

SEX-BASED DISCRIMINATION  
PROFESSOR SHIRLEY MAYS  
FINAL EXAMINATION-----FALL 1992

PLEASE READ THE INSTRUCTIONS BEFORE YOU BEGIN YOUR EXAM. FAILURE TO FOLLOW THE DIRECTIONS CONTAINED HEREIN CAN RESULT IN FAILURE OF THE FINAL EXAM.

This is an open book, take home examination. The exam consists of three essay questions. Question I is worth 40 points, and Questions II and III are worth 30 points each.

If you use a blue book to write out answers to the questions, you must write on every other line. You should only write on the front of each page. The front of each page counts as one page. Please limit your answer to each question to six (6) pages. I will stop reading your answer at the end of the sixth page. Therefore, make certain that your answer does not exceed the six page limit.

If you choose, you may type your answers on a separate sheet of paper. Typed answers are limited to four 8 1/2 x 11 1/2 pages, double-spaced. I will stop reading at the end of the fourth page; therefore, do not exceed the four page limit.

Take time to organize coherent answers. Your answers should be concise and to the point. You should, however, discuss all relevant issues even though resolving one issue might dispose of the case. Merely stating legal principles is insufficient. Analysis is imperative.

You should not assume facts not specified in each problem. If you do make an assumption in answering a question, state what that assumption is and its significance.

This exam is due at 6:15 p.m. on Friday, December 15<sup>th</sup> in my office, Room 121. No late exams will be accepted.

Good luck. I have thoroughly enjoyed your interaction and discussion in this class.

Exam Number \_\_\_\_\_

## QUESTION I

Jesse Bush, a legislator in the state of Helms, has received hundreds of letters from constituents regarding the abortion issue. The letters express both elation and dismay with the state abortion bill, S.B. 101 that Jesse has just introduced to the Senate. Prior to the introduction of 101, Helms had no state laws governing abortions.

According to Section 1 of 101, only licensed "abortion specialists" are permitted to perform abortions. These specialists must obtain a license from the state of Helms abortion licensing commission. The commission interviews potential licensees, and issues the specialist license based upon its determination of where the greatest need exists. For example, if thirty persons in a large city already possess the specialist license, the commission may choose to refuse to issue any more licenses to those who apply from that city. Those who are specialists can only perform abortions in the city in which they are licensed; if they want to practice in another city, they again must go before the commission. Legislative history reveals that the state wanted to encourage responsible birth control in its citizenry, and legislators thought this was an effective way to send that message.

Section 2 (a) provides that all persons who contact an abortion specialist to make an appointment to discuss an abortion must first view the film "AMuffled Holler", which depicts in an honest and accurate fashion what happens to an unborn child during an abortion procedure. The film is provided free of charge to all state Health Departments. Those who have seen the film are given a written receipt in a sealed envelope to take to the specialist. The envelope must remain sealed or the specialist will not accept the receipt.

According to Section 2 (b) , potential patients may request that they be given a pregnancy test packet while they are at the Health Department viewing the film. The pregnancy test packet contains the newly developed AOF (Age of the Fetus) test which accurately determines the potential patient's stage of pregnancy. The AOF test must be administered prior to performing an abortion since abortions in the last trimester of pregnancy are absolutely prohibited. The package also contains written pamphlets that explain the abortion procedure, provide information regarding adoption facilities, and refer patients to a list of psychiatrists who can aid them in making the right decision. If potential patients receive the AOF test and pamphlets from the Health Department in the packets, the 48 hour waiting period explained in Section 3 is waived. If potential patients do not choose to receive the pregnancy test packet, Section 3 provides that they will be administered the AOF and receive the written pamphlets when they go to see the specialist, but must wait 48 hours after their initial appointment with the specialist before they can schedule their abortion. The pregnancy test packet costs \$25.00.

Section 4 specifies that it only applies to unemancipated minors who choose to have an abortion. Both of the minor's parents must receive notification of the minor's decision, and sign a parental consent form. The form must be notarized and one of the minor's parents must accompany her to the specialist's office for her appointment. Section 4 contains no judicial bypass procedure for unemancipated minors.

Pursuant to the provisions of Section 5 (a), potential patients must talk to one of the state-approved psychiatrists on the referral list contained in the written material received from the Health Department or the specialist. Because pregnancy can be such a beautiful experience, the decision to terminate that pregnancy should not be entered into lightly. Therefore, one of the

state-approved psychiatrists should counsel the patient regarding alternatives and ensure that she is making an informed, voluntary choice.

Finally, section 5(b) is applicable only to those who receive public assistance, currently have two living children, and go to a specialist for an abortion. These patients must consent to have a NUPA (No Unwanted Pregnancy Again) implant before the specialist can perform the abortion. The NUPA implant is inserted in an unobtrusive area in the patient's inner thigh. It is a foolproof method of birth control and lasts for five years. Those who refuse the implant cannot get an abortion.

You are Jesse's legal research assistant, and she comes to you for your opinion (based upon the holdings of relevant court cases) as to the constitutionality of S.B. 101. What do you tell her?

## QUESTION II

Glen Fiddich and Theodore (aka "Buddy") Leicht have just taken their last exam and after three and one-half long and grueling years, have finally graduated from law school. Needless to say, they are ecstatic (and somewhat surprised) and want to celebrate in a style befitting the stature of their accomplishment. They decided to go to the new hot spot in town, Boozally.

Boozally had gotten off to a great start and its owner, Harvey Wallbanger was pleased with the amount of money he was making. Harvey's only concern was the fact that he seemed to attract a young mostly male crowd to his club. He was afraid that the young men would lose interest in Boozally unless more young women became patrons. Therefore, Harvey instituted several "Ladies' Night" specials during the week.

On Mondays, women paid no cover charge to enter the club. On Tuesday's, women only paid \$1.00 for their drinks; men paid full price. Wednesday was "Young Ladies Night Out", consequently women under the age of 25 were admitted to Boozally free, all other women paid \$5.00. Since Thursdays were "Singles Nights", unmarried women paid a \$5.00 cover charge and received five free drinks. Married women were not admitted to Boozally on Thursdays. Finally, on Fridays women who had at least three women in their party would gain entrance for their group for a total of \$5.00. Men were welcome at Boozally any night during the week as long as they paid a \$10.00 cover charge and purchased at least one regularly-priced drink.

As Glen and Buddy approached Boozally, they noticed that all the women were walking into the club while all the men were handing over ten dollar bills to the bouncer at the door. They grudgingly gave the bouncer their \$10.00 (which was quite a lot of money since they were poor law school graduates) , but vowed to have a good time anyway.

Once inside, Glen and Buddy ordered a drink. The bartender charged them \$3.50 for each of their drinks, but a woman who ordered the same drink only paid \$1.00. Glen questioned the bartender about this discrepancy and was told of the above policy. At this point, Glen and Buddy became absolutely livid, and since they did not have the wisdom and foresight to take a course in sex-based discrimination, they came to you for advice, contending that their due process rights had been violated. They even think that your rights, as a married woman who is forty-something, may have been violated. What do you tell Glen and Buddy about the policies at Boozally based upon an historical analysis of what you have learned in this class?

### QUESTION III

An amendment to the United States Constitution was passed on January 1, 1993, which reads as follows:

"Equality of rights under the law shall not be denied or abridged by the United States or any state on account of sex."

Re-write the Rostker v. Goldberg opinion (at page 86 in the textbook), applying the new constitutional amendment.