

EXAM ID: _____

**FINAL EXAMINATION
FEDERAL COURTS
LAW 6232 – Section 12 – Siegel
Spring 2024**

INSTRUCTIONS

1. This is an open book examination. You may use any written materials that you have brought with you to the exam. “Written” materials include materials that are handwritten, typewritten, printed, or published, and, to the extent permitted by the school’s examination procedures, also includes electronic materials stored on your electronic device prior to the start of the exam. You may retype text from written materials into your exam answer. However, during the exam, it is forbidden to access the Internet, to consult any other person directly or indirectly, or to make use of an artificial intelligence program.
2. You have **THREE HOURS** to complete the exam. The exam consists of this instructions page and 7 pages of questions. There are **FIVE QUESTIONS**. All students must answer all questions. Questions 1, 2, and 3 should take about 40 minutes each. Questions 4 and 5 should take about 30 minutes each.
3. Do not put your name anywhere on your answers. Do not write “Thank you for a great class” or anything similar on your exam. If you are writing your answers by hand, remember to *write legibly*.
4. If, with regard to any question, you think additional facts are needed to answer the question, state clearly what facts you think are missing, make a reasonable assumption about the missing facts, and answer the question based on your assumption. Do not change the given facts.
5. Using good judgment, address all the issues presented and assigned by the questions, even if your answers to some issues would, in real life, eliminate the need to address other issues.
6. Unless otherwise specified, assume all events described in the questions occurred in the United States and answer all questions on the basis of current law.
7. Good luck.

QUESTION ONE

The government of Hinrobia, a central European nation, begins systematic persecution of members of an ethnic minority group in Bolosova, which is a region within Hinrobia. The President of the United States strongly condemns Hinrobia's actions and masses U.S. troops just outside Hinrobia's borders. The President demands that Hinrobia permit an international peacekeeping force to enter Bolosova to prevent persecution there. When diplomatic efforts to resolve the crisis fail, the President announces that the United States, in conjunction with a coalition of other nations, will begin bombing raids on military targets within Hinrobia, and that ground troops may be sent into Hinrobia at a later date. The United States Congress takes no action. Bombing begins the next day.

Two days later, the Hinrobia Business Roundtable ("HBR") and several of its individual members bring an action against the United States in federal district court. The HBR is an association of U.S. citizens and U.S. corporations that own property in Hinrobia and that do business there. The HBR asserts that the bombing raids constitute a "war" between the United States and Hinrobia within the meaning of the War Powers Clauses of the United States Constitution, and that the war is unconstitutional in the absence of a congressional declaration of war. The HBR asks the district court to enjoin the United States from participating in the bombing raids or in any other military action against Hinrobia until such time as the Congress declares war.

A week later, the Hinrobian government announces that it will comply with all of the demands of the international coalition. The bombing raids are halted, but U.S. and other international military forces remain outside Hinrobia in a state of readiness.

The United States then moves to dismiss the HBR's lawsuit. Without addressing the merits of the constitutional war powers issue, the government raises such threshold grounds for dismissal as might be expected on the above facts, except that the government does *not* raise sovereign immunity. The HBR makes all appropriate arguments in response.

You are the law clerk to the district judge considering the case. Write a memorandum discussing the issues and making a recommendation as to how the judge should rule on each issue. Conclude your memorandum with a recommendation as to whether the government's motion to dismiss should ultimately be granted or denied.

QUESTION TWO

Many employers require their employees, as a condition of employment, to sign a “non-compete agreement.” In such an agreement, the employee promises that after ceasing to work for the employer, the employee shall not work for any competitor of the employer for a specified time period. Many employees feel that these agreements are unfair, because they tend to lock employees into their current jobs and reduce employees’ bargaining power.

Congress passes the Employee Freedom Act (EFA), a federal statute, which provides that no employer shall require any employee to enter into a non-compete agreement. EFA also provides that any non-compete agreement between an employer and an employee shall be unenforceable.

Thereafter, Diana, a designer employed at Perfect Kitchen, Inc. (PKI), a firm that designs kitchens for its customers’ homes, leaves to work at a competing firm. Diana is a citizen of New York and PKI is a corporation incorporated in New York. PKI sues Diana in New York state court. It alleges that Diana signed a two-year non-compete agreement. It asks the court to enjoin Diana from working for any competing firm for two years. Asserting EFA as a defense, Diana removes the case to federal district court. PKI moves to remand the case to state court on the ground that the case is not within the federal court’s jurisdiction.

Part A: How should the federal district court rule on the remand motion? Explain.

