GWid: __________________

EXAMINATION
FEDERAL COURTS – LAW 6232-10
Spring 2022 – Siegel

INSTRUCTIONS

1. This is an open book examination. You may use any written materials that you have brought with you (including typewritten, printed, or published materials). The use of computers to type answers is permitted.

2. You have **THREE HOURS** to complete the exam.

3. The exam consists of this cover page and 16 exam pages numbered 1 through 16.

4. There are **FOUR ESSAY QUESTIONS** and **FOURTEEN MULTIPLE CHOICE QUESTIONS**. All students must answer all questions. Recommended times are:

Essay Question 1:	25 minutes
Essay Question 2:	45 minutes
Essay Question 3:	25 minutes
Essay Question 4:	30 minutes
Multiple Choice Questions:	55 minutes total

   The weights of the questions are proportional to the recommended times.

5. Do not put your name anywhere on your answers. Do not indicate whether you are taking the class pass/fail. Do not write "Thank you for a great class" or anything similar on your exam. If you write answers by hand, remember to *write legibly*.

6. If, with regard to any question, you think additional facts are needed to answer the question, state clearly what facts you think are missing. Then make a reasonable assumption about the missing facts and answer the question based on your assumption. Do not change the given facts.

7. 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.

8. 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 your answers to the essay questions to be explained and justified, but doesn't have time to read unnecessary material.

9. Good luck.

QUESTION ONE

The Fair Debt Collection Practices Act ("FDCPA" or "Act") is a federal statute. The Act contains a "Declaration of Purpose," which states that "[a]busive debt collection practices contribute to personal bankruptcies, marital instability, the loss of jobs, and invasions of individual privacy." The Act prohibits "the use of any false representation or deceptive means to collect or attempt to collect any debt." The Act provides that if a debt collector violates the Act with regard to any person, the debt collector shall be liable to the person for any actual damages sustained by the person, plus whatever additional damages, not to exceed $1,000, that a court may award.

The law of Illinois sets a five-year statute of limitations on the collection of debts. However, making a payment, or promising to make a payment, on a time-barred debt "revives" the debt and gives the creditor a new five-year period within which to sue for the debt.

Linda, a citizen and resident of Illinois, runs up a debt of $10,000 on her bank credit card and defaults on it. The bank makes some unsuccessful efforts to collect, but ultimately gives up. Ten years later, the bank sells Linda's debt to Friendly Finance, Inc., a corporation incorporated in Illinois, for $100. Friendly Finance sends Linda a letter that states, "We have purchased the debt that you previously owed to your bank. We have pre-approved you for a program designed to save you money. We will erase this debt in exchange for just $6,000, which is a savings of 40%. But you must accept this offer within 30 days." After explaining how to accept the offer, the letter also states, "Because of the age of your debt, we will not sue you for it, we will not report it to any credit reporting agency, and payment or non-payment of this debt will not affect your credit score."

Linda, for whom $6,000 would be a very considerable outlay, is confused and alarmed by the letter, as she fears that she will be made to pay her old debt. After experiencing great anxiety for several days, she consults a lawyer. The lawyer informs her that she does not have to pay the debt. Indeed, the lawyer says that Friendly Finance is liable to her for violating the FDCPA.

Represented by the lawyer, Linda sues Friendly Finance in federal district court in Illinois. Linda asserts that the letter that Friendly Finance sent to her was a "deceptive means to . . . attempt to collect" her time-barred debt and that the letter therefore violated the FDCPA. She seeks $1,000 in "additional damages" for the emotional distress that she suffered.

Friendly Finance moves to dismiss Linda's suit, citing such grounds as might be expected on the above facts, but limited to matters we studied in class. Linda opposes the motion. Both sides make all appropriate arguments.

You are the law clerk to the federal district judge considering the case. Write a thoughtful memorandum discussing the issues raised by the case and recommending how to rule on each issue. Conclude your memorandum with a recommendation as to whether the motion to dismiss should be granted or denied.

QUESTION TWO

The Fair Labor Standards Act ("FLSA" or "Act"), a federal statute, requires all covered employers to pay their employees a minimum wage of $7.25 per hour and to pay their employees at least one and a half times their basic rate of pay ("time-and-a-half") for hours worked in excess of 40 hours per week. The minimum wage provision applies to all employees, but some employees are exempt from the time-and-a-half provision.

The FLSA provides that any employee who is damaged by an employer's violation of any provision of the Act may sue the employer for any back pay owed, an injunction requiring the employer to comply with the Act in the future, attorney's fees, and costs.

The Act provides that "States are 'employers' covered by this Act. States are subject to all remedies provided by this Act and shall have no immunity from any such remedies."

