**Constitutional Law I**

**Spring 2025**

**Professor Mike Ramsey**

**Writing Assignment 2 (Federalism)**

**Instructions:** *Answer the question below in a clear, well-organized essay of 1500 words or less. No research outside of the course materials is expected or permitted. You may take as much time as you like, but under exam conditions a question of this nature would likely be accorded about 1 hour to complete. At this point in the course, I recommend allowing 1 ½ hours.*

*There is no ultimate “right” answer; the question has been deliberately written so that arguments are available on both sides, and your goal should be to identify and explain the best contending arguments. If you think additional facts are necessary or helpful to answer the question, you may include them in the discussion (but do not consider unlikely scenarios, scenarios which substantially alter or undermine the premise of the question, or facts contrary to those given). Be sure to consider fully both sides of the debate. Also be sure to read the limiting direction at the end of the question.*

*Your essay must be submitted to me via email prior to* ***10:00 am on Monday, March 17, 2025****.*

*This is a non-graded, credit/no credit assignment. I expect everyone to complete it, and I will impose substantial penalties, including ultimately a failing grade in the course, for failure to complete it.*

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Some religious organizations and other private groups opposed to same-sex sexual activity have begun offering so-called “gay counseling” in which they provide counseling services for people who are questioning their sexuality. The stated point of the counseling is to explain to people how to reject a “homosexual lifestyle.” The counseling involves only sessions in which counselors speak with the person and suggest ways to “overcome” homosexual desires. The services are popular with parents who have sexually troubled teenagers.

The state of California believes that gay counseling is harmful to the people it purports to help; that sexual orientation is largely a matter of biology that can’t be changed by counseling; and that in any event all persons should be free to choose their sexuality. The California legislature bans gay counseling directed to minors (people under the age of 18), even with parent consent. Among other things, it points out in support that no study has shown any effectiveness of gay counseling, and several studies show harmful psychological effects.

The Stone Creek Church, located in California, offers free gay counseling services to its members (although it encourages donations) and wants to challenge the California law. Initially, rather than file suit, it approaches the U.S. Congress for help. One member of Congress introduces a bill specifically to approve of gay counseling. After considerable debate, the proposal is modified and enacted as the Federal Counseling Act of 2018 (FCA). The FCA, as enacted, requires all persons offering counseling services of any sort to submit an outline of their qualifications and procedures to obtain a license from a federal Board of Counseling Review. Stone Creek applies for and receives a license.

California nonetheless announces its intention to enforce its anti-counseling law against Stone Creek and demands that the church stop its gay counseling services for minors. Stone Creek refuses, and threatens suit to enjoin enforcement of the law. As an attorney for California, identify the challenge you anticipate Stone Creek making and explain the ways the state can respond. If you think additional facts are important, identify them and explain how they might affect the analysis.

**[Note: assume that (a) courts have previously held that California’s law does not violate the First Amendment; (b) the FCA does not specifically mention state laws; (c) Stone Creek has standing to challenge the California law; and (d) the question does not turn on whether there is a constitutional right to same-sex sexual activity or any other individual constitutional right (matters we have not studied)].**