Whether the government was justified in prosecuting the Reverend Righton on the grounds that his play constituted incitement or disturbance of the public peace.
7. Whether the Reverend Righton was justified in ignoring the Temporary Restraining Order and going ahead with his performance.