

Scott Pearce's
Master Essay Method

Constitutional Law

CONSTITUTIONAL LAW APPROACH

- I. Identify the Plaintiff's Injury. (Be Specific)

- II. Identify the Plaintiff.
 - A. If plaintiff is a private party:
 1. Show that the plaintiff has standing.
 2. Consider ripeness and mootness.

 - B. If plaintiff is a government, consider inter governmental immunities.

- III. Identify the Defendant.
 - A. If defendant is a private party, discuss state action.

 - B. If defendant is a state or local government, consider:
 1. Interstate privileges and immunities clause
 2. Commerce clause
 3. Pre-emption (express / implied)
 4. Police Power

 - C. If defendant is the federal government, consider:
 1. Executive powers (domestic and foreign)

 2. Judicial powers
 - a. Article III courts (the federal system)
 - b. Article I courts (bankruptcy, etc.)

 3. Legislative powers
 - a. Interstate Commerce / Postal Authority
 - b. Taxing and Spending
 - c. Foreign Affairs and Aliens
 - d. Necessary and Proper Power
 - e. Enabling Clauses of the 13th, 14th and 15th Amendments

IV. What Constitutional right has been violated?

A. 1st Amendment Freedom of Expression

1. Freedom of Speech (time place and manner)
2. Freedom of Association
3. Freedom of the Press

B. 1st Amendment Freedom of Religion

1. Establishment Clause
2. Free Exercise Clause

C. Due Process Clause (5th Amendment - Feds, 14th Amendment - States)

1. Procedural Due Process
2. Substantive Due Process
3. 5th Amendment 'Taking' Cases

D. Equal Protection Clause of the 14th Amendment

1. Determine the standard to be applied to the challenged action.
 - a. Strict Scrutiny
 - b. Intermediate Scrutiny
 - c. Rational Basis
2. Evaluate the action according to the applicable standard.

V. Conclusion: a concise answer to the question.

CONSTITUTIONAL LAW

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City has adopted an ordinance banning tobacco advertising on billboards, store windows, any site within 1,000 feet of a school, and “any other location where minors under the age of 18 traditionally gather.”

The purpose of the ordinance is to discourage school-age children from smoking. The likely result of the ordinance will be to cause the removal of tobacco advertising from the vicinity of schools, day care centers, playgrounds, and amusement arcades.

The Association of Retailers (AOR) was formed to protect the economic interests of its member retailers. AOR had unsuccessfully opposed the adoption of the ordinance, arguing that it would cause hardship to store owners by depriving them of needed advertising revenue. AOR believes the best way to discourage young people from smoking is by directly restricting access to tobacco rather than by banning all tobacco advertising.

AOR is considering filing a complaint for injunctive relief against City in federal district court claiming that the ordinance deprives its members of rights under the Free Speech Clause of the First Amendment.

What arguments could AOR reasonably make to show that it has standing, and that its First Amendment free speech claim has merit, and would it be likely to succeed? Discuss.

Constitutional Law – Outline of Issues
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- I. Association Standing
 - A. The lawsuit is relevant to the Association’s purpose.
 - B. Individual members of the Association would have standing.
 - C. Individual members will not be required to participate in the proceedings.
 - D. Conclusion: AOR has standing.

- II. AOR’s First Amendment free speech arguments
 - A. Ripeness, Mootness, State Action
 - B. Commercial Speech
 - 1. Substantial Relationship with Important Government Interest
 - 2. Ordinance Advances Government Interest
 - 3. Narrowly Tailored
 - 4. Vagueness
 - D. Conclusion: The statute is void for vagueness

Constitutional Law – Model Answer
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I. Association Standing

The Association of Retailers (AOR) is considering filing a complaint to enjoin City's ban on tobacco advertising on First Amendment grounds. The threshold issue is whether or not AOR has standing to sue. The test for Association Standing has three parts: the lawsuit must be relevant to the association's purpose, individual members would have standing, and individual members will not be required to participate in the proceedings. AOR should have little trouble establishing that it has standing to sue.

A. The lawsuit is relevant to the Association's purpose.

AOR was formed to protect the economic interests of its member retailers. Even before City's ordinance was enacted, AOR unsuccessfully opposed the adoption of the ordinance. AOR argues that its member retailers need the advertising revenue they receive from tobacco companies, and that physically restricting access to tobacco for young people is better than banning advertising.

Preserving a source of income to its member retailers is relevant to the purpose of AOR. This element is met.

