

CONSTITUTIONAL LAW LS2 CHRISTIANSEN FALL 2009**PART II: Essay Question****Recommended Time: 75-90 minutes**

After a spate of embarrassing news stories about sexual infidelity among executive branch officials, conservative members of Congress threaten to pass laws severely punishing federal employees who engage in "acts of sexual immorality." The executive branch believes that such a law would be very embarrassing to the federal administrative agencies because secret internal investigations have revealed that many federal employees had sex before marriage, have cheated on their spouse or slept with married persons, or even have engaged in certain illegal sexual activities.

The President of the United States, in an attempt to limit the political fall-out of such a potential law and to avoid humiliating speeches on the floor of the House and Senate, preemptively signed Presidential Order 301. This executive order required that all executive branch officials and employees sign a document swearing or affirming that they have never "committed adultery, fornication, or other similar acts of sexual immorality" prior to or since receiving employment by the U.S. government. Those who refuse to sign these "morality statements" are to be fired or discharged.

Not wishing to appear less concerned about sexual morality than the President, Congress proposes a Moral Government Officials Act. This Act would require that all states which receive federal funding require similar oaths of "any and all officials who directly or indirectly supervise, direct or oversee" any programs "partially or fully funded by federal monies." When the Act is passed into law over the President's veto, it is accompanied by considerable committee and Congressional testimony that "sexually immoral people are less likely to be responsible stewards of government money" and that "the intentional and negligent misuse of federal money has a devastating impact on national and local commerce." All federal money will be withheld from states that continue to employ persons who refuse to sign the Act's "morality statements."

State and federal officials protest the Order and the Act, claiming it is invalid under federal law.

Please evaluate and discuss the following in light of this semester's course material:

1. Does the President have the power to pass such a executive order? What is the constitutional basis for such authority?
2. Does Congress have valid authority to pass the Moral Government Officials Act? What is the constitutional basis for such legislative authority?
3. Even if the President or Congress has authority to pass such restrictions, does the Constitution permit such restrictions on an individual's personal decisions about sex?

END OF EXAM