

**SAN LUIS OBISPO COLLEGE OF LAW
CONSTITUTIONAL LAW II FINAL EXAM**

Spring 2022

Professor Erica Flores Baltodano

INSTRUCTIONS: This exam consists of one long essay question and one short essay question. Point values of each essay vary and are listed below. You will be given three hours to complete the examination. The 2022 Spring Exam Policy applies to this exam: this is a closed book exam.

Answer all questions presented by stating the constitutional principle(s) at issue and the relevant legal test(s). Use the facts to support your analysis under the law, arguing both sides as necessary. If you are missing facts necessary to your analysis, identify your assumptions and make arguments based on the assumptions you make. You must clearly state your conclusion.

Your answers should demonstrate your ability to apply the law to the given facts and to reason in a logical, lawyer-like manner from the premises you adopt to a sound conclusion. Do not merely state legal principles. Instead, try to demonstrate your proficiency in using and applying them. If a rule has multiple parts, analyze each element fully. If multiple rules apply, state, analyze, and draw a conclusion for each (and organize your essay accordingly).

If your answer contains only a statement of your conclusion without analysis, you will receive little credit. State fully the reasons that support your analysis and conclusions, relying on historical context, public policy, theory, and common sense, as appropriate, and discuss all points thoroughly.

QUESTION 1 (200 Points)

In March 2022, the Sunland State Public Health Department lifted a statewide school masking mandate, which had been imposed in March 2021 to stop the spread of COVID-19 in schools after schools reopened for in-person learning (schools had been closed for in-person learning since March 2020). School Districts now have discretion to lift the mask mandate at their schools and make masking optional or continue to require masking at school. The Sunland School Board scheduled a 6pm in-person school board meeting at the District Office to help it decide how to proceed.

One father, Mr. Williams, supports the mask mandate because his youngest child is too young to be vaccinated and his wife is battling breast cancer. In advance of the school board meeting, he prepared a flyer, made photocopies, and placed one flyer on each of the audience chairs in the school board room just before the start of the meeting. He planned to leave before other parents arrived to avoid a large indoor gathering. Mr. William's flier said "Has your family ever stared death in the face? My wife has been battling cancer for several years. My three children know that every day with their mother is fragile. Please find it in your hearts to support continued masking at schools. It's not just about you—let's keep each other safe." It was signed, "Concerned Father."

Mrs. Star, another school parent, was fed up with school masking. She felt that masking had caused her second grader to fall behind in phonics and reading because the child could not see her teachers form unfamiliar words with their mouths. Before the school board meeting, Mrs. Star stood on the sidewalk in front of the School District Office, loudly chanting "Masking Harms Kids" and holding a sign saying, "End Masking Now."

Committed to civil discourse, the Sunland School Board requested the presence of a city police officer at the school board meeting to maintain the peace. Upon arriving at the School District Office, the police officer cited Mrs. Star for violating a local ordinance enacted after a noisy demonstration disrupted classroom learning several years earlier. The ordinance says, "lawful expressions of speech, including protests and demonstrations, are permitted on sidewalks adjacent to school facilities but are prohibited during school events or when school is in session." The ordinance says school is deemed in session "7am through 3pm, Monday through Friday, September through May each year."

When the police officer walked into the school board meeting, she saw Mr. Williams placing his fliers on chairs, asked him to remove them all, and cited him for violating an obscure state election law that "prohibits the anonymous distribution of literature intended to promote the adoption or defeat of any public issue." The citation imposed a fine.

What constitutional issues can Mr. Williams and Mrs. Start raise and how likely are they to succeed?

QUESTION 2 (100 Points)

In 2015 Los Rios County Department of Transportation hired Henry Scout as a security guard. When he was offered the job, he was told the position was not "at-will." On his job application, Scout stated he had never been convicted of a felony, even though he had been convicted of grand larceny more than a decade earlier.

In 2022, during a routine examination of employee records, the County discovered Scout's felony charge and dismissed him from employment immediately, citing the conviction without further comment. Scout filed a lawsuit arguing that Los Rios County violated his due process rights.

What constitutional claim is Scout likely to raise?

(Exam end.)

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QUESTION 1 ANSWER OUTLINE

Issue: Can Mr. Williams argue the state's election law prohibiting anonymous leafletting is unconstitutional?

