

Individual Rights Final Exam Grading Notation Key
Prof. McDonald

Issue

- I1 = Correct issue statement
- I2 = Incomplete issue statement
- I3 = Incorrect issue statement

Rule

- R1 = Correct statement of governing legal principles
- R2 = Incomplete statement of same
- R3 = Incorrect statement of same

Analysis

- A1 = Correct factual analysis
- A2 = Incomplete factual analysis
- A3 = Incorrect factual analysis

Conclusion

- C1 = Correct conclusion
- C2 = Incomplete conclusion
- C3 = Incorrect conclusion

Other Specific Notations:

- D = Did not follow instructions provided on front of exam or as part of question (e.g., what rule to apply).
- G = Good point or analysis.
- ORG = Recommend better organization of issues and analysis, and/or not mixing together different issues within the same discussion.
- Y = "Yes!" (as in "righto!")

Part A' Mary Nod

I Does the MC Restriction on extended family members violate Nod's Substantive Due Process rights?

The 14th Amendment states that "nor shall any person be deprived of life, liberty, or prop. w/o due process of law. The Ct. has been willing to review the substance of legislation through the term "liberty." Under the modern scheme, the court will look to see if there is a fundamental right at stake.

If there is, then the Court will apply a strict scrutiny standard of review. Fundamental liberties are those that are deeply rooted in history and trads., supported by precedent, and show an emerging awareness of contemporary plurality societal values/needs. Just as the Ct held in Moore; there is a fundamental liberty in ^{C3} the right to live as a family unit, both nuclear and extended. The Court in that case ~~applied~~ found that this nation's history of immigrant families banded together for survival.

THIS IS
CLOSE TO
RIGHT TO
A THICK
FUNERAL
(PRECEDENT
ARGUMENT)

~~therefor~~, In Nod's case, there is a close relationship w/ parents, and grandparents. A2 Due to precedent and history and trads. (as explained in Moore), the right is fundamental. The Ct will also likely find emerging awareness for respect to soldiers' ~~to~~ extended

family due to the recent needs of veterans of the Iraq war / Afghan war. Moreover, there is a long standing military tradition here of giving soldiers in MC full death rights, including the opt. to have one's family ^{extended} ~~extended~~ ^{present}. Since the right is ⁹ fundamental, the state must show a compelling state interest. Compelling means it must be necessary or crucial. The interest asserted here is preserving limited space, and preventing graves from being unduly trampled. The court has held that administrative convenience is not a compelling governmental interest. However, grave trampling is likely a compelling interest, especially for soldiers. Second, the state must show that the legislation is narrowly drawn to express only the compelling interest. This is where the state ~~has~~ ^{has} problems because the ~~Prop~~ means taken were not necessary for the legislative interests. Specifically there were alternative methods available

6 The state could buy more land, use eminent domain on surrounding areas, etc. Moreover, the lottery system is totally random. It could have ~~been~~ ^{select} 1 soldier instead of 5, thereby making more room.

* Also, it is UU and under inclusive. Our because people w/ large nuclear families will trample more than people w/ small extended families.

Accordingly, their substantive due process rights were likely violated.

II Violate the Free Exercise Clause?

When generally applicable state/local law is alleged to burden an individual's free exercise of religion, the court will review the state action under a rational basis standard of review.

(Oregon v. Smith). Here, we have a generally applicable law that states that only nuclear family is allowed to be at the ceremony point. The Sikh faith states that all family must be. So the issue is whether an exception need be made. Under a rational basis test, the

state needs a legitimate state interest plus that means taken must be rationally related to the legitimate state interest. This is a low level of scrutiny. The interests stated are both legitimate. ~~is~~ Stopping ~~from~~ ~~from~~ trampling and carving space is a valid exercise of state police powers. The means taken

1) lottery, 2) limiting how many people may attend are not illogical or arbitrary. Therefore it will survive the dearest level of scrutiny.

III Violate EPC Fundamental Rights?

Under a very similar analysis as the DPC analysis. They ~~are~~ could also assert ~~the~~ a claim under the Equal Protection Clause. Where a class of people's exercise of a fund. right is sub. burdened, the gov. action will be subjected to strict scrutiny, regardless of whether the class is suspect. Here, the non-excluded family is a non-suspect class. But, as explained, their fundamental right to be together as a family is affected.

