

EXAMINERS' ANALYSIS OF QUESTION NO. 6

I. First Amendment Claims

A. Free Exercise of Religion

The strongest argument Ron could make is that denying him scholarship funds to pursue a degree in pastoral ministries violates his First Amendment right to free exercise of religion. However, he is unlikely to prevail on that claim.

The Religion Clauses of the First Amendment of the United States Constitution, made applicable to the states by the Fourteenth Amendment, provide that: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." The former clause is known as the Establishment Clause; the latter clause is known as the Free Exercise Clause.

Generally speaking, the link between government funds and religious training is broken by the independent and private choice of fund recipients and does not violate the Establishment Clause. See *Zelman v Simmons-Harris*, 536 US 639, 652 (2002). Therefore, Michigan could permit students to use state scholarship funds to pursue a career in religious instruction without violating the federal constitution. The facts presented ask the converse question - whether Michigan, in accordance with the Michigan constitution, may deny state funds to a student pursuing a religious career without violating the Free Exercise Clause of the federal constitution.

Under identical facts, the United States Supreme Court in *Locke v Davey*, 540 US 712 (2004), held that a state could permissibly deny state funds to a student seeking a degree in vocational theology without violating the Free Exercise Clause. The general rule is that the Free Exercise Clause is not violated where a law that is facially neutral regarding religion and of general applicability has an incidental burden on religious practice. *Dep't of Human Resources of Oregon v Smith*, 494 US 872 (1990); *Church of the Lukumi Babalu Aye v City of*

Hialeah, 508 US 520 (1993). However, where a law is not neutral or not of general application, it must satisfy the strict scrutiny standard: it must be justified by a compelling governmental interest and must be narrowly tailored to advance that interest. *Id.*

The United States Supreme Court held that the application of strict scrutiny is not required under these facts because "[t]he State has merely chosen not to fund a distinct category of instruction." *Davey*, 540 US at 721. Denying scholarship funds to those seeking a career in religious instruction does not impose criminal or civil sanctions on a religious service or rite; does not deny clergy the right to participate in the political affairs of the community; and does not require students to choose between their religious beliefs and receiving a government benefit. The state's interest in declining to fund the training of religious professionals was not based on hostility for religion, but rather to avoid establishment of religion, a substantial and historical state interest. Moreover, the restriction placed a "minor burden" on scholarship recipients. The program permits students to attend religious schools, so long as they are accredited, and take religious courses, so long as the student was not pursuing a vocational theology degree such as pastoral ministries.

B. Right to Free Speech

Ron might make the argument that the scholarship program violates his First Amendment right to free speech, but that is a much weaker argument and would likely fail. Any claim that the scholarship program is an unconstitutional viewpoint restriction on speech should be rejected because the scholarship program is not a forum for speech. The purpose of the scholarship program is to assist qualifying students with college expenses, not to "encourage a diversity of views from private speakers." *Davey*, 540 US at 721 n 3. Therefore, Ron's right to free speech is not implicated.

II. Equal Protection

Ron might also make the claim that the scholarship program violates the Equal Protection Clause of the Fourteenth Amendment, but that claim would also likely fail. If a suspect classification or fundamental right is implicated, the strict

scrutiny standard is applied. Here, however, because there is no violation of a fundamental right (no violation of the Free Exercise Clause), rational basis scrutiny would be applied to Ron's Equal Protection claim. *Davey*, 540 US at 721 n 3. Michigan's classification denying scholarship funds to those pursuing religious vocation degrees would be *presumptively valid*. In order to succeed, Ron would bear the burden of proving that the state's classification is not rationally related to *any* legitimate governmental interest. This is a very difficult burden to meet, and Ron is unlikely to prevail.