

**FINAL EXAMINATION  
FEDERAL COURTS  
Law 6232 – Section 10 – Siegel  
Spring 2021**

**INSTRUCTIONS**

1. This is an open book examination. You may consult written materials during the exam. “Written” materials include materials that are handwritten, typewritten, printed, published, and the electronic equivalents thereof, including materials posted on the Internet. The materials may be written by you or by anyone else. They may include commercial materials. The materials must have been written before the exam begins (i.e., before 2:00 pm Eastern time on Wednesday, April 28, 2021).
2. It is forbidden to consult any other person about the exam, directly or indirectly, during the exam. It is forbidden during the exam to discuss the exam with any other person, even in a general way, regardless of whether or not the other person is a student in the class, regardless of whether or not you and/or the other person have seen the exam, and regardless of whether or not you and/or the other person have already submitted answers. The phrase “during the exam” means the entire 24-hour period from 2:00 pm Eastern time on Wednesday, April 28, 2021, until 2:00 pm Eastern time on Thursday, April 29, 2021.
3. **You have THREE HOURS to complete the exam.** You may start the exam at any time from 2:00 pm Eastern time April 28, 2021 to 10:50 am Eastern time April 29, 2021. Once you start, you have 3 hours to complete the essay and multiple choice questions, to upload your essay answers, and to submit your multiple choice answers using an online form. Late exams will be penalized. For further details, see the school’s general exam instructions.
4. The exam consists of three pages of instructions and twelve pages of questions. There are **FOUR ESSAY QUESTIONS** and **ELEVEN MULTIPLE CHOICE QUESTIONS**. All students must answer all questions. You may complete the questions in any order.
5. You will answer the essay questions using MyLaw. **Include your Gwid at the start of your first essay answer.** Input your Gwid wherever the MyLaw software says, and also type it at the start of your first essay answer.
6. **Word Limit on Essay Answers:** Your answers to all the essay questions combined must be no more than 3000 words in total. You must conclude your answers to the essay questions with a certificate in the following form: “I certify that my answers to all the essay questions combined contain [number] words in total. [Gwid].” Replace [number] with the total number of words in your answers to all of the essay questions, and replace [Gwid] with your Gwid, which constitutes your signature. Do not put your name on the certificate.
7. You will answer the multiple choice questions using an online form. To get to the form, click this link (or copy and paste it into your browser): <https://tinyurl.com/465e7psm>

8. **You must be logged in to your @law.gwu.edu email to access the multiple choice online answer form.** If you have trouble accessing the form, try closing all other Google accounts. The form will record your email address, but Prof. Siegel will not see it, so the anonymity of the exam will be preserved.
9. When entering answers into the multiple choice answer form, **do not click “submit” until you are completely done with the form.** Once you click submit, you will not be able to change your answers. You may change your answers until you click submit. The form does not check whether you have answered all the questions, so please make sure that you have. Clicking anywhere in a question’s box may select the nearest answer, so before submitting please also make sure that you have selected your intended responses. When you click submit, you should see a confirmation. Make sure you see the confirmation so that you know you have really submitted your answers. It is recommended that as you enter your answers on the online form, you also record them on paper, so that you will have them in case you lose connectivity during the exam.
10. **Exam clock:** The online form that you will use to answer the multiple choice questions does not show the exam clock (i.e., how much time you have left to complete the exam). Students are responsible for keeping track of the time remaining.
11. The recommended times for the questions are:

Essay Question One:	45 minutes
Essay Question Two:	25 minutes
Essay Question Three:	25 minutes
Essay Question Four:	25 minutes
Multiple Choice Questions:	45 minutes (total)
- The weights of the questions are proportional to the recommended times. The recommended times add up to 2 hours 45 minutes. The remaining 15 minutes are for dealing with the administrative aspects of the exam.
12. 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 write any answers by hand, *write legibly*.
13. If, with regard to any essay 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.

14. Using good judgment, address all the issues presented and assigned by the essay questions, even if your answers to some issues would, in real life, eliminate the need to address other issues.
15. Unless otherwise specified, assume all events occurred within the United States and answer all questions on the basis of current law. Unless otherwise specified, assume that your reader wants all your answers to the essay questions to be explained and justified, but doesn't have time to read unnecessary material.
16. Good luck.