B. Individual members of the Association would have standing.

City's ordinance bans tobacco advertising on billboards, store windows, near schools and other places where minors traditionally gather. Any individual member of AOR that sustained a loss in revenue would have standing to challenge the Constitutionality of the ordinance. These individuals will have suffered a financial harm directly caused by City's ordinance. The injunctive relief sought by AOR would redress their grievances.

It is likely that many members of AOR would not have standing as individuals, because many retail outlets neither sell tobacco nor profit from tobacco advertising. This fact would not serve to deny AOR's pursuit of association standing. It is not necessary for all of AOR's members to have standing. Certainly many of the members will have individual standing, and that is good enough to satisfy the second element of association standing. .

C. Individual members will not be required to participate in the proceedings.

AOR seeks to litigate First Amendment Free Speech Clause issues. Thus, fundamental rights are at issue. AOR's arguments are all based on the law. No essential facts are in dispute. As discussed below, the case is ripe for litigation. No facts are present that suggest any participation will be required of individual members in order for AOR to present its case and make its legal arguments. It is evident that AOR can meet the third element required for association standing.

D. Conclusion

AOR has met all the requirements to establish association standing.

II. AOR's First Amendment free speech arguments

Having met the requirements for Association Standing, AOR will be able to represent the interests of its members. Now we consider the merits of AOR's First Amendment claims against City's ordinance.

A. Ripeness, Mootness, State Action

City has adopted the anti-advertising ordinance. AOR's members are subject to the ordinance, and are suffering the present harm of losing valuable advertising income. City has shown no signs of backing down and revoking or revising the ordinance at issue. Thus the case is ripe for review. Because neither City nor AOR are likely to chance their positions, the case is not going to become moot or resolve itself naturally. Judicial intervention will be required to sort out the respective rights of the parties. The state action requirement is satisfied because City, as an arm of government, has passed the ordinance at issue in this case.

AOR has shown that its case is ripe, not moot, and that City's actions constitute state action.

B. Commercial Speech

City's ordinance targets commercial speech. Outright bans of advertising are routinely upheld when the advertising is for an illegal product, or where it is false or misleading. Although tobacco use has been increasingly restricted in recent years, the possession and use of tobacco is legal for adults. No facts are present which suggest that there is anything false or misleading about the advertising at issue.

Laws restricting truthful advertising of legal products are subject to intermediate scrutiny by the courts, which is a more lenient standard than the strict scrutiny standard commonly applied to restrictions of private speech. To prevail, City will have to show the following: there is a substantial relationship between the ordinance and an important government interest, that the ordinance directly advances that interest, and that the ordinance is narrowly tailored. AOR also will attack part of the ordinance as being void for vagueness.

1. Substantial Relationship with Important Government Interest

City asserts that the purpose of the ordinance at issue is to discourage school-age children from smoking. The harmful effects of cigarette smoking are indisputable. Smokers who have their first cigarette as children are more likely to be addicted to tobacco and thus are more likely to have smoking related health problems throughout their lives.

Even AOR admits that young people should be discouraged from smoking. That likely amounts to a stipulation that keeping tobacco away from kids is an important government interest. It will be hard for AOR to dispute that the ordinance in question is substantially related to the important government interest in reducing the numbers of young people who take up smoking. Smoking advertising is

effective. That's why tobacco companies are willing to pay AOR members to display advertising for tobacco products.

Restricting advertising for smoking is substantially related to an important government interest.

2. Ordinance Directly Advances Government Interest

The likely result of City's ordinance will be to cause the removal of tobacco advertising from the vicinity of schools, day care centers, playgrounds and amusement arcades. Since it is clear that advertising for tobacco products is effective at promoting smoking, making sure that young eyes are not exposed to the seductive allure of tobacco ads must be judge to directly advancing the government interest in reducing the number of young people who smoke.

3. Narrowly Tailored

AOR argues that the best way to discourage young people from smoking is to directly restrict their access to tobacco rather than banning all tobacco advertising. Since this approach does not require any restrictions on the commercial speech of its members, this argument is not without merit. If the court were to apply the strict scrutiny test, the ordinance would be stricken.

In this case, however, intermediate scrutiny applies. The ordinance deals primarily with billboards, store windows and sites within 1,000 feet of a school. These are all identifiable locations. The ordinance does not constitute an absolute or a blanket ban on tobacco advertising.

The language at the end of the ordinance banning tobacco advertising at "any other location where minors under the age of 18 traditionally gather" is more problematic. AOR could make a good argument that this language is not narrowly tailored, but its better argument is that the language renders the ordinance void for vagueness.

4. Vagueness

Restrictions on speech must be precise in order to pass Constitutional standards. The above-quoted language banning tobacco advertising from any other location where kids gather is not specific. City easily could have made additional specific bans on tobacco advertising, such as prohibiting it from 1,000 feet of day care centers, playgrounds and amusement arcades.

