

POLS 4130 (Fall 2017) Hypothetical Essay #2

This assignment requires you to write a draft majority opinion from the perspective of a U.S. Supreme Court justice. Your grade will be comprised of multiple components. The most important of these will be an evaluation of whether you appropriately cited all relevant cases to the hypothetical situation presented below. In addition, the quality of your arguments, attention to the specific question(s) asked, and your overall writing will also impact your grade.

A rough draft of the essay is due in hard copy at the beginning of class on Thursday, October 26. The final copy is due in hard copy at the beginning of class on Thursday, November 9.

Part I

A recently passed Congressional statute prohibits the production of obscene pornographic materials that are to be shipped in interstate commerce. Additionally, the statute criminalizes the possession of any obscene pornographic material that has been shipped in interstate commerce. After this legislation went into effect, federal authorities began a sting operation that resulted in arrest of John B. Johnson, the owner of X-Treme Studios and Liv N. Basement, one of X-Treme's customers. Johnson was charged with producing obscene materials to be shipped in interstate commerce in violation of the first part of the statute, and Basement was charged with violating the second part of the statute for purchasing the materials produced and shipped by Johnson.

Neither Johnson nor Basement dispute the facts of the case. Johnson admits to producing the materials. Basement admits to purchasing the materials. Also, neither Johnson nor Basement raise any claims under the First Amendment. However, both Johnson and Basement separately challenged the provisions of the new law relevant to them on the grounds that the law exceeds the authority granted Congress under the Interstate Commerce Clause.

As a justice on the Supreme Court deciding this case **today**, you are asked to evaluate whether the prohibition of the shipment of obscene materials exceeds Congress's power

under the Commerce Clause and, **separately**, whether the criminalization of possessing obscene materials violates the Commerce Clause?

Part II

How would you have decided this case differently were you deciding the case prior to 1937?