

THE UNIVERSITY OF DAYTON SCHOOL OF LAW
JUDEO-CHRISTIAN ETHICS AND THE LAW
FINAL EXAMINATION

PART I

PROFESSORS ALLEN SULTAN AND JOHN PUTKA

FRIDAY, MAY 1, 1992

1:00 - 4:00 p.m.

INSTRUCTIONS

You will have three hours for this examination. After 90 minutes the proctor will collect the attached question and your answer. You will then receive the second question to be answered in the remaining 90 minutes.

Read the entire examination carefully before you write. Plan your answers. **WRITE IN INK. WRITE CLEARLY ON ONE SIDE OF THE PAGE ONLY. DO NOT REPEAT THE QUESTION. BE AS DETAILED AND SPECIFIC AS POSSIBLE. ANSWER THE QUESTION. DO NOT SURVEY. DO NOT REPEAT YOURSELF.** No materials of any kind are allowed with you. All question sheets must be handed in with your blue book(s).

Please make sure you have your examination number on each blue book and that they are sequentially numbered before you submit them to the proctor.

GOOD LUCK

Medicaid is a government funded program providing medical services for those too poor to afford them. It is administered by the states pursuant to Acts of Congress and Regulations thereto that allow certain discretion to the states.

Citing the ever exploding costs of medical services, and the fact that the present depressed state of the economy has thrust an unprecedented number of new patients into the Medicaid system, the Ohio legislature has decided to regulate the future availability of Medicaid Services for AIDS patients including any resulting medical consequences of that disease. To this end, a statute is promulgated that restricts such services to patients who develop the disease by means of:

1. Blood Transfusions.
2. As a health delivery worker.

3. At birth due to one or both parents having the disease.
4. As a researcher or other individual seeking a cure for the disease.
5. As a result of rape, including statutory rape.
6. Those who contracted it from their spouse without knowledge that the spouse suffered from the disease.

Specifically eliminated from Ohio Medicaid services are those who contract the disease as a result of all other types of consensual sexual contacts, and from the illegal use of narcotics or other proscribed drug use.

The male and female joint leaders of the Ohio Gay and Lesbian Civil Liberties Union seek your assistance in challenging the statute.

What possible challenge(s) can be made to the statute? Upon what can it or they be based?

PART II

John Putka, S.M.
May 1992

With the national debt topping \$5 trillion, Congress and the President, facing economic and political realities, decide that the national interest requires drastic measures. Research by congressional investigators provides facts and projections as follow (these are actual statistics from a House committee):

Due to medical advances, smaller families and tens of millions of abortions, the "graying of America" is dramatic:

-In the past 20 years, the number of Americans 65 and over has increased by 56%, whereas the number of Americans under 65 has increased by only 19%. By the year 2020, the number of those 65 and over is expected to double, while the number of those below 65 will continue to shrink.

-In 1900, 123,000 Americans were 85 and older; by 1985, the number had risen to 2,800,000; by 2000, it will be well over 5,000,000. Of these, approximately 22% need nursing home care, and another 20% need long-term health care services.

-Long-term health care needs for the entire U.S. population: 1986, 5,670,000; 2000, 872,000; 2040, 17,752,000.

-The United States is spending about \$800 billion a year on health care, and by the year 2000 these costs could be over \$1.5 trillion.

-Large sums of money are spent on a small number of patients who have unusual medical conditions, so much so that the State of Oregon has decided to ration health care according to certain priorities. In addition, fully half of all health care money is spent on persons who are in the last six months of their

lives.

-With the U.S. population aging so quickly, and with an increasingly smaller tax base, it is clear that unless something drastic is done the national economy will self-destruct.

The Fourteenth Amendment of the Constitution provides in Section 1 that "All persons born or naturalized in the United States..." are guaranteed certain legal rights and protections. Section 5 provides that: "The Congress shall have power to enforce, by appropriate legislation, the provisions of this article." In response to the nation's fiscal and health care problems, Congress passes the Quality of Life Control Act of 1992, which contains the following provisions, for which national polls indicate high degrees of support:

-Assisted suicide is sanctioned as an extension of the right of privacy and its penumbras and emanations mentioned in *Griswold v. Connecticut*, as long as it is a decision made by the patient and his/her physician, as protected by both *Roe v. Wade* and *Webster*.

-Noting that *Roe v. Wade* argued that constitutional protection is reduced if one is not "a person in the whole sense" or "capable of meaningful life," Congress finds that the following are not to be considered as "persons" under the terms of the Fourteenth Amendment if the attending physician determines that said conditions are permanent and irreversible: the insane, the severely retarded, the senile, those in a persistent vegetative state, those in a coma, and the severely deformed or handicapped. If the families of such persons can pay for all necessary health care, they are free to do so; if public funds are needed, then the physician is authorized to administer a lethal injection.

QUESTIONS:

1. Would a President Cuomo sign such legislation? Explain.
2. Would a President Henry J. Hyde do so? Explain.
3. Would John Courtney Murray find this legislation compatible with his understanding of the American proposition? Explain.

4. Should this legislation become law, explain how each of the following would rule were he/she a member of the U.S. Supreme Court---and explain the reasoning of each.

a. Robert H. Bork
b. Harry V. Jaffa

c. Oliver Wendell Holmes
d. You

CONGRATULATIONS TO THOSE GRADUATING! HAVE A GREAT SUMMER. KEEP IN TOUCH.