There are two notable problems with vague restrictions on speech. First, the public is not put on proper notice of what the law is. Second, public officials called on to enforce vague statutes cannot help but put their own personal interpretation into the law, which gives them impermissible power.

Most of City's ordinance is not vague, and would likely be upheld. The last clause of the ordinance is void for vagueness.

D. Conclusion

The final clause of the statute is void for vagueness. City can fix the ordinance by simply deleting the last clause, or by replacing it with language that is specific enough to meet Constitutional requirements.

CONSTITUTIONAL LAW
Copyright July, 2006 – State Bar of California

In an effort to “clean up Columbia County,” the County Board of Supervisors recently passed an ordinance, providing as follows:

- “(1) A Review Panel is hereby established to review all sexually graphic material prior to sale by any person or entity in Columbia County.
- (2) Subject to subsection (3), no person or entity in Columbia County may sell any sexually graphic material.
- (3) A person or entity in Columbia County may sell an item of sexually graphic material if (a) the person or entity first submits the item to the Review Panel and (b) the Review Panel, in exercise of its sole discretion, determines that the item is not pornographic.
- (4) Any person or entity in Columbia County that fails to comply with subsection (2) or (3) is guilty of a misdemeanor, and is punishable by incarceration in jail for one year or by imposition of a \$5,000 fine, or by both.”

Videorama, Inc., a local video store, has brought an action claiming that the ordinance violates the First Amendment to the United States Constitution.

What arguments may Videorama, Inc. reasonably make in support of its claim, and is it likely to succeed? Discuss.

Constitutional Law – Outline of Issues
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- I. Videorama v. County Board of Supervisors
 - A. Standing, Ripeness and Mootness
 - B. State Action
 - C. Obscenity / Profanity
 - D. Videorama's First Amendment Arguments
 - 1. The ordinance is void on its face as an unreasonable prior restraint
 - 2. The ordinance is void for vagueness
 - 3. The ordinance is overbroad
 - 4. The Review Panel has unfettered discretion
 - E. Strict Scrutiny Standard of Review
 - F. Conclusion: Videorama's First Amendment arguments will defeat the statute.

CONSTITUTIONAL LAW

Copyright February, 2005 – State Bar of California

A State X statute prohibits the retail sale of any gasoline that does not include at least 10 percent ethanol, an alcohol produced from grain, which, when mixed with gasoline, produces a substance known as “gasohol.” The statute is based on the following legislative findings: (1) the use of gasohol will conserve domestic supplies of petroleum; (2) gasohol burns more cleanly than pure gasoline, thereby reducing atmospheric pollution; and (3) the use of gasohol will expand the market for grains from which ethanol is produced.

State X is the nation’s largest producer of grain used for making ethanol. There are no oil wells or refineries in the state.

Oilco is an international petroleum company doing business in State X as a major retailer of gasoline. Oilco does not dispute the legislative findings underlying the statute or the facts concerning State X’s grain production and lack of oil wells and refineries. Oilco, however, has produced reliable evidence showing that, since the statute has been enacted, its sales and profits in State X have decreased substantially because of its limited capacity to produce gasohol.

Can Oilco successfully assert that the statute violates any of the following provisions of the United States Constitution: (1) the Commerce Clause, (2) the Equal Protection Clause, (3) the Due Process Clause, and (4) the Privileges and Immunities Clause? Discuss.

Constitutional Law – Outline of Issues
Copyright 2005 – Scott F. Pearce, Esq.

- I. Oilco's Constitutional Claims
 - A. Standing, Ripeness and Mootness
 - B. State Action / 11th Amendment
 - C. Commerce Clause
 - 1. Discrimination
 - 2. Undue Burden
 - 3. Conclusion
 - D. Equal Protection Clause
 - 1. Discrimination
 - 2. Standard of Review
 - 3. Conclusion
 - E. Due Process
 - 1. Procedural Due Process
 - 2. Substantive Due Process
 - 3. Conclusion
 - F. Privileges and Immunities Clause
 - G. Conclusion

CONSTITUTIONAL LAW
Copyright July, 2004– State Bar of California

State X amended its anti-loitering statute by adding a new Section 4, which reads as follows:

A person is guilty of loitering when the person loiters, remains or wanders about in a public place, or on that part of private property that is open to the public, for the purpose of begging.

Alice, Bob and Mac were separately convicted in a State X court of violating Section 4.

Alice was convicted of loitering for the purpose of begging on a sidewalk located outside the City's Public Center for the Performing Arts in violation of Section 4.

