

FINAL EXAMINATION
Constitutional Law
Professor Power

Question 1 (90 minutes)

It is now 1995. Three years ago, Congress enacted the Billions for Defense but Not One Cent for Tributaries Act (“Billions Act”). That Act contains the following provisions:

Section 1. - Revenue Enhancement

Each person must pay a fee of \$2 whenever he or she:

- a. Crosses an interstate waterway;
- b. Travels on a boat or other watercraft on any navigable waterway in the United States.

Section 2. - Disposition of Funds

Funds received under this Act shall be disbursed as follows:

- a. $\frac{1}{2}$ of all funds shall be provided to the Department of Defense for general military expenditures;
- b. $\frac{1}{2}$ of all funds shall be provided to the various states for use in improving the environment, but no state shall receive any funds unless it establishes a program to control the spread of Acquired Immunodeficiency Syndrome (AIDS) and prohibits persons with that disease from marrying.

Section 3. - Incentives for Private Initiatives

- a. The \$2 fee shall be waived for any person who is certified by the Environmental Protection Agency as having worked on behalf of the environment for 20 or more hours in the previous year.
- b. The \$2 fee shall be waived for any person who is certified by the Center for Disease Control as having been tested for AIDS.

The State of Frenzy passed 3 statutes following Congress’ enactment of the Billions Act. The 1st set up a statewide office responsible for collecting data on AIDS. The 2nd required that all persons applying for marriage licenses take an AIDS screening test, which is accurate 90% of the time, and prohibited persons diagnosed in that test as having AIDS from marrying in the State of

Frenzy. The 3rd prohibited the advertising of condoms that are not effective in preventing the spread of AIDS.

Your client is Bambi Neejurck. She chairs the Friends of Rafting on The Housatonic (FROTH), an environmental and recreational group in southwestern Frenzy. She tells you that FROTH is upset about the Billions Act and the 3 new state laws and asks you to file an action in federal court challenging each statute.

Tell her whether she or FROTH may bring the action. Your answer should identify and explain any questions you may want to ask her to help resolve this part of the question.

Then, assuming that the action may be brought, explain what arguments you can make that the various statutes are unconstitutional.

Question 2 (90 minutes)

In Massachusetts Board of Retirement v. Murgia, Justice Marshall dissented from a judgment upholding a state law setting a mandatory retirement age for state police officers. In the course of his opinion, he stated the following:

“Although there are signs that its grasp on the law is weakening, the rigid 2-tier model still holds sway as the Court’s articulated description of the equal protection test. Again, I must object to its perpetuation. The model’s 2 fixed modes of analysis...do not describe the inquiry the Court has undertaken - or should undertake - in equal protection cases. Rather, the inquiry has been much more sophisticated and the Court should admit as much.”

Justice Stevens disagrees with the 2-tier model as well. He describes the case law as “reflect(ing) a continuum of judgmental responses” that ultimately turn on 1 question - does the legislative action seem to constitute a reasonable response to a real problem?

Discuss the nature of equal protection review, with emphasis on the different methods the Supreme Court has used to resolve different problems. You may, of course, agree or disagree, in whole or in part, with Justices Marshall and Stevens. You may also relate equal protection analysis to other topics discussed in this course. Your answer, however, should discuss both the terminology and reality of equal protection analysis.