

**FINAL EXAMINATION
Constitutional Law I
Professor Marc Stickgold
Fall, 2006**

1. You have three (3) hours to complete this exam.
2. This is a **closed** book exam. No materials may be used during this exam.
3. There are 2 parts to this exam:

PART I: Consists of **18 multiple choice** questions. PART I is a total of **36 points**. Be certain to read each question fully and carefully. Often one word may make a difference. There is one best answer for each question. You must choose among the answers provided even if you think the best answer is not offered.. Suggested time: 60 minutes.

PART II: Consists of **two (2) essay** questions of **32 points** each worth a total of **64 points**. Suggested time: 60 minutes for each question. Think about the question before you begin to write.

It is wise to outline and organize your answer before beginning.

Correct multiple choice answers are to be marked on the separate ParSCORE TEST FORM using pen or pencil and following the instructions on that form. If you change your answer, place a clear X through the wrong answer and mark the correct answer. A machine will score the exam and any ambiguities will be counted as a wrong answer.

Please use pen and write the responses to your essay questions in the blue books provided. Please write on one side of each page and on every other line. Please write legibly.

4. Write your exam number on your exam envelope. Put your correct class section and student exam # at the top of this page, each page of questions, each blue book, and the ParSCORE TEST FORM. **Do not** use your name, student ID number or Social Security Number on any exam materials.
5. At the conclusion of the exam, return all exam materials to the exam envelope and submit it to the proctor. Do not seal the envelope. Students who do not return all exam materials at the end of the exam will not have their exams graded.

GOOD LUCK!

PART II: ESSAY QUESTIONS**QUESTION 1 (60 minutes)**

In recent years there have been a number of serious cases of child abuse, sometimes resulting in the child's death. In many instances, state or county Child Protective Services (CPS) agency was aware of, or had investigated, the abusive home situation, but no action had been taken. In one case, the four year old son of a drug addicted mother had been to the hospital seven times in one year for "suspicious" injuries, but although CPS had been notified early on, nothing was done. On the eighth hospital visit the child died from the abuse.

A public outcry to these terrible stories prompted Congress to pass the Federal Child Abuse Protection Act (FCPA). After a long series of hearings exposing the social, medical and economic impacts of the nationwide rash of child abuse, and the apparent inability of many states to deal effectively with the problem, Congress does a number of things. It makes it a federal crime for any person to physically abuse a child under age 12. It sets up the Federal Child Welfare Board (FCWB), which has the statutory authority to (a) withhold federal child welfare funds from any state/county that does not terminate the employment of any government official found negligent in the supervision of a child abuse case; (b) order states to furnish the FCWB with certain information concerning the numbers of child abuse cases in the system, and the number of criminal prosecutions and convictions.

A case of serious abuse is revealed shortly thereafter involving a father, John Jones, who caused the death of his six year old son. The federal prosecutor charges Jones under the new FCPA, which allows for a sentence of up to life in prison if he is convicted. It turns out the county CPS knew of the abuse, but the worker assigned to the case never took any action after a cursory investigation. The FCWB notifies the county that unless the worker is fired, all federal funds to that agency will be cut off for one year. It also requests the county CPS to furnish all the material authorized by the FCWA concerning all child abuse cases in the system, and the record of all criminal prosecutions.

- (1) Jones challenges the constitutionality of the federal law under which he is being prosecuted. Discuss.
- (2) The county files suit against the appropriate federal defendants challenging the constitutionality of the two statutory provisions that are being enforced against them. Discuss.

QUESTION 2 (60 minutes)

George and Henry are a gay couple who have been together for over 20 years. They have two adopted children, ages 12 and 10. They view themselves as a family. Their state has no laws dealing with gay relationships. Unfortunately, last year George was diagnosed with a brain tumor. He has been undergoing intensive treatment, but doctors now believe that they have done all that is medically possible, and without hospitalization George will die within a few months. After long discussion with Henry and their children, George tells them all that if he “becomes a vegetable” or is “unable to think clearly” that he wants Henry to decide when it is “time” to end his life.

Soon thereafter, George is admitted to the hospital in terminal condition. He soon goes into a coma. However, doctors attach him to machines and administer medications that can keep his body alive. A few weeks later, after consulting with the children, Henry tells the doctors that he wants all treatment stopped, and all machines disconnected. The doctors agree that George is unlikely to come out of the coma; that if he did he would be in great pain and disoriented; but that it is possible for the machines and medicines to keep him alive for a long period. They indicate, however, that the law of the state prohibits them from honoring Henry’s request. The statute of the state allows a surrogate to exercise a choice on behalf of a dying patient only if (1) the surrogate is the parent, child or spouse of the patient, and (2) the patient’s intent is proved by clear and convincing evidence, and the testimony of children under 16 is not permitted.

Since Henry is not one of the statute’s authorized surrogates, and there is question about whether there is clear and convincing evidence under the terms of the statute, the doctors say they cannot honor his request. George must stay on the machines indefinitely. Henry brings suit in the local court asking for an order requiring the doctors to honor his decision on behalf of George. Discuss the constitutional issues presented in the case.

END OF EXAM