THESE EXAMINATION QUESTIONS MUST BE RETURNED AT THE END OF THE EXAM.

Santa Clara University
School of Law

FINAL EXAMINATION

Constitutional Law II        April 30, 2001
Professor Griffin            Spring 2001
4 Questions                   3 1/2 Hours

CLOSED BOOK/OPEN CONSTITUTION (provided with exam)

THE REVISED EXAMINATION RULES ISSUED IN --- APPLY TO THIS EXAMINATION.

This examination consists of four questions, all of which you must answer. You should devote 30 minutes to Question I, 60 minutes to Question II, 45 minutes to Question III, and 60 minutes to Question IV. Question I is worth 15 points, Question II is worth 30 points, Question III is worth 25 points, and Question IV is worth 30 points.

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Read carefully. Think before you write. Accurate reading of the question is essential. Good organization, clear statement and avoidance of filler all count in your favor.

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You may consult only the copy of the Constitution that is provided with this examination. You may not consult any other materials or any person. In your answers, you should cite to any applicable provision of the United States Constitution and to the governing case law that is relevant to the question.

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If the questions are similar to current events, you should draft your answer based on the facts as they are set out in the question and not on outside reading.

Good luck, and have a good summer.
State government has paid many medical expenses for tobacco-related illnesses over the last 30 years. State also participated in a lawsuit brought by 45 states against the tobacco companies in an effort to recuperate from the companies some of the money that the states had spent on medical bills. The medical payments have made State officials acutely aware of the bad health effects of smoking.

State is also aware that tobacco companies often use advertising that is attractive to children (with cartoon characters, e.g.) to encourage new young smokers. State wants to develop effective measures to alert consumers to the dangers of smoking and to protect children from the companies' influence.

Accordingly State passed tobacco advertising regulations that prohibit outdoor tobacco advertising in any location that is within 1,000 feet of any elementary or secondary school, public playground or public park with a playground. The only exception to this prohibition is for "tombstone" signs, which are permitted. Tombstone sign are black and white, and state: "Tobacco products sold here."

For inside advertising, the regulations require the placement of all in-store tobacco advertising at or above 5 feet high so as not to be in the direct line of vision of children.

Are these regulations constitutional? Why or why not?

Do not discuss any questions of federal preemption.
The Supreme Court has recognized that there are only two sources of citizenship in the United States, birth and naturalization. Those persons not born in the United States may only acquire citizenship by birth as provided by Acts of Congress.

Congress has passed the following legislation as part of the Immigration and Naturalization Act:

The following shall become citizens of the United States at birth:

(a) a person born outside the geographical limits of the United States and its outlying possessions of parents one of whom is an alien, and the other a citizen of the United States who, prior to the birth of such person, was physically present in the United States or its outlying possessions for a period or periods totaling not less than five years, at least two of which were after attaining the age of fourteen years.

However, there is an exception to this general provision for children born out-of-wedlock. This provision allows for out-of-wedlock children of citizen mothers to acquire automatic citizenship at birth, while out-of-wedlock children of citizen fathers cannot establish their citizenship unless the citizen father takes certain affirmative steps.

(b) Out-of-wedlock children of U.S. citizen fathers become citizens at birth if:

(1) a blood relationship between the person and the father is established by clear and convincing evidence,
(2) the father (unless deceased) has agreed in writing to provide financial support until the person reaches the age of 18 years, and
(3) the father acknowledges paternity of the person in writing under oath.

(c) Out-of-wedlock children of U.S. citizen mothers become citizens at birth if:

(1) the mother was a U.S. citizen at the time of the child's birth, and
(2) the mother had been physically present in the United States or one of its outlying possessions for a continuous period of one year.

The appropriate plaintiffs (including U.S. citizen fathers and their out-of-wedlock children born outside the U.S.) challenge the constitutionality of this legislation. Will they succeed or fail in their constitutional challenge? Why or why not?
Question III (25 points, 45 minutes)

At the trial of defendants for murder during the bombing of a federal government building, the prosecution introduced evidence of the *Terrorists' Manual* that was found at defendants' home.

The manual has 18 chapters and runs about 180 pages. It is a thick and excruciatingly detailed document, part philosophical treatise, part training guide and part jokes and cartoons about spies.

In chapter one, the manual notes that explosives are "believed to be the safest weapon," because they allow terrorists to "get away from enemy personnel and to avoid being arrested." "In addition," the manual advises, "explosives strike the enemy with sheer terror and fright."

