Anonymous number:

## LEGISLATION - SECTION A

Thursday, December 13, 1990 1:00 p.m. to 4:00 p.m.

# Professor Ray

## Instructions

- 1. This is an open book examination. You may use any materials you consider helpful.
- 2. Be sure to write your anonymous number on this examination and on each blue book you use.
- 3. Number your blue books, and indicate on the first blue book the total number of blue books you are submitting.
- 4. Please begin the answer to each of the three questions in a separate blue book.
- 5. Please write on only one side of a page. And please write as legibly as you can.
- 6. If you think that you must assume any facts not included in the question in order to complete your answer, please indicate what assumptions you are making.

#### I 90 minutes

Michael and Jennifer Lee are the parents of eight year old In December 1983 the Lees move to Evergreen Timothy, who is deaf Vermont and enroll Timothy in the public school system After the local school officials review Timothy's prior school and medical records, he is assigned by the school board to a program for handicapped children in Hamilton a town some 20 miles from Evergreen Timothy is the only deaf child in a class of 10 children with various disabilities In February 1984 the Lees who believe that Timothy's educational needs would be better served by a placement in a school for the deaf in Burlington appeal the board's decision to the state education agency under the federal Education of the Handicapped Act (EHA) On September 1 1984 the state agency reverses the board's decision and orders it to pay Timothy's expenses at the Burlington school After reviewing the state agency's decision, the board decides to accept the ruling and not appeal the matter further

In December 1984, the Lees file suit in federal district court under the EHA, seeking attorneys' fees for their successful effort to change Timothy's placement. The school board argues that the Lees are not entitled to attorneys' fees for a successful effort conducted in 1984 at the administrative level. Research by the trial court's law clerk produces the following information on the EHA. In light of that material, draft an opinion for the trial court on the question of whether the Lees are entitled to attorneys' fees.

- 1 The Education of the Handicapped Act (EHA) was orginally enacted in 1975
- 3 Section 1415(e)(4) provides that "[t]he district courts of the United States shall have jurisdiction of actions brought under this subsection without regard to the amount in controversy "
- 4 In <u>Smith v. Robinson</u>, 468 U S 992 (1984), the Supreme Court ruled that attorneys' fees were not available under EHA to plaintiffs who prevailed in administrative proceedings and then filed suit for attorneys' fees under the statute



- 5. In 1986 Section 1415(e)(4) was amended to include subsection (e)(4)(B): "In any action or proceeding brought under this subsection, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to the parents or guardian of a handicapped child or youth who is the prevailing party."
- 6. Act Aug. 5, 1986, P.L. 99-372, Section 5, 100 Stat. 798 the act which amended the EHA provides: "The amendment made . . . shall apply with respect to actions or proceedings brought under [Section 1415(e) of the EHA] after July 3, 1984, and actions or proceedings brought prior to July 4, 1984, under such section which were pending on July 4, 1984.
- 7. In New York Gaslight Club, Inc. v. Carey, 447 U.S. 54 (1980), the Supreme Court indicated in dicta that in Title VII civil rights actions the prevailing party could be awarded attorney's fees incurred in state and local administrative proceedings even when no lawsuit was filed.
- 8. In North Carolina Department of Transportation v. Crest Street Community Council, Inc., 479 U.S. 6 (1984), the Supreme Court held that attorneys' fees are available in Title VII civil rights actions for administrative proceedings only when those proceedings are part of or are followed by a lawsuit.
- 9. According to the Senate Labor and Human Resources Committee Report for the 1986 amendment, the congressional intent was to "allow the Court, but not the hearing officer, to award fees for time spent by counsel in mandatory EHA administrative proceedings. This is consistent with the Committee's position that handicapped children should be provided fee awards on a basis similar to other fee shifting statutes when securing the rights guaranteed to them by the EHA. [citing New York Gaslight Club]" S. Rep. No. 99-112. 99th Cong., 2nd Sess (October 2, 1985)
- 10. According to the House Committee Report on the amendment, "if a parent prevails on the merits at an administrative proceeding..., the parent may be awarded reasonable attorneys' fees, costs and expenses incurred in such administrative proceeding. There is no sound basis for distinguishing the rights of litigants under the EHA from the rights of litigants under Title VII in this regard. [citing New York Gaslight]" H. Rep. No. 99-296, 1st Sess. 5 (October 5, 1985)
- 11. In floor debate on the amendment, the following colloquy occurred between Senator X, a sponsor, and Senator Y, an opponent.
- Sen. X: "We want to encourage parents to assert the rights of their handicapped children under EHA, and we don't believe that a parent's lack of money should mean a child's lack of educational opportunity."
- Sen. Y: "We all want the best for America's children, but we also must consider the limited resources available these days to our school systems. Should school boards have to worry about



