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CONSTITUTIONAL LAW
FALL, 2009
MID-TERM EXERCISE
PROFESSOR RUDNICK

1. During the early days of the Iraqi conflict, before Saddam's capture, American intelligence discovered what they believed was a secret nuclear fuel reprocessing plant behind one of Saddam's many palaces. President Bush ordered the bombing of the plant as part of his large scale effort to destroy all possible locations capable of contributing to Iraq's manufacture of weapons of mass destruction. In reality, this target, which was totally destroyed by one of the bombs, turned out to be a private pharmaceutical plant that manufactured chemicals for use in the manufacture of prescription drugs, and the building in front was not Saddam's palace, as originally thought, but a very fancy the corporate headquarters. The owner, Pharm-Corps, brought suit in the Federal District Court for the District of Washington D.C. against President Bush, contending that negligently acquired intelligence caused the destruction of their property. The Bush administration moves to dismiss the case on the grounds that the lawsuit should not even be heard by the Court. (a) What is the strongest ground to support the administration's position, (b) what is the most likely result of the Motion, and (c) why (include what factors or standards the Court might rely on in reaching its conclusion)?

2. Connie Candidate has decided to run for election to a newly formed state wide Commission, the Massachusetts Casino Oversight Commission (MCOC) that will oversee the operation of any casinos established under the Governor's proposal. In order to get your name on the ballot, the statute establishing MCOC requires that any candidate must obtain 10,000 signatures, at least one from each of the 351 cities and towns in the Commonwealth. The Secretary of State, who is charged with the administration of the election under the statute, has admitted the law imposes a burden, but claims there is nothing he can do but enforced it. Connie, who lives in Boston, and is legally blind, and has no car, simply can not travel to each of the towns to obtain signatures on her own. She tried hiring a limousine and managed to get to a number of cities and towns not on the "T", but she spent so much money she had to stop the practice. She has filed a lawsuit in federal district court. In order to avoid a successful motion to dismiss by the Commonwealth, (a) who must Connie sue, (b) what relief can she ask for, and (c) what constitutional doctrine compels the result you have just stated?

Assume that Connie is unsuccessful in obtaining an injunction against the enforcement of the statute. She appeals. By the time the case gets to the Federal Court of Appeals, the election is already over. The Commonwealth moves to dismiss. (a) What is the most likely basis for the Commonwealth's motion? (b) What is the Court likely to do on the motion and (c) why?

4. What must an individual prove in order to demonstrate that he or she has standing, and who has the burden of proof on this issue?

5. Massachusetts law makes intentional refusal to pay child support for children, ordered by a court of competent jurisdiction a criminal offense, punishable by up to 6 months in prison. The Massachusetts Probate and Family Court ordered Frank Father to pay child support to Maureen Mother for their three children, ages 15, 16, and 17 who are in Maureen's custody. Although Frank is working and earning a good living, Frank has refused to pay because he believes he did not get a fair hearing in Court. Frank challenged Maureen's fitness to be the custodial parent, and he believes that the system always favors mothers, even when they are unfit. Maureen has repeatedly asked the District Attorney to prosecute Frank, but she has refused, because it is his policy not to prosecute where one or more of the children who are the subjects of the order are older than 16. Maureen brings suit against the DA in federal court, requesting that he be ordered to commence a prosecution under state law, claiming his policy unconstitutionally discriminates against families with older children. The DA moves to dismiss the case, alleging it is not justiciable. On what grounds should the DA base his motion? What is the most likely result?

7. Surprisingly, through recent hearings, Congress discovered that many states do not require that public schools have kindergarten programs for children under 6 years old, or the programs are voluntary not mandatory. Connie Congressperson, a proponent of early childhood education and a member of the House Committee on Education desires that states provide a structured educational experience for children under the age of 6. However, her chief legislative aide is concerned that the Constitution would not permit Congress to directly order the states to have mandatory kindergarten. How should Connie structure the proposed legislation to give it the best chance to succeed against a constitutional challenge (what constitutional provision should Connie use) and why?
