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Book#1

Blue Book

NAME

SUBJECT Conlaw

INSTRUCTOR Brady

EXAM SEAT NO. SECTION

DATE 4/13/11 GRADE

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50 - 16 PAGE

~~The 1st Amendment of the Constitution guards rights to individuals that are incorporated under the Bill of Rights through the 14th Amendment against States.~~

The 1st Amendment of the Constitution avails several right to individuals, such as the right to freedom of speech, right to petition the govt. for redress of grievances, freedom of the press, right to assemble, right to free exercise of religion and right to prevent the government from establishing religions. Additionally inferred in the 1st Amendment are the right to associate (expressive, intimate and economic). The first issue here is whether Frito has "Defenses to raise against the State prosecution for

violating a state ordinance. The rights under the 1st Amendment would apply here through Application of Due Process Clause of the 14th Amendment (States.). In this case there are several defenses Frito could assert. The state ordinance entitled "Ordinance to further regulate public places and prevent violence" had several requirements. The first area or defense Frito could assert is that the ordinance on its face was invalid due to its broad/overbroad/vague title.

In this case the Argument would be that the statute itself was void due to the Overbroad / Vagueness of the Statute's language

A statute that is overly broad is one that is not narrowly tailored and is not using the least restrictive means. Additionally a statute that is vague is one in which the actual language is unclear to the common person and could be misunderstood.

In this case the ~~the~~ statute to further "regulate public places" — public places could clearly be misconstrued by the citizens and unclear on what constitutes

regulating innocent conduct

a public place. Is the public place

the definition of a Traditional Public (ie- streets, sidewalks, public parks) Forum or that also included in

a non traditional public forum? (ie - schools, universities)

Also, legally vague and overbroad is

the term "public violence". What

exactly does public violence mean? Is

there a definition or behaviors that are

targeted? It FITS more to rip on

this argument than the entire

statute would be considered void and

therefore his prosecution for failure to

comply with the statute would not be valid

The State would likely argue that the name of the statute is merely the naming convention and that the requirement imposed are what should be scrutinized rather than the title. They would also argue they felt that if was construed for a legitimate purpose - that of providing safety to public and preventing any type of violent behavior.

(2) The second defense Frito could assert is that he has the right to Assembly according to the 1st Amendment. And that he is afforded the right to assemble

In a group in any manner he could assemble as an individual. The ~~Govt.~~ State would argue they have the right to impose Time, Place and Manner Restrictions in the event the assembly is going to occur in a ~~Traditional~~ Public Forum. There are 3 types of Public Forums (Traditional Public Forum, Non Traditional Public Forum and Non Public Forums). The State would argue that the Time Place and Manner restrictions could be reasonably applied to the protesting if the assembly is going to occur

in a traditional public forum (street, sidewalk etc.) or non traditional public forum (university setting or school). In this case the state would say the Time Place and manner Restriction - which includes the govts ability to restrict the assembly if the restriction is content neutral, their are alternative means of assembly/forum available, the restriction is narrowly tailored and the state has a significant govt. interest. The state would assert that the restrictions imposed on Frito that there could

be no more than 25 people protesting at the same time for anti-abortion protest was narrowly tailored and that their interest was crowd control and public safety and that their were alternative forums available example having multiple protests on different days or groups rotating if there were more than 25 people wanting to protest. Frito would assert that this is not content neutral that is focusing on anti-abortion protest and that they would be demonstrating on the sidewalks

which are considered Traditional Public Forums and that this is a violation of his 1ST Amendment Rights. Likely the State will prevail on this one portion of the requirements. It in fact the Statute on its face was not determined to be invalid due to overbroad/vagueness as supra