Bob was convicted of loitering for the purpose of begging on a waiting platform at a stop on City's subway system in violation of Section 4.

Mac was convicted of loitering for the purpose of begging in the lobby of the privately owned Downtown Lawyers Building located in the business district of City in violation of Section 4.

Alice, Bob and Mac have each appealed their convictions, and their appeals have been consolidated in State X appellate court. It has been stipulated that Alice, Bob and Mac are indigent, that Section 4 is not void for vagueness, and that the only issue on appeal concerns the validity of Section 4 under the First Amendment to the United States Constitution.

How should the appellate court decide on the three appeals, and why? Discuss.

Constitutional Law – Outline of Issues
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- I. The Consolidated Appeals of Alice, Bob and Mac
 - A. Standing, Ripeness and Mootness
 - B. State Action
 - C. Indigence
 - D. The First Amendment
 - 1. Content-Based
 - 2. Vagueness
 - 3. Overbreadth
 - E. Conclusion
- II. Alice's Appeal
 - A. Alice's First Amendment Arguments
 - B. Conclusion
- III. Bob's Appeal
 - A. Bob's First Amendment Arguments
 - B. Conclusion
- IV. Mac's Appeal
 - A. Mac's First Amendment Arguments
 - B. Conclusion

CONSTITUTIONAL LAW
Copyright February 2004 State Bar of California

The National Highway Transportation and Safety Administration (NHTSA), a federal agency, after appropriate hearings and investigation, made the following finding of fact: “The NHTSA finds that, while motor vehicle radar detectors have some beneficial purpose in keeping drivers alert to the speed of their vehicles, most are used to avoid highway speed-control traps and lawful apprehension by law enforcement officials for violations of speed-control laws.” On the basis of this finding, NHTSA promulgated regulations banning the use of radar detectors in trucks with a gross weight of five tons or more on all roads and highways within the United States.

State X subsequently enacted a statute banning the use of radar detectors in any motor vehicle on any road or highway in State X. The State X Highway Department (Department) enforces the statute.

The American Car Association (ACA) is an association comprised of automobile motorists residing throughout the United States. One of ACA’s purposes is to promote free and unimpeded automobile travel. ACA has received numerous complaints about the State X statute from its members who drive vehicles there.

In response to such complaints, ACA has filed suit against the Department in federal district court in State X, seeking a declaration that the State X statute is invalid under the Commerce Clause and the Supremacy Clause of the United States Constitution. The Department has moved to dismiss ACA’s complaint on the ground that ACA lacks standing.

1. How should the court rule on the Department’s motion to dismiss on the ground of ACA’s lack of standing? Discuss.
2. On the assumption that ACA has standing, how should the court decide ACA’s claim that the State X statute is invalid under the Commerce Clause and the Supremacy Clause of the United States Constitution? Discuss.

CONSTITUTIONAL LAW
Copyright February 2004 Scott F. Pearce, Esq.
Outline

- I. The court should deny the Department's motion to dismiss on standing grounds.
 - A. The litigation is relevant to the Association's purpose.
 - B. Individual members of the Association would have standing.
 - C. No participation by individual members is needed.
 - D. Conclusion

- II. The Court Should Decide Against ACA's Constitutional Challenges to the State X statute
 - A. Commerce Clause
 - 1. Speed Limits are a reasonable exercise of the Police Power
 - 2. Banning use of radar detectors does not unreasonably burden commerce
 - 3. The State X law does not discriminate against other states.
 - 4. Conclusion: The State X statute does not violate the Commerce Clause
 - B. Supremacy Clause
 - C. Conclusion: ACA's Constitutional Challenges to the State X statute will fail.

CONSTITUTIONAL LAW

Copyright February, 2003 – State Bar of California

Paul, a student at Rural State University (“Rural”), wishes to sue Rural, a public school, for violation of his rights under the U.S. Constitution because rural refused to select him for its cheerleading squad solely on the basis that he is a male. Paul is indigent, however, and cannot afford to pay the costs of suit, including filing and service of process fees.

State law permits court commissioners to grant a prospective state court litigant permission to proceed in forma pauperis, which exempts the litigant from any requirement to pay filing and service of process fees. Paul applied for permission to proceed in forma pauperis. At a hearing, the state court commissioner conceded that Rural’s refusal to select Paul was constitutionally discriminatory, but nevertheless denied Paul’s application on the ground that Paul’s prospective lawsuit “involves merely cheerleading.”

What arguments could Paul reasonably make that the denial of his in forma pauperis application violated his rights under the U.S. Constitution, and what is the likely outcome. Discuss.

Constitutional Law – Outline of Issues
Copyright 2003 – Scott F. Pearce, Esq.

