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**501 INTRODUCTION TO CONSTITUTIONAL LAW**  
**SEMESTER 1, 2001-2002**

Final Examination/Paper  
UNM School of Law  
Three Credits

Professors Ellis and Kovnat  
December 12, 13, or 14, 2001  
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 ½ hours to complete your answer.

The examination consists of two questions involving multiple lawsuits. Grading will be on the basis of the importance and complexity of individual issues which are not necessarily evenly allocated among the lawsuits. In our judgment, roughly 60% of your time should be devoted to Part I; 40% to Part II.

Please pick up your packet from Janet Cox's office on any one of the three days the exam is offered (Dec. 12, 13, or 14) 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 casebook, 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 final products will be much appreciated.

Your answer may not exceed 3,500 words (approx. 14 typed pages). Economy of expression will be appreciated and may be necessary to enable you to address all of the relevant issues contained in the questions. 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.

QUESTION

Protecting the health and safety of U.S. citizens after the terrorist attacks on the World Trade Center and the Pentagon presented new and enormous challenges to the President, the Congress and State and local governmental units. The response was immediate.

In October of 2001, without formally declaring war against anyone, and emboldened by the marketing success of the PATRIOT Act, Congress enacted the Measure Against Knowing Enterprises Lowering Our Values Enactment (MAKELOVE). The President immediately signed MAKELOVE into law. Among other things MAKELOVE: 1) increases the law enforcement powers of the agencies of the federal government; 2) provides conditional subsidies to state and local law enforcement agencies to assist in the investigation of acts of terrorism; 3) expands federal regulation of certain biological substances that are capable of use as weapons of mass destruction; 4) makes it an aggravated federal crime for any person to commit any crime under either federal or state law where the victim is a U.S. citizen who practices Islam; and 5) expands federal regulation of financial institutions and state financial agencies to prevent the use of financial assets to support acts of terrorism.

**Relevant portions of MAKELOVE are in the appendix. Please consult the appendix before addressing the questions.**

**Part I**

(a) The institutions of the federal government implemented the law within days. The Attorney-General published a list of countries supporting terrorist activities. Then, under section 101(a) of MAKELOVE, the Department of Justice (DOJ) made grants to many State law enforcement agencies, including to the State of Oregonia. Oregonia used a portion of the federal funds to support the activities of Oregonia's State Police. The State distributed the rest to various city and county police departments. The City of Portia's police department received a federal grant. Then DOJ ordered Oregonia's police officers, both state and local, to interview thousands of men with Middle Eastern names, related to persons from countries on the Attorney-General's list, for the purpose of seeking information about terrorism. Various police departments reacted differently to DOJ's order. The police officers of Portia refused to interview the men on DOJ's list because they believed that doing so was racial profiling in violation of the fourteenth amendment of the U.S. Constitution. The U.S. Attorney-General filed an action against the police officers of Portia in federal district court seeking an injunction to require Portia's police to obey DOJ's order. Portia's police officers answered alleging that Congress and DOJ had exceeded federal powers under the U.S. Constitution. **Write a brief memo addressing Portia's police officers' defense regarding whether section 101(a) of MAKELOVE exceeds the scope of federal powers.**

(b) In contrast, the State police of Oregonia enthusiastically started to interview the people on the DOJ's list. Most interviewees cooperated, but when Abdullah Abdullah refused to cooperate, Oregonia's police threatened to tell his employer. Abdullah Abdullah suffered extreme mental anguish as a result. He filed a civil action for damages against Oregonia in federal district court under section 101(b) of MAKELOVE claiming denial of equal protection. Oregonia moved to dismiss this complaint. **Rule on Oregonia's motion based on your analysis of question I.a. above. Do not address the merits of Abdullah's equal protection claim.**

(c) Doctors licensed to practice medicine by the state of Oregonia also have some difficulty with MAKELOVE. Three years earlier, Oregonia had enacted a Death with Dignity Law which specifically authorized physicians licensed by Oregonia to prescribe to consenting patients suffering from terminal illnesses, Loxbox, a biological agent which produces a quick and peaceful death. Enacted after substantial public debate, Oregonia's Death with Dignity Act establishes a state policy that favors assisted suicide under certain circumstances. Since the enactment of Oregonia's law, Dr. No has kept a supply of Loxbox that she recently gave to a terminally ill patient in strict compliance with Oregonia's law. After the patient's death, Dr. No was charged with violation of section 102(a) of MAKELOVE. Dr. No moves to quash the charges against her on the grounds that as applied to her, section 102 of MAKELOVE exceeds Congressional powers and that Oregon's Death with Dignity Act permits her to possess Loxbox and to give it to her patient. **Rule on Dr. No's motion, giving reasons for your ruling.**

(d) Oregonia's banking regulatory agency challenges the requirements of the federal money laundering regulations contained in section 103 of MAKELOVE. The banking regulatory agency seeks a judgment in federal court declaring that these provisions violate the U.S. Constitution. **Write a short memo discussing the constitutionality of these provisions.**

(e) Ethel Mertz has been convicted of battery in a federal court. She attacked a woman wearing a head covering traditional in the practice of Islam. During the sentencing hearing, the U.S. attorney seeks an enhanced sentence under the provisions of section 104 of MAKELOVE. Ethel Mertz argues that this provision is unconstitutional. **Rule on Ethel Mertz's argument, giving reasons for your ruling.**

