

Administrative Law
Spring 2013 – 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.** (If you are using the computer, you may use the whole exam as note paper.) You may use the back for scratch paper.

Each question has a 75-word limit. If you are hand writing, you are also bound by the word limit. These are short answer questions. 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.**

If you use the computer, you do not have to turn in the paper exam. If you handwrite the exam, put the complete exam in the box at the front of the examination room.

1. What is the constitutional provision that is seen as the basis of sovereign immunity under the U.S. constitution?

2. What is an earmark?

11. Same assumption as above: What would be the result and why if FCA immunity applies?

12. If a document is covered by one of the nine FOIA exceptions, under what circumstances may the agency still release the document?

13. What is necessary to assure that a document will not be released under FOIA?

14. How were the facts determined in the perverts R us cases?

15. Referencing the above question, why does this undermine the basis for demanding a hearing?

16. What was the Great Compromise between the large and small states that lead to the organization of the Congress?

17. Why is bicameralism critical to the Great Compromise?

18. How does the *Bonvillian II* decision undermine the LA SC's resolution of *Wooley*?

19. The city council sets a tax rate for real property: Rulemaking or adjudication and why? Do you get a hearing to contest the rate?

20. The tax assessor's office sets the value of your house for property tax purposes: Rulemaking or adjudication and why? Do you get a hearing to contest the valuation?

21. Why is the problem of ex parte contacts different for ALJs and Article III judges?

22. What factors do the courts consider when determining whether an interpretive rule is really a legislative rule, requiring notice and comment?

23. How does the policy for admitting evidence differ between an Article III jury trial and an ALJ hearing?

24. How was *Chocolate Manufacturers Ass'n v. Block* modified by *Arizona Public Service*?

25. Why isn't compensation required in most cases where regulations reduce the value of property, such as designating private property endangered species habitat and thus limiting the uses to which it can be put?

26. Is it a taking when the postman runs over your dog or hits your car? Why or why not?

27. We have seen different standards for reviewing rules that affect small business. What are the problems with this special concern for small business from a consumer/individual citizen's point of view?

28. What is the "bitter with the sweet" doctrine? Is it still good law?

29. Why didn't plaintiffs get standing in *Summers v. Earth Island Institute*, 555 U.S. 488 (2009) (the tree cutting permit case) but did get standing in *Monsanto Co. v. Geertson Seed Farms* (the GMO seeds case), 130 S.Ct. 2743 (2010)?

30. Why did the Court find that the orders in *Sackett v. EPA* were ripe?

31. In *Vermont Yankee*, how did the NRC attempt to limit attacks on reactor permitting based on nuclear waste disposal?

32. What is OIRA? What is its role in rulemaking?

33. What are the *Barnhart* Factors for evaluating agency persuasiveness?

34. Why were plaintiffs unable to get standing in *Clapper v. Amnesty International USA*, 568 U.S. XXX (2013) (the phone tap case)?

35. What do you have to show to claim a final agency action for documents like opinion letters?

36. In the context of private data aggregators such as Equifax and Facebook, how does the Silver Platter Doctrine undermine constitutional protections?

37. How can an agency bind a regulated party without using a notice and comment regulation? (Hint - Public Citizen v. DHHS) How is this used by federal agencies without regulatory powers to get states to do what the feds want?

38. How is hard look review reconciled with deference to agency decision making?

39. What specific APA subsection provides a useful alternative to mandamus and why?

40. What APA section will always get you into court if your client is affected by a final agency action?

41. Why did Frank say that traditional public health and safety inspections did not trigger 4th Amendment warrant requirements?

42. What is the rationale for why warrants are not necessary for pervasively regulated businesses?