## ESSAY QUESTION ONE

Iowa state law requires all restaurants within the state to meet specified health and safety standards. The standards cover matters such as cleanliness, safe storage of food, fire safety, and similar matters. The law also requires each restaurant to maintain specified records demonstrating its compliance with the law. The law allows state officials to conduct inspections of any restaurant in the state and to order the immediate closure of any restaurant that is not in compliance. The law provides restaurant owners no right to a hearing or an appeal prior to such closure.

Preeta is the owner of a restaurant in Des Moines, Iowa. David, an Iowa state health and safety inspector, inspects the restaurant. Although he finds no actual unsafe conditions at the restaurant, he finds that Preeta is not complying with the state law's record-keeping provisions. He orders her to close the restaurant, which she does. Preeta then brings the restaurant's records into compliance, and David allows it to reopen. The restaurant is closed for a total of seven days.

Preeta sues David and the state of Iowa in federal district court in Iowa. She asserts that the defendants violated her rights under the Due Process Clause of the U.S. Constitution by ordering her to close her restaurant without giving her an opportunity for a pre-closure hearing, even though there was no threat to public safety that justified the closure. She seeks \$15,000 in damages (which, she alleges, is the amount of profit she lost because her restaurant was closed), an injunction prohibiting the defendants from ordering her restaurant closed solely on the basis of record-keeping violations in the future, attorney's fees, and costs. She invokes 42 U.S.C. §§ 1983, 1988 as appropriate. The defendants move to dismiss, citing such grounds as one would expect on the above facts, but limited to grounds that we studied in our class. Preeta opposes the motion. Both sides make all appropriate arguments.

The district court sets a date to hear oral argument on the defendants' motion. Before that date, the Iowa state legislature amends state law to provide that no restaurant shall be ordered closed solely on the basis of record-keeping violations. Both sides make all appropriate additional arguments in light of this development.

You are the law clerk to the district judge considering the case. The judge says to you, "I did some research, and I think the plaintiff is correct that for state officials to order a restaurant closed with no prior hearing when there is no actual threat to public safety violates the Due Process Clause of the federal Constitution. The cases on the issue are not entirely clear, but that's my best judgment on that issue. So I don't need any advice on that issue, but please write me a memo discussing the other issues raised by the case, making a recommendation as to how to rule on each issue, and explaining your reasons. Please conclude your memo with a clear conclusion as to what parts of the case, if any, can survive the defendants' motion to dismiss."

**Write the requested memorandum. Put your GWid at the start of the memo.**

## ESSAY QUESTION TWO

Paolo and Danielle, a married couple, are citizens of Pennsylvania. They keep all their money in a joint bank account. Danielle is a disabled veteran of the U.S. armed forces and she receives a pension from the U.S. Department of Veterans Affairs (the “VA”) that is based on a rating of 20% disability. They have no children.

Danielle leaves Paolo and moves permanently to Ohio. She withdraws \$25,000 of the \$50,000 in their joint bank account and deposits it in a separate bank account that she opens in Ohio in her name only. Shortly thereafter, the VA changes Danielle’s disability rating to 60%, with the change applying retroactively to a date ten years earlier. As a result, the VA pays Danielle a lump sum of \$100,000, which she deposits in her separate bank account in Ohio.

Paolo sues Danielle for divorce in a state court in Pennsylvania. In the divorce action, Paolo seeks division of their marital property, which, he asserts, includes both the \$50,000 that was in their joint bank account and the \$100,000 Danielle received from the VA. The couple has no other assets of any substantial value. Under Pennsylvania law, in the event of divorce, a couple’s marital property is to be “equitably” divided. An equitable division need not be an equal division. An equitable division is a fair division that takes into consideration factors such as the financial condition, age, health, and earning power of each spouse. Paolo asserts that he has less earning power than Danielle.

Danielle notes that a federal statute, 38 U.S.C. § 5301(a)(1), provides that “[B]enefits . . . under any law administered by the Secretary [of Veterans Affairs] . . . shall be exempt from the claim of creditors.” Therefore, she asserts, veterans’ benefit payments, such as the \$100,000 lump sum payment she received, may not be considered marital property that is subject to division in a divorce.

