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501 INTRODUCTION TO CONSTITUTIONAL LAW

Semester I, 1999-2000

Final Examination
UNM School of Law
Three Credits

Professors Browde and Ellis
December 15, 16, or 17 1999
7:30 a.m. to 4:00 p.m.

INSTRUCTIONS

This is a 1 day take-home examination/paper. You have no more than 8 1/2 hours to complete your answer.

The examination consists of a single question involving multiple law suits. Grading will be on the basis of the importance and complexity of individual issues which are not necessarily evenly allocated among the law suits.

Please pick up your packet from Janet Cox's office on any one of the three days when the exam is offered (Dec. 15, 16, or 17) any time after 7:30 a.m., but before 8:45 a.m.

It shall be a violation of the Honor Code to consult with any other person about the subject of this course anytime after you have picked up your packet.

In preparing your answer you may consult the textbook, supplement, handouts, hornbooks, your notes, or any other materials you might find helpful. You may use a word processor, and are encouraged to do so, because typed/printed final products will be much appreciated.

Your answer may not exceed 3,500 words (approx. 14 typed pages). It may, of course, be shorter than that, and we are certain that an excellent exam can be written in fewer pages. Please count the words in your answer and write the total on the first page of your answer; You may do so by counting the words on a few representative pages, and multiplying the per/page average by the number of pages. (Running the spell-checker in WordPerfect for DOS will do an automatic count; WordPerfect for Windows will do a count from "File, Document Info"; and MS Word does it from "Tools, Word Count.")

Be sure to put your exam number, the course number and name, and the instructor's name on each page of your answer. Also, please number each page of your answer.

Return your answer to Janet Cox's Office by 4:00 p.m. on the same day you pick up the packet.

[EXAMINATION BEGINS ON PAGE 2]

QUESTION

For more than two decades, opponents of abortion in New York have maintained a Right to Life Party which sometimes endorses candidates of the major political parties and at other times offers its own candidates. Over the years, although no candidate has been elected to office with only the nomination of the Right to Life Party, the party has had considerable success in influencing the outcome of elections and in affecting the positions and actions of candidates and office-holders by raising the political “price” of opposing their views.

Recognizing that there was no effective counterweight to this political force, abortion rights advocates formed a Freedom of Choice Party (FOC) in New York, which would operate in a similar fashion. The idea struck a responsive chord with abortion rights activists in other states, and as a result, there are now Freedom of Choice parties in fifteen states, scattered in various regions of the country. In each of these states, individual voters have the option of registering with Freedom of Choice as an alternative to Republican, Democrat, or any of the other minor parties recognized in that particular state. Currently there are approximately five million voters in these states registered as members of Freedom of Choice. The demographics of this party, as with most minor parties, are somewhat skewed—68% of the members are female, and it has a relatively heavy concentration of physicians who specialize in OB/GYN, the latter having been actively recruited to party membership.

In 1999, the sporadic violence that has surrounded abortion clinics and abortion providers took a new turn. Two murders and an attempted murder of abortion rights supporters (including the killing of one physician who worked at an abortion clinic) were traced back to their registration with the Freedom of Choice Party (FOC). The attacks occurred at their homes, which were listed on their voter registration. A suspect has confessed to these attacks, and indicated that he picked his victims and obtained their home addresses from information he obtained at the office of the Registrar of Voters. He also acknowledged that he got the idea from a radical anti-abortion website, www.babymurderers.com, which said:

“Having trouble identifying the supporters of baby-killing? Let the government do your leg work for you. In fifteen states, individuals who are so disdainful of innocent unborn life that they actually *proclaim* their perverted beliefs can be easily identified, with their home addresses, by consulting voter registration lists and looking for those who have designated ‘Freedom of Choice,’ which we know really means ‘freedom to murder.’”

Following publicity surrounding this arrest, there were twenty attacks, seven of which were fatal, in six other states that recognized FOC party status, which indicated either a broader conspiracy or copy-cat crimes. In each instance, the victim was a registered member of the FOC party, and in each instance, the attack occurred at the victim’s residence.

The leaders of the FOC parties in the various states and leaders of the pro-choice movement were understandably disturbed by these events. They petitioned Congress to provide them protection. In response, Congress enacted, and the President signed, the “Voters’ Privacy Protection Act of 2000,” which is reprinted in the appendix to this examination.

The State of Funk, which has a Freedom of Choice Party, is quite upset at the passage of the Federal statute. Funk has a long tradition of openness regarding its voting records, and regards its practice of easy access as central to its maintenance of scandal-free state government and robust political discourse. A recent study by the political science department at Funk University has indicated that since adopting the policy of open access, the information about candidates and issues that state citizens possess at election time has increased by 10%, voter turnout has increased by 8%, and (most significantly to some) the frequency of annoying calls from political telemarketers dialing numbers blindly out of the phone book has dropped by 30%.

The State of Ennui, another Freedom of Choice Party state, is also concerned about the law, but for different reasons. It has long had its own statute restricting access to voter registration information, whose provisions differ from the federal law. The Ennui statute had been enacted following a series of complaints from voters that information from their registration was being used to compile mailing lists by corporate junk mailers from out of state. Relevant portions of the Ennui Election Code are reprinted in the appendix to this examination.