(3) The third defense Frito could assert is that the requirement for the permit to be obtained 30 days prior to protest was also a violation of his Assembly Rights (supra) and his right to Associate. The Right to Associate

is an implied right of the 1st Amendment and includes expressive association (groups like boyscouts, Intimate) association - (small groups and families) and economic association. In this Case Fnto would say this ~~to~~ requirement was a Prior Restraint on his right to Assemble and Associate as protected by the 1st Amendment. A Prior Restraint has a permit, in order to be allowed by the GOA. is ~~one that must be~~ allowed if the goverment can show an important goverment interest, that the officials

agency granting the permit does not have unfettered discretion with regard to granting or denying the permit and that there are ~~the~~ appropriate procedural safeguards in place. Frito would argue that this permit process is a restraint on his ability to assemble and associate as well as demonstrate his freedom of speech. The State will argue that they do have an important interest - which is to assure that there is a thought full process in the demostration and that prior

permit decreases the likelihood for increased and heightened agitation and high emotional levels. That the demonstration will likely be more peaceful and they can provide forewarning to clinics of the demonstration so that patients can be notified and forewarned so as not to be scared or choose not to come for services – thus promoting safety and health and that there is no unfettered discretion as the permit is not set to be denied due to certain criteria, it is just a time requirement.

Additionally the state will argue that there are approp. procedural safeguards - although the facts ∅ state this. Likely in this argument. Frito will not prevail because the permit only appears to be a timing requirement, however if the statute was determined to be overbroad/vague as argued above Frito would not have to comply with this ~~duty~~ requirement at all as the statute was void and therefore could not actually be convicted for failure to comply.

④ The Sousa argument is that he has the right to speech and that his sign although discarded on the ground has symbolic speech Symbolic speech is protected and the test that is applied is O'Brien which states that the statute has to be content neutral, the state has to have the power to enact the statute and have a compelling interest and it is narrowly tailored. Herbrito will argue that his sign was his symbol. 2 speech and that the requirement for

discards anti abortion protest signs or literature on the ground would be punishable by a $100 fine. This would be also argued by Fnto that this requirement is overbroad and vague - what is "abortion protest sign" and "literature." Was his sign "God loves babies" anti abortion sign or literature. Likely the Govt. would argue that this is not overbroad but the court would find the language for the requirement was too broad and vague and therefore

not apply this requirement. So Fnito could not be held for dropping the sign.

(5) He could also assert he dropped the sign out of fear for the individual yelling - "Yeah, get him so we don't have to" as those are fighting words. Fighting words are words directed at a person (Fnito) intended to create anger and likely to result in harm. Since Fnito did not yell these words it would not be his issue to bring up.

Defenses Fnto could raise against Federal Government Prosecution of Notary Registration Requirement.

Fnto could assert several 1ST Amendment Defenses with regard to his prosecution for failing to Comply with the Reproductive Privacy Act. ~~As Applied by Due Process of the Amendment~~.

First Fnto would assert that under the 1ST Amendment he has the right to Assemble (supra) and that the GOA imposed unnecessary and unrelated Prior Restraints (supra)

In this case the prior restraint he is trying to is the requirement for registration which included name, address, social security #, phone #, employer contact information and name/address of anti abortion organization. The gov. is not able to ask for all this ~~co~~ information as it also violates his Fundamental Right of Privacy as Applied thru the 5th Amendment of Due Process. In this case the gov. is asking for much more information than

allowed and although the
gov. will say they have a
compelly interest and it's
(safety)
narrowly tailored (anti abortion
protestors) it will fail because
the act is not vague and
they are not inciting unlawful
behaviors or actions in the
demonstration. Therefore the would
not be an appropriate prior restraint

(2) Additionally this would be
argued by Fito as being too
broad (supra). Likely this argument

chold and Fifth would prevail.
Due to the fact that law
violates the individuals ability
to exercise their assembly
and association rights and
is too broad, Smith would not
be able to be prosecuted for
failure to produce a card and
lack of registration because the
claim is fact invalid due to
its overbroad nature.

Clinics

~~Ethics~~ 1st Amendment and

Due Process defenses against

Federal government prosecution

of Commercial Advertisements.