Asserting all potentially relevant bases of jurisdiction, Danielle removes the case to federal district court in Pennsylvania. Paolo moves for the case to be remanded to state court on the ground that it is not within the federal district court’s subject matter jurisdiction. Danielle opposes the motion. Both sides make all appropriate arguments.

You are the law clerk to the federal district judge considering the case. The judge asks you to write a memorandum discussing the issues raised by the parties and providing a recommendation as to how to rule on each issue and on the overall case. The judge asks that you conclude your memorandum with a clear recommendation as to whether the motion for remand should be granted or denied.

**Write the requested memorandum.**

### ESSAY QUESTION THREE

Following an incident in which some college students in Ithaca, New York celebrate Halloween by wearing costumes that some other students believe show a lack of respect for other people's cultures, the city council of Ithaca passes a local ordinance that provides that "any person who in a public place wears clothing that is the cultural property of a culture of which the person is not a member shall be guilty of a misdemeanor and shall be fined not more than \$500 or imprisoned not more than 10 days or both." The ordinance does not define "culture" or "cultural property."

Thereafter, Peter, a white man of Anglo ancestry, is sitting in a public park in Ithaca on a hot, sunny day wearing a broad-brimmed straw hat. An Ithaca police officer approaches Peter, inquires about his ancestry, and then cautions Peter that he is violating the new ordinance by wearing a sombrero. Peter denies that the hat is a sombrero (he says that it is actually a "boater" and that it is culturally appropriate for him), but takes the hat off.

Peter then files a lawsuit in federal district court against Diane, the Municipal Attorney for Ithaca, who has the sole power to bring prosecutions under Ithaca ordinances. He seeks a declaratory judgment (1) that for him to wear the hat in question would not violate the Ithaca ordinance, and (2) that if his wearing the hat would violate the ordinance, then the ordinance violates his rights under the U.S. Constitution's First Amendment and/or Equal Protection Clause. He also seeks a preliminary and permanent injunction against being prosecuted under the ordinance.

The district court sets a hearing date to consider Peter's request for a preliminary injunction. Before that date, Diane brings a prosecution against Peter in a New York state court for violating the Ithaca ordinance on the occasion described above (in the second paragraph of this question). Peter's prosecution is the first under the Ithaca ordinance, so there have been no judicial interpretations of the terms in the ordinance.

Diane then moves to dismiss Peter's federal suit, citing such grounds as one might expect on the above facts. Peter opposes the motion. Both sides make all appropriate arguments and rely on all potentially applicable statutes and doctrines.

You are a law clerk to the federal district judge considering the case. Your judge asks that you write a memorandum discussing the issues raised by the case and making a recommendation as to how to rule on each issue. Your judge asks that you conclude your memo with a clear recommendation as to what the court should do with the case overall.

**Write the requested memorandum.**

## ESSAY QUESTION FOUR

Estelle is a citizen and resident of Maryland who works in Virginia. She is diagnosed with osteoporosis (decrease in bone density). Her doctor prescribes Fosamax, a pill that increases bone density. Estelle buys Fosamax at a drug store in Virginia, brings it home, and ingests it at her home in Maryland. The next day, she has a stroke. She survives, but her right side is partially paralyzed. Fosamax is manufactured by Merck, a corporation incorporated in Delaware with its principal place of business in New Jersey. Merck markets Fosamax in all 50 states.

Estelle brings a tort action against Merck in state court in Maryland. She seeks \$1 million in damages. Merck, relying on the Due Process Clause of the federal Constitution, moves to dismiss for lack of personal jurisdiction (because Estelle bought the Fosamax in Virginia and brought it to Maryland herself). The state court denies this motion. Merck then moves for summary judgment. Merck presents evidence that people who take Fosamax experience strokes no more frequently than people who have not taken Fosamax. Estelle opposes the motion. The state court grants Merck's motion for summary judgment on the ground that Merck's evidence demonstrates that Fosamax cannot have caused Estelle's injuries.

Estelle appeals. Merck cross-appeals the denial of its motion to dismiss for lack of personal jurisdiction. A Maryland intermediate appellate court affirms the judgment in all respects. Estelle seeks permission to appeal to the highest court in Maryland. Merck seeks permission to cross-appeal the denial of its motion to dismiss for lack of personal jurisdiction. Maryland's highest court grants permission to both sides. It then determines that the trial court's exercise of personal jurisdiction violated the U.S. Constitution. Accordingly, the court determines that it need not decide whether the trial court should have granted summary judgment. The court remands the case to the trial court with instructions to dismiss for lack of personal jurisdiction.

