SOUTH TEXAS LAW REVIEW
WRITE-ON PACKET
WINTER 2015
I. INTRODUCTION

Congratulations! Your commendable grade point average enables you to take part in the South Texas Law Review write-on competition.¹ Law review membership strengthens one’s research, writing, and editing skills and is, for many employers, an important hiring criterion.

The strategies and lessons propounded by Legal Research and Writing I and II are integral to success in this competition, so contestants are encouraged to review their coursework and Bluebook exercises. Timeliness and organization are also key components to succeeding in the write-on competition, as the writing topic typically concerns novel issues of complex law.

II. ASSIGNMENT

The winter write-on competition is divided into two parts: Part A involves completion of a case note and Part B involves completion of an editing exercise.

Part A

A case note is a detailed analysis of a recent case that either supports or criticizes the court’s rationale and holding. The position you take is irrelevant, provided that your position is delivered clearly and is well supported. A case note should include analysis of relevant legal principles, exploration of related cases in the same and other jurisdictions, and a prediction of appellate review, should the court’s holding be challenged. The conclusion should include a summary of the argument, a predicted outcome, and the likely practical effect of the court’s holding.

¹ You must have a minimum G.P.A. of 3.25, and you must have completed a minimum of thirty (30) credit hours and Legal Research and Writing I and II. Additionally, all South Texas Law Review candidates must have at least four remaining semesters, which may include summers. Specific questions regarding your eligibility for membership on the South Texas Law Review should be directed to Kelsie Haaland, Editor in Chief, at: stclawview.eic@gmail.com.
Part A is a *closed-source* assignment. Consequently, you may only cite the cases and authorities included in the source list provided. Note that contestants may not need to use all of the cited sources to succeed in this competition. The Editorial Board has attempted to select an interesting and controversial topic, and, as with many legal issues, there is no “right” or “wrong” answer—merely well or poorly reasoned arguments. Persuasive reasoning, strong authoritative support, and technical prowess are the keys to success in this competition.

Though the substance of your analysis is critical, the form is equally so. Remember that one purpose of a law review is to ensure the technical perfection of published articles. A persuasive and articulate case note that is littered with citation errors, spelling mistakes, and grammatical problems will not pass muster.

A good resource is *Scholarly Writing for Law Students: Seminar Papers, Law Review Notes and Law Review Competition Papers* by Elizabeth Fajans & Mary R. Falk. This book contains a specific discussion of the content and organization of a case note and is available at the reference desk in the South Texas library, and in the South Texas bookstore for purchase.

The case for Part A is *Utah v. Strieff.* Please read the case carefully before you begin writing.

**ISSUE:** Whether evidence that was seized as part of a lawful arrest pursuant to a warrant should be suppressed because the warrant was only discovered during an unlawful investigatory stop.

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2 ELIZABETH FAJANS & MARY R. FALK, SCHOLARLY WRITING FOR LAW STUDENTS: SEMINAR PAPERS, LAW REVIEW NOTES AND LAW REVIEW COMPETITION PAPERS (2005).

Part B

The editing exercise will show your ability to follow the guidelines set forth in the Bluebook,\(^4\) the Greenbook\(^5\) (if applicable), the Texas Law Review Manual on Usage and Style\(^6\) and the Yale Style Sheet\(^7\). The Bluebook index is a great place to start if you are citing a source that you are unfamiliar with. Note that this exercise may involve more than one rule per citation. The Manual on Usage and Style, or “MoUS,” is the controlling guide for any style matter not addressed by the Bluebook. Generally, we do not encourage changing an author’s style or word choice merely because you think something else may sound better. However, do not assume that any information contained in the exercise is correct. You will be required to verify the source and substantive accuracy of any information contained in the exercise, as well as correct any grammatical or citation errors in the text and footnotes. Please do not add or delete any footnotes. It is recommended that you complete the editing exercise first because it will help you in your case note citations. Regarding editing, please make sure that the “TRACK CHANGES” feature is turned OFF.

III. DEADLINES AND INSTRUCTIONS

The case note and editing exercise are due on Monday, January 4, 2016 at 5:00 p.m. Please deliver them to Jacob Hubble, the Coordinator of Scholarly Publications for the South Texas Law Review. His office is located in room 224 next to the Law Review suite. No late papers will be accepted, without exception. You must turn in five (5) hard copies. Students that are out of town during the time the case note is due must mail five

\(^4\) THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION (Columbia Law Review Ass’n et al. eds., 19th ed. 2010).