The Clinics will first Argue that

they have the Right to Freedom

of the Press and they are able

to Print Materials about their

services or comments about

their business. Moreover their

argument would focus on

their freedom of speech - Specially

Commercial Speech. Commercial

Speech is afforded protection so long as the speech is not illegal and material not fraudulent. Assuming the printed materials were not fraudulent then the government can regulate the commercial speech by applying the Central Hudson Test which then looks at the gov. having a significant government interest, that the statute directly advances that interest and that it is no more restrictive than necessary. The statute banned

any commercial advertising done by the clinics. The clinic would argue that there is not a least restrictive means ~~test~~ ~~test~~ no more than restrictive approach at all. They are simply not allowed to advertise which is a right they are afforded The govt. would fail despite argument for ~~compelling~~ significant interest - to decrease possible pregnancy because the did not use the less restrictive means and banning the advertisement

is an infringement on their speech as well as the symbolic speech espo. where the ~~B~~ advertising is the target which is content specific.. This would not be allowed and the goA would fail and the clinic would prevail and not be convicted. Additionally the clinic could raise a due process argument through the 5th Amendment Due Process Clause that the infringement is an infringement on their right to work as an economic right - without advertising

they cannot have a successful business. Although this an economic right, the govt. only has to show a rational relationship to a legitimate govt. purpose and often the govt prevails.

You covered an impressive amount of ground, and did it well.

Good analysis and good writing

2) Is the Federal Law a violation of any clauses found in the First Amendment? If so, which ones, and what justification would the government argue in its defense?

I believe that several clauses of the First Amendment are implicated here: free exercise of religion and freedom of association.

Concerning the free exercise clause, the mosques may argue that the government powers granted have a chilling effect on their practice of Islam, as no other religions are implicated by the law. The test here is fairly simple: first, is the individual expressing a genuine religious belief? If so, a strict scrutiny test is performed to see whether the law is constitutional. This is *not* a cut-and-dry violation: first, it is difficult to assume that the government is really infringing upon the expression or practice of religious beliefs in any direct manner. The law contains no content or practice restrictions of any kind, and it doesn't appear that anyone's religious expression was affected at all. So already the government seems to be standing on steady ground; in fact, the battle may be lost right there. However, let's assume that expression was restricted in some way -- at that point, a simple strict scrutiny analysis is applied. So, does the government have a compelling interest in preventing terrorism? Yes it does. Furthermore, is there a rational connection between examining the mosques' records and preventing terrorism? I don't believe this is a "slam-dunk" for the government, but a court would probably find enough of a connection between the two to proceed to the third prong. And once again, it appears that the law is not "narrowly-tailored" enough to be "as unrestrictive as possible", for the simple fact that the government assumes all PASI mosques are financing terrorists! If there was a distinction drawn between "good" and "bad" mosques, the law may pass muster, but in its current, all-encompassing form, it is simply too broad.

In the end, I think a court would find that the government isn't really restricting religious expression in any meaningful way, and thus does not qualify for review under this portion of the First Amendment.

Second, one could argue that the law implicates religious *association*, which isn't quite the same as religious exercise. The government would once again have to pass a "strict scrutiny" test, but this time, it wouldn't have the protection they did last time; there is no requirement that PASI prove the government is infringing upon any person's right to exercise religion. Instead, they need to show that the effect of the law is harmful to associations between mosques, both within and outside of PASI. That would seem much easier to prove, as the law would, at a minimum, convey the message to the general population that PASI mosques were inherently criminal enterprises. This could lead to widespread public scorn, and an incentive for other Muslims to avoid PASI-affiliated mosques. The government could use the justification that only PASI mosques have been "busted" thus far, and as such, they are the only ones who should reasonably be subject to the law. Such a defense would also tie in the to

strict scrutiny test, in that the fact could be used to prove a rational relationship between the federal government's goal and the reach of the law. However, it seems that, once again, the broad-brush approach will backfire on the government, as the law sends a very strong implication to the rest of society that PASI-mosques are evil, and thus are to be (even subtly) discouraged. Clearly the law could be narrowed to those mosques where criminal activity was suspected, and thus, the law fails the final prong of the strict scrutiny test. Under this facet of the First Amendment, a court would probably rule the law unconstitutional.

