

QUESTIONS FROM **FINAL EXAM** -- P Sc 104D – FALL 2012  
Within Coverage of Spring 2014 Final Exam

[NOTE: As you know, your midterm will only have three questions; further information about the specific question allocation will be provided later...]

**PART I**  
**One-Paragraph Concept Explanation / Identification Questions**

**A.** CHOOSE ONE of the following statements:

1. The *Bush v. Gore* majority tried to limit the extent to which its holding would encourage other election challenges. But, as later election-challenge cases show, other litigants have tried to use the *Bush* theory to advance their electoral goals.
2. Some of the factors preventing U.S. Supreme Court decisions from being faithfully implemented by others are the same, whether the implementers are lower court judges or non-judicial officials. But some factors leading to less-than-full implementation by non-judicial implementers are not present when lower courts are called upon to follow the Court's lead.
3. Members of Congress and the president have many ways to try to control the federal judiciary or at least limit its influence. Some of these ways are common to both legislators and the president; some of these ways are possessed by only one branch.

Then, IN ONE PARAGRAPH that begins by clearly indicating the number of the statement you are addressing, BRIEFLY ILLUSTRATE the thought process behind your chosen statement through TWO EXAMPLES from the course texts or from other materials discussed in P Sc 104D.

**B.** CHOOSE ONE of the following paired concepts:

....

3. Lower-federal-court and state-court judges defying (i.e., flatly refusing to follow) U.S. Supreme Court decisions // These judges narrowly interpreting (or finding technical reasons for avoiding) U.S. Supreme Court decisions

IN ONE PARAGRAPH BRIEFLY EXPLAIN what you regard as THE TWO MOST IMPORTANT DIFFERENCES between the first and second concepts in the pair you selected. [NOTE: In some cases it may be useful to use specific examples to enhance your explanation of differences.]

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**PART II**  
**One-Paragraph Position Argumentation Questions**

At a recent panel discussion on “Judges and Politics: Elections, Social Controversies and the Proper Judicial Role,” three different exchanges took place:

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**Exchange 2: Charles vs. Delta**

Professor Charles: The contrast between *Bush v. Gore* and later election-challenge cases convinces me that there is a very real difference between a court deciding a legal challenge *after* the election has occurred and doing so *before* the election. In a pre-election challenge, judges can plausibly claim that they are not really sure how their decisions will affect elections, and thus that they are not really determining their outcomes.

Professor Delta: You’re really overstating the difference! In most pre-election challenges after *Bush*, it was clear who would be benefitted by a decision one way or the other. It was not believable for any of the judges to claim they didn’t know the impact of their potential decision.

**Question D.** CHOOSE EITHER Professor Charles’ or Professor Delta’s position, and clearly write the name of your chosen professor at the top of your answer. Then, IN ONE PARAGRAPH, use the course materials to BRIEFLY DEVELOP what you regard as the TWO BEST ARGUMENTS (or EXAMPLES) to SUPPORT all or part of this professor’s position.

**Exchange 3: Ekko vs. Fox**

Professor Ekko: Unelected federal judges need to be especially careful when they are invited into disputes about elections. In those cases, there are special dangers that judges will have to decide matters that do not involve judicial expertise and for which meaningful legal standards are especially lacking. Plus, there’s just a core sense that judges “cross a forbidden line” when they participate in partisan politics.

*[Note from Prof. Smith: The following professor’s view traffics in the same-sex marriage cases, which will not be within Spring 2014 coverage; but the comment makes an interesting comparative point, nonetheless...]*

Professor Fox: I don’t see anything special about election cases – as compared to, say, disputes over discrimination against same-sex marriage. As the legal decisions about

the Defense of Marriage Act clearly demonstrate, the same-sex-marriage-equality dispute gives judges highly controversial legal issues seemingly more appropriate for non-judicial policy makers and without especially meaningful guidance. Plus, everyone knows that partisanship is significantly present in the same-sex-marriage-equality area.

**Question E.** CHOOSE EITHER Professor Ekko's or Professor Fox's position, and clearly write the name of your chosen professor at the top of your answer. Then, IN ONE PARAGRAPH, use the course materials to BRIEFLY DEVELOP what you regard as the TWO BEST ARGUMENTS (or EXAMPLES) to SUPPORT all or part of this professor's position.

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### **PART III**

#### **One-Paragraph Question Based on a Hypothetical Fact Pattern**

For many years State X was dominated by officials affiliated with the Democratic party. Two years ago, however, State X elected a Republican Governor and gave Republican legislators majority control in both houses of the State X legislature.

One of the first legislative acts of the new Republican-dominated government was to change the state's election laws. Two changes were especially controversial:

Change I: Gave voters who were on active- or reserve-duty in the U.S. military a month-longer time period for requesting and mailing in absentee ballots, compared to non-military voters. (In practice, this change allowed military voters to request ballots both earlier and later in the election cycle than non-military voters. The change also allowed votes from military voters to be counted even if they arrived on election day; non-military ballots had to be received in the mail at least three days before election day.)

Change II: Abolished the State's previous practice of allowing any registered voter to engage in "early voting" (i.e., voting on the weekend and the Monday before the designated Tuesday election day).

Assume that, three months before the 2012 general election, the League of Women Voters of State X concluded that both changes violate the Equal Protection Clause of the U.S. Constitution. The League filed a lawsuit in federal-district court asking that the judge issue a preliminary injunction against implementation of the law changes during the 2012 election cycle. The federal-district judge in charge of the challenge held extensive hearings and decided not to enjoin implementation of either change. The League then appealed to the federal court of appeals with jurisdiction over cases from State X.

**F.** CHOOSE EITHER Change I OR Change II, and clearly write the name of your chosen Change at the top of your answer.

Then, IN ONE PARAGRAPH, do the following:

1) In three or four sentences, BRIEFLY DEVELOP what you regard as the BEST ARGUMENT in SUPPORT of the League's argument that your chosen Change is unconstitutional.

AND

2) In three or four sentences, BRIEFLY DEVELOP what you regard as the BEST ARGUMENT AGAINST the League's argument that your chosen Change is unconstitutional.

[NOTE: Although this will not be separately graded, you should consider whether it will enhance your response to prompt 1 and/or prompt 2 to DRAW a COMPARISON to an APPROPRIATE CASE we studied in the course.]

**--END OF EXAMINATION--**