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UNM School of Law
Final Examination

Professor James Ellis
Thursday, May 2, 2002
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 on Thursday, May 2nd. Answers must be returned by 4:00 on Friday, May 10th.

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 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

Domestic controversy has erupted in the State of Enchantment in the wake of the terrorist attacks of September 11th and the recent conflicts in the Middle East. Several aspects of that controversy have now ended up in the State Supreme Court.

Quite a few of the disputes involved the Islamic Institute of Instruction (I.I.I.), a private, sectarian school which enrolled 250 students (including both American citizens and foreign nationals) from first grade through high school. Since its founding in 1974, the III has limited admissions of students and employment of instructors to those who profess to be adherents to the Islamic faith. Students receive religious instruction as well as secular classes, and are also required to participate in religious ceremonies and observation, including calls to prayer several times a day. Like other private schools, the III is chartered by the State Board of Education, and is subject to its regulations. But prior to September 11th, the regulations had been minimal and non-substantive, such as requiring compliance with local fire and building codes, obtaining permission to change the school's name, etc.

The current controversies began with the events of September 11th of 2001 and the intensification of the Intifada on the West Bank. Three days after the attacks on the World Trade Center and the Pentagon, the Board of Trustees of the III met and declared their solidarity with "our Muslim brothers who have sacrificed their lives for the greater glory of Allah." (Local analysts have concluded that one of the motivations for these actions by the Trustees was an intensification of the rivalry between the III community and a more moderate Islamic faction in Enchantment which had denounced the attacks on New York and Washington.)

Accompanying the III Trustees' declaration of support were several concrete actions. The first was formally to change the name of the Institute to the "Intifada Inspiration Institute." The III also erected a large billboard, on the school grounds but clearly visible from both a public highway and the cemetery where two firefighters killed in the World Trade Center are buried, which portrays a photograph of Osama Bin Laden above the printed messages, "Bringing Humiliation and Defeat to the Infidels" and "Go and Do Thou Likewise." The school also organized, and students were urged to participate in a fund-raising effort to send money to the families of "the martyrs who have sacrificed their lives to punish the American and Zionist oppression of Muslim peoples." The fund-raising brochure stated that "By providing support for the family members of the martyrs we (1) honor the martyrs' courage and sacrifice; (2) assure that innocent family members who have lost the earning power of a brave loved one are not left destitute; and (3) reassure future martyrs that they need not fear that their choice to bring righteous vengeance to Americans and Zionists for the greater glory of Allah will subject their families to lives of poverty."

Not surprisingly, these actions provoked intense public outrage in Enchantment. Shortly afterward, the state legislature passed the "Defend American Dignity Act" (DADA), which its supporters said was designed to instill patriotism and assist in the war

against terrorism. (A copy of the statute is included in the APPENDIX to this examination.)

The III's Board of Trustees responded to the enactment of the new law by issuing an order to all teachers in the school which prohibited them from implementing the curricular requirements of DADA's Section 2, and "reaffirming our commitment to the teaching of traditional Islamic values and virtues." They also instructed the school's principal to locate other commercial billboards for rent elsewhere in the community "so we can publicize similar messages of support for the freedom fighters and martyrs."

Responding to public outcry against the III, state officials acted.

First, the State Board of Education convened a hearing to consider the III's charter. Following the hearing, the Board concluded that III was in violation of state law (1) because it discriminated against non-Muslims in the hiring of teachers; (2) because it refused to include in its curriculum the instruction required in section 2A of DADA; (3) it had changed the school's name without obtaining permission from the State Board of Education (although seven other schools had changed their names – including Pius VI School renaming itself "John XXIII School" and George Washington Carver School renaming itself "Malcolm X Academy" – over the years, in technical violation of a state regulation that requires all private schools to obtain Board permission to change their names or addresses without seeking the Board's permission, and none of those schools had had its charter revoked); and (4) because it had "deeply offended the sensibilities of the community in supporting the goals and actions of terrorists." The III appealed to the Board, which refused, without written opinion, to reconsider its ruling. The Trustees then filed an appeal in the State District Court, claiming that the Board's action was unconstitutional under the Federal and State Constitutions. (All relevant portions of the State Constitution are included in the APPENDIX.) The District court dismissed the appeal, holding that it had no jurisdiction because of the limitations of section 2C. The Trustees have now appealed to the State Supreme Court.

Second, the parents of one III third grader, upon the closing of the school, refused to enroll the child in either public or another private school. The parents, citizens of Egypt whose child is an American citizen, have been prosecuted under the State's longstanding mandatory attendance law, and were convicted and sentenced to a fine of \$1,000 and confinement in jail for a period of six months. They have appealed their conviction to the State Supreme Court on Federal and State constitutional grounds.

