Special Topics in Federal Jurisdiction: Standing to Sue and Other Justiciability Requirements – Syllabus

Purpose of the Course
The Supreme Court has interpreted Article III of the United States Constitution to impose a number of justiciability requirements that require the federal courts to ask, “Can I hear this case now, with this plaintiff and this defendant?” These doctrines (which include standing, ripeness, mootness, and the political question doctrine) can be threshold jurisdictional requirements or prudential limitations on the exercise of judicial power. The Supreme Court has long stated that the justiciability doctrines play a key role in maintaining the constitutionally required separation of powers. The doctrines can also raise highly technical problems. In this course, we will explore both the technical and the jurisprudential aspects of these doctrines in depth.

This course is also meant to prepare students to participate in the symposium, “The Structure of Standing at 25,” to be held at the Law School on Friday, February 22. Participation in the symposium is mandatory unless I excuse you; class time in this seminar reflects the time you will spend at the symposium, so any student who must miss the symposium will be required to watch the videos from the symposium to make up the class time.

Required Texts
No casebook is required for this course. I will hand out readings weekly.

Reading Assignments
A list of weekly topics (including the citations for some of the articles we will read) is attached. I will be adjusting the reading as the semester goes along to reflect the interests of the class, so I have not fully determined the reading for each week. Our primary texts will be law review articles and book chapters that analyze various justiciability doctrines. You have probably read many of the cited cases in your Constitutional Law and Federal Jurisdiction classes. If you have not read a case upon which an article heavily depends, you should find it on Westlaw or Lexis or in the Library and read it. I provide a list of important cases at the beginning of the topic list.

As we proceed through the semester, you may find it useful to read the sections on justiciability in Wright & Miller, Federal Practice & Procedure, which is available both on reserve in the Library and on Westlaw. You may also find it helpful to refer to a federal courts casebook or hornbook, such as the casebook Hart & Wechsler's Federal Courts, also available in the Library.

Grading
Your grade comprises the following components:

Research paper, as described below 70%
Class participation, as described below 30%
Research Paper

In General

Seventy percent of your grade will come from a substantial research paper with a topic suitable to the seminar’s subject, written solely by you. This paper is intended to satisfy the seminar requirement for graduation. The paper should be at least 6000 words long with appropriate citations in footnotes (do not include your footnotes in your word count).

You should start investigating a suitable topic now, but you need not choose a final topic until after the Symposium on February 22. Before you invest too much time in research, you should chat with me about your topic so that I can confirm that it is suitable. You will turn in a rough draft to me by March 15, so you should confirm your topic with me no later than March 1 (and preferably before) unless you are an extremely fast writer.

You should choose a topic that allows you to make an original argument arising from one or two important themes that arise from the seminar readings, our discussions, and the Symposium. One productive way to find a suitable topic is to look at recent cases in the federal courts that have raised justiciability issues. At least two such cases are currently pending before the Supreme Court, for example, and the U.S. Circuit Courts of Appeal (especially the D.C. Circuit) regularly address these issues.

To write a qualifying paper, you should do extensive research to ensure that you are making an original argument and to support the original argument that you make. Feel free to cite not only cases and law review articles but also legal briefs and position papers, as well as the seminar readings, the symposium papers, and other legal literature that you find in your research.

Please keep in mind the paramount importance of making sure that you properly attribute not only direct quotations but also arguments or facts that you paraphrase from others’ work. As the Honor Code states, plagiarism “is the ‘taking of the literary property of another, passing it off as one’s own without appropriate attribution, and reaping from its use any benefit from an academic institution.’ Malicious or deceitful intent is not required to commit plagiarism. In light of course requirements, plagiarism may include any work submitted to a professor in a course for credit (regardless of whether the paper itself is graded) and may include work submitted as a draft as well as work submitted as a final product. Plagiarism may also occur in work submitted to other students as part of the requirements in a course for credit.”

Because this is a seminar that meets the graduation requirement, you will revise at least two drafts of your paper. The first draft you will submit to me (only me) by Friday, March 15, and you will discuss it with me during the week of March 18. You will then revise your draft and circulate it to me and the other members of the class by the Friday before your chosen discussion day (see Schedule of Assignments and Class Participation requirements below). You will revise your draft based on class discussion and any further research required, and turn in your final draft to me at the end of the exam period.

