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Exam/Paper No. \_\_\_\_\_

## 501 INTRODUCTION TO CONSTITUTIONAL LAW

Semester I, 2005-2006

Final Examination/Paper  
UNM School of Law  
Three Credits

Professors Ellis & Bay  
December 13, 2005  
9:00 am – 1:00 pm

### INSTRUCTIONS

#### Examination Format Essay Answers

1. **Laptops:** Start the Securexam program entering your examination number, course name, professor's name, and date of examination. Click "proceed" to enter the program. Type START in the next window that is displayed but do NOT press the enter key until the proctor says to begin the exam. Use 12 point or larger type face and double space (but not triple space) your answer.

2. **Bluebooks:** Write in ink, on only one side of the page, and skip lines. On the front of bluebook record the class name, professor's name, date of exam, and your examination number. Be sure to number your bluebooks in consecutive order. DO NOT WRITE YOUR NAME ON BLUEBOOKS.

A five-minute warning will be given prior to the conclusion of the examination. When time is called, stop immediately. If you are handwriting, lay down your pen and close the bluebook immediately. If using a laptop, save and exit the program.

Go to the exam check-in table at the conclusion of the exam and fill out an examination receipt.

#### Professor's Instructions

1. This is a four hour exam; however, during the first half hour you may only read the examination and make notes on the examination document. You may not start writing (either in blue books or on your computer) until 9:30. The exam consists of two highly general questions, which will have a number of sub-parts as you construct your answers. Part I is worth 60% of the exam; Part II is worth 40%.

2. This is an open book exam, except that you may bring not bring any commercial materials, including commercial outlines, hornbooks, or treatises. You may bring your casebook, class notes, the Constitution, and any outline you helped prepare.

[EXAMINATION BEGINS ON PAGE 2]

PART I (60%)

Vernon and Petunia Dursley recently moved to the State of Rowling, where they bought an adobe house on an acre of land in a rural part of the State. The Dursleys are avid gardeners who are committed to xeriscaping. They wish to add desert plants to their property and plan to buy the plants from a nearby nursery that raises the plants locally. The Dursleys will do the landscaping and gardening themselves.

Next to the Dursleys' property is an eight-acre parcel of land owned by Ron Weasley. Weasley is in the process of selling his land to Tom Riddle, a developer who plans to create an exclusive gated community known as Slytherin Estates, which will feature million dollar homes. Riddle has purchased an option to buy Weasley's land. The option will expire in three months.

Last week, an official from the U.S. Fish & Wildlife Service visited the Dursleys and Weasley to inform them that the celebrated Flower-Loving Psuedoscorpion (FLP) was found on their property. The FLP is an arachnid (an arthropod with four pairs of legs and no antennae) that ranges from one-quarter to half an inch in size. It is also known as the "Dancing Bug," for the comical, yet compelling, leap it makes to reach the pollen in flowering desert plants. It has been the subject of 12 articles in scientific journals. For the last five years, the nearby town of Mugglesville has hosted a Dancing Bug Festival in July, when the FLP is at its most active. Despite a slow start, last year the festival attracted almost 36 people from around the State and was the subject of a five-part series on National Public Radio.

The FLP has no known commercial use or value. Because of real estate development and habitat loss, it is listed as a very endangered species under federal law (the Very Endangered Species Act or VESA, which replaced the Endangered Species Act). The FLP is only found in the State of Rowling. Its habitat is estimated to encompass two square miles.

The official informed the Dursleys and Weasley that because the FLP is a very endangered species they would not be allowed to disturb its habitat. In particular, the Dursleys would not be able to landscape their grounds. Nor would Riddle be allowed to build Slytherin Estates. Violation of the VESA can result in federal criminal prosecution.

Fearing prosecution, the Dursleys and Riddle have brought independent actions against Cornelius Fudge, the Director of the U.S. Fish & Wildlife Service and the official responsible for enforcement of VESA, in which they seek declaratory and injunctive relief. Weasley, a non-litigious fellow, has not filed a lawsuit. The Dursleys and Riddle challenge the constitutionality of the federal statute.

The parties have stipulated to the facts as outlined above and agree that the following provisions of state and federal law are applicable. You are the law clerk to the federal judge in the case, and she has asked you to **prepare a memorandum that identifies all federal constitutional issues presented and explains how they should be resolved and why. WRITE THE MEMORANDUM.** (Please do not waste your time writing a “statement of facts” section of the memo; rather, use the facts in your analysis of the issues presented.)

Relevant portions of the Very Endangered Species Act are as follows:

Very Endangered Species Act (VESA)

Section 1. Congressional Findings.