In 2025, Congress amends the FLSA to add the following new section:

> **§ 208. Any employer covered by this Act that receives, from an employee, notice that the employer has not paid the employee any amount that the employer should have paid the employee under this Act at any time within a period of three years preceding the date of the notice shall have an affirmative duty to pay the employee the amount that the employer should have previously paid.**

On June 1, 2026, Paul takes a job with the state of Tennessee. The job pays $20 per hour. Paul works at the job 50 hours per week and gets paid $1000 per week ($20 x 50). Paul asks Denise, the head of his office, why he is not getting time-and-a-half (i.e. an extra $10 per hour) for the 10 hours per week he is working in excess of 40 hours per week. Denise informs Paul that Paul's position is an "exempt" position not subject to the time-and-a-half provision of the FLSA.

Paul continues working at the job 50 hours a week. In May 2027, Paul consults a lawyer, who says that Paul's position is not properly classified as "exempt" and that he should be getting time-and-a-half for hours in excess of 40 hours per week. Assisted by the lawyer, Paul, on June 1, 2027, gives Denise notice, pursuant to the new § 208 of the FLSA, that over the preceding year Paul worked a total of 500 hours in excess of 40 hours per week and that Tennessee must therefore pay him $5000 ($10 x 500). Denise responds that Paul's position is exempt and that he will not receive the money he requests.

Represented by the lawyer, Paul sues the state of Tennessee and Denise in federal district court. He claims that the defendants are violating the FLSA. He seeks all back pay owed to him, an injunction requiring that the defendants comply with the FLSA in the future, attorney's fees, and costs. Among other things, he requests that the injunction require the defendants to comply with their duty under the new FLSA § 208 with respect to any new notice that Paul gives to the defendants after the injunction is issued.

The defendants move to dismiss the action, citing such grounds as might be expected on the above facts. Both sides make all appropriate arguments. While the action is pending, Paul continues to work 50 hours per week for the state of Tennessee.

You are the law clerk to the district judge considering the case. The judge says, "I have determined that Paul's position is not 'exempt' for FLSA purposes, and that the state does have a duty to pay him time-and-a-half for hours worked in excess of 40 hours per week. So I don't need any advice about that. But please write me a memo discussing the other issues raised by the case, and making a recommendation as to how I should rule on each issue and on the case overall. I will issue my ruling on June 1, 2028."

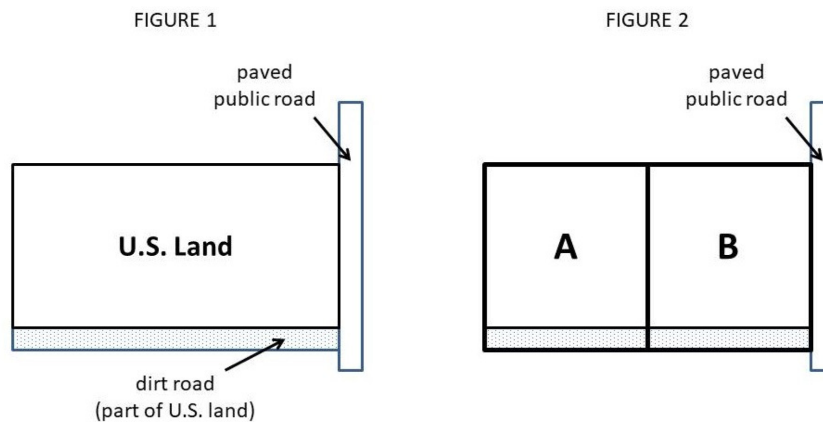
Write the requested memorandum.

QUESTION THREE

Under the common law of most states, when an owner of land sells a portion of the land that is "landlocked," i.e., not accessible from any public road, an "easement by necessity" automatically arises. This easement gives the new owner the right to cross the land retained by the original owner to access the landlocked land that was purchased by the new owner.

The United States owns land in Texas that it uses as an agricultural research site. The United States determines that the purposes of the site have been fulfilled and it no longer needs the land. Therefore, it decides to sell the land. The land is a large rectangle bordered by private property to the North, West, and South and by a paved public road to the East. A dirt road on the southern edge of the land is part of the U.S.-owned land. It is not a public road. (See Figure 1, below.)

The United States determines that it can get the most money for the land by selling it as two separate lots. The United States first sells the lot labeled "A" in Figure 2, below, which consists of the western half of the land, including the western half of the dirt road. Smith buys lot A. After that sale is recorded according to state law, the United States sells the remainder of the land, which consists of the portion labeled "B" in Figure 2, below. Jones buys lot B.



Throughout the process, no one considers the fact that Lot A is landlocked. Smith wrongly assumes that the dirt road is a public road. However, after the sales, Jones informs Smith that she (Jones) owns the eastern half of the dirt road and that Smith has no right of access to it.