\(^5\) THE GREENBOOK: TEXAS RULES OF FORM (Texas Law Review Ass’n ed. 2010).

\(^6\) TEXAS LAW REVIEW, MANUAL ON USAGE & STYLE (Texas Law Review Ass’n ed., 11th ed. 2008).

\(^7\) This can be downloaded at: http://www.yalelawjournal.org/files/Vol.125StyleSheet_hqwl7ymj.pdf
copies of their case note and editing exercise to:

Jacob Hubble  
Coordinator of Scholarly Publications  
South Texas College of Law  
1303 San Jacinto Street  
Houston, Texas 77002

Mailed copies must be physically mailed by 5:00 p.m. on Wednesday, December 30, 2015. A mailed submission properly postmarked by this deadline will not be considered late. In addition to the five hard copies, all participants must submit one (1) electronic copy to Jacob Hubble at jhubble@stcl.edu. These must be in Word document form. Each participant is solely responsible for ensuring the case note and editing exercise is received by the 5:00 p.m. deadline on Wednesday, December 30, 2015. There will be no exceptions to this deadline, so ensure your paper is turned in on time. Decisions will be posted by Wednesday, January 6, 2016, an informational meeting will be held Wednesday, December 16, 2015 at 12:15 p.m., and mandatory orientation for new candidates will occur on Saturday, January 9, 2016 at 1:00 p.m.

The case note must be at least eight (8) pages, but no more than eleven (11) pages in length (excluding the editing exercises), twelve-point Times New Roman font, fully-justified, with one-inch margins, containing at least fifty footnotes. The text and footnotes should be formatted according to the Bluebook, the Greenbook, and the Manual on Usage and Style. The body text should be double-spaced, and footnote text should be single-spaced, but double-spaced between each footnote, in ten-point font. Please include the following items in the case note:

- Table of Contents – reference the page numbers on which different sections begin;
- Page Numbers – centered at the bottom of every page, except the first page, which should not be numbered.
Your case note should also include the following sections:

- Introduction paragraph including a thesis and roadmap;
- Background of the law, including a discussion of the cases leading up to the selected case;
- Facts and the court’s reasoning of the selected case;
- Your analysis of why the court was right or wrong in the decision it came to;
- A “prediction” of the possible disposition of the Supreme Court of the United States regarding the case; and
- A conclusion.

**Do not place your name or any identification number on the case note or editing exercise.** You will be assigned an identification number when you turn in your five copies. Any case note submitted containing a name or any other mark identifying the student/author, other than the assigned identification number, will be disqualified from the write-on competition. Be sure to **complete and sign the attached pledge form** and submit it with five copies of your case note.\(^8\)

The case note and editing exercise must be solely the work of the student. Students may not collaborate with anyone, including other students, attorneys, professors, or members of *South Texas Law Review*.

Feel free to look at previously published *South Texas Law Review* case notes for further guidance. Copies of the *South Texas Law Review* are available in the Law Review suite, the South Texas library, and on electronic legal databases. Remember—start early, work hard, and be precise. Good luck.

The 2015–2016 *South Texas Law Review* Editorial Board

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\(^8\) The Write-On Competition Pledge Sheet is located at the end of this packet. If you submit your case note via mail, please make sure to include the signed and completed Write-On Competition Pledge Sheet with your packet.
WINTER 2015 LAW REVIEW WRITE-ON COMPETITION SOURCE LIST

PLEASE NOTE: The sources cited below may or may not be correct Bluebook form and may or may not be relevant to the case note topic. It is the student’s responsibility to cite these sources in their correct Bluebook form and to make sure that the sources are relevant, updated, and still good law.

SOURCES

1. United States v Green, 111 F. 3d 515 (9th Circ. 1997) (en banc).
2. State v. Moralez, 300 P. 3 1090 (Kansas 2013).
7. 4th amendment of U.S. Constitution.
8. Wayne R. Lafave et al, CRIMINAL PROCEDURE, § 9.3(a) (3rd ed. 2007)
24. Hardy v. Commonwealth, 149 S.W.3d 433 (KFC 2004)
34. People v. Reese, 761 N.W.2d 405 (Mich. 2008) (per curiam).
36. State v. Thompson, 438 N.W.2d 131 Neb. 1989
43. 6th Amendment
44. Utah v. Topanotes, 76 P. 3d 1159
46. First Amendment of U.S. Const.
47. U.S. Const. 14th Amendment.
54. Rice Simmons, Ending the Zero-Sum Game: How to Decrease the Productivity of the 4th Amendment, 36 HARVARD JOURNAL OF LAW AND PUBLIC POLICY 549 (2013).
60. Eugene Milhizer, Debunking Five Great Myths About the Fourth Amendment Exclusionary Rule, 211 Mil. L.R. 211 (2011).


