

TIME LIMIT: 50 MINUTES

INSTRUCTIONS:

1. Please do not use pencil to write this examination. If you use a felt-tip or fountain pen, make sure that your answer does not "bleed" on to the next sheet of paper.
2. WRITE ONLY ON THE LINES AND IN THE SPACE PROVIDED. WRITE ONLY ONE LINE OF SCRIPT ON EACH LINE. DO NOT WRITE IN THE MARGINS. DO NOT WRITE ON THE REVERSE SIDE OF THE PAGE. DO NOT WRITE IN A BELOW AVERAGE SIZE OF SCRIPT.
3. Do not take the examination from the room in which you are writing,
4. When you are finished with this examination, place it on the instructor's table at the front of the room announced at the beginning of the examination.
5. There are four questions on this examination, which are weighted equally. Therefore you are advised to spend approximately the same length of time on each question.
6. Because question 2 builds on question 1, it might be helpful to read question 2 before answering question 1. Questions 3 and 4 are unrelated to questions 1 and 2 and to each other.
7. Do not assume facts not given, and do not change the facts. In particular, do not assume the existence of statutes unless referred to in the question.
8. Discuss each issue fairly raised by a fact pattern, even if your answer on one issue makes discussion of another issue unnecessary. Complete in full your discussion of one issue before discussing another issue.

1. As the 1994 election campaign became more heated and the weather became colder, many supporters of various political candidates decided to move their campaign activities indoors. Several of them decided that local post office buildings would be ideal places to solicit campaign contributions from persons waiting in lines to be served by the ever-speedy postal workers. Due to numerous complaints, the Postal Service decided to prohibit the inside of post office buildings from being used by any non-charitable or political organization or person for the purpose of soliciting funds. Only charitable organizations (as defined by federal tax law) were permitted to solicit funds inside post offices, and all organizations were permitted to solicit funds in post office parking lots. The regulation was challenged in federal district court and a decision upholding it was finally reviewed on the merits by the United States Supreme Court. What result, and why?

BEST ANSWER

The first issue the court will be forced to decide is the nature of the forum. Since legitimate time, place and manner restrictions are acceptable, so long as they meet certain requirements, the nature of the forum is an important issue. The US Supreme Court has recognized three distinct levels of a forum where discussion is allowed. The time place and manner restrictions vary according to the forum. Public forums are places that are traditionally places where limitations on expressions will be suspect. These include the streets, sidewalks, statehouse lawn. Limited public forums are places owned by the government that are opened up for purposes of expression. The best example of a limited public forum is a school or fairground. The third is a non-public forum. These are government owned places that have never been opened for expressive purposes. Military bases are the best example of non-public forums. The court is likely to place a post office within this third classification. Time place and manner restrictions in a non-public forum will be reviewed by the court with rational basis so long as the restriction is view point neutral. The test for public and limited public forums is much more stringent.

Since the court will most likely place a post office in a non-public setting the issue is reviewed on a rational basis level so long as it is viewpoint neutral. This regulation prohibits all political solicitation but not charitable. This case is like Shaker Heights in that it is viewpoint neutral in its exclusion of all political solicitation. The argument of captive audience, the right not to be exposed to solicitation when unable to get away, may also be invoked by the postal service. Since the post office is a non-public forum and the regulation is viewpoint neutral, it will be upheld under Rational Basis.

2. Assume, irrespective of your Answer in Question 1, that the United States Supreme Court upheld the Post Office Regulation. Based on this precedent, the Capital City council enacted an ordinance prohibiting all organizations and persons whomsoever from soliciting funds in public parks. This ordinance was challenged in federal district court, and a decision upholding it was finally reviewed on the merits by the United State Supreme Court. What result, and why?

BEST ANSWER

The issue in this case is whether the regulation is violative of the first amendment because it limits speech in a public place.

Parks are traditionally viewed as a public forum. Therefore, people have a fundamental right to express their views here. Although, regulations may not control the content of the speech, they may regulate the time, place and manner in which they are presented. This licensing must meet three requirements. First, that the regulation be content neutral. Since all groups were prohibited from soliciting funds here, this regulation is definitely content neutral. The second is that the regulation be narrowly tailored to advance the government interest. The interest here may be to prevent people from being harassed while they go to the park to relax. This regulation would further this good but there are less restrictive means. The regulation could require that the solicitors must silently solicit funds through use of signs. Therefore, they wouldn't badger people. So this regulation is not least restrictive means. The third requires that alternatives be given to the solicitor if not allowed in the park. There are alternatives because the solicitors could have stood at the park entrance to solicit funds since political speech is at the core of the 1<sup>st</sup> amendment protection and parks are traditional public forums, all three prongs must be met. The regulation would be struck down.

3. Alice Alexander, the Mayor of Capital City, State of Franklin, was the subject of a front-page newspaper story stating that Alice was in the habit of taking bribes from real estate developers. In fact, the story was completely false. Pursuant to a new state statute, Alice brought suit seeking a declaratory judgment that the story was false, but did not seek money damages. The newspaper defended on the grounds that, while it had been negligent in not checking the accuracy of the story, it was immune from any libel action. The case finally was decided by the United States Supreme Court. What result, and why?

BEST ANSWER

Ms. Mayor is clearly a public official under the NY Times standard, requiring public officials and public figures to prove actual malice - knowledge of falsity or disregard for whether the story was true or not. Since only negligence can be shown, the Mayor would be unable to recover damages under this standard. However, since she is only seeking a declaratory judgment to clear her name and no monetary damages, the restraint on free speech would be relatively little and her interest in her damaged reputation strong. One of the dissenters intimated that this very action should be permissible by public officials floundering under the heavy NY Times burden of proof. But this question has not been part of a majority opinion. It is likely that the court would allow the states to craft a further addition to their defamation law, allowing this interest in reputation to prevail. They are likely to throw out some factors and leave it up to the states.

4. Concerned by the rising tide of violence, the Federal Communications Commission promulgated a regulation prohibiting all advertising of any guns on any television or radio station licensed by the FCC. Several television stations and gun manufacturers brought suit to enjoin the enforcement of this order. The case finally was decided by the United States Supreme Court. What result, and why?

BEST ANSWER

The issue is whether or not the FCC can prohibit advertising on radio and TV of guns.

The court will first determine that this is a regulation of commercial speech, although not unprotected is lower valued speech and regulation on them have little fear of complete suppression of a view. The court will first determine if commercial speech is protected it must be concerning a lawful activity and not be misleading, advertising gun sales would pass. Secondly the asserted government interest must be substantial; the interest of protecting people from violence by less advertising may decrease the demands for guns and may lessen crime. The regulation does further this interest by prohibiting ads on the TV and radio it may decrease the demands for guns. Finally the government regulation must be narrowly tailored, does not mean least drastic mean. The court will also look at the fact that radio has limited frequency and the airways are for the public, the Regulation of Speech is more permissible in radio and TV because of that. Also, radio and TV has the ability to be accessed by minors and the state has an interest in protecting them.

Since the Regulation prohibits ads only on radio and TV which is accessible to children and unwilling recipients in own home, the Regulation may be upheld even through it is a complete ban, may still advertise in other places. This would be similar to the bans on smoking ads. They are Regulatory because of secondary effects that ads may cause great gun sales or use.