Rules/Analysis:

Compelled Speech/Right to Remain Silent: 1st Amendment Free Speech as applied to the State through the 14th Amendment Due Process Clause; right to speech includes right to stay silent (*Talley v. California*); case is like *McIntyre v. Ohio* finding law criminalizing anonymous flier at a school board meeting, which is political speech, unconstitutional. Strict scrutiny applies: law must be narrowly tailored to serve a compelling state interest. State's interest with the law is unknown, but a desire to regulate elections (as opposed to litter, for example) can be inferred based on categorization of the law as an "election law." Only in the context of campaign finance disclosures has the Court found it constitutional to compel a person to provide their name when engaging in political speech. This is because the state has a compelling interest in preventing fraud and corruption in elections. *Buckley v. Veleo*; *Citizen United v. F.E.C.* If preventing corruption and fraud in elections is the state's interest here, the law is not narrowly tailored. It forbids leafletting for or against public issues instead of more narrowly addressing candidate/ballot initiative elections or campaign contributions. If the city's concern is littering, the law is misplaced under the Election Code and there are several less restrictive alternatives to prevent litter without chilling speech. If litter is the concerns, the law is underinclusive because it forbids anonymous fliers on one subject but allows all other anonymous fliers.

Forum Analysis: is location where school board meeting takes place a dedicated public forum like a school or are school board meetings limited public forums dedicated for specific purpose (school board meetings) or specific topics (school board issues)? Regulations in designated public forums must be content-neutral and only reasonable time, place, manner regulation will be allowed. Reasonable means the law serves an important government interest and leaves open adequate alternative places for speech. Must be narrowly tailored to meet government's goal, but least restrict alternative not required. Here, the regulation is not content-neutral because it singles out speech for or against a public issue while allowing anonymous fliers on other topics (ex: lost dog, school fundraiser, tutor wanted). This means strict scrutiny applies: the election law must be narrowly tailored to serve a compelling state interest. The law fails strict scrutiny (see above). Regulations in a limited public forum need only be viewpoint neutral and reasonable.

The election law is viewpoint neutral, but it is not reasonable to ask someone to give up their constitutional right to stay silent when distributing literature about a political (policy) issue that is not a campaign contribution. Also, a law is not reasonable if it is vague and overbroad. The election law therefore fails the lower standard of review under limited public forum analysis.

Void for vagueness: a reasonable person would not know what "adoption or defeat of any public issue" means. Are unsigned flyers for or against a school board candidate during an election treated the same as unsigned flyers for or against a new school lunch menu? This is an "election law," but does adoption or defeat of any public issue mean an issue up for public vote or school board vote or simply public debate?

Overbroad: an overbroad statute regulates substantially more speech than the Constitution allows. The election law the law forbids anonymous leafletting for or against any public issue. The Constitution only allows the government to compel disclosure of names in the context of campaign contributions. The election law might apply to someone under those circumstances, but as applied to Mr. Williams who is simply expressing an opinion on a public issue in a constitutionally protected manner (anonymously), the law is unconstitutional.

Issue: Can Mrs. Star argue the local speech ordinance is unconstitutional?

Rules:

Forum Analysis: Speech is most protected in traditional public forums (parks, sidewalks, and streets). Ordinance regulates speech in a traditional public forum (sidewalks adjacent to school facilities). District Office is a school facility and Mrs. Star was demonstrating on the sidewalk. Regulations of speech in traditional public forums must be content-neutral. Only reasonable time, place, and manner restrictions that serve an important interest and leave open adequate alternative places for speech will be permitted under the Constitution. A regulation of speech in a traditional public forum must be narrowly tailored to achieve the government's purpose, but the least restrict alternative is not required. The purported purpose for the ordinance is to prevent noise that can disrupt classroom learning (that is why the law was passed). But the ordinance prohibits lawful expression (protests, demonstrations) when school is in session and during school events, which can be any time of the day, any day of the week, even when school is not in session. Preventing distraction while students are in class is an important goal, but the law goes beyond this, prohibiting lawful expression even during school events, which could include evening school board meetings, afterschool athletic practice and games, or weekend college fairs. Given that school days are long (7am-3pm), school is in session most of the year (Sept-May), sports activities are frequently after school hours and into the evenings, and weekend events at schools are not uncommon, few alternative times for speech are left available. The ordinance is not narrowly tailored to meet the city's interest in keeping the sidewalks adjacent to school and school facilities quiet to foster students learning and the law leaves few alternatives available for speech.

Void for vagueness: a weaker argument is that the ordinance is vague because it is unclear what constitutes "school events" and it is potentially unclear whether "school events" apply to school event that take place inside or outside school session hours.

Overbroad: the ordinance regulates more speech than the Constitution allows because it goes beyond what a reasonable time, place, manner regulation would permit. If the language "during school events" was delated from the ordinance, it would be more narrowly drawn and likely to survive constitutional review.