## Part II

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The State of Oregon has also reacted to the events of September 11, 2001. The immediate concern of its legislature centered on the safety of its deep-water ports which have long been used by large tankers transporting oil and gas from Alaska. After fuel is received at Oregon's ports, it is shipped throughout the Pacific Northwestern states by either pipeline or truck. However, most of Oregon's ports are privately owned and abut large population centers that would be impossible to protect from the explosions and fires that could ensue from attacks on these ships when loaded with fuels. So to protect the safety of its population, Oregon enacted legislation that prohibited fuel-carrying tankers above a certain size from entering any of the existing ports near cities. The legislature instead directed that all such ships anchor at least three miles from shore. It provided that fuel was to be delivered ashore (after transfer to small vessels) to a single receiving facility located next to undeveloped beaches and far from population centers. The major energy and shipping companies, as well as the owners of the existing port facilities vigorously lobbied against this measure. The energy and shipping companies estimated that costs of delivering fuel would double as a result of this legislation. The owners of existing port facilities argued that they would be financially ruined by the diversion of this traffic from their ports. Nevertheless, Oregon's legislature authorized the State to issue a contract to the private company that won a competitive bid to immediately construct and then to operate the fuels receiving facility in accordance with detailed safety and security specifications contained in the legislation. Among other things, the law prohibited the winning bidder from employing a non-citizen of the United States and gave a preference to bidders who employed a majority of citizens of Oregon. The successful bidder was ENWRONG INC., an energy company incorporated in Texas. ENWRONG complied with all the legislative specifications and completed the construction project within two weeks.

Four lawsuits were filed challenging Oregon's legislation.

- a. The owners of the existing private ports sued the State's officers challenging the statute as an unconstitutional taking.
- b. The shipping companies sued the State's officers challenging the statutes as a violation of the dormant commerce clause.
- c. California construction workers sued the State's officers alleging that the conditions placed on bidding violate both the dormant commerce clause and the privileges and immunities clause.
- d. A disappointed candidate for employment with ENWRONG, a non-citizen with a "green card" and therefore entitled to work under immigration regulations, was rejected for a job with ENWRONG. Because he was fully qualified, he filed an action against ENWRONG claiming that ENWRONG had denied him equal protection. ENWRONG has since filed for bankruptcy and claims the case is

moot. Analyze all features of ENWRONG's anticipated motion to dismiss the lawsuit.

**Discuss each of these lawsuits. Again, do not address the merits of the equal protection claims.**

#### APPENDIX

Relevant portions of MAKELOVE provide:

Section 100. Congressional findings. Congress finds:

- a. The health, safety, and economy of the United States are imperiled by acts of terrorism.
- b. No State has the resources to deal with the peril of terrorism alone. In particular, bioterrorism risks the lives of all of the people of the United States and demands a national response. Fear of exposure to biological agents decreases economic activity and depresses the national economy.
- c. States need additional resources and regulatory authority to combat all instrumentalities used to support terrorism. To effectively fight terrorism, federal, state and local law enforcement agencies must have enhanced investigatory power to target for questioning persons who have connections to countries that support terrorism.
- d. Crimes against citizens of the United States that are motivated by fear and misunderstanding of Islam tend to decrease the commercial activity of persons who practice Islam thus depressing the national economy. Moreover, discrimination against persons practicing Islam is a denial of equal protection that requires a national, uniform remedy.
- e. Congress has the power to enact this law under Article I, section 8, clauses 1 and 3, the necessary and proper clause and under section 5 of the Fourteenth Amendment.

Section 101. Subsidies to State and local law enforcement agencies.

- a. \$20 billion is hereby authorized and appropriated to the U.S. Department of Justice to be distributed in accordance with Department of Justice regulations to eligible State and local law enforcement agencies who assist the Department of Justice with investigations of terrorism. No State is eligible for a grant under this subsection unless its law enforcement officers comply with the investigation standards set by the Department of Justice which shall permit investigation of persons who are from or related to persons from countries that support terrorism as designated by the Attorney-General of the U.S. notwithstanding anything to the contrary contained in

State law. For purposes of this subsection, classifications made by the Attorney-General based on national origin shall be deemed rational and shall not be deemed to be suspect classifications.

- b. Any person aggrieved by a State or local law enforcement officer's conduct of an investigation under section 101(a) of this law shall have an action in damages against the State in federal district court.

#### Section 102. Regulation of biological products.

- a. No person shall manufacture, transport, sell, possess, prescribe, or use any biological agent capable of use as a weapon of mass destruction.
- b. Persons convicted of manufacture, transport, sale, possession, prescription, or use of any biological agent capable of use as a weapon of mass destruction shall be guilty of a federal felony.
- c. Partial list of prohibited biological agents.

- (1) Anthrax
- (2) Smallpox virus
- (3) Loxbox

#### Section 103. Money Laundering Provisions.

- a. All financial institutions insured by the federal insurance deposit corporation shall require all owners of accounts to disclose detailed personal information. If an account owner is a natural person, he or she shall disclose place of birth. He shall be required to list every address, educational institution, and place of employment from date of birth until the present. Corporate, non-profit, and other account holders shall disclose similar information about every individual officer, director and principal shareholder. Financial institutions shall report this information every six months to the Federal Banking Authority as well as to any state agency exercising regulatory authority over financial institutions.
- b. State agencies exercising regulatory authority over financial institutions shall promulgate customer disclosure rules applicable to check-cashing establishments, halawas (informal money transfer transactions) and other money-lending organizations not insured by the federal insurance deposit corporation. Such disclosure rules shall require disclosure of information equivalent to that required under section 103(a). State regulatory agencies shall provide semi-annual reports to the Federal Banking Authority.

Section 104. Crimes against Persons practicing Islam.

- a. It shall be a federal crime for any person to commit any crime under either state or federal law against a U.S. citizen who professes or practices Islam.
- b. A person convicted of a crime committed against a U.S. citizen who professes or practices Islam shall receive a sentence of 20 years imprisonment in addition to the sentence imposed for commission of the underlying crime.

END OF APPENDIX

**[END OF EXAMINATION]**