

CONSTITUTIONAL LAW-LIBERTIES SCORING FORM¹

Anthony Winer

[137 Total Points]

Exam No.: _____

I. Franklin CAP Act in its Initial Form

[43 Points Possible]

- A. Reference to counseling in context raises Free Exercise issue 1
Free Exercise Clause of the 1st Amendment 2
Applies initially only to Fed. Gov't. 2
Incorporation against states via 14th Amendment DPC 3
- B. Employment Div. v. Smith 2
"Valid & neutral law of general applicability" 3
Co-attendance requirement valid, neutral & general 2
Duly ordained clergy exception may not be neutral 2
Lukumi Babalu Aye v. Hiialeah; "gerrymander" exclusions 3
- C. Residual Analysis under Strict Scrutiny 2
E.g., Sherbert v. Verner 2
Strict Scrutiny content & application 3
- D. Establishment Clause Issue; Incorporation 2
Establishment Clause of 1st Amendment 2
Sexual Development training for ordained clergy 2
3-Part Test from Lemon v. Kurtzman 4
Application here 2
- E. Fundamental Right for Child Rearing? 4

II. Amendment to CAP Act

[19 Points Possible]

- A. Restrictions on publication implicate free speech issues 1
Freedom of Speech & Press Clauses of 1st Amendment 2
Incorporation under 14th Amendment DPC 2
- B. Advocacy of Illegal Action as Unprotected Speech 2
Prohibition must pass test in Brandenburg v. Ohio 3
Two elements of statute: advocates & encourages 2
- C. If either element fails Brandenburg, law is content-based 3

¹ This is the first page of the chart Professor Winer used to grade a recent final exam.