A2 (Under a strict scrutiny analysis (like w/ SDP) ~~this right~~ the law will also fail for EPC.

Part BI

I State Actor?

Constitutional provisions apply only to gov-
based interferences (except 13th Amendment). Thus,
for const. violation to exist there must be
a state actor. Here Veteran Co. is a
~~pot.~~ pot. entity. Thus, it doesn't seem to
be a state actor. However, there are exceptions
where the pot. group is performing an activity
that has traditionally and exclusively been performed
by the gov., then the pot. actor is treated
as a state actor. Here, the outsource
was the 1st time. This means the gov. has
always performed this function exclusively.
Also, traditionally, the military has always
given its own honor guard ceremonies. Thus,
Veteran Co. is a state actor under the
public function doctrine. It may also be
under the Quasi-Gov. Agency doctrine too.

If a purportedly pot. entity has sufficient
attributes of a gov. agency → it will
be a state actor. Here, the gov. was the

only customer. Also, all employees were
former gov. employees. Thus, it is probably
a state agent.

II Infringement of Right to Keep and Bear Arms?

~~U.S. Miller~~

The Heller case has affirmed that the 2nd Amendment's right to keep and bear arms is an individual right. The specific holding of the case held that Pvt. individuals have a right to keep and ~~use~~ bear usable firearms (including handguns) in the home for self defense. The ~~so~~ scope of this right may be limited, however, to the types of arms in common military use at the time the 2nd Amendment was enacted. Also, the historical qualifications on gun ownership as are not introduced w/ by the 2nd Amendment right. In this case, the rifles qualify as a type of weapon protected because they were rifles, which were a very common type of military weapon in use. Furthermore, these weapons were vintage. The weapons used in the Civil War were usually the same type as from the Rev. War. Thus, these are exactly the historical type protected.

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The weapons were not in a usable state. Thus, the prohibition violates the 2nd Amendment Rights. The flat out prohibition also clearly violates his right to own a handgun. Handguns were expressly

found to ~~be~~ be protected in Heller. So long as he only wants to keep it in his home, the possession of both (1) workable handgun and (2) workable vintage rifles is part of the 2nd Amendment right under Heller.

Part B2

Frankly, I agree w/ the dissenters in Dist. of Columbia v. Heller. The textual ~~of the~~ argument that the prefatory clause expresses the purpose of

Part B2

A2 I agree w/ the dissenters in Heller. Their reading of the text "right of the people" indicates collective language. Thus it ~~is~~ seems like a state right. Also, the operative clause's purpose is set out in the prefatory clause. Thus, the purpose seems to be to "establish and support a militia." I also agree that, historically, the adoption of the ~~2nd~~ Amendment describes an overriding concern about the potential threat to state sovereignty that a federal standing Army would pose. Thus, to ease this anxiety, the Framers gave States the right to keep their own standing armies.

Structurally, the court should also defer to the legislators in matters of important public policy concerns. Finally, I agree that gun bans are important to contemporary societal norms and needs. The burdens on one's liberty to bear arms are simply outweighed by the reduction of violence and \uparrow in public safety.

Accordingly, the court should not incorporate this to state action. There is even precedent (Cruikshank) on point, which held that the 2nd Am. is not to be incorporated. Moreover, the Ct should apply a "substantial burden" test to the ~~real~~ security of ~~the~~ laws effecting the right. ~~Under these~~

In sum, I would overrule Heller. I believe the dissenting opinion proves textually, structurally, historically, and common-sensically that the right to bear arms shouldn't be a individual right - fundamental or otherwise.

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Q1: Good Job!

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QUESTION ONE

Part A:

1) Were R and S's substantive due process rights to attend their grandchild's funeral violated by CPS's regulation in 2000?

Was the government acting? Yes in this case the government actor was the CPS. Any regulations they passed were government actions as well. The 14th Amendment protects a citizen's personal liberty rights from being infringed

Was the right fundamental? The right in question is a grandparent's right to attend their grand child's funeral. The court has recognized that a law which infringes on right which is deemed to be fundamental is looked at with strict scrutiny. A right deemed to be "important" is looked at with "heightened scrutiny" and any other rights are looked at with rational basis review.