Third, the Director of Public Safety, claiming jurisdiction under section 3 of the Act, issued an order requiring III to remove the existing billboard as a public nuisance. When III failed to comply with this order, the Director obtained an order from the State District Court requiring the sign's destruction, and prohibiting the erection by III of "any similar billboards or signs, commercial or otherwise, at this or any other location in the State of Enchantment for a period of one year." The Trustees have filed an appeal from this order in the State Supreme Court, citing State and Federal constitutional grounds.

Fourth, citing DADA's section 4, State Attorney General Peri Cinderman seized all the money raised for the Martyrdom account and obtained an order for its forfeiture in State District Court. In her press conference announcing the seizure, the Attorney General stated that "Islam is a religion that demands that people sacrifice their sons for Allah. Christianity is a religion in which God sacrificed His Son for the people. American values and the values of Enchantment will not tolerate the support of terrorists." The Trustees of III have appealed this order to the State Supreme Court, and have also asked that court for a declaratory judgment that the Attorney General's statement violated the Federal and State Constitutions.

You are a law clerk to Justice I. M. Shirley Wright of the Enchantment Supreme Court. Provide her with a memorandum analyzing the constitutional issues in all cases discussed above, and making recommendations for their resolution.

APPENDIX A

DEFEND AMERICAN DIGNITY ACT (portions)

SECTION 1. LEGISLATIVE FINDINGS.

The People of Enchantment are outraged by the infamous and ungodly attacks on Americans on September 11th, and by the terrorist attacks against innocent civilians in Israel and Israeli-occupied territories. Every effort must be made to assure that such attacks are not repeated.

SECTION 2. EDUCATION IN AMERICAN CIVIC VIRTUES.

A. Every public and private school in Enchantment shall include in its curriculum a program of instruction in American values, including affirmation of the absolute necessity of tolerance of people of all nationalities and religions, and emphasizing the importance of rejecting archaic views of the role of women in society.

B. No public or private school may discriminate on the basis of race, gender, or creed in the employment of teachers.

C. The State Board of Education shall assure that the provisions of this Act, and of all other state laws, are rigorously enforced, and shall revoke the charter of any private school that is not in compliance with such laws. Any school whose charter is revoked pursuant to this section shall be closed immediately. A school that has been closed under this section shall have the right of appeal to the State Board of Education, seeking reversal of its previous order. The school shall remain closed and no child may attend classes during the consideration of any such appeal. No other appeal to any administrative or judicial body in the State of Enchantment seeking review of the order of the Board may be entertained.

SECTION 3. PROTECTION OF PUBLIC ORDER AND PRESERVATION OF PROPERTY.

Any public display of advertising on billboards or other signs which is designed to cause, and does or is likely to cause, public unrest, or to inflict extreme emotional distress to citizens of Enchantment, may be enjoined as a public nuisance and removed by the order of the State Director of Public Safety. Any person who disobeys an order by the Director issued pursuant to this section may be prohibited by a writ issued by a state District Court judge, from erecting other similar displays for a period of one year. A judge shall issue such a writ only upon concluding that the Director has proven, beyond a reasonable doubt, that the previous display was in violation of this section and, beyond a reasonable doubt, that future displays would also be likely to cause comparable harm.

SECTION 4. PROHIBITING PROVISION OF AID AND COMFORT TO TERRORISTS.

No individual in Enchantment may provide financial assistance in support of terrorist activities, either at home or overseas. The State Attorney General may impound any funds intended to be spent in aid of terrorism. If a State District Court determines that the funds were intended to support terrorism, it may order all such funds forfeit and shall disburse them to the State's general fund.

APPENDIX B

ENCHANTMENT STATE CONSTITUTION (portions)

AMENDMENT 1. INVIOABLE PERSONAL LIBERTIES.

Every citizen of Enchantment shall be free to express his or her views without fear of punishment, being always responsible for the abuse of this right. Every citizen shall also be free to worship Almighty God in any way dictated by the individual's conscience. Every individual in Enchantment shall be free from discrimination based on race, gender, or sexual orientation, and shall be free from unreasonable discrimination based on mental or physical handicap, creed, political viewpoint, or national origin. No person shall be deprived of life, liberty, property, or privacy except by due course of law. The right to keep and bear arms for any lawful purpose may never be questioned.

AMENDMENT 2. EDUCATION.

Education being necessary to secure a republican form of government, the State shall operate a system of free, efficient, non-discriminatory public instruction, available to all children up to the age of 18. The State shall also carefully monitor the provision of private instruction to assure that the values of our pluralistic, democratic society are inculcated in our children, and that all children receive an effective and appropriate education.

AMENDMENT 3. PUBLIC SAFETY AND WELFARE.

Every branch of the government of the State shall assure that public order is maintained and that public safety is protected. The State shall also strive to assure that the sensitivities and feelings of all its People shall be protected from abuse and harm.

AMENDMENT 4. OPEN COURTS.

The Courts of this State shall ever be open to redress the interest of any person in his or her liberty, property, or reputation.

[End of Examination]