FIRST AMENDMENT
FINAL EXAM
SPRING, 2013

This is a 3 hour CLOSED BOOK exam. The exam is divided into three parts. The first part is short answer. Answer these questions directly on the exam. The second part is two essays. These should be answered in your bluebook. The third part is multiple choice. These answers go on the scan-tron card. Each section is worth a different number of total points, and the point values of the short answer and essay questions differ. The value of each part or question is set forth at the beginning of the part or question. You might want to allocate your time in accordance with the weight of the question. The exam is worth a total of 80 possible points. The other 20 come from work during the semester.

When you discuss issues in the essays (part II), discuss both sides.

Do not start until told to do so. You may have nothing with you in this exam except writing implements. Please place all books, coats, jackets, pocketbooks, knapsacks, etc. at the front of the room. You may have access to them during the exam only with the proctor's permission. ALL CELL PHONES AND OTHER ELECTRONIC DEVICES CAPABLE OF OBTAINING, TRANSMITTING OR RECEIVING INFORMATION OR MESSAGES MUST BE TURNED TO THE OFF POSITION, AND MUST BE PLACED WITH YOUR BELONGINGS IN THE FRONT OF THE ROOM. VIOLATION OF THIS PORTION OF THE EXAM RULES WILL RESULT IN A DEDUCTION OF NO FEWER THAN 25 POINTS FROM THE TOTAL OF YOUR EXAM, AND COULD RESULT IN REFERRAL OF THE MATTER TO MSL’S DISCIPLINARY COMMITTEE.

YOU HAVE THREE HOURS FOR THIS EXAM.

Use your MSL Identification Number ONLY on your scan-tron, the exam and the bluebook.

There is a page limit of one bluebook total, single-spaced for the entire exam. Because of this restriction, we advise you to outline your answers before you begin writing so that you do not needlessly waste space. Please write on only one side of the page and leave some margin on at least the left hand side. No credit will be given for illegible writing or for answers that violate these instructions, and/or exceed the page restrictions. Keep in mind the relative value of the questions when apportioning your time.

Please sign below in the designated place to confirm you have read and understand these instructions.

GOOD LUCK!!!
Part I
Short Answer

1. (4 points) While running for a seat on the Santa Verde City Council, Connie Candidate introduced herself at the first debate as a veteran of Operation Desert Storm, and the recipient of the Purple Heart for wounds obtained in combat. None of this information was true. Connie was indicted for violating the “Stolen Valor Act,” which provides as follows:

“(b) False Claims About Receipt Of Military Decorations Or Medals.—Whoever falsely represents himself or herself, verbally or in writing, to have been awarded any decoration or medal authorized by Congress for the Armed Forces of the United States ... shall be fined under this title, imprisoned not more than six months, or both.

According to the Congressional Record, the statute was enacted in order to preserve the integrity of the military honors system, thereby maintaining the respect due those who actually earned these awards. At trial, Connie challenged the constitutionality of the statute as violative of her first amendment rights to free speech.

What standard or test will the court apply to evaluate the constitutionality of the statute, what will the party with the burden have to prove, and what is the likely result?

2. (2 points) Congress has made it a federal crime for anyone to threaten to kill a major candidate for President or Vice President of the United States. The statute provides:

(a) Whoever knowingly and willfully threatens to kill, kidnap, or inflict bodily harm upon—
(1) a former President or a member of the immediate family of a former President; 
(2) a member of the immediate family of the President, the President-elect, the Vice President, or the Vice President-elect; 
(3) a major candidate for the office of President or Vice President, or a member of the immediate family of such candidate; or
(4) a person protected by the Secret Service under section 3056(a)(6); shall be fined under this title or imprisoned not more than 5 years, or both.

Larry Loudmouth, a member of a right wing, neo-Nazi group, joined an internet message board, on which members of the public can post messages concerning financial
matters, business fraud and mismanagement, and other topics. At 1:15 am on the day that he joined, Loudmouth posted the following statement on the message board: “Re: Obama fk the niggar, he will have a 50 cal in the head soon.” About twenty minutes later, he posted another statement on the same message board: “shoot the nig country fkd for another 4 years+, what nig has done ANYTHING right? ?? ?? long term? ?? never in history, except sambos.”

Loudmouth was indicted for violating the statute. His defense was that his statements were protected by the first amendment. Assume that the court has ruled that the statute is neither vague nor overbroad. In determining whether the statute, as applied to Loudmouth’s posting, violated the defendant’s first amendment rights in other respects, what standard or test will the court use to determine whether Loudmouth’s expression was protected?

3. (5 points) City passed the following ordinance to regulate topless or nude dancing within the city limits.

A. It shall be a violation of this Chapter for a patron, employee, or any other person to knowingly or intentionally, in an adult-oriented establishment, appear in a state of nudity, regardless of whether such public nudity is expressive in nature.

B. It shall be a violation of this Chapter for a person to knowingly or intentionally in an adult-oriented establishment, appear in a semi-nude condition unless the person is an employee who, while semi-nude, shall be at least six (6) feet from any patron or customer and on a stage at least eighteen (18) inches from the floor....

C. It shall be a violation of this Chapter for any employee, while semi-nude in an adult-oriented establishment, to knowingly or intentionally receive any pay or gratuity by direct physical contact with any patron or customer or for any patron or customer to knowingly or intentionally pay or give any gratuity by direct physical contact with any employee, while said employee is semi-nude in the adult-oriented establishment.

D. It shall be a violation of this Chapter for any employee, while semi-nude in an adult-oriented establishment, to knowingly or intentionally touch a customer or the clothing of a customer.
The definition of “semi-nude” in the statute is so restrictive that dancers at sexually oriented businesses (SOB) must wear (at least) bikini tops and bottoms in order to avoid violation of the law. Deborah Dancer, who makes her living expressing her disdain for clothing and any other apparel that covers the body or restricts movement, began dancing at the Pussycat Lounge years ago, when the (prior) ordinance allowed pasties and g-strings. Deborah claims that having anything hiding body parts interferes with expression of her message, but bikinis will destroy the communicative nature of her expression. She challenges the above ordinance as violative of her first amendment rights.

Is Deborah correct that her conduct is protected by the first amendment (Yes or No). If yes, what tests, factors or standards will the court use to determine whether Deborah’s claim has merits?

4. (6 points) Although Congress was unable to reach an agreement on any substantive gun control legislation in the last session, its members were able to pass the following statute:

   It shall be unlawful for any person, entity or commercial establishment licensed to sell firearms and/or ammunition, (as that term is defined elsewhere in federal law) in interstate commerce to advertise or provide information that discloses (1) the identity of any particular firearm or ammunition that is for sale by the person, entity or commercial establishment, whether by way of manufacturer’s name, or “street name” (i.e. “Saturday night special”) or caliber of the ammunition; and (2) the price of any particular firearm or group of firearms. This prohibition shall not apply to (i) the placement of any generic sign on a structure housing a commercial establishment licensed to sell firearms and/or ammunition that identifies to the public only that the person, entity or commercial establishment sells “guns,” “firearms” or “ammunition” or (ii) any advertisement, sign or identifying information located entirely within any building or structure used for the purpose of selling firearms or ammunition, providing such sign, advertisement or identifying information is not visible from the street.

   The debate on the floor of both the House and Senate reflect Congress’ belief that regulating advertisements of firearms, especially the price thereof, will deter price wars, and ultimately result in a decrease in the demand for such weapons. Although there was no direct evidence on this point, supporters of the legislation hoped that it would, in turn, decrease the incidents of gun-related injury and/or death.

   Sandy Secondamendment owns “Gunsforsale” which he operates out of a storefront in State, where gun ownership is very popular. Sandy is licensed to sell
firearms, as that term is defined by federal and state law. For years, he has put posters in his windows advertising monthly specials, such as sales on Glocks and Sig Sauer P220s. The special price of the particular firearm is featured prominently on the posters, which are clearly observable from the street that runs in front of Sandy’s store.

Obviously, Sandy is outraged by the new federal law. He challenges it as a violation of the First Amendment. Other than vagueness and overbreadth, what first amendment doctrine should Sandy claim is violated by the statute? What factors or standards or tests will the court use to evaluate Sandy’s claim, and what is the likely result?

5. (4 points) Springpole County operates a correctional facility where prisoners sentenced to twenty-four or fewer months following trial or a plea serve their sentences. Springpole County’s Sherriff, who operates the facilities has recently been engaged in controversial penological practices, including the use of chain gangs for road clean up activities. Because of the racial make-up of the prison population, most of those prisoners who the public sees on the side of the roads in chains cleaning up refuse and trash are black, and this has caused quite an uproar. As a result, several civil and prisoners’ rights organizations have started protesting in front of the prison all day and night. The Sherriff has petitioned the City of Springpole City Council to pass an ordinance that would make it unlawful to:

a) parade, stand, or move in processions or assemblages within 500’ of the Springpole prison or on prison grounds, including any street and/or sidewalk adjacent to the prison, and

b) display therein any sign, flag, banner, or device whose message concerns any activities of the Springpole Prison, or its Administration.

Assume the City Council enacts the proposed ordinance, and a party with standing challenges its constitutionality on grounds other than vagueness and overbreadth. What standard, tests or factors will a court most likely use to evaluate the ordinance and why?
6. (2 points) The Affordable Care Act (pejoratively known as Obamacare) contains a provision requiring all health insurance plans and issuers to cover all items and services recommended by the United States Department of Health and Human Services ("HHS") without charging a co-payment, co-insurance, or a deductible. This includes, amongst other medical items and services, all Food and Drug Administration ("FDA") approved prescription contraceptive methods.