Grading Criteria

I will grade your paper by considering the following criteria:

- Does the paper reflect substantial original creative thinking and analysis like that usually found in a publishable law review article or comment?
Does the paper reflect thorough and rigorous research of the subject matter, citing and discussing the relevant authorities? Does the paper focus only on relevant issues and authorities, avoiding discussion of irrelevant issues and authorities?

Does the paper thoroughly analyze the issues relevant to the paper’s subject matter? Does the paper advocate a particular position or hypothesis while making sure to analyze reasonable opposing positions or hypotheses?

Does the paper clearly set forth and develop the subject matter of the paper and any proposals or hypotheses? Is the paper written in a clear manner, and are the paper’s conclusions and opinions well-supported by explicit and clear analysis?

Is the paper well-organized, in the format of a law review comment or article, allowing a reader of the paper to understand the subject matter of the paper and the author’s hypotheses and positions? Does the organization facilitate the reader’s understanding of the topic and issues involved? Does the reader have a sense of what the author is trying to accomplish at an early point in paper? Is the background information logically separated from the analysis? Does the paper use proper citation form?

As the Academic Rules state, no more than half the students in a seminar course may receive an A grade.

Schedule of assignments
First draft (hard copy or email) due to Prof. Elliott by 5 p.m. on Friday, March 15th.
Appointment with Prof. Elliott to discuss draft during the week of March 18th.
Revised draft (hard copy or email) due to Prof. Elliott and the class by the appropriate date -
  March 29 for the April 2 discussions
  April 5 for the April 9 discussions
  April 12 for the April 16 discussions (see Class Participation requirements below).
Final paper (hard copy or email) due to Prof. Elliott by 5 p.m. on May 8.

Technical requirements
Draft papers need follow no specific requirements other than to be legible and intelligible. Your final paper should be double-spaced and formatted with one-inch margins in a standard 12-point font such as Times New Roman. Your citations should be in footnotes (not endnotes) and should follow BlueBook format for law review notes.

You should include with your final paper a cover sheet with a signed statement to this effect: "I certify that this paper is solely my own work, that I have complied with the Honor Code in writing it, and that it has X words, according to the Word Count feature of this word processing program," where X is the number of words in your paper as counted by the Word Count feature. Do not include your footnotes in your word count.

Class Participation and Attendance
You will be responsible for two major class presentations, as well as general class participation and attendance.

Your first responsibility occurs early in the semester, as co-leader (with me and one of your
classmates) of the seminar for one class meeting. A sign-up sheet is available on TWEN for this responsibility. You and your co-leader will have lunch with me (my treat) on the day of the seminar (or an earlier day, if Tuesday lunch is not possible) to plan the presentation of the material to the class and the desired progress of class discussion. All of these classes occur prior to the Symposium on February 22. **Ten percent of your grade** will come from your preparation for class on your assigned day (including your preparedness for our lunch before class) and from your leadership of the class on your assigned day.

Your second responsibility is to lead a 25-minute discussion of your research paper for the class near the end of the semester. There is a sign-up sheet on TWEN for this responsibility. Four of you will present per class, on the dates April 2, April 9, and April 16. You will circulate a draft of your paper by the Friday before your assigned class, so that your classmates can read it and prepare for discussion. You should start your time with a five-minute presentation that gives a brief summary of your argument and presents to the class three questions that you desire to discuss to help your editing and revision process. **Ten percent of your grade** will come from your meeting these requirements (circulating your draft in a timely way, and giving a five-minute presentation at the beginning of your time) and your facilitating the discussion of your paper. **A further ten percent of your grade** will be based on your participation in classes when you are not the leader of the discussion or not presenting your paper. Your participation should demonstrate that you have read the required material thoughtfully; that you have related that material to earlier reading from this class, to reading you are doing for your research paper, and to knowledge you possess from other classes; and that you are fully engaged in the class discussion.

