

PROMOTION RECOMMENDATION
The University of Michigan
Law School

Approved by the Regents
May 20, 2010

Gil Seinfeld, assistant professor of law, Law School, is recommended for promotion to professor of law, with tenure, Law School.

Academic degrees:

J.D. 2000 Harvard Law School
B.A. 1997 Harvard University

Professional Record:

2005-present Assistant Professor of Law, Law School
2003-2005 Associate, Wilmer Cutler Pickering Hale & Dorr
2002-2003 Law Clerk, Hon. Antonin Scalia, Supreme Court
2001-2002 Fellow, Law & Public Affairs, Princeton University
2000-2001 Law Clerk, Hon. Guido Calabresi, 2d Circuit

Summary of Evaluation:

Teaching — Professor Seinfeld is spectacularly successful as a teacher. He won the student-conferred best teaching award in his first year at the Law School. His CRLT evaluations are consistently at the very top level. Class visits demonstrate that he is successful for all the right reasons. He is dynamic, demanding, and engaging. His students come prepared to be challenged and respond with enthusiasm.

Research — Professor Seinfeld is on his way to becoming a leading figure on the study of federal courts, a challenging field that continues to attract some of the finest law scholars. His work demonstrates complete mastery of the law and the secondary literature. He writes with great clarity and remarkable verve. His work demonstrates as well the highest scholarly qualities of care, discipline, and openness. To date he has finished three articles, two published and one forthcoming this spring. Each of the three focuses on questions of original subject-matter jurisdiction in the United States District Courts. The first, *Complete Preemption*, laments the Supreme Court's failure to provide a sufficient theory to justify removal of actions from state courts to federal courts when what purports to be a state-law claim is actually a federal-law claim that preempts any role for state law. He proposes a new theory that would, in some cases, change existing practice. The second, *Federal Courts as Franchise*, challenges the justifications commonly accepted for conferring federal-question jurisdiction on the District Courts, and proposes a new "franchise theory" addressed to Congress as it decides how to allocate jurisdiction. Leaders in the field recognize that the article has forced them to rethink established views. The third, *Article I, Article III* takes dead aim at the established view that the enumeration of categories of judicial power in Article III, § 2 of the United States Constitution actually limits Congress's power to establish federal jurisdiction over cases arising under state law. This article is the most ambitious of the three, taking on Twentieth Century giants in the field and proposing a new resolution for the "protective jurisdiction debate" that has been one of the most enduring subjects of academic exchange. Again, it is forcing the leaders of the field to reconsider their views.

Recent and Significant Publications

The Puzzle of Complete Preemption, 155 U. Pa. L. Rev. 537-579 (2008).

The Federal Courts as a Franchise: Rethinking the Justification for Federal Question Jurisdiction, 97 Cal. L. Rev. 95-159 (2009).

Article I, Article III, and the Limits of Enumeration, forthcoming in 108 Mich. L. Rev. (June 2010).

Service — Professor Seinfeld has ably discharged all of his responsibilities in Law School committee work. He also has volunteered to be steward of a regular luncheon series of scholarly presentations by faculty members, and volunteers for student-centered events such as judging moot courts. He is a member of the Leadership Council at the Center for the Education of Women. He is a good servant of the Law School and University.

External Reviewers:

Reviewer (A):

“[The *Article I, Article III* article] is a fine article, with important strengths and a few weaknesses. Professor Seinfeld is obviously extremely knowledgeable. His treatment of cases and secondary authorities is sure-footed and accurate. And I especially admire the verve of his writing and the clarity of his exposition.”

Reviewer (B):

“Among [junior] scholars in the field of federal jurisdiction, Professor Seinfeld enjoys a prominent place. ... [The *Federal Courts as Franchise* article] provides a number of interesting insights and sound judgments about issues of state court competence, about the sources of litigant preferences for state and federal court, and about the somewhat unpredictable consequences of greater federal competence for the enforcement of the federal Constitution... I really liked Seinfeld’s willingness to confront the fact that the judges on the federal courts tend to be better equipped to handle complex legal problems than their state counterparts.”

Reviewer (C):

“[Professor Seinfeld] is a scholar in the midst of developing an important body of work... I ... want at the outset to record my enthusiasm — for his intelligence, his thoughtful reflections, his well-written, clear, and even-handed accounts, and his significant scholarly promise.”

Reviewer (D):

“[*Federal Courts as Franchise*] takes a clear-eyed look at conventional judicial and academic views of the functions of ... federal-question jurisdiction, convincingly finds them wanting, cogently develops a novel and alternative view of the functions, and explores that view’s implications [Article I, Article III] is first-rate legal scholarship.”

Reviewer (E):

“[A]ll three articles contain new, interesting, and important ideas. [*Federal Courts as Franchise* is] ambitious, well-argued, ... mov[ing] beyond specific doctrines into more broadly theoretical areas. It contains interesting insights, a few new arguments, and a clever repackaging of old

ideas. It makes an important contribution to the literature by identifying an issue that has eluded most (if not all) of the scholars who write about this question. [*Article I, Article III*] seems to make an entirely original contribution to an important area of federal-courts scholarship, and shows a broad mastery of the literature.”

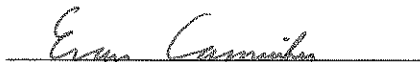
Reviewer (F):

“[*Article I, Article III*] is the most ambitious of these articles...[and] has many strengths. ... Professor Seinfeld makes his arguments with subtlety and skill.”

Internal Review: In keeping with the Law School’s tenure procedures, a Tenure Committee conducted a comprehensive review of Professor Seinfeld’s performance. The Committee read all of the work that Professor Seinfeld has submitted for publication since joining the Law School faculty, solicited and read inside and outside reviews, observed his classes, interviewed students, and prepared a recommendation for the Law School faculty. The Tenure Committee concluded that Professor Seinfeld satisfies the requirements for tenure and promotion. In accordance with Law School procedure, the tenured faculty considered the Committee’s report and recommendation at two meetings. At the second meeting, the tenured faculty voted to recommend Professor Seinfeld for promotion to professor of law, with tenure.

Summary of Recommendation:

Professor Seinfeld is a valuable teacher in traditional core areas of the Law School curriculum. His deeply informed work on federal-court jurisdiction has challenged established views and both stimulates the thinking of the senior leaders in the field and also commands their respect. He will soon enough become established as another of the senior leaders. It is with the widespread support of the Law School’s Tenure Committee and the tenured faculty that I recommend him for promotion to professor of law, with tenure, Law School.



Evan Caminker
Dean, Law School

May 2010