

## Administrative Law Spring 2017 – Richards

You will email your exam to my administrative assistant, Kristi Parnell <Kristi.Parnell@law.lsu.edu>, by 2PM, Monday, May 15. Submit it in a Microsoft word compatible file, with only your exam number on the document to identify it. Name the file Law 5402 Exam – [your exam number] (Law 5402 Exam – 4677). She will print the exam and give me the paper copy to allow anonymous grading. She will reply to you when she gets your email. If you do not get the reply, check with her to make sure the exam was received.

Mechanics: 12pt font, single-spaced, a blank line between paragraphs (like this exam).

Exam is open book – any materials we used in class, the E&E book, materials linked to on the class blog, and your own notes may be used. What you turn in must be your own work. Do not confer with others and attribute any published work you use. General Internet research is prohibited. (This is not a research paper.)

You should tie your answers to the law and be specific. Do not just discuss policy. You do not need to use Bluebook form, just give your readers enough information to find the reference if they want to look it up. Put the cite info in parenthesis (Mass v EPA) in the text, do not use footnotes.

### Questions

1) One of the most difficult problems in rulemaking is balancing the costs and benefits of rules. This balancing was address in the “Presidential Executive Order on Reducing Regulation and Controlling Regulatory Costs”, otherwise known as the 2 for 1 order. You have been asked to analyze Sec. 2. Regulatory Cap for Fiscal Year 2017 of the order and its Guidance, and write a memo discussing the problems that it potentially poses for rulemaking. Draw on the materials we have used in class and that are linked on the blog and use specific examples from the cases and materials we have read to illustrate these problems. Do not just talk about policy – discuss specific legal problems that regulators will encounter in trying to implement this Executive Order. What questions will the courts raise during judicial review? How will this harm the public good? **You have 2000 words.**

2) First Katrina, then the plague outbreak. New Orleans has moved from the City that Care Forgot to the City with No Luck. The last plague outbreak in New Orleans was in 1921, so no one was expecting to see plague again. When the first patients showed up in physicians’ offices and emergency rooms with what looked like ordinary pneumonia, no one paid any attention – there are a lot of sick people in New Orleans. When people started dying, the cases were taken seriously and *Yersinia pestis*, the plague bacillus, was cultured from autopsy samples. Plague is usually spread by fleas, but it can spread from person to person when it infects the lung and the patient coughs up particles containing the bacteria. The fleas are carried by rats and household pets.

Fortunately, the cases appeared to cluster in a small area off the French Quarter. The governor declared a state of emergency, which suspended all state statutes limiting the authority of public health officials, leaving them to free to do whatever would be allowed under the United States

Constitution. There is no evidence of foreign involvement and the CDC is treating it as an outbreak of unknown, but likely natural origin. The State Attorney General is not convinced, and is running a parallel criminal investigation. He has announced that he will prosecute anyone who is found to be hiding pets or infected persons for obstructing the police investigation and abetting bioterrorism.

Health inspectors, with police escorts, fanned out across the area where the cases had come from and demanded entry into all homes and apartments. All persons running a fever were detained and taken to a quarantine center in the Superdome. They were to be kept in the Superdome until medical personnel certified that they were plague free. With the limited staff and the difficulty of ruling out plague, this might be for several days. The Superdome was crowded and not well set up for medical isolation, which put everyone at risk of catching plague from the infected persons who were being detained.

Cats and dogs were seized and sent to animal control for de-fleaing and, if this was not feasible, for destruction. The houses were fumigated to kill fleas and rats.

People were terrified of being taken to the Superdome pest house and of having their pets destroyed. Many people refused entry to the inspectors or hid their pets. With police assistance, the inspectors forced their way into the houses and carried out their orders. If anyone with a fever or a pet was found, the resisting homeowners were arrested and charged before being sent to the Superdome quarantine center.

The inspectors did not have specific warrants to enter houses, only a general order from the court that authorized them to search all housing, detain individuals, seize dogs and cats, and fumigate all buildings in a geographic area bounded by certain streets. The order said that since time was critical, there would be no hearings or other procedures to allow people to contest their confinement, the seizure of their property, or its fumigation.

The Mayor has appointed a task force with public health experts, the ACLU, and the chief counsel for the city to make sure that people's constitutional rights are not violated while still aggressively containing the outbreak. You have been asked to write a memo on the search and seizure issues for the property and the due process rights of the individuals. You are to address any issues in the use of evidence found during the searches in subsequent criminal proceedings. You are to look at this from both the City's point of view and that of the individuals whose property is being searched. Are any of the City's actions constitutionally suspect? Should they modify their procedures? How can you best defend what has been done to limit potential liability of the city? You are not to address remedies such as 42 USC 1983, only to identify which City procedures are constitutionally suspect. **You have 3000 words.**

3) Medicaid is the single biggest state-spending program and most state decisions involving institutions and Medicaid are done by the Department of Administrative Law ALJs. A group of Louisiana nursing home operators has hired a national health law firm to represent its members before the DAL. You have been hired by this firm to help them understand the special issues in practicing before the DAL. Write a memo explaining how adjudications in Louisiana differ from the federal model. Explain the significance of the Wooley and the Bonvillian cases and the

difficulty of working with the agency to assure that the ALJs apply the law consistently across cases. **You have 500 words.**

4) In March, the Department of Interior announced that it was considering new lease sales in the Gulf of Mexico. Florida property owners along the Florida Gulf Coast are worried that the prospect of oilrigs spoiling their pristine view of the Gulf, as well as the threat of oil spills, will reduce the value of their properties. Several Florida congresspersons sent a letter to the Interior Secretary, warning him that:

“Drilling in this area threatens Florida’s multibillion-dollar, tourism-driven economy and is incompatible with the military training and weapons testing that occurs there,” they said in a Mar. 24 letter to the secretary. “If you do choose to draft a new plan, we strongly urge you to keep the eastern gulf off-limits.”

The Interior secretary reassured them that nothing can happen until Interior has studied the problem and decided where it will issue new leases. The area covered by any new leases would then have to be published for public notice before the leases are put up for auction. Even if leases are sold for drilling off the Florida coast, with low oil prices it could be years before drilling starts.

Three weeks later, President Trump issued an executive order - Presidential Executive Order Implementing an America-First Offshore Energy Strategy - directing the Department of Interior to expand offshore oil and gas exploration and production. While the eastern Gulf of Mexico was spared, the South Atlantic outer continental shelf area, which includes north and central Florida, was included. This had been excluded from development by President Obama and has historically not been leased for oil and gas production. Assume that after signing the order, the President tweeted: Drilling platforms off Daytona Beach: looks like jobs to me! (The Trump properties are in the Straits of Florida Planning Area, which was excluded from the EO.)

The Florida Chamber of Commerce (Chamber) has contacted your law firm about suing to enjoin this Executive Order. Your senior partner has asked you to draft a memo analyzing the problem of contesting Executive Orders in general and the issues involved in the Chamber contesting this order in specific. Include your theory for the injunction, how you can get into court, and what are your chances of success in enjoining the order. **You have 2000 words.**