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UNM School of Law  
Final Examination

Examination No. \_\_\_\_\_

Professor James Ellis  
Wednesday, May 2, 2001  
Take Home Examination

**526 CONSTITUTIONAL RIGHTS  
INSTRUCTIONS**

This is an eight-hour, open-book final examination.

Your eight hours begin when you open this question for the first time. You should not pick up the question until you are ready to begin, or as close to that time as practical. Similarly, you should return your answer to the staff as soon as possible after your time has elapsed.

Working on the exam past the eight-hour deadline will constitute a violation of the Honor Code.

The exam question will be available to be picked up after 9:30 am on Wednesday, May 2, 2001. Answers must be returned by 4:00 pm on Friday, May 11, 2001.

In preparing your answer, you may consult your textbook, published and photocopied supplements, any notes prepared by you (either alone or in conjunction with your classmates), treatises and other primary or secondary materials to be found in the law library. Please note that this exam is not a research project. It is my belief and anticipation that you can prepare a successful answer based solely on the course materials and your notes alone, but I have no objections if you want to consult the full text of a relevant case or check your understanding against a secondary source. You may not discuss any aspect of this exam or your answer with any other student or any other individual.

Your answer is limited to 3,500 words. Please count the words in your answer and write the total on the first page of your exam answer. No credit will be awarded for anything past the 3,500 words of your answer.

You have eight hours to write an exam answer that is no longer than that expected of a four-hour, in-class, ambush-style exam. This gives you the opportunity to re-read a case or two and any notes or materials you might deem relevant to the question, and consider your answer. It also gives you the opportunity to reAd over what you have written to determine whether it makes sense to you.

**GOOD LUCK!**

## QUESTION

The issue of cloning has created quite a controversy in the State of Expectancy. And, as so often happens at this time of year, much of the controversy has ended up in court.

It all began with a paid advertisement in the state's largest newspaper, The Contraction Times. The ad included a large picture of an apparently healthy infant being held by her beaming parents. (Subsequent investigation revealed that that the three individuals photographed were models, and that the child had been conceived and born through more traditional methods.) The ad's copy included the following:

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EXERCISE YOUR RIGHT TO CHOOSE THE APPEARANCE OF YOUR  
FUTURE BABY!

IF YOU ARE A STERILE COUPLE WITH NO MORE HOPES TO GET THE  
CHILD YOU HAVE DREAMED OF...

IF YOU ARE A HOMOSEXUAL COUPLE OR INDIVIDUAL DEEPLY  
WANTING TO HAVE A CHILD CARRYING YOUR OWN GENES...

IF YOU WANT TO BE CLONED FOR ANY REASONS, CONTACT US.

**CLONAIID.COM**

(PRICES START AT \$200,000)

(ALSO ASK US ABOUT OUR CLONAPET SERVICES, through which the pets of wealthy individuals can be reproduced or brought back to life. The service is also offered to the owners of racehorses, a very promising market given the outrageous prices paid for champions.)

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Clonaid.com turns out to be a corporation registered in the Bahamas, which is affiliated with the Raelian Movement, an international religious organization which proclaims that life on Earth was created scientifically through DNA and genetic engineering by a human extraterrestrial race whose name, ELOHIM, is

found in the Hebrew Bible and was mistranslated as the word "God." The Raelian Movement also proclaims that Jesus was resurrected through an advanced cloning technique by the ELOHIM. The Movement further believes that the aliens will soon return to Earth, and that cloning is the way to eternal life. The group has begun holding services in the city of Contraction, and invites passersby to attend its practice of "sensual meditation" on the first Sunday of each month. Both Clonaid.com and the Raelian Movement were founded and are led by a racecar driver named Rael, whom critics consider somewhat eccentric.

(Rael has published a book in which he claims that he is merely following the directives of "Yahweh," whom he describes as the leader of the ELOHIM, a race that is 25,000 years ahead of humanity, both scientifically and spiritually, and whose young people created all of Earth's species experimentally as a Science Fair project. According to Rael, Yahweh landed a flying saucer in a volcanic crater in France in 1973, inviting Rael aboard in order to explain the creation of human beings to him. During that same visit, Rael says that he met Jesus "and enjoyed the most extravagant night of his life with six beautiful female machines created purely for his pleasure." The group's \$4 million temple includes a life-size model of the spaceship Rael says he boarded in 1973, visual exhibits on robotics and genetics, a snack bar, and a souvenir shop. The group's beliefs include seeking sexual pleasure, using contraceptives, aborting unwanted children, respecting animals, and creating a new political system by putting geniuses in power and allowing only people with above average intelligence to vote.)