Smith sues Jones in state court in Texas. Smith asserts that under the common law of Texas, when the United States sold lot A to Smith, Smith acquired an easement by necessity allowing Smith to use the dirt road to access lot A from the paved public road. Smith asserts that Jones purchased lot B subject to this easement. Jones admits that Smith would be correct if Smith had purchased lot A from a private owner. Jones asserts, however, that the United States is not subject to easements by necessity and that Jones therefore purchased lot B free of any such easement. (The parties agree that if the easement did not exist immediately after Smith bought lot A, it could not come into

existence later, such as when Jones purchased lot B.)

No federal statute provides any rule governing whether, when the United States sells land, it is subject to easements by necessity the same as, or differently from, a private landowner who sells land. Both parties make all appropriate arguments, limited to matters that we studied in this course, as to whether Smith acquired an easement by necessity to use the eastern half of the dirt road. As there are no facts in dispute, each side moves for summary judgment as a matter of law.

You are a clerk to the state judge considering the case. Write a memo discussing the issues raised by the case and making a recommendation as to how to rule on them. Conclude your memo with a recommendation as to whether Smith or Jones should win the case.

QUESTION FOUR

In *Miranda v. Arizona* (1966), the Supreme Court held that before conducting "custodial interrogation" of a criminal suspect (i.e., questioning a suspect while the suspect is in police custody), police must give the "*Miranda* warnings" ("You have the right to remain silent," etc.). *Miranda* held that if police do not give these warnings, admission of any statements made by the suspect during custodial interrogation violates the Fifth Amendment to the U.S. Constitution.

In addition, the Supreme Court has long held that admission of statements elicited by *coercive* interrogation also violates the Fifth Amendment, whether or not such interrogation is preceded by any warnings. E.g., *Brown v. Mississippi* (1936).

In 2023, police in Boston, Massachusetts are trying to solve a murder case. The police believe that David committed the murder. The police arrest David and take him to the police station for questioning. A police detective says, "before we start, let me notify you of your rights." David says, "Oh, don't bother. I know all about the *Miranda* decision. I know my *Miranda* rights." The detective therefore questions David about the murder without giving David the *Miranda* warnings. David initially denies committing any crime, but after five hours of continuous questioning, during which David repeatedly says he is tired and hungry and asks for breaks and rest, David confesses to the murder. The next day, David again denies committing any crime and asserts that his confession was a false confession.

David is prosecuted for murder in Massachusetts state court. When the prosecution seeks to introduce David's confession, David's counsel objects on the ground that David was not given the *Miranda* warnings and on the ground that the prolonged questioning was unconstitutionally coercive. The state trial court holds that in light of David's affirmative statement that he knew his *Miranda* rights, the police could question him without giving him the *Miranda* warnings. The trial court also holds that the questioning, although long, was not unconstitutionally coercive. David's confession is therefore admitted. The confession is important to the case as the other evidence connecting David to the murder is weak. David is convicted and sentenced to 30 years in prison.

On appeal in state court, David's counsel pursues the arguments that David's confession was inadmissible because of the *Miranda* violation and because the questioning was unconstitutionally coercive. The state's highest court affirms the judgment in all respects. The U.S. Supreme Court denies David's petition for certiorari on October 1, 2024.

On November 1, 2024, a video is posted on the Internet by Edward, a U.S. citizen who has moved to China, with which the U.S. has no extradition treaty. In the video, Edward confesses to the murder for which David was convicted. David promptly seeks habeas relief in *state* court. He asserts that the video proves that he is innocent of the murder. The state court denies relief. David takes all possible state appeals, but the denial of relief is affirmed.

On May 1, 2025, David seeks habeas relief in *federal* district court. He claims that (1) his

confession was admitted in violation of *Miranda*, (2) his confession was elicited by unconstitutionally coercive questioning, and (3) the video shows that he is innocent.

On June 1, 2025, the U.S. Supreme Court, in the case of *Hightower v. Wisconsin*, overrules *Miranda v. Arizona*. The Court's opinion states, "*Miranda* was a mistake and is overruled. Admission of a *coerced* confession violates the Fifth Amendment's Due Process Clause. But the police are not required to give any warnings before conducting *non-coercive* questioning of a suspect, and confessions obtained by non-coercive questioning are fully admissible, whether or not any warnings are given before such questioning."

David's habeas petition then comes before the federal district court for decision. Both parties make all appropriate arguments.

You are the law clerk to the federal district judge considering the petition. Your judge says, "The Supreme Court said in *Miranda* itself that the *Miranda* warnings must be given regardless of whether a suspect already knows them. So it is quite clear that the admission of David's confession violated *Miranda* (as it existed before the recent *Hightower* decision). As to the issue of whether the police questioning of David was coercive, that is a closer call. I think five hours of questioning of a suspect who says he is tired and hungry is unconstitutionally coercive, but it's not clear-cut."

