

PART II: Essay Question
Recommended Time: 75 minutes

To: You, the Legal Director of the Office of the Governor
From: The Honorable Eric C. Christiansen, Governor of California
Re: Herb Suppression Laws and Religious Protest

As you know, I was elected governor to bring law and order back to this state and it is my considered opinion that the correct place to begin is by cracking down hard on the too frequent and casual use of herbs for cooking! I am particularly concerned with the overuse of parsley, sage, rosemary and thyme—they corrupt our residents with too much flavor in their food! Also, I have heard rumors of strange rituals involving these herbs.

As a consequence, the state has recently passed the Herb Suppression Law (HSL) of 2008. Possession of any of the four herbs named above is a misdemeanor and cultivating or selling them is now a felony in the state. A couple issues have arisen in relation to HSL

First, there is at least one religion, Holy Herbalism (HH), that relies heavily on use of these four herbs for their religious worship—which I and others think is weird. I believe they cover their unclothed bodies with a paste-like mixture made from the herbs; this allows them to commune with their deity. No exception was written into the law for this use and the adherents of HH have already been arrested.

Second, the religious adherents and their supporters are protesting the law. I fear that violence may break out at any moment. Today, police here in Sacramento found flyers pasted all around the State Capitol Building that said (in very large, bold lettering): "Take Down the Governor! Take Down the Government!" at the top and then explained that there would be a "Massive Herb-Loving Rally" on the steps of the Capitol Building tomorrow.

We have already identified the two leaders of this movement, who wrote and posted the flyers and are planning the demonstration tomorrow. They will be arrested tonight and charged under the California law making it a crime to "promote illegal activity." We'll seek a permanent injunction prohibiting future participation by them in HSL demonstrations.

I also wish to arrest anyone demonstrating tomorrow on the steps of the Capitol Building as that is also illegal. Under California law, protests are allowed on the grounds of the park surrounding the Capitol Building (between 8am and 8pm) but may not enter the building or climb on any part of it (including the stairs). We will not arrest those who protest in accordance with the law.

Please help me with the following issues:

- 1) Are the adherents of HH protected under the Religion Clauses of the U.S. Constitution? What effect does that have on our enforcement of the law against them?
- 2) Is our arrest of the two leaders of the protest for violating the law against promotion of illegal activity constitutional? Do you think the judge will grant our injunction against them?
- 3) Is our law prohibiting protesting on the steps permitted under constitutional free speech protections?