Student Number __________

Final Examination
Constitutional Law, Professor Leslie Griffin
University of Houston Law Center
May 4, 2007
9 A.M. to 1:30 P.M.

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

This examination is CLOSED BOOK, NO NOTES. You may consult only the copy of the Constitution that is provided with this examination. You may not consult any other materials or communicate with any other person. You are bound by the Law Center’s Honor Code. Don’t forget that it is also a violation of the Honor Code to discuss the exam’s contents with any student in this class who has not yet taken the exam.

Write your student examination number in the blank on the right side of the top of this page. If you are handwriting your examination, write your examination number on the cover of each of your bluebooks. Number your bluebooks by indicating the book number and total of books (e.g., 1/5, 2/5, 3/5, 4/5, 5/5). If you are using the computer, write your examination number on each diskette and at the beginning of your response to each question. If you are handwriting, please do not use pencil. At the end of the exam, you MUST turn in the examination AND the Constitution along with your answers. Please do not write your name, social security number or any other information that provides me with your identity.

This exam is eight pages long, with FOUR questions. Question I is worth 30 points. Question II is worth 30 points. Question III is worth 25 points. Question IV is worth 15 points. You have four hours and thirty minutes. I recommend that you spend 75 minutes on Question I, 75 minutes on Question II, 60 minutes on Question III, and 45 minutes on Question IV. You have an extra 15 minutes to use at your discretion.

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

If you write your exam, use ONE SIDE of a page only, and SKIP LINES. If you type on a typewriter, DOUBLE SPACE, and leave wide margins. If the exam software fails, you should immediately start writing in your bluebooks.

Honor Code. It is a violation to use ANY aid in connection with this examination; to fail to report any such conduct on the part of any other student that you observe; to retain, copy, or otherwise memorialize any portion of the examination; or to discuss its contents with any student in this class who has not yet taken it. By placing your exam number in the PLEDGE blank below, you are representing that you have or will comply with these requirements. If for any reason you cannot truthfully make that pledge, notify me as soon as possible. Sign your number and not your name.

PLEDGE: ____________________________
Question 1
(30 points, 75 minutes)

A majority of State's legislators oppose abortion. Accordingly the Legislature passes a new state abortion law that contains the following requirements:

1. Every woman who undergoes an abortion procedure in State must be informed that women who have abortions face an increased risk of developing breast cancer. (The lawmakers were influenced by one medical study that suggested that one of every one thousand women who had an abortion later develops breast cancer.)

2. Every woman who undergoes an abortion procedure in State must be informed that the fetus may be able to feel pain at 18 weeks and that her doctor may prescribe a special drug, to be used during the abortion procedure, that will numb the fetus' pain.

3. Every woman who undergoes an abortion procedure in State must undergo an ultrasound procedure so that she may see the development of the fetus. The doctor is required to meet with the woman, in person, and to point out fetal development in the ultrasound pictures.

4. Every woman who undergoes an abortion procedure in State must listen to the fetal heartbeat, if it is audible.

5. Every woman who undergoes an abortion procedure in State must be told that RU-486, a drug that can be used to cause abortion, has been linked to heart attacks in women who use the drug. Five women in the U.S. have died after taking the drug.

6. Every woman who undergoes an abortion procedure in State must be given a list of agencies that provide alternatives to abortion, including centers that provide for prenatal care, childbirth assistance, and infant care.

7. Every woman who undergoes an abortion procedure in State must be told that the abortion will terminate the life of a whole, separate, unique, living human being.

8. All abortion counseling (including any information required in any provisions of this law) must be given to the woman in person.

9. In any abortion involving a minor woman, the parental consent form must be notarized by two notaries public before the abortion may proceed.

10. Every woman who undergoes an abortion procedure in State must be told that some women experience psychological regret and sorrow after they have an abortion.
11. Beginning at the time of passage of this legislation, all State license plates must include the motto “Choose Life.”

12. Any clinic in which more than 100 abortions are performed per year must pay a monthly registration fee of $150 to the State. Medical clinics in which no abortions are performed pay $75 a month.

13. Hallways in all abortion clinics must be 100 feet wide.

Parties who have standing challenge the constitutionality of these provisions of State law, which are then defended by State lawyers. What arguments will both sides make? Will they win or lose those arguments in the Supreme Court of the United States? Why?
Question II
(30 points, 75 minutes)

Two State legislatures decided to fund new monuments for public display. In State One, legislators added a Ten Commandments monument to their public park. The park already includes statues of State One’s Founders and representations of key moments in State One’s history, including depictions of the passage of State One’s Constitution. In building the monument, the legislature wanted to remind citizens of the importance of religion as a historical source of law. Accordingly, legislators selected a version of the Ten Commandments that reminds viewers of the Jewish roots of the Commandments. The commandments are written in Hebrew, engraved on Jerusalem stone, and have as background a Jewish star:

State Two is a Western state that has been deeply influenced by its Native American population. The State Two legislators decide to add a display to their county courthouse. As you walk into the courthouse, you see the following display of Native American Ten Commandments. (The text is reprinted below, in the footnote, in case you can't read the words in the picture.) State legislators hope that the display will encourage civility among lawyers and citizens.

See http://imagecache2.allposters.com/images/pic/AGF/9212~Ten-Commandments-Posters.jpg

1. The Earth is our Mother; care for Her. 2. Honor all your relations. 3. Open your heart and soul to the Great Spirit. 4. All life is sacred; treat all beings with respect. 5. Take from the Earth what is needed and nothing more. 6. Do what needs to be done for the good of all. 7. Give constant thanks to the Great Spirit for each day. 8. Speak the truth but only of the good in others. 9. Follow the rhythms of Nature; rise and retire with the sun. 10. Enjoy life's journey; but leave no tracks.
State Two Judge wants to support the legislature’s commitment to civility. He begins every session in his courtroom by asking everyone present there to rise and recite the Native American Ten Commandments along with him. Individuals who refuse to recite the Commandments are asked to leave the courtroom.

Parties who have standing challenge the two displays, which are defended by attorneys for States One and Two. What arguments will both sides make? Will they win their cases in the Supreme Court of the United States? Why or why not?
Question III

(25 points, 60 minutes)

Polly, an African-American woman, is a student at Public High School. Polly is an A student with a history of exemplary behavior and is a superior track and field athlete. Polly has never been a disruption in any class. No teacher has ever commented that Polly has been insubordinate. Polly also never missed a day of school or track practice and has always received an A grade in physical education. Polly is the fastest runner, boy or girl, in her school, and the fastest female runner in the County. Polly has won numerous ribbons, medals, and trophies for her running.

During her senior year, Polly was given a C in her track and field class by Teacher for lack of effort during class. Teacher referred to Polly as a bitch in the presence of other school staff members before issuing the C grade. Teacher was heard saying she would like to “wring Polly’s neck” for her insubordination.

Teacher, who has tenure, reported having a conflict with Polly’s cousin, Clara, after Teacher began teaching physical education. Teacher recalls that Clara wanted to fight another girl and refused to obey Teacher’s command to disperse and used profanity. After the incident with Clara, Teacher recalls that Polly and two male students (who were friends of Polly and Clara) no longer cooperated with her or complied with her instructions, had bad attitudes, and made no effort in their physical education class. As a result, Polly and Clara received C grades, while their two male friends, who were white, received Bs. Other students who were poor athletes received C physical education grades that school year. Polly’s C grade was based solely on her poor attitude and lack of effort.

Physical education grades are not factored into a student's grade point average or eligibility for academic honors. C grades reflect average, not failing, performance.

Polly tells you that she wants to file a lawsuit. What constitutional claims should she make in the lawsuit? Will she win or lose those claims? Why?

After Polly’s family filed the lawsuit on her behalf, Principal called Teacher into his office and fired her for not having handled the grading situation and discipline problems in a more diplomatic manner. What constitutional lawsuit would you file on Teacher’s behalf? Will she win or lose?
Question IV

(15 points, 45 minutes)

In response to *Hamdan*, Congress passed the Military Commissions Act of 2006, which the President signed into law. Section 7 of the MCA is entitled “Habeas Corpus Matters.” The MCA now reads:

(1) No court, justice, or judge shall have jurisdiction to hear or consider an application for a writ of habeas corpus filed by or on behalf of an alien detained by the United States who has been determined by the United States to have been properly detained as an enemy combatant or is awaiting such determination.

(2) No court, justice, or judge shall have jurisdiction to hear or consider any other action against the United States or its agents relating to any aspect of the detention, transfer, treatment, trial, or conditions of confinement of an alien who is or was detained by the United States and has been determined by the United States to have been properly detained as an enemy combatant or is awaiting such determination.

Is this provision of the MCA constitutional? Why or why not?
This course was subject to the Law Center’s mandatory grading curve, which requires that the class average be between 2.9 and 3.1. I awarded the following grades, with a class average of 3.1, for your final exam.

