

MODULE 8

Limits on the Federal Judicial Power

Advisory opinions · Standing · Ripeness · Mootness · California v. Trump

Constitutional Law · Fall 2026 · Professor Jorge R. Roig

Justiciability: why limit the courts?

Article III gives the courts “Cases” and “Controversies” — nothing else.

IN THEORY

- Keep courts to deciding real disputes.
- Spend public good will wisely.
- Stay independent of politics.

IN PRACTICE

- “You can't sue!”
- Constitutional limits: Congress can't change them.
- Prudential limits: Congress can.

Who may sue, and when — before anyone asks whether the law is valid.

Four doctrines

Each one asks a different question about the same lawsuit.

ADVISORY OPINIONS

- A real dispute?
- Will the decision do anything?

STANDING

- The right plaintiff?

RIPENESS

- Too early?

MOOTNESS

- Too late?

Ripeness and mootness are standing measured in time.

The first doctrine: no advisory opinions

A court decides disputes. It does not give advice.

HAYBURN'S CASE • 1792

- Pension rulings the Secretary of War could revise.
- Not judicial power.

WALLACE • 1933

- A declaratory judgment.
- A real dispute: a case.

PLAUT • 1995

- Congress orders final judgments reopened.
- Not allowed.

A decision someone else can revise is advice, not a judgment.

The second doctrine: standing

Is this plaintiff the proper party to bring this claim?

WHAT

- The proper party.
- Article III standing: Congress can't override it.
- Prudential standing: Congress can.

WHY

- No intermeddlers.
- Concrete facts.
- A plaintiff with a personal stake.
- A limited role for courts.

“An essential and unchanging part of the case-or-controversy requirement.”

Three constitutional requirements

Lujan's “irreducible constitutional minimum.”

1 • INJURY

- Concrete and particularized.
- Actual or imminent.

2 • CAUSATION

- Fairly traceable to the defendant.

3 • REDRESSABILITY

- Likely, not speculative, that a ruling helps.

The plaintiff must prove all three.

Injury: personal, and not someday

My 2020 slides: “Include a plaintiff that uses the damn park!”

LYONS • 1983

- Choked by police once.
- Damages: yes.
- Injunction: no real and immediate threat.

LUJAN • 1992

- Plans to see endangered species “some day.”
- Not imminent.
- Buy the plane ticket first.

Past harm gets damages. An injunction needs a real, imminent threat.

New standing cases

My board: a statute is not an injury, and fear is not either.

SPOKEO • 2016

- A people-search site's mistakes.
- A bare statutory violation is not injury.

TRANSUNION • 2021

- Reports sent to businesses: standing.
- Reports never sent: none.

CLAPPER • 2013

- Fear of surveillance.
- Not “certainly impending.”

vs. 303 CREATIVE

- Plans, plus a credible threat of enforcement.
- Standing.

“No concrete harm, no standing.” — TransUnion

Causation: fairly traceable

When the injury depends on what someone else does.

ALLEN • 1984

- Tax exemptions for segregated private schools.
- Causation “attenuated at best.”

FDA v. ALLIANCE • 2024

- Doctors who don't prescribe the drug.
- An unregulated party: no standing.

DUKE POWER • 1978

- Neighbors of planned nuclear plants.
- No plants without the Act: standing.

The harder it is to trace the harm through third parties, the weaker the standing.

Redressability: will a ruling help?

My 2020 slides: characterization of the injury is key.

REDRESSABLE

- Massachusetts v. EPA.
- A State gets “special solicitude.”
- Slowing the harm is enough.

NOT REDRESSABLE

- Simon: would hospitals change?
- Warth: would housing be built?
- Linda R. S.: prison, not support.

Describe the injury differently, and redressability may change.

Prudential limits

Rules the Court made for itself — so Congress can change them.

THIRD PARTIES

- Generally, assert only your own rights.
- Exceptions: close relationships (doctor, vendor).
- Or the right holder can't sue.

GENERALIZED GRIEVANCES

- No standing just as a taxpayer (Richardson).
- Exception: spending that violates the Establishment Clause (Flast).

A bartender may raise his customers' rights. A taxpayer usually may not raise his own.

The third doctrine: ripeness

Is the case premature? When may a plaintiff sue before enforcement?

ABBOTT LABS • 1967

- Is the issue fit for decision?
- Hardship if review is withheld?

SBA LIST • 2014

- A “credible threat of prosecution”...
- ...suffices before enforcement.

POE • 1961

- A law almost never enforced.
- No real threat: not ripe.

Ripe when the issue is fit for decision and delay would cause hardship.

The fourth doctrine: mootness

The dispute was live when it started. Is it still?

MOOT

- DeFunis: about to graduate.
- Death, settlement, a new law, a changed fact.

NOT MOOT

- Capable of repetition, yet evading review (Moore).
- Voluntary cessation, unless “absolutely clear” (Laidlaw).
- Class actions (Geraghty).

Stopping is not enough. The defendant must show it cannot happen again.

Current case: California v. Trump

Can States sue over an executive order aimed at federal officials?

THE ORDER

- Citizenship lists sent to States.
- Prosecution priorities.
- New ballot-envelope rules.

FIRST CIRCUIT • JULY 25

- The States have standing.
- An injunction for the plaintiff States only.

SUPREME COURT • AUG. 24

- Stay granted.
- An “attenuated chain of inferences.”

Massachusetts v. EPA's “special solicitude” meets Clapper's chain.

For discussion: the drone-delivery rule

A hypothetical. Every doctrine is in play.

THE PLAINTIFFS

1. A homeowner under a planned route.
2. Birdwatchers who hope to visit “some day.”
3. A State worried about crashes.
4. A taxpayer.

QUESTIONS FOR DISCUSSION

1. Who has an injury?
2. Traceable through private operators?
3. Ripe, eighteen months out?
4. Moot, if the agency “pauses” the rule?

Challenging government action: the basics

My board: the first question is whether a fundamental right is infringed.

FUNDAMENTAL RIGHT?

- Yes: Part Two of the course.
- No: ask who acted.

FEDERAL • McCULLOCH

- A legitimate end.
- Within the enumerated powers.
- Rational means.

STATE • RATIONAL BASIS

- A legitimate interest (the police power).
- A rational means–end fit.

Part One asked who may act. Part Two asks what no government may do.

Module 8 on one slide

One question per doctrine.

THE LINE, ONE DOCTRINE AT A TIME

- Advisory opinions: a real dispute, and a decision that sticks.
- Standing: injury, causation, redressability — “no concrete harm, no standing.”
- Prudential limits: your own rights; no generalized grievances.
- Ripeness: fit for decision, and hardship if delayed.
- Mootness: still live — unless it is capable of repetition, yet evading review.

Next — Module 9: Part Two begins.

Next: Module 9 — Introduction to Fundamental Rights; The State Action Doctrine. Readings on the course website.