QUESTION 2 ANSWER OUTLINE

- I. Issue: Did Los Rios County violate Scout's right to procedural due process by terminating him without an opportunity to be heard before or after his termination?
- II. Rule: The Due Process Clause of the 14th Amendment says no state shall deprive any person of life, liberty, or property, without due process of the law.
- A. Deprivation: Being terminated from one's place of employment and cut off from one's source of income is an intentional deprivation.
- B. Property Interest: Property interests extend well beyond actual ownership of real property or money. In the context of welfare benefits, the U.S. Supreme Court (Court) suggested in *Goldberg v. Kelly* that the importance of the interest to the individual determines whether a property interest exists or not. Later, in the context of public employment, the Court has said a property interest exists if there is a reasonable expectation, based on law or custom, to continued receipt of a benefit. In *Roth*, an assistant professor hired expressly for one year, was not deprived of liberty or property when he was not rehired for a second year for no reason and with no process to appeal. In other cases, the Court has found a property interest existed when the public employee was hired under circumstances merely implying continued employment, such as when a community college professor was hired without tenure but given a faculty guide suggested continued employment barring misconduct. *Perry v. Sindermann*. When an employee is hired at-will, meaning the employment will continue only at the will of the employer, there is no expectation of continued employment. At-will employment can be implied when an employee is hired knowing he/she will only be terminated for gross misconduct. An employee who is not hired at-will, can have a reasonable expectation in continued employment. *Bishop v. Wood*; *Arnett v. Kennedy*.
- C. Due Process: To determine what procedures are required to provide due process when there has been a deprivation of a property interest, apply *Mathews v. Eldridge* balancing test: (1) importance of the interest to the individual, (2) the ability of additional procedures to increase the accuracy of the fact-finding process, and (3) the burden imposed on the government (administrative or fiscal) if more safeguards had been used.
- III. Analysis: Here, the government job that Scout held for ⁷two years was taken away from him because of an incident that allegedly took place ^{17 yrs}over a decade ago. Loss of one's job is a clear deprivation. The issue is whether it is a deprivation of a property interest subject to constitutional protection. Scout was hired as a security guard, a position he was told was not at-will. Since he was not hired at-will, it is reasonable for him to have had an expectation in continued employment with the County. Moreover, after two years of employment and no reference made to or questions asked about his job application, he could have further expected his employment would continue. When he was terminated, he was deprived of a property interest. When a public employee is deprived of a property interest, he or she is entitled to due process under the law. Applying *Mathews v. Eldridge*: (1) it is reasonable to argue that losing one's job (particularly in 2020) is almost always going to be of high importance to the individual and was probably of high importance to Scout. While

the facts are silent here, it would not be completely misplaced to assume Scout may have been looking for work for a while in light of his prior history and/or the pandemic, which caused a lot of loss of employment and even slowed down public transportation for a while. (2) Scout was not given notice or an opportunity to be heard before his termination; if he had been given even an informal opportunity to respond in writing or in-person at a pre-termination hearing, he may have been able to explain the error on his application. Indeed, Scout's alleged felony conviction may not even be accurate. A state court judge must consider the risk of erroneous deprivation in light of the government's procedures. Here the government procedure was to offer nothing: no notice or opportunity to be heard, which substantially increases the likelihood of an erroneous deprivation. A pretermination hearing seems essential to ensuring the accuracy of the fact-finding that led to Scout's deprivation. (3) But, *Matthews v. Eldridge* requires courts to balance the employee's interests with those of the employer. Providing Scout with a pre-termination hearing does not suggest the need for a full-fledged court hearing, but at least some hearing is essential. An informal hearing would seem to be both cost and time efficient with a substantial pay-off (if the facts were wrong, Scout would keep his job; if the facts play out, the County can be assured its termination decision was justified). Whether or not Scout should have also been granted a post-termination opportunity to appeal might depend more on administrative cost and efficiency. Depending on the type of hearing, a post-termination appeal could get more expensive, particularly if attorneys for either side are needed. That said, due process does grant public employees due process protection and if the County had done its due diligence at the time of hiring, it may not have extended a job offer to Scout in the first place. The counterargument here is that Scout (potentially) misled the County at the outset.

IV.