In a separate case, Douglas, a citizen of Illinois, leaves Paradiso, a restaurant where he is a chef, and goes to work for a competing restaurant. Paradiso, a corporation incorporated in Illinois, sues Douglas in Illinois state court. It alleges that Douglas signed a two-year non-compete agreement and asks the court to enjoin Douglas from working at any competing restaurant for two years. Douglas does not remove the case, which remains in state court, but he asserts EFA as a defense. Paradiso argues that EFA is unconstitutional because it is beyond the powers of Congress. The state court rejects Paradiso’s argument and rules that EFA renders the non-compete agreement between Douglas and Paradiso unenforceable. It enters judgment for Douglas. Paradiso appeals to Illinois’s highest court, which affirms the judgment in all respects. Paradiso then seeks certiorari in the U.S. Supreme Court. Douglas asserts that the Supreme Court lacks jurisdiction to hear the case.

Part B: Can the U.S. Supreme Court hear the case? Explain.

In yet another, separate case, Dameon, a high-level executive at Panther, a firm that manages money for wealthy clients, leaves to work for a competing money-management firm. Dameon is a citizen of California, and Panther is a corporation incorporated in California. Panther sues Dameon in California state court. It asserts that Dameon signed a two-year non-compete agreement, and it asks the court to enjoin Dameon from working for any competitor for two years. Dameon asserts EFA as a defense. Dameon also defends on the basis of the California Business and Professional Code (CBPC), a California state statute enacted over 100 years ago. CBPC declares most non-compete agreements to be unenforceable in California, although it does have exceptions. Panther

asserts that Dameon's non-compete agreement falls within one of CBPC's exceptions. Panther also argues that EFA is unconstitutional because it is beyond the powers of Congress. The state court rules against Panther on both arguments and determines that CBPC and EFA each independently render Dameon's non-compete agreement with Panther unenforceable. The state court enters judgment for Dameon. Panther appeals to California's highest court, which affirms the judgment in all respects. Panther then seeks certiorari in the U.S. Supreme Court. Dameon asserts that the Supreme Court lacks jurisdiction to hear the case.

C. Can the U.S. Supreme Court hear the case? Explain.

QUESTION THREE

In the early 2000s, as genetic science advanced, it became possible to determine, by examining a person's genes, whether the person was at risk for certain diseases. Congress was concerned that people might be denied employment opportunities based on genetics. For example, an employer might try to save on health care costs by denying employment to people who were at high risk for developing diseases that would be expensive to treat. While there were hardly any cases of employers actually doing this, Congress wanted to be pro-active about this issue.

In 2008, Congress passed the Genetic Information Nondiscrimination Act ("GINA" or "the Act"), a federal statute. The Act prohibits employers from firing or refusing to hire any person on the basis of genetic information about that person. The Act provides that any person whose rights under the Act are violated by an employer may sue the employer for all appropriate remedies, including reinstatement and back pay. The Act provides that a prevailing plaintiff shall be entitled to an award of attorney's fees and costs. The Act provides that "states acting as employers shall be fully covered by this Act and shall be subject to all remedies provided in this Act." The Act states that Congress passed the Act pursuant to "all appropriate constitutional powers," including Congress's Commerce power, its Necessary and Proper power, and its power under Section 5 of the Fourteenth Amendment. The Act also states that "the Congress finds that governmental discrimination against a person based on genetic information about that person is a denial of equal protection of the laws."

Thereafter, Mariela, a citizen of Florida who works as an attorney in the office of Florida's Attorney General, is fired after she takes a genetic test that shows that she is at high risk for developing a form of diabetes that would be very expensive to treat. The stated reason for her firing is poor performance, but Mariela suspects that she is really being fired because of her genes.

Mariela sues the state of Florida and its Attorney General in federal district court under GINA. She seeks reinstatement, back pay, attorney's fees, and costs. The defendants move to dismiss the case on the basis of sovereign immunity. Both sides make all appropriate arguments.

You are a law clerk to the federal district judge handling the case. Your judge says to you, "the Supreme Court has never decided a case about discrimination based on genetics but based on my own research, I believe that the Supreme Court would hold that such discrimination would trigger only 'rational basis' scrutiny under the Constitution's Equal Protection Clause. Therefore, governmental discrimination against a person based on genetics would violate the Equal Protection Clause only if it were *irrational* discrimination. Assuming that to be correct, please write me a memorandum in which you discuss the issues raised by this case and make a recommendation as to how I should rule on each issue and on the overall case. If you determine that the case (or any part of it) can go forward, please specify the remedies that the plaintiff may receive if she prevails."

Write the requested memorandum.

