

**[Note: in addition to the 2 hours of discussion questions, this test included 1 hour of multiple-choice questions.]**

**I. (60 minutes)**

Suppose Congress, concerned that the recent flurry of gay rights court decisions could prompt major changes in traditional family law, adopts a federal statute prohibiting gay or lesbian adults from adopting a child. This new federal adoption statute states: "No person eligible to adopt under any state law or policy may adopt if that person is a homosexual." It also requires state court officials to compile, maintain, and report various adoption statistics to the U.S. Attorney General.

According to the accompanying congressional committee reports, the statute reflects the federal government's moral disapproval of homosexuality based on the nation's religious, moral, and ethical standards, and it serves the best interests of the nation's children by ensuring they are raised in a family consisting of a married father and mother. The reports also note the growing prevalence of fee-paying adoption services as well as interstate adoption placements. A survey of current state laws reveals that only Florida has adopted a statutory prohibition on adoption by homosexual persons. Most state laws are silent on this particular matter, though a few have written policies that either allow or disallow such adoptions.

An action for declaratory and injunctive relief has been filed in Iowa federal district court against the Director of the Iowa Department of Family Services (IDFS), alleging that the federal homosexual adoption prohibition is unconstitutional. The plaintiff in this federal action is Steven Lofton, a state-certified long-term foster parent who has cared for several foster children since their infancy. One of Lofton's foster children, five year old John Doe, was recently released for adoption, meaning that his biological parents relinquished their parental rights. Lofton sought to adopt Does, but his application was rejected by IDFS officials because of his sexual orientation. Meanwhile, the Iowa DFS has initiated proceedings for John Doe to be adopted by a local married couple. The IDFS Director has moved to dismiss the case.

What issues are raised by Lofton's federal court action? What constitutional arguments might Lofton mount against the federal statute? How should the court decide the case? Explain.

## II. (60 minutes)

Under the 1993 North American Free Trade Agreement (NAFTA) (a treaty ratified by the U.S. Senate), the United States, Mexico, and Canada agreed to engage in “mutual free and unrestrained trade and commerce.” Despite NAFTA, the U.S. has prohibited Mexican trucks from entering the country, citing safety and health concerns because Mexico’s vehicle safety and emissions standards were much less rigorous than those prevailing here.

Until recently, the U.S.’s position was fortified by the Bus Regulatory Reform Act of 1982 (BRRA), which imposed a two year moratorium on the entry of motor carriers domiciled in a “contiguous foreign country.” The moratorium was renewable for subsequent two year intervals by the President if he deemed it “in the national interest.” The President consistently invoked his moratorium renewal authority until 1996, when Congress passed the Interstate Commerce Commission Termination Act (ICCTA), which provided that “all existing restrictions on motor carriers domiciled in any foreign country” are to remain in effect.

Confronted with a recent adverse ruling by a special NAFTA treaty arbitration panel, President Bush has announced his intention to modify the moratorium to allow Mexican trucks to operate in the U.S. if they meet federal Clean Air Act emission requirements. According to the Environmental Protection Agency (EPA), most Mexican long-haul trucks now meet federal emission standards.

The California Attorney General (CAG), however, asserts that Mexican trucks do not meet California’s more stringent air emissions standards. She notes that the Clean Air Act empowers states to establish more rigorous air emission standards than the federal standards, which California has done. She has been joined in her position by key border state congressional delegations, who are all ready to sue to block the entry of Mexican trucks. In anticipation of litigation, the CAG has requested copies of documents generated by a special presidentially-appointed NAFTA review commission.

Not only is the President poised to approve the entry of Mexican trucks into the U.S., but he has refused to release any NAFTA review commission documents, invoking executive privilege. Citing his foreign affairs power, he asserts that his actions are not judicially reviewable.

Based on the material covered this semester, identify, analyze, and resolve the constitutional issues raised by this controversy.