Conclusion: Courts have considerable discretion in the application of the *Matthew v. Eldridge* balancing test. Here, Scout is accused of substantial misconduct, but he was not given an opportunity to even explain himself. Even if the accusation against him is true, the constitution demands due process before deprivation of a property interest and those factors seem to be convincingly met here. A judge will very likely agree that Scout did suffer a deprivation of a property interest, warranting due process procedures. He or she will probably conclude that Scout was, at a minimum, entitled to pre-termination hearing to ensure the accuracy of the facts on which the termination was based. Whether or not a post-termination hearing was warranted may turn on evidence presented regarding the likely administrative costs of such a hearing or the outcome of the pre-termination hearing. If after a pretermination hearing the facts remain unclear and Scout is still terminated, a post-termination hearing may be warranted. Also, given the County's delay in identifying the alleged omission on Scout's application, Scout may be able to convince the judge that he is entitled to both a pre- and post-termination hearing.

(Exam end.)

1)

Question 1A: Mr. Williams

What constitutional issues can Mr. Williams raise against Sunland State in opposition to the citation he received for distributing anonymous leaflets at the school board meeting?

Issue 1: Freedom of Speech

The First Amendment of the Constitution provides that "Congress shall make no law...that abridges the freedom of speech." The First Amendment is applicable to the federal government through the Due Process Clause of the Fifth Amendment and applicable to the state by the Due Process Clause of the Fourteenth Amendment. *yes!*

Here, the defendant is Sunland State, a state government. ✓

Thus, the First Amendment is applicable to Sunland via the Due Process Clause of the Fourteenth Amendment. ✓

Issue #2: State Action

Constitutional safeguards are provided to an individual only if there is a state actor, and is not applicable to private actors. A state actor can be a government agency or individual working under the color of the law.

Here, the citation was issued by a police officer who was enforcing a state election law. Since police officers are state actors and the officer was working in his capacity as an officer, there was a state actor present,

Therefore, the constitutional safeguard of the First Amendment applies to Mr. Williams. ✓

Issue #3: Content-Based (CB)/Content-Neutral Regulation(CN)

A content-based regulation is a law that targets speech based on its communicative content. Application of content based laws can be based on subject matter, which focuses on the topic of discussion. CB laws can also be viewpoint based, where the ideology of the message is restricted. However, speech cannot be restricted if the expression may offend. CB laws are presumptive invalid and subject to strict scrutiny unless the speech is obscene, incitement to illegal activity or defamation.

A content neutral regulation is a law that applies universally to all speech. CN laws are subject to intermediate scrutiny. To be upheld, the government must demonstrate an important interest not related to the suppression of speech and the law should not restrict more speech than necessary.

Here, the law at issue prohibits any literature intended to promote the adoption/defeat of any issue. Mr. W will want to argue that the law is content-based because it will put a higher burden of strict scrutiny upon the government to meet. Mr. W will claim the law is content-based because it is aimed at public issues. However, this would be a weak argument because a CB law is more definite, such as "pro-life posters allowed but anti-abortion posters are not" or "all posters permitted but for sale signs." The state will argue the law is CN because it applies universally to all public issues, regardless of what the topic is or the position being taken.

Therefore, the court is likely to find the law content-neutral, making is subject to intermediate scrutiny.

Issue #4: Vagueness

A law will be deemed void for vagueness if the regulation is not clear to a reasonable person what speech is permitted and what speech is prohibited. Under a fairness standard,

If this is your conclusion, where is your analysis?

good analysis but I disagree. Law prohibits literature for or against a public issue but it allows flyers or lunchbox flyers or flyers about school fundraiser. So I would say law is C/B subject to 5/5.

people should be able to know when they are breaking the law and should not have to refrain from speaking out of fear that they may break the law. ✓

Here, Mr. Williams will argue that the election law is vague because it is unclear as to exactly what is a public issue. While he may think a mask mandate is a public issue, others may think that choosing to wear a mask is a personal issue that is not up for debate, especially since there is no longer a mandate in place. Additionally, the law in which Mr. Williams was cited on was an obscure state election law, which makes it questionable if the someone only breaks the law if their literature is about public issues that have to do with elections only? However, even if that were the case, Mr. Williams can argue the law is still vague because it is unclear to him, who is a reasonable person, exactly when he is breaking the law. *great!*

The state could argue that the law is not vague because it clearly states that anonymous literature intended to promote the adoption/defeat of a public issue is prohibited. Mr. Williams distributed anonymous literature that stated "please find it in your hearts to support continued masking at school," that was intended to promote the adoption of a mask mandate, a public issue, so he has violated the law. However, Mr. Williams can argue he didn't intend to break an election law. The school board invited the public to come to the board meeting to discuss a public issue, making literature about the public issue likely to be present.