In determining whether a right is fundamental, the court has many different tools in its toolbox. However, the most likely approach currently is the one used by Justice Kennedy which is to look at whether the right is deeply rooted in history and traditions, and to also be open to looking at both precedent and emerging social awareness. The right to attend the funeral of a grandchild, though probably rare (because a grandchild rarely dies before his grandparents) is probably one deeply rooted in history. Look around at any funeral and you will see much extended family there, not to mention friends as well. If Scalia was deciding this case, he would probably define the right more specifically, as he did in Michael H, and possibly argue that the right is specifically to attend a military funeral. Arguably, military funerals are probably smaller.

Next we would turn to precedent and emerging social awareness. There doesn't seem to be much info about the emerging social awareness of the right of a grandparent to attend their grandchild's funeral, so we move to precedent. In looking at precedent, the court could take into account the decision of the plurality in the Moore case, which found that an ordinance that limited who could live in a household to immediate family was unconstitutional because it infringed on the FUNDAMENTAL right to live together in a family relationship. The majority in that case still found the right was important, if not fundamental. Similarly, the court has put great weight on the rights of a biological family to stay together. (see Stanley v. Illinois and dissent in Michael H). However, the most on par case is probably Troxel v. Granville which held that a parent could limit a grandparent's visitation of the child because of the fundamental right of a parent to decide who their kid visits. In this case, the parent, Mary, wanted and supported the grandparents being able to come to the funeral. Denying the grandparents the right to attend would also be denying and infringing on the parent's right to make decisions regarding their child, which expressly contradicts the ruling in Troxel. Therefore, the court is likely to find that the right of a grandparent to attend their grand child's funeral, when the parent of the child desires and encourages it, is at least important under Moore, and probably fundamental under Troxel.

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AL

Strict Scrutiny? Analyzing the regulation under strict scrutiny, the court has held there must be a compelling interest and the law must be closely tailored to that interest. Here, the interest of the CPS was to prevent the surrounding gravesites from being unduly trampled during a service. This is probably a compelling state interest and one the state would hold under its police powers to protect the health and safety of its citizens. Is it narrowly tailored? The statute must be neither under or overinclusive, and there must not be other alternatives. There are other alternatives to prevent the gravesites from getting trampled. These could include having smaller ceremonies, or

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A2

even allowing less people to be buried in the cemetery. They could also place fences around each of the graves to make sure that no one steps on them. Under/over inclusive? The law may be under inclusive because there may be a family that has 10 siblings and parents, and all of them can come, whereas there may be another family, like Nan's in this case, who is an only child, and even if her grandparents came, wouldn't have as many people.

Therefore, the regulation should be struck down for violating substantive due process.

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2) Did the 2000 regulation violate R and S's 1st amendment Free Exercise rights?

The first amendment secures a citizen's right to practice their religion without interference from law. The court has found the Free Exercise clause to be important in two situations: where one claims an exemption from a general law for religious purposes and when a law is targeted to a specific religious practice.

Was the law targeted to a specific religious practice? No, it is clear that the law was not targeted to religion, and there is no indication the law was passed to prohibit those of the Sihalu faith from being able to attend funerals.

Were R and S claiming an exemption from a generally applicable law? Yes, they wanted an exemption from the regulation that did not allow grandparents to come, because that regulation interfered with their free exercise of their religion. Because this is a state law and not a federal law, the holding in *Smith* will apply. *Smith* said that the court would no longer apply strict scrutiny to exemption type cases such as the one at hand, and that the court will apply a rational

basis review. For rational basis review, the law must have a legitimate government interest (ENDS). Here, the legitimate interest, as stated above, was to prevent surrounding gravesites from being trampled. This is surely legitimate. For rational basis, there must be a reasonable relationship between the interest and the law. Although there are other alternatives to the law to prevent trampling, as stated above, the law certainly would lessen the amount of trampling on the graves by lessening the amount of people. Therefore, there is a reasonable relationship and the law does not violate the Free Exercise clause.

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Was the 1970 regulation of the lottery unconstitutional?

Substantive due process rights of the rights of a grandparent to have their child buried at MC?

Probably not fundamental, rests more on the actual rights of the grandparents than the right of the parent (which was more closely connected for attendance of the funeral)

RB review. Legitimate purpose- prevent overcrowding. Rational relationship: less people.

