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HOWARD UNIVERSITY SCHOOL OF LAW  
CONSTITUTIONAL LAW II SECTION I

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## Fall 2015 Final Exam Instructions

December 7, 2015

### General Instructions

1. You have three (3) hours for the exam.
2. Times noted for the questions reflect the amount of time I estimate it would take to answer each question. Please note that although the time noted for each question does relate somewhat to the points for that question, it does not do so in a strict one-to-one fashion.
3. The exam is three (3) pages long, excluding this instructions page.
4. There are three (3) questions worth 75 points, 80 points, and 40 points respectively, for a total of 195 possible points.
5. If you are not typing your exam, write legibly and clearly in blue or black ink.
6. Use substantive headings as appropriate.
7. Respond to the question asked, not to questions that might have been asked. Even though the fact pattern may be based on one or more of the hypothetical problems discussed or distributed during the semester, the call of the question may be different and the facts may have been revised. In your responses, do not spend time on matters that are not relevant just to show me how much you know. This exam tests professional judgment as well as knowledge of the material we covered in Constitutional Law.
8. One or more of the issues or sub-issues may have a clear answer. For such items you should provide a brief explanation that is sufficiently complete such that the reader will understand your analysis and why the matter is not a close one. Other matters may be less certain of outcome and may depend upon filling a gap in the current legal doctrine. For such issues analogizing to other cases and the use of relevant policies and principles are particularly appropriate to discuss.

### Permissible exam materials

The exam is closed book. No materials other than the exam itself, blank scratch paper, the laptop with the exam software, and (for those not using the exam software) bluebooks are allowed.

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### **Question 1. 75 points. Estimated time: 70 minutes.**

Cheri emigrated from France with her family 10 years ago, when she was 8. Her family has lived in the state of Marilina from the time they first emigrated. Cheri's parents both were employed and have had permanent resident alien status throughout that time.

Cheri applied to the Marilina State University, and was admitted as a student. However, she was charged out-of-state tuition because she was not a citizen of the state of Marilina and because she had not resided in the state as a citizen for the requisite three years to qualify for in state tuition. In-state tuition for citizens is \$8000 per year; tuition for people who are not citizens of Marilina or who have resided in the state as a Marilina citizen for less than 3 years is \$30,000 per year.

Cheri has sued Marilina State University and others in Marilina federal district court claiming that they are violating her federal constitutional rights (a) to equal protection, (b) to travel, and (c) to an education.

Your judge has asked you, his new law clerk, to analyze the problem and recommend a disposition. Be sure to explain your reasoning fully.

Do not discuss procedural matters such as standing, state sovereign immunity, or any other procedural defenses. Assume the defendants are proper parties to the suit.

### **Question 2. 80 points. Estimated time: 70 minutes.**

The city of Woester in the state of Pansida enacted an ordinance that prohibits discrimination on the basis of sexual orientation and on the basis of sexual identity in employment, in education, and in places of public

accommodation. Under the ordinance, “a place of public accommodation” is defined as follows:

A business, accommodation, refreshment, entertainment, recreation, or transportation facility, or an organization of any kind, whose goods, services, facilities, privileges, memberships, advantages, or accommodations are extended, offered, sold, or otherwise made available to the public.

Joe and Gene, both male and lawfully married under state law to each other, sought to become members of the Woester Sports and Health Club (WSHC) which provides exercise and other facilities to members. The facilities include free weights, exercise equipment of all sorts, a swimming pool, an exercycle class room, rooms in which group fitness classes were held, a sauna, a steam bath, and single-sex locker rooms/changing rooms as well as a family changing room. WSHC also had within its building a massage and beauty parlor, a small health food restaurant for members, and a store selling health food supplements, exercise-related clothing, and exercise equipment.

WSHC was owned and operated by evangelical born again Christians as a “witness to Jesus.” The owners held weekly management meetings at which they used the Bible as their business operating manual. All managers and staff were required to attend those meetings.

WSHC also held daily prayer meetings for members to attend if they wished to do so. They also posted signs throughout the facility clearly stating their religious views and urging members to follow the teachings of the Bible as the WSHC owners understood them. Among the signs were condemnations of homosexuality, gays, lesbians as “abominations to the Lord,” and of the city council for enacting a law prohibiting discrimination on the basis of sexual orientation and gender identification as “the work of Satan made manifest on earth.”

WSHC only allows as members those who are “growing Christians” according to its view of what it takes to be a growing Christian. Anyone applying for membership must be vouched for by someone who is already a member. The WSHC has about 1000 members which is comparable in size to other exercise clubs in the city. The WSHC is closely held corporation governed by a board of directors selected by the three shareholders. WSHC’s

advertising always advocates for the WSHC's shareholders' religious viewpoint, especially with respect to homosexuality.

Only members can use the facilities, except for guests of members. Guests of members can have guests use the facilities free once each month, except the restaurant is open to anyone provided the guest is accompanied by a member.

WSHC refused membership to Joe and Gene.

Joe and Gene sued WSHC in state court claiming that they have been unlawfully discriminated against by WSHC in violation of the Woester city non-discrimination ordinance. WSHC concedes that WSHC is, within the meaning of the ordinance, "a place of public accommodation."

Consider the possible constitutional defenses of WSHC in defending the suit.

**Question 3. 40 points. Estimated time: 30 minutes.**

Using a thesis-based essay format, discuss the propriety and legitimacy of the Supreme Court engaging in substantive due process jurisprudence.

**End of Exam**