Since the election law does not clarify what is a public issue, or clarify if the law only applies to election literature, the court may find the law void for vagueness.

Issue #5: Overbroad

A law is considered overboard if it suppresses more speech than necessary or the law makes speech unconstitutional to one person and constitutional to another. ✓

great!

Here, the law that Mr. Williams was cited for was an election law that prohibited anonymous literature "intended to promote the adoption or defeat any public issue." Mr. Williams can argue the law is overbroad because it prohibits "any public issue" from being communicated to the public. Public issues are supposed to be discussed, that is the goal the founding fathers had in enacting the First Amendment. Without freedom of speech to discuss public issues, we would not be able to promote tolerance because discussion of issues is what aids bringing about change. Communicating public issues promotes self-governance because this is our democracy works. The main point of the school board meeting that Mr. Williams displayed the flyers at was to discuss whether the mask mandate should be continued, which is a public issue. Mr. Williams will argue that the law was overbroad because he would have violated the election whether he opposed or supported the mask mandate. Technically, under this law, anyone who distributed a leaflet as innocent as "we should stop daylight savings time" could be cited, when this is a valid public issue that should be up for debate by a community. The state may argue the law is not overbroad because the goal is to promote public safety and maintain the peace. However, this would be a poor argument because it assumes that people cannot have civilized discussions and promoting public safety, while a valuable interest, can be obtained in several other ways, such as having an officer present to maintain the peace when a heated public issue will be discussed, as the school board did here.

great analysis

Since the election law suppresses more speech than necessary, the court is likely to find the election law overbroad.

Issue #6: Right to Remain Anonymous

The First Amendment of the constitution provides not only that a individual has a right to speak but also provides that an individual has the right to refrain from speaking or endorsing ideas in which the individual does not agree. The government cannot compel



and individual to communicate a message in which he does not agree. Additionally, the First Amendment provides a person the right to remain anonymous.

Here, Mr. W distributed the leaflets anonymously stating that his wife has breast cancer, his kids are struggling seeing his wife fragile, and pleads with the community to please support the mask mandate to keep everyone safe. The state claims that Mr. W violated the statute because he distributed the flyers anonymously and must be compelled to reveal his identity. However, what value would be received if Mr. W revealed himself? Then the whole school would know that the three children's mom is facing cancer, putting the whole family's personal struggle out for the community. Mr. W was taking action to protect his family from sickness, death, and grief, while the state's interest may want to prevent fraud or misinformation. While false information is still protected under the First Amendment, the balance of interest for Mr. W's privacy here outweighs the state's interest of preventing fraud.

ah! Be sure to address fraud as the purported state interest when you apply either

Therefore, the court may find Mr. W had a right to remain anonymous.

*5/5
or 1/5.*

Issue #7: Designated Public Forum *You must analyze all aspects here: CIN?*

A designated public forum, such as a public school or university, is a government property that is not traditionally made available for speech but the government has intentionally made available for speech. Any regulations on speech must be content-neutral. If the regulation is a content-based restriction, then strict scrutiny will apply. To be upheld, the government must demonstrate the regulation is narrowly tailored to necessary compelling state interest. Any time, place, and manner restrictions must also be reasonably related to an important government interest that does not justified by suppressing more speech than necessary and is narrowly tailored. However, the least restrictive alternative is not necessary.

Leaves other channels open for expression?

Did you consider that a school board room is not like a school (DPF) but a

Here, the district office is a designated public forum because it is property that the government is traditionally obligated to make available for speech but the government has opened the property up for speech by inviting the public to come to the district office to discuss the mask mandate. The district office is usually open during the day to conduct school related business and is not normally a public forum for speech. Mr. W will claim his freedom of speech rights were violated when the police officer approached him to remove the fliers he placed on the chairs, restricting his speech on the mask mandate issue. Mr. W will claim that the election law should not be permitted at the district office because it violated the time, place and manner restriction by prohibiting him from distributing literature in support of the mask mandate at the time of the school board meeting. Had he distributed it during office hours, it wouldn't be appropriate but his action took place at the time of discussion about the topic of his fliers.

limited Public Forum dedicated for specific purposes or specific types?

The state will argue that they did not violate Mr. W's freedom of speech because the law was a content-neutral law that did not take a viewpoint. The state will argue that they had an interest in preventing trash from being left behind and Mr. W was putting flyers on the chairs with the intent of leaving after he placed them, with no intention of picking up any left over fliers. The state will claim that Mr. W could have stayed at the meeting and communicated his message without leaving trash behind. Mr. W was planning on leaving due to the crowd but the officer could have asked him to come back afterwards to pick up the trash or it is likely the district officer already had a janitorial service scheduled to come afterward, especially since Covid is not fully gone and they were expecting a large crowd.

