

**EXAMINATION
FEDERAL COURTS – LAW 232
Siegel**

Spring, 2007

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). Computer use is permitted.
2. You have THREE HOURS to complete the exam.
3. The exam consists of this cover page plus 11 exam pages numbered 1 through 11.
4. There are two essay questions and 15 multiple choice questions. All students must answer all questions.
5. The recommended time allocations are:

Essay Question 1: 60 minutes
Essay Question 2: 60 minutes
Multiple Choice Questions: 60 minutes

The weights of the questions are proportional to the time allocations.

6. 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.
7. If you are writing your answers by hand, remember to *write legibly*.
8. 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. Then make a reasonable assumption about the missing facts and answer the question based on your assumption. Do not change the given facts.
9. 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.
10. Good luck.

ESSAY QUESTION ONE

(60 minutes)

In the spring of 2008, according to intelligence reports, it seems increasingly likely that Iran is developing nuclear weapons. President Bush demands that Iran open all facilities anywhere in its territory to inspection by international arms inspectors. The President also orders some of the U.S. troops stationed in Iraq to be massed near the Iran-Iraq border. When Iran refuses to admit the inspectors, President Bush announces, on May 1, 2008, that the United States, in conjunction with a coalition of other nations, will begin bombing suspected Iranian nuclear sites and that ground troops may be sent into Iran at a later date. Congress takes no action. Bombing begins May 2, 2008.

On May 5, 2008, the Iranian Friendship Committee (“IFC”) brings suit against the United States in United States District Court. The IFC is an association of U.S. citizens and U.S. corporations that own property in Iran and do business there. The IFC asserts that the bombing raids constitute a “war” between the United States and Iran within the meaning of the War Powers Clauses of the United States Constitution, and that the war is unconstitutional in the absence of a congressional declaration of war. The IFC asks the district court to enjoin the United States from participating in the bombing raids or in any other military action against Iran until such time as the Congress declares war.

On May 15, 2008, Iran announces that it will comply with all the demands of the international coalition. The bombing raids are halted, but U.S. and other coalition forces remain near the Iran-Iraq border in a state of readiness.

The United States then moves to dismiss the IFC’s lawsuit. Without addressing the merits of the constitutional war powers issue, the government raises such threshold grounds for dismissal as might be expected on the above facts. The IFC makes all appropriate arguments in response. You are the law clerk to the district judge presiding over the case.

Write a memorandum advising the judge on how she should rule on the government’s motion to dismiss. (In case you missed them, be sure to read instructions 6-9 on the cover page for instructions applicable to all your answers.)

ESSAY QUESTION TWO

(60 minutes)

In 2008, the state of Idaho passes a statute that forbids any public school, college, or university within the state from employing homosexuals as teachers or professors. A group of gay and lesbian teachers and professors challenges the law in federal court as violative of the Equal Protection Clause of the United States Constitution. The case reaches the U.S. Supreme Court, which holds that government discrimination on the basis of homosexuality is lawful if it has a rational basis. The Court further holds that a state could rationally believe that employing homosexuals as teachers or professors could be harmful to students. The Court therefore upholds the state statute as constitutional.

In 2009, the United States Congress passes the Employment Non-Discrimination Act of 2009 (“ENDA” or “Act”). The Act provides that it shall be illegal for any employer to discharge any employee on the basis of sexual orientation. The Act provides that any person whose rights under the Act are violated by any employer may sue the employer in federal district court. Remedies under the Act include back pay, reinstatement, attorney’s fees, and costs.

The ENDA provides that “the Congress finds that government discrimination on the basis of sexual orientation is a form of gender discrimination. This Act is necessary to fully protect against all unconstitutional gender discrimination by any government.” The Act goes on to provide that “States, acting in their capacity as employers, are subject to suit under this Act. States shall be as liable for all remedies provided by this Act as private employers.”

Under the Supreme Court’s cases, governmental gender discrimination is subject to “heightened scrutiny” under the Equal Protection Clause and is unconstitutional unless the government can show an “exceedingly persuasive justification” for the discrimination.

In 2010, the University of Idaho, a public university operated by the state of Idaho, discharges Gary, a professor, for homosexuality. Also in 2010, the Boise High School, a public high school operated by the city of Boise, Idaho, discharges Linda, a teacher, for homosexuality. Gary sues the University of Idaho and its trustees under ENDA. Linda sues the city of Boise, Idaho and her school principal under ENDA. Each plaintiff seeks reinstatement, back pay, attorney’s fees, and costs. Each case is brought in the U. S. District Court for the District of Idaho.

The two cases are pending before the same federal district judge, and you are the judge’s law clerk. The defendants in each case move to dismiss, citing such grounds as might be expected on the above facts. The plaintiffs make all appropriate arguments in response. The judge says to you, “I don’t need any advice about whether the firings violate ENDA, because they both obviously do.”

Write the judge a memorandum discussing the issues raised by the two cases and making a recommendation as to how the judge should rule on each issue.