By contrast, the State of Dyspepsia, which does not have a Freedom of Choice party, claims that it is not affected by the law at all. This is because it privatized all of its voter registration and the operation of its polling places and the counting of ballots six years ago. At that time, it contracted with Democracy Whataconcept, Inc. (DWI), a California corporation which promoted its services in the following way:

‘DWI can free contracting states from concerns about partisan and legal complications surrounding the running of elections. Never again will you have to confront the shenanigans of corrupt local registrars and pollwatchers, never again will you have to cater to the whims of AFSCME [the union of public employees], never again will you have to weather the charges of partisanship and cheating leveled by sore losers. Give us your elections. We can do them better, cleaner, and cheaper.’”

Dyspepsia continues to set qualifications of voters and filing deadlines for candidates by statute, but has no statute regarding access to voter registration information, and the Dyspeptic Secretary of State answers all inquiries on the topic with a form letter that says, “Inquiries should be directed to DWI, because they make those decisions and determine those policies.”

Several related federal law suits have been filed involving these issues:

1. The Funky Secretary of State has sued to enjoin the implementation of the Federal law.

2. Ted Tedious is a registered voter in Ennui. Bob Boring is a political consultant from New York who claims to want to send politically oriented mail about environmental concerns to voters in all of the states in Ennui's region of the country. Irene Indifferent is a political scientist who wishes to do a comparative study between the policies of her state and Ennui. Irene is also the Director of Social Science Institute at Funk University, competing for a multi-million dollar private foundation grant with a similar institute at the University of Ennui. All three have sued in Federal court for a declaratory judgment that the Ennui statute is unconstitutional.

3. The Attorney General of the United States has sued DWI, seeking to enjoin it from violating the Federal statute.

These law suits have been consolidated before a single federal judge. You are that judge. Write the opinion resolving all the cases.

APPENDIX

VOTERS' PRIVACY PROTECTION ACT OF 2000 (portions)

Section 100. Congressional Findings. Congress finds the following:

a. The safety of voters has been imperiled by illegitimate access to and use of information contained in voter registration materials in several of the states.

b. In 42 of the states, information about individual voters can be obtained easily by any person, either for free or for the payment of a small fee. In these states, no check is provided to determine why the person making the inquiry wants the information or the purposes for which he or she intends to use it.

c. The franchise being the most sacred of the rights of citizenship of the United States, it is essential that free exercise of that right be safeguarded and protected.

d. Differences among the several states regarding voter registration practices for state elections produces a variation in the time, place and manner of registering for Federal elections that has the potential to discourage citizens from moving from one state to another for fear that the registration practices in their adopted states may imperil their safety, leaving them with only the options of not moving or of not registering to vote. Congress is particularly concerned about the potential for disparate impact on women.

e. Information about registration with a political party constitutes a major component of the privacy that is at the heart of the secret ballot, which in turn is central to each state's republican form of government. No one is entitled to know a citizen's partisan preferences without that citizen's consent.

Section 101. Release of voter information.

Information about registered voters, including any voter's partisan preference or home or business address shall not be disclosed or otherwise made available to any person or entity, except as provided in this section. The only people who can be provided that information are (1) the voter himself or herself; (2) authorized public officials of the state or a political subdivision thereof who are investigating allegations of election fraud which those officials have probable cause to believe are correct; and (3) academics who certify that they are conducting legitimate scholarly election law research. Disclosure of confidential voter information by a state, or by any other entity or individual who has acquired such information, to any other person or entity shall be punishable by imprisonment for not more than one year, or by a fine of \$10,000, or both.

Section 102. State plans.

The Secretary of State of each state, or the appropriate comparable state official entrusted with the conduct of elections, shall, by January 1st of the year following the effective date of this Act, submit a plan for the implementation of this Act to the Federal Elections Commission. When the Federal Elections Commission is satisfied that the state plan satisfies the requirements of this Act, it shall reimburse the state for the cost of complying with this Act. The reimbursement shall be in the amount of 25 cents per registered voter in the state. No funds shall be reimbursed to the state until its plan is approved by the Commission. If a state fails to submit a satisfactory plan, the Commission shall inform the Attorney General of the United States, who shall seek injunctive relief in any United States District Court ordering the state to comply with this Act. The District Court shall fine any state which has not submitted an acceptable plan in the amount of \$100 per voter registered in that state for each day that the state is not in compliance with this Act.

Section 103. Private Litigation for Enforcement.

Any citizen of the United States may bring an action in the United States District Court of any District, alleging that a state is not in compliance with this Act.

STATE OF ENNUI, ELECTION CODE (portions)

Section 666. Information regarding voter registration.

The Secretary of State shall keep voter registration information, including home addresses of voters and information regarding party registration confidential. Such information can be released to no one except academics at the University of Ennui who certify that they are conducting legitimate scholarly research into the operation of Ennui's election laws.

[END OF EXAMINATION]