Your judge continues, "I don't need any advice as to whether the admission of the confession violated *Miranda* or as to whether the questioning was coercive. But how am I supposed to rule on David's habeas petition? Please write a memorandum identifying and discussing the relevant issues and making a recommendation as to how to rule on each issue. Please conclude your memorandum by clearly recommending whether I should ultimately *grant* or *deny* David's habeas petition."

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. **Submit your answers using the Exam4 multiple-choice interface. Do not simply include your answers as part of your answers to the essay questions. Do not simply mark the answers on the physical exam papers. A grade penalty will apply to students who do not answer the multiple-choice questions using the Exam4 multiple-choice interface (unless excused by the Records Office or Dean of Students Office because of equipment failure or other difficulty).**

Question 1. Portia invests in stocks and bonds. Her broker is Deerfield, Inc., a corporation. Portia believes that Deerfield is improperly charging her a commission that is $1 more per trade than is specified in her brokerage agreement with Deerfield. She believes that she was charged this excess commission in connection with 50 trades. She demands that $50 be credited to her account at Deerfield. Deerfield refuses and asserts that the commissions charged were correct. Portia brings a class action against Deerfield in federal district court. She asserts that Deerfield violated the Securities Exchange Act, a federal statute, by charging her the alleged excess commission. She sues on behalf of herself and all other Deerfield customers who were charged the alleged excess commission. She seeks a refund of the alleged excess commissions to all class members and an injunction requiring Deerfield to charge only the correct commission to all class members in the future. The case is certified as a class action. After the class is certified, Portia closes her account at Deerfield. Deerfield moves to dismiss the case as moot. What should happen?

A. The entire case should be dismissed as moot.
B. The claim for damages should be dismissed as moot, but the claim for injunctive relief may proceed.
C. The claim for injunctive relief should be dismissed as moot, but the claim for damages may proceed.
D. Both claims may proceed, because they are "capable of repetition, yet evading review."
E. Both claims may proceed, because the case was certified as a class action.

Question 2. Tennille, a citizen of Maryland, rents an apartment in Maryland from Sanjeet, a citizen of New York, for $1,000 per month. During the COVID pandemic, Tennille fails to pay her rent. When she is $10,000 behind on her rent, Sanjeet brings an action against Tennille in state

court in Maryland seeking to evict her. Tennille, asserting that the eviction is forbidden by a temporary ban on evictions issued by the Centers for Disease Control and Prevention, a federal agency, removes the case to federal district court. Which of the following is true?

A. Removal is proper on the basis of federal question jurisdiction.

B. The case cannot be removed on the basis of federal question jurisdiction because of the well-pleaded complaint rule.

C. The case cannot be removed on the basis of federal question jurisdiction because the federal question is not necessarily raised, actually disputed, substantial, and capable of resolution without disturbing the federal-state balance approved by Congress.

D. Removal is proper on the basis of diversity jurisdiction.

E. The case cannot be removed on the basis of diversity jurisdiction because it falls within the domestic relations exception to diversity jurisdiction.

Question 3. The Federal Food, Drug and Cosmetics Act ("Act"), a federal statute, provides that before marketing a new pharmaceutical drug, the drug manufacturer must apply for and receive authorization from the Food and Drug Administration ("FDA"). The Act provides that to receive authorization, the manufacturer must demonstrate that the new drug is "safe and effective." The Act provides that if the FDA denies an application for such authorization, the applicant "may seek judicial review of the denial in federal district court." Pfizer, Inc., a drug manufacturer, seeks FDA authorization to market a new drug for treating diabetes. After considering data submitted by Pfizer, the FDA denies authorization on the ground that the data do not demonstrate that the drug is safe. The FDA states that "because the data do not demonstrate the drug to be safe, it is unnecessary for the agency to consider whether the data demonstrate that the drug is effective, and the agency makes no finding on that issue." Pfizer seeks judicial review of the FDA's decision in federal district court. It asks the court to determine that its data demonstrate that the drug is safe and to order the FDA to determine whether its drug is effective, and if so, to authorize the marketing of the drug. Which of the following is true?

A. The court should consider the case in its capacity as a court.

B. The court cannot consider the case, because the rule of *Hayburn's Case* prohibits courts from issuing rulings that are subject to review by the executive branch.

C. The court cannot consider the case in its capacity as a court, but the district judge may consider the case by acting in the capacity of a "commissioner."

D. The court cannot consider the case in its capacity as a court, and the district judge may not consider the case in the capacity of a "commissioner" because the statute authorizes review of the agency's action by a "court," not by a judge of the court.