The bulk of the text is a series of lessons on the specifics of a successful terrorist strike: forged documents, safe houses, arms and ammunition, transportation, codes and ciphers, surviving interrogation, and booby traps.

Chapters three and four analyze the philosophy and ethics of torture and the use of force against enemies. Chapter five warns terrorists not to drink and advises them on how to develop a calm personality.

In chapter ten, "Assassinations Using Poisons and Cold Steel," the authors explain how to kill with knives, ropes, blunt objects and by spraying a lethal chemical brew on a potential victim.

Chapter sixteen offers advice on what information to gather about a target for assassination: his name, age and residence; his job and routes to work; how he spends his free time; the physician who treats him; the stores where he shops, and ways of sneaking into his home.

The survivors of the bombing victims sue the publisher of *Terrorists' Manual* for damages. Can the publisher constitutionally be held liable?

Why or why not?
Question IV (30 points, 60 minutes)

The Good News Club is a national Christian missionary organization. It ministers to high school students and encourages the students to evangelize, i.e., to preach and teach to other students the Gospel of Jesus Christ.

Good News Clubs hold regular meetings of their members. At these meetings, the students pray and read the New Testament (which is part of the Christian Bible). After fifteen minutes of prayer and Bible reading, the students then discuss for another 30 minutes the moral issues that affect them as high school students, including sexuality, pregnancy, society's obligations to help the poor and honesty in the workplace.

Teacher was a member of the Good News Club when he attended a religious high school years ago. Now he teaches at the local public high school. Last year, before class started in the morning, he used to tell some of his favorite students stories about his days in the Good News Club. The students became interested and wrote to the national club for information. Now they want to have their own local club that holds typical Good News Club meetings.

The students believe laziness is a sin, so they get up very early in the morning. They decide to hold their meetings in Teacher's classroom from 8:10-8:55 A.M. The first class of the day begins at 9. Teacher, who has agreed to be the faculty advisor to the club, told the students that they should get a permit from school Principal to use the classroom before school hours. Principal, who regularly grants permits for after-school club meetings, was astonished that any high school students would meet so early in the morning. He told Teacher that Teacher would have to open the building and turn on the lights. Teacher agreed, and Principal granted the permit, telling Teacher that "this is a good group of kids who should be encouraged in their good works."

Students meet with Teacher regularly to ask his advice about their meetings. He opens the building for them but does not participate in the meetings. Teacher goes to the library while the group is meeting and then waits with the non-Club members in the hallway, watching the group until they recite their concluding prayer and yell "Amen" at 8:55.

Occasionally, Teacher lets Club members make announcements about future Club meetings during the first class hour.

Students who are not Club members challenge the constitutionality of this arrangement under the First Amendment to the United States Constitution. Will they succeed in their challenge? Why or why not?
In Question I, you should have focused on commercial speech. You should apply the Central Hudson 4-prong test. Good answers also took account of the Supreme Court’s more recent decision in 44 Liquormart. The best answers traced the disagreements among the justices about Central Hudson in Liquormart (Supp. 272-75).

For Question II, I wanted you to identify the tension between Congress’ naturalization power and the demand for intermediate scrutiny in gender cases. A good answer had to address naturalization and gender. For gender, you had to do a good job applying the current cases, especially VMI. You did not have to remember Miller v. Albright (Supp. 184) which we read for class but did not discuss. Some students did remember the case. In Miller, two justices (Stevens, Rehnquist) rejected an equal protection claim for fathers in these circumstances. O’Connor and Kennedy argued that the daughter lacked standing to raise her father’s claim. Scalia and Thomas wanted to dismiss the complaint because the Court had no power to offer the remedy of citizenship. These six justices upheld the statute. Breyer, Souter and Ginsburg dissented on the grounds that the statute violated equal protection.

In Question III, you needed to identify and apply the Brandenburg test to the facts. The better job you did with the facts, the more points you got. Please note that the two cases in the Supplement (that we discussed in class and that you should have discussed in your answers) are not U.S. Supreme Court cases. Paladin Enterprises (Supp. 266) is from the Fourth Circuit; the "Nuremberg Files" (Supp. 267) is from the Ninth Circuit.

For Question IV, the key was to identify the tension between the Establishment Clause and Free Speech. Many of you started with the Lemon test. But Lemon and its successors, Agostini and Mitchell, are aid cases. Although you could build an argument that the aid cases shed light on this question, given the facts, this question is most naturally a prayer/speech question. Therefore the best answers focused on Santa Fe and Rosenberger.