QUESTION FOUR

Police in Hartford, Connecticut are trying to solve a sensational murder case that is the subject of much public attention. They receive an anonymous tip that the murderer is Daniel Green. Without getting a warrant, the police search Green's home in Hartford, where they find and seize a bloody knife. They also arrest Green. They interrogate him overnight at the police station (after duly giving him the *Miranda* warnings—"you have the right to remain silent," etc.). The next morning they have Green's signed confession. Forensic analysis shows that the blood on the seized knife came from the murder victim.

Green is tried for murder in Connecticut state court. There is little evidence against him other than the knife and his confession. Green objects to the introduction of the knife on the ground that the search of his home violated his rights under the Fourth Amendment to the U.S. Constitution. The trial judge overrules this objection on the ground that "exigent circumstances" justified the search because the state had a strong need to solve the case. The knife is admitted into evidence. Green's confession is also admitted. Green makes no objection to the admission of his confession.

Green is convicted and sentenced to life in prison. He appeals within the Connecticut state court system to an intermediate-level state appellate court. While his appeal is pending before that court, the U.S. Supreme Court decides the case of *Scardilli v. Massachusetts*, a direct appeal of a criminal conviction that involves the admissibility of a confession. The Court holds that because technological advances have made recording so easy and inexpensive, the Fifth Amendment to the U.S. Constitution requires all police interrogations that occur in police stations to be videotaped. It holds that any evidence resulting from such an interrogation that is not videotaped is not admissible, even if the interrogation would not otherwise violate the Fifth Amendment. The Court overturns Scardilli's conviction on that basis. No previous Supreme Court case had required that police interrogations be recorded.

Green then asks the Connecticut state appellate court to overturn his conviction on the grounds that (1) the admission of the bloody knife violated the Fourth Amendment, and (2) in light of *Scardilli*, the admission of his confession violated the Fifth Amendment, because the police interrogation that produced the confession was not videotaped. The state appellate court affirms the state trial court with regard to the admissibility of the knife. As to the confession, the state appellate court declines to consider Green's argument, on the ground that state law requires any objection to evidence to be made at the time the evidence is admitted. Therefore, the state appellate court affirms Green's conviction. Green seeks review by Connecticut's highest state court, but that court exercises its discretion to decline to review Green's case. Green then seeks review in the U.S. Supreme Court, but his petition for certiorari is denied.

Immediately thereafter, Green seeks habeas corpus relief in federal district court. Green's grounds for habeas are that the admission of the knife and the admission of his confession each violated his constitutional rights for the reasons stated in his appeal in the intermediate-level state appellate court. Connecticut state officials oppose Green's habeas petition. Both sides make all

appropriate arguments.

You are the law clerk to the federal district judge considering Green's habeas petition. Your judge says to you: "The state courts' ruling with regard to the admissibility of the knife was clearly wrong. There is an 'exigent circumstances' exception to the Fourth Amendment's exclusionary rule, but it applies when, for example, the police urgently need to conduct a warrantless search because they have good grounds to believe that if they don't, important evidence will be destroyed. It doesn't apply simply because the police have a strong need to solve a case. Also, it is clear that the police interrogation of Green violated the Fifth Amendment in light of the *Scardilli* decision."

The judge continues: "So I don't need any advice on the *merits* of Green's constitutional claims. But am I allowed to consider those claims? Should I ultimately grant habeas relief? Give me your advice on that."

Write a memorandum addressing the issues raised by the case and advising your judge how to rule on each issue. Conclude your memorandum by stating whether habeas should ultimately be granted or denied.

QUESTION FIVE

You are the Legislative Director for U.S. Senator Valerie Virtue. Another Senator introduces a proposed amendment to the United State Constitution called the “Jurisdiction Clarification Amendment.” The amendment provides:

Congress has full authority to regulate the jurisdiction of all inferior federal courts and the appellate jurisdiction of the Supreme Court. Article III of this Constitution shall not be construed to prohibit Congress from removing any case or class of cases from the jurisdiction of the inferior federal courts or from the appellate jurisdiction of the Supreme Court.

Senator Virtue asks you to write a memorandum evaluating this proposal. Your memorandum should explain what the likely effects of adopting the proposal would be, discuss how courts might respond to it, and evaluate whether the proposal is a good or a bad idea. If you think the proposal could be improved by any relevant amendments that Senator Virtue could offer to it, you should mention those, or you may recommend that she support it as is or that she just oppose the whole thing. The Senator is not an expert on federal courts so some basic explanation of what the proposal is all about would be useful, but the main focus of your memorandum should be your evaluation of the proposal from a policy perspective.

Write the memorandum.

END OF EXAM