Although employers that qualify as "religious" under the mandate may seek an exemption from the contraceptive coverage requirement, the exemption criteria are very narrow and only afford protection to churches, houses of worship, and monasteries. Religion-based entities such as hospitals, colleges, universities, and charitable organizations do not meet the criteria and are therefore excluded. This restrictive exemption has adversely affected organizations affiliated with the Catholic Church (but other entities affiliated with other similarly minded religious groups are also affected) because they will be forced to comply with the mandate or pay a penalty for failing to do so. Additionally, many private entities that are owned and operated by adherents to Catholicism or other religions that believe that contraception is against God's will oppose this requirement on religious grounds. If a party with standing challenges the contraception coverage provision on the grounds that it violates the Free Exercise Clause, what test or standard is the court likely to apply and why?

7. (7 points) Since the extensive priest sexual abuse scandal came to light about a decade ago, churches have become the subject of numerous and massive protests, largely orchestrated by groups supporting abuse survivors, such as Survivors Network of Those Abused by Priests ("SNAP"). Missouri enacted a statute entitled the "House of Worship Protection Act," which makes it a crime for any person to, inter alia: "intentionally and unreasonably disturb[], interrupt[], or disquiet[] any house of worship by making noise either within the house or worship or near it as to disturb the order and solemnity of the worship services." Noise that disturb[s] the order and solemnity of the worship services shall mean noise that is clearly audible within the sanctuary where services are occurring during the time when services are occurring. The statute further defines "house of worship" as a church, synagogue, mosque, or any other building or structure used for religious worship, instruction or other religious purpose.
Every time another incident of priest sexual abuse is publicly revealed, members of SNAP convene around a local church, armed with signs that criticize the church’s inadequate handling of the apparently widespread incidents of abuse. Frequently, the protesters march in a circle with signs, chanting “protect the innocent, get the guilty.” Depending on the number of protesters gathered at a particular time, sometimes the chanting can be heard inside the church. On one such occasion in front of a Missouri church, the police were called, and the SNAP members were asked to cease the chanting. They refused, and were arrested. If the members challenge the statute as violative of their first amendment rights, what standard or test or factors is the court most likely to apply to evaluate the constitutionality of the House of Worship law and why?

Part II

Essays

A. (15 points) Since 1957, the Connellsville Area School District has maintained a stone monument bearing numerous inscriptions. Standing approximately five to six feet tall near the front entrance to the auditorium at Connellsville Area Junior High School, a portion of the monument displays the text of the Ten Commandments as follows:

I AM the LORD thy God.

I. Thou shalt have no other gods before me.

II. Thou shalt not take the Name of the Lord thy God in vain.
III. Remember the Sabbath Day, to keep it holy.

IV. Honor thy father and thy mother, that thy days may be long upon the land which the Lord thy God giveth thee.

V. Thou shalt not kill.

VI. Thou shalt not commit adultery.

VII. Thou shalt not steal.

VIII. Thou shalt not bear false witness against thy neighbor.

IX. Thou shalt not covet thy neighbor’s house.

X. Thou shalt not covet thy neighbor’s wife, nor his manservant, nor his maidservant, nor his cattle, nor anything that is thy neighbor’s.

Carved directly above the text are two tablets inlaid with that which appears to be ancient script and surrounded by a floral motif, an eye inside of a pyramid similar to that appearing on the back of a dollar bill, and an eagle grasping the American flag. Below the text of the Decalogue are the superimposed Greek letters Chi and Rho, two Stars of David, and an inscription indicating that a local chapter of the Fraternal Order of Eagles, a national civic organization, donated the monolith on May 13, 1957. Aside from the shrubbery, trees, fire hydrant, and traffic sign that appear to adorn the surrounding area, the monument stands alone.

Recently, a student enrolled in the Junior High, and her parents, all avowed atheists, brought suit to remove the monument on the ground that it violated the Establishment Clause.

1. Identify all possible tests or standards that a court might apply in evaluating whether the monument must be removed.

2. As to each test, explain what the test means or how the test works, if it has component parts, identify them.

3. Chose one of the tests or standards listed in response to subpart 1 above, and apply the facts set forth in this question to the test, and evaluate the likely outcome of the case.
B. (30 points) The Ann Arbor Transportation Authority (AATA) operates the local public transit system in the Ann Arbor, Michigan area. AATA has a program that allows advertisers to place ads on AATA buses. The policy is as follows:

2.10 AATA ADVERTISING POLICY

Advertising in or on AATA vehicles, in AATA shelters, building, benches or informational material which does any of the following shall be prohibited.

1. Contains false, misleading, or deceptive material.

2. Promotes an illegal activity.

3. Advocates violence or crime.

4. Infringes copyright, service mark, title or slogan.

5. Defames or is likely to hold up to scorn or ridicule a person or group of persons.

6. State or implies the endorsement of a product or service by AATA.

7. Supports or opposes the election of any person to office or supports or opposes any ballot proposition.

8. Contains material which is obscene, as defined by [state law], or sexually explicit, as defined by [state law], and as such statutes shall be amended or supplemented.

9. Promotes alcohol or tobacco products.

10. Contains visual depictions or language which is/are likely to cause an imminent breach of the peace.

Although the AATA Director of Advertising reviews proposed ads for compliance with the above regulations, s/he does not make any substantive changes to the submission. A group entitled “Voice Support for Palestinian Rights” (“VeSPeR”) submitted the following poster that they wanted displayed on the exterior of busses.
The AATA refused, and VeSPeR filed suit, alleging the AATA's policy violated the First Amendment. Among other things, the suit requested injunctive relief prohibiting AATA from refusing to put the ad on its busses. At a hearing on the Preliminary Injunction, evidence was adduced that AATA scrupulously followed the parameters of the policy stated above. It had never permitted an ad concerning a political candidate or ballot issue, ads that referred to bodily parts like "kick-ass," and one for Vespa motor-scooters that referred to cars as "gas-holes."

Set forth IN DETAIL the arguments in support of VeSPeR's suit, what standards or tests is the court likely to use to evaluate the grounds you have raised, and what the likely outcome is.
1. The state of Louisiana imposes a fee on all licensed alligator farmers (yes, such persons do exist) and trappers. A small portion of the fee goes to support a state wide advertising and promotion campaign supporting the sale of alligator meat and alligator products. The Alligator Advertising and Promotions Board, consisting of five members appointed by the Governor, is solely responsible for the creation of a series of generic advertisements, for television, electronic media and billboards, which extol the virtue of eating alligator meat, and buying products made with the hides of Louisiana alligators. Tommy Trapper is unhappy with the subject of the advertising materials, because they do not mention that he has a special way of killing the gators which yields a softer and more pliable skin. These skins are uniquely usable for a variety of products, none of which are mentioned in the ads. Tommy challenges the statute that imposes a compelled contribution as a violation of his first amendment rights.

The most likely result of the challenge to the mandatory contribution is:

(A) The statute will be held unconstitutional because the government cannot compel a person to give a financial subsidy to support a message with which he or she does not agree.

(B) The statute will be held unconstitutional because the government cannot use the first amendment to support some businesses but not others.

(C) The statute will be held constitutional because the government controls the message, and the advertisements are government speech, not subject to the restrictions of the first amendment free speech clause.

(D) The statute will be held constitutional because the government’s promotion of its own agricultural businesses is compelling, and the small fee is narrowly tailored to achieve this goal.
2. City operates a municipally owned, state-of-the-art recreational facility that includes, among other things: an indoor Olympic sized pool with two diving boards, an outdoor pool, a gymnasium that can be used for regulation basketball, two indoor tennis courts, squash and racquetball courts, and extensive shower and changing facilities. There are also classrooms and meeting rooms available for use. The public schools use the facilities during the school year, for physical education, intra and intermural sports, and public school operated after-school programs. However, because the facilities are not well used during the summer the City School Board passed a resolution allowing community based groups to use the facilities for a nominal fee. Those groups that are eligible to use the facilities must “focus on the needs of underprivileged or at risk youth, and have, as a component to the athletic instruction and practice, “teaching youth to be productive members of the community, through teamwork, loyalty, amicability or similar skills.”

Several community groups sponsored by non-profit agencies immediately filled out applications to use the facilities. The application requires the group to include a description of the demographics of the youth it serves, and how it intends to use the facilities, to insure that it meets the above criteria. An administrator then assigns groups use of particular facilities on particular days during the summer.

The Church of the Immortal, located in City, operates a summer camp/program for inner city youth on Church premises. The Church’s current facilities are below par, and the program could certainly benefit from using the recreation center and all it has to offer. In its application, the Church described its intended use of the facilities, including use of the outdoor pool and basketball court, and, following the athletic activities, a classroom for instruction in how Christianity fosters good citizenship, teamwork, and loyalty.

When the administrator saw how the church group was going to use the premises, the Administrator denied the group’s request, and the Church brought suit, claiming the policy, as applied, violated the first amendment.

What is the likely result of the suit?

(A) Judgment for the Church, because the recreational facility is a non-public forum, and City is discriminating in the administration of the program on the basis of viewpoint.

(B) Judgment for the Church because the City is discriminating against religion, and its discrimination cannot be justified by strict scrutiny.

(C) Judgment for City, because allowing an avowed religious group to use public property for a religious purpose violates the establishment clause.

(D) Judgment for City, because a government is permitted to limit the manner in which it uses its own property in the same way a private person can.
3. One of Congress’ latest attempts to eradicate the market for child pornography is through an anti-pandering and solicitation statute that criminalizes the advertisement, promotion, distribution or solicitation through the mails, or in interstate or foreign commerce “any material or purported material in a manner that reflects the belief, or that is intended to cause another to believe, that the material or purported material is, or contains—

(i) an obscene visual depiction of a minor engaging in sexually explicit conduct; or
(ii) a visual depiction of an actual minor engaging in sexually explicit conduct.”