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Model answers are posted on TWEN. There is a Sample Answers file that includes model answers for all four questions. The best exam was a long handwritten exam that was too long to retype. All four handwritten answers are posted on TWEN in pdf files.

The class did very well as a whole so the competition was tough for the highest grades. Following are some tips on how you should have reasoned your way through the questions.

Question I.

Question I was obviously about *Casey*. You had to employ the undue burden/substantial obstacle test. The key was not just to assert the test but to apply it to all the provisions. Details matter. In analyzing my provisions, you should have compared my law to the details of the Pennsylvania law at issue in *Casey* and to the earlier abortion cases. Thus for provision 9, e.g., you should have recognized that a judicial bypass was necessary.

Provision 11 was a trick provision to get you to address the First Amendment speech cases that we studied. Provision 12 raised Equal Protection issues as well as SDP ones.

FYI, Justice Kennedy’s opinion in the new partial birth abortion case relies on the argument that women experience psychological regret and sorrow after they have an abortion.

Question II

Most of you did a good job with this Establishment Clause question. Challengers relied on *McCreary* and the States defended with *Van Orden*. You needed to discuss the list of
tests that we studied in class: *Lemon* secular purpose, neutrality, endorsement, coercion, and religious activity.

Judge’s actions in the second case should have caused you to consider the school prayer cases, especially *Lee v. Weisman*, because the compelled commandments were very similar to a compelled prayer.

A few bonus points if you argued that judge was denying the fundamental right of access to the courts!

**Question III**

This question and Question IV were written in order to see if you could reason your way through a problem. Most of you recognized that that was a double-barreled Equal Protection question, where you must write about racial and gender classifications. However, you also had to consider rational basis Equal Protection as well. It could be hard to prove racial or gender discrimination on these facts. But animus is always irrational, as in *Moreno*. You lost a lot of points if you failed to discuss rational basis EP.

You received points for doing a good job with defamation here. But most of the points were awarded for good EP analysis.

**Question IV**

This was a hard question. I wanted to see if you would remember that Congress must always have an enumerated power to act. So I gave lots of points to anyone who struggled through the possible sources for Congress to act here. War powers!

I also wanted to see if you would read the Constitution, your only lifeline during the exam. You had to talk about Article I, section 9, clause 2, the habeas provision. The question is about habeas. Address the constitutional provision that considers it! Did Congress suspend the writ in this legislation? Was it authorized to do so by section 9?

The question began with *Hamdan*, a huge tip. Remember that Hamdan held that the Congress hadn’t authorized the president’s military commissions. Now Congress has done so. Shouldn’t that mean that the act is constitutional, indeed, a constitutional response to *Hamdan*? See Breyer, Supplement 22.

The question also raised separation of powers questions, see Kennedy, Supplement 23, so you should have talked about Steel Seizure. Does this new legislation leave the president at the height of his powers

Finally, any question about closing the courts and jurisdiction should have led you to Article III (sections 1 and 2) and *Marbury*. If the Congress was acting unconstitutionally then the Court should be able to retain jurisdiction.
Throughout all these questions, and as I told you in class, the facts matter. You should not have written essays about the law as it is, but instead applied the law to the facts. Those of you who did that well got the highest grades.

I am happy to speak with you about your exams if you have any questions. But before you do so, please read through the model answers so you can see if those answers help you to understand what you missed.

Enjoy the summer and congratulations on completing your first year in law school.
Question -1-

The challengers here would be pregnant woman who are seeking abortion, and physicians who are burdened by the restrictive anti-abortion law.

**Violation of Substantive Due Process**

To attack State's anti-abortion legislation, Challengers can claim that the legislation violates their right to privacy and their liberty interest in seeking abortion protected by the *Griswold, Roe & Casey* courts. The 14th Amdt guaranteed that Life, Liberty, and Property will not be taken away without due process of law. From this constitutional guarantee the Supreme court has concluded certain rights are so fundamental that the government (govt) should be held to a higher standard whenever they try to infringe on those rights. After *Griswold & Eisenstadt* determined that the right to privacy was one such fundamental right that the govt could not substantially burden without a compelling interest, the *Roe* court extended that right to privacy to abortion cases. Challengers can point to the majority opinion by Justices O'Connor, Kennedy, and Souter, stating that the right to privacy is part of the 14th Amdt's concept of personal liberty and is "broad enough to encompass a woman's right to seek abortion." *Roe* held that the State can only regulate abortion subject to preserving the life and health of the mother and potential life. *Casey*, affirming the underlying principles of *Roe*, stated that a State can only regulate abortion without placing an undue burden on the woman; that any law that has "the purpose or effect of placing a substantial burden on the path of a woman seeking abortion" constitutes an undue burden and will be struck down by the Court.

Challengers can argue that the State's legislation has the purpose to place a substantial burden on any woman
seeking abortion because the law was created by law makers who clearly oppose abortion. Their intent to discourage women from seeking abortion is clear from the provisions of the law.

First, the law is using coercive tactics, and biased, insufficiently proven facts to scare women away from abortion. Provisions 1, 5, and 10 are facts that have not been proven & cannot be used to scare women away from abortion.

Second, the law has the purpose and effect of placing a substantial burden on a woman seeking abortion. Provision 2, 3, 4, 6 are subtle tactics used by the State to emotionally compel a woman not to choose abortion. Even though *Casey* allows the State to regulate abortion procedures, it requires that such regulation be rationally related to the State's goal of protecting & preserving the life and health of the mother and preserving the potential life. Forcing a woman to hear, or see potential life in her womb is far removed from protecting the woman's health, or life, or even the potential life. Provisions 12 & 13 place a substantial burden on the woman & doctors because it forces the clinics to pay a substantial amount of money as penalty for exercising their protected personal liberty in to conduct abortion. Added to this substantial penalty fee, requiring abortion clinics be 100 feet wide will surely place some clinics out of business, limiting the number of available clinics in the State and making it harder for the woman to get an abortion. Furthermore, both provisions are too far removed from the State's goal of preserving the life & interest of the mother.

Third, the challengers can point out that provision 7 is unconstitutional because the State is attempting to interpret the Constitution, which Chief Justice Marshall in *Marbury v. Madison* clearly held was "emphatically the province and duty of the judicial department to say what the law is." (emphasis added). By making an unborn fetal a human being is overriding the Supreme Court's decision not to label an unborn fetus as such because the Constitution is silent on the matter.

Fourth, the challengers can point out that this law is invalid because it is overbroad, as it has no medical exception as mandated by the *Casey* court. Following *Carhart*, the Challengers can argue that the
Court should strike down the entire law as unconstitutional.

STATE

The State will likely counter the Challengers' assertion of 14th Amdt violation by stating the Constitution does not give a woman the right to abortion - "I like my privacy as much as the next" but since it is not in the Constitution, it is not a protected right (Griswold dissent). Rather, that historically women have been encouraged to bear children. The State will argue that only fundamental rights are protected by Substantive Due Process, and the court has traditionally looked to the "history and tradition of the people" and the "collective conscience" of the people in determining what a fundamental right is. (Goldberg concurrence in Griswold). Abortion, the State can argue, is contrary to the history, tradition, and collective conscience of the people.

Even though this is a losing argument, the State can also argue that the Court should allow them to regulate abortion because they are part of the democratic branch and speak on behalf of the people. The State can draw support from Justice Black in Griswold - "For my self it would be most irksome to be ruled by a bevy of platonic rulers." The States are representative govt that rule in accordance with the needs and desires of the people, and the court should allow them to regulate in this area.

The State can also argue that Casey recognizes that the State's interest of protecting the life and health of the mother and the potential life is present at all stages of abortion. Casey gives the State the right to regulate abortion procedures, encourage the woman to choose child birth over abortion, and regulate to preserve the woman's life and health. This is exactly what the law does. Provisions 1, 2, 5, 8, and 10 are in line with Casey because they ensure that the woman makes an informed choice when seeking abortion. This is exactly
what Casey said the States can do. Provision 9 is constitutional because it is in line with Casey's recognition that the State has a valid interest in wanting Parents to be involved in decision making concerning their children. (Meyer & Pierce). The Challengers will especially want to counter this argument because Casey only upheld the parental consent provision because there was an alternative judicial by-pass procedure for a minor who did not want to inform her parents of her decision to abortion. Challengers can strengthen their argument by pointing out that even minors are protected from the State's undue interference. In Carey, the court extended the right of privacy to minors and in Ayotte the court extended the emergency abortion to minors. Therefore, the State cannot make access to abortion any more restrictive for minors than it can for adult women. Since this is where the law currently stands, the State will not have a counter to this argument.

To continue advocating the constitutionality of its provisions, the State can point out that provision 6 & 12 are constitutional because Casey allows the States to persuade a woman to choose childbirth and Rust allows the State to use monetary incentives to encourage pro-life. The Challengers would show up here again, and argue the narrowness of the Rust holding to clinics receiving govt funding, whereas this law is overbroad and extends restrictions to ALL clinics.