- I. Paul's Constitutional Arguments: Preliminary Issues
 - A. Standing, Ripeness and Mootness
 - B. State Action
 - C. Conclusion

- II. Procedural Due Process
 - A. Paul's Arguments
 - B. Conclusion

- II. Equal Protection
 - A. Paul's Arguments
 - 1. Gender Discrimination
 - 2. Fundamental Rights
 - B. Conclusion

- III. Substantive Due Process
 - A. Paul's Arguments
 - B. Conclusion

- IV. Conclusion

CONSTITUTIONAL LAW
Copyright February 2002 - State Bar of California

The growth of City has recently accelerated, putting stress on municipal infrastructure. City's water supply, roads, sewers, and schools are all operating in excess of designed capacity.

The Assembly of Future Life was organized in City not long ago. Its members adhere to certain unpopular religious beliefs. City gave the Assembly preliminary zoning approval for plans to build a worship center on a one-acre parcel of real property the Assembly owned within City's borders. The Assembly's plans incorporated a dwelling for its minister. Soon after the preliminary zoning approval, newspapers in City featured articles about the Assembly and its members' beliefs.

After these newspaper articles appeared, City adopted a "slow growth" ordinance providing for an annual lottery to allocate up to 50 building permits, with applicants for certain "priority status" dwellings entitled to participate first. Priority status dwellings were defined as: (1) affordable housing; (2) housing on five-acre lots with available sewer and water connections; or (3) housing with final zoning approval as of the date the ordinance was adopted. Only after all applicants for priority status dwellings had received permits in the lottery could other applicants participate.

Over 500 applicants for priority status dwelling participated in the first annual lottery. Realizing that its opportunity to participate in a lottery could be years away, the Assembly submitted an application for retroactive final zoning approval and a building permit. City denied the application.

The Assembly brought suit in federal district court against City, alleging that:

(1) City's ordinance was invalid under the due process, equal protection, and takings clauses of the U.S. Constitution; and (2) City's denial of the Assembly's application was invalid under the due process clause of the U.S. Constitution.

What arguments can the Assembly reasonably make in support of its allegations and is each argument likely to succeed? Discuss.

CONSTITUTIONAL LAW
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Outline

- I. Assembly's challenge to City's "slow growth" ordinance
 - A. Preliminary Issues
 - 1. Standing
 - 2. Ripeness and Mootness
 - 3. State Action
 - 4. Conclusion: Assembly is entitled to litigate these issues.
 - B. Substantive Due Process
 - C. Procedural Due Process
 - D. Equal Protection
 - E. Takings Clause
 - F. Conclusion: City's ordinance will be upheld.

- II. Assembly's challenge to City's denial of its retroactive application for zoning and building
 - A. Substantive Due Process
 - B. Procedural Due Process
 - C. Conclusion: City's denial of Assembly's application will be upheld.

CONSTITUTIONAL LAW
Copyright July 2001 - State Bar of California

To prepare herself for a spiritual calling to serve as a pastor at City's jail, Ada enrolled in a nondenominational bible school. After graduating, Ada advised the pastor of her own church that she was ready to commence a ministry and asked that her church ordain her. While sympathetic to her ambition, Ada's pastor accurately advised her that their church did not ordain women.

Ada began going to City's jail during visiting hours and developed an effective ministry with prisoners, particularly women inmates who increasingly sought her counsel. Ada noticed that ordained ministers who visited the jail received special privileges denied to her.

Dan, the jail supervisor, told Ada that ministers who were ordained and endorsed by a recognized religious group were designated "jail chaplains" and, as such, were permitted access to the jail during nonvisiting hours. He told Ada that she too could be designated a jail chaplain if she obtained a letter from a recognized religious group stating that it had ordained her as a minister and had endorsed her for such work.

Ada replied that her church was not part of any recognized religious group and would not ordain her anyway because she was a woman. She asked Dan nonetheless to designate her as a jail chaplain because of the effectiveness of her work.

Dan refused to designate Ada as a jail chaplain or to allow her the access enjoyed by jail chaplains. He acted pursuant to jail regulations adopted to avoid security risks and staff involvement in making determinations as to who was really a "minister."

Ada has brought suit in federal court to obtain an injunction requiring that she be designated a jail chaplain or be granted access to City's jail equivalent to those who have been designated jail chaplains. Ada's complaint is based on the grounds that the refusal to designate her a jail chaplain violates rights guaranteed to her and the prisoners by the First Amendment to the U.S. Constitution and also violates rights guaranteed to her by the equal protection clause of the Fourteenth Amendment to the U.S. Constitution.

How should Ada's suit be decided? Discuss.

