

Administrative Law
Spring 2015 – Richards
4 Hours

The exam is closed book and closed notes. Put your exam number on each page of the examination if you are **handwriting** the exam. Put your exam number only on the first page of the paper exam if you are **using the computer**. Do not put your name or any identifying information other than your exam number on the examination. Read the entire exam before answering any questions. Make sure you have all the pages and that they are all different. Use no more than the space provided. **Do not write answers on the back.** You may use the back for scratch paper. (If you are using the computer, you may use the whole exam as note paper.)

Each question has a word limit. If you are hand writing, you are also bound by the word limit. Read the question carefully and think about your answer before you start writing. **If you use the computer, make sure to number your answers to match the question numbers.**

Turn the exam in to my secretary, Tenisha Collor, in Room 427. If you use the computer, you still have to turn in the paper exam because we have two exam deferrals and have to keep track of the questions.

1) These statutes govern the appointment and supervision of US Attorneys:

28 U.S. Code § 541 - United States attorneys

- (a) The President shall appoint, by and with the advice and consent of the Senate, a United States attorney for each judicial district.
- (b) Each United States attorney shall be appointed for a term of four years. On the expiration of his term, a United States attorney shall continue to perform the duties of his office until his successor is appointed and qualifies.
- (c) Each United States attorney is subject to removal by the President.

28 U.S. Code § 519 - Supervision of litigation

Except as otherwise authorized by law, the Attorney General shall supervise all litigation to which the United States, an agency, or officer thereof is a party, and shall direct all United States attorneys, assistant United States attorneys, and special attorneys appointed under section 543 of this title in the discharge of their respective duties.

Your senior partner is defending a Medicaid fraud criminal proceeding by the local US Attorney. She is wondering if there is any way to challenge the appointment of a US Attorney. Based on these statutes, write a short memo on the appointments and removal process and where you think US Attorneys fit in. Note anything unusual about these statutes. You have 250 words.

2) The State of Grace has passed a law empowering its Department of Environmental Quality (DEQ) to regulate fracking. (The State of Grace follows the federal agency model.) The statute gives the agency broad authority to regulate to protect health and safety and the quiet enjoyment of nature. The DEQ can enforce the law through individual orders and adjudications and it can also issue notice and comment regulations. This is a new regulatory area for the agency. There is not a lot of precedent or technical information available, so the agency will have to figure things out as it goes. DEQ wants to get something done fairly quickly, even if it is just a start. It knows industry hates the law and will fight every action by the agency so it wants to maximize its chance of not getting bogged down in the courts. Counsel of DEQ has asked you to draft a memo on a strategy to best use adjudications and rulemaking to start regulating fracking. You have 500 words.

3) In what pundits termed the Silent Stoner Majority landslide, Rand Paul has been elected president. Being a man of his word, he wants to get the federal government out of controlling people getting stoned. Several states have legalized marijuana and New York has passed the Lou Reed Act, legalizing the growth of opium poppies and the recreational use of opiates, including heroin. (The governor noted at the signing ceremony that New Yorkers needed to mellow out.) Congress, however, is even more law and order oriented and wants to increase federal drug prosecutions, not eliminate them. The attorney general, knowing about your brilliant work on analyzing the legal status of the appointment of US Attorneys, has asked you to draft a memo on what President Paul can do with executive orders to get the federal government out of the drug law enforcement business. This includes criminal prosecutions, agency regulations in the CFR that limit drug use or require drug free workplaces or the like, and foreign policy initiatives to prevent the smuggling of drugs into the US. Think about OIRA as you write this, and remember the limitations of executive orders. You have 500 words.

4) State of Grace University (SOGU), the Flagship University of the State of Grace, has been rated the top party school by every major beer company and is regarded as Sodom on the Prairie by the state's Moral Majority. The new president has been told by the board of supervisors that that legislature will cut all state money from SOGU if he cannot change its reputation in a hurry. He is facing hundreds of pending sexual assault complaints from students of both sexes and wants to adopt a procedure to resolve the claims as quickly as possible. A consulting firm has proposed a system of hearings run by students. The student hearing officers will have the authority to expel students from the university if they find, by a preponderance of the evidence, that a student committed a sexual assault. These will be informal hearings and will not use the rules of evidence. To speed the process, the proceeding will all be done through written documents. Since the students are not experts in law or sexual assault, they will be allowed to consult with members of the faculty on an informal basis when they need expert help. The written opinion of the committee will be binding on the university and may be appealed to the courts. University counsel has asked you to write a memo analyzing whether this proposal will run afoul of United States Supreme Court due process requirements. She knows that *Matthews* allows significant flexibility and wants you to be objective in your appraisal and suggestions, but to support as aggressive an adjudication process as can be justified under the relevant United States Supreme Court cases.

You should address these three questions, anticipating rebuttal arguments:

How can SOGU convince the court that this is an academic discipline issue?

How can SOGU convince the court that conducting the process through written documents satisfies due process?

How can SOGU defend allowing the students to seek expert help (not factual information) from faculty?

Use appropriate cases as necessary, but explain how they apply, do not just use the name. If you cannot remember the name, just briefly describe the case and why it applies. You have 1000 words.

5) A New York environmental group, Save Our Wetlands (SOW), wants to sue the Corps of Engineers for not doing an Environmental Impact Statement, as SOW claims is required by NEPA, for the newly proposed Great Wall of Louisiana levee system. (For this question, analyze NEPA standing under *Lujan*.) SOG says that with subsidence and sea level rise, the levee will drown the wetlands by preventing them from retreating as relative sea level rises. The Corps has hired an engineering firm to design the levee and has sought bids from construction companies to build it. The Corps says it is just doing this to figure out the cost and that it has not decided whether to build the levee yet and thus does not need an EIS. The Corps believes that SOW is just a bunch of Yankees who have no business in Louisiana. The Corps has also determined that the earth is 4,000 years old and unchanging, so that there is no factual basis for the claim that subsidence and sea level rise will drown the wetlands.

SOW wants to file an injunction to stop the Corps from taking any more steps toward building the Great Wall of Louisiana. SOW has hired you to write a short memo addressing three questions:

What does SOW need to show to get standing and how can they accomplish this?

How can SOW attack the claim that the case is not ripe because the Corps has not made a final decision?

What are the jurisprudential issues in attacking the fact-finding that the earth never changes?

Use appropriate cases as necessary, but explain how they apply, do not just use the name. If you cannot remember the name, just briefly describe the case and why it applies. You have 1000 words.