The State will also argue for Provision 3, pointing to (the viability testing case) where the Court said the State could validly requires testing to determine where the fetus was viable, thereby determining they could regulate or even ban abortion subject to the mother's health.

Nevertheless, to counter all the arguments of the Challengers, the State will cite to O'Connor, co-author of Casey and creator of the modern day Undue Burden test that "an obstacle is not of necessity an undue burden." O'Connor requires that the obstacle be so substantial that it abortion extremely difficult for the
woman. For O'C in *Casey*, the 24 hour wait was not an undue burden. Likewise, taking steps to inform the woman about the risks posed by abortion, requiring clinics to pay extra fees, and requiring parental consent does not rise to the level of an undue burden.

CONCLUSION

The Challengers will likely win the case.

The majority Court will most likely not find all parts of the law constitutional and following *Ayotte* the court will not rule the entire law unconst but only those parts that are unconstitutional.

All the justices would strike provision 7 because the State is clearly interpreting the Constitution in violation of Separation of Powers principles.

Justices Kennedy and Souter - as co-authors of *Casey* would vote to uphold part of the law

Justice Ginsburg will likely side with Justice Souter as she usually does but she may write a special concurrence noting that her vote is based on EP grounds because there are no equivalently restrictive laws against men, and forcing a woman to have a child affects her ability to progress in the workforce.

Justices Scalia and Thomas - as textualists, would no doubt vote to uphold the provisions, except #7 because they believe that Substantive Due process, right to abortion, and the Undue burden test are made-up by the court and not in the Constitution.

Justice Stevens - would vote with the majority to uphold only parts of the provision, but because in *Casey* he
believed that the 24hr wait was an undue burden & was based on impermissible assumption that woman needs 24 hours to make a decision. He also noted that where the govt is trying to force people to listen, the court should pay closer attention. He will may particularly vote against provisions 12, 13.

Justice Breyer - will likely vote with the majority.

Justices Alito and Roberts - as O'Connor and Rehnquist's replacements, respectively, may take the places of the replacements. Alito voting with Kennedy and Souter, and Roberts voting with Scalia and Thomas. However in the 2007 Carhart case, Justice Alito voted with Justices Roberts, Scalia, and Thomas. It is hard to tell which way either justice will go.

[Note to students: Other answers did a much more thorough job of analyzing the justices’ votes, giving more detailed explanations of their reasoning. This answer was good for the challengers’ views and because it spotted EP and the First Amendment issue.]

EQUAL PROTECTION CHALLENGE

The doctors can argue that provision 12 violates 14th Amdt EP clause because it discriminates against abortion clinics. The State will likely successfully counter that in EP cases, the court has given deference to govt in economic laws (*Lee optical, Railway express*) and the court should defer to the govt here. The State can also argue that *Casey* allows them to use tactics to show preference for child birth over abortion. In *McRae*, the court allowed the govt to give medicaid funding for childbirth and deny abortion funding. (This argument can be used in the SDP section).

1ST AMENDMENT - FREE SPEECH CLAUSE

Challengers can argue that provision 11 violates their free speech rights because the govt is trying to compel
a certain kind of speech. Using \textit{RAV} as an argument, they can point out that the provision is content discriminatory because it is favoring one kind of speech, pro-life, over another, pro-choice.

\textbf{Model Answers Conlaw Spring 2007}

\textbf{Question -2-}

The facts stipulate that both parties have standing.

\textbf{I. State One Display of Hebrew Ten Commandments}

Petitioners will argue that the publicly-funded display of the ten commandments, regardless of what language they are in, is violative of the first amendment's establishment clause (incorporated by the 14th amendment against the states) because it constitutes an endorsement of religion (\textit{McCreary, Stone,} dissent in \textit{Perry}). Further, they will argue, relying on McCreary, that the legislature's clearly religious intent in erecting the monument is dispositive, because it violates the first prong of the \textit{Lemon} test (1) law must have a secular purpose; 2) it must neither inhibit nor promote religion; 3) it must avoid excessive gov't entanglement in religion).

The legislature clearly stated that the purpose of the monument was to "remind citizens of the importance of religion as a historical source of the law." Although the monument does not favor the majority religion, Christianity, it is clearly religious in nature, and applying O'Connor's \textbf{reasonable observer} test, the petitioners will argue that a reasonable observer would believe the monument to be an endorsement of religious values and practices. The fact that the ten commandments are superimposed on a star of david, a patently religious icon, ensures that the commandments will be regarded as religious items, rather than as
merely historical sources of the state's secular laws.

They will further argue, relying on McCreary, that the secular context of the monument (a public park with other secular historical monuments) does not save the monument from an establishment clause violation because of its religious purpose, as demonstrated by stated legislative intent.

Petitioners will distinguish this from Perry, where the court found constitutional a 10 commandments monument erected on state capital grounds but by use of private funds. As a result, in perry, there was no clearly religious purpose by the government for the display.

The state will argue, relying on Breyer's concurrence in Perry, that it is precisely the context of the monument that saves it from being unconstitutional. They will argue that their intent was to promote an exchange among the different monotheistic religions and honor the creator as the source of law, which would be permissible under Scalia's reading of the establishment clause. Further, they will argue that their purpose of educating the population about the history of the law was in fact a secular purpose, and will point to the friezes above the court which also contain moses and the ten commandments. They may also note that the tablets merely contain the numbers 1 through 10 in hebrew, not the actual text of the ten commandments, and therefore are merely symbolic.

II. State Two's Native American Ten Commandments

Petitioners will argue that, as against state one, the Native American commandments are religious in nature and have no place in a county court house. McCreary. The court has already ruled that the display of the
Mosaic Ten Commandments alone in a court house is unconstitutional. (case name?) The facts do not provide whether there are any additional items on display that might provide a broader context for this display.

Petitioners will argue that the purpose of the establishment clause is not just to protect religious minorities from persecution (and so would allow the display of "minority" religious items) but rather to preserve government neutrality between religion and non-religion, and between the various religions. The display of an isolated religious item in a county court house would fail the O'Connor test, because it would appear to a reasonable observer that the government was endorsing the Native American religion, a clear violation of the establishment clause.

The state will argue that this is entirely distinguishable from McCreary since that case was decided based on discerning that the legislative intent (clearly stated) was to promote religion, violating the first prong of the Lemon test. In this case, the legislature had a clearly stated secular purpose: "to encourage civility among lawyers and citizens." They will also argue that placing the ten commandments would not suggest to a reasonable observer that the state was endorsing Native American religion, or any religion at all. Rather, it was intended to honor a rich cultural tradition that played a significant role in the area, and to ease some of the feeling of exclusion or foreignness of Native Americans who were coming to the county court. In doing so, it was actually furthering the purpose of the Establishment Clause: to ensure that no one religious group is disfavored or excluded from civic life by reason of their faith.

III. Judge's Requirement of Reading the Native American Ten Commandments
Petitioners will argue, based on the line of school prayer cases (Engel--no nondenominational prayer in classrooms; Abington--no bible reading in classrooms; Jaffree--no moment of silence/prayer; Weisman -- no nondenominational prayer at commencement; and Santa Fe--no student led prayer at football games) that the judge may not order his court to recite the Native American 10 Commandment, that such an order is a violation of the Establishment clause because it is coercive. Petitioners will rely on Weisman to argue that the people in the court room have no meaningful choice but to participate.

This coercion is exacerbated by the judge’s order that anyone not participating leave the court room. This would overcome Scalia's notion in Weisman that there is no stigma attached to quiet non-participation in a prayer. Further, the requirement implicates another fundamental right of access to justice/due process (TN v. Lane) which petitioners will argue should lead the court to exercise the strictest scrutiny.

The state will argue that the supreme court cases relied upon by the petitioners were all cases which involved minors, who are presumably more impressionable and unable to form nuanced opinions about the state's intent. Further, they will note that the court has upheld prayers before legislative sessions, and that the Congress itself has an official chaplain. They will argue that the only difference here is that the prayer is not Christian, but a reading of the ten commandments.

The state will further argue that the requirement that people leave the court room if they choose not to recite with the court is merely a part of deference or respect to the court, and that there is no stigma attached to non-participation, as they are free to merely pretend to recite, or leave and return to the court room after the recitation.
Finally, they may argue, in the alternative, that the Judge is not acting on the behalf of the state, but rather of his own accord, and that the state cannot and should not prevent him from exercising his first amendment right to free speech and free exercise, particularly when they have already stated an additional secular purpose for this particular speech.

Petitioners will respond to this argument that Santa Fe suggests that the actions of a judge while the court is in session, may be imputed to the state as officially sponsored activities, and as such, are still subject to the establishment clause limitations.