CONSTITUTIONAL LAW
Outline
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- I. Ada v. City
 - A. Standing
 - 1. Standing to adjudicate her claims
 - 2. Standing to adjudicate the prisoners' claims
 - 3. Conclusion
 - B. Ripeness / Mootness and State Action
 - C. First Amendment
 - 1. Free Exercise Clause
 - 2. Establishment Clause
 - 3. Conclusion
 - D. Equal Protection
 - 1. Discrimination between recognized and non-recognized religions
 - 2. Discrimination between ordained and non-ordained ministers
 - 3. Gender discrimination
 - 4. Conclusion
- II. Injunctive Relief
 - A. Inadequate Legal Remedy
 - B. Property Interest
 - C. Feasibility
 - D. Balancing the Hardships
 - E. Defenses
 - F. Conclusion

CONSTITUTIONAL LAW

Copyright July, 2000 - State Bar of California

State law makes it a felony to either promote a dogfight or knowingly attend a dogfight where admission is charged. Ruth, a reporter for the Dispatch, City's only newspaper, observed a staged dogfight by posing as a patron and paying the admission fee. She took over 30 photographs of the event with a concealed camera. Later, she wrote an article about the event in the Dispatch that did not identify anyone else present, but which was accompanied by one of her photographs showing two dogs in bloody mortal combat.

The City police then asked Ruth if she knew the names of any persons at the illegal dogfight and requested all of her unpublished photographs in order to try to identify the fight promoters and attendees. With the backing of the Dispatch, Ruth flatly refused the police requests. When Ruth's refusal came to the attention of the city council, several council members stated publicly that the Dispatch was guilty of "bad citizenship." The council then unanimously enacted an ordinance banning all coin-operated news racks from City's public sidewalks and any other public property in order to "improve public safety." The ordinance left unaffected those other news racks on public property, far fewer in number, that dispensed several kinds of free publications (commercial, political, religious, etc.)

The state prosecutor in City commenced a grand jury investigation of illegal dogfighting in City. The grand jury subpoenaed Ruth to testify and answer questions about the dogfight she had attended and to produce all her unpublished photos of the event. Ruth brought an appropriate action in state court seeking an order quashing the grand jury subpoena.

The Dispatch sells about half of its daily editions from coin-operated news racks located on City's sidewalks. The Dispatch commenced an action against the city council in the local federal district court seeking a declaration that the ordinance banning coin-operated news racks violates rights guaranteed under the U.S. Constitution.

1. What arguments based on rights guaranteed by the U.S. Constitution could Ruth reasonably make in support of her action for an order quashing the grand jury subpoena, and how should the court rule on each? Discuss.
2. What arguments could the Dispatch reasonably make in support of its claim that the city ordinance violates rights guaranteed under the U.S. Constitution, and how should the court rule on each? Discuss.

CONSTITUTIONAL LAW
Copyright July, 2000 - Scott F. Pearce, Esq.
Outline

- I. Ruth's Constitutional Theories Re: Motion to Quash
 - A. Standing, Ripeness and Mootnes
 - B. Subpoena Re: Testimony and Photographs
 - 1. 5th Amendment Right Against Self-Incrimination
 - 2. 1st Amendment Freedom of Speech
 - 3. The Photographs
 - C. Conclusion

- II. Dispatch v. City Council Re: Anti-News Rack Law
 - A. Standing, Ripeness and Mootness
 - B. 1st Amendment Freedom of Speech
 - 1. The statute was passed by the Council out of anger.
 - 2. The Council justified its action as in the interests of "public safety".
 - 3. The statute is not a valid time, place and manner restriction.
 - 4. Conclusion
 - C. Equal Protection
 - D. 5th Amendment Taking
 - E. Conclusion

CONSTITUTIONAL LAW
Copyright July 1997 - State Bar of California

A city ordinance enacted several years ago requires payment of an annual tax of \$500 by each household in City with two or more children. The tax applies only to people who have become residents of City since the effective date of the ordinance. Its stated purpose is to reimburse City in part for the additional public school expenses and costs of recreational facilities attributable to the new residents.

Paul and Pat, husband and wife, became residents of City since the effective date of the tax ordinance and live alone with no children. They have filed suit against City in federal court for a judgment declaring that the ordinance violates their rights under the U.S. Constitution to familial privacy, to due process, and to equal protection.

During discovery, Paul and Pat revealed that they are medically unable to conceive a child and have applied to adopt twins. Although the court had ordered that this information remain confidential and all references to it were ordered sealed, City's attorney has disclosed the information in a press release. Paul and Pat have amended their complaint to allege a third claim against City: i.e., that the disclosure by City's attorney violated their privacy rights under the U.S. Constitution, entitling plaintiffs to an injunction prohibiting further disclosures and allowing the court to impose sanctions for violation of its confidentiality order.