Since the regulation suppresses more speech than necessary, it is likely the court may find that the law should not be upheld.

You only mention the gov't interest in preventing fraud in elections or preventing litter? Analyze both bk

Conclusion: Mr. W can raise issues with the election law being overboard, vague, and suppressing more speech than necessary when balanced against the important

you can't assess NIT until you state what the assumed gov't interest is + whether

government interest. Since the law is content-neutral, the law is unlikely to survive intermediate scrutiny because it does not serve an important government interest, nor is it narrowly tailored due to being overboard. Therefore, Mr. W is likely to succeed.

Question 1B: Mrs. Start

What constitutional issues can Mrs. Start raise against Sunland State in opposition to the citation she received for protesting the local mask ordinance outside the district office? How likely is Mrs. Start to succeed in her constitutional challenges?

Issue 1: Freedom of Speech

The First Amendment of the Constitution provides that "Congress shall make no law...that abridges the freedom of speech." The First Amendment is applicable to the federal government through the Due Process Clause of the Fifth Amendment and ✓ applicable to the state by the Due Process Clause of the Fourteenth Amendment.

Here, the defendant is Sunland State, a state government.

Thus, the First Amendment is applicable to Sunland via the Due Process Clause of the Fourteenth Amendment.

The law under which Mrs. Start was cited is a "local ordinance"

Issue #2: State Action

Constitutional safeguards are provided to an individual only if there is a state actor, and is not applicable to private actors. A state actor can be a government agency or individual working under the color of the law.

Here, the citation was issued by a police officer who was enforcing a local protesting ordinance. Since police officers are state actors and the officer was working in his capacity as an officer, there was a state actor present,

Therefore, the constitutional safeguard of the First Amendment applies to Mrs. Star.

Issue #3: Content-Based/Content-Neutral Restriction

best to situate this after analysis you determine correct forum. Forum analysis based on whether C/B or C/N.

A content-based regulation is a law that targets speech based on its communicative content. Application of content based laws can be based on subject matter, which focuses on the topic of discussion. CB laws can also be viewpoint based, where the ideology of the message is restricted. However, speech cannot be restricted if the expression may offend. CB laws are presumptive invalid and subject to strict scrutiny unless the speech is obscene, incitement to illegal activity or defamation.

A content neutral regulation is a law that applies universally to all speech. CN laws are subject to intermediate scrutiny. To be upheld, the government must demonstrate an important interest not related to the suppression of speech and the law should not restrict more speech than necessary.

Here, the law at issue is for Mrs. S. violating an local ordinance that states protests on sidewalks adjacent to school facilities are prohibited during school events or when school is in session. The law is considered a content-neutral law because it applies universally to all speech, regardless of the content. As long as the protest and demonstrations occur outside of school hours and not during school events, ^{Mrs. Star} she can protest. The law is not related to the suppression of speech because it still permits speech but not during times that will disrupt learning for the school children. Mrs. S may claim that the goal of the ordinance was to restrict her from protesting, especially because the ordinance was enacted after a noisy demonstration several years earlier. However, ^{the city will argue} the goal of the

ordinance is to prevent demonstrations from disrupting classroom learning, not restricting more speech than necessary.

Therefore, the court will likely find the ordinance to be content-neutral, subject to intermediate scrutiny. *But is she disrupting learning when school is not in session? Does City interest hold up? Is a school board meeting a "school event"? Maybe a void for vagueness argument is needed.*

Intermediate Scrutiny

To pass intermediate scrutiny, the government must demonstrate an important government interest that is unrelated to the suppression of speech.

Mrs. S will argue that she did not violate the ordinance for two reasons. First, the discussion of a mask mandate is not a school event and was not on school grounds.

Second, her protest was occurred before the board meeting, which was to take place at 6pm. Although we don't know what time Mrs. S arrived, it can be inferred that she was protesting after 3pm but before 6pm, because that is when most people would see her protest.

Issue #4: Traditional Public Forum

A traditional public forum is a property which the government is obligated to make available for speech, such as public sidewalks and parks. Any regulations on speech must be content-neutral. (If the regulation is a content-based restriction, then strict scrutiny will apply. To be upheld, the government must demonstrate the regulation is narrowly tailored to necessary compelling state interest.) Any time, place, and manner restrictions must also be reasonably related to an important government interest that does not justified by suppressing more speech than necessary and is narrowly tailored. However, the least restrictive alternative is not necessary.