70. Atkins v. Chicago, 631 F.3d 823 (7th Cir. 2011)(mem op.)


73. Michael Kimberly, Discovering Arrest Warrants: Intervening Police Conduct and Foreseeability, 118 YALE 177 (2009)


75. 4 Wayne R. LaFave, Search and Seizure sec. 11.4 (4th edition 1996).

76. United States v. Faulkner, 636 F.3d 1009 (8th Cir. 2011).

77. State v. Strieff, 286 P.3d 317

78. Article I, Section 14 of the Utah Constitution.


82. Utah Code 58–37–10

83. George Thomas, Stumbling Toward History: The Framers' Search and Seizure World, 43 TECH LAW REVIEW 199, 201 (2010) 


86. State v. Strieff, 357 P.3d 532, cert. granted.


I. Local regulation And Preemption

The home-rule city of Houston faces an environmental crisis. The “Houston/Galveston area] has 1 of the most serious ozone problems in the state.” It seeks to hold its companies to the standards set by the state on air pollution, but local regulation must be consistent with federal law to avoid an implied preemption finding.***

A. Implied Preemption

If the legislature decides to impliedly preempt an entire field or subject matter that normally falls within a home-rule cities powers, the intention must be shown with “unmistakable–clarity.” “The mere existence of a state law regulating the same subject-matter as an ordinance does not render the ordinance void, even where” the state law and ordinance partially overlap. Thus, even if the Texas Clean Air Act (the “TCAA”) and the local ordinance overlap on certain areas, that still does equate to implied preemption.

For Example, the home-rule city of Richardson passed a comprehensive ordinance on animal control and the state had code provisions regulating the keeping of cuddly animals. Despite the “small area of overlap,” the supreme court of Texas found that the ordinance was not impliedly

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12 Fair v. Galveston, 915 F.Supp. 873, 880 (S. D. Tex. 1996), aff’d 100 F.3 953 (6th Cir. 1996) (citing City of Richardson v. Responsible Dog Owners, 794 S.W. 2d 17, 19 (Texas 1991)). See also City of Amarillo v. Griggs Southwest Mortuary, 406 S.W.2d 230, 232 (Tex. App.–Amarillo 1966, pet. ref’d n.r.e.) (quoting Ex parte Heine, 254 S.W.2d 790 (Tex. App. 1953)) (“[t]he fact that the State does not require a license does not mean that the legislature has pre-empted the field.”).
preempted: “[t]he mere fact that the legislature has enacted a law addressing a subject does … not mean that the subject matter is completely preempted.”

Thus, concurrent local regulation by houston of the same subject matter is not impliedly preempted by a comprehensive state scheme. Houston’s power to regul8 alongside the state is even weaker here, because the statute expresslie recognizes the city’s authority to inact and enforce an ordinance that regulates ground-water pollution similarly regulated by the TCAA. Even the Federal Clean air act invisions both state and local regulation.

Since Houston's ordinance is not irreconcilably inconsistent with the TCAA, the Tejas Commission on Environment Quality’s (“TCEQ’s”) rules, and does not make acts authorized UNDER the TCAA or by the TCEQ unlawful, then local regulation of air-quality is not impliedly preempted by the TCAA or the TCEQ. Moreover, reasonably construing the TCAA makes it clear that cities like Houston can have an in-dependent & complimentary program that is consistent with the TCAA and TCEQ’s rules.

B. Mixed State and Local Concern

While Houston’s program is an independent program regulating consistent with state law, and is not impliedly preempted by a claimed comprehensive field regulation, further support is found in the fact that teh locall concerns of Houston out-weigh any state concerns

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13 Responsible Dog Owners, 793 S.W.2d 17, at 19; see also City of Houston v. Harris C’nty Outdoor Adver. Ass’n, 732 S.W.3d 42 (Tex. Civ. App.—Houston [1st Dist.] 1987, no pet) (“In the absence of express limitations, there’s nothing that prevents a city from enacting an ordinance covering the same subject as state and federal regulations.”).

14 See e.g., Fair v. City of Galveston, 915 F. Supp. 873, 878 (N. D. Tex.) (Finding that an ordinance requiring licensing and registration of bicycles was not preempted by comprehensive state regulation of bicycles on the state’s roads.).