Senator I. M. Shirley Wright, chair of the Expectancy Legislature's Joint Committee on Science and Technology, was outraged when she saw the ad, and quickly convened a committee hearing to investigate. Although invited, no representative of the Movement testified. All of the scientific witnesses testified that there had been no known attempts at human cloning to date, and that animal cloning had proven to be considerably more problematic than appeared to be the case when "Dolly" was cloned in 1997. Later attempts have demonstrated that the vast majority of animal embryos fail to survive to term, and most of those born alive die soon after birth. Even among the live and apparently healthy births, a majority of the animals develop massive health problems in later life, most frequently in the form of abrupt immune system failure. In addition to the scientific witnesses, leaders of a wide range of religious denominations in the state testified that they found the Raelian Movement to be reprehensible and blasphemous. The leader of one synagogue in particular expressed outrage at what he considered "defamatory" depiction of Hebrew sacred texts and the "misappropriation" of Jewish symbols, particularly the silver pendant worn by

Rael and his followers, which incorporates both a Star of David and a galaxy-shaped whirl.

Shortly after the hearing, Senator Wright introduced “The Cloning Regulation Act of 2001,” which quickly was passed by both houses of the Legislature and signed by the Governor. (The text of the Act appears in Appendix A to this examination.) Following the effective date, Clonaid defiantly reprinted the advertisement in the newspaper.

Litigation ensued.

The District Attorney in Contraction obtained an indictment of Rael and Clonaid, charging unlawful solicitation under section 2 of the Act. Defendants moved to quash the indictment on the grounds that the Act is unconstitutional under both Federal and Expectancy Constitutions. (Portions of the State Constitution are included in Appendix B to this examination.) The state District Court’s denial of this motion has been appealed on an interlocutory basis to the Expectancy Supreme Court.

Dr. Richard Seed [to paraphrase Dave Barry, I am not making most of this up] is a scientist who is not affiliated with Clonaid or the Rael Movement, but who wishes to offer cloning services to voluntary patients seeking human cloning. John and Jonathan Doe are an unmarried gay couple who wish to have a child by cloning John’s DNA and inserting it into the womb of a hired surrogate. Fred and Fiona Fruitless are a married couple who have failed in their efforts to have a child either through ordinary methods or *in vitro* fertilization, and view cloning as their last chance to have children. (They note that Expectancy does permit *in vitro*.) Montgomery Burns [OK, some of it] is a fabulously wealthy industrialist who wants to attain immortality by cloning a replica of himself. Doris Knight is an animal-loving actress of yesteryear who wishes to clone one of her favorite pet dogs, Pip, so that she can enjoy its company past its expected lifespan. She has sought and been denied permission by the Cloning Control Board. Seed, the Does, Fred and Fiona, Burns, and Knight have sued to obtain declaratory relief that the Act unconstitutionally prohibits them from obtaining the clones they so desperately desire. Assume that each has adequate standing and that the issue is ripe for decision. Denial of their suits by a trial judge has also been appealed to the Expectancy Supreme Court.

You are a clerk to the Chief Justice of the Expectancy Supreme Court. She has asked you to prepare a memorandum analyzing the constitutional issues in these cases and making recommendations for their resolution.

## APPENDIX A

### **CLONING REGULATION ACT OF 2001**

#### Section 1. Legislative Findings

- The prospect of human cloning, which has never been successfully accomplished, raises the most disturbing ethical and scientific issues, as well as health concerns for the citizens of Expectancy.
- Results of animal cloning suggest that the likelihood of offspring incapable of surviving is unacceptably high.
- Proponents of cloning appear, in too many cases, to be motivated by weird and unhealthy purposes, with insufficient concern for the health and sensibilities of our citizens, thereby making legislation necessary.
- Although the cloning of animals has sometimes been successful, it continues to raise substantial concerns that doting pet-owners may be seduced into ill-advised procedures.

Section 2. Human Cloning. Any attempt to clone a human being shall constitute a felony in the fourth degree. Solicitation of another person or persons to participate in a human cloning shall also constitute a felony in the fourth degree.

Section 3. Animal Cloning. Any person desiring to clone an animal must first obtain permission from the Expectancy Cloning Control Board. The Board shall grant such permission only when the applicant demonstrates, by clear and convincing evidence, that the particular cloning proposed is necessary for the public welfare. Attempting to clone an animal without permission of the Board shall constitute a misdemeanor. All commercial advertising of the availability of animal cloning is prohibited, and shall constitute a misdemeanor.

**APPENDIX B**

**EXPECTANCY STATE CONSTITUTION (portions)**

ARTICLE I. All citizens of Expectancy are created equal in the eyes of God and are entitled to be free from irrational discrimination on the basis of race, creed, gender, sexual orientation, or disability.

ARTICLE II. All persons shall have the right to worship God as they choose, and may not be deprived of life, liberty, or property without due process of law.

ARTICLE III. The health and safety of our citizens shall be the paramount interest of State government.