

Constitutional Law Examination

December 8, 2017

6:00 p.m. - 9:00 p.m.

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Instructions:

You will have three hours to complete this exam. There are two essay questions. Each question is worth 50% of the final score. Each question has a 1,000-word limit. Anything you write past 1,000 words will not be read. Both answers combined should not total more than 2,000 words. Please use the word-count feature to check the length of each answer. If you hand-write the exam, or can't utilize the word-count feature, please do a manual word count.

The exam is completely open-book. You can use anything you wish, so long as that it was printed *before* the distribution of this exam. Obtaining any new information from anyone or anything *after* the exam is prohibited.

Please don't turn the page until the proctor signals that the exam has begun.

Good luck!

Part 1 (50%)

Instructions:

The year is 1936. President Roosevelt has become increasingly frustrated with five conservative members of the Supreme Court who consistently invalidate progressive laws. He proposes a new piece of legislation to deal with the situation on the Supreme Court, which the Congress promptly enacts. You are asked to prepare a memorandum of no more than 1,000 words addressing five issues arising from this matter.

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During the first four years of President Roosevelt's administration, five conservative members of the Supreme Court consistently invalidate progressive laws at both the state and federal level. Following his landslide electoral victory in November 1936, the President proposes a new piece of legislation to deal with the situation on the Supreme Court.

The Constitutional Fidelity Protection Bureau (CFPB) Act of 1936

Section 1: The Congress finds that the Supreme Court's erroneous interpretations of the Constitution are limiting the power of the federal government to establish Justice, insure domestic Tranquility, provide for the common defence, and promote the general Welfare. Therefore, this Act establishes the Constitutional Fidelity Protection Bureau (CFPB) as an independent agency.

Section 2: The CFPB shall be headed by a Director, who shall be nominated by the President, and confirmed by and with the Advice and Consent of the Senate. The Director shall serve a term of five years, but can be removed by the President for inefficiency, neglect of duty, or malfeasance in office.

Section 3: The Director of the CFPB shall have the authority to issue rules concerning commerce that is intermingled between two or more states, and to issue all rules that shall be necessary and proper for carrying into execution the foregoing powers.

Section 4: The Director of the CFPB shall have the power to execute any rules he issues.

Section 5: Any disputes concerning the Director's authority shall be adjudicated solely by an administrative law judge within the CFPB. All administrative law judges within the CFPB shall be appointed by the Director, and are removable at his discretion.

Section 6: The Judicial power of the United States shall not be construed to extend to any suit, in law or equity, commenced or prosecuted against the CFPB or its Director.

The House of Representatives and the Senate promptly enact the CFPB Act of 1936, and the President signs it into law. Roosevelt then nominates Richard Trebek as the director of the CFPB; he is promptly confirmed by the Senate.

Pursuant to Section 3 of the CFPB Act, the Director issues the *Seizure Rule*, which provides:

All farmers that grow more than 500 bushels of raisins are required to surrender the excess amount to the CFPB. The farmers will be paid “just compensation” based on the fair market value of raisins. The funds to provide the compensation will be withdrawn from the United States Treasury at the Director’s discretion.

Pursuant to Section 4 of the CFPB Act, the Director orders Roscoe Filhorn, a farmer in Ohio, to surrender his excess raisins. It is unclear whether Filhorn intended to ship the raisins in interstate commerce, but the Director determines that seizing these raisins is “necessary and proper for carrying into execution the foregoing powers” in the *Seizure Rule*.

Filhorn refuses to surrender his excess raisins. Pursuant to Section 5 of the CFPB Act, Filhorn seeks a declaration from the Administrative Law Judge that the seizure of his raisins is unconstitutional. The Administrative Law Judge rules in favor of the Director.

Filhorn then files suit against the Director in the U.S. District Court for the Southern District of Ohio, seeking a declaration that the seizure of his raisins is unconstitutional.

You are asked to prepare a memorandum of no more than 1,000 words addressing the following five issues.

1. Does the Director’s appointment, pursuant to Section 2 of the CFPB Act, violate the Constitution’s Appointments Clause?
2. Is the Director’s authority to issue the *Seizure Rule*, pursuant to Section 3 of the CFPB Act, constitutional?
3. Is the Director’s authority to seize Filhorn’s raisins and provide him with compensation, pursuant to Section 4 of the CFPB Act, constitutional?
4. Does the seizure of Filhorn’s raisins violate the Fifth Amendment’s Due Process Clause?
5. What should the U.S. District Court for the Southern District of Ohio do with Filhorn’s suit in light of Sections 5 and 6 of the CFPB Act? Keep in mind Congress’s findings in Section 1 of the CFPB Act.