Estelle then files a petition for certiorari in the U.S. Supreme Court. Merck opposes the petition on the grounds that the state court's judgment is not final and that the judgment rests on an adequate and independent state ground. Merck also states that if the Supreme Court grants certiorari, it should ultimately order either that the case should be dismissed for lack of personal jurisdiction or that summary judgment should be entered for the defendant because the evidence in the record proves that Fosamax could not have caused the plaintiff's injuries.

You are a law clerk to U.S. Supreme Court Justice Amy Coney Barrett, the newest Justice, who says, "I never had to deal with this kind of issue as a federal appellate judge! **Please write me a memo on the question of whether this case is within our jurisdiction and if so which issues we can decide.** I don't need any advice on the merits of whether the state court had personal jurisdiction, on the merits of whether summary judgment should be granted, or on whether we should, as a matter of discretion, grant certiorari. **Please end your memo with a clear conclusion as to whether we have jurisdiction and, if so, which issues we can decide.**"

**Write the requested memorandum.**

## MULTIPLE CHOICE QUESTIONS

### Instructions:

1. For each question, choose the best answer from the answers provided. You may choose only one answer per question.
2. There are five possible answers for each question. Make sure you read all the answers, even if they continue onto another page.
3. There is no penalty for wrong answers, so answer every question.
4. Enter your answers into the online answer form available at: <https://tinyurl.com/465e7psm>

**Question 1.** 18 U.S.C. § 3231 provides that “The district courts of the United States shall have original jurisdiction, exclusive of the courts of the States, of all offenses against the laws of the United States.” Congress creates a new federal offense by passing the “Prevention of Voting Suppression Act” (PVSA or Act). Section 1 of the Act provides that any person who, near any polling place at which an election for federal Representatives or Senators is being held, displays any sign that could intimidate voters from casting lawful votes, shall be guilty of a felony. Section 2 of the Act provides that, notwithstanding any other provision of law, no state or federal court shall have jurisdiction to consider any argument that any part of the PVSA is unconstitutional, regardless of whether that argument is presented by a plaintiff bringing an affirmative challenge to the Act’s constitutionality, by a defendant raising the argument as a defense to prosecution under the Act, or by any other kind of party in any kind of case.

Thereafter, during an election for federal Representatives and Senators, Douglas stands outside a polling place in Atlanta, Georgia and displays a sign that says: “It is a federal and state crime for any person who is not a U.S. citizen or who is not properly registered to vote to attempt to vote in this election!! People who vote illegally may end up in prison!!” Douglas is prosecuted in federal district court under the PVSA. Douglas asserts as a defense that both sections of the Act are unconstitutional. Does the district court have jurisdiction to consider this defense?

- A. No, because Congress has the power to channel federal jurisdiction into specified fora.
- B. No, because even if Congress has an obligation to vest federal courts with any jurisdiction other than the Supreme Court’s original jurisdiction, that obligation is limited to cases that are in the first three of the nine categories listed in Article III, § 2 of the Constitution.
- C. Yes, because Congress cannot provide for an Article III court to exercise the federal judicial power in a case while precluding the court from considering constitutional issues that might affect the case (unless it provides some other, adequate forum for consideration of those issues).
- D. Yes, because the federal judicial power extends to “all” cases arising under federal law.
- E. Yes, under 28 U.S.C. § 1331.

**Question 2.** A federal statute provides that any party that transports nuclear waste must have a license to do so from the United States Department of Energy (DOE), a federal agency. DOE adopts a rule providing that it may immediately suspend the license of any transporter of nuclear waste if it determines that doing so is necessary for national security reasons. The rule provides that following such a suspension, the suspended licensee may request a hearing, which will be conducted by the agency. At the hearing, the agency will present evidence supporting its determination and the licensee will have an opportunity to rebut the agency's evidence and present its own evidence. Based on the findings at the hearing, the agency will either rescind the suspension or make the suspension permanent. But the suspension will remain in effect during the pendency of the hearing. After the rule is promulgated, but before DOE has suspended any license pursuant to the rule, the National Association of Nuclear Waste Transporters sues for judicial review of the rule and claims that the rule is unconstitutional under the Due Process Clause insofar as it allows the agency to suspend a license before the licensee has had an opportunity for an evidentiary hearing. The Association asks the court to enjoin enforcement of the rule. What should the court do?