- (a) Many species of fish, wildlife, insects, and plants are threatened with extinction.
- (b) This has been an unfortunate consequence of economic growth and, most especially, real estate development untempered by adequate concern for the ecological patrimony of future generations of Americans.
- (c) All species are of esthetic, ecological, educational, historical, recreational, and scientific value to the Nation and its people.
- (d) In particular, Congress is concerned by the unknown uses that very endangered species might have and about the unforeseeable place such creatures may have in the chain of life on this planet.
- (e) The United States is a party to the Quito Convention to Protect Very Endangered Species. Under that treaty, each party is required to make a good faith effort to protect very endangered species and to pass legislation implementing the agreement's terms.

(f) Moreover, this Act is also necessary because prior attempts to protect very endangered species have failed to shield them from the ravages of development. Although the Supreme Court has never extended special solicitude under the 14<sup>th</sup> Amendment to ecological interests, Congress recognizes that very endangered species are discrete and insular groups unable to rely upon the political process to safeguard their interests. For that reason, this Act now recognizes and protects the rights of very endangered species.

### Section 2. Prohibitions.

(a) It shall be unlawful for any person to take any species listed as very endangered by the U.S. Fish & Wildlife Service.

(b) “Take” is defined to include to harass, harm, hunt, shoot, kill, annoy, capture, collect, or disrupt the habitat of, or to attempt to engage in any such conduct.

(c) The willful violation of this statute shall be punishable by up to five years imprisonment and a fine of \$250,000.

### Section 3. State-Federal Cooperation.

Each State shall cooperate to the extent possible with the U.S. Fish & Wildlife Service in the preservation of very endangered species and notify the U.S. Fish & Wildlife Service of any species the State believes may qualify for listing as a very endangered species. When such notifications are made, the State must list the critical habitat for the species and provide an explanation for the scientific bases of its belief.

### Section 4. Funding.

States that pass laws protecting very endangered species at levels not less than that provided by this Act shall receive an annual federal grant of \$100,000,000. This grant may only be used by the State to pay for the costs of operating state parks and its Game & Fish Department.<sup>1</sup>

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<sup>1</sup> [Ed. Note: This amount would equal 60% of the Rowling annual budget for its parks and Game & Fish Department.]

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The 22<sup>nd</sup> Amendment of the Rowling State Constitution states, “A person’s full enjoyment of his real property or homestead shall not be abridged by law unless necessary for the protection of individual citizens.”

PART II (40%)

In light of Section 4 of the VESA, the State of Rowling sees an opportunity to protect the Flower-Loving Pseudoscorpion, while at the same time promoting economic development in a depressed part of the State. The Governor's Office has devised the following eight-point plan:

1. The State will condemn the property owned by the Dursleys and Weasley, paying fair market value.
2. The State will then deed the property to the Rowling Chapter of the Sierra Club, a non-profit private environmental organization.
3. In exchange, Sierra Club will agree to create an FLP preserve and to build an elevated walking path around the preserve so that nature lovers will be able to observe the FLP in its natural habitat. The Sierra Club will charge admission to the preserve and half of all profits will be given to the State.
4. To ensure that the FLP will thrive on the new preserve, the County will impose a 36-month moratorium on construction on land adjacent to the preserve. Landowners may obtain an exemption from the moratorium and a development permit if they agree to dedicate a 15-foot easement to the County. The easement will border the preserve and will create an FLP-friendly zone. In any event, it is expected that the creation of the preserve will enhance the prestige, and thus the real estate values, of the surrounding property.
5. Because the FLP is particularly susceptible to milk-borne microorganisms, the State will pass a law that requires all milk, whether in-state or out-of-state, to be pasteurized to its exacting standards, which exceed those imposed by the U.S. Department of Agriculture. Almost all milk producers in Rowling have voluntarily met those standards for the past few years. In addition, scientific testing has shown that out-of-state milk has a higher concentration of the microorganisms than Rowling's milk.
6. The Governor, always on the lookout for economic development, intends to promote the Dancing Bug Festival. An entity called Dancing Bug Festival, Inc., will be incorporated under Rowling law. The by-laws of DBF, Inc., which must be filed with and approved by the Rowling Public Regulation Commission, provide that the Secretary of Tourism will be a member of the five-member Board of

Directors. In addition, the State will agree to pay for half of the operating expenses of DBF, Inc., in exchange for half of all profits generated by the Festival.

7. DBF, Inc., has announced that it intends to only hire residents of Rowling each year for the Festival.

8. Moreover, DBF, Inc., plans to charge state residents \$5 to enter the Festival. Non-residents would be charged \$15. State residents who wish to operate a booth at the Festival will be charged a \$100 fee. Non-residents will be charged \$1000.

You are Counsel to the Governor, Hermione Granger. She very much favors the plan, but prior to signing it, she asks for your legal opinion **identifying any federal constitutional problems with this plan, and explaining in depth the nature of those problems and their likely resolution. PLEASE WRITE THE MEMORANDUM.**

[END OF EXAMINATION]