Anonymous #	

FINAL EXAMINATION, PART I Federal Courts § O Professor McManamon Spring 2003

This examination is an open-book test. You are allowed to refer to any written materials in answering the questions. You may not, however, use a computer for research while taking this test. And, of course, no discussion about the examination is allowed with anyone else – except for me -during the test. In case you need it, I will be available to answer any questions you may have while taking the test.

There are three questions, each weighted equally.

Please put the answer to each question in a separate blue book. Be sure to label your blue books "Question I," "Question II," and "Question III." Write only on one side of each sheet of paper. And remember, a legible exam makes a happy professor!

This part of the examination contains Question I. You have one hour to complete it. Return both the test and your answer to my secretary, Ms. Karen Chiarini, at the third floor secretaries' station by 3:00 p.m. When you do, she will give you the next part of the examination, which contains Questions II and III.

Do \underline{NOT} identify yourself as a graduating senior. All papers will be graded as if you are a graduating senior.

Good luck to all.

QUESTION I (1 hour)

Gilbert P. Hyatt filed a "part-year" resident income-tax return in California for 1991. In the return, Hyatt represented that as of October 1, 1991, he had ceased to be a California resident and had become a resident of Nevada. In 1993, petitioner California Franchise Tax Board (CFTB) – an arm of the State of California – commenced an audit to determine whether Hyatt had underpaid state income taxes. The audit focused on Hyatt's claim that he had changed residency shortly before receiving substantial licensing fees for certain patented inventions related to computer technology.

At the conclusion of its audit, CFTB determined that Hyatt was a California resident until April 3, 1992, and accordingly issued notices of proposed assessments for income taxes for 1991 and 1992 and imposed substantial civil fraud penalties. Hyatt protested the proposed assessments and penalties in California through CFTB's administrative process.

On January 6, 1998, with the administrative protest ongoing in California, Hyatt filed a lawsuit against CFTB in Nevada in Clark County District Court. Hyatt alleges that CFTB directed "numerous and continuous contacts... at Nevada" and committed several torts during the course of the audit, including invasion of privacy, outrageous conduct, abuse of process, fraud, and negligent misrepresentation. Hyatt seeks punitive and compensatory damages.

During the discovery phase of the Nevada lawsuit, CFTB filed a petition in the Nevada Supreme Court for a writ of mandamus, or in the alternative, for a writ of prohibition, challenging certain of the district court's discovery orders. While that petition was pending, CFTB filed a motion in the district court for summary judgment or, in the alternative, for dismissal for lack of jurisdiction. CFTB argued that the district court lacked subject matter jurisdiction because principles of sovereign immunity and comity required that the district court apply California law, under which:

"Neither a public entity nor a public employee is liable for an injury caused by:

- (a) Instituting any judicial or administrative proceeding or action for or incidental to the assessment or collection of a tax [or]
- (b) An act or omission in the interpretation or application of any law relating to a tax." Cal. Govt.Code Ann. § 860.2 (West 1995).

The district court denied CFTB's motion for summary judgment or dismissal, prompting CFTB to file a second petition in the Nevada Supreme Court. This petition sought a writ of mandamus ordering the dismissal of the case.

On June 13, 2001, the Nevada Supreme Court granted CFTB's second petition, dismissed the first petition as moot, and ordered the district court to enter summary judgment in favor of CFTB. On April 4, 2002, however, the court granted Hyatt's petition for rehearing, vacated its prior ruling, granted CFTB's second petition in part, and denied it in part. The court held that the district court "should have declined to exercise its jurisdiction over the underlying negligence claim under comity principles" but that the intentional tort claims could proceed to trial.

The Nevada Supreme Court noted that both Nevada and California have generally waived

their sovereign immunity from suit in state court and "have extended the waivers to their state agencies or public employees except when state statutes expressly provide immunity." Whereas Nevada has not conferred immunity on its state agencies for intentional torts committed within the course and scope of employment, the court acknowledged that "California has expressly provided [CFTB] with complete immunity." The court then decided that Nevada law applied, and there was, therefore, no sovereign immunity for California's intentional torts.

The United States Supreme Court has granted certiorari to resolve whether the "residuary and inviolable sovereignty" of the States embedded in the Constitution prohibits a suit against an unconsenting State in the courts of another State. You are a newly-appointed Supreme Court Justice. Write your draft opinion answering this question. Note whether you anticipate that you will be writing for the majority, concurring in the judgment, or dissenting. Be sure to address the probable arguments of your opponents on the Court. That is, if you are writing for the majority, explain what the dissent says and why that is wrong. If you are concurring in the judgment, explain why you disagree with the reasoning of the majority. If you are dissenting, explain why the majority is wrong.

END OF PART I OF THE EXAMINATION. TURN IN THIS TEST AND YOUR BLUEBOOK(S) TO MY SECRETARY, MS. KAREN CHIARINI, BY 3:00 P.M. AND PICK UP THE NEXT PART OF THE EXAMINATION.

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FINAL EXAMINATION, PART II Federal Courts § O Professor McManamon Spring 2003

This part of the examination continues as an open-book test. You are still allowed to refer to any written materials in answering the questions. As before, you may not use a computer for research while taking this test. And, of course, no discussion about the examination is allowed with anyone else – except for me – during the test. In case you need it, I will be available to answer any questions you may have while taking the test.

There are two questions in this part of the test, each weighted equally. You have until 5:00 to complete them.

Please put the answer to each question in a separate blue book. Be sure to label your blue books "Question II" and "Question III." Write only on one side of each sheet of paper.

Do <u>NOT</u> identify yourself as a graduating senior. All papers will be graded as if you are a graduating senior.

May your good luck continue.

QUESTION II (1 hour)

The fact pattern for Question I was adapted from a real case, Franchise Tax Board of California v. Hyatt (U.S. 2003). In that case, the Supreme Court unanimously refused to reconsider its 1979 holding in Nevada v. Hall that "the Constitution does not confer sovereign immunity on States in the courts of sister States." The Court allowed the suit against California to go forward in the Nevada state court. (Don't panic if you did not anticipate this result. Many people thought the Court would go in a very different direction.)

Taking into consideration the *Hyatt* case and all the other recent sovereign immunity cases you read for this course, explain and evaluate the following statement:

The Rehnquist Court's federalism jurisprudence is not really about federalism; rather it is a readjustment of the separation of powers among the federal branches of government.

OUESTION Ⅲ (1 hour)

Article III of the Constitution gives Congress control over the appellate jurisdiction of the Supreme Court and the jurisdiction of the lower federal courts. The Congress has frequently exercised this power to withdraw cases from the federal courts. As an illustration, every so often, the Congress has raised the jurisdictional minimum for diversity cases. That is hardly controversial. But the Congress has occasionally withdrawn cases from the federal courts because it is not happy with their decisions. For example, in the not-so-distant past, bills have been introduced to take all cases involving abortion out of the federal courts. Recently, some members of Congress have proposed taking cases about the pledge of allegiance out of the federal courts. One question that arises is, "how far can Congress go in shutting down the federal courts?"

You are a legislative aide for a U.S. Senator who believes that a large percentage of the federal judges are far too liberal and activist. She would like to curtail the jurisdiction of the federal courts. She is playing with the idea of proposing taking away the general federal question jurisdiction provided by 28 U.S.C. § 1331, leaving the courts with specific federal question jurisdiction found in other statutes (such as bankruptcy), admiralty jurisdiction, and diversity jurisdiction. She has asked you for a memorandum advising her of the wisdom of this step. In answering her question, be sure to advise her as to the role of the federal judiciary in our federal system of government.

END OF EXAMINATION.