Here, Mrs. S was protesting on the sidewalk in front of the school's District Office holding a sign and loudly chanting. Mrs. S will claim that her speech is protected because she was protesting on a sidewalk, which is a traditional government forum and she was not protesting during school hours, so she did not violate the ordinance. The state will argue that Mrs. S did violate the ordinance because she was protesting during a school event and her actions of a noisy demonstration is exactly the kind of behavior the ordinance is aimed at preventing. Since the ordinance is content neutral and is a time, place, and manner restriction (no protest while school is in session and during school events), the state must demonstrate that its goals are reasonably related and does not suppress more speech than necessary, and narrowly tailored, providing alternative channels of communication.

more analysis here

But there are some overbroad arguments to be made. And

Therefore, the court is likely to find the sidewalk in which Mrs. S protested on a traditional public forum.

vague b/c unclear what is a school event.

Conclusion: Since the ordinance does provide alternative channels of communication by giving alternative times that protest and demonstrations can occur, while protecting children from disruptions in the classroom, the ordinance should be upheld. The issue is whether Mrs. S. actually violated the ordinance, and that is dependent upon whether the school board meeting is actually a "school event." The goal of the ordinance was to prevent classroom disruption and Mrs. S. protesting outside the district office, and not outside the school, during the time in which she is allowed to protest based on the TPM regulation, makes it likely that the court will find she did not violation the ordinance, making her likely to succeed.

END OF EXAM

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2)

SCOUT'S CONSTITUTIONAL CLAIM

The issue presented by this fact pattern asks what constitutional claim the dismissed employee, Henry Scout, may assert against his former government employer, Los Rios County. Henry was hired in 2015 by the County Department of Transportation as a security guard and ^{told} given to understand that his employment was secure, i.e. not "at-will." In 2022, the County summarily fired Scout after discovering that he had a prior conviction for Grand Larceny that he failed to disclose on his job application. Because Scout received no further information about his dismissal and because he has an important property interest in keeping his job, he will likely assert a claim that his procedural due process rights have been violated.

the belongs in your analysis

good!

RULE: PROCEDURAL DUE PROCESS

The Fifth and Fourteenth Amendments protect individuals from being arbitrarily deprived of life, liberty, or property by acts of the government without due process of law. The Fourteenth Amendment provides due process against state governments, and by extension the municipalities that draw their power therefrom. It requires that the state provide both substantive and procedural due process rights any time an individual is deprived of life, liberty, or property. Procedural due process generally entitles the individual to notice and an unbiased decision with various safeguards depending on the nature of the interest to be protected.

✓

Analysis

The presence of a government actor is a threshold requirement for a procedural due process violation. The actor may be the government itself, or, in some cases, a private

actor fulfilling an essential government function. Here, Scout was employed by Los Rios County Department of Transportation ("DOT"). The facts are not explicit, but they suggest that the DOT was a unit of the county government. Even if the DOT is a private enterprise that contracts for the county, provision of roads and other transit infrastructure is generally considered an essential government function, so a private entity would likely be a government actor for the purposes of fulfilling these public obligations. Counties generally draw their police power from the state's enabling statutes, therefore Los Rios County and its DOT are bound by the same Fourteenth Amendment Procedural Due Process Considerations as the state would be.

In order to proceed with his claim against the DOT, Scout will need to show that his claim ripe, i.e. justiciable, that he had a cognizable liberty right or property interest at stake, and that he was denied the procedural safeguards to which he was entitled.

Conclusion

Los Rios County is a proper defendant against whom Scout can assert a procedural due process claim.

Rule: Ripeness

This is a Con Law I issue not covered or tested in this class but good job!

A claimant must have an injury in fact, or be facing imminent injury, before his claim can be evaluated by the court. Additionally, when a claim deals with employment there may be statutory "administrative remedies" that must be exhausted. Further, states often have statutes setting out notice requirements that must be fulfilled prior to filing suit against them (or against municipal government units).

Analysis

Scout has a present injury in fact because he has lost his job as a security guard for the DOT. However, there are no facts to tell us whether Scout pursued any administrative remedies prior to filing suit against Los Rios County for violating his due process rights. If there is a statutory requirement to exhaust administrative remedies, e.g. by filing a complaint with the state's employment commission or by giving notice of a potential claim against Los Rios County and an opportunity for the County to settle the claim without a lawsuit, it is possible that Scout's lawsuit may have been prematurely filed.

Conclusion

Scout has an injury in fact that is ripe for adjudication, however it is unclear whether he has exhausted his administrative remedies such that he can pursue a lawsuit against Los Rios County.