3) Has Harvey suffered a substantive due process or equal protection violation under the Nevada law?

Harvey may have defenses under equal protection for his arrest.

The first controversy here is what kind of class Harvey has been tossed into -- if he can show that either (a) he is a "suspect" class, or (b) suffering under an infringement of a fundamental right, then the law will have to pass strict scrutiny examination. The government will try to have him identified as a "non-suspect" class, at which point the government need only demonstrate that the law is furthering a legitimate governmental interest. This is known as the "rational basis" test, and laws qualifying under this criterion have a much higher chance of passing constitutional muster.

Harvey's best argument is that the government is infringing upon a couple of his fundamental rights: the right to privacy, and the right to intimate association. Both are protected under the Fifth and Fourteenth Amendments, and have been recognized by the judiciary as "fundamental". He would argue that the government has no business telling him who he may sex with, especially since the common age of consent in Nevada was (until very recently) sixteen for both genders. Furthermore, he would argue that the governmental intrusion into his sex life is a violation of his privacy, which is part of the "penumbra" of rights one enjoys under the US Constitution. And while he may have a point, courts have put some substantial limitations on both rights: governments can prevent rape, for instance, even though such conduct might be in one's "intimate" sphere. They also have passed a number of law preventing sex with animals and children, despite the fact that such limitations clearly infringe upon a person's individual liberties. In this regard, the government would concede that, generally, one has the right to privacy in their intimate affairs. However, this right has limits, and our courts have never recognized a "fundamental" right to have sex with children. What constitutes a "child" is normally a matter for the Legislature to decide, which implies that having sex with anyone regardless of age is *not* a fundamental right -- those norms are fluid, and will change drastically over the course of time. As such, a court would probably determine that Harvey's "class" -- males who have commercial sex with other males under the age of eighteen -- is "non-suspect".

Applying a "rational basis" test, the government must show that (a) it is furthering a legitimate governmental aim; and (b) that there is a rational relationship between the governmental aim and the effects of the law. Given the fact that Nevada's sex industry provides a large amount of revenue for state coffers, a court would probably determine that regulation of the sex industry's "integrity" is a legitimate aim of the state government. However, whether or not the law furthers the aim is questionable; while the state need not meet the same "least restrictive" standard as strict scrutiny, there still needs to be *some* kind of connection between the law and protecting the sex industry. Harvey would argue that that law is so narrowly drafted that it essentially does nothing to further this interest; it was passed in reaction to a completely unrelated criminal conspiracy, and there is no indication at all in the fact pattern that the prior appropriate age for commercial sex between males was doing *anything* to harm

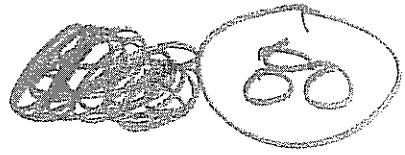
Nevada's sex industry. This is made worse when one considers that the consensual age for female prostitution is *still* sixteen, betraying a fundamental lack of consistency in the law's reach. Attorneys for Nevada would counter that, as a result of the PASI controversy, male prostitutes under the age of eighteen were inherently suspected of being criminals; especially since one of the mosques was located in Nevada, local officials were merely doing what they could to remove the PASI stigma from the Nevada sex industry. In doing so, they would argue that the narrow reach of the law actually *protects* Harvey's fundamental rights, since he may still enjoy commercial sex with females as young as sixteen, and even non-commercial sex with boys at age sixteen. All they did was narrow his rights to the smallest degree that the situtation called for; after all, there were no female prostitutes/terrorists.

While the government's arguments are questionable, it remains Harvey's burden to prove that there is not a rational basis for the law to exist. And given courts' historic deference to the judgment of the Legislature in such matters, I believe a court would find that the law is constitutional, since none of Harvey's fundamental rights were impaired, and the law was specifically tailored to prevent the worsening of the PASI mosque stigma on Nevada brothels. There is just enough of a justification (although barely, in my opinion) for the law to withstand a constitutional challenge.

END OF EXAM

Very Lawyerlike.

I'm impressed.

Final Exam  50