I 3

Proc Due Process Violation for the 2000 regulation for compactness?

Fair Process: law enacted pursuant to state administrative procedures, so no procedure due process violation.

3

Did the 2000 regulation create a class that burdened a fundamental right of free exercise in the first amendment?

This would rest on disparate impact on those of the Sihalu faith.

Is there a substantial burden? Yes, not being able to attend your grandchild's funeral is a

I 2

substantial burden.

Because the law applies equally to everyone, there is no EPC violation here.

) A2

Part B1)

First, is Veteran a state actor? The constitution only applies to State action. Is V a state actor under the Public Function Doctrine? This applies when a private actor is engaged in something traitorally and exclusively done by the government. Being on a funeral honor guard was something that was always done by members of the U.S. Military (part of the government) and therefore a private actor doing this function would fall under the Public Function Doctrine. V is a state actor.

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Was there a SDP violation for H? I3

Did V infringe on H's 2nd amendment right to possess a gun in his household? I1

First, did the regulation that required that they keep vintage rifles stored at home violate the 2nd amendment? I3

In DC v. Heller the court held that there was an individual right to possess usable handguns in the home. The court does not ask whether the right is fundamental, because we are not dealing with an unenumerated right, but rather we are INTERPRETING a right already written into the constitution. The court interprets the right using the precedent in U.S. v. Miller, which held that a weapon in the home must have a reasonable relationship to militia uses for the 2nd amendment to apply to it. Because the Civil War rifles were actually used in the civil war, they easily pass the test that the gun in the home could have been used for militia purposes.

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However, just as one may have the right to carry a firearm, one may also have the right to not carry one at home. This would probably also go under "heightened" scrutiny (see below). If this

) I3

was part of the 2nd amendment right (just as the right to NOT speak is a part of the right to free speech), then the govt must show a compelling reason for adopting it. Avoiding legal liability is probably not compelling because it does not have to do with the state's police powers. Therefore, this regulation might be struck down because it violates someone's right not to have a handgun in their home. ²

I3

Second, did the regulation that prohibited V from possessing any other firearms violate the second amendment?

As stated above, in Heller the court found that the right to possess a usable handgun in the home was in the constitution. The court did not outline whether it was a fundamental right or not, and also did not law out a level of review for the right, rather they say "heightened level" of review. ³

Assuming this is closer to strict scrutiny, Veteran must have had a compelling interest to ban the use of the guns. His stated interest was that he wanted to prevent his employees from

A2 inadvertently using other parts on the vintage rifles. This probably satisfies the ENDS test, in that the state has the right to regulate the health and safety of its citizens through its police powers.

The regulation must then be closely tailored to fit the interest. There are other alternatives to make sure that they don't use other parts, such as holding training sessions for them, or changing the first part of the regulation to not have them store their guns at home. It is also under inclusive because the workers could still damage the guns even if they did not have other guns at home.

Therefore, the regulation violates Hero's 2nd amendment right and should be struck down. ⁵

B2)

A2 The methods of constitutional interpretation are Plain meaning or text, original intent, precedent and contemporary societal values. In looking at these, I would hold different than the supreme

court did and hold that there is not an individual right to carry a gun in the home.

Text: While the majority argues taht "the people" in the 2nd amendment are the same "people" from the 4th and 1st amendment, I would argue that the people in the second amendment is more of a collective, as the dissent in Heller did, and that it refers to the people's ability to protect themselves against the militia. Also, I would argue like the dissent that "bear arms" is not just to carry a gun but clearly refers to something more confrontational, and that is not just self defense. Also I would argue taht the second, operative clause, is not separate from the prefatory clause as the majority states, but that it is there only to modify the prefatory clause as need be. As the prefatory clause only refers to the Militia, the right therefore does too.

History/Original Intent: While the majority argues that the ind. right to have guns in the home already existed before the 2nd amendment, I would agree with the majority that if the framers intended it to be an ind. right to protect those int he home, they would have included it as such in the constitution.

Societal Needs: While the majority doesn't look at this at all (throat clear...Scalia), this is an important piece of the interpretation. A very important societal need that should be considered is the amount of people killed by handguns, and that it interpreting the right the way the majority did, the need to try to curb these murders is not being served.

Therefore, I would find that there is no individual right to possess a handgun in the home to be used for self defense.

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