

## Constitutional Law Section 4

### Weeks 3 & 4

- I. Limits on the Judicial Branch Continued
  - a. Congressional checks
    - i. Congress has the power to limit jurisdiction, but
      1. A law repugnant to the constitution is void
      2. This includes the power to make exceptions to the Court's jurisdiction.
    - ii. U.S. v. Klein (note 7, page 73)
      1. Congress passed a jurisdiction limiting law (intended to overturn a prior Supreme Court decision that said presidential pardon for rebellion gave rednecks the right to recover their seized property)
      2. Law says: if a person sues in Court of claims to recover property seized because the person was allegedly a rebel, introduction of proof of pardon results in an immediate end to the jurisdiction of the court; case must be dismissed.
      3. Court holds: this is unconstitutional. Congress is telling the court how to rule. Unconstitutional intrusion on judicial power, telling them how they should rule on cases involving pardons.
      4. Separation of powers limitation on Congress' ability to affect the judicial branch.
    - iii. Plaut:
      1. Scenario
        - a. T1: the securities act did not have a statute of limitations; courts borrowed certain state statutes. Certain cases were filed that were timely under borrowed statutes.
        - b. T2: Court decides its old rules were wrong - it borrowed statutes that are too long, decides henceforth to use shorter statute of limitations, cases filed under earlier statute are now dismissed because they are untimely
        - c. T3: congress passes law adopting a longer statute of limitations, it authorizes refiling of cases dismissed pursuant to Court's decision at T2
      2. Held: Congress can adopt whatever statute of limitations it wants and apply it to pending and future cases; but it cannot reinstate cases that courts have dismissed.
      3. Interfering with the doctrine of res judicata is an intrusion on judicial power.
    - iv. Hypothetical
      1. In class example: Congress passes a law stating the courts do not have jurisdiction to decide the constitutionality of any laws they pass. How do you respond? Congress attempts to grant themselves immunity from scrutiny, but it is the court's job to uphold the constitution and strike down those laws that are repugnant to it (*Marbury*). This law is not a constitutional limitation on jurisdiction, it is an attempt to strip the

Court of their most important job: upholding the Constitution. This is a power inherent in the constitution, therefore this law is unconstitutional.

2. Handout question 1:

- a. What does the law do? It removes jurisdiction from reviewing states laws restricting abortion (but removing jurisdiction would also prevent these laws from being enforced). Only the State courts would be able to review. But a State court is required to follow Roe v. Wade...this law would lock in the Roe v. Wade ruling and prevent the Supreme Court from being able to change their mind since they don't have jurisdiction. (but state's will ignore Roe v. Wade if they can do so without review).
- b. Is the law constitutional? Yes. The intent is to prevent the Supreme Court from striking down state laws on abortion. It allows the states to vary from the rights guaranteed from the constitution, interfering with Res Judicata (since state courts have to follow the constitutional interpretation handed down by SCOTUS, but this won't be enforced). This affects someone's rights as decided by SCOTUS in Roe v. Wade...the court has the power to make sure constitutional rights are available everywhere.
- c. What does that do to McCardle? Well, the court got it wrong.

b. Self-checks

i. Narrowly defining their job

1. Art III gives them the judicial power to decide disputes. "cases and controversies."
2. Marbury: won't review the political decisions of the executive (but will the actions of the executive when it affects the rights of a discrete group) "the province the court is solely to decide on the rights of individuals."
3. They have also made it clear in Marbury that Congress cannot give them jurisdiction outside of what the Constitution has given them.
4. Early on, they made it clear that they would not give advisory opinions.

ii. Standing: the right to bring a case before the court. Effectively limits the types of disputes that can be brought before the federal courts in general and the Supreme Court.

1. Can only bring a case before the courts when legal rights or concrete interests are at stake. The "minimum, irreducible requirements":
  - a. Injury in fact of a legally protected interest which is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical.
  - b. There must be a causal connection between the injury and the conduct complained of—the injury has to be "fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court.

- c. It must be likely as opposed to merely speculative that the injury will be redressed by a favorable decision.
  - 2. There is a history of denying "taxpayer suits:" suits from citizens who say they are harmed by having to pay taxes for something that they don't consider constitutional. Thoughts?
    - a. May be good because it conserves judicial resources for things that are more important.
    - b. Motivation by a concrete injury sharpens the adversarial process.
    - c. The case or controversy requirement can be read to require standing (although it isn't defined)
    - d. Decisions which affect many people (precedential value) that are made w/out real need to decide the case or in a made up situation will not be fair.
  - 3. This has been characterized as judicial prudence and as political blocking of the courts. But the court (esp. Scalia) considers it a constitutional requirement rooted in the words "cases and controversies" in Art III.
  - 4. Tocqueville: even though the Americans have given their judicial branch extreme political power, it is not very dangerous. They have limited them to deciding cases. "Rights must be contested in order to warrant the interference of the tribunal."
- iii. Lujan v. Defenders of Wildlife, U.S. 555 (1992)
- 1. The ESA requires departments of the federal government to consult with the interior department to determine whether there are endangered species that will be threatened by their various projects. The ESA and the secretary of the interior decided that these agencies don't need to consult if these projects take place outside of the United States. Defenders of Wildlife protest via lawsuit.
  - 2. Associational standing: the defenders of wildlife can bring the action as an organization by establishing that (1) at least one of their members would have standing, (2) the purpose of the suit is related to the association, and (3) the member is not an essential party to the suit, i.e. the member is not seeking personalized damages, but some sort of injunction or order to enforce an action. (an organization can sue on its own behalf if it is seeking personalized damages).
  - 3. Injury in fact: invasion of legally protected interests (Scalia). Do the named members of the organization have a legally protected interest?
    - a. Yes. The desire to observe the species is a cognizable interest for purposes of standing.
  - 4. Is the injury concrete and particularized? Actual or imminent?
    - a. Not for Scalia. The members who try to establish standing do not have concrete plans to return to the foreign countries where they have previously observed the animals that were at risk
    - b. There is evidence that the animals are likely to be harmed, but without a particularized injury to them (because they can't say