Sen. X: "I share your concern, and let me assure you that it is not the intention of this committee to expose our well intentioned school officials to unforeseen expenses when these disputed cases don't ripen into serious litigation."

12. In an opinion letter dated November 12, 1986, the United States Department of Education reviewed the legislative history of Section 1415(e)(4)(B) and concluded that "fees incurred at the administrative 'due process' level are subject to reimbursement." Letter of G. Thomas Bellamy, Director, Office of Special Education Programs of the U.S. Department of Education.

## II. 45 minutes

Open Election, a citizens' group favoring the reform of present campaign finance legislation, proposes the following changes to the Federal Election Campaign Act:

- A. An individual may contribute no more than \$250 to each candidate he or she supports and may contribute only to candidates running for office in the jurisdiction where the contributor is registered to vote.
- B. All campaign contributions must be forwarded to the Federal Election Commission, which will create a common fund of contributions for each electoral contest. The Commission will then divide those contributions equally among the candidates for that office (i.e., A and B are running for a seat in the House of Representatives; A receives \$800,000 in contributions, while B receives \$200,000; the Commission would pool those contributions and distribute \$500,000 to each candidate).
- C. Corporations may make contributions only to the common fund they may not designate the identity of their preferred candidate.
- D. All political advertisements on radio and television must be at least five minutes in length and must be broadcast between the hours of 5:00 p.m. and 8:00 p.m.

Comment on the constitutionality and the policy advantages or disadvantages of <u>three</u> of these proposals in light of present campaign finance law.



## III. 45 minutes

James and Margaret Anderson, residents of the state of Widener, have been married for ten years and separated for two years. While their attorneys are in the early stages of negotiating a divorce settlement under the Widener no fault divorce law, Margaret hires a private detective to investigate her husband's social activities. Her detective obtains evidence that James is having an affair with another woman. Margaret takes this evidence to the local police and asks that James be arrested under Section 53a-81 of the state penal code, which provides as follows:

Sec. 53a-81. Adultery: Class A misdemeanor

- (a) Any married person is guilty of adultery when he engages in sexual intercourse with any person other than his spouse.
  - (b) Adultery is a class A misdemeanor.

The penalty for a violation of Sec. 53a-81 is a term of imprisonment of up to one year.

Widener, one of a dozen states that presently have adultery statutes, first enacted an adultery statute in 1824. The predecessor to the present Widener statute applied only when the woman participating in the adultery was married; in 1971 the statute was revised to apply to sexual intercourse with any person other than one's spouse. In 1985 the Widener Law Revision Commission recommended to the state legislature that the adultery statute be repealed, but the legislature did not act on that recommendation.

Although the police are reluctant to respond to Margaret's complaint because there have been no prosecutions under the statute for thirty years, Margaret insists and James is arrested. He is tried, convicted, and given a suspended sentence of six weeks. James is now appealing his conviction to the Widener Appellate Court. James' attorney argues that the state should not be permitted to enforce the statute because it represents an obsolete attempt to legislate moral values that has not been enforced for a generation. The state responds that the statute is on the books and must be enforced until it is repealed.

How should the court rule on the appeal and why?