15 Texas Heath and Safety Code Annotated § 382.111, 382.113(a) (2014); see also Bryan Hackey, Don’t Mess With Houston, Tex.: The Clean Air Act and State-Local Pre-emption, 88 U.T. LAW REVIEW 640, 649 (2012); In re Sanchez, 81 S.W. 3d 794, 797 (Tex. 2001).

16 42 U.S.C.A. § 7401(a)(3) (2006) ("Air pollution prevention…and air pollution control at its source is the primary responsibility of states and local governments"). The purpose of the Federal Clean Air Act is to provide technical and financial assistance to “State and local governments in connection with the development and execution of there air pollution prevention and control programs.” Id. at § 7401(b)(3)


18 Supra notes 7.
like uniformity in its regulation of pollution statewide. The supreme Court has recognized that the "regulation of health and safety matters are primarily, and historically, a matter of local concern."19 Cities like Houston are unique in its understanding of the local concern, and are in the best position to find solutions too the problem of pollution without conflicting with state law.20

In home/rule jurisdictions, their are many functions that fall into the category of mixed state and local concerns: highways and streets; education; taxes, finances, and fees; environment and land use; public health; and others.21 Other Courts have found there is no fixed standard to determine what is a local, state, or mixed state and local concern, but rather apply a case–by–case evaluation analyzing certain factor’s; (1) the need for statewide uniformity of regulation; (2) the impact of municipal regulation on persons living inside the municipal limits; (3) historical considerations, specifically whether the matter is one traditionally governed by state or by local government; and (4) whether the [state] Constitution specifically commits the matter to state or local regulation.22 Even balancing the factors under other tests provides substantiation for the ordinance’s validity.

The need for statewide uniformity is laudable, but the TCAA could have provided such with exclusive language in the statute making the TCEQ the sole—regulator. It did not, but rather

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20 Randy P. Kromm, Town Initiative & State Preemption in the Environmental Area: A Massachusetts Case Study, 22 HARVARD ENVT’L. L.R. 241, 249—51 (1998) (Discussing distinct disadvantages local regulators have over centralized or state regulators.).

21 Frayda Bluestein, Does North Carolina Local Governments Need Home Rule, 84 N. C. L. Rev. 1983, 1999—2000 (2004). The “historical purpose of home rule was an effort to provide broader authority and control to the local governments and relief from the restrictive interpretations of local authority under Dillon’s rule.” see Id. at 1986 n. 14 (citing Sandra M. Stevens, Antieau on Local Government Law 21.01, 21-4 (2nd ed. 2006))

expressly recognized Houston’s power to enact and enforce its air quality ordinance. This ordinance does not impact persons outside Houston, but is concerned with providing the people of Houston better air to breathe and a future to look forward to. Finally, the Constitution recognizes Houston’s narrow home-rule powers, and the TCAA since enactment has recognized and expressly authorized local government regulation of air pollution. Further elaborated infra, Houston can take steps to prevent any conflict arguments, but based on Texas Law and other related balancing tests, this ordinance is impliedly pre-empted by the TCAA.

II. CONCLUSION

“win a home rule city ordinance appears to be in conflict with a draconian statute, the court's dooty is to reconcile the two ‘if any fair and reasonable construction of the apparently conflicting enactments exists and if that construction will leave both enactments . . . in affect.”24 Similar to the local regulations found in Sanchez, Responsible Dawg Owners, and Fair, the ordinance here is in conflict with the TCAA, and by reasonably construing both the ordinance and the TCAA’s relevant sections, the ordinance is more a complimentary system rather than a inconsistent local regulation.25

23 Texas Const. art XI, section 5 (“No ordinance passed under said charter shall contain any provision consistent with the Constitution of the state, or of the laws enacted by the Legislature of Texas”). Under Article XI, § 5, “the power of the city [to act] is as general and broad as is the power of the Legislature to act.” Le Gois v. State, 190 S.W. 724 (Criminal Court of Appeals 1915).


25 See supra Part I. A
WRITE-ON COMPETITION PLEDGE

I hereby pledge that the case note I have submitted for the write-on competition is exclusively my work and that I have not collaborated with or received assistance from any other person in its preparation.

I have read and I understand the requirements for South Texas Law Review eligibility. I acknowledge that in the event I do not meet the academic requirements for the South Texas Law Review that I will not be eligible for South Texas Law Review candidacy despite the fact that I have turned in a case note for the write-on competition.

Signature: ______________________________

Print Name: ______________________________

Date: ______________________________