Attendance at the seminar is mandatory for all class meetings; because we meet only once a week, no absence for a reason other than a dire illness or death in your family or the like will be excused. You must attend the Symposium on February 22 unless I excuse you for a reason such as a dire illness or death in your family or the like. There is no class on February 26, March 5, March 12, or March 19, to make up for the time you devote to the symposium. (You will meet with me during the week of March 19 regarding your paper, but we will not have class.)

**Course Webpage**

The course webpage is hosted by The West Education Network (TWEN). There you will find this syllabus and other handouts, discussion forums, sign-up sheets for your class participation responsibilities, announcements, and links to supplemental material. I will also use the email function of the website to contact the members of the class periodically. Everyone should sign up at [http://lawschool.westlaw.com/](http://lawschool.westlaw.com/) (follow the link to TWEN, provide any information requested, click “Drop/Add,” and add this class). **You must supply an email address you actually use when you sign up for the TWEN site. Do not use your UA email address if you do not check it at least daily.**

**Course Policies**

*Office hours.* My office hours are Tuesdays from 1:30-3. I am also available for other appointment times: simply email me at helliott@law.ua.edu to set up a mutually convenient time. Please note that I am a SafeZone Ally, one of many resource people on campus who provide an
open door for individuals seeking information or assistance regarding sexual orientation, gender identity, harassment, and/or discrimination. Feel free to talk to me at any time if you or someone you know has questions or concerns.

**Disability policy:** If you have a disability which requires accommodation (for classes, exams, or both), please contact the Dean of Students/Academic Services.

**Nondiscrimination Policy:** The University of Alabama is committed to providing an inclusive environment that is free from harassment or discrimination based on race, genetic information, color, religion, ethnicity, national origin, sex, sexual orientation, gender expression, age, ability, or veteran status. The University of Alabama prohibits any verbal or physical conduct that threatens or endangers the health or safety of any individual or group, including physical abuse, verbal abuse, threats, stalking, intimidation, harassment, sexual misconduct, coercion, and/or other communication or conduct that creates a hostile living or learning environment.

**Electronic devices:** Cellphones, PDAs, and similar devices must be off during class. You may not send or receive calls, text messages, instant messages, or the like during class. Someone whose use of such an electronic device interferes with the classroom learning experience may be asked to leave class and will be considered absent for that day.

Laptops are permitted in class only for taking notes and for viewing web pages or other documents that I have asked you to pull up. You may not use your laptop for any other purpose during class. Someone whose laptop use interferes with the classroom learning experience may be asked to leave class and will be considered absent for that day. Laptops must be set up before class starts.

**Recording devices:** The use of recording devices in class is prohibited without my prior written permission. I give permission only for disability-related purposes or for unavoidable absences; you may not record class simply because you believe it will aid your studying.

**The Honor Code**

The Honor Code governs your conduct in this class, as it does any other activity in which you participate at the Law School. “The goal of the Honor Code is to ensure that no Student gains an unfair advantage in Law School over another Student and to promote those ideals of honor and integrity that are germane to the practice of law. Pursuant to this goal, all students while enrolled at the University of Alabama School of Law shall refrain from intentionally lying, cheating, stealing, or tolerating such action by another and shall refrain from other reprehensible acts.”
Special Topics in Federal Jurisdiction: Standing to Sue and Other Justiciability Requirements – Outline of Weekly Topics

Cases you should familiarize yourself with
You need read only the justiciability sections, but make sure to read majority, plurality, concurring, and dissenting opinions on justiciability:

- Massachusetts v. EPA, 549 U.S. 497 (2007) (the D.C. Circuit opinions are worth reading as well)
- Bennett v. Spear, 520 U.S. 154 (1997)
- Warth v. Seldin, 422 U.S. 490 (1975)
- Sierra Club v. Morton, 405 U.S. 727 (1972)

Weekly topics

January 8 – Introduction and Overview of Standing to Sue and Other Justiciability Requirements

January 15 – History of the Doctrines

January 22 – Special Issues in Standing Doctrine (Informational Standing, Procedural Standing, the Zone of Interests)


January 29– Standing and Its Critics


February 5– Defenses of Standing and Other Justiciability Doctrines


February 12 – Other Justiciability Issues


February 19 – Are There Any Cures?