Peter Pandering put an ad on a website known to appeal to devotees of child pornography, offering to sell videos of children playing together in a sexual manner. Peter knew that the videos were not in fact depictions of real children, but were computer alterations, achieved by putting the heads of young teenagers atop the naked bodies of young adults (persons over 21). Peter also knew that only the real thing sells, so he advertised the videos as “real life portrayals of minors engaged in sexually explicit conduct.”

Peter was charged with violating the statute. At trial Peter claims that the statute violates his first amendment rights. What is the likely result of the constitutional challenge?

(A) The statute will be held constitutional because obscenity is not protected by the first amendment.

(B) The statute will be upheld, because Peter advertised the videos as real child pornography, which is not protected by the first amendment, and offers to engage in the sale of illegal material are not protected by the first amendment.

(C) The statute will be struck down, because the videos were computer generated child pornography which can not be prohibited by the first amendment.

(D) The statute will be struck down if the video’s depictions are not obscene.
4. Ben Builder was appointed the Building Commissioner for Town, located in State. The Building Commission is appointed by the Board of Selectman, and is charged with enforcing the State Building Code, the Department of Public Safety regulations relating to construction or alteration of new or existing structures, and Town’s zoning bylaws. The Selectmen had recently changed the bylaws, lessening the requirements for ventilation and installation of wood-burning stoves. The request for these amendments came from the wood burning stove industry, because newer, lighter weight models which are more economical to the purchaser, cannot be installed and vented under existing codes. Ben appeared at a hearing the Selectmen held on the issue, and brought to the Selectmen’s attention that the proposed changes to the installation and ventilation requirements would create a fire hazard to the structures and surrounding areas. The fire chief agreed. The Selectmen passed the change to the bylaw anyway. Shortly thereafter, Ben wrote a letter to the local paper, calling to task the Selectmen’s amendments, claiming that they were risking the health and safety of the residents in favor of the economic well being of the stove industry. Ben was suspended for 60 days without pay for speaking out as he did.

If Ben sues, claiming the suspension was a violation of his first amendment rights to free speech, what is the likely result?

(A) Ben will win because the issue on which Ben was speaking was one of public safety, and he had personal knowledge of relevant facts.

(B) Ben will win because a government cannot retaliate against a public employee for exercise of the employee’s first amendment rights to free speech.

(C) Town will win because Ben was speaking on a matter within the scope of his employment, and the first amendment does not protect this speech.

(D) Town will win because the Selectmen amended the bylaws after a full hearing at which opponents, including Ben, had an opportunity to be heard.
5. Before the 2008 election, Buddy Bell participated in a protest against Operation Iraqi Freedom on the corner of Dearborn Street and Jackson Boulevard in downtown Chicago. He, along with two other protesters, held a banner that said, "End the war and occupation TROOPS HOME NOW." At the time, President Bush was at a luncheon at the nearby Union League Club. One of the protesters stood directly in front of a police sergeant, obstructing his passage towards the Club, and was arrested. Seeing their comrade in handcuffs riled Bell and two other protesters, who immediately left the sidewalk where they had been protesting, and walked down the middle of the street outside the Club, interfering with the limited passing traffic driving on the street. Other protesters congregated in the middle of the sidewalk, interfering with passersby. The commanding officer in charge ordered Bell and the others holding the banner back on the sidewalk. All three refused, and were arrested, charged with violating a Chicago city ordinance that makes it a crime for anyone to: "knowingly ... fail[] to obey a lawful order of dispersal by a person known by him to be a peace officer under circumstances where three or more persons are committing acts of disorderly conduct in the immediate vicinity, which acts are likely to cause substantial harm or serious inconvenience, annoyance or alarm."

If Buddy and the other two protesters defend the arrest on the grounds that the statute violates the first amendment, what is the likely result?

(A) Buddy will win because the statute is vague and overbroad.

(B) Buddy will win because the protesters were on a public street, and the government cannot limit free expression in a traditional public forum.

(C) Buddy will lose because the charges stem out of Buddy’s conduct, and conduct is not protected by the first amendment.

(D) Buddy will lose because Chicago had a compelling interest in protecting the safety of the President and the public, and the order to disburse was reasonable in light of the circumstances.
SECTION I
SHORT ANSWER
DIRECTED ESSAYS
5 pts. each

A. Most jurisdictions have rules regulating attorney discipline proceedings. As part of those overall regulations, many jurisdictions, including State, have confidentiality rules, which mandate that "the existence of, as well as communications and information related to, any investigation or proceeding into a lawyer’s conduct shall be kept confidential, and shall not be disclosed to any third party unless and until the proceedings are made public by the filing of charges." The rule in State applies to "participants" in the proceeding; that is, complainants, witnesses, attorneys who are the subject of the inquiry, attorneys representing the subject of any inquiry, and members of the disciplinary prosecutor’s office. State claims that the rule is designed to protect the integrity of the system, protect lawyers’ reputations should no charges (or no public charges) actually be brought, and to protect complainants and witnesses from harassment, which would deter individuals harmed by lawyers’ conduct from pursuing administrative redress.

Violation of the rule can result in further disciplinary action for attorneys, and a fine for non-lawyers.

Larry Lawyer is the subject of an investigation resulting from a complaint filed by Carol Client, a former client, who claims that Larry botched her civil personal injury case by refusing to introduce evidence concerning the severity of her injury. Larry believed that Carol was exaggerating the severity of the harm, and had falsified certain medical documents to support her claims. Carol lost the case. Larry learns that Carol has hired another attorney to pursue a personal injury claim in which Carol alleges that she suffered injuries similar to those she suffered in the case in which she was represented by Larry. Larry wants to warn Carol’s new lawyer, by calling her and telling her about Carol’s conduct in the earlier civil proceeding, and that she had filed a complaint with the disciplinary board, which charges are still under investigation. Larry is aware of the disciplinary board’s confidentiality rule, so he brings suit asking for declaratory and injunctive relief prohibiting enforcement of the confidentiality rule because it violates the First Amendment.

1. What test or standard will the court apply in evaluating whether the rule violates the First Amendment and why?
B. In response to the persistent claim (of those liberal lefty do-gooders) that the state is making money off the backs of those who can least afford it, the Massachusetts State Lottery Commission recently did a study of the demographics of those who participate in lottery activities. Keno, the computerized game that is a cross between bingo and traditional lottery games, is offered in Massachusetts at licensed locations that fall into several categories. Some retail stores that sell lottery and scratch tickets have Keno boards. Some restaurants and bars are also licensed premises, as are some of the race tracks in the state that are still in operation. The study showed that those who regularly purchase lottery tickets in significant amounts (more than 5 at a time, more than once a week) come from diverse socioeconomic backgrounds. The study showed that many people with incomes far above the poverty level regularly buy lottery and/or scratch tickets. However, those who play Keno overwhelmingly come from lower socioeconomic strata.

After reviewing and considering the results of the Lottery Commission’s study, the Massachusetts Legislature passed a statute aimed at deterring those who they believe cannot afford to be wasting their money on Keno from playing the addictive game. The statute prohibits any establishment licensed as a location where Keno can be played, from advertising that fact in any public place. That means no ads in or on newspapers, billboards, magazines, radio or TV or outdoor signs. The establishment may advertise that Keno is available if the ad is placed within the establishment itself, so long as the ad is not visible from the street.

This rule has adversely affected restaurants, bars, and racetracks, which are licensed for Keno only, and do not sell lottery or scratch tickets as well. Barney’s Bar, which is a licensed Keno establishment, but does not sell any other lottery product, has seen a 10% decrease in Keno revenues since the law went into effect.

Barney’s brings suit against the proper party in court alleging that the Keno legislation violates the First Amendment.

2. What tests, factors or standards will the court use to evaluate the constitutionality of the Keno law, why, and who is likely to win?
C. City operates a municipally owned, state-of-the-art recreational facility that includes, among other things: an indoor Olympic sized pool with two diving boards, an outdoor pool, a gymnasium that can be used for regulation basketball, two indoor tennis courts, squash and racquetball courts, and extensive shower and changing facilities. There are also classrooms and meeting rooms available for use. The public schools use the facilities during the school year, for physical education, intra and intermural sports, and public school operated after-school programs. However, because the facilities are not well used during the summer the City School Board passed a resolution allowing community based groups and "camps" to use the facilities for a nominal fee. Those groups that are eligible to use the facilities must "focus on the needs of underprivileged or at risk youth, and have, as a component to the athletic instruction and practice, "teaching youth to be productive members of the community, through teamwork, loyalty, amicability or similar skills."

Several community groups sponsored by non-profit agencies immediately filled out applications to use the facilities. The application requires the group to include a description of the demographics of the youth it serves, and how it intends to use the facilities, to insure that it meets the above criteria. An administrator then assigns groups use of particular facilities on particular days during the summer.

The Church of the Immortal, located in City, operates a summer camp/program for inner city youth on church premises. The church has a non-regulation basketball court, some jungle-gyms and other like equipment but could certainly benefit from using the recreation center and all it has to offer. In its application, the Church described its intended use of the facilities, including use of the outdoor pool, basketball court, and, following the athletic activities, a classroom for instruction in how Christianity fosters good citizenship, teamwork, and loyalty.

When the administrator saw how the church group was going to use the premises, the Administrator denied the group's request, and the Church brought suit, claiming the policy, as applied, violated the First Amendment.
3. What test or standard will the court apply in evaluating the Church’s claim, and how is the case likely to be resolved?