E. The court cannot consider the case because Pfizer is not within the zone of interests of the statutory provision allegedly violated.

Question 4. The Patent Act, a federal statute, authorizes the Patent and Trademark Office ("PTO"), a federal agency, to award patents and provides that any owner of a patent whose patent is infringed may sue the infringer for patent infringement and recover damages. 28 U.S.C. § 1338

provides: "The district courts shall have original jurisdiction of any civil action arising under any Act of Congress relating to patents, plant variety protection, copyrights and trademarks. No State court shall have jurisdiction over any claim for relief arising under any Act of Congress relating to patents, plant variety protection, or copyrights."

Amaya, a citizen of California, receives a patent from the PTO for a improved process for generating electricity. She sues Pacific Gas & Electric ("PG&E"), a corporation incorporated in California with its principal place of business in California, in a California *state* court of general jurisdiction for patent infringement. She seeks $250,000 in damages. PG&E moves to dismiss the case for lack of jurisdiction. What is the likely result on this motion?

A. Denied, because a state court of general jurisdiction has concurrent jurisdiction to hear a case even if the case could have been brought in federal court.

B. Denied, because the parties are not diverse.

C. Denied, because a state court may not refuse to hear a federal claim unless it has a valid excuse.

D. Granted, because the statutory text makes clear that federal jurisdiction over patent actions is exclusive.

E. Granted, because the presumption of concurrent jurisdiction is rebutted by a clear incompatibility between state court jurisdiction and federal interests.

Question 5. Congress passes a new federal statute providing that every "place of public accommodation" that provides restrooms must provide at least one restroom that can be used by persons of any gender. Connecticut's Department of Parks and Recreation ("CDPR") promulgates a regulation imposing the same requirement on all golf clubs, whether public or private.

Blake is a gender-fluid person who sometimes faces prejudice when using restrooms designated for use either by men only or by women only. Blake is a member of Oakwood, a private golf club in Connecticut. Blake is a citizen of Connecticut and Oakwood is a corporation incorporated in Connecticut. Oakwood's restrooms are all designated for use either by men only or by women only. Blake requests that Oakwood designate at least one restroom for use by persons of any gender. Oakwood asserts that because it is open only to its members, it is not a "public accommodation" under the new federal statute and that CDPR lacks authority under state law to regulate its restrooms. Oakwood therefore declines to comply with Blake's request.

Blake sues Oakwood in federal district court. Blake claims that Oakwood is violating the federal statute and the state regulation. Blake seeks an injunction requiring Oakwood to designate at least one restroom for use by persons of any gender. Oakwood responds with the two points mentioned above. Whether CDPR has the authority to regulate Oakwood's restrooms and whether Oakwood is a "place of public accommodation" under the new federal statute are both difficult, unresolved questions. Oakwood asks the district court to abstain from deciding the case until Connecticut state courts resolve the question of CDPR's authority. Which of the following is true?

A. The district court does not have jurisdiction over Blake's claim under the state statute, as it is a state-law claim between nondiverse parties.

B. The district court must dismiss the state law claim as a federal district court may not enter

injunctive relief on the basis of state law.

C. The district court should abstain on the basis of *Pullman* abstention.

D. The district court should not abstain on the basis of *Pullman* abstention, although certification of the state-law question to state court would be permissible.

E. The district court should abstain on the basis of *Younger* abstention.

Question 6. The Bankruptcy Act, a federal statute, provides that a debtor may declare bankruptcy. When a debtor declares bankruptcy, the debtor's assets (other than exempt assets) are distributed to the debtor's creditors and the debtor's debts are "discharged," i.e., the debtor no longer owes them. But some debts are "nondischargeable" under the Bankruptcy Act and the debtor still owes such debts after bankruptcy.

Harold, a citizen of Arizona, sues Maude, a citizen of Colorado, in *state* court in Colorado and claims that Maude owes Harold $100,000 pursuant to a contract. Maude asserts that Harold has misinterpreted the contract and that she already paid Harold everything he was entitled to under the contract. Maude also asserts that since completing the contract with Harold she declared bankruptcy and received a discharge of her debts and that therefore even if she did owe Harold any additional money under the contract, her obligation to pay that money was discharged in bankruptcy. Harold asserts that Maude's debt to him was nondischargeable and that she still owes it.

On cross-motions for summary judgment, the state trial court determines that Harold's interpretation of the contract is correct and that when Maude declared bankruptcy, she owed Harold $100,000 pursuant to the contract. However, the state trial court determines that Maude's debt to Harold was discharged in bankruptcy. Accordingly, the state trial court enters judgment for Maude. Harold appeals to a Colorado appellate court, which affirms the determination that Maude owed Harold $100,000 when she declared bankruptcy, but reverses on the dischargeability issue. The appellate court holds that Maude's debt was nondischargeable. Accordingly, it orders the case remanded to the state trial court with instructions to enter judgment for Harold in the amount of $100,000. Maude seeks permission to appeal to Colorado's highest court, which denies permission.

