FINAL EXAM INSTRUCTIONS: PLEASE READ CAREFULLY

This final examination consists of Two essay questions. The exam should have TWO (2) pages. Please be sure NOW that you have all of the pages.

THIS IS A TAKE-HOME EXAM:

YOU WILL HAVE 24 HOURS TO COMPLETE THE EXAM:

EXAMS MAY BE PICKED UP FROM A BOX LOCATED OUTSIDE THE FACULTY SECRETARIAT (SECOND FLOOR, JUST OFF THE GRAND STAIRCASE) AND MUST BE DROPPED OFF AT THE SECRETARIAT (LEAVE WITH SECRETARIAT PERSONAL OR DEPOSIT UNDER THE SECRETARIAT DOOR AFTER HOURS) WITHIN THE ALLOTTED TIME.

EXAMS MAY BE PICKED UP ON ANY DAY FROM THE FIRST DAY OF THE EXAMINATION PERIOD TO THE DAY BEFORE THE LAST DAY OF THE EXAMINATION PERIOD ON ANY DAY AND AT ANY TIME.

Put your exam number on each page of the paper you will be submitting. You do not
need to put any other information on the papers you turn in. Do not write your name on the examination or on any of the papers you submit to me --I REALLY DO NOT WANT TO KNOW WHO YOU ARE AS I GRADE THE EXAMS!!!!

This is an open book exam. Instructions on answering the essay questions are underlined and are found at the end of each question. Follow these instructions carefully and discuss the issues presented fully. BE SURE TO ANSWER ONLY THE QUESTION ASKED OF YOU. YOU DO NOT HAVE TO ANSWER THE QUESTIONS IN ANY PARTICULAR ORDER, AS LONG AS YOU IDENTIFY THE QUESTION YOU ARE ANSWERING.

Plan and organize your answers before starting to write them out. Please keep the following in mind as you write your answers. The most important thing you can remember is this: answer the question asked and only the question asked. A good rule to follow is to read the question before reading the facts presented. Do not discuss legal doctrines that are not pertinent to the questions asked; likewise long introductory paragraphs which are not directly responsive to the questions asked will receive no credit. Points will be deducted for erroneous statements of law. Please, where appropriate, be sure to apply the law to the facts of the question as presented. If you think additional facts are necessary for a complete answer, state those facts and the reasons you believe such additional facts are necessary. An answer containing only a statement of your conclusions will receive no credit. Where this may be helpful to support your arguments, refer to specific cases by name (complete names and citations are not required) and to articles, statutes and otherwise by number (Bluebook form citations are not required).
EXAM REQUIREMENTS --
PLEASE READ CAREFULLY!!!!!!

1. EXAMS MUST BE:
   (A) DOUBLE SPACED,
   (B) ON STANDARD AMERICAN 8.5X11 PAPER,
   (C) ONE (1) INCH MARGINS ON ALL SIDES OF THE PAGE
   (D) NO SMALLER THAN 10 POINT TIMES NEW ROMAN FONT
   (E) NO FOOTNOTES; ENDNOTES; OR OTHER NOTES

2. MAXIMUM LENGTH OF EXAM IS TEN (10) TYPED PAGES.

   FINAL RULE OF THUMB:  KEEP IT SHORT AND TO THE POINT!!

   I have enjoyed the semester with you all. I look forward to seeing you again in another class!
QUESTION 1:

Your study group is reviewing the Establishment Clauses cases studied in class. In the course of the review your best friend and classmate, Oh Hiyo, tells the group the following:

It seems to me that Professor Backer has read far too much into the cases we have studied. The Lemon Test as originally established remains the ‘basic law’ of Establishment Clause jurisprudence since the 1940s. Nothing has changed since the adoption of this standard. All the cases we have studied have applied the Lemon Test uniformly despite any supposed jurisprudential differences among the justices. And I can prove it too!

THE STUDY GROUP IS AMAZED. DO YOU THINK OH HIYO IS RIGHT OR WRONG? WRITE A MEMO TO PROFESSOR BACKER EXPLAINING FULLY HOW YOU WOULD RESPOND TO THAT STATEMENT: BE SURE TO INCLUDE EXAMPLES AND ANALYSIS FROM THE CASE LAW DEMONSTRATING THE EXTENT TO WHICH THE STATEMENT IS CORRECT OR NOT CORRECT.
Constitutional Law of Religion;  
Professor Backer  
Take Home Final Exam -- Fall 2004

QUESTION 2:

While studying for the final exam a classmate of yours said the following:

After *Employment Div. v. Smith* it has become clear that there is substantially no "Free Exercise" Clause left in the Constitution. Now the federal government can enact whatever law it wants and there is no way any person can seek any accommodation because of her religious beliefs or practices, no matter how important.

WRITE A MEMO TO YOUR CLASSMATE EXPLAINING FULLY HOW YOU WOULD RESPOND TO THAT STATEMENT: BE SURE TO INCLUDE EXAMPLES AND ANALYSIS FROM THE CASE LAW DEMONSTRATING THE EXTENT TO WHICH THE STATEMENT IS CORRECT OR NOT CORRECT.