**How the court will rule.**

The court will find itself in a bit of a bind here. Scalia's main argument in support of allowing the display of the 10 commandments in Perry was that even though it was clearly religious, it was representative of the majority of the nation, and that venerating the ten commandments in a non-proselytizing manner was acceptable. The logical implication of that argument is that a display of a religious item from a minority religion (the other 2.3%) would not be acceptable. However, that would seem to create a *per se* violation of the establishment clause, eg, the court will allow the state to display judeo christian iconography, but no other.

Scalia could get around this apparent conflict by relying on the Lemon test, but he hates the lemon test and finds it unworkable and contradictory. If the court applied the lemon test, the first display would be unconstitutional, and the second constitutional (maybe).
Majority: Scalia, Thomas, Breyer, Alito, Roberts, Ginsberg

The majority will find both displays of the ten commandments constitutional. Although disclaiming the Lemon test, the majority will still apply it and determine that in both cases, the state had a secular purpose in erecting the monuments. They will note that in the context, the displays do not constitute an endorsement of religion that is unconstitutional.

Scalia will again emphasize the legitimacy of the state favoring religion over non-religion, and perhaps noting that he doesn't think the NA ten commandments are religious at all.

Thomas would again note that the establishment clause has not been incorporated by the 14th amendment.

Kennedy and Breyer would note in concurrences that the goal of the clause is to avoid exclusion and to promote a functioning, inclusive democracy, and that both of these displays further that goal.

The majority would find the Judge's compulsory recitation of the Ten Commandments unconstitutional because it implicated access to the courts. A reasonable observer, or even a casual passerby, would regard his speech as official, not private, and sponsored by the county (see Santa Fe). Further, Someone refusing to recite might have the mistaken impression that they could not return to the court room, or that the judge's decisions would be influenced by their non-participation. As a result, there was implied coercion. Further, because this coercion involved access to the courts, it implicated procedural due process, and the court would declare this unconstitutional.
Dissent: Stevens, Ginsberg, Souter

The dissenters would join with the majority in finding the judges compulsory recitation unconstitutional.

They would apply the *Lemon* test to both displays, and under that test, find that the first display violated the first (secular purpose) prong, and so was unconstiutional under *McCreary*. They would find that the second one did not violate the secular purpose prong. Further, a casual observer would probably not regard the native american display as an endorsement of that religion, but rather a cultural homage designed to foster inclusiveness.

[Note from Prof. G: justices’ votes somewhat confusing here!]

**Question -3-**

Threshold issues:

In order to raise her claims, Polly must have standing. Standing requires that she have an injury, caused by the defendant that is redressable by the court. In this case it does not appear that she meets those criteria. Specifically, it does not appear that she was in fact injured by the low grade. As stated in the problem, the grade will not affect her GPA or eligibility for honors and she did not fail so she will not be forced to repeat the course!

Additionally, the state will argue that she is prevented by sovereign immunity from suing the state (unless they waived their immunity).

She could sue teacher directly for defamation. However, because the defamation (telling other staff that Polly is a “bitch”) is between a private individual and a private actor, it would be governed by state law (the Dun & Bradstreet case). Polly could attempt to claim an emotional injury from the description of her 14th am. Equal protection rights by teacher who was acting under color of state law, but the injury is likely too abstract for justiciability.
If Polly were to raise an Equal Protection Claim under the 14th amendment she would argue that the different grade to her and the white male students was based on race or gender. If she could demonstrate that the low grade was based on her race, the State’s actions (through the teacher) would be subject to strict scrutiny under Adarand, Brown, Etc. The state would have to argue that their basing grades on race is necessary to promote a compelling government interest. This argument would surely fail, there for is Polly could prove that the grade was based on race (which would be difficult to do) then she would prevail.

Similarly, if Polly could prove that her low grade was based on gender, she could also argue an equal protection violation. Then the state would have to argue that basing grades on gender is substantially related to some important government objective. This is an untenable argument, but like the race argument is unlikely to arise.

Furthermore, and perhaps most likely, Polly could argue that she was denied equal protection as a class of one, similar to the Willowbrook case where a village singled out a single home owner for unequal treatment. In this case the state would need only to meet rational basis scrutiny. And is likely to argue that giving low grades for poor attitude and lack of effort is rationally related to a legitimate government interest in education. Poly would need to counter that argument by arguing that the grade was based on animus rather than attitude or effort and that animus is not a legitimate government interest (e.g. Moreno the hippy case).

Ultimately, Polly will not prevail on her claims because of the difficulty of demonstrating the actual motivation of her low grade, but primarily she will not win based on the standby issue.

Teacher’s Claim

As a tenured teacher a property interest in her employment. (Roth) If she has a property interest in her job then she cold raise a claim under procedural due process under the 14th amendment.

Teacher would argue that the state (acting through the principal) deprived her of this property interest with out a proper hearing. The Supreme Court has ruled that hearings are necessary when a state deprives some one of welfare benefits (Goldberg V. Kelly), a tenured teaching position (Roth), etc.

The issue then is what process must the state provide Teacher. Generally the court follows the rule in Mathews V. Eldridge which balances the importance of the right at stake, the risk of erroneous deprivation of the right, and the value of added protection of additional safeguards. In this case, Teacher will argue that her job is a fundamental interest and that additional safeguards such as a faculty review panel would add valuable safeguards to a process that has a high risk of erroneous deprivation. The state will argue that the procedures in place are sufficient to protect teacher’s property interests from erroneous deprivation and that additional safeguards would be a large burden that add little extra protection. Ultimately, the outcome of the case will turn upon the details of the school’s tenure system, and how much protection it provides. Based on the few facts provided, it seems that termination is solely at the discretion of the principal in which case more process is probably required. However, if the district’s policies limit termination to “good cause” or imposes similar restrictions then there may be enough.
Article I, Section 9, Clause 2 states that 'The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.' Its placement among Article I suggests that it is only Congress that may suspend the writ during the cases of rebellion or invasion the public safety may require it. This is what Congress is attempting to do here, suspend the writ and destroy jurisdiction (which is important to determining if a writ is required in the first place). By establishing a law, the Congress is giving the President the greatest power he can enjoy (that of Jackson Box one - where he's exercising Article II powers as Commander in Chief and those that congress has given him - here, the right to detain without writs or jurisdiction) and therefore, judicial review must be done with the upmost deferential scrutiny. (Steel Seizure)

Right off the bat, the parties could argue over whether this is an appropriate time of rebellion or invasion in which Congress could constitutionally suspend the writ. The challengers would argue that our country is neither being invaded, nor are we experiencing an uprising of its citizens, as a rebellion would require, and therefore, Congress has no authority to suspend the writ. However, Congress would argue that not only are we at war with a menacing enemy, but we are at a war caused by the direct invasion of our country, and therefore, the suspension of the writ is both valid and needed. In light of the recent executive power holdings, including how Padilla might have come out, it is a strong possibility that the court would find this unconstitutional. However, before reaching this conclusion, a review of Hamdi, Hamdan and Padilla is necessary.
In Hamdan, there was an alien citizen, picked up in Afghanistan, detained in GB (which was deemed to be within US jurisdiction because it was under the exclusive control of the United States; Rasul), and was labeled as an enemy combatant. The court determined that because the President had not been given the power to hold him as such by Congress, he was entitled to a military commission. This is where the challengers and the government would argue. The executive would argue that they have expressly been given the power to do so under the MCA, and the challengers would argue that, the MCA is invalid in the first place as an inappropriate suspension of the writ.

Further, in Hamdi, O'Connors argued that a person labeled an EC, by due process Matthews weighing test, had the right to be brought before a court to hear the evidence against them and rebut it as to their enemy combatant status. The determination of enemy combatant was central to whether, as a citizen, he would be afforded Article III protection, or whether a Military Commission was all that he received. O'Connor's writing for the court and applying the Matthews DP test (balancing the right of the individual, the right/interest of the government and the risk of erroneous deprivation of that right) determined that this was the minimal procedure due someone labeled an EC. The challengers would argue that this holding extends to alien citizens, as they are under the exclusive control of the United States. They would cite to Kennedy, who says the C extends protection to 'people' and not just 'citizens.' However, the government would attempt to narrow this holding, by saying that previous case law in this area, along with this specific holding, making the facts exceedingly important, and thus cannot be extended to different facts like those here, where the challenger would be an alien, and not a citizen.

In Padilla, a case that was decided on procedural issues (Rehquist writing for the court) and was later moved into an Article III court, thus granting inadvertently what Padilla had been seeking, there were at least 5
justices who seemed to think that the automatic labelling of a person held by the United States on US soil might not be constitutional. Those justices included Stevens, Ginsburg, Breyer, Souter, and Scalia (?!). These justices could quite possibly be the deciding votes in this case, holding it unconstitutional to deny an alien both jurisdictional power and the fundamental writ.