Maude then seeks certiorari in the U.S. Supreme Court. On which issues, if any, does the U.S. Supreme Court have jurisdiction to grant certiorari?

A. None, because the state court judgment is not final.

B. None, because the state court judgment is not from the highest court of the state in which a decision could be had.

C. None, because the state court's determination that Maude owed Harold $100,000 at the time she declared bankruptcy is an adequate and independent state ground supporting the judgment in favor of Harold.

D. The Supreme Court may review the issue of whether Maude's debt to Harold was dischargeable, because that is a federal law issue, but not the issue of whether Maude owed Harold $100,000 at the time she declared bankruptcy, because that is a state law issue.

E. The Supreme Court may review both the issue of whether Maude owed Harold $100,000 at the time she declared bankruptcy and the issue of whether Maude's debt to Harold was dischargeable, because the issue of whether Maude owed Harold the money at the time she declared bankruptcy is antecedent to the issue of whether the debt was dischargeable.

Question 7. The Constitution provides that "The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators." Congress, concerned about the many new state laws that make it harder to vote, adopts the Federal Voting Freedom Act ("FVFA" or "Act"). Among other things, the Act forbids states from requiring voters to show identification ("ID") in order to vote for a U.S. Senator or Representative. The Act provides that any state election official who requires voters to show ID in order to vote for a U.S. Senator or Representative, or who instructs other state election officials to do so, shall be guilty of a felony and shall be fined up to $10,000 or imprisoned for up to two years or both. The Act does not regulate voting in elections for state or local offices.

Martin is the Secretary of State of Arizona and has responsibility under Arizona state law for conducting elections in Arizona. He brings suit against the Attorney General of the United States in federal district court in Arizona. He alleges that Arizona state law requires voters to show state-issued photo ID in order to vote in person in any election held in the state and that he desires to instruct all election officials in the state to follow this state law in conducting all elections in Arizona, including elections for U.S. Senators and Representatives. He alleges that the no-ID provision of the FVFA goes beyond Congress's power to regulate state elections and he seeks an order forbidding its enforcement. The U.S. Attorney General moves to dismiss for lack of jurisdiction or to abstain. What should the district court do?

A. Dismiss, because Martin lacks standing to sue.
B. Dismiss, because the case presents a nonjusticiable political question.
C. Abstain on the basis of *Pullman* abstention (or certify the case to state court).
D. Abstain on the basis of *Younger* abstention.
E. Hear the case and rule on the merits.

Question 8. Idaho enacts a law prohibiting the sale of the "Plan B" contraceptive, which can be used after sex to prevent pregnancy, and which some people regard as an "abortion pill" that causes an abortion. The law provides that sale of Plan B within Idaho is a felony punishable by up to three years in prison. Walgreen's, a corporation that operates drug stores in Idaho that sell Plan B, suspends its sale of Plan B before the law takes effect and brings a lawsuit in federal district court against the Attorney General of Idaho, who has power to enforce the new law. Walgreen's seeks a declaratory judgment that the law violates the federal constitutional rights of people who wish to purchase and use Plan B. The defendant moves to dismiss or abstain, citing all possible grounds. What should the district court do?

A. Dismiss for lack of standing, as Walgreen's has not suffered any injury.
B. Dismiss for lack of standing, as Walgreen's may not assert the rights of third parties.
C. Dismiss on the basis of sovereign immunity.
D. Abstain on the basis of *Younger* abstention.
E. Hear the case and rule on the merits.

Question 9. Ramon, a 32-year-old single man who was born and raised in Arizona and who has lived there all his life, is the manager of an office building in Tucson, Arizona. In 2023, he accepts a job managing a building in San Francisco, California. He moves out of his rented apartment in Tucson and rents an apartment in San Francisco. His new job is of indefinite duration and he has no plan for how long he will stay at the job or how long he will stay in California. He has no plan to move back to Arizona, but neither has he decided never to move back there.

In 2024, Ramon goes back to Tucson for a visit to see some friends. While there, he gets into a car accident with Clara, a citizen of Arizona. Clara is injured and her car is damaged. She sues Ramon in state court in Arizona. She seeks $10,000 for damage to her car, $40,000 in lost wages and medical expenses and $50,000 in pain and suffering, for a total of $100,000 in damages. Ramon desires to remove the case to federal district court. May he do so?

