

1st Amendmt Rts - Exam No. \_\_\_\_\_ Raw Score \_\_\_\_\_ Final Grade \_\_\_\_\_

**David Leonardo (David's Pizza) v. City of Springdale (70 points)**

**D.L.'s arguments (35 points)**

**Fully protected artistic speech**-famous statue communicates more than restaurant name(3) \_\_\_\_\_

**Regulated based on its content** -only prohibited if indecent, obscene or immoral------(3) \_\_\_\_\_

**Fails Strict Scrutiny**-no comp'g interest-city aesthetics, prop values, traffic safety-no evidence sign detracts from those interests; Not narrowly tailored-standards not defined, subjective(4) \_\_\_\_\_

**Symbolic sp** - satisfies Spence test-intended to communicate message, likely to be understood by audience-relation betw photo of statute & name of restaurant & owner is clear------(3) \_\_\_\_\_

**O'Brien test**-DL argues no sub'l int, not narrowly tailored, govt interest related to suppression of sp - because of nudity on sign-fails this pt of test-govt must satisfy strict scrutiny (above)(4) \_\_\_\_\_

If commercial speech because restaurant ad, **fails Central Hudson test**-not false or misleading, doesn't directly advance sub'l int-no showing sign promotes city's interests, could be protected by more limited restriction that doesn't ban famous works of art & isn't based on viewpt-----(4) \_\_\_\_\_

**Vague**-indecent & immoral-subjective terms - 1 person's indecency is another's decency(3) \_\_\_\_\_

**Sign not obscene**-fails Miller test-serious artistic value, doesn't appeal to prurient interest, sexual activity is not defined in ordinance, nudity alone is not obscenity------(4) \_\_\_\_\_

Ordinance is **substantially overbroad** - unconstitutional applications dwarf const'l ones(4) \_\_\_\_\_

City manager - **unbridled discretion** to enforce - vague terms undefined & subjective---(3) \_\_\_\_\_

**Springdale's arguments (35 points)**

**Obscenity** under Miller test: no serious value, appeals to prurient interest, explicit nudity(4) \_\_\_\_\_

If protected, less protected **commercial speech**-advertises restaurant, commercial interest(3) \_\_\_\_\_

**Satisfies Central Hudson test**-directly advances sub'l int-promotes city's interests, narrowly tailored-prohibits signs inappropriate on public streets like bans on public nudity------(4) \_\_\_\_\_

**Regulation not based on message** communicated (**content**) only **manner** of expression(3) \_\_\_\_\_

**Symbolic sp**-doesn't satisfy Spence-no message communicated by photo of statue that is likely to be understood, no political message, just intended to draw attention based on nudity--(3) \_\_\_\_\_

**If symbolic sp-O'Brien**-sub'l ints, narrowly tailored-doesn't prevent signs that identify businesses and nature of business, govt int not to suppress message, just how expressed-(4) \_\_\_\_\_

**Satisfies Strict Scrutiny** if it applies-compelling interests-aesthetics, prop values, traffic safety, & narrowly tailored to achieve, only signs outside businesses are regulated------(4) \_\_\_\_\_

**Not Vague** - obscene (defined by Miller), indecent and immoral refer to sexually explicit but not obscene speech and explicit nudity with exhibition of the genitals - near obscene speech-(3) \_\_\_\_\_

**Not substantially overbroad** - application to obscenity regulates unprotected sp, indecent includes sexually explicit near obscene sp that can be banned from public displays------(4) \_\_\_\_\_

**City Manager not given too much discretion** - obscene, indecent, immoral - all terms related to depictions of sexual activity or graphic nudity & only outside commercial businesses------(3) \_\_\_\_\_