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Exam No. _____

**605-001 Advanced Constitutional Rights
Spring 2010**

**UNM School of Law
Take-Home Final
Examination
Two Credits**

**Professor J. Ellis
Distribution- W: May 5, 2010
Return- R: May 13, 2010/4:00 p.m.
8 hours**

Examination Format: Essay

Professor's Instructions

This is an eight-hour (8), open-book final examination.

Your eight consecutive hours begin when you open the question for the first time. You should not open the question until you are ready to begin. Working on the exam past the eight-hour deadline will constitute a violation of the Honor Code.

In preparing your answer, you may consult your textbook, published and photocopied supplements, and notes prepared by you (either alone or in conjunction with your classmates). 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 2,500 words. Please count the words in your answer and indicate the total on the first page of your exam answer. No credit will be awarded for anything past the 2,500 words of your answer.

Good Luck!

Essay Instructions

Laptop for typing: use no less than a 12 pt. font and double space. Create a header and record your Exam ID number, the class name, professor's name, and the date. Create a footer and record the page numbers using the "X of Y" format. Print out your exam answer and return it along with this exam to the front desk of the UNMSOL no later than **Thursday, May 13, 2010 by 4:00 p.m.**

Bluebooks for writing: using black or blue ink only, write on every-other line and only on the front side of each page. On the front cover of each bluebook record the class name, professor's name, date of exam, and your examination number. Make sure to number each bluebook in order. **DO NOT WRITE YOUR NAME ON BLUEBOOKS.** Return your exam answer along

with this exam to the front desk of the UNMSOL no later than **Thursday, May 13, 2010 by 4:00 p.m.**

ALL EXAM TAKERS

If you have any questions or feel the need to explain/clarify your interpretation/understanding of the question being posed by the professor, please write those questions or comments within the exam and do not sign your name. **Do not ever contact the professor during the exam period.**

If you have an emergency, procedural question, or issue that may occur during this exam period, **do not contact the professor**, please contact the Registrar's Office (William or Ernest) at 277-2146/2147 or jackson@law.unm.edu or tafoya@law.unm.edu

You may not make/keep a copy of this exam! You are required to return this exam with your answer.

[Exam begins on the next page]

QUESTION

Issues involving the public schools have recently been in the spotlight in the State of Ignorance.

The first controversy arose in the city of Willful, where discipline has proven to be a problem in Willful Middle School. Anonymous reports led the school's principal to discover that a student, Ramus, had posted on his personal blog the (untrue) accusation that a teacher at the school was a convicted sex offender. Principal Skinner convened a faculty-student tribunal which concluded that Ramus had posted negligently, since he had "found" the erroneous information about the teacher on an unreliable website (www.maybesomeofthisistrue.com). That website had referred to a different person with a similar name who had been convicted of a sex crime in another state. (The tribunal concluded that Ramus was negligent because the actual perpetrator had a different middle initial than the teacher, and because the conviction had occurred when the teacher would have been two years old.) The principal told Ramus that because of this infraction he would be expelled from school unless he satisfied specific conditions. To remain in school, Ramus was required to post the teacher's response to the false accusation on his blog and to make that response the first screen that a user would find on the blog for a period of one year. Ramus was also required to obtain the principal's prior approval before posting any new entries on his blog. (In order to avoid evasion of the order, Ramus was also forbidden to post for one year on any other blog or on FaceBook™.) Ramus has sued the school district, claiming that Principal Skinner's actions violated his free expression rights under the Federal and State constitutions.

Meanwhile, fellow Willful students who were outraged at the penalties imposed on Ramus met and formed an organization called "Slackers for Free Expression" (SFE). The organization petitioned Principal Skinner for recognition as a chartered student organization, which would have entitled the group to meet on school grounds, to post notices and posters in designated areas on school property, and to receive a \$100 grant for miscellaneous expenses each semester. Principal Skinner denied the group's request for official recognition, stating that the group's message and activities would undermine school spirit and thereby impede the educational mission of the school. He stated, "While we cannot prevent students from having these obnoxious opinions, we are certainly not obligated to assist them with access to school property or to subsidize their efforts which are so subversive to the school's academic efforts." After they were denied official recognition, the students in SFE enlisted a commercial printer to manufacture T-shirts that featured the logo of SFE and contained the message "Free Expression, Fire Skinner!" (The message on the reverse side said "Principal Skinner is Ill-Advised.") Students who arrived at the school wearing the shirts were told that there was a school policy against any apparel or visible display of the name of an unapproved organization (which included SFE). The students were then denied entry to the school grounds and were told that they had to go home and change to another shirt. When the students were turned away, other students walked out of school in solidarity with their slacker colleagues. (When it was determined that 40% of the school's students were absent, all classes were canceled for the rest of the week.) The students have sued the school district under the Federal and State constitutions.

The SFE students then took a stack of the T-shirts to a local merchant whose store was located across the street from the school building, and he agreed to offer them for sale for a price of \$20 each, with \$5.00 of each sale rebated to SFE, and he posted a large sign in his store window offering the shirts for sale. Officers of the Willful Police Department cited the merchant for violating a city ordinance forbidding the advertisement or sale, within 500 yards of a public school, to minors of any merchandise which was prohibited on school grounds. (The ordinance had originally been passed to address concerns about the sale of weapons, pornography, and drug paraphernalia.) The merchant has filed an action in state court seeking a declaratory judgment that the ordinance is unconstitutional under State and Federal constitutions.

Meanwhile, in the nearby city of Abysmal, a different constitutional dispute has arisen because the President of Abysmal State University has revoked the charter of the campus Christian Students Association (CSA). The President's action was based on the University's standing requirement that all chartered student organizations must accept "any student" as a voting member. The Christian Legal Society invites all students to attend meetings but restricts the designation of voting members and club officers to students who sign a "Profession of Faith" which includes language affirming the belief that "Christians should not engage in sexual conduct outside of a marriage between a man and a woman." Three students – two of whom identified themselves as gay and one a self-described "heterosexual with a randy disposition," all of whom considered themselves Christians – who refused to sign the Profession of Faith were denied status as voting members. They complained to the President, who revoked the organization's charter. The CSA then filed suit in state court alleging that the university President's action violated their right of free association under the First Amendment and their right to freedom of religious expression under the State and Federal constitutions.

State trial court judges denied relief in each of the cases. Each ruling has been appealed to the state Supreme Court. You are a clerk for the Chief Justice of the Supreme Court, and she has asked you for a memorandum exploring each of the constitutional issues presented and making a recommendation for the resolution of each.

APPENDIX

STATE CONSTITUTION (portions)

Article XV. Freedom of Expression. Free debate and the exchange of competing ideas being essential to the success of any democratic society, all citizens shall have unlimited right to express their views, being responsible for any abuse of that right.

Article XX. Freedom of Religion. Religious faith having been prized in our State since its founding, all citizens shall be free to believe any creed, or none at all, and shall never be restricted in the declaration of their views on religious topics or in abiding by the commandments of their faith.