

## CONSTITUTIONAL LAW

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### QUESTION I (40 minutes)

In 1998, North Dakota amended its constitution by referendum. The state's voters added the following to the Constitution:

"No corporation or syndicate may acquire, or otherwise obtain an interest, whether legal, beneficial, or otherwise, in any real estate used for farming in this state, or engage in farming. However, a 'family farm corporation or syndicate' is exempt from this prohibition. A family farm or syndicate is a corporation or syndicate engaged in farming or the ownership of agricultural land, in which a majority of the partnership interests, shares, stock, or other ownership interests are held by members of a family or a trust created for the benefit of a member of that family. 'Family' means natural persons related to one another within the fourth degree of kinship according to civil law, or their spouses."

Before the constitutional amendment was to go into effect, two North Dakota corporations, Dave's Feedlot, Inc. (Dave's), and Bjorn's Feedyard, Inc. (Bjorn's) sued in federal court requesting a permanent injunction. Dave's and Bjorn's both own a custom cattle feedlot, which means that they raise cattle owned by third parties. The third parties deliver cattle to the feedlots but retain ownership of the cattle. The feedlots then raise the cattle in preparation for slaughter. The plaintiffs claim that the amendment prohibits out-of-state corporations who own cattle from contracting with South Dakota feedlots because those corporations would be engaging in farming in South Dakota, and they would not fit within the "family farm corporation" exemption. This would then put the feedlots out of business because they earn their revenue from feeding cattle owned by non-exempt entities.

Evidence presented at the hearing before the court showed the following: The state sent to all voters a "pro-con" statement concerning the proposed constitutional amendment. The "pro" statement was written by members of a private organization that shepherded the proposed amendment through the legislature, which then sent it to the voters for determination. The "pro" statement concluded that, if the amendment was not adopted, "Profits will be skimmed out of local economies and into the pockets of distant corporations." Additionally, the "pro" statement stated, "The proposed amendment gives North Dakota residents the opportunity to decide whether control of our state's agriculture should remain in the hands of family farmers and ranchers or fall into the grasp of a few, large corporations." Finally, the "pro" statement emphasized "the need to protect the family farmer from predatory businesses and the need to protect our environment from those who would despoil it in the name of short-term profits." The Governor urged all voters to vote in favor of the amendment, concluding, "Our way of life in North Dakota is at stake. Save the family farm." The "con" statement, written by a lobbyist who was hired by Tyson's and other large agricultural corporations, stated, "Family farmers need all the assistance they can get from those who wish to invest in North Dakota agriculture, and barring corporations from farming in our state will not save us from the serious problems facing family farms." The "con" statement further noted, "The amendment will merely cost

North Dakota more jobs, for this will bar out-of-state corporations, which are the only corporations in agribusiness, from creating jobs in the state. It is unfair to treat such firms as predators when their very success requires them to work with not against farmers in North Dakota."

You are the law clerk to the federal district judge assigned to hear the case. Analyze all constitutional issues raised.

**QUESTION II** (50 minutes)

In 2005, the city of New Athena, Texas, amended its zoning ordinance as follows:

"(1) In any area in which property is zoned exclusively for a one-family dwelling, 'family' shall be defined as 'One or more persons related by blood, adoption, or marriage, exclusive of household servants, living and cooking together as a single housekeeping unit, or not more than two persons though not related by blood, adoption or marriage, living and cooking together as a single housekeeping unit. No other living arrangement shall be deemed to constitute a family.'"

(2) No mini-dormitory shall be permitted in any residential area zoned exclusively for a one-family dwelling. A 'mini-dormitory' is defined as 'an off-campus residence, located in a building that is, or was originally constructed as a one-family, two-family, or three-family dwelling which houses at least three (3) individuals who are unrelated to one another by blood, adoption or marriage and who are registered full-time or part-time students at an institution of higher learning.'

(3) This ordinance is adopted to prevent the deterioration and abuse of housing stock, to prevent any disturbance of the quiet enjoyment of families, and to avoid unlawfulness."

The year before the adoption of the ordinance, New Athena, which is the home of Clarkson College, saw a rise in police calls to fraternity houses and other off-campus housing in which students at Clarkson were living. At one party, it was alleged that female students were drugged and sexually assaulted. (This allegation was later determined false.) Citizens of New Athena demanded action to "curb the animalistic behavior of Clarkson students," one citizen said, as reported by the local newspaper. The New Athena city council directed its lawyer "to write a law that prevents students from taking advantage of our hospitality and then leaving us." The lawyer noted that the area surrounding Clarkson College consisted solely of housing originally built as one-family houses. Some of those houses subsequently had been converted into "boarding houses" or "mini-dormitories" by their owners. The city council agreed to zone the area immediately outside the boundaries of Clarkson College as exclusively for one-family dwellings. Approximately 10% of the land in New Athena was available for use as "mini-dormitories." The land available for use as "mini-dormitories" was no closer than 6 miles from Clarkson College, and some of that land was 8 miles from Clarkson.

Several persons have sued New Athena, alleging the law is unconstitutional. Sam LoPresti, the owner of three (3) dwellings located less than ½ mile from Clarkson, which he rents to students at Clarkson, has sued, noting that his dwellings have been empty since the ordinance went into effect because no "family" as defined in the act is willing to move close to Clarkson.

Additionally, Daniel Haber has sued, claiming that the ordinance will require his "family" to leave the house he has owned for 10 years. Haber is the father of two sons, one of whom

passed away in 2004, and the other of whom is currently serving a sentence in prison. Each son was living in Daniel Haber's house with a woman. Neither couple was married (either by statute or common law). Each woman had a child through an earlier relationship. Both of those children called Haber's sons "Dad." Finally, Clarkson College graduate students Tracy Zinkel, Haley Bernard, and Robin Colella, all unrelated to each other, have sued, alleging that the city has interfered with their constitutional rights by banning them from a house they jointly purchased together near the school, and at which they have lived for the past year. Each case was filed in federal district court, and the administrative judge has combined the three cases. You are the law clerk to the federal district judge assigned to hear the case. The judge has asked you to draft a memorandum discussing the constitutional issue(s) involved.

**QUESTION III** (30 minutes)

Since the constitutional crisis of 1937, when the Supreme Court allegedly engaged in the "switch in time that saved nine," two opposing approaches to constitutional interpretation have competed for allegiance from those who study constitutional law. One group views the Supreme Court as engaging in a form of "politics," while the other maintains that constitutional adjudication is not "politics by another name," but is a particularized (or specialized) form of judging, or "doing law." Choose a side in this debate, and use *at least* one case to support your position (or which contradicts the other view).

**END OF EXAM**