FINAL EXAMINATION

Constitutional Law Professor Power

Question 1 (90 minutes)

Assume that the following bill is pending before Congress:

THE HUMAN RIGHTS ACT OF 1985

- 1. All persons shall be entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages and accommodations of each establishment listed in Section 3.
- 2. In order to assure that all persons are able to receive the full and equal enjoyment provided by Section 1 of this Act, each establishment listed in Section 3 shall provide the following special facilities for the disabled by January 1, 1987:
 - a. Wheelchair ramps, if it is necessary at present for persons to ascend or descend outdoor stairs or steps;
 - b. Elevators that can be operated by persons in wheelchairs, if it is necessary at present to ascend or descend indoor stairs or steps;
 - c. Restroom conveniences that can be utilized with safety and personal dignity by persons in wheelchairs, if restroom conveniences are provided to other persons.
- 3. Each of the following establishments is subject to this Act:
 - a. Any inn, hotel, motel or other place of transient lodging that contains at least 5 rooms for hire;
 - b. Any motion picture house, theater, concert hall, sports arena or stadium that customarily presents entertainment that moves in interstate commerce;
 - c. Any store, shop or other place that customarily sells any item that has traveled in interstate commerce;
 - d. Any manufacturing plant that affects interstate commerce in any manner or degree.
- 4. Any establishment listed in Section 3 that would be required to spend more than \$20,000 to comply with this Act is exempt from its provisions until January 1, 1990.

You have been asked to testify before a Senate committee concerning this legislation. Please discuss whether the proposed legislation is constitutional. Your answer should discuss every portion of the proposed statute that arguably raises a constitutional issue. If you think amendments may be required to make the statute constitutional, explain why they may be necessary and suggest possible amendments.

The committee is also interested in your views on 2 state laws already in effect. They are 1) a New York law enacted for safety reasons which requires that every place of business and multiple occupant dwelling in New York contain a fire escape that can be utilized by persons in wheelchairs, and 2) a Massachusetts law enacted "to ensure human rights for all citizens" which imposes requirements similar to those in the proposed federal statute on all places of business located in Massachusetts. The Massachusetts law also requires that all buses that pick up or discharge passengers in the state have wheelchair ramps. Your answer should discuss whether the New York and Massachusetts laws are now constitutional and whether they would be constitutional if the Congressional statute is adopted as proposed.

Question 2 (90 minutes)

The state of Nevada makes prostitution, defined for purposes of this question as the sale of sexual services, a crime punishable by 6 months in jail. Another Nevada statute, however, allows individual communities to enact local ordinances permitting and regulating prostitution. One town that has chosen to do so is Winnemucca. That town recently enacted 6 ordinances concerning prostitution. The ordinances state as follows:

- 1. Prostitution, as defined in the laws of the State of Nevada, is permitted within the Town of Winnemucca subject to the following ordinances;
- 2. a. Female prostitutes may sell sexual services only to men;
 - b. Male prostitutes may sell sexual services only to women;
- 3. Prostitutes may sell sexual services only between the hours of 1 p.m. and 4 p.m.;
- 4. Prostitutes must be certified by a licensed physician as free from any venereal disease;
- 5. Prostitutes selling sexual services in Winnemucca may not reside within city limits;
- 6. Prostitutes may not marry any person who resides in Winnemucca.

Two persons who engage in prostitution in Winnemucca, Della Street and Walter Walker, come to your law office upset about the limitations imposed on them by the ordinances. They tell you that prostitution had been virtually unregulated in Winnemucca until a recent and stormy Town Council meeting. That meeting occurred approximately 1 week after 2 prostitutes moved

into Winnemucca and were severely beaten the same evening while they were plying their trade on the town's streets. At various points in the debate over ordinances 2 through 6, members of the Town Council cited health, safety or morals justifications for various provisions, but no formal legislative findings were adopted.

Street and Walker also tell you that although homosexual prostitution is banned by ordinance 2, the Chief of Police has stated that his department enforces it only where male homosexual conduct is concerned. The Chief bases this policy on his belief, adequately supported by medical evidence, that Acquired Immune Deficiency Syndrome (AIDS) is transmitted primarily through male homosexual conduct. Walker is offended by this policy, but notes that he has never engaged in homosexual prostitution. Indeed, he and Street are happily married to each other.

Street and Walker want to know if they could prevail in a lawsuit brought in Federal court challenging ordinances 2 through 6 and the Police Chief's enforcement policy with respect to ordinance 2. Answer them, explaining all of the possible theories discussed in this course under which such a suit could be brought, any obstacles they would face, and the probable outcome of the litigation.