D. The City of Rolling Shores is a beautiful, bucolic, upscale bedroom community located along the Pacific coast. The City Council has passed a number of ordinances in an effort to maintain the pristine condition of the residential and commercial areas. Because of its proximity to a major metropolitan area, and its wealth, Rolling Shores is frequently visited by panhandlers and entities soliciting money from individuals stopped at red lights at the down-town intersections. It's the panhandlers and kids asking to wash windshields for a buck that really offend the residents. Consequently, the City Council passed an ordinance “prohibit[ing] solicitation of employment or contributions on city streets of any individual occupying a motor vehicle located on a public way.” When it passed the ordinance it issued a press release stating that the ordinance was intended to address “traffic and safety hazards occurring as a result this practice” and “to alleviate sidewalk congestion and traffic hazards that occur when large numbers of persons congregate on the sidewalks to solicit temporary employment or money.” Violation of the ordinance is punishable by fines which increase with the number of violations.

APPLES (Association for the Assistance of Penniless Law Students) regularly solicits contributions from drivers of motor vehicles stopped at red lights during peak traffic periods which is then used to help law students pay to attend political rallies and conventions. Several APPLE members were cited for violating the Rolling Shores ordinance. APPLE challenges the ordinance on First Amendment grounds.

4. What standard, test or factors is a court likely to apply to evaluate the constitutionality of the ordinance and why?
E. State’s criminal harassment statute provides:

(1) A person is guilty of harassment if:

   (a) Without lawful authority, the person knowingly threatens:

      (i) To cause bodily injury immediately or in the future to the person threatened or to any other person; or

      ....

      (iv) Maliciously to do any other act which is intended to substantially harm the person threatened or another with respect to his or her physical or mental health or safety; and

   (b) The person by words or conduct places the person threatened in reasonable fear that the threat will be carried out....

Danny Defendant purchased a used car from Arnie’s Autos, located in State. Arnie himself promised Danny that the car only had 25,000 miles on it, and needed no substantial work. “It will run like a dream for years,” Arnie told Danny. After Danny had the car three weeks, things began to go wrong. First it was the ignition, then the wipers, then the air conditioner. As each part ceased to function, Danny went to see Arnie, who said he was really sorry, but the vehicle was purchased “AS IS, with no expressed or implied warranties.” Danny didn’t give up. He e-mailed Arnie every day, sometimes 10 times a day, saying until he (Arnie) lived up to his promises, he (Danny) would e-mail him until he “went mad.” Arnie called the cops, and Danny was arrested and charged with a violation of the above statute.

5. What is Danny’s strongest First Amendment defense?
ESSAY
35 pts.

Stetson High School is a public high school located in the City of Stetson, which includes grades 9-12. On an annual basis, the 10th, 11th, and 12th grades each elect officers (President, Vice-President, and Secretary, called “Class Officer(s)”), and the entire student body (including 9th graders) elects a President and Vice-President of Student Government (Student Government Officers). At the end of the school year, any student in good standing who is a member of the class can vote for its Class Officers, who begin to serve in September when school reopens following summer break. In December of that year, before the Christmas Holiday recess, the entire student body elects the two Student Government officers from all those Class Officers desiring to run. These eligibility rules were established by the Principal, Vice-Principal and Faculty Executive Committee, comprised of three faculty members.

All students wishing to be candidates for Class Officer must meet with the Vice Principal, discuss their platform, and agree, in writing, to abide by all school rules. The candidates must disclose the “theme” or “message” of the campaign, which must be approved by the Vice Principal. Additionally, the candidates must be in good academic standing, and have not less than a 2.8 cumulative GPA. Each class is allotted a time when the candidates can make campaign speeches. The speeches are held in the school auditorium during school hours. The same is true for candidates running for Student Government Officers, although, because of the size of the student body, and space limitations imposed by the auditorium, there are two sessions at which candidates may make speeches before the student body: one for 9th and 10th graders, one for those in the 11th and 12th grades. Candidates are also allowed to put up posters in designated places throughout the school advertising their candidacies so long as the posters further the approved “theme” or “message.”

Tom Terrific, a 10th grader at Stetson High decided to run for election as President of the Junior Class. He met all the requirements, including meeting with the Vice Principal and signing a document agreeing to abide by school rules. One of the major issues that ran across many of the candidates’ campaigns was discouraging teenaged drinking, particularly drinking and driving. Tom’s campaign slogan, approved by the Vice Principal, was “Stay Safe: Vote for Tom.”

One day, after classes were over, Tom and several of his classmate-supporters stood outside the school, on the sidewalk between the school grounds and the street, and handed out literature advocating Tom’s Candidacy. Students took the flyers and went about their business. Oh, one more thing: attached to each flyer was a new, freshly packaged condom.

When the Vice Principal heard about this, she immediately went to the sidewalk, confiscated the condoms, and convened a hearing, three days later, to show cause why
Tom should not be ineligible to run for office and suspended for a week. Tom lost. His name was removed from the ballot, and he was suspended for a week.

Terry Teacher, who resides in Stetson, has children in the Stetson schools, and teaches biology at Stetson High, is a proponent of teaching sex education in public schools, and encouraging students to engage in responsible sexual activity if they are going to engage at all. The Stetson School Board formally adopted Teacher’s curriculum (safe sex) and urged all faculty members to promote it, if appropriate, to their class subjects. Terry heard about Tom’s tribulations. She thought that the Vice Principal totally overreacted and that Tom was, in fact, serving the school’s mission. She sent a letter, which she signed, to the Stetson Gazette, a local paper highly critical of the Vice Principal’s actions. The letter said, “I write this letter as a concerned citizen, resident of Stetson, and mother of three children who all attend Stetson Public Schools. She signed the letter: “Terry Teacher, Parent of Stetson Public School Students and resident, Stetson.” She did not mention that she was a teacher in the Stetson schools, but someone at the paper inserted at the conclusion of her letter: Note: the author teaches Biology at Stetson High.

Terry, who did not have tenure, was fired at the conclusion of the school year.
Multiple choice
2 pts. each

Question # 1

An ordinance of City makes it a crime for "any person on city property to display any sign or to distribute any literature of a nature that may induce a provocative or violent reaction from bystanders." Comp Lainor ("Comp"), a resident of City, disturbed by a newspaper expose of his state senator that revealed her accepting kickbacks on a highway construction project, decided to publicly oppose her candidacy for governor. Comp created a sign that looked like a political ad favoring the senator, but the image of the legislator showed her sporting a red bulbous clown’s nose and her hand is shown reaching into a large cookie jar full of cash. Comp went to City’s center plaza and set up the sign on a post behind him. He then handed out copies of the newspaper article to interested persons. Comp was standing 20 feet away from city hall, where a number of the senator's supporters work. At lunchtime, some of her supporters saw the sign and accosted Comp, knocking over his sign and stomping on it. Some of the people who had gathered to listen to the city resident reacted in anger and a fight broke out in the plaza. Undeterred, the following day Comp arrived at the same location on City’s center plaza, where he found a contingent of policemen. He started to again set up his sign and prepared to distribute his literature, when he was arrested under the city ordinance.

In the prosecution of the city resident under the ordinance, what is the most likely result:

(A) Comp will prevail, because the city ordinance violates Comp’s associational rights guaranteed by the First Amendment.

(B) Comp will prevail, because City’s ordinance violates Comp’s free speech rights guaranteed by the First Amendment.

(C) City will prevail, because City has a right to protect the public against the violence from Comp’s "hostile audience".

(D) City will prevail, because Comp knew from his first appearance on the plaza, that his expression was likely to result in violence.
Question # 2

City has an ordinance that prohibits the establishment or maintenance of more than one adult entertainment business in the same building, within 1000 feet of another adult entertainment business, or a school, playground, park or other place where children congregate. City originally had one adult bookstore in an isolated part of town. The opening of this adult bookstore had no appreciable effect on the crime rate in the area. Two years later, a second adult bookstore opened on the same street, 1000 feet away. After the opening of the second bookstore, crime in the area increased by 25 percent. Soon after, an entrepreneur sought a license to operate a strip club on the same street as the two adult bookstores. However, all available property located 1000 feet from the two adult bookstores was also less than 1000 feet from a school or park.

Entrepreneur brought suit challenging City's ordinance on the grounds that it violated his First Amendment rights. Assuming jurisdiction and standing, what is the most likely result of Entrepreneur's suit?

(A) City will win, because it has a compelling interest in regulating criminal activity, and the zoning ordinance is the least restrictive manner of achieving that interest.

(B) City will win, because the ordinance is a proper time place and manner regulation.

(C) Entrepreneur will win, because based on local community standards, nude dancing establishments do not appeal to the prurient interest.

(D) Entrepreneur will win, because the current ordinance essentially bans any further adult businesses from opening in City.
Question # 3

A state law allowed parents of all primary and secondary school students to deduct expenses for tuition, textbooks, and transportation from their state income taxes. A group of taxpayers sued the state on the ground that the state law included parents who sent their children to parochial schools. The taxpayer group asserted that such a deduction was unconstitutional as an establishment of religion under the First Amendment.

Assuming that the taxpayers have standing, how should the court rule?

(A) In favor of the state, because the statute was not sectarian, and the primary effect or purpose did not advance religion.

(B) In favor of the state, because the statute did not foster excessive government entanglement with religion.

(C) In favor of the taxpayers, because the statute did not have a secular purpose, and the primary effect of the statute advanced religion.

(D) In favor of the taxpayers, because the statute fostered excessive government entanglement with religion.
Question # 4

A group of public high school students founded a Jews-For-Jesus religion club. The group sought permission from the school’s new principal to use a room in the school for its meetings that were to be held after school hours and would be open to any student as long as they had parental permission. The school had a rule that only secular student groups could use rooms at the school after school hours to hold their meetings. The new principal decided to change the rule’s wording to permit any student group to use the classrooms after school for group meetings as long as the discussions were related to school and school activities. The principal thereafter granted permission to the Jews-For-Jesus club to use the classrooms. A group of parents brought an action in court to compel the school to return to the old rule, claiming that the newly worded rule violated the Establishment Clause. The school countered that the new rule did not violate the Establishment Clause because it was aimed at permitting all students a chance to discuss school issues with their peers, regardless of their viewpoint.