Rule: Life, Liberty, or Property Interest

(1) Has there been a deprivation? Analyze
(2) Is it of L, L, or P?

Life and liberty have been broadly construed to include the exercise of fundamental freedoms guaranteed both explicitly and implicitly by the constitution. Traditionally, property was limited solely to chattels or realty, but modernly courts recognize a much wider range of property interests. Today, nearly any government benefit, e.g. a job or welfare payments, in which an individual has a legitimate interest may be considered "property" for the purposes of substantive or procedural due process.

Analysis

Hmm, it depends on whether employment is at-will or not.

Scout has an important property interest in his DOT job. He--and possibly others if he has any dependents--likely rely on the income and other benefits he earns. Depending on the circumstances of the County, its job market, and Scout's own resume (not to mention his criminal history), he may not be able to secure another comparable position easily. It is particularly significant that he was told the position was not "at-will" when he was hired

✓
✓
yes! ↓

because this gives rise to a reasonable expectation that the employment will only be terminated for good cause. In such a case, Scout has a right to know in at least some detail why he was terminated and may also have the right to contest the findings and conclusions on which his termination was based. ✓

Conclusion

Scout's DOT job is a property interest sufficient to entitle him to procedural due process during termination, particularly because the job is not "at-will." ✓

Balancing of Procedural Safeguards

When it has been determined that the government or its agent has deprived an individual of liberty or property interests, the type of procedural safeguards to which they are entitled is determined by a balancing test. Courts consider (1) the importance of the interest to the individual and (2) the value of the particular safeguards in protecting that interest against (3) the government's interest in fiscal and administrative efficiency. ✓

Procedural safeguards to which someone may be entitled include notice, an opportunity to hear the "charges" against them, an opportunity to be heard, and an unbiased decision maker.

Analysis

As explained above, Scout's interest in his DOT job is very important to him. It likely represents his livelihood and may even affect his ability to remain a member of the Los Rios County community. The facts tell us that Scout was fired without any sort of process aside from being informed that it was because of his felony conviction. He had no opportunity to learn how the conviction was discovered or why the discovery led to his dismissal, let alone the chance to explain or defend himself. Consider that Scout may have simply checked a box to indicate that he had never been convicted of a felony without ✓

set forth in Matthews v Eldridge

It would be nice for your analyses to be organized w/ headers for each of the 3 Matthews factors.

actually reading the job application carefully. Or he may not have realized that grand larceny was a felony. Or that a conviction more than 10 years old could still be considered relevant for employment. Or he may have believed that the conviction had been reduced and/or expunged. Without sufficient information about why he was fired and the opportunity to be heard by a neutral arbiter, it is possible that Scout has lost a job that he was actually entitled to keep. Presuming that the felony conviction itself did not disqualify him from employment, it was likely the fact that he failed to disclose it. However, given the dearth of information provided, Scout has no way to know this. And, perhaps more importantly, with no opportunity to be heard before the final decision is made, Scout has no opportunity to defend his job in case the DOT is mistaken about the circumstances.

The County may argue that providing detailed information about why Scout was fired is unnecessary because he should realize that he lied about the felony conviction. They will likely also argue that providing a noticed hearing and appeal-like process for Scout to present his side of things would be expensive and time consuming and interfere with the efficient functioning of the DOT. It is possible that if the DOT has a large number of employees and high turnover that this would be true. However, Scout has been employed there for 7 years. The County has invested in training and supervising him. And he is being fired for a reason that is unlikely to be frequently repeated regarding other employees.

Overall, the balance of equities falls squarely on the side of affording Scout additional due process. At a bare minimum, he should be informed that the discovery of his felony record is inconsistent with his claims on the job application (filled out 7 years ago) and that this is the cause for his termination. He is also likely entitled to a hearing, possibly even an adversarial hearing where he would have representation -- there are no facts to suggest a union is in play here, but transit workers are often unionized -- in order to present any justification or explanation that might explain the discrepancy.

Conclusion

The cost to the County in terms of time and other resources is outweighed by the high importance Scout likely places on retaining his job and the value that an opportunity to be heard by an unbiased decision maker would have on helping him to do so. ✓

OVERALL CONCLUSION

DOT's termination of Scout from his government job as a security guard likely violated Scout's procedural due process rights. The job is an important property interest and the value of easily available procedural safeguards considerably outweighs any costs to the county. Provided Scout has exhausted his administrative remedies prior to filing suit, he will likely succeed in his procedural due process claim. ✓✓

END OF EXAM