City has moved to dismiss the entire complaint on the following grounds: (1) the plaintiffs lack standing to challenge the tax ordinance, and (2) that, in any event, none of the alleged constitutional rights claimed by Paul and Pat were violated by City.

How should the court decide City's motion to dismiss? Discuss.

CONSTITUTIONAL LAW
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Outline

- I. City claims plaintiffs lack standing to challenge the tax ordinance.
 - A. Standing
 - 1. “Case in Controversy” Article III
 - 2. Plaintiffs do not have children, and are medically unable to conceive.
 - 3. Taxpayer standing
 - B. Ripeness
 - C. The 11th Amendment does not bar the action.
 - D. Conclusion

- II. Paul and Pat’s Constitutional Rights Claims
 - A. Familial Privacy - Substantive Due Process
 - B. Procedural Due Process
 - C. Equal Protection (children, number of children, and duration of residency)
 - D. Injunction and Sanctions
 - 1. Collateral Bar Rule
 - 2. 1st Amendment Speech Restriction

CONSTITUTIONAL LAW
Copyright July 1996 - State Bar of California

To lessen the exposure of children to lead poisoning, Congress passed the Lead Poisoning Prevention Act (LPPA), to be administered by the federal Housing and Urban Development Agency (HUD). LPPA requires owners of residential housing, including all state and municipal owners of public housing, built before 1965, when lead-based paint was banned, to test all such dwellings for the presence of lead-based paint. The owner must then record the results of the test with the county recorder. If the presence of lead-based paint is found, LPPA requires the owner at the owner's expense to take remedial steps within 18 months to remove all traces of lead.

LPPA requires each state to designate a state agency to enforce LPPA within that state. LPPA also authorizes private enforcement by a suit in a federal district or state court, including: (a) injunctive actions by lawful residents of affected dwellings, and (b) compensatory damage actions by anyone proximately injured by a failure to comply with LPPA.

After passage of LPPA, State X, through its attorney general, filed suit in federal court in State X against HUD contesting the validity of LPPA under the U.S. Constitution. The suit alleges that Congress lacks authority: (a) to enact such regulatory legislation; (b) in any event, to require individual states to enforce the LPPA; and (c) to regulate through such legislation state or municipally owned housing.

Ida is a wealthy investor living in State X who owns no residential buildings, but claims to be planning to buy several apartment buildings built before 1965. Ida claims that LPPA imposes such extraordinary liability risks on owners of affected residential properties as to constitute an unlawful confiscation. Ida has filed a motion to intervene as an additional plaintiff in the State X attorney general's pending suit to contest the constitutionality of LPPA as applied to her. HUD opposes Ida's motion to intervene, claiming that she lacks standing.

1. How should the federal court rule on the following arguments of the State X attorney general?
 - a. That Congress lacks authority to enact such regulatory legislation. Discuss
 - b. That Congress lacks authority to require the individual states to enforce the LPPA. Discuss.
 - c. That Congress lacks authority to regulate state and municipally owned housing through such legislation. Discuss.

2. How should Ida's motion to intervene be decided? Discuss.

CONSTITUTIONAL LAW
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Outline

- I. Federal Court's Rulings on the State X Attorney General's Arguments
 - A. Congress lacks the authority to enact this regulation.
 - 1. 10th Amendment
 - 2. Commerce Clause
 - 3. Necessary and Proper Clause
 - B. Congress lacks the authority to require states to enforce the LPPA.
 - 1. 10th Amendment
 - 2. Intergovernmental Immunities
 - C. Congress lacks the authority to regulate state and municipally owned housing.
 - 1. Commerce Clause
 - 3. 11th Amendment
- II. Ida's motion to intervene should be denied.
 - A. Ida does not have standing.
 - B. Conclusion

CONSTITUTIONAL LAW
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Because teenage pregnancies have increased the number of school dropouts, the Board of Education of City (Board) adopted an "Alternative Education Program" (AEP) for unmarried students under age eighteen who become pregnant. All such students must participate. AEP offers a special core educational curriculum supplemented with personal counseling and instruction on prenatal and infant care designed to alleviate the educational, emotional, social and health problems confronting unmarried teenage mothers. Once placed in AEP, the student remains a participant through the term of her pregnancy and until the end of the school year in which her pregnancy terminates.

