

**FINAL EXAMINATION
ADMINISTRATIVE LAW
FALL, 2005
PROFESSOR PHILIP HARTER**

INSTRUCTIONS

1. This examination is a take-home that will be sent to you by email at 8:00 am on Thursday, December 15. If it is a problem to get your exam by email, you may pick up the exam in Room 203. In any case, you must return your answers in person to Room 203 no later than 4:00 pm on December 15.
2. You must use exam identification numbers. You must pick up the sticker in advance. Be sure to allow space on your exam answer cover sheet for the sticker with the identification number. **Put your examination number on each page of your answer sheets** in case the sticker becomes separated from your exam answer. Do not put your name on your answer sheets and do not identify yourself in any way.
3. Your answers should be typed in at least 11 point type on 8 ½” by 11” paper with 1” margins.
4. You should be able to answer all the questions in 10 pages. Do not write more than 12.
5. You may consult your notes, the textbook, or any written materials you have. You may not consult any person or receive any other type of assistance.
6. The honor code applies to this take home exam. You must perform all work on your own and abide by the instructions on this page.

I hope no one takes political offense at what follows. It is not meant to take a position one way or another on the current partisan battles, but in an effort to make the exams more interesting by basing them on current events, this whole controversy seemed too delicious to pass up. Good luck, and remember, I need concise directions as to how to drive to Denver (if you weren't in class and don't know what that means (a) shame on you, but (b) don't worry about what it means since it concerns only my advice as to how to write the answers).

Do Well, and Do Good!

Assume for purposes of this exam that the Republicans in Congress have become outraged at the potential and actual prosecution of elected officials for a variety of alleged offenses. There have been angry accusations of politically motivated prosecutors and agency officials who are out of control in their desire to “get” members of the majority party. Speech after speech has also denounced the courts as an inappropriate place to resolve issues concerning national politicians and that courts are legislating to reach partisan results. They therefore proposed legislation that would establish an administrative agency, the Federal Election Integrity Commission (FEIC), to hear these cases.

The Commission would consist of five members to be appointed by the President with the Advice and Consent of the Senate. It would be established immediately upon passage of the bill and, interestingly, would terminate (“sunset” is the administrative law term of art for this) on January 1, 2009. The legislation continues that “The Commission has jurisdiction to resolve all controversies of any nature with respect to any person who serves in the House of Representatives or the Senate, the President, and the Vice-President.” It further provides that “No Federal court shall have jurisdiction concerning any issue involving the designated officials unless the Commission has determined that a particular subject matter would not affect the integrity of the electoral process.” The Commission is required to make its decisions in accordance with the Administrative Procedure Act, and the decisions of the Commission are reviewable under the APA. Finally, the Act grants the Commission the authority to issue such rules as may be necessary or appropriate to the implement the Act.

Assume further that the proposed legislation passed both houses of Congress on strict party lines and that the President signed it with great fan fare saying that it would restore integrity to elections by stopping these inappropriate and harassing prosecutions.

Soon after the Commission set up shop, the Securities and Exchange Commission (SEC) began an investigation of Congressman Hurri for irregularities involving the sales of securities in his blind trust; it was concerned that Hurri’s actions might have violated the Securities and Exchange Act which it administers. That, of course, was big news. Immediately upon hearing it, the Integrity Commission wrote the SEC that the SEC lacked jurisdiction to hear the matter, but that the FEIC would welcome the SEC’s cooperation in investigating Cong. Hurri. The SEC countered by petitioning the FEIC to issue a rule granting the SEC the authority to continue its own investigation of Hurri. The FEIC denied the petition, did its own investigation, brought charges against Hurri for securities violations, and assigned the matter to an administrative law judge for a hearing.

And so, here we go:

1. Using only the materials in the book and those that we discussed in class, is this Act constitutional? Discuss how the Supreme Court is likely to approach the issue and why.

2. Hurri objected vehemently to the assignment of this particular ALJ since, Hurri discovered, he (a) is a registered Democrat; (b) five years ago contributed \$50 to a Democratic candidate for Congress; and (c) ran unsuccessfully for his local school board as a Democrat. Hurri challenged the appointment and moved that the Commission assign a new ALJ to hear his case. What result and why?
3. Hurri was found guilty by the FEIC. On appeal, Hurri challenged the FEIC's procedures saying that it should have deferred to the expert agency so that it should have issued a rule authorizing the SEC to proceed and that it was an abuse of discretion for the FEIC to proceed directly with a prosecution. What result?
4. In its opinion, the FEIC addressed the SEC's contention that it, rather than the FEIC, should have heard the case. The FEIC said that the entire intent of the legislation was to centralize prosecutions of elected officials and that it would therefore be inappropriate to defer to another agency except in extraordinary circumstances. In discussing the charges against Hurri, the FEIC interpreted the Securities and Exchange Act to prohibit an elected official who has declared a blind trust from receiving reports as to the holdings of the trust, which was a central part of the allegations against Hurri. What level of deference should the court grant these two determinations by the FEIC? Why?