A. No, because the parties are not diverse, and the amount-in-controversy requirement is not satisfied.

B. No, because the parties are not diverse, although the amount-in-controversy requirement is satisfied.

C. No, because the amount-in-controversy requirement is not satisfied, although the parties are diverse.

D. Yes, because the parties are diverse and the amount-in-controversy requirement is satisfied.

E. No, because although the parties are diverse and the amount-in-controversy requirement is satisfied, a defendant sued in state court who is a citizen of the forum state cannot remove on the basis of diversity jurisdiction.

Question 10. The Fair Labor Standards Act ("FLSA"), a federal statute, requires covered employers to pay their employees a minimum wage of $7.25 per hour. The FLSA provides that any covered employer that violates that requirement shall be liable to the affected employee for the amount of the unpaid minimum wages.

In 2023, Florida adopts the Florida Freedom of Employment Contracts Act ("FFECA"). The FFECA abolishes Florida's minimum wage and provides that no Florida state court shall have jurisdiction to consider any action by an employee against an employer to recover any amount of wages other than the wages contractually agreed between the employer and the employee.

Thereafter, Ralph, a citizen of Georgia, sues Mortimer's, Inc., a corporation incorporated and with its principal place of business in Florida, in a Florida *state* court of general jurisdiction. Mortimer's operates grocery stores in Florida and Georgia. Ralph alleges that Mortimer's hired him to work in one of its stores in Georgia at an agreed wage of $5.25 per hour and that he has worked for Mortimer's at the Georgia store for 6000 hours over the preceding three years at that wage. He alleges that under the FLSA, Mortimer's owes him an additional $2 per hour for each of the 6000 hours he worked for the company in Georgia. He seeks judgment in the amount of $12,000.

Mortimer's moves to dismiss for lack of jurisdiction and on the ground of *forum non conveniens*. With respect to the latter point, Mortimer's argues that all of the events giving rise to the case took place in Georgia, that all the witnesses and evidence in the case are in Georgia, and that the suit should therefore be resolved there.

Which of the following is true?

A. The Florida state court must dismiss the case because the plaintiff has stated only a federal-law claim and the case must therefore be brought in a federal court.

B. The Florida state court may dismiss the case on the basis of forum non conveniens, as that would be a valid excuse for not hearing the case.

C. The Florida state court may dismiss the case for lack of jurisdiction under the FFECA, as that would be a valid excuse for not hearing the case.

D. The Florida state court must hear the case and resolve the merits of Ralph's FLSA claim, because a state court may not discriminate against a claim that arises under federal law.

E. The Florida state court must hear the case and resolve the merits of Ralph's FLSA claim, because the case does not meet the amount-in-controversy requirement for federal jurisdiction.

Question 11. In September 2022, Mississippi enacts a law that prohibits providing any refreshment to any person waiting to vote in any election. Violation of the law is a misdemeanor punishable by a fine of up to $1000 and/or imprisonment for up to six months. The Attorney General of Mississippi, who has authority to enforce the law, announces that it will be enforced vigorously. In October 2022, Raylon, who has had no interaction with any Mississippi state or local officials regarding the law, brings an action in federal district court against the Mississippi Attorney General. Raylon asserts that he wants to hand out water to people waiting to vote in the November 2022 elections and he seeks a declaratory judgment that the new Mississippi law violates his federal constitutional rights. During the November 2022 elections, Raylon does indeed hand out bottles of water to people waiting to vote in Biloxi, Mississippi. Afterwards, a Mississippi state prosecutor initiates a prosecution against Raylon in Mississippi state court under the new law. Then, in the federal action, in which nothing of consequence has yet happened, the Attorney General moves to dismiss or abstain, citing all possible grounds. What should the federal district court do?

A. Dismiss because Raylon lacks standing to sue.
B. Dismiss on the basis of sovereign immunity.
C. Abstain on the basis of *Younger* abstention.
D. Abstain on the basis of *Pullman* abstention (or certify the case to a state court).
E. Hear the case and rule on the merits.

Question 12. The National Park Service ("Park Service") has long designated certain places, including some privately owned buildings, as National Historic Landmarks. Under existing law, designation of a building as a National Historic Landmark does not restrict the owner from making any desired changes to the building. In 2023, however, Congress passes the National Historic Landmark Preservation Act ("NHLPA" or "Act"). Under the Act, if the Park Service, after passage of the Act, designates a building as a National Historic Landmark, then the owner of the building may not make any changes to the building without receiving permission from the Park Service. The Act provides that any person aggrieved by the designation of a building as a National Historic Landmark may seek judicial review of the designation in the U.S. District Court for the District of Columbia and may, in the proceeding for judicial review, challenge the constitutionality of the Act.

