WIDENER UNIVERSITY SCHOOL OF LAW

EXAMINATION

Fall 1999

First Amendment Professor Alan E. Garfield

INSTRUCTIONS:

- 1. This exam has three parts:
 - (a) Essay Question #1:
 Worth: 33 Points
 Estimated time needed by students: 1 hour
 - (b) Essay Question #2:
 Worth: 33 Points
 Estimated time needed by students: 1 hour
 - (c) Essay Question #3:
 Worth 34 Points
 Estimated time needed by students: 1 hour
- 2. The exam consists of 4 pages (not including this page). Please check now to see that you have a complete copy.
- 3. Good luck!

Question #1

(33 Points)

(Estimated Time: 1 Hour)

Mary Smith is 23 years old. She is originally from Kansas but moved to New York City when she was 18 to study at New York University. Sometime during her junior year in college, Mary became involved with a religious cult known as "People for Outer Consciousness," or as its members refer to it, "POC." Followers of POC believe that most people live unfulfilled lives because they suppress their inner consciousnesses. They believe that the true road to happiness is to understand one's inner consciousness and to express it to the outside world.

To symbolically remind themselves to reveal their inner consciousnesses, and as a way of bringing this message to non-believers, all POC members wear their undergarments on the outside of their clothes. Mary, for example, wears her underwear on the outside of her clothes. Mary hopes that this will remind others to bring their inner consciousnesses out in the open.

Mary's unusual dressing habits barely raised an eyebrow in New York City, but such was not the case when Mary visited her parents in Kansas. One day during her visit, Mary and her mother went to the local supermarket. Soon after they started shopping, a local sheriff arrived and arrested Mary for violating the township's indecent exposure law. The law makes it a misdemeanor to appear in public in "a state of indecency that would be highly offensive to other members of the public." Mary was subsequently convicted and fined \$200.00.

Mary is currently appealing her conviction on First Amendment grounds. What arguments can be made for and against having Mary's conviction overturned on First Amendment grounds? Please make sure to fully explain your answer.

Question #2

(33 Points)

(Estimated Time: 1 hour)

Congress has been very concerned about gun violence in American society. Efforts have been made to control the manufacturing and selling of guns, but these efforts have had only minimal success in stemming gun violence. As a result, Congress recently passed the "Gun Violence Act of 1999." This comprehensive bill places restrictions on the advertising of guns and the depiction of gun violence on television.

Please consider and discuss the following:

- (a) One provision of the Gun Violence Act makes it illegal to advertise the sale of any type of gun. Advertisements for guns may only be posted inside gun stores. No advertisements are allowed in newspapers, magazines, or on billboards.
 - Harry owns "The Outdoorsman," a sporting goods store in West Virginia, that sells a wide range of hunting and fishing gear. For years Harry has run advertisements in the local paper listing the sales of his merchandise, including the sales of guns which are a major part of his business. Harry has brought a suit seeking a declaratory judgment that the Gun Violence Act's ban on the advertising of guns is unconstitutional. What arguments can be made for and against finding this provision of the Act unconstitutional?
- (b) Another provision of the Gun Violence Act makes it unlawful to transmit on either broadcast or cable television any depiction of gun violence between 7:00 a.m. and 10:00 p.m. The Act only applies to fictionalized depictions of gun violence; it does not apply to actual pictures of gun violence as might be used in a news broadcast. Neither does the Act prohibit a discussion of gun violence (as might occur in either a news show or a fiction television show).

The legislative history of the Gun Violence Act includes numerous reports submitted by social scientists which indicate a link between gun violence in the media and gun violence by youth. The legislative history also indicates that the "V" symbol used in the current rating system for television does warn viewers that a program may contain gun violence, but that most parents do not pay attention to these ratings. It was also noted that televisions with a "V-Chip" can be used to block all programming with a "V" rating, and that by the year 2001, most homes are expected to have a TV with a V-Chip. Nevertheless, several experts testified that few parents currently use the V-Chip technology and that many find it too bothersome to learn how to use it.

The American Broadcasting Company ("ABC") has brought an action challenging

the Gun Violence Act's limitation on when gun violence may be depicted on television. What arguments can be made for and against finding this provision of the Act unconstitutional?

Question #3

(34 Points)

(Estimated Time: 1 Hour)

Wrestling is a big time sport in Ohio. Hundreds of parents and students turn out for meets and whole communities read about meet results in the local newspapers.

There has been a longstanding tradition in the Foxhole School District to have a prayer said before each wrestling meet. Many members of the community believe that these prayer sessions protect contestants from being hurt during matches.

A few years ago, counsel for the School District advised the School Board that these prayer sessions, even if led by students, may not be constitutional. A year later the School District implemented a new "Open Meeting Policy" that is currently in place. The policy explicitly forbids any formal prayer session before a wrestling match. Instead, the policy provides that 30 minutes before a wrestling meet, the auditorium where the meet will occur should be reserved for community gatherings. These gatherings may be for whatever purposes people choose to use them (i.e., discussing current events, health concerns). To facilitate the use of the space for these gatherings, people interested in leading a community group must notify the manager of the auditorium two days before a match. The manager will then post a sign before each match which will announce the different groups meeting that night, and in which part of the auditorium's seating area each group will meet.

Since the new policy was implemented, members of the local Baptist church have requested space before each wrestling match so that members of the community can hold a bible study and prayer session. Only two other groups have requested space before matches: the local chapter of the Rotary Club, which had poor attendance at its first meeting and has not scheduled a meeting since; and the Horticultural Club of Foxhole, which regularly requests meeting space before wrestling matches but attracts only a handful of people. Without exception, 95 percent of the people who show up before a wrestling match go to the bible study and prayer session. The songs and prayers by this group can be heard throughout the auditorium but this has not led to complaints from other groups.

(a) To avoid any constitutional problems, the Open Meeting Policy forbids any employee of the Foxhole School District from participating in any meeting before a wrestling match that involves religious ceremonies. Bob Johnson is a school teacher in the Foxhole School District. He is also a devout Christian.

Bob has sued the School District claiming that the prohibition of employee

participation in religious meetings is unconstitutional. What arguments can be made for or against finding this prohibition unconstitutional?

(b) Amy is a school teacher in the Foxhole School District. She is also a member of the Ohio Atheists Society. Amy was deeply disturbed by the School District's Open Meeting Policy for wrestling matches, and after the District implemented the policy, she started wearing a pin to school that has a large question-mark on it, which is the symbol of the Atheists Society. The Principal of Amy's school told Amy that she was not allowed to wear the pin while at school but Amy persisted in doing so. The School District subsequently terminated Amy because of her refusal to cooperate with the Principal's request.

Amy is challenging her dismissal on First Amendment grounds. What arguments can be made for or against finding Amy's dismissal unconstitutional?

(c) The ACLU of Ohio has brought a suit on behalf of some students of the Foxhole School District seeking to have the School District's Open Meeting Policy declared unconstitutional. What arguments can be made for or against finding the school district's policy unconstitutional?