- A. Dismiss the case because the suit is barred by sovereign immunity.
- B. Dismiss the case because the agency action is not final.
- C. Dismiss the case because the agency action is not ripe for review.
- D. Dismiss the case because the case is moot.
- E. Hear the case and consider the merits of the plaintiff's claim.

**Question 3.** Congress is concerned about the impact of class actions on the economy. Congress passes the "Class Action Improvement Act" (the "Act"). The Act creates a "Class Action Review Commission" ("Commission"). The Commission is to consist of five Commissioners appointed by the President who will serve five-year terms. The Act provides that in any class action brought in federal court in which a plaintiff class prevails and obtains a monetary judgment, the defendant, after exhausting appellate review, may seek review of the judgment by the Commission. If the Commission determines that the judgment has a "significant potential, either alone or in combination with other, similar judgments, to be harmful to interstate commerce in the U.S. economy," the Commission may order that the judgment be reduced, including to zero. Which of the following is true?

- A. The Act is unconstitutional, because Congress cannot provide for such a Commission to review and alter judgments of Article III courts.
- B. The Act is unconstitutional, because Congress cannot provide for the Commission to review judgments in which a plaintiff class has prevailed unless it also provides for the Commission to review judgments in which a defendant has prevailed.
- C. The Act is constitutional, because Congress can assign non-judicial tasks to "Commissioners," even if it could not assign the same tasks to an Article III court.
- D. The Act's is constitutional, because Congress has power to do everything necessary and proper to regulate interstate commerce.
- E. The Act's constitutionality cannot be determined by a federal court, because it is a political question.

**Question 4.** Congress is concerned about the payday lending industry. “Payday loans” are short-term loans required to be repaid when the borrower receives her next pay from her employer. Such loans often carry interest that appears small in absolute terms but is very large in annualized percentage terms. Congress passes the Federal Payday Loan Disclosure Act (FPLDA or Act). The FPLDA requires all payday loan agreements to include specified disclosures, including disclosing the interest rate on the loan expressed as an annualized percentage rate. The Act provides that when any payday loan is made without compliance with the FPLDA, the lender shall not be able to collect any interest from the borrower, but shall be limited to collecting back the loan principal (i.e., the amount borrowed). The Act further provides that any defendant who is sued in state court and who asserts the FPLDA as a complete or partial defense may remove the case to federal district court. Thereafter, FastCash, Inc. a corporation incorporated in Maryland with its principal place of business in Maryland, makes a payday loan in the amount of \$2000 to Aisha, a citizen of Virginia. When Aisha fails to repay the loan, FastCash sues her in state court in Virginia for the \$2000 owed plus \$200 interest. Aisha, asserting that she does not have to pay any interest because FastCash failed to comply with the FPLDA, removes the case to federal district court. FastCash moves for the case to be remanded on the ground that it is not within the district court’s subject matter jurisdiction. What is the likely disposition of the motion?

- A. Granted, because the amount-in-controversy requirement is not satisfied.
- B. Granted, because the well-pleaded complaint rule is not satisfied.
- C. Denied, because the parties are diverse.
- D. Denied, because the case “arises under” federal law for constitutional purposes, and the FPLDA provides a statutory basis of jurisdiction.
- E. Denied, because FastCash could have sued in federal court originally.