How should the court rule?

(A) In favor of the parents, because the prohibition against the use of public school facilities by a religious student group violates the Equal Protection Clause.

(B) In favor of the parents, because using a strict scrutiny analysis, granting the religious club permission to meet on school grounds violates the Establishment Clause of the First Amendment.

(C) In favor of the school district, because under strict scrutiny analysis, permitting the religious club to meet on school grounds would not violate the Establishment Clause of the First Amendment.

(D) In favor of the school district, because under the Lemon v. Kurtzman test, permitting the religious club to meet on school grounds would not violate the Establishment Clause of the First Amendment.
Members of certain churches believe that America’s tolerance of homosexuality is contrary to God’s law, and the deaths of military personnel and other tragedies occurring in the United States are the result of God’s disapproval of America’s stance on homosexuality. In order to bring their message to the American people, these church members go to locations where funerals of military personnel killed in the line of duty, and other high profile deaths are occurring, and stand on public streets and sidewalks bearing banners and signs that convey their message. Several fights have broken out between the families and friends of soldiers and church members, which have necessitated calling in the police. Some arrests for disturbing the peace have been made. At a recent funeral of a young soldier killed in Afghanistan held in City, three arrests were made when friends of the deceased soldier, infuriated by signs that proclaimed his death to be retribution from the Lord for America’s tolerance of homosexuality, attacked church members, hurting one of them rather badly. In response, City enacted Ordinance 10–112, creating the civil offense of “unlawful picketing of a funeral” which a person commits if he or she pickets a funeral “during the period from one hour prior to the commencement of any funeral through one hour following the cessation of any funeral.” “Picketing of a funeral” consists of “protest activities ... within three hundred feet of the premises of a cemetery, mortuary, church or other place of worship or other location during, and which target, a funeral.” “Funeral” includes “the ceremonies and memorial services held in connection with the burial or cremation of the dead” but specifically excludes funeral processions and wakes. A violation of Ordinance 10–112 may result in a fine of up to $1,000, but no incarceration.

If a party with standing challenges the ordinance as a violation of the First Amendment, how is the court most likely to rule?

(A) For the Plaintiff because although deterring violence is a compelling government interest there are less restrictive alternatives to achieving the goal than City’s ordinance

(B) For the Plaintiff because the ordinance is targeted at the expression of certain religious groups, and is not justified by a compelling governmental interest.

(C) For the City, because the ordinance is a valid time place and manner regulation.

(D) For the City, because the ordinance addresses conduct, not speech.
FIRST AMENDMENT
FINAL EXAM
SPRING, 2010

This is a 3 hour CLOSED BOOK exam. The exam is divided into three parts. The first part is multiple choice. These answers go on the scan-tron card. The second part is short answer. Answer these questions directly on the exam. The third part is two essays. These should be answered in your bluebook. Each section is worth a different number of total points, and the point values of the short answer questions differ. The value of each part or question is set forth at the beginning of the part or question. You might want to allocate your time in accordance with the weight of the question. The exam is worth a total of 70 possible points. The other 30 come from work during the semester.

When you discuss issues in the essays, discuss both sides.

Do not start until told to do so. You may have nothing with you in this exam except writing implements. Please place all books, coats, jackets, pocketbooks, knapsacks, etc. at the front of the room. You may have access to them during the exam only with the proctor’s permission. (You may keep valuables atop the desk in front of you if you choose)

YOU HAVE THREE HOURS FOR THIS EXAM.

Use your MSL Identification Number ONLY!!! Put the number on the scan-tron, the exam and the bluebook.

There is a page limit of one bluebook total, single-spaced for the entire exam. Because of this restriction, we advise you to outline your answers before you begin writing so that you do not needlessly waste space. Please write on only one side of the page and leave some margin on at least the left hand side. No credit will be given for illegible writing or for answers that violate these instructions, and/or exceed the page restrictions. Keep in mind the relative value of the questions when apportioning your time.

GOOD LUCK!!!
I. Multiple Choice (10 pts./ 2pts. each):

1. In 2009, Chicago was host to the “Gay Games,” a sort of Olympics for gay men and lesbians. Anticipating that the events, which were held in various venues throughout the city including Soldier’s Field, a city owned stadium, would be very well attended, the City Council passed an ordinance prohibiting picketing, protesting, leafleting or handbilling within 500 feet of the entrance to Soldier’s Field, while the Field is in use for an event. The Council passed the ordinance on the recommendation of the police, who testified that allowing protesters any closer to the entrance or in the parking lot surrounding the stadium would obstruct the free flow of traffic and interfere with patrons entering the field. Numerous members of a religious group, “Christians for a God-fearing Society” appeared on the final day of the games, and began handing out brochures extolling the virtues of the group, and lambasting gays and lesbians for living a life of “depravity and godlessness.” Single page flyers read “Gays and Lesbians will burn in hell for their sins.” Those members who tried to hand out the brochures and flyers in the parking lot and at the gates where the observers entered were told to go across the public street that abuts the far end of the parking lot, which was 500 feet away. Protesters complained no one would see them there.

The group stopped its protest, and brought suit against the City of Chicago in federal court, alleging its ordinance violated the members’ first amendment rights.

What is the most likely result of the plaintiffs’ case?

(A) The plaintiffs will prevail because the first amendment right to free expression necessarily includes the right to be heard in a meaningful, and effective way.

(B) The plaintiffs will prevail because although the city may have a compelling interest in passing the regulation, there were less restrictive alternatives to achieving the goal than banning expression within 500 feet of the entrance to Soldier’s Field.

(C) The City will prevail because the group voluntarily stopped protesting, mooting the case.

(D) The City will prevail because the restriction furthers an important government interest, burdens no more speech than is necessary, and leaves open alternative channels of communication.
2. Many states that issue firearms licenses statutorily require that the license bear an up-to-date photograph of the licensee. State is just such a place. According to State's law, the photograph must have been taken no more than 30 days prior to submission of an application for a permit. State's law also requires that the firearms license be displayed prominently on any person using and/or carrying the firearm for any purpose. The purpose of the statute is to provide law enforcement officials with an immediate means of ascertaining whether a person in possession of a firearm has the lawful right to possess it. The Amish, a Christian religious denomination, many of whose members live in State, believe that cameras are a tool of the devil, and their religious beliefs do not permit them to be photographed. They consider photographs to be "graven images" prohibited by the Bible.

Peter Plaintiff, a member of the Amish sect residing in State, wished to hunt deer in the woods surrounding his home. However, he knew he would not be issued a license if he refused to have his picture taken. So he took his chances and lost. He was arrested for unlicensed possession of a firearm, a crime punishable by a year in prison.

Peter defended the case on the grounds that the license requirement interfered with the free exercise of his religious beliefs.

With respect to the merits of the case and his defense, the court will:

(A) Rule for State because there is a compelling interest in providing law enforcement with an immediate means of identifying an individual with a gun.

(B) Rule for State because the law is a general rule of neutral application which is reasonably related to a legitimate governmental purpose.

(C) Rule for Peter because the right to bear arms is fundamental.

(D) Rule for Peter because although there might be a compelling interest in identifying individuals in possession of firearms, there are less restrictive means that do not impinge on religious freedoms, such as fingerprinting.
3. Following several episodes of violence and racial unrest in one southern County, the County Commissioners passed a parade ordinance, which requires all persons seeking to use the public streets for gathering to get a permit from the County Administrator, no fewer than 10 days in advance, and pay a fee to defray "the cost of necessary and reasonable protection of persons participating in or observing said parades, assemblies, and demonstrations, where road closings and other related activities exceeds the usual and normal cost of law enforcement and for which those participating should be held accountable and responsible." The ordinance allows the Administrator to adjust the fee anywhere from $0-$2500. Although the ordinance does not set forth any factors the Administrator must or may consider in setting the fee, beyond the purpose of the ordinance itself (to offset the actual, reasonable and necessary costs of protecting the participants and viewers), in considering applications the Administrator has looked to: the size and nature of the parade itself, whether vehicles will be involved, as well as the size of the crowd anticipated to observe the parade.

Although the Administrator has varied the fee depending upon the nature of the parade, he has never denied a permit. The County Gay Pride Association applied for a permit to hold a Gay Pride Parade, on Gay Pride Day, through the main street of City, located in County. Anticipating some disturbance and unrest, and the need for increased police presence, the Administrator granted the permit but imposed a fee of $2500, the largest fee ever imposed.

The Gay Pride Association brought suit in federal court requesting injunctive relief against application of the parade statute to its proposed parade on the grounds that it violates the group’s first amendment rights.

The most likely result of the group’s request is:

(A) The Court will deny the injunction because the Administrator granted the permit, and there is no evidence that the group cannot afford to pay the fee.

(B) The Court will deny the injunction because the fee is reasonably related to costs incurred by the County.

(C) The Court will allow the injunction because the permit ordinance is a prior restraint, and the lack of factors gives the administrator unbridled discretion in fixing the fee.

(D) The Court will allow the injunction because imposition of the highest fee possible constitutes impermissible discrimination on the basis of sexual preference.
4. Craniff High School, a public High School in the city of Craniff, state of State, has a student population of 600 students in grades 9-12. Students publish a school newspaper, "The Craniff Clarion" on a monthly basis. The editorial board of the paper is elected by the student body from candidates selected by the faculty, and the faculty chooses the "Editor-in-Chief" and other substantive Editors from those students on the Editorial Board. The Editorial Board has initial control over the subject matter of the articles, but a Faculty Oversight Board, comprised of the principal of Craniff High, and several members of the English Department, have final editorial say over content.