The Act also provides that "no court other than the U.S. District Court for the District of Columbia shall have jurisdiction to review any designation of a building as a National Historic Landmark or to consider any claim, defense, or other assertion that this Act or any provision of this Act is unconstitutional," except that the Act provides that judgments of the U.S. District Court for the District of Columbia shall be subject to appellate review in the U.S. Court of Appeals for the District of Columbia Circuit and then to review by certiorari in the U.S. Supreme Court, as usual.

Thereafter, the Park Service designates the childhood home of former Chief Justice Warren Burger, a modest home in St. Paul, Minnesota worth about $50,000, as a National Historic Landmark. The owner of the home, unhappy at the thought of having to get permission to make any changes to it, brings suit against the Park Service in federal district court in Minnesota. He claims that the NHLPA is unconstitutional. The Park Service moves to dismiss for lack of jurisdiction. What is the likely ruling on this motion?

A. Denied, because Congress cannot strip the federal courts of jurisdiction over a question arising under federal law.

B. Denied, because the case is within the district court's jurisdiction under 28 U.S.C. § 1331.

C. Granted, because Congress may channel jurisdiction over a question arising under federal law to a particular federal court.

D. Granted, because the amount-in-controversy requirement for federal jurisdiction is not met.

E. Granted, because the plaintiff lacks standing to sue.

Question 13. James is a state juvenile court judge in Pennsylvania. Anya, who is 14 years old, comes before James on a charge of causing a disruption at her school. Even though the evidence against Anya is very weak, the charge is very minor, and Anya has no previous record of delinquency, James finds her delinquent and orders that she spend a year at a juvenile reform school. A couple of months later, it comes out that the reform school, which is operated by a for-profit corporation, is paying James a sum of money for each juvenile he orders to the school, and for each month that such a juvenile spends at the school. Anya is released and her finding of delinquency is vacated.

Anya sues James in federal district court under 42 U.S.C. § 1983. She alleges the above facts and claims that in finding her delinquent and sentencing her to reform school purportedly on the basis of law, when he was really acting for personal profit, James's violated Anya's federal constitutional rights to liberty and to due process of law. She seeks $500,000 in damages. James moves to dismiss. What is the likely result?

A. The case will be dismissed because James has absolute immunity from the suit.

B. The case will be dismissed because a reasonable official in James's position could have believed that his actions did not violate Anya's constitutional rights and James therefore has qualified immunity from the suit.

C. The motion will be denied because the constitutional rights of liberty and due process are clearly established, and so James lacks immunity from the suit.

D. The motion will be denied because every reasonable official in James's position would

have known that his actions violated Anya's constitutional rights, and James therefore lacks immunity from the suit.

E. The motion will be denied because James's actions were not taken in his judicial capacity, and he therefore lacks immunity from the suit.

Question 14. Congress passes the Federal Drone Regulation Act ("FDRA" or "Act"). The Act regulates operation of drone aircraft, which it defines as any aircraft that flies without a human pilot on board, including personal drones sold as toys. The Act states that "Congress finds that the irresponsible operation of drone aircraft can endanger the safety and privacy of Americans." The Act prohibits the operation of any drone aircraft over privately owned property below a height of 5,000 feet without the permission of the owner of the property. The Act provides that any person who violates this prohibition shall be subject to a fine of up to $10,000, which is to be imposed and collected by the Federal Aviation Administration ("FAA"). The Act neither expressly authorizes nor expressly prohibits any private actions.

Thereafter, Vincent, a citizen of Vermont, operates a small drone, which is equipped with a video camera. Vincent causes the drone to fly low over property owned by Carmella, who is also a citizen of Vermont, and record video of her. The drone flies into Carmella and injures her.

Carmella sues Vincent in federal district court. She asserts that Vincent violated the FDRA. She also asserts that Vincent's actions constitute a common-law tort. She seeks $25,000 in damages for her injuries and invasion of her privacy. Vincent moves to dismiss. What is the likely result?

A. Motion denied, as Carmella's claim against Vincent under the FDRA can go forward because Carmella is in the class of persons the Act was intended to benefit, and her common-law claim can proceed pursuant to pendent jurisdiction.

B. Motion denied, as Carmella's claim against Vincent under the FDRA can go forward under the four-factor test of *Cort v. Ash*, and her common-law claim can proceed pursuant to pendent jurisdiction.

C. Motion denied, as Carmella's claim against Vincent under the FDRA can go forward because Congress intended private actions to be available under the FDRA, and her common-law claim can proceed pursuant to pendent jurisdiction.

D. Motion granted as to the FDRA claim, because there is insufficient evidence that Congress intended private actions to be available under the FDRA, but motion denied as to Carmella's common-law claim, which can proceed pursuant to pendent jurisdiction.

E. Motion granted as to both claims, because there is insufficient evidence that Congress intended private actions to be available under the FDRA, and the district court should exercise its discretion to dismiss her common-law claim.

END OF EXAM