**Question 5.** Dorothy is on trial in state court in Ohio for the murder of Victor, who died from a gunshot wound. Dorothy claims that at the time of Victor’s death she was with Wendy, Victor’s wife, at a place nowhere near the shooting. However, Wendy, who suspects that Dorothy and Victor were having an affair prior to Victor’s death, refuses to come testify at Dorothy’s trial. Dorothy’s counsel, Leroy, asks the state trial court to issue a subpoena ordering Wendy to testify. The state trial court declines to do so, on the ground that Wendy may refuse to testify because she can invoke the “marital privilege” under Ohio state law. Leroy argues that this is an incorrect application of marital privilege. Under Ohio law, Leroy argues, the privilege can be invoked when someone is asked to testify in a case in which their spouse is a *party*; it has no application to a criminal case in which the potential witness’s spouse was the crime *victim*. Moreover, Leroy argues, the denial of the request for a subpoena would violate Dorothy’s right under the Sixth Amendment to the U.S. Constitution to have “compulsory process for obtaining witnesses.” The state trial court rejects these arguments and denies the subpoena. Dorothy has no other witness who can prove her whereabouts at the time of Victor’s death. Dorothy is convicted and sentenced to twenty years in prison. Leroy files an appeal on her behalf, but he miscalculates the appeal deadline and files the appeal a few days late. Dorothy’s state appeals are rejected for that reason alone, and the U.S. Supreme Court denies her petition for certiorari. A month later, previously unknown video evidence emerges that clearly shows that Victor was accidentally killed by a stray bullet fired by someone

other than Dorothy, who was aiming at someone other than Victor. Leroy promptly seeks relief for Dorothy under available state procedures, and when these are unsuccessful, promptly seeks habeas corpus in federal district court. The federal district judge believes that the state trial court's denial of the subpoena was clearly incorrect with regard to the application of the marital privilege and also clearly violated Dorothy's Sixth Amendment right to compulsory process. What is the likely outcome of the habeas case?

- A. Habeas denied, because habeas cannot be granted on the basis of an error of state law.
- B. Habeas denied, because Leroy procedurally defaulted Dorothy's claims in the state proceedings and there was no good cause for the default.
- C. Habeas denied, because the state trial court's error was harmless.
- D. Habeas granted, because it is unconstitutional for the state to continue to imprison Dorothy once the new evidence shows her to be innocent.
- E. Habeas granted, because the new evidence showing Dorothy to be innocent excuses the procedural default of her Sixth Amendment claim, and that claim is clearly meritorious.

**Question 6.** The National Labor Relations Act ("NLRA") forbids employers from interfering with their employees' right to unionize. An employer may not fire an employee because that employee tries to convince other employees to join a labor union. An employee who is fired for that reason may sue the employer and obtain a judgment for reinstatement and back pay. (Note: In real life, a federal administrative agency is involved in such suits, but for purposes of this question disregard the agency and imagine that employees bring such suits in federal district court.)

The NLRA defines "employer" to exclude a state. However, in 2022 Congress passes the "State Employee Labor Rights Act" ("SELRA"), which provides: "The term 'employer' in the NLRA shall include a state. States shall be subject to all provisions of the NLRA. A state employee whose rights under the NLRA are violated by a state may sue the state in federal district court for all remedies provided by the NLRA. States shall not be immune from such suits under the Eleventh Amendment or otherwise." Thereafter, the state of Mississippi fires Portia, a state employee. Portia believes she was fired for trying to convince other employees to join a labor union, and she sues the state of Mississippi in federal district court. Citing the NLRA and the SELRA, she seeks reinstatement and back pay. The state of Mississippi is the only defendant. Mississippi moves to dismiss the case on the basis of state sovereign immunity. Which of the following is true?

- A. The suit must be dismissed in its entirety, because the SELRA could not be a proper exercise of Congress's power under section 5 of the Fourteenth Amendment and Portia has not sued a state officer.
- B. The suit must be dismissed in its entirety, because although Congress may abrogate a state's sovereign immunity, it must do so with unequivocal clarity.
- C. The claim for back pay must be dismissed, but the claim for a prospective order of reinstatement may proceed.
- D. The entire suit may proceed, because Congress may abrogate a state's sovereign immunity provided it does so with unequivocal clarity.
- E. The entire suit may proceed, because Congress may abrogate a state's sovereign immunity

even with regard to actions that do not themselves violate the Fourteenth Amendment, provided that doing so is a congruent and proportional response to a problem of actual Fourteenth Amendment violations by states.

**Question 7.** A person’s “gender identity” is the person’s own conception of the person’s gender. A “transgender” or “trans” person is a person whose gender identity is different from the gender that the person was assigned at birth.

Congress passes the “Gender Identity Medical Rights Act” (“GIMRA” or “Act”). The Act provides that no health care provider shall deny medical care to any person because of that person’s gender identity. The Act states, “Any person whose rights under this Act are violated may sue the violator in federal district court for the resulting damages.” The state of Arkansas then passes a statute providing, “No court of this state shall have jurisdiction to entertain any suit based on any law providing rights based on gender identity.” Arkansas law provides a cause of action to people who are denied medical care on the basis of their race or religion.