Mary Contrary, a talented senior at Craniff High, and Managing Editor of the Clarion, recently penned an editorial critical of the school’s decision not to dispense condoms in the male bathrooms. The Principal thought the subject matter was too controversial, inappropriate for freshman, who could be as young as 13 or 14 years old, and did not belong in a High School paper.

Mary’s Mother, Momma Contrary, an active member of the local Planned Parenthood chapter, brought suit in federal district court against the Principal, the school and the School Board, alleging her daughter’s first amendment rights were violated by removing the article.

On the merits, the Court is likely to:

(A) Hold for the School, because the paper is school sponsored speech and the Principal’s decision was reasonably related to legitimate pedagogical concerns.

(B) Hold for the School because the decision, though content based, furthers a compelling interest, and there are no less restrictive means to accomplish the ends.

(C) Hold for Momma, because the principal discriminated on the basis of the content of the speech.

(D) Hold for Momma, unless the school could prove that publishing the editorial would likely be disruptive to the school environment.
5. State has enacted a statute that prohibits the wearing of a pin, ribbon, emblem or decoration, on one's person, clothing or accessory, supporting or opposing any candidate or issue on the ballot, in any courthouse or the State House. The purpose of the law is to avoid creating the impression that the state is taking a position on a candidate or issue, and to avoid political controversy between or among employees and visitors, jurors or litigants in and to these state owned buildings. Any person attempting to enter a courthouse or the State House wearing or carrying a prohibited item will be required to remove the item, or will be barred from entering the building. Any person seen wearing or carrying a prohibited item within a prohibited building will be fined.

Ellen Employee works for the Chief Judge of the Trial Court. Ellen is supporting her brother, Evan, for Treasurer of State. She was stopped entering a courthouse and required to take off the pin bearing the phrase: VOTE EARLY VOTE EVAN. She reluctantly did so, but she later filed suit, challenging the constitutionality of the statute, alleging it violated the first amendment. On the merits the court should:

(A) Rule for the Plaintiff because the statute restricts speech on public property and is not supported by a compelling government interest.

(B) Rule for City because the statute is reasonable and viewpoint neutral.

(C) Rule for the Plaintiff because the statute discriminates against state employees who work in certain state office buildings and not outdoors or in other kinds of government structures.

(D) Rule for City because, as applied, it is regulating the speech of its own employees.
II. Short answer

A. (8 pts.) In response to what the bar perceived as a recent spate of tasteless and shameful advertising in which lawyers are likened to pit bulls, lions, and other sorts of aggressive, dangerous animals, the state of New York enacted legislation that regulates attorney advertising. Among other provisions, the law provides:

(c) An advertisement shall not:

1. include an endorsement of, or testimonial about, a lawyer or law firm from a client with respect to a matter that is still pending ...

2. include the portrayal of a judge, the portrayal of a fictitious law firm, the use of a fictitious name to refer to lawyers not associated together in a law firm, or otherwise imply that lawyers are associated in a law firm if that is not the case ...

3. rely on techniques to obtain attention that demonstrate a clear and intentional lack of relevance to the selection of counsel, including the portrayal of lawyers exhibiting characteristics clearly unrelated to legal competence ...

4. utilize a nickname, moniker, motto or trade name that implies an ability to obtain results in a matter

The firm of Attorney, Lawyer and Counsel (“ALC”) is a personal injury firm comprised of lawyers licensed to practice in New York. They specialize in complex civil cases and class actions, particularly those arising out of claims for damages resulting from defective products. They regularly refer to themselves as “heavy hitters.” The firm caused to be produced an ad for television that first, displays a muscular baseball player whacking a ball out of the park. The scene then switches to a courtroom, in which several of ALC’s lawyers are together, with an actor portraying a judge sitting behind a large judge’s bench. The lawyers speak to the audience about how much experience they have had in litigation, stating that they have earned the respect of many members of the New York state judiciary. They end the ad with a repeated reference to their being “heavy hitters.”
The disciplinary board of the state of New York has proceeded to charge ALC with a violation of the above law. The board claims that these rules are necessary to protect the public from unscrupulous attorneys, who prey on unwary potential clients, to improve the public perception of lawyers, and maintain professionalism among members of the bar. ALC wishes to challenge the constitutionality of the law.

1. What test or standard (including subparts or factors) will the court likely apply to evaluate ALC’s First Amendment claim, and why?

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2. Who has the burden of proof?

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3. Apply the test (including subparts or individual factors) that you stated in your answer to Q1 to the facts.

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B. (4 pts.) Tarique el Habanna is charged with the federal crime of threatening the overthrow of the United States. El Habanna translated into English the publication “39 Ways to Serve and Participate in Jihad,” and published the translated tract on the Internet. El Habanna’s sixty-five page translation begins by stating that the “entire world has announced its war on terrorism—or rather on Jihad.” El Habanna’s translation makes plain that, among others, the United States is the object of this jihad: “America and Britain are behind the fight against Jihad.” In addition, a few sentences later, the text directs that the reader to “Do away with Americans.” In many chapters, the book goes on to describe what jihadists should do: “make jihad with your wealth, help prepare the fighter going for jihad, expose the hypocrites and traitors, train with weapons and learn how to shoot, have enmity toward the disbelievers and hate them, and engage in electronic jihad (including hacking)”. El Habanna’s introduction to the work exhorts its readers to “stand up to the infidels,” and to “bring our message to the American People” that “jihad will take us to heaven.” It concludes with the words “We must not be afraid to die for our cause.”

The defendant caused the translated tract to be published on an internet site: jihadtoamerica.com.

At trial, Tarique defends on the grounds that the translation and publication are protected by the First Amendment.
4. What tests or standards will the Court likely use to determine whether the publication of the translated tract on the internet is protected by the First Amendment, and what is the likely result of Tarique's case?

C. (4 pts) The City School Department and City's School Committee have been the subject of a great deal of controversy lately. Declining enrollment coupled with declining resources have resulted in a recommendation by the Superintendent that two schools—one elementary and one secondary—be closed permanently. The School Committee held several hearings on the issue, and many were quite contentious. Parents of children who would have attended the schools to be closed vociferously objected—saying that assigning students to schools further from their homes would raise safety concerns and would take time away from the students' studies. Parents also expressed concerns that the two schools scheduled for closing had large minority populations. Statements raising issues of racism resulted in screaming matches among committee members and the audience, and even threats of physical violence. At the last meeting, a police officer who was stationed at the door had to come in and restore order. At the last meeting, the issue was tabled for a vote on April 15.
On April 15, the School Committee convened its meeting. At the
commencement of the meeting the Chair announced the items on the
agenda. The Chair also announced that it would take no more
comment concerning school closings, but would vote on the issue at
the end of the meeting. Patty Plaintiff, mother of two school aged
children who would have attended the elementary school scheduled
for closing, stood and asked to be heard on the issue. The Chair said,
"You heard me. You can talk about any other items on the agenda,
but no further discussion on the school closing issue. We have
devoted several meetings entirely to that topic, and we are ready to
vote. We will do so at the end of this meeting."

At the end of the meeting, the school board unanimously voted
to close the schools.

The following day, Patty Plaintiff brought suit against the school
board claiming her first amendment rights had been violated.

5. What test or standard will the court use to evaluate
whether the Board’s refusal to hear Ms. Plaintiff was a
violation of her first amendment rights, and why will the
court use that test?

D. (4 pts) During the last election period, the streets of
City, particularly those in bucolic residential areas, were inundated
with cardboard political signs supporting candidates and issues on
the ballot. The usually beautiful, peaceful tree-lined streets were
awash with multi-colored signs on residents' houses and front lawns, some interfering with visibility at the intersection of streets, some falling or blowing over onto sidewalks, and all turning the neighborhoods into cacophonies of colored cardboard. Therefore, City enacted the "anti-nuisance and visual blight" ordinance. The ordinance prohibits placement of more than two signs, no matter what they say, neither of which can be larger than 2 feet by 1 foot, on the residential property of any person, whether affixed to a structure or to the ground, for more than twenty consecutive days. The ordinance specifically exempts "For Sale" signs, and signs identifying licensed businesses located on and within the premises from both the size and duration requirements.

Property owners are responsible for making sure signs on their property comply with the ordinance, and are secured firmly. Owners who do not do so are subject to a fine for littering. Violation of the ordinance is punishable by a daily fine for each day of non-compliance.

Patty Property, President of the local Planned Parenthood chapter, wishes to permanently erect a sign on her front lawn, bearing the slogan "I respect life. A Mother's Life. I am Pro-Choice." The sign she wants to erect will be 4 feet by 3 feet. Patty is told by the enforcement officer if she erects the sign, she will be in violation of the ordinance, and will be fined $100/day.

Patty brings suit against City in Federal Court contending that the ordinance violates her first amendment rights.

6. What standard or test will the Court use to evaluate the constitutionality of the sign ordinance and why?

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E. (4 pts) In yet another effort to curtail litter and keep the public streets clean, City enacted an anti-leafletting ordinance, which prohibits the placement or affixing of handbills, flyers, leaflets, posters or advertisements to or on a motor vehicle parked or stopped on a public street, or a public right of way, without the express consent of the owner. There are no exceptions. Motor vehicles are defined to include anything with a motor that requires a license to operate. Violation of the ordinance is punishable by fines up to $500.