Note that any alien who is being detained would have standing. He has an injury (being held without being able to present himself before the court), it is directly traceable to the government (causation; as they are the ones holding him), and redressability (the government could in theory release him to redress any injury.)
Question 3

Polly's argument for standing:

Polly has been treated in discriminatory ways by the state, in the form of Teacher T. She has a case on account of race by the state.

Polly (P) has been discriminated against by one of her race by the state, in the person of Teacher T. Further, she has received low grades and a C in her grade. Both of these injuries have inflicted emotional distress, the discrimination and the low grade, had inflicted emotional distress on P. They are injuries in fact, particularized.
Poly has an exception to the 3rd party role b/c her family and her are very close and she is a minor so she cannot defend herself adequately. [With]
and actual [Lujan] they are directly traceable to States action. If the court address this issue, it will be likely to care it by providing Pols with the defense a higher grade cat restored self worth in having she cannot be discriminated against based on the color of her skin.

States argument for States P has suffered no injury. Her C will not factor into her GPA and will not adversely affect her grades. Her emotional pain is unfounded and contrived, not actual.
Courts rely on standing

Stevens

Discrimination based on race is all too real of an injury. P has been injured and fulfills the other elements of standing. She shall be heard in court. P also meets the 3rd party exception.

Souter - Dissent.

No we should be discriminated against based on race. However, we must carefully guard our study requirements. The Constitution's "Controversy" clause demands such. This injury is too remote. It is a hypothetical. I would deny.

Stevens. Nor do I think P meets the third party exception. She is old enough to understand.
Pr's argument:

Polly has been the victim of discrimination based on race. The 14th Amendment Equal protection clause does not allow similarly situated people to be treated differently.

Racial classifiers death strict scrutiny. The state must have a compelling interest to discriminate based on race. The regulation must be narrowly tailored to achieve this compelling objective. [Adjudg] It does not matter if this discrimination is benign or mandatory.
Equal Protection protects even a class of one [Slech J]

Pollyeller female were given Cs
while boys got Bs for same activity
then white people based on her race is Polly could also

Polly has also been discriminated against based on gender. A gender classification also protected by EP demands a exceedingly persuasive justification. The state must carry the burden of meeting this justification. At a minimum this means the state must have an important objective to which the regulation classification is substantially related. This justification must not be based on stereotype or created ad hoc.

Although Polly has been discriminated against be of both genders
and race, and we can prove it,

we will only discuss race in this brief.
today, because it is not exactly relevant.

At best the states interest is in

promoting education. Under these auspices

it gave P. C. This is an important company

objective. But it is also education

is also extremely important to P [Brown].

The states means of achieving this end

were not merely hybrid. Indications of this

as two white boys were given. However,

they were not of the same participation

in the same activities (laziness).

The fact that similarly situated people
were treated differently shows this is a classification, and an underinclusive one.

Not everyone who was lazy was given a C. Underinclusive was the
regulation was not narrowly tailored.

Furthermore, in the state court
were not the result of merit to benefit education
but were directed by animus. This is a indicitive
of it referring to less a bitch. Animus
is never a compelling interest much less a gd.

Legitimate one. [ Moreno ] For that
reason the Poly remedy is C would
not even pass returned basis review.

The state has violated Ps equal protection.
She had argued.

The state has a compelling interest in promoting education, including physical education. This is a state's most critical job [Blown]. For this reason Polly received a C. The state has no interest in ensuring that its grades students are administered fairly.

Polly did not get a C

b/c of her race. She got it b/c she was lazy. Her exceptional athletic ability made her laziness all the more disturbing and profound. She is faster than any boy, including the boys who were given B's.
exception this athletic ability makes her

means she is not similarly situated to

the boys. Similarly, that differently situated

people do not have to be treated the

same. [Valcho v. Quill, where the
teaching/medical treatment was deemed different

then they wanting assisted suicide]

The suggestion that P was discriminated

based on gender is also oxymore. It is a

female. Why would a woman discriminate

against another based on gender.

Court: Chief Justice Robert Kunz

Race and gender receives the

most exactly scrutiny we have.
Bleakly or decent and insular

minorities, with a long history of being
discriminated against. The

Constitution will not tolerate it.

We find state's arguments that

and the boys were not similarly situated

unconvincing. State must present better evidence than the.

They have to carry

the burden of strict scrutiny.

T's argument for study

It has been fired without

adequate due process. Her loss of employment

is an injury in fact, actual and

personalized
It is directly traceable to that the state's actions of removing a tenured teacher without procedural due process. If the court finds a procedural due process violation, they can award her due process and redress her injury.

State's argument: We do not contest standing.

Cost: Roberts - Weaver

we find the claim by study
This argument:

T is a tenured professor. (The case we read on implied tenured professor) indicates that a tenured professor 

cannot be fired without adequate due process.

Government employment is a property interest given by the state. Once the state gives a property interest like welfare or a job they are entitled to procedural due process before they can have the property removed from them.
The state gave her a job, property, etc.

They cannot remove it without an adequate process. This case is not like (the case we read where the professor was fired, but it was decided he did not have implied tenure) because it was not on a term or permanent basis.

Therefore, her property interest continued until she quit, died, or had tenure removed by adequate process. Here, she was notified by the school that she was fired for not handling a sensitive issue diplomatically.

This is not an adequate process, however.
Is entitled to a hearing on the issue.

Under the authorities balancing test this
is a minimum for her interest

is greater. The risk of not employment
is a fundamental right; the risk of being
this employment avoided is great without

further due process; and the cost
of a hearing is minimal.

To is entitled to a hearing to
see if the firing was justified.

States argument:

I received adequate due process.

She was given notice of why she was

fired. She acted in an undiplomatic biased
Manner. She also had a chance to petition with a teacher principle. She was not fired for very good cause, being bigoted and subjecting a student the state to a law suit. Under the *Mathen's Test* if the state prove everyone every teacher who was fired a hearing it would be extremely costly. Nor is government employment a fundamental right.

[Signature: Ethan Stern]

This case is distinguishable
Coats ruling: Stevens: unanimous

This court has long recognized that public employment is a property interest. The government is big and society demands it. The Proc Property, once given by the State cannot be removed without adequate due process. We find the fact that I was tenured to be dispositive.

If I was not, she would have no interest in continued employment. We feel that I may have been given factual notice. The 14th Amendment demands more. She must
be given a chance to rebut this claim.

We remand to the lower court to apply the Mathews balancing test and decide the process due.
Challengers to State One (001)

1's The newly funded monuments violate the establishment clause, rooted in the first amendment: "Congress shall pass no law respecting an establishment of religion." The first amendment has been incorporated into the 14th and prevents 1 from erecting this monument. In doing so erecting this monument, 1 is clearly endorsing an the Judeo-Christian religion. This would be obvious to any objective observer.

Furthermore it is no longer acting neutrally in regards to religion, favoring religion over nonreligion.
This display has [no secular purpose but a religious one]

This case is also subject to Stone v. Graham a display of the 10 commandments on public grounds was struck down by this Court.
And Judeo-Christianity over other religions. The appropriation of government funding and the site at this monument at a public park has the psychological effect of course, its citizens into subscribing to the tenants of Judeo-Christianity. All people who do not practice the Judeo-Christian faith feel excommunicated by the state. For all these reasons I US violate the establishment clause.

This case is without analogies to McVey County. There like here the monument is new. In McVey County, the court struck down McVey County's display of the Ten Commandments. I hes also displayed the-
10 Commandments. In McHenry County, as here, the monuments were new additions on public grounds, and funded by the State. There, as here, the purpose of the commandments was to show the role of the 10 commandments in the history of the law's development. There, as here, the 10 commandments also included a copy of the Bill of Rights. There, as here, the display was overtly religious. In Von Orden, Chief Justice Rheingardt acknowledged that the 10 commandments were overtly religious. Putting the Star of David behind the 10 commandments and putting it on ancient Hebrew, as language no longer read.
only makes it more religious. McCrory County’s display was found to be in the hallway with
religious purpose and a violation of neutrality.

For all the above mentioned reasons. It should be found the wise here.

This display is quite different from the display that was upheld in Van Orden.

There the display was 40 years old, here it is new. Here it was funded by a private group,
here it was funded by the state. There the community was surrounded by 20 others. There is no education on the display, was so numerous here.

The overtly religious display, the funding, the placement of the display on state grants all
Exhibit an endorsement of religion to an objective observer. It violates neutrality, and has no secular purpose despite what the state may say. Its purpose was to proselytize the establishment. This court clearly holds beyond question that the purpose is to endorse the purpose [McCreary County]. The true purpose here is for the state to show its affection and endorsement for Judeo-Christianity, and an attempt to proselytize its citizens.

