

START OF EXAM

This exam is intended to test what you have learned in Constitutional Law I this semester. Your answer should rely on material covered in the assigned readings and/or the class sessions. Bringing in material outside the scope of this course will not earn you points.

If your answer would depend on information not provided, indicate what other information you would need to answer definitively and how that information would bear on your answer.



*The picture is provided only to help you visualize the factual scenario described.
Any resemblance to Indiana and Kentucky is purely coincidental.*

The Conflict

On a continent far from North America, the countries Freedonia and Sylvania share a border and a complicated history. For nearly 200 years, Freedonia was part of the Sylvanian Empire. When that empire broke up in the early 1990s, Freedonia became an independent country. The territory of Duckburg was included within the borders of the newly independent Freedonia. However, many

Sylvanians do not recognize the cession¹ of Duckburg to Freedonia, and in fact, many Duckburgians identify more with Sylvania than Freedonia.

In April, Sylvania's Parliament declares Duckburg to be part of Sylvania, and Sylvanian troops cross the border to seize control of Duckburg. Fierce fighting between Freedonian and Sylvanian troops begins in the disputed territory.

In the United States, reactions to these events are mixed. The United States had previously maintained friendly relations with both countries. Many Americans deplore Sylvania's invasion as a violation of international law. Some believe Sylvania has a strong historical claim to Duckburg. Others want most of all to avoid U.S. involvement in an overseas conflict.

The Response

Initially, the legislative and executive branches of the United States government both favor strong action against Sylvania's aggression. In May, Congress appropriates \$10 billion in aid to Freedonia, to be released by President Drake at the rate of \$1 billion a month. Congress intends for Freedonia to use the money to buy arms.

President Drake also signs, and the Senate ratifies, the Leave Duckburg Alone (LDA) Treaty, along with 35 other countries. The LDA Treaty requires all countries that sign it to impose strict economic sanctions against Freedonia by banning their citizens from doing business with Sylvania and Sylvanian companies. The LDA Treaty also requires signatories to identify assets held in their countries by Sylvanian officials and prevent those officials from making use of those assets.

The U.S. Congress follows up the treaty with legislative action. Both Houses of Congress pass, and the President signs, the Defund Sylvanian Aggression (DSA) Act. Section 1 of the statute provides that no Americans can do business with the Sylvanian government or Sylvanian firms, under penalty of criminal punishment. Section 2 provides that all assets on U.S. soil or in U.S. financial institutions that are owned by Sylvanian officials in whole or in part are subject to a 100% tax. The tax will be collected by the Internal Revenue Service (IRS).

Because Sylvanian officials often own U.S. assets through complicated legal structures, Section 3 of the DSA Act sets up a new body authorized to investigate and determine the ownership of assets suspected of being in Sylvanian hands. The Asset Review Tribunal (ART) is an expert body of forensic accountants charged with reviewing legal and financial records to determine whether

¹ In case this is a word you haven't encountered before, a territorial cession is the act of ceding (giving up) territory.

assets are owned by Sylvanian officials. Government officials and members of the public can send tips of suspected Sylvanian ownership to the ART. The Tribunal is headed by an Accountant General, who decides which tips merit an investigation by the ART.

The statute makes the ART a part of the Department of Commerce and provides that the Accountant General and Tribunal members are to be appointed by the Secretary of Commerce. So that the Tribunal can operate independently, the Act provides that the Accountant General and Tribunal members serve five-year terms of office. They may be removed from office before their terms elapse only for good cause, and only by the Secretary of Commerce.

A Turn of Events

Through the summer, however, U.S. opposition grows to the measures supporting Freedonia. Stories of war crimes committed by Freedonia troops cost Freedonia public support in the U.S., and battlefield losses leave Sylvania firmly in control of 99% of Duckburg. Leaked reports also reveal that Freedonia has been spying on the United States by hacking into the National Security Agency (NSA), a U.S. intelligence agency. An economic downturn at home also makes many Americans regret the financial support committed to Freedonia, especially as allegations swirl that Freedonia has misspent billions of dollars, allegations bolstered by Freedonia's poor military performance.

