

Comm Law: Final Exam: George M Weinert V

Issue #1.

Issue: Does Alabama's ban on sales of Cycles Gladiator wine, which features a stylized nude female figure on its label constitute a First Amendment Violation, does this same ban effect interstate Commerce and can diversity jurisdiction be called upon to settle this dispute?

Conclusion: Due to direct and serious conflicts with fundamental principles of U.S. Law, Alabama's Ban on sales of Naked Gladiator Wine will be readily overthrown.

Rule: The First Amendment to the Constitution states:

**First Amendment - Religion and Expression Amendment Text | [Annotations](#) Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.**

The U.S. Constitution is the Highest Law in the land. Any state or local law that violates this foundational statute must yield to the original intent of the founders.

U.S. Constitution

Article 1 - The Legislative Branch

Section 8 - Powers of Congress

The Congress shall have Power To lay and collect Taxes, Duties, [Imposts](#) and [Excises](#), to pay the Debts and provide for the common [Defence](#) and general [Welfare](#) of the United States; but all Duties, [Imposts](#) and [Excises](#) shall be uniform throughout the United States;

To borrow money on the credit of the United States;

To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

In the instant case, Article I, Section 8 of the U.S. Constitution governs and overrules the Alabama Statute.

Diversity Jurisdiction can be called upon when the opposing parties reside in two different states, and the amount in question (the sales here) is over \$75,000.00.

Analysis: Alabama's Ban on Sales of Naked Gladiator Wine is a clear violation of both the First Amendment to the U.S. Bill of Rights, as well as the Commerce Clause of the U.S. Constitution. Additionally, overly-puritanical ban ignores cases like *Hustler v. Pat Robertson*, in which the Court sets a very high standard for obscenity, the most part of which is that the material contain no redeeming social value and appeals to the prurient interests of the viewer.

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Issue #2: To Snowmobile or not to Snowmobile, that is the question.

Issue: Should snowmobile users be allowed to use Yellowstone National Park's trails, considering the known consequence on the environment and native animals that reside there?

Conclusion: Yes, the Park and its myriad trails are a beautiful natural resource meant to be shared and enjoyed by all. A delicate balance must be maintained, however; between the interests of snowmobile enthusiasts and the needs of wildlife native to the Park. Though this will take constant monitoring, both the Federal government and the states that the Park encompasses already have the personnel in place.

Rule: After a decade of studies and court cases, the Park Service is leaning toward adopting temporary rules that have been in place since 2004. They allow 720 snowmobiles into the park per day. Groups of about 10 must have a guide, who is trained to keep snowmobilers away from animals and on the roads. The rules also require rental companies to use the best available technology in their machines to reduce noise and emissions.

**David McCrary owns Two Top Snowmobile Rental in West Yellowstone, Mont. He says confusion over the rules has hurt his business in recent years. Still, he says he'd rather have "half a sandwich than no sandwich at all." So he generally supports the Park Service's proposed rules.**

**Snowmobiles were first allowed into the park in the 1960s.**

**"To eliminate snowmobiles in Yellowstone at this juncture is absolutely... it's just downright mean-spirited," says McCrary. "Because you're going to disenfranchise a lot of people that come back, year after year, with their families — and now their grandchildren. Just generations of people have done this at this point."**

**Environmental groups point out that there are thousands of acres of national forest land surrounding Yellowstone where snowmobilers can ride. McCrary says people come from all over the country to use those lands. But, he says, most also want to spend a day in the park.**

**"Without Yellowstone," says McCrary, "we're just another place with snow and good trails. And there're a lot of [other] places where these folks can go."**

**Analysis: Analysis:**

**Environmental groups: No**

**Arguments:**

- Snowmobiles are loud and pollute. While cleaner and quieter than they were just a few years ago, the vehicles are still neither clean nor quiet.**
- The Park Service's own research shows snow coaches are better for the environment.**
- The Park Service is not required to accommodate all transportation choices, just provide access to the park.**
- The priority is maintaining the pristine qualities of the park for future generations.**

**Snowmobile industry: Yes**

**Arguments:**

- Improved technology is making snowmobiles cleaner and quieter.**
- Snow coaches don't provide the thrilling outdoor experience that snowmobiles do.**
- Snowmobiling has been allowed in the park for four decades.**
- Banning snowmobiles would hurt the local economy.**

**Currently, the Park Service is leaning toward allowing 720 snowmobiles per day. They must have the best available technology to reduce pollution and sound. There must be a commercial guide to ensure snowmobile users follow the rules.**