

FIRST AMENDMENT  
FINAL EXAMINATION

**Directions:** This is a three hour examination. The examination is entirely open book, i.e., you may bring to the exam any materials you want (annotated in any fashion that you want). If you are handwriting your exam, please use pen and double space. Good Luck!

I. **Short Answer Questions:** Provide an answer for each of the six questions below. Each question should take approximately 20 minutes. Each answer is worth five (8) points.

- 1) The State of New Hampshire has passed a criminal statutes that makes it a misdemeanor for “any person to go about in a public or private way to which the public is permitted for the purpose of begging or receiving alms.” The preamble to the statute says that the law was passed to facilitate the free flow of traffic on sidewalks and streets.

Jeff Sinclair, a 47 year-old homeless person living in Concord, New Hampshire, has filed suit in federal district court challenging the statute on First Amendment grounds. Sinclair’s complaint states that he sits on the Centre Street sidewalk at the entrance of White Park in Concord and holds a sign asking for help. He also holds a cup in which people may deposit money. Sinclair is afraid that he will be arrested if he continues this activity. What arguments can Sinclair make in support of a facial challenge to the statute? Do you think that these arguments will succeed?

- 2) Idaho has popular elections for its judges. The elections are non-partisan and can involve television, radio, newspaper, and internet advertising. Elections to the State Supreme Court have cost as much as \$1.5 million in recent years. The Idaho legislature is concerned about the escalating cost of these elections and in particular is fearful that practicing attorneys will make large contributions to incumbent judges before whom they regularly appear. In an effort to stop this “appearance of impropriety” and actual corruption, the Idaho legislature has enacted a law banning practicing attorney from contributing to judicial campaigns. Identify the constitutional issues present and provide a preliminary assessment on whether the law is constitutional.
- 3) The State of Mississippi Department of Transportation permits the posting of signs on a highway overpasses only if the signs points to a turnoff for a special event or presents a “respectful depiction of an American Flag.” The Department’s overpass policy permits state police officers to remove non-compliant signs. After the United States invaded Iraq in 2003, state police removed a sign from an overpass that was placed next to an American Flag which read, “No Blood for Oil.” The person who put up the sign sued, asserting a violation of the First

**Amendment.** The federal district court judge granted the State's motion for summary judgment. What First Amendment issues are raised by this case and do you think that the judge ruled correctly?

- 4) You are a lawyer for the National Park Service. The Assistant Secretary for Park Maintenance has asked your advice on the constitutionality under the First Amendment of a proposed regulation that would limited the use of any park for protests. Under the regulation only 10 people could participate in a protest and there could only be one protest per day. The purpose of the regulation is to protect the parks from damage caused by the frequent congregation of large groups. What advice will you give?
- 5) To prevent fighting in school. Camden High School (CHS) prohibits any student from wearing gang symbols. One of the gangs at CHS wears a symbols that looks like the Star of David. The gang has no religious affiliation. A Jewish student shows up at registration wearing a chain with a Star of David given to him by his grandmother. School official tell the student he will not be allowed to wear the Star of David. The boy objects, claiming that the Star of David is a religious symbol that has existed for centuries. What First Amendment issues are implicated? Provide a preliminary assessment of whether CHS must permit the student to wear the Star of David?
- 6) In the beginning of this course we studied various justifications for the First Amendment (e.g., market place of ideas, encouraging democratic decision making, tolerance, safety-valve, and self-fulfillment). In light of these theories, does the Supreme Court's interpretation of the First Amendment to permit the banning of obscenity make sense?

**II. Essay Question. (12 points).**

Suppose that you represent the AIDS Action Committee in the litigation that we have been discussing throughout the semester. Suppose further that the judge has ruled that the interiors of the subway cars where your group would like to place its public service advertisements are non-public forums. What argument(s) might you make in favor of a holding that, notwithstanding the non-public nature of the forums in which you would like to post the advertisements, the MBTA has still violated the First Amendment rights of the AIDS Action Committee? Be specific in reciting the case(s) and the evidence that support your argument.