

## **Constitutional Law Exam 5**

### **Fact Pattern:**

State of Confusion passed the Statute Outlawing Smelly People, which reads:

Section 1. A person is guilty of a misdemeanor when a person who smells really, really bad sits, stands or wanders around a public place, or on private property open to the public hassling people for money or shouting incoherently and acting crazy. The purpose of this section is to create a peaceful smell-free environment for citizens of the State of Confusion.

Carrie and Dipsy were separately convicted under Statute Outlawing Smelly People in a State of Confusion court. Carrie was convicted of asking for change to take the bus on a public sidewalk near a bus stop. Dipsy was convicted of shouting incoherently at a private office building outside an office being used to hold a county commission meeting.

### **Questions:**

Discuss any challenges Carrie and Dipsy can make to the smelly people statute under the U.S. Constitution.

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## **Example Answer:**

### Standing

Do Carrie and Dipsy have standing to bring these claims?

Courts are only empowered to hear cases involving real controversies, and a plaintiff has standing to bring a case only if he or she suffers, or will imminently suffer, an injury in fact that may be remedied by the court's action.

Here, both Carrie and Dipsy have actually been convicted under the Statute Outlawing Smelly People. Unless overturned Carrie and Dipsy will be guilty of a misdemeanor. And the appeals court has the power to remedy this injury as it can overturn the conviction.

Both Carrie and Dipsy have standing to bring these challenges to the constitutionality of the Statute Outlawing Smelly People.

### State Action

Has there been sufficient state action for Carrie and Dipsy to challenge the constitutionality of the Statute Outlawing Smelly People?

Generally where a plaintiff alleges violation of personal rights under the Constitution, the violation must have been committed by a state or federal actor in order to be actionable.

Under the due process clause of the Fourteenth Amendment, the limitations that the First Amendment places on federal government action have also been incorporated against the states.

Carrie and Dipsy must demonstrate that an arm of the State of Confusion government has taken some type of action which has violated their First Amendment rights. Here, the state has convicted them of violating the Statute Outlawing Smelly People. This constitutes state action sufficient to allow Carrie, and Dipsy to challenge the statute.

Under these facts there has been sufficient state action for Carrie and Dipsy to challenge the constitutionality of the Statute Outlawing Smelly People.

## Void for Vagueness

Is the Statute Outlawing Smelly People void for vagueness?

A statute is unconstitutionally vague if the conduct forbidden by it is so unclearly defined that a reasonable person would have to guess at its meaning.

Here the statute does not define what it means to smell really, really bad or what shouting incoherently or acting crazy means. As “smell” and “acting crazy” are at least partially subjective these terms are inherently vague. In addition, everyone carries some type of scent and may act weird at one time or another. Under the statute as written it would be impossible for an individual to know when they were violating the statute.

Under our facts, the statute can be challenged for being unconstitutionally vague.

## Equal Protection Clause

Does the Statute Outlawing Smelly People violate the equal protection clause of the 14<sup>th</sup> Amendment?

The Fourteenth Amendment states that, “No State shall deny to any person. . . equal protection of the laws.”

Here, the statute singles out “smelly” and “crazy” people. Under the equal protection clause, the government may not enact legislation that discriminates against any person or group.

Smelly and crazy people certainly do not fall into a suspect or quasi-suspect class. Under our facts, however, Carrie and Dipsy are attempting to exercise a fundamental right (free speech) which will give rise to the strict scrutiny standard. To survive under strict scrutiny, the ordinance must be necessary for a compelling governmental interest.

Here, the government does have a legitimate interest in creating a peaceful smell free environment for its citizens. However, there is no evidence that this interest is compelling. In addition, in order to pass strict scrutiny, the statute must necessarily and narrowly tailored to accomplish its purpose. Here, the statute does not appear to be necessary or narrowly tailored to ensure a peaceful smell free environment. Therefore the statute will not survive strict scrutiny and will be struck down.

Under these facts, the statute violates the equal protection clause of the Fourteenth Amendment to the U.S. Constitution.

## First Amendment – Carrie's Case

Does the Statute Outlawing Smelly People violate the free speech clause of the First Amendment to the U.S. Constitution?

The free speech clause of the First Amendment is applicable to the states through the Fourteenth Amendment to the Constitution.

The First Amendment to the constitution states in part, "Congress shall make no law . . . abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble . . ."

Under the free speech clause, the Government may not control the content of expression in public forums. In addition, the U.S. Supreme Court has held that a government cannot compel anyone to speak, or endorse any particular words.

Here the statute prevented Carrie from begging for money on a public sidewalk. A public forum is an area which is traditionally available to the public as a place in which they may exercise their First Amendment rights to free speech. Sidewalks and parks are classic public forums.

In addition, begging for money is considered speech and the state's prohibition against begging bans speech based on content. If a state undertakes to regulate the speech of its citizens in a way that discriminates on the basis of certain content, the statute must satisfy strict scrutiny to be upheld when the statute is enforced. To survive under this standard, the ordinance must be necessary for a compelling governmental interest.

Here, the government does have a legitimate interest in creating a peaceful smell free environment for its citizens. However, there is no evidence that this interest is compelling. In addition, in order to pass strict scrutiny, the statute must necessarily and narrowly tailored to accomplish its purpose. Here, the statute does not appear to be necessary or narrowly tailored to ensure a peaceful smell free environment. Therefore the statute will not survive strict scrutiny and will be struck down.

Under these facts, the statute violates Carrie's First Amendment right to free speech.

## First Amendment – Dipsy’s Case

Does the Statute Outlawing Smelly People violate the free speech clause of the First Amendment to the U.S. Constitution?

The free speech clause of the First Amendment is applicable to the states through the Fourteenth Amendment to the Constitution.

The First Amendment to the constitution states in part, “Congress shall make no law . . . abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble . . .”

Under the free speech clause, the Government may not control the content of expression in public forums. In addition, the U.S. Supreme Court has held that a government cannot compel anyone to speak, or endorse any particular words.

Here the statute prevented Dipsy from shouting incoherently and acting crazy at a private office building. A private office building is not considered a public forum. The exception to this is if the private forum is serving a public function. Under our facts, the private building was being used to hold a county commission meeting. This is a public function and makes the private office building a public forum in the area where county commission is meeting at the time it is meeting.

Shouting incoherently and acting crazy is considered speech and the state’s prohibition against it bans speech based on content. If a state undertakes to regulate the speech of citizens in a way that discriminates on the basis of certain content, the statute must satisfy strict scrutiny to be upheld when the statute is enforced. To survive under this standard, the ordinance must be necessary for a compelling governmental interest.

Here, the government does have a legitimate interest in creating a peaceful smell free environment for its citizens. However, there is no evidence that this interest is compelling. In addition, in order to pass strict scrutiny, the statute must necessarily and narrowly tailored to accomplish its purpose. Here, the statute does not appear to be necessary or narrowly tailored to ensure a peaceful smell free environment. Therefore the statute will not survive strict scrutiny and will be struck down.

Under these facts, the statute violates Carrie’s First Amendment right to free speech.