1. Which of the following decisions best exemplifies the holding that a federal court can review agency inaction if that agency refuses to properly respond to a statutorily-authorized petition for rulemaking?

    a. *Muscarello v. United States*

    b. *Holy Trinity Church v. United States*

    c. *West Virginia University Hospitals v. Casey*

    d. *Massachusetts v EPA*

    e. *Gregory v. Ashcroft*

2. In *West Virginia University Hospitals v. Casey,* the U.S. Supreme Court held that:

    a. The hospital system could recover its expert witness fees because the federal Medicaid statute's purpose of assuring adequate review of the denial of reimbursement claims would otherwise be frustrated.

    b. The hospital system could not recover its expert witness fees because the underlying federal Medicaid statute had not clearly and unequivocally waived the United States' sovereign immunity for lawsuits seeking reimbursement of those costs.

    c. The hospital system could not recover its expert witness fees because Congress' consistent distinction of "expert fees" from "attorney's fees" across multiple statutes meant that the same meaning of the term would apply to the University's claims pursuant to the Whole Code Canon.

    d. The hospital system could not recover its expert witness fees because it had failed to prevail on all of its claims as required by the federal Medicaid statute's citizen suit provision, which the Court had to read narrowly under the American Rule.

3. Thanks to advances in genetic engineering, the start-up company TransTobacco has created a new strain of tobacco that possesses triple the concentration of nicotine as conventional varieties of tobacco. It also has less than half of the tar and particulates that normally pose health risks. The Food & Drug Administration wishes to immediately regulate TransTobacco's new type of tobacco as a drug before it hits the market. If TransTobacco wishes to oppose FDA's action to regulate, TransTobacco will likely point to:

    a. *Nova Scotia* because FDA failed to consider aspects of TransTobacco's new species that require it to be regulated differently than regular tobacco, which renders its

decision arbitrary and capricious.

b. *FDA v. Brown & Williamson Tobacco Co.* because Congress presumptively denied FDA the power to regulate tobacco under existing food and drug laws in the absence of express statutory language.

c. *Heckler v. Chaney* because the FDA has absolute discretion to bring enforcement actions based on its decision to classify tobacco as a drug.

d. All of the above.

e. None of the above.