It does not matter if this is a Jewish religious or a Christian religious symbol or both. (Ed: Any of the three violate the amended § 1 to establish no religion. Just like Judaism may be a minority religion does not save it
a first precedent violation. In Lee v. Co.
court said a non-sectarian prayer by a rabbi
violated the establishment clause.
This monument offends the Constitution
and should be struck down.

[Signature]

Supreme argument
The This monument has a purely
secular purpose and does not offend
the establishment clause. It should not be taken
down. The purpose of this monument is
remind citizens of the importance of the 10 Command
in the moral development of the law. Upholding
Our legal tradition is a secular purpose. No
does this monument coerce anyone. Unlike Stone, this monument is not a school grounds where children are forced to attend school. The secular purpose of W. J. over here is forced to view the monument. W. J. is forced to display a monument at children. This differentiates the monument from Lee, where the fact the school was named after children was a deciding essential element of this Court's decision. The mere placement of a 10 Commandment display on state
grades. There as here the display was 
of the 10 commandments. There as here 
of a state park.

It was on state grounds. Below Van Order

the display was surrounded by other monuments.

There as here the purpose was to show the historical
importance of the 10 commandments. The monument
in Van Order was upheld b/c it did not

coerce anyone and did not break down the

divide well between church and state.

This monument is very different from the

one stuck down on Melrose County. This monument

is in Hackett. It is not at the courthouse. It is

not the 3rd such attempt to display the 10 commandments.

The fact it is not in a court house makes it
Less coercive Court houses are a naturally more coercive environment than state parks. For one thing, people need to please the judge, for another people are often compelled to go to Court house.

The fact that this is the first such display and also shows the purpose is not religious. Here it was found that b/c the county kept trying to keep the display it could not at all costs it was determined that its purpose had not changed, this just is not the case here.

The fact that this is a retelling of the 10 commandments have religious significance should not be felt [like Order 1]. The state is allowed to acknowledge the role of religion in its histories and traditions. See id.
Furthermore this is a prominently Jewish display. It contains the Star of David and is in Hebrew. Jews are a "discrete and inscrutable minority in need of judicial solicitude. [ft. Not y]

They are not a majority religion that can impose its will on the minority. They have a long history of being victims of discrimination (e.g., Holocaust).

Yet another reason for judicial solicitude. A Jewish display does not deserve judicial solicitude, heightened judicial scrutiny.

The history and traditions of our great nation protect this movement should it be upheld.
Justice Kennedy wrote the opinion of the court joined by Chief Justice Roberts and Justice Alito, and...

Kennedy:

At a museum, the establishment clause protects citizens from being coerced by the state to practice religion in a certain favored manner. This coercion can be by law or by more subtle psychological means. This monument was in a state park, the presence there is not compulsory unlike a courthouse or a school or graduation ceremony or a high school. Nor is the monument aimed at children, unlike a graduation ceremony or a school or even
a high school football game. [Lee, Stern, New Mexico high school football case] The magnitude of a monument at a state park is much less coercive. Nor does the expenditure of a small amount of funds make this coercive. A find He settles here to be much less coercive than the cases where we 

prayers, or
stop down displays, speeches on the grounds of an establishment cause violation. I think Van Orden

is much more applicable than for the reason mentioned by states council. The Constitution does not protect a few individuals from offense. Nor does it absolutely bar the State from acknowledging the role of religion in life and history. For these reasons the monument will stand.
Religious monotheism is deeply rooted in the history of our nation. Washington, Marshall, Adams all publicly professed it. Congress opened with an invocation as does this court. Pictures of the 10 commandments adorn our court house facade. History clearly indicates that this nation cannot favor religion over irreligion and monotheism over polytheism. All this display does is acknowledge the role of Juda-Christianity in the law and history of our people; it does not violate the Constitution. Only every people is able to believe in certain words would do harm.
Only coercion by law would do that. Because a few individuals might be offended by this display does not make it needed.

The minority cannot force prevent the majority.

Nothing - absolutely nothing - brings people closer and builds tolerance like worship together for the same God.

I write today to seek the establishment clause should not be enshrined in the First Amendment. It should be held not respect the First. If I had to choose a test it would be coercion by force of law.
Descartes Boynes

I have changed my vote from the way I did on Our Order for 2 reasons.

First, this movement is not yet 40 years old.

Second, this movement is not overly religious. It would have been counter to the very purpose of the constitution to take down the movement in Va. Order 5/6 it would have created division, faction, and unsettled society. Taking down this movement would not have the same effect. It is never old many Jewish. It would be less invasive to remove all New Jewish 10 Commandments than it would have been to take down the 40-year-old man.
typical comment. We must look at the context and consequences of our decisions in light of the purpose of the Constitution.

Ginsburg and Stevens.

Neutrality is my touchstone. If a statute favors religion over non-religion or a religion over religion, it is not neutral. Therefore it does not have a secular purpose. We look at the purpose from the viewpoint of an objective observer. We acknowledge in Van Orden v.

1.)
Any objective observer could see that. It therefore has no neutral purpose. When a state favors religion or non-religion, it excommunicates people.

As Justice O'Connor pointed out, this destabilizes both the state and the religion.

"It is not our history. We need look no further than Jefferson and Madison. If O'Connor were here today, she would point out that we do not want heads before enforcing the 1st Amendment."
by moving them slowly and say outside
the suspect (NA 60), at rear of
leaving the courtroom.
State 2 challenges (2) State 2 = (2)

This displays the establishment clause.

This display and its fixed style violate the establishment clause. The\r\ncontrol of the Native American 10 Commandments (NA 10) is coercive. It coerces\r\nbeth legally and psychologically people to\r\nfollow the scripture of the (NA 10).

It is not neutral; it favors religious\r\nnon-religion the religion of the native\r\nAmericans and non-native Americans.\r\n
Fristly, it violates the lean test b/c it's\r\npurpose is to promote the religion of
the (NA 10). It also endorses the NA 10

(Stuck case is like Lee, I think)

as if Rebus is reading at a non-sectarian

prayer at a graduation ceremony where

people were forced to stand, was deemed
to violate the establishment clause.

Strictly speaking, attendance at a graduation

ceremony is voluntary. Attendance

at court is not. The children of

the ceremony could have remained sitting. Here

If you do not stand the judge will renew

you for the court house. Obviously this can

have serious effects on consequences to a litigant.
Finally, a judge or the police is an even more intimidating presence than a Rabbi.

For all these reasons, this case is even more coercive than the situation in Lee.

If Lee violated the establishment clause this situation surely does.

The fact that a Rabbi, a leader of a minority religion, led the prayer did not save Lee from offending the constitution. It should not save it.

The fact that this is the NAACP also represents a minority religion should not save it.
State argument

Nor should the display be
said to be
vido of a minority religion.

It is still a display at a court house
and a school violated McCurry County
and Stone and would do so here. A court
this
is also a court house and like a school
attendance is required. It is declar.
conceive, people have too been, let to see it, and will inevitably feel
the court is imposing its beliefs upon them.
This will make people feel excommunicated by
the idea that the AG is State
is endorsing a religion that is not the on
Nor is the display secular. It mentors the Great Spirit (analogy to God). It also commands prayer, like the 10th Commandment. It demands honoring family, the 10 Commandments mandate honoring family as (father and mother). It, like the 10 Commandments, demands that people not lie. And like the Bible commands to do on to others as you would have them do on to you by saying, "Do what needs to be done for the good of all. Reading from the Bible in school is nothing a constitutional violation and should be kept. This document has strong religious constitution and is similar to the 10 Commandments. Meckley County
Starke down the 10 commandments in court and it should be done so here too. For these reasons, the 10 commandments document should not have any more protection than displaying it. Further, this is the prayer given in Lee which also mentioned God. 

(State argument)

To compare this document to the 10 commandments is absurd.

While this Court has recognized the 10 commandments to be religious in nature, the Court has ever done so as to declare the 10 commandments.
The 10 commandments: may not kill, may not steal, may not bear false witness, may not covet, may not commit adultery, may not eat of what you have not been given, may not commit murder, may not steal, may not bear false witness, may not covet. This document simply lists well-recognized social values. Such as respect for your neighbor, do not lie, do not steal, honor your family, take care of the environment, do not be greedy. Our society endorses these morals, and our court system upholds them. This is indication of a purely secular purpose. And gives with the legislators intended purpose. It is sensible to think that a minority religion...
has convinced the legislature to inflict its views on the people, or that it is the legislative purpose.

Further, the fact that this is a minority religion further indicates that the legislature is not endorsing it. The legislature, no objective observer would think Z is trying to endorse this religion. If they are trying to endorse any thing it is the novel s encompassed in the NA which is clearly encompassed in society and Z's legal code.

Native Americans are a discrete and insular minority. Indeed, satellite Highland judicial scrutiny is not only not necessary
Because it is not endorsing a religion, it is not violating neutrality. It is neither favoring religion over non-religion or Native American religion over other religions. It is merely favoring the words encompassed in the NALO something it already does through the legal code.