The Committee to Save our Libraries, a group of community leaders who have come together to raise money to forestall the closing of several branches of City’s public library system, decided to hold a book and bake sale. The leaders of the Committee got several teenagers to comb the streets after school and place flyers on cars parked on the streets in downtown City, notifying the public of the date and place of the sale and urging citizens to come and support this worthy cause. The teenagers were seen sticking flyers under car windshield wipers, and told to stop. Committee Board members were fined $500 for instructing them to act in contravention of the ordinance.

The Committee filed suit in federal court, claiming the anti-littering ordinance violates his first amendment rights.

7. What test or standard will the Court use to evaluate the Committee’s claim and why?
F. (10 pts) Suburb is a middle class municipality, located on the outskirts of City. Harry Homeowner is one of many residents who, in this troubled economy, have chosen to add onto or make improvements to their existing homes (assuming they are not already in foreclosure or under water!!) rather than move to a larger residence. Harry decided to renovate the kitchen and enlarge the master bedroom and bath by adding on a modest addition to his house. However, Harry was not ready for what confronted him during construction. Although he obtained the requisite building permit without much difficulty, things got bad as he went through the process. The building inspector (Izzy Inspector) came round several times during construction, suggesting that things were not to code, and suggesting, not terribly subtly, that if Harry paid him a little something, the inspection process would go more smoothly. Harry gave Izzy a couple of Red Sox tickets, and $250 bucks, but the last time Izzy came round, Harry had had it. After telling Izzy he would not give him another penny, and to get off his property, Harry ran into the house, took the building permit out of the front window where it had been since construction began, and, followed Izzy out to the street. On the sidewalk, Harry proceeded to rip the permit into little pieces and throw them at Izzy, who was also on the sidewalk, screaming “This is what I think of your stinking permit process.”

Izzy proceeded to give Harry a citation for violation of Suburb’s Building Ordinance 98-100, which provides in part:

All building permits shall be displayed on the building site in a place visible from the street until construction is complete, and the building inspector has issued a
certificate of completion or occupancy permit. It shall be a violation of this ordinance for any person to deface, obliterate, or mutilate any part of the permit during the construction process. Violation of this ordinance is punishable by a fine of $100/day while the violation continues.

Harry refused to pay the fine and was summonsed into court, as provided by the statute. He defended the case on the grounds that he was exercising his first amendment right in tearing up the permit.

8. What standard, test or factors will the court use to evaluate Harry’s first Amendment claim?

________________________________________________________________________
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________________________________________________________________________
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9. What is the most likely result, applying the facts to these factors?

________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
G. (6 pts) What are the three factors a court considers in determining whether a work is obscene?

1) 
2) 
3) 


III. Essays

A. (20 pts) In 1985, the Loyal Order of Llamas, a fraternal organization dedicated to advancing community service and spirit, donated to the City Council of Capital City, a series of framed documents and books which the Council placed in the vestibule of City Hall in Capital City, which is the capital of State. The display is comprised of framed documents hanging on the walls and a book placed in a Plexiglas display case that sits atop a three-foot tall granite stand. The documents include: the Preamble to the State Constitution, the national motto, the national anthem, an image of Lady Justice, the Declaration of Independence, the Mayflower Compact, the Bill of Rights to the United States Constitution and the Magna Carta. A copy of the King James version of the Bible, open to a page from the book of Psalms, is placed in a Plexiglas cube atop a granite slab on the floor in front of the walls holding the framed documents. It is the only such “monument” in the room. In accepting the donation, the City Council said the display conveys that: “a sense of historical context, civic duty, and responsibility, and the general application and understanding of the law of this land, are all desirable components of the education of the citizens of Capital City.” The resolution goes on to say that the documents and book included in the display “positively contribute to the educational foundation and moral character of the citizens of this county.”

Beneath each framed document is a plaque bearing text that identifies the document and gives some explanation of the importance of that document to the overall display. For example, under the Declaration of Independence, the plaque reads: “perhaps the single most important document in American History ... the ‘frame’ into which the Framers placed the Constitution, the fundamental premise of which is that [g]overnment is not a giver of rights, but a protector of God-given rights.”

Beneath the Preamble to the State Constitution, the plaque reads: “derives directly from the idea that Government is not a giver of rights, but a protector of God-given rights.”

A security guard, whose job it is to stand guard in the front vestibule of City Hall is an atheist, is offended by the presence of the Bible in such an obvious location. He brings suit in 2010 asking for an injunction compelling the removal of the Bible. In 2001, the same security guard successfully brought suit against Capital City, obtaining a court order to remove a granite monument of the Ten
Commandments that sat by itself on the City Hall lawn. Capital City complied with that order.

Discuss the First Amendment issues, including the standard of law that the Court is likely to apply in evaluating the constitutionality of the Bible in the display.

B. (20 pts) Gifford Elementary School has an annual event for all students enrolled in grades 1-5, called "All About Me Day." On that day, all the students identify their favorite interests and activities, and bring in objects or read from books describing their favorite interests and activities to other children in the class. Johnny Jones, a third grader, wants to be a policeman like his dad, and loves police cars and fire engines. He brought in models of police cars and fire engines, and read from a book "So you want to be a Policeman?" Johnny’s dad accompanied him and told him about some investigations in which he had recently been involved.

Susie Smith plays the piano and wants to be a doctor. She came dressed in a white doctor’s coat, carrying a stethoscope, and played a song on the piano in the school auditorium. Her mother, also a doctor, told stories about her times in medical school.

Peter Prelate, nephew of Father Paul Prelate, wants to be a priest like his uncle. Peter came dressed in a black robe, wearing a large cross dangling around his neck. He wanted to read from the Bible, and lead the other children in prayer, accompanied by his uncle.

The presentation of each student had to be reviewed first by the teacher and principal. They told Peter he would not be permitted to make his presentation. They offered to help find an alternative subject to present. Father Paul was outraged, and called Peter’s mother, who immediately marched down to the school and made a scene in the principal’s office. Principal Douglas refused to back down.

Peter brought a lawsuit in federal court against the principal, teacher and school superintendent alleging their conduct discriminated against their religion and religious exercise.

Discuss the issues.
FIRST AMENDMENT LAW FINAL
FALL, 2008

PROFESSORS RUDNICK AND BECKER

DECEMBER 11, 2008

Do not start until told to do so

YOU HAVE THREE HOURS FOR THIS EXAM

INSTRUCTIONS:

USE ONLY SOCIAL SECURITY NUMBERS TO IDENTIFY YOURSELF ON THE BLUEBOOKS.

The examination is comprised of three questions worth a total of 90 pts. (the remaining 10 are from the Summum exercise). Each question is worth 30 points.

In discussing the issues consider the arguments and counter-arguments and the likelihood that any particular claim will succeed. If you think additional information is required to analyze the issue, or you are making factual assumptions, state the information required and/or the fact(s) assumed, and what bearing this has on your answer to the question.

If the same argument is applicable to more than one issue or answer, you do not need to repeat the entire analysis, but you may make reference back to the question and page on which the analysis you wish to repeat can be found. Be careful with this procedure, make sure that the prior analysis is sufficiently similar to warrant such a reference!

You do not need to use case names. If the fact pattern reminds you of or is controlled by a case we considered in class, feel free to refer to it by facts or name, but YOU MUST STATE WHY THAT CASE IS RELEVANT TO THIS FACT PATTERN. If you use a case name only, and it’s wrong, you will lose points.

THIS IS AN OPEN BOOK EXAM—This means you are allowed to use any source whatsoever, except another person.

THERE IS A TWO-BLUEBOOK MAXIMUM FOR THIS EXAM—Do not use more than 2 bluebooks or 16 pages. Outline your answers in a scrap bluebook so that you do not needlessly waste space. Write on only one side of the page and leave some margin on at least the left hand side. No credit will be given for illegible writing or for answers which exceed the page restrictions.

IF YOU USE MORE THAN ONE BLUE BOOK, NUMBER THEM IN THE FOLLOWING MANNER: 1 of 2; 2 of 2.
The School Committee ("Committee") of the Town of Despair ("Despair") has noticed a recent precipitous rise in violent crime among students in grades 6-8, who generally range in age from 12-14. Of particular concern is the rise of "hate crimes," that is, crimes committed against persons because of the actual or perceived characteristic(s) of the victim. The members of the Committee have determined that this rise in violence likely results from a variety of things, most notably, the failure of the family and other community institutions to instill proper values in children, particularly respect and tolerance for persons of diverse races, religions and cultures. Additionally, the members are aware that children in this age range are particularly susceptible to external forces, including peer pressure, problems at home and substance abuse, some or all of which color their ability to exercise appropriate judgment in decision-making. The Committee, in conjunction with the Superintendent of the Despair Public Schools and the Principal of the Despair Middle School (Grades 6, 7 and 8) decided to establish a "Clergy in the Schools" program, in which members of local clergy were invited to come into the Middle School once a month at pre-appointed times, and hold discussions with the students regarding (1) civic values and morality including tolerance and respect for diversity; (2) maintaining a safe school atmosphere; and (3) volunteer opportunities in the community. Attendance at the sessions was voluntary, although no parental consent was necessary. Those children not choosing to participate were assigned to a study hall during the period when the clergy members were conducting the discussions.

Participants were recruited by way of written invitations sent to all local clergy. Of those who agreed to participate, 70% (7) were of various Protestant denominations, 20% (2) were Catholic, and 10% (1) Jewish. That ratio approximates the division of organized religious faiths in Despair. Participants were instructed not to quote from the bible or other scripture during the sessions, not to advocate a particular religious sect, philosophy or practice, but they were permitted to give their contact information to any student who requested additional or private discussions, or who, in the mind of the clergyperson, was "in need" or "at risk."

Despair Middle School does have a general "School Volunteer Program," in which various persons from the community, including police, fire, parents and health care workers, visit the school on about a monthly basis, and address the students concerning their vocations or other areas of
interest and expertise. Attendance at these sessions is mandatory. Substantive tutoring in academic subjects by qualified, trained community members on an individual basis is available free of charge to qualified students.

