

EXAM ID: \_\_\_\_\_

**FINAL EXAMINATION  
FEDERAL COURTS  
LAW 6232 – Section 10 – Siegel  
Fall 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 6 pages of questions. There are **FIVE QUESTIONS**. All students must answer all questions. The questions should take about 35 minutes each. That adds up to 175 minutes, leaving 5 extra minutes for whatever you need.
3. Do not put your name anywhere on your answers. Use your Exam ID. 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. Unless otherwise specified, explain your answers to all essay questions.
7. The content of some state law may have been changed for exam purposes. In places where the exam specifies what state law provides, ignore any outside knowledge you have of the state law and accept what is stated in the exam.
8. Good luck.

## QUESTION ONE

Howard, a citizen of California, is the president of Defenders of Wildlife, the organizational plaintiff from the case of *Lujan v. Defenders of Wildlife* (casebook p. 76). As you will recall, that case concerned § 7(a)(2) of the Endangered Species Act (“ESA”), which is a federal statute. Section 7(a)(2) requires every federal agency, in consultation with the Secretary of the Interior (“the Secretary”), to ensure that any action authorized, funded, or carried out by the agency is not likely to jeopardize the continued existence of any endangered species. The Secretary had issued a regulation that determined that the requirement of § 7(a)(2) does not apply with regard to actions in foreign countries. In *Defenders of Wildlife*, the plaintiff challenged this regulation as being contrary to the ESA, but the Supreme Court held that the plaintiff lacked standing to bring the suit.

Howard is still frustrated by that ruling. He wants to construct a case that would yield a federal court ruling on the validity of the Secretary’s regulation. (The regulation is still in effect.)

Howard makes a bet with Jennifer, who is also a citizen of California. Jennifer is the president of a firm that works overseas for the U.S. Agency for International Development, including working for the agency on projects that would be subject to the § 7(a)(2) requirement if the Secretary’s regulation were determined to be invalid. Howard bets Jennifer \$1,000 that the regulation is invalid because it is contrary to the ESA. After the two make the bet, each claims to have won it and refuses to pay the other. Howard then sues Jennifer in federal district court. He claims that Jennifer has breached a contract with him by not paying on the bet, which he claims to have won because the regulation is invalid under the ESA. Jennifer admits that the bet constitutes an enforceable contract under California state law, but she defends, and also counterclaims against Howard, on the ground that *she* won the bet and so he should have paid her, and thus he is the one who breached their contract.

You are the law clerk to the federal district judge considering the case. Your judge says to you, “Neither side has challenged the court’s jurisdiction, but it is my duty to consider it anyway. Is this a proper case under Article III of the Constitution? Is it within the federal subject matter jurisdiction? Please write me a thoughtful memorandum that discusses these issues. Please reach a clear conclusion on each and please conclude your memorandum with a clear statement as to whether I should dismiss the case or permit it to continue.”

**Write the requested memorandum.**

## **QUESTION TWO**

Congress passes the Federal Promotion of Golf Act (FPGA or Act). The Act provides that no state or local government shall enact or enforce any law that prohibits the use of any privately owned land as a golf course or golf practice facility.

Thereafter, Clive, a citizen of Connecticut, opens a public golf practice facility in his back yard, even though his property is located in a residential area in which local zoning laws prohibit commerce. Clive's neighbor, Serena, also a citizen of Connecticut, is greatly bothered by the traffic and noise produced by Clive's facility and by golf balls landing on her property.

Serena sues Clive in federal district court in Connecticut. She alleges that although the FPGA renders the local zoning laws unenforceable against Clive's practice facility, the facility constitutes a common-law nuisance, and she asserts that the FPGA does not prohibit enforcement of common-law nuisance doctrine. She seeks \$25,000 in damages for the noise and commotion that she has put up with already and an injunction requiring Clive to close his practice facility. Clive moves to dismiss the case for lack of subject-matter jurisdiction.

### **Part A. How should the district court rule on the motion? Explain.**

Whatever you thought of the motion, the court determines that the case is within the federal subject matter jurisdiction and denies the motion. The case continues. Clive moves to join a counterclaim against Serena. He alleges that he and Serena jointly hosted a charity event on Clive's property to raise money for cancer research and that Serena never paid her share of the event's expenses. Clive alleges that Serena owes him \$10,000 in expenses from that event. Serena opposes the motion to add this claim on the ground that the court lacks subject-matter jurisdiction over it.

### **Part B. How should the district court rule on the motion? Explain.**

Whatever you thought of the motion, it is granted. Clive's counterclaim against Serena is dismissed and the case continues on Serena's claims against Clive. While the case is in discovery, Clive sells his property to Leland and retires to Florida. Leland has no interest in golf and loves peace and quiet. He dismantles the golf practice facility. Clive again moves to dismiss Serena's case against him, citing such grounds as one might expect.