Nor is this coerced religion. The judge in deciding, and the court in deploying are only asking visitors to pay respect to the words, binding of the NALO something it already draws of the legal code.

This case is different from Lee. It is a minority religion unlike Judaism, the
purpose is to promote civility not to lead a prayer.

teach about the legal code. This is unlike the

State or Lee, is not aimed at children.

It is likewise less coercive. Nor is it

true that attendance is mandatory for everyone

at trial. Finally, the Rabbi in Lee

was a religious leader. A Judge is not.

This makes the activity more secular and

less religious.

It is also different from McClary

County. This is not the third attempt to cancel

the display. The purpose is civility to

not to teach the legal code. Nor is the

7

display as prominent as the massive display.
In Nervory County,

Because few individuals may be
offended does not make this a constitutional
violation.

Kennedy

Justice wrote the opinion.
at the court with Roberts and Alito

This action & clarity has

As a re

At a constitutional minimum

a state cannot coerce its citizens

to worship or worship in a certain way.

A judge forcing the court to recite a religious

text with force of law is clearly coercion.

For this reason the act violates the law.

Thus must be renewed and the recital stopped.
If merely one person feels his rights to freedom and religion are infringed upon it is enough for a violation.
Justice Scalia with Stevens and Ginsburg concurring. Neutrality is the touchstone, and this document offends it. Any religious observer would see the court as endorsing the NATS. This favors Native American religion over other religions and religion over non-religion. This text portrays the great spirit who is like God. It is therefore a religious document and does favor religion over non-religion.

Justice Breyer

I write simply to say the context of consequences do not present divisiveness if the display is removed and the recital stopped. The religion
is too small to rest upon

Justice Scalia - Concurring

No where in history or tradition is
this religion rooted. It is not
Judaism, Christianity, or Islam.

The judge is coercing people by force of law.

This is a violation.

Justice Thomas - Dissent

The national govt cannot infringe
upon 2 this way. The Establishment
clause was wrongly incorporated into the 1st.

[Signature]
Challenges argument

The provisions in this law place an undue burden in the path of a woman seeking an abortion and should be struck down for violating due process. The 14th amendment protects every woman's right to choose. [Roe v. Casey] without undue restraint from the state. These provisions place an undue burden on a woman's right to bodily privacy. Deborah, reproduction, choice; and bodily restraint. [Granold, Pierce, Roe v. Casey] by because they have the purpose or effect of placing a substantial obstacle in the path of a woman seeking an abortion.
Furthermore, this relationship is supported by only one medical study, hardly a mountain of data that can be relied upon.
We acknowledge that the State has a right to exhibit its pretense of rule over a woman's right to choose; however, these provisions are not reasonably related to the end of exhibiting this pretense and therefore create a substantial obstacle.

(Provision l is not reasonably related to...

A woman's likelihood of developing breast cancer after an abortion. While Casey may have held that informed consent was not an undue burden, this small correlation between abortion and breast cancer is too attenuated to be reasonably related to informing a woman about the health consequences. It clearly has the purpose and effect of trying to prohibit abortion and...
is a substantial obstacle. The second provision

Now is the second provision reasonably related
to either the State's interest in preserving the health of the
mother or promoting life. It is not overinclusive to

tell every woman that the fetus will feel pain at 18 weeks
when many not every woman who has an abortion will reach
this stage before she aborts. Therefore it is not reasonably
related to the State's objective and should be struck down.

Provision 3 is also not reasonably related either
to the State's other interest. First of this is that similar
laws were struck down between Roe and Casey. These
provisions have the purpose and effect of creating a substantial
obstacle in the path of a woman.

Provision 5 also has the purpose and effect of
Creating a substantial obstacle. Only five women live
and after taking the drug. This number is too
apparent too small for this provision to
be reasonably related to the states interest in protecting the health
of the mother.

Provision 9 clearly violates Casey. Casey
allowed for parental notification of an unincorporated woman
by only one parent. This provision requires notification
by the parents, and they must be notified. This addition
of a parent is enough to create an undue burden in
and of itself. But this provision violates Casey even more clearly.
Casey explicitly held there must be a judicial bypass.

For parental notification, provision 9 contains no judicial
bypass. It is therefore an undue burden and violates
Every clinic would be forced to exceed their kill ratings:

- ridiculous withs of 100 ft.

They place an undue burden on clinics that give abortions, and therefore the women seeking to choose.

The license plate provision is coercive and inhumane.
due process.

Provisions (11, 12, 10 and 13) render also clearly violate Casey. These provisions license clinics with "Choose Life," forcing clinics to pay extra if they give more than 100 abortions a year. To pay twice the amount could mandate that hallways be at least 100 ft wide clearly are irrational and arbitrary. They bear no reasonable (beside possibly violating other parts of the Constitution (Equal Protection and 1st Amendment) say more) they are not reasonably related to the state's interest in promoting the potential life or the women's health. [100 ft wide hallways are implausible and ridiculous, as is forcing everyone in the state to live "choose life or their licencia phobia"] These
This was then reaffirmed in Corbett v Clark Kear

health exception requirement was
provision are in no way reasonably related to promoting the health of the mother or the life potential of the child. Consider even exhibiting a preference for life. Their only purpose is the actual and true purpose.

The most egregious offense of all, however, is the outright violation of Casey's health exception. Casey required that all prohibitions be exceptions on abortion, including the informed consent provision. There's been a health exception, allowing the woman to have an abortion if her health was in danger. These provisions violate that because they have no health exception. In a medical emergency, each woman would be required to complete each one of these forms.
tasks before they could have her right to an abortion.

Moreover, this could endanger the life of many women. And as Justice O'Connor stated in Roe v. Wade, if even someone will face a substantial burden because of a regulation, the regulation creates an undue burden.

In conclusion, these provisions have the purpose or effect of creating an undue burden on a woman's right to control her body, and therefore, violate due process of the 14th Amendment.
These provisions do not place
an undue burden on the part of a woman seeking
to abort her baby. They fulfill the
state's interest in promoting life, protecting the
health of the mother, and protecting the
potential life of the unborn baby, and 

are consistent with the state's powerful interest in displaying its preference
for life.

Provision 1 does no more than protect the state's
scientifically proven
interest in the health of the mother. There is a relationship
between abortion and breast cancer. It is perfectly reasonable and even wise that a state should require a woman conscious of this so she can make an informed decision. This relationship is not to attenuate, try telling that to a woman who contracts breast cancer as a result of being an abortion.

Provision 2 also does no more than allow a woman to make a reasonable, mature decision. All women should know they have a baby inside of them who will feel pain and the consequences of abortion are terrible. It also is in furtherance of the state's interest in promoting and displaying its preference for life. It is perfectly reasonable and not an undue burden.

Provisions 3 and 4 were struck down by the Court.
They had been struck down prior to Casey, but that was because they received strict scrutiny under Roe. Roe did not properly recognize the state's profound interests. Casey did so by changing the test to undue burden. Under the undue burden standard, these provisions should be upheld.

Provision 5 is similar to provision 1 in that it protects the state's interest in the health of the mother. This is an important interest. Women have died from this drug, indicating that this provision is reasonably related to protecting the mother's health.

Provision 6 is similar to the gag rule upheld in <i>Rust v. Sullivan</i> allowing the State to counsel women about non-abortion methods.
and the benefits of natural birth. It survived strict scrutiny and should survive the less exacting undue burden.

Provision 9 is similar to the parental notification provision in Casey. It is perfectly reasonable that a minor should inform both parents about her decision to abort her baby so that parents can help her make an informed and mature decision.

Two parents will only increase the likelihood of her making an informed decision. Even if enjoining both parents did rise to the level of a burden as Casey showed, a burden is insufficient; it must be an undue burden. Telling both parents clearly is not.

Provision 7 only reasonably promotes the
States interest in the potential life of the baby and shows the state's interest in protecting life, by allowing the woman to understand this is a life she is about to abort. It is scarcely related to these ends.

Provision 8 is also just like the informed consent provision in Casey. There too the woman was required to receive the informed consent in person. The State does demurds if be upheld.

Provision 10 also promotes the state's interest in the health and mental well being of the mother by making her conscious of the emotional pain she may feel about aborting the living baby inside her.
Provision 11, requiring the license plate also promotes the state's interest in displaying its patience for life. It is not coercive, a woman who is mature enough to abort her baby should be mature enough to withstand this effort.

Provision 12 is also reasonable and does help the state's interest in protecting potential life and health. It costs money to ensure that these abortions are administered properly according to the law. This extra pitucrature merely compensates the state for these additional costs.
The hallway provision is also reasonably related to the state's interest in protecting life not only of the potential baby but of all mothers and other visitors to abortion clinics. Abortion clinics on the other scenarios of emotional events, for both participants and protesters and have been the scene of violence in the past. E.g., abortion bombings. Wide hallways simply allow for easy ingress and egress in case of emergency, like a fire, which unfortunately occurs all too often at these types of places.