Assume a group of parents with standing challenge the “Clergy in the Schools” program in federal court, alleging that it violates the First Amendment. Based upon cases we read this semester and hypotheticals we discussed, evaluate the constitutionality of the program.
Question 2

The Commissioner of the Department of Motor Vehicles of the State of Euphoria ("DMV") is authorized by statute to issue license plates to individuals who register their cars in Euphoria ("registrants"). For an additional fee of $35.00, registrants may request a special plate, known colloquially as a "vanity plate." The registrant may choose, in order of preference, up to three letter or number combinations for his vanity plate.

On April 20, 2008, Henry Ford, still driving slowly at age 112 and having recently found religion, applied for a vanity plate for his recently "tricked-out" 1929 Model T. His first, second, and third choices for a vanity plate were "John316," "JN316," and "JN36TN" respectively. He stated on his application that "all three represented a Bible passage" which reads: "For God so loved the world that he gave his one and only Son, that whoever believed in him shall not perish but have eternal life." The DMV rejected Ford’s application on May 14, 2008 because it referred to a deity in violation of the Euphoria statutes.

The current Euphoria statute and Euphoria Code of Regulations explicitly prohibit seven categories of letter/number combinations. The category at issue here prohibits in pertinent part:

"Combinations of letters or numbers that refer, in any language, to a race, religion, color, deity, ethnic heritage, gender, sexual orientation, disability status, or political affiliation; provided, however, the commissioner shall not refuse a combination of letters or numbers that is a generally accepted reference to a race or ethnic heritage (for example, IRISH)."

Registrants must also provide a meaning for each proposed vanity plate selection on their applications, which are signed under oath. Plates are denied if the meaning supplied falls within one of the prohibited subject matter areas. Nevertheless, proposed vanity plates that could have a dual meaning or reference both a permissible and prohibited subject matter may be allowed if the stated meaning is a permissible subject matter. For example, the term FAITH may be allowed if the supplied meaning was someone’s name but if the same application had "faith in God" as the meaning for FAITH, it would be denied as an impermissible religious
reference. In addition, even incomprehensible proposed plates will be denied if the supplied meaning falls into one of the prohibited categories of the statute.

In determining whether to approve or deny a plate based on its reference to a religion or a deity, the DMV relies on common knowledge, the registrant's supplied meaning, and, at times, advice of the department's general counsel. The DMV takes many factors into account when granting or denying vanity plates, including the specificity of the religious term and whether or not the term has become secularized. For example, GODSAVES would be denied, but PEACE or GRACE might be allowed because they are not necessarily associated with a religion. Similarly, general terms such as HOPE and PEACE may be allowed, but specific references to religion or deities such as YAHWEH or JESUS would be denied.

Under the current statutory scheme the DMV has denied 25 requests, including Ford's, for vanity plates because they made reference to religion or a deity. The plates denied were: ODHINN, SHIVA, REV B, SEEKGOD, ROMANS8, SHJ BVM, REV3 20, JMJ1, PSALM48, TORAH, ATMAN, HESTIA, KRISHNA, STBRUNO, PRAY, BVM 22, VTWITCH, GODSON, ONEGOD, 1GOD, FEDEDIO, THE REV, UM REV, GESU.

Applications for plates GEMINI and LIBRA were granted where the registrants gave astrological and zodiac signs as the plates' intended meanings. Similarly plates FAERIES and 13WIZRD were issued where the supplied meanings were "the love of mystical characters" and "wizard plus a lucky number" respectively. Several variations of the reference to angels were also issued including, ANGEL1, ANGEL21, ANGEL23, ANGELL, and ANGELSC. The meanings supplied for those plates ranged from children's names to nicknames.

Ford has filed suit in Federal District Court, alleging that the Euphoria vanity statute is unconstitutional arguing that his rights under the First and Fourteenth Amendments are violated by the DMV rejecting his application for vanity plate "JN36TN." Based upon cases we read this semester and hypotheticals we discussed, evaluate the constitutionality of the program.
The Centralia County Courthouse was built in 1910 and is owned and operated by Centralia County, Dispepsia, a political subdivision of the State of Dispepsia. The Courthouse is located in an area of downtown Center City containing many other county government buildings. The Courthouse is an imposing, six-story, granite building that occupies the center of an entire city block. The Courthouse originally housed all county and state courts and county government offices. Over the years as other county courthouses and county buildings were erected the building was designated as a Civil Courthouse and currently houses 18 courts, as well as the county and district clerks' offices.

In 1953 the Monumentally Hopeful Mission, ("MHM"), a local Christian charity that provides food and shelter to indigents, decided to build a memorial to Jimmy Swaggert, a prominent Center City businessman and philanthropist who died in 1948. Swaggert had been a long-time, active supporter of the MHM. Billy Graham, the president of the MHM, approached the Centralia County Commissioners Court and secured permission to erect a memorial to Swaggert on the County Courthouse property. Graham testified that the MHM selected a location in front of the Courthouse because of the permanence and prominence of its location.

The MHM designed and paid for the Swaggert monument. It was erected in 1956 in a plaza 21 feet from the main entrance to the Courthouse. The monument measures two-feet-six-inches by three feet and is four-feet-five-inches high. Engraved on the front surface of the monument, and occupying most of the area of the front surface, is the following inscription:

MONUMENTALLY HOPEFUL MISSION
ERECTED IN LOVING MEMORY
OF
HUSBAND & FATHER
JIMMY SWAGGERT
A.D.1956
The top part of the monument is an open Bible intended to memorialize Swaggert's Christian faith. The sloping top of the monument with the Bible has the appearance of a lectern. There is no written explanation on the monument as to why the Bible is there. A public ceremony, which included Christian prayers, was held in 1956 to dedicate the Swaggert monument.

Graham testified that one of the MHM's purposes for depicting the open Bible was to convey to the public that Swaggert was a "godly man" who had helped others. The Bible is intended to represent Swaggert's Christianity. Graham also testified that the presence of the Bible on the monument conveys to people that this is a Christian government.

Because the Swaggert monument faces the main entrance to the Courthouse, it is readily visible to attorneys, litigants, jurors, witnesses, and other visitors to the Courthouse. However, a passerby would have to walk up to the monument to observe that it is a Bible and would have to stand in front of it to read the Bible. The open Bible as displayed measures twelve-by-sixteen inches.

There are two wall plaques and two free-standing historical markers in the same area as the Swaggert monument. Neither the plaques nor the historical markers contain any religious message. No other open books are displayed in or near the Courthouse. There are other monuments, markers, and plaques in and near other county buildings, but none of them contain a religious message.

The MHM maintained the monument from 1956 until 1995. The monument was vandalized several times and the Bible made to appear to be the centerfold of a copy of Hustler Magazine. Each time that happened the MHM repaired the Bible. In 1988 atheists complained about the Bible to the Centralia County Commissioners Court and asked that it be removed. Although the evidence on this point is not entirely clear, it appears that the MHM decided either to remove the Bible or not to repair it again, rather than face potentially costly litigation. From 1988 until 1995 the Bible was hidden by a granite bowl placed on top of the Bible. The bowl was often used as a trash bin.

In 1995 Pat Robertson was elected a state district judge. Robertson campaigned on a platform of putting Christianity back into government. As a judge he initially officed in a county building near the Civil Courthouse and later moved to the Courthouse. His official court reporter was Tammy
Faye Bakker. In 1995 Robertson and Bakker embarked on a project to solicit private donations to refurbish the Swaggert monument, which had fallen into a state of disrepair, to restore the Bible, and to add neon lighting so that the monument was perpetually bathed in light day or night.

Robertson sought and obtained approval from Centralia County to make the improvements. Centralia County did not pay for any of the improvements to the. A ceremony was held in November of 1995 to commemorate the refurbishing of the. A number of Christian ministers led prayers at the rededication ceremony. Spectators and participants sang "The Battle Hymn of the Republic," a patriotic hymn that extols Christ's glory.

In 1996 and again in 1998 Bakker paid to repair the lights and for repairs to the Bible from migrating birds. Since 1995 Centralia County has paid for electricity to illuminate the neon lights that were installed in 1995. The cost of providing this electricity is $93.16 per year. For a few years after the monument was refurbished Bakker cleaned the Bibles face every day while on her lunch hour. Since 1997 the MHM has maintained the monument. Although Centralia County does not maintain the Swaggert monument, it retains the authority to move or alter it.

Margaret Sanger is a resident and taxpayer of Centralia County. She is also an attorney who passes by the monument going to and from the Courthouse in the course of her profession. She claims that she is offended by the Bible display in the Swaggert memorial because it advances Christianity and it sends a message to her and to non-Christians that they are not full members of the Center City political community.

Sanger has filed an action in United States District Court asking that the County be ordered to remove the Bible display. Supporters of the Bible display have held a large rally on September 4, 2008, in the Courthouse plaza next to the Swaggert monument. Several hundred rally participants prayed and stressed that the Bible was a foundation of the Christian faith. County Judge Jim Jones, Judge Robertson, and Centralia County Attorney David Koresh spoke at the rally and participated in prayers led by Christian ministers. Jones and Robertson stated that the County would strongly oppose the lawsuit. The County Judge is the chief executive officer of Centralia County. He presides over meetings of the Centralia County Commissioners Court, the legislative body that establishes County policy.

Assume that you are the Law Clerk to the Justice who has been assigned the
job of authoring the opinion in this matter. Using the cases and hypotheticals that we read and discussed during the semester, please write a draft opinion.

[Any similarities between characters in this question and real persons, living or dead, are purely coincidental.]