### **Part C. How should the district court rule on the motion? Explain.**

### QUESTION THREE

The “Coinage Clause” in Article I, § 8 of the U.S. Constitution provides that Congress shall have the power “[t]o coin Money [and] regulate the Value thereof.” Article I, § 10 of the Constitution provides that “[n]o State shall . . . coin Money.” In the *Legal Tender Cases* (1870), which held that Congress has the power to issue paper money, the Supreme Court said:

The Constitution was intended to provide the same currency, having a uniform legal value in all the States. It was for this reason the power to coin money and regulate its value was conferred upon the Federal government and withdrawn from the States. The States can no longer declare what shall be money, or regulate its value. Whatever power there is over the currency is vested in Congress.

Congress is concerned about cryptocurrencies, which are privately created digital currencies such as Bitcoin. Congress passes the “Right to Demand Dollars Act” (RDDA or Act) which provides: “Any employee working in the United States for any employer may demand that the employer pay the employee in U.S. dollars. Any employee who makes such a demand but receives payment in another currency may change the payment into U.S. dollars and sue the employer for any transaction fees incurred. A prevailing plaintiff may recover attorney’s fees and costs. States acting as employers are covered by this Act and are subject to all remedies provided by this Act.”

Thereafter, the state of Arizona announces that all state employees will receive their wages in Bitcoin. The city of Phoenix, Arizona announces the same thing for city employees. Gabriela, a professor at Arizona State University (which is owned by the state), demands to be paid in U.S. dollars. Marcus, an engineer in the city of Phoenix’s Public Works Department, makes the same demand. Both are paid in Bitcoin anyway. They both change each Bitcoin payment they receive into U.S. dollars, incurring a 5% transaction fee each time.

Pursuant to the RDDA, Gabriela sues Arizona State University and its Trustees in federal district court in Arizona. She seeks recovery of the transaction fees she has incurred in converting her pay into U.S. dollars, an order that she be paid in U.S. dollars in the future, and her attorney’s fees and costs. Marcus sues the city of Phoenix and the head of its Public Works Department in federal district court in Arizona and seeks the same remedies. All defendants move to dismiss on the basis of sovereign immunity. All the parties make all appropriate arguments.

Both cases are being heard by the same federal district judge, and you are that judge’s law clerk. Your judge says to you, “I think that the Coinage Clause (combined with the Necessary and Proper Clause) empowers Congress to require that all employers, including state and local governments, pay their employees in U.S. dollars. But I’m not sure what remedies Congress may provide against the defendants here. Please write me a memorandum discussing the issues raised by the defendants’ motions to dismiss and making a recommendation as to how I should rule.”

**Write the requested memorandum.**

## QUESTION FOUR

The “Confrontation Clause,” which is part of the Sixth Amendment to the U.S. Constitution, provides that “[i]n all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him.” Traditionally, this clause was understood to mean that all witnesses in a criminal case must testify in the presence of the defendant. In *Maryland v. Craig* (1990), however, the Supreme Court approved the following procedure provided by Maryland law: In a case in which the defendant is accused of sexually abusing a child and the court determines that requiring the alleged victim to testify in the presence of the defendant would cause such emotional distress that the alleged victim would be unable to communicate, the alleged victim may testify in a separate room. The prosecutor and defense counsel join the witness in the separate room and question the witness there. The judge, jury, and defendant remain in the courtroom. A video feed allows the people in the courtroom to see and hear the people in the separate room, but the people in the separate room cannot see or hear the people in the courtroom.

Pennsylvania law on this topic is stricter. Pursuant to Pennsylvania’s state constitutional equivalent to the Confrontation Clause, Pennsylvania’s highest court has held that all witnesses in all criminal cases must testify in the presence of the defendant.

Thomas is arrested for murder in Pennsylvania. He claims that at the time of the murder he was driving a car many miles from the scene of the murder. He claims that video from a gas station where he stopped for gas will confirm this. However, the gas station reports that the video from the day of the murder has been deleted. Thomas has no other way to prove his whereabouts at the time of the murder.

In 2025, Thomas is tried in state court in Pennsylvania. A crucial piece of evidence in the case is the testimony of Winnie, an adult witness who claims to have seen Thomas commit the murder. Winnie is scared to testify in Thomas’s presence. The prosecution moves that Winnie be permitted to testify in a separate room, using the procedure approved in *Maryland v. Craig*. Thomas’s counsel, who is unaware of Pennsylvania’s state rule on this topic, makes no objection. The trial judge determines that requiring Winnie to testify in Thomas’s presence would cause her great distress and grants the prosecution’s request. Winnie testifies in a separate room while Thomas remains in the courtroom. Thomas is convicted and sentenced to 30 years in prison.