In November, presidential candidate Saturnin L. Canard, who had made opposition to the country's Freedonia policies the centerpiece of her presidential campaign, wins the election. Canard is a member of Party Y. Both Houses of Congress remain under the control of Party X, which continues to support Freedonia.

Presidential Actions

After Canard's inauguration in January, she takes several actions:

1. She issues a presidential proclamation recognizing Sylvania's sovereignty over Duckburg. "It is time to face the facts," she said, when issuing the proclamation. "Duckburg is effectively part of Sylvania now, and the United States will recognize it as such. This is the President's call to make."
2. Canard instructs the Department of Justice not to prosecute anyone for violating Section 1 of the DSA Act. "I believe we have more important national priorities than prosecuting people under this law," she explains. "Under Article II of the Constitution, I have broad discretion over how to enforce the laws, and I am exercising that discretion now."

3. Canard announces that her administration will not be enforcing Section 2 of the DSA Act on constitutional grounds. “Nothing in the Constitution gives Congress the power to enact this statute,” Canard argues. “Owning an asset isn’t commerce; this isn’t really a tax; and Congress can’t get powers from a treaty. In my view, this statute is unconstitutional, and I will not enforce it.”
4. President Canard announces that she will stop releasing to Freedonia the aid funds appropriated by Congress, \$2 billion of which remains unspent. Instead, she instructs the Secretary of the Treasury to divide the \$2 billion by the number of American taxpayers and send each one a check for that amount. “Freedonia has already frittered away \$8 billion of American taxpayers’ money,” Canard said. “No more. I’m sending this money back where it belongs.”
5. President Canard fires the Accountant General, Robert McCloskey. “Under Article II, I have the power to fire officers of the United States whenever I want,” Canard explained. “Anyway, it was unconstitutional for Congress to give the Secretary of Commerce the power to appoint the Accountant General.”
6. What the President does *not* announce is that, upon taking office, she directs the U.S. Army Cyber Command to launch a cyberattack on Freedonia’s state-sponsored hacking operations that had breached the NSA. The cyberattack, carried out through a computer virus, brings down the computer network for Freedonia’s entire intelligence system for four days.

A month later, word of the cyberattack is leaked. The White House confirms that the President ordered the cyberattack. When asked at a press conference why she did not report this military action to Congress, as required by the War Powers Resolution, the President replied that, in her view, the War Powers Resolution is unconstitutional.

Congress Considers Its Next Move

Members of Congress, especially those in Party X, are outraged by these presidential actions. Several members of the House of Representatives circulate a draft containing six Articles of Impeachment, one for each of the actions listed above. With respect to #1, the charge is that the President has exceeded her power by unilaterally recognizing a government in defiance of Congress. With respect to #2 and #3, the charge is that the President has failed to execute the laws, as required by Article II of the Constitution. With respect to #4, the charge is both that she failed to execute the laws and also that she has exercised Congress’s appropriation power. With respect

to #5 and #6, the charges are that the President has violated the terms of the DSA Act and the War Powers Resolution, respectively.

While that draft is circulating, a rumor begins to circulate as well. It is claimed that, before entering politics, President Canard had had an extramarital relationship with an adult film star, Gosalyn Mallard, and had paid the rent on Mallard's apartment for three years.

While there is no allegation of illegal conduct with respect to Mallard, Canard's opponents in the House believe that it would be embarrassing and politically damaging to Canard if the rumors could be substantiated. Some members of the House raise the idea of issuing a subpoena to President Canard for her bank records from before when she was President, to determine whether she had, in fact, paid the rent on Gosalyn Mallard's apartment.

The Question

You are a legal advisor to Jack Quacker, a member of the House of Representatives. Representative Quacker wants a memo from you that makes legal sense of the facts above and provides him some guidance in deciding whether it is appropriate to support either of the House actions under consideration. More specifically, your memo should:

- (1) include a legal evaluation of the President's actions and address the legal contentions advanced by the President. (This should be the longest part of your memo.)
- (2) address what constitutes an impeachable offense, making reference to the different positions advanced during previous impeachments, and whether the President's conduct rises to that level.
- (3) address the scope of Congress's power to investigate and whether the proposed subpoena would fall within that power.

Write the memo.

END OF EXAM