Pam, an unmarried sixteen year old eleventh grader at City High School, is pregnant. She wants to remain in her regular classes at City High School but has been assigned to AEP. She has sued the Board in federal district court for declaratory and injunctive relief, seeking return to her original classes. Pam's complaint alleges that being assigned to AEP violates her right to equal protection of the law guaranteed by the United States Constitution and penalizes her for exercising a fundamental right protected by the substantive due process provision of the Constitution.

Shortly after Pam's suit was filed, the school year ended and during the summer Pam suffered a miscarriage. The Board has transferred Pam back to her regular high school classes and has moved to dismiss her complaint on the grounds that : (1) the action is moot; and (2) the complaint fails to state a claim for relief under the Constitution.

How should the court rule on the issues raised by the Board's motion? Discuss.

CONSTITUTIONAL LAW
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Outline

- I. The Board alleges that Pam's action is moot.
 - A. Standing and Ripeness
 - B. Mootness
 - C. Conclusion: Pam's suit will not be dismissed for being moot.

- II. The Board alleges that Pam's complaint fails to state a Constitutional claim.
 - A. Pam claims that her assignment to AEP violates her right to equal protection.
 - 1. Pam's gender discrimination claim: Intermediate Scrutiny
 - 2. Is Board's action substantially related to an important government interest?
 - 3. Pam's age discrimination claim: Rational Basis
 - 4. Conclusion: Pam's equal protection claim should not be dismissed.
 - B. Pam claims her assignment to AEP violates her substantive due process rights.
 - 1. Privacy is a fundamental right.
 - 2. Strict Scrutiny
 - 3. Conclusion: Pam's substantive due process claim should not be dismissed.

CONSTITUTIONAL LAW
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Ricks County is a rural, sparsely populated county of State X. There have never been enough female prisoners to make it economically feasible to have separate facilities for them in the Ricks County Jail, which is located in Hickory. Consequently, Ricks County has always placed its female prisoners in the Rock County Jail, some thirty miles from Hickory, under a contractual per diem arrangement with Rock County.

Betty recently moved to Hickory from the state capital of State X. She had worked there for five years as a guard in the large State X prison. Betty has applied for one of two vacant positions as a deputy jailer at the Ricks County Jail. She is thirty-four years old, five feet five inches tall, weighs one hundred forty-five pounds, and is a junior college graduate.

Marie, who has just returned to Hickory after a four-year enlistment in the Marine Corps following graduation from high school, has also applied for one of the deputy jailer jobs. Marie was a corporal in the military police for the last two years of her Marine Corps enlistment. She is twenty-two years old, five feet seven inches tall, and weighs one hundred fifty-five pounds.

Dan, the Ricks County sheriff, has stated that he will not hire either Betty or Marie as deputy jailer because of their gender. Dan said that having a woman inside the Ricks County Jail would create unmanageable security problems for two reasons. First, a woman would not be strong enough to deal with unruly inmates, and second, there would be the danger to her of sexual assaults by male prisoners. Dan also claims that having a woman as a jailer would infringe on the privacy interests of the male inmates who must use toilet and shower facilities in full view of the jailers. Finally, Dan claims that Betty did not meet the minimum height and weight requirements for deputy jailers under State X law: five feet six inches and one hundred fifty pounds. These requirements have always been enforced.

Dan agreed that both women applicants met the age and educational requirements of State X law: being at least twenty years old, and having a high school diploma or its equivalent. Both Betty and Marie have letters from their supervisors in their previous employment stating that each was a competent, reliable, good-to-average employee, with no job performance problems.

Betty and Marie have each filed a complaint in federal district court in State X against Ricks County and Dan. The complaints seek injunctive relief requiring defendants to approve plaintiffs' job applications and to employ them as deputy jailers, under rights guaranteed by the U.S. Constitution. Given the similarity of major issues, the actions have been consolidated.

How should the court rule on the claims of Betty and Marie? Discuss.

CONSTITUTIONAL LAW
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Outline

- I. Betty and Marie's Equal Protection Claims against Ricks County and Dan.
 - A. Standing: Betty and Marie have been denied employment because they are female.
 - B. State Action: Sheriff Dan is an agent of State X.
 - C. The 14th Amendment and gender discrimination:
 - D. Dan's justifications for not hiring Betty and Marie:
 - 1. Women are not strong enough to deal with unruly inmates.
 - 2. The danger of sexual assaults by inmates:
 - 3. The threat to the privacy of male inmates:
 - E. Conclusion: Marie will win the injunctive relief she seeks.
- II. Betty's failure to meet the State X height requirement is unrelated to her gender.
 - A. Betty must rely on the 14th Amendment.
 - B. The rational basis standard will be applied to Betty's challenge to the height and weight requirements.
 - C. Conclusion