Part 2 (50%)

Instructions:

The time is now. The Manhattan District Attorney has secured a three-count indictment against President Trump in New York Supreme Court (the trial court). He seeks to hold a criminal trial for President Trump's alleged violation of several state statutes that took place both before and after the inauguration in January 2017. You are an attorney in the White House counsel's office, and are asked to prepare a memorandum of no more than 1,000 words addressing five issues arising from this matter.

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Shortly after President Trump's inauguration in January 2017, the Manhattan District Attorney secures the following three-count indictment against President Trump in New York Supreme Court (the trial court).

COUNT ONE

THE GRAND JURY OF THE COUNTY OF NEW YORK, by this Indictment, accuses Donald J. Trump of the crime of "Forcible Touching," in violation of Penal Law § 130.52, committed as follows:

From 1996 to 2015, Donald J. Trump owned the Miss USA beauty pageant. Cassandra Searles, a contestant from Washington, alleges that during the September 2013 competition, Mr. Trump forcibly squeezed her buttocks while she was getting dressed backstage. Five other contestants who were present at the time corroborated this account. NY Penal Law § 130.52 makes it a misdemeanor when one "forcibly touches the sexual or other intimate parts of another person for the purpose of degrading or abusing such person, or for the purpose of gratifying the actor's sexual desire." The statute of limitations for this provision is ten years.

COUNT TWO

THE GRAND JURY OF THE COUNTY OF NEW YORK, by this Indictment, accuses Donald J. Trump of the crime of "Failure of a Presidential Candidate to Disclose Federal Tax Returns," in violation of Penal Law § 2015.01, committed as follows:

In November 2016, Donald J. Trump, a candidate for President of the United States on the ballot in New York, refused to disclose his federal tax returns from the previous decade. NY Penal Law § 2015.01 provides that it is a misdemeanor when one "on the ballot for President of the United States in the state of New York fails to disclose his or her federal tax returns from the previous ten years." The statute of limitations for this provision is 2 years.

COUNT THREE

THE GRAND JURY OF THE COUNTY OF NEW YORK, by this Indictment, accuses Donald J. Trump of the crime of “Diminishment of Dignity,” in violation of Penal Law § 2016.01, committed as follows:

In February 2017, President Donald J. Trump (@realDonaldTrump) tweeted: “New York just legalized polygamous marriages. That is absolutely disgusting. #Sad. We need to make marriage great again and support an amendment to the Constitution to reverse Obergefell v. Hodges. #SCOTUS #Constitution.” A throuple—that is three people who were married to each other under New York’s new law—told the District Attorney’s office that the President’s tweet demeaned and disparaged their marriage, and took away their dignity, which was recognized in the Supreme Court’s decision in *Obergefell v. Hodges*. Penal Law § 2016.01 provides that it is a misdemeanor when one “demeans, disparages, or diminishes a person’s dignity when that person exercises a right protected by the United States Constitution.” The statute of limitations for this provision is 4 years.

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You are an attorney in the White House counsel’s office, and are asked to prepare a memorandum of no more than 1,000 words addressing five issues arising from this matter.

1. With respect to Count One of the indictment, can the sitting President be tried for the violation of a state criminal law, wherein the offense took place *before* the President’s inauguration.
2. Analyze whether the crime of “Failure of a Presidential Candidate to Disclose Federal Tax Returns,” Penal Law § 2015.01, violates the separation of powers.
3. With respect to Count Three of the indictment, can the sitting President be tried for the violation of a state criminal law, wherein the offense took place *after* the President’s inauguration.
4. Analyze whether the crime of “Diminishment of Dignity,” Penal Law § 2016.01, violates the First and Fourteenth Amendments.

After a jury trial, the President is convicted on all three counts. Despite the commencement of impeachment proceedings, President Trump refuses to resign from office, insisting that the prosecution was unconstitutional, because a sitting President cannot be tried and imprisoned. The trial court judge sentences the President to four years in prison, a period that would extend beyond his elected term. You (the President’s attorney) ask the judge to put the sentence on hold, so an emergency appeal could be filed to the United States Supreme Court. The judge refuses to stay the sentence, stating that “Donald Trump must be stopped immediately from further corrupting his office.” The judge orders the Marshall to *immediately* take the President into custody. With his gun drawn, the Marshall demands that the Secret Service agents—charged with protecting the President—step aside, and allow the President to be removed to prison. The Secret Service agents, also with their guns drawn, ask for your immediate advice.

5. What do you advise?