FEDERAL COURTS IN THE 21ST CENTURY: CASES AND MATERIALS

Fourth Edition

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Earlier, in *Maldonado v. Fasano*, 67 F. Supp. 2d 1170 (S.D. Cal. 1999), the district court held it had no jurisdiction to grant habeas corpus relief with regard to a pending deportation proceeding, because such jurisdiction had been specifically abrogated by § 242(b)(9) of the Immigration and Naturalization Act, as amended, which consolidates all Article III review power in the courts of appeals, and permits Article III review only of final orders of deportation. See also *Morel v. Immigration and Naturalization Service*, 144 F.3d 248 (3d Cir. 1998) (writ of mandamus with regard to interim relief denied).


3. Limits on Habeas Corpus, Prison-Condition Litigation, and Immigrant Cases. The issues discussed in this chapter have been in play with regard to a number of controversial pieces of legislation passed by Congress dealing with curbs on habeas corpus, prisoner-initiated litigation over prison conditions, and immigrant-initiated litigation. While ultimate judicial review in an Article III court is generally not eliminated, access to the courts is limited by procedural barriers or exhaustion requirements.

See the discussion in Chapter 17 on Habeas Corpus for State Prisoners and discussion of military commissions in Chapter 18. See also the Supreme Court’s decision in *Reno v. American-Arab Anti-Discrimination Committee* and other immigration cases discussed in Note 2 supra.

With regard to litigation challenging prison conditions under the Civil Rights Act, a number of provisions have restricted the right to bring such suits. Thus, 42 U.S.C. § 1997e(a) requires the exhaustion of all available administrative remedies before a civil-rights action can be filed. The Supreme Court has held that an administrative remedy that cannot give the relief that the prisoner seeks must be exhausted, as long as the grievance tribunal can take some responsive action. *Booth v. Churner*, 532 U.S. 731 (2001). In *Porter v. Nussle*, 534 U.S. 516 (2002), the Court held that the exhaustion requirement applied even to a charge of a single act of misconduct on the part of prison officials; the term “prison conditions” encompasses even such singular acts. And in *Woodford v. Ngo*, 548 U.S. 81 (2006), the Court held that when the prisoner’s grievance was dismissed because it was not filed in a timely manner under state regulations, he had not “exhausted” his available administrative remedies merely because he had no further remedies left. Most recently, though, the Court unanimously held that failure to exhaust in a PLRA action is an affirmative defense that must be raised by the defendant. Further, the exhaustion requirement can be satisfied even if not all the defendants named in the court complaint had been parties to the administrative proceeding; and, contrary to practice in habeas corpus actions, see infra § 17.04[B], failure to exhaust as to some claims does not require dismissal of the entire action. *Jones v. Bock*, 549 U.S. 199 (2007). The Act also imposes limits on remedies available in such suits, as by requiring “a prior showing of physical injury” to bring an action “for mental or
§4.5 Limits on Federal Court Jurisdiction

§4.5 Legislative Courts for Private Law and Criminal Matters

§4.5.1 Introduction: Inherently judicial matters

Overview

The Supreme Court held that certain matters were "inherently judicial" and hence must be decided by an Article III court; that is, they have to be decided by a judge with life tenure whose salary could not be decreased. Federal criminal prosecutions and civil cases between private parties were considered to be inherently judicial matters. However, the Supreme Court ruled that even in these areas legislative courts could be used as adjuncts to Article III courts. These decisions, authorizing legislative courts for "inherently judicial" matters, are reviewed in §4.5.2.

In 1982, in the extremely important decision of *Northern Pipeline Construction Co. v. Marathon Pipe Line Co.*, the Supreme Court declared the bankruptcy courts unconstitutional because they were legislative courts entrusted with deciding private law matters.¹ This case is discussed in §4.5.3.

In two subsequent decisions—*Thomas v. Union Carbide Agricultural Products Co.*² and *Commodity Futures Trading Commission v. Schor*³—the Court upheld the use of legislative courts to decide particular private law matters. These cases are discussed in §4.5.4. Finally, and most recently, in 2011, the Court decided *Stern v. Marshall* and held that a bankruptcy court cannot issue a final judgment as to a state law counterclaim.⁴

In summary, the analysis that follows reveals that the Supreme Court has approved the use of legislative courts for private and criminal law matters where the tribunal is an adjunct to an Article III court, where the matter involves private litigation that is closely related to a public regulatory scheme, or, generally, where the benefits of using a legislative court exceed the disadvantages.⁵

However, there is an underlying difference in approach in these cases that makes the law uncertain and that makes it very difficult to predict in any particular case whether the use of a legislative court for a private law matter is unconstitutional. In *Northern Pipeline*,

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¹458 U.S. 50.
⁵For a criticism of this balancing test and an argument that the Constitution broadly authorizes the creation of Article I courts, see Craig A. Stern, What's a Constitution Among Friends: Unbalancing Article III, 146 U. Pa. L. Rev. 1043 (1998).
Justiciability

§2.3

a government expenditure as violating the establishment clause.206 After Valley Forge, Hein, and Winn, taxpayer standing to enforce the establishment clause is significantly limited. Flast has not been overruled, but it would appear that it is confined to allowing taxpayers to challenge government expenditures pursuant to statutes as violating the establishment clause.207

Generalized grievance as a constitutional bar

In Warth v. Seldin, the Supreme Court declared that the bar on citizen and taxpayer suits was “prudential,” not constitutional.208 The Court apparently believed that citizens and taxpayers are hurt when the government violates the law, but that it was prudent for the federal courts to refuse to hear such cases. However, in Lujan v. Defenders of Wildlife, the Court treated the bar on citizen standing as constitutional.209 The Endangered Species Act provided that “any person may commence a civil suit on his own behalf (A) to enjoin any person, including the United States and any other governmental instrumentality or agency . . . who is alleged to be in violation of any provision of this chapter.”210 The plaintiffs invoked this authority as the basis for a suit challenging a federal regulation providing that the United States would not comply with the act outside the country except on the high seas.

The Court, in an opinion by Justice Scalia, held that the plaintiffs were asserting a generalized grievance and that Congress by statute cannot authorize standing in such an instance. The prohibition against citizen standing was characterized as being derived from Article III and therefore not susceptible to a statutory override.

206In DaimlerChrysler Corp. v. Cuno, 547 U.S. 332 (2006), the Court rejected the argument that Flast should be extended to allow taxpayer standing to challenge government actions that allegedly violate the dormant commerce clause. The Court thus dismissed a challenge to a state program to give tax benefits to businesses relocating from out of state.

207This allows challenges to state and local expenditures as well as those by the federal government. See Grand Rapids School Dist. v. Ball, 473 U.S. 273 (1985) (allowing a challenge to local expenditures to parochial schools as violating the establishment clause and referring to “the numerous cases in which we have adjudicated Establishment Clause challenges by state taxpayers to programs for aiding nonpublic schools.”).

208422 U.S. at 490. For a discussion of whether the generalized grievance bar should be regarded as constitutional or prudential, see Craig A. Stern, Another Sign from Hein: Does the Generalized Grievance Fail a Constitutional or a Prudential Test of Standing to Sue?, 12 Lewis & Clark L. Rev. 1169 (2008).


2116 U.S.C. §1540(g).