Thereafter, Carol, a transgender woman who is a citizen of Missouri, is taken to a hospital in Arkansas following a car accident. When the emergency room doctors learn that Carol is trans, they refuse to treat her. She goes to a different hospital and receives treatment, but her injuries are exacerbated by the delay. The doctors who refused to treat Carol are citizens of Arkansas. She sues the doctors in an Arkansas *state* court of general jurisdiction under GIMRA for \$15,000 in damages. The doctors move to dismiss the case for lack of subject matter jurisdiction. What is the proper disposition of this motion?

- A. Denied, because the amount-in-controversy requirement for diversity jurisdiction in federal court is not met.
- B. Denied, because the state court has concurrent jurisdiction over GIMRA actions and cannot decline to exercise that jurisdiction without a valid excuse.
- C. Granted, because the text of GIMRA shows that federal jurisdiction over GIMRA actions is exclusive.
- D. Granted, because Congress cannot commandeer organs of state government and require them to carry out federal law.
- E. Granted, because the Arkansas state law depriving the court of jurisdiction provides a valid excuse for not hearing the case.

**Question 8.** Warrantless searches and seizures usually violate the Fourth Amendment, but the U.S. Supreme Court’s decision in *Chambers v. Maroney* (1970) established an “automobile exception,” under which police may search a car without a warrant, provided they have probable cause to believe the car contains evidence of a crime.

Valerie is murdered in California. Police receive a tip that Valerie was murdered by Daniel and that the murder weapon is in Daniel’s car. The car is parked at Daniel’s home and Daniel is at work, so the police have no reason to think that the car will be moved anytime soon, but they search the car immediately, without a warrant, and seize a knife. Forensic analysis proves that the knife is the murder weapon and that it has Daniel’s fingerprints on it.

Daniel is tried for murder in California state court. Although Daniel does not challenge the

existence of the automobile exception, he objects to the introduction of the knife as evidence. He argues that the search of his car violated the Fourth Amendment because the police did not have sufficient probable cause to believe that the car contained evidence of a crime. The state trial judge finds that the police did have probable cause, overrules the objection, and admits the knife as evidence. The knife is important to the case as the other evidence against Daniel is not very strong. Daniel is convicted and sentenced to life imprisonment. While Daniel's case is pending on appeal in a California state appellate court, the U.S. Supreme Court, in the case of *Appleby v. Illinois* (2022), overrules *Chambers* and holds that the Fourth Amendment prohibits police from searching an automobile without a warrant, even if they have probable cause to believe it contains evidence of a crime, unless they also have probable cause to believe that the automobile will be moved before they could obtain a warrant to search it. Daniel's conviction is nonetheless affirmed. The state appellate court holds that Daniel cannot take advantage of the *Appleby* decision because it is based on arguments he did not raise during trial. The California Supreme Court declines to hear Daniel's case and the U.S. Supreme Court denies certiorari. Daniel then promptly seeks habeas corpus in federal district court. The federal district judge believes that in light of *Appleby*, there is no doubt that the knife was erroneously admitted as evidence in Daniel's state criminal trial. What is the likely disposition of the habeas case?

A. Habeas granted, because the state court's ruling was not merely wrong, but unreasonably wrong.

B. Habeas granted, because Daniel is entitled to take advantage of the *Appleby* decision; Daniel has good cause for failing to challenge the existence of the automobile exception at trial; and the erroneous admission of the knife prejudiced his case.

C. Habeas denied, because the state court's error was with regard to an issue that cannot be the basis for habeas relief.

D. Habeas denied, because a federal court must show deference to a state court's rulings, even on issues of law, when considering a habeas case.

E. Habeas denied, because with exceptions not relevant here, new rules do not apply retroactively to habeas cases.

**Question 9.** Congress passes the "Railroad Reasonable Care Act" (RRCA or Act), which provides that "whoever operates a railroad in interstate commerce shall take reasonable care to avoid injuring any person." The Act is designed to override any state law that provides that railroads need not take reasonable care to avoid injuring certain people (e.g., trespassers). The Act provides that a railroad operates "in interstate commerce" if its trains cross state lines. The Act also provides that a railroad operates "in interstate commerce" even if none of its trains cross state lines, provided its operations within a state have any effect on the economy of any other state.