Thomas appeals. On appeal, his counsel argues that the fact that Winnie testified in a separate room in which the defendant was not present violated the Confrontation Clause, particularly given that Winnie was an *adult witness* to his alleged crime, not a *child victim* of his alleged crime. Counsel also argues that Winnie’s testimony violated the equivalent clause in the Pennsylvania state constitution. The Pennsylvania state intermediate appellate court rejects these arguments on the ground that Thomas did not raise them as objections at the time Winnie testified, as required by state law. Thomas requests review from Pennsylvania’s highest court, which refuses to consider the case. Thomas does not seek certiorari from the U.S. Supreme Court. His time to seek certiorari expires on June 1, 2026.

On September 1, 2026, the gas station informs the prosecution and the defense that it was mistaken and that the video from the day of the murder is available. The video clearly shows that Thomas was at the gas station, many miles from the scene of the murder, at the time of the murder.

Thomas seeks habeas relief in Pennsylvania *state* court. He argues that the video proves that he is innocent. The state court receives the video as evidence, but denies relief on the ground that innocence is not a basis for habeas relief under state law. Thomas appeals this ruling to the highest possible state court, but it is affirmed.

Thereafter, on March 1, 2027, Thomas seeks habeas relief in federal district court. He argues (1) that the gas station video proves that he is innocent, (2) that allowing Winnie to testify in a separate room violated the federal Confrontation Clause, and (3) that allowing Winnie to testify in a separate room violated the Pennsylvania state constitution's equivalent to the Confrontation Clause.

You are the law clerk to the federal district judge considering the case. Your judge says to you: "It is clear from the gas station video that Thomas is innocent. It is also clear that allowing Winnie to testify in the separate room violated the Pennsylvania constitution's equivalent to the federal Confrontation Clause. As to whether the procedure violated the federal Confrontation Clause itself, the question is a close one. I can see how a reasonable person might think that the separate-room procedure did violate the Confrontation Clause, because the procedure, which the U.S. Supreme Court has approved for *child victims* of an alleged crime, should not extend to *adult witnesses* to an alleged crime. But my best judgment is that the situations are sufficiently similar that the separate-room procedure applies to both, and so Winnie's testimony did not violate the Sixth Amendment's Confrontation Clause."

"Accepting all that," your judge asks, "should I grant habeas relief? Please write me a memorandum discussing the issues presented and giving me your advice on each. Please conclude your memorandum with a clear recommendation as to whether habeas relief should ultimately be granted or denied."

**Write the requested memorandum.**

## QUESTION FIVE

The Free Exercise Clause of the First Amendment to the U.S. Constitution provides that “Congress shall make no law . . . prohibiting the free exercise [of religion].”

Congress passes the Free Exercise Protection Act, which provides:

**The federal district courts shall have power to issue injunctions prohibiting state courts from proceeding in any criminal case in which a conviction would violate a person’s rights under the Free Exercise Clause of the First Amendment to the United States Constitution.**

Thereafter, Anita, a citizen of Virginia who lives in Portsmouth, Virginia, brings suit in federal district court in Virginia against Brooks, the city prosecutor for Portsmouth. Anita is a practitioner of Wicca, which she regards as her religion, and she hosts Wiccan rituals in her home. These rituals are often attended by Anita’s minor children and the minor children of other adults who are attending. Wiccan rituals are regarded as “witchcraft” by some non-adherents of Wicca.

Anita alleges that Brooks has warned her that the rituals she hosts in her home violate a Portsmouth city ordinance making it a crime to practice witchcraft in the presence of minors. Anita asserts that prosecuting her for hosting these rituals would violate her rights under the Free Exercise Clause of the First Amendment to the U.S. Constitution. She asks the court to enjoin Brooks from prosecuting her under the Portsmouth ordinance.

At the time Anita brings her suit, no prosecution is pending against her. However, a few days after she files her federal lawsuit, Brooks initiates a prosecution against her in state court for violating Portsmouth’s anti-witchcraft ordinance.

Brooks then moves to dismiss Anita’s federal case against him. Anita opposes this motion. Both sides make all appropriate arguments.

You are the law clerk to the federal district judge considering Anita’s federal case. Your judge says to you, “It is clear that prosecuting Anita for hosting Wiccan rituals in her home would violate her rights under the Free Exercise Clause of the First Amendment. So I don’t need any advice on that point. But it’s not clear to me what I should do. Please write me a memorandum analyzing the issues in the case and advising me on what to do. Please conclude your memorandum with a clear recommendation as to whether Brooks’s motion to dismiss should be granted or denied.”

**Write the requested memorandum.**

END OF EXAM