Therefore, all of these provisions are reasonably related to the state's profound interests in life and health of its citizens, both present and future, and do
not create a substantial obstacle

Justice Kennedy wrote the opinion of the
Court joined by Justice

These provisions do not violate the health exception either. They merely: A woman may still receive an abortion in the event of a health emergency. Undergoing these consent requirements could be easily performed before an abortion was needed. The woman would be at the hospital in case of an emergency and it would be no problem attempting to for her to undergo these steps there. Most likely she would be accompanied by both parents if she were a minor (and all medical facilities have notified)
Justice Kennedy wrote the opinion for
the Court joined by 6 Chief Justice
Roberts and Justice Alito in parts.

Pursuant to Ayotte, we today
strike down some of these provisions and remand
others so they can be more address.
to allow a health exception for the mother
in case her health or life is in danger. We
strike down provision 9, 11, and 13 and
remand the rest so that a health exception may
be added. Implicit in the concept of
ordered liberty is a woman's right to choose,
privacy, to contraception, to control her reproduction, 
and her right to choose...
be free from bodily restraint [61swld, Pierce, Roe, McRor,] Encouraged within these rights is a woman's right to choose whether or not to endure the sacrifice of having a child. But we must also consider the state's profound interest in the life. This requires us to balance these interests. The state may not place a substantial obstacle in the path of a woman seeking an abortion. For these reasons we affirm provisions 1, 5, and 10 b/c they protect the state's interest in the health of the mother. They reasonably allow her to make an informed choice. Provisions 2, 3, 4, 6, 7, 8, all protect the
States interests in promoting life and protecting potential life, by allowing the mother to know the
severity of the choice she is about to make. An
abortion of fetus. Having a heartbeat, seeing a
picture, knowing about the potential life at stake, and
the potential for pain and danger so in person all send
have the gravity of the decision at hand. They
do not constitute an undue burden and are entirely
reasonable.

Provision 12 simply allows a state
to be compensated for its extra costs incurred
by protecting its interest in the face of this choice.
This was affirmed in first [DATE] which
said that a state need not pay for abortions.
is a negative right. All above mentioned provisions by excluding 12 must be remedied. However, pursuant to Casey for a health exception.

Provision 9 is a substantial obstacle in the path of a woman. Casey required a judicial bypass, this provision does not have one. It also violates Casey by requiring 2 parents to be informed. This provision violates due process.

Provision 11 and 12 contents are not reasonably related to an interest of protecting life, promoting life, promoting health of the mother, or displaying the state's preference. They are arbitrary, coercive and perform no legitimate function.

It is so ordered.
Justice Alito joined by Chief Justice Roberts.

I right agree with Justice Kennedy for the most part. However, I do not feel provision 9 places an undue burden on the path of a woman.

In many (though not in my) this is perfectly reasonable. I would have upheld the provision 9 and reconciled it for a health exception.

Justice Sotomayor joined by Justice Thomas.

Concurring in part and dissenting in part.

No, where is it rooted in the history and traditions of our nation that abortion is a fundamental right. In fact the opposite is true. The provisions struck down by the plurality were a perfectly
Because of a recent decision, all women's trust in life has also vote to amend for the health exception of these.
reasonable method for the state to act.

It was merely displaying its patience for life, a
patience which the vast majority of its citizens
cherished. This action decimates the moral beliefs
of States citizens. It is elitist judges,
imposing their will, and subverting the democratic
process. It is up to the Court
should overturn its past abortion decisions
and allow the states to regulate and prohibit abortion
freely. This is what the Constitution demands.

Justice Souter, dissenting:
I upheld some of these similar
provisions in Casey, but I cannot do so today.
The world is not born anew each morning. In the
context of the bill as a whole it is clear that the intended purpose was to place a substantial obstacle in a woman's path. This purpose tells me that all three of the unreasonableness of some of these provisions, particularly 11 and 13 lead me to this conclusion. This reason I would do as does the lack of a health exception. For this reason I would strike down the entire bill.

Justice Stevens joined by Breyer, Ginsburg in dissent. Abortion is a fundamental right. [Roe] it is implicit in the concept of ordered liberty. Women should be able to control the morning of their lives, their
life story and their right to be free from bodily restraint. I feel Justice O'Connor's undue burden test has been incorrectly applied by the plurality. I reject she for no longer with us. A lack of a health exception is an undue burden. All of these provisions are therefore irrational or place an undue burden on the path of a woman. This is the only purpose. Thus I would have applied strict scrutiny under Roe, but ever under the undue burden test these provisions would fail. I would have struck them all down. I feel the flaw of life Justice Benna talked about is what to be of greatest evil.
Excellent points. I think you are right. Your analysis and your point are both on the mark. I believe your insight is very valuable. Thank you.
Question 4

Illegal Aliens are entitled to rational basis review, except for regulatory education for children. Doe v. The state has a legitimate interest in preventing terrorism. Denying the writ and detaining suspected terrorists would seem reasonably related to that end. There is therefore no substantive equal protection process by. The only weapon of habeas in the Constitution is Article I, the Suspension Clause, which gives Congress the authority to suspend
Says Congress is the writ can be suspended in times of war or insurrection. But it is in Art. 1 (would seem Congress would have the prior to suspend it, because it arguably falls under war powers and therefore Commander-in-Chief powers it would secure the President might be able to do it. But it can be suspended by Congress even argue the writ is not a constitutional protection. I would argue it is. If Congress suspended the writ for no reason without good reason I would argue the Court under Marbury could say
It is not at time of war or inscription
and the suspension is relaxed.

We are engaged in a war on terror.

For I would argue against

the false struggle between rigid oppression (Particularized Islam), rigid and oppressive application of Western ideology.

We have been attacked and it is a time

so suspension at the writ is valid.

Under the Jackson framework

the president is at the height of his
power when he acts in concert with Congress. It would seem the act
explicitly gave the president the right to suspend the writ.

Suspended the writ and gave the president the right to act accordingly.

According to Jackson framework only.

If this suspension was unconstitutional would Congress and the president have right to suspend the writ and act accordingly.

As discussed this suspension was invalid.

Result should not interfere with this.

Here, Justice Stevens found that Congress had not suspended the writ to Guantánamo and that Guantánamo was in Art. 3 courts jurisdiction. Here Congress has explicitly
removed the writ for costs regarding aliens. This is what Stevens reportedly required when he wrote Reuel. It would also obviate Justice Kennedy's separation of powers concern since Congress has explicitly acted. Scalia would probably deny the writ to aliens not on U.S. soil since he rejected so fervently to its extension to the four corners of the earth in his dissent.

Thomas would probably agree say the ability to suspend the writ was an inherent presidential power if simply the slightest acquiescence from Congress. Alito and Roberts are generally more cautious. But based on his
broad interpretation of presidential powers in Hamdan while on the lower court, Alito's dissent in Hamdan would indicate the same.

**Detection & Deterrence**

The detention of Aliwis also brings up separation of powers concerns. It would appear that it does. According to Senator Stevens, in Hamdan, Kennedy, Ginsburg and Breyer, because of the UCMJ and congressional authorization, detention and military tribunal would need to explicitly empower the President would be acting against the Congress.
and be at the "lowest ebb" of his powers. The concern about military tribunals and detention is they are purely executive functions and therefore there is no oversight by a co-equal branch. This could allow for people to have their liberty infringed upon by an aggrandized executive. In 2002 at least Ginsburg, Breyer, and Kennedy stated that if the president wanted Congress wanted to be able to detain and the president to hold military tribunals all they had to do is give him express authorization.
The MCA would seem to be express authorization. There would still be great concern, however, about indefinite detention. A concern expressed by Justice Stevens and others.

In Hamdi, the court said that a detainee was entitled to due process regarding whether or not he was an enemy combatant. However, Hamdi was a U.S. citizen and the act pertains to clients.

So the question is on the
President as a matter of law declared an alien to be an enemy combatant. With such express congressional authorization he could as long as there was no other constitutional bar.

I would argue that Congress has explicitly given the President the power to suspend the writ to detain aliens (detemine them, and hold military tribunals). I cannot see another constitutional bar preventing this action. Therefore, the President would act would not affect violate
Constitution. Scalia does not think clerks are entitled.

Scalia does not think clerks are protected to the same extent as U.S. citizens and would probably say it is constitutional.

Thomass would assume all of these acts are within the presidents implied powers.

Kennedy, Ginsburg, and Brey would probably be satisfied, but only if they found the act an explicit instruction.

Stevens would probably be to concerned with separation of po.

Indefinite detention to uphold the act.
Roberts and Alito would probably also be more willing to see that the president has explicit authorization from Congress and uphold the act with 6 of the 9 Justices in favor.