Thereafter, Hakim, a citizen of Iowa who is walking on a path parallel to some railroad tracks in Iowa, is hit by something protruding from a train operated by the Union Pacific Railroad Company. The train is carrying freight from Iowa to Illinois. Union Pacific is a corporation incorporated in Delaware with its principal place of business in Nebraska. Hakim sues Union Pacific in federal district court in Iowa for \$100,000. Jurisdiction is based on diversity. Among other things, Hakim asserts that under the RRCA, Union Pacific had a duty to take reasonable care to

avoid injuring him. Union Pacific claims that under Iowa law Hakim was a trespasser to whom the railroad did not owe a duty of reasonable care. Union Pacific also asserts that the RRCA is unconstitutional because its definition of “interstate commerce” is so broad that the Act would apply to railroads that operate only in intrastate commerce that is beyond the reach of Congress’s commerce power. Hakim challenges the standing of Union Pacific to raise this argument. Which of the following is true?

A. Union Pacific may raise the argument, because it has an appropriate relationship with other railroads that might be subjected to unconstitutional applications of the RRCA.

B. Union Pacific may raise the argument, because, if the argument is correct, the RRCA is unconstitutionally overbroad.

C. Union Pacific may not raise the argument, because it has not suffered any injury in fact.

D. Union Pacific may not raise the argument, because it may not rely on the rights of third parties.

E. Union Pacific may not raise the argument, because it is not within the zone of interests of a relevant statute.

**Question 10.** Nonprofit corporations have traditionally been exempt from federal income tax. In 2022, however, Congress passes a statute subjecting nonprofit corporations to a tax of 5% of all contributions they receive. The Sierra Club, a nonprofit corporation incorporated in California and dedicated to the preservation of the natural environment, brings suit against the United States in federal district court. The Sierra Club asserts that the tax violates the First Amendment rights of nonprofit corporations. The government moves to dismiss for lack of standing. Does the Sierra Club have standing to challenge the tax?

A. Yes, because the individual members of the Sierra Club would have standing to challenge the tax, the suit is germane to the organization’s purpose, and the suit will not require the participation of the individual members.

B. Yes, because the tax statute causes an injury in fact to the Sierra Club itself.

C. No, because the individual members of the Sierra Club would not have standing to challenge the tax.

D. No, because the suit is not germane to the Sierra Club’s purpose of preserving the natural environment.

E. No, because the Sierra Club is not within the zone of interests of the tax statute.

**Question 11.** Following the 2020 census, the Texas state legislature adopts the Texas Decennial Redistricting Act of 2021 (TDRA or Act), which redraws the boundaries of Texas’s legislative districts for elections to the Texas state legislature and for Texas’s Representatives in the U.S. House of Representatives. The Texas state legislature is controlled by Republicans, and Texas Democrats believe that the legislature has “gerrymandered” the legislative districts so as to be strongly favorable to Republicans and specifically so that the percentage of seats Republicans will likely win in the state legislature and in the U.S. House of Representatives is far higher than the percentage of total statewide votes that Republicans will likely receive.

A section of the TDRA provides that “whoever publishes any statistics that might tend to show that the Texas legislative districts created by this Act are gerrymandered shall be guilty of a misdemeanor and shall be imprisoned for not more than six months.” The Democratic Party of Texas brings a lawsuit in federal district court against the Attorney General of Texas, who has responsibility for enforcing all Texas state criminal laws. The complaint alleges that members of the Party desire to publish statistics that show that the Texas legislative districts created by the TDRA are gerrymandered, but are refraining from doing so because of the TDRA. The complaint seeks a declaratory judgment that the section of the TDRA that prohibits publishing these statistics is unconstitutional under the First Amendment to the U.S. Constitution. What should the district court do?

- A. Dismiss the case because the plaintiff lacks standing to sue.
- B. Dismiss the case because the case presents a nonjusticiable political question.
- C. Dismiss the case pursuant to *Pullman* abstention (or certify it to a state court).
- D. Dismiss the case pursuant to *Younger* abstention.
- E. Hear the case and decide the merits of the plaintiff’s claims.

**END OF EXAM**