
HOWARD UNIVERSITY SCHOOL OF LAW
CONSTITUTIONAL LAW I SECTION 2

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Spring 2014 Practice Exam Instructions March 5, 2014

General Instructions

1. This practice exam counts for **zero points** toward your final grade.
2. You have **70 minutes** for this practice exam.
3. The exam is two (2) pages long, excluding this instructions page.
4. Type your answer in a word processing document using a 12 pt font, single spaced.
5. You are limited to **1000 words** (a bit over 2 pages single spaced).
6. Use headings and paragraphs as appropriate in your answer.
7. Your answer is to be emailed to Prof. Jamar at **stevenjamar@gmail.com** by 11:00 am Friday, March 7, 2014. In the **email subject line put: CL1 2014 practice exam.** Title your exam answer file in the following way: **CL1 2014 Practice Exam [your last name].doc**, e.g., CL1 2013 Practice Exam Howell.doc . (Smiths – include your first initial as well please.)
8. Respond to the question asked, not to questions that might have been asked. In your responses, do not spend time on matters that are not relevant just to show me how much you know. This exam tests professional judgment as well as knowledge of the material we covered in Constitutional Law I.
9. One or more of the matters you are asked to assess for constitutionality may have a clear answer. For such matters you should provide as complete an explanation as is appropriate so that the reader will understand your analysis and why the matter is not a close one. Other matters may be less certain of outcome and may depend upon filling a gap in the current legal doctrine. For such issues policies and principles at stake are particularly appropriate to discuss.

Permissible exam materials

The exam is closed book. No materials other than the exam itself, blank scratch paper, computers, and bluebooks are allowed. I will not be policing this rule or the time or any other aspect of this practice exam.

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Professor Steven D. Jamar

SPRING 2014 PRACTICE EXAM

MARCH 5, 2014

Question 1. 60 points. 60 minutes.

The State of Nebraska passed a law that requires oil or gas pipelines to have the following safety features:

1. Pipes must be double walled – if the inside pipe leaks, the oil or gas will flow into the space between the two pipes;
2. Pipelines must be above ground;
3. Pipelines must be built in such a way that any spills are contained by a leak-proof channel that guides spills to leak-proof catch basins located every 5 miles along the pipeline;
4. Pipelines are required to have sensors that monitor flow rates and pressure and that, when flow rates or pressure drops below certain levels such as would happen when there is a leak, automatic shut-off valves stop the flow of the oil or gas through the pipe and alert the pipeline company of the problem;
5. Pipeline owners and operators are required to report all spills and maintenance and repairs on all pipelines in the state; and
6. Pipeline owners, operators, and builders are required to prepare environmental impact statements before construction;
7. Pipeline owners, operators, and builders are required to obtain state and county permits prior to construction of any pipeline and prior to beginning any construction related to the construction of the pipeline itself.

Fracking Gas, Inc., wants to build a pipeline from near the Canadian border to the port of Galveston, Texas, where it will liquefy the natural gas for shipment to China and India. The proposed Fracking Gas pipeline will run through the center of the State of Nebraska; it is not feasible to build a gas pipeline from the gas fields near Canada to Galveston, Texas, without passing through Nebraska.

No gas is produced in Nebraska either through fracking or through traditional wells. No one in Nebraska would use the gas passing through this pipeline—it is destined entirely for export.

No other state regulates gas pipelines other than requiring inspections by the owners and reporting of any spills or leaks. The federal government through Environmental

Protection Agency regulations has standards for pipeline construction quality and for inspection and reporting. Only Nebraska has standards that exceed those of the EPA.

Complying with the Nebraska requirements would increase the cost of the pipeline through Nebraska by at least 5 times. The cost of complying with the Nebraska requirements in Nebraska would double the cost of building the entire pipeline just because of the increased costs of construction and maintenance of the Nebraska section.

Fracking Gas has sued the proper parties of the State of Nebraska (for purposes of this exam, just refer to the defendant as “Nebraska”) to get an injunction against the enforcement of the pipeline statute. Nebraska cites its interest in protecting the environment of its state and the safety and well-being of its residents by limiting their exposure to pollutants and toxins associated with oil and natural gas. It cites data on spills and leaks from ordinary pipelines that comply only with the EPA standards in support of the propriety of its standards. Some leaks from underground gas pipes have contaminated groundwater and have even resulted in houses becoming filled with natural gas and exploding.

Evaluate the substantive constitutional claims Fracking Gas, but do not consider any preemption issues.

End of Exam

ps For review for the final exam, it may be helpful to consider other possible constitutional issues raised by this fact pattern that are beyond the scope of the call of the question (including, e.g., preemption). I could use essentially this same fact pattern on the final, but ask you to evaluate the issues omitted here. DO NOT write any such analysis on the exam answer you submit to me.