

FEDERAL COURTS

SYLLABUS

Fall 2006

Professor Jake Sullivan

9:00-10:55 a.m. Thursdays – Room 238

Telephone: (612) 766-7886

Email: ajsullivan@faegre.com

COURSE INFORMATION AND POLICIES

Overview of Course: Federal courts are courts of limited jurisdiction. The shape of those limits is constantly changing, as lawyers and citizens continue to debate a series of fundamental questions about our system of government. Among them are:

- *Separation of powers* – To what extent, and in what ways, should the federal courts serve as a check on the powers of Congress and the Executive? Likewise, to what extent, and in what ways, should Congress regulate the power of the federal courts?
- *Federalism* – Are federal courts more appropriate forums than state courts for resolving constitutional questions? How much deference should federal courts give to state court determinations? What function should the federal courts play in resolving citizen challenges to state action and inaction?
- *Constitutional rights* – What is the proper role of the federal courts in protecting civil rights and liberties? *Who* can bring a federal lawsuit, and under *what circumstances*?

This course is devoted to exploring these questions, but not merely in the abstract. We will review individual cases that raise them, lines of doctrine that frame them, and concrete current events and trends that will reshape them. And we will examine how the work of the federal courts unfolds in the real world. The course will consist of (a) classroom discussion of cases, notes, and problems; (b) mock oral arguments on relevant issues; and (c) a writing assignment that will give you an opportunity to apply what you are learning.

Attendance Policy: There are only thirteen class meetings, so class attendance is important. For most of the classes, I will assign students to panels so that they can know in advance that they will be asked to toss in their two cents. I do not expect the panelists to be experts, just prepared and engaged. I also expect the non-panelists to help the panelists out. If you cannot make class on a day you are assigned to a panel, it is your responsibility to switch with another student. Otherwise, I have no formal attendance policy.

Course Grade: Grades in this course will be based on four things: (1) participation in a brief, informal, in-class oral argument; (2) a short writing assignment (a mock memo to a judge recommending whether to accept or deny jurisdiction over a lawsuit); (3) an open-book, take-home final (details on the first day of class); and (4) class participation. There is no curve.

Assignments: The attached tentative syllabus lists the topics I expect to cover in the order in which we will cover them. I have also included the reading assignments for the first five classes. On Fridays of each week, I will send an e-mail with specific daily assignments for the following week's classes. I will also send a list of questions that will help frame the discussion. (The syllabus could very well change as the semester goes along.)

Information: I am still working out office hours. I will have more information on the first day of class. In the meantime, I can promise that I am readily available to meet before or after class or any other time by appointment. You can call or email me day or night – I'm happy to talk about the class, job searches, career choices, the Twins, or anything else. You can reach me by phone at either (612) 766 7886 or (612) 220 6545 and by email at jjsullivan@faegre.com.

Texts:

LOW & JEFFRIES, FEDERAL COURTS AND THE LAW OF FEDERAL-STATE RELATIONS (5th Ed. 2004) (“Textbook”), and 2006 SUPPLEMENT (“Supplement”)

CHEMERINSKY, FEDERAL JURISDICTION (4th Ed.) (“Chemerinsky”) (strongly recommended)

Other materials posted on Blackboard (typically cases for which I will provide a website link)

Topics and Assignments

Week One: The Place of the Federal Courts in Our Constitutional Structure

History, constitutional foundation, and themes of the course

Textbook, Appendix A, Article II, Art. I § 8, § 9, Art. VI cl. 2-3, Amendments X, XI, XIII, XIV, XV

Marbury v. Madison (Textbook, Appendix C)

H.R. 3073, Congressional Accountability for Judicial Activism Act of 2005 (*Blackboard*)
Chemerinsky, 20-40

Week Two: Who Has Standing to Sue in the Federal Courts?

The constitutional baseline, Congress' power to confer standing, third-party standing, and prudential standing

Textbook, 355-379, 381-88, 388-408

ACLU v. NSA, Sections I & III (*Blackboard*)

Week Three: Ripeness, Mootness, and the Political Question Doctrine

When is a case “ripe” for judicial review? When has it become moot such that no further review is required? When should the courts decline to hear a lawsuit because it raises questions that can only be decided through the political process?

Textbook, 426-39, 440-59, 459-74

Evans v. Stephens (Stevens., J., respecting the denial of certiorari)

Week Four: Congress's Power to Limit or Override the Jurisdiction of the Federal Courts

Can Congress remove from the federal courts the power to decide certain types of cases? And when does/can Congress "re-decide" a case that a court has already decided?

Textbook, 235-262, 329-354

An Act for the Relief of the Parents of Theresa Marie Schiavo (*Blackboard*)

Week Five: Congress's Power to Expand Federal Jurisdiction

What happens when Congressional power runs up against the boundaries of Article III? What happens when Congress tries to create Non-Article III courts?

Textbook, 262-276, 286-313

Supp. 24-25

Week Six: Review of State Court Decisions by the Supreme Court

The establishment of jurisdiction and the relation between state and federal law

***** Writing assignment handed out**

Week Seven: "Arising Under" Jurisdiction and Federal Common Law

What does "arising under" mean? What is a federal question? When is the creation of federal common law appropriate?

Week Eight: The Eleventh Amendment and State Sovereign Immunity

The origins and meaning(s) of the Eleventh Amendment; the complicated world of lawsuits against state officers

Week Nine: Congress's Power to Abrogate State Sovereign Immunity

How has the Supreme Court responded to efforts by Congress to permit citizen suits against states under the 14th Amendment and Article I? What about state sovereign immunity in state courts?

Week Ten: Judicial Doctrines of Equity, Comity, and Federalism (Abstention)

What is the deal with these judicially developed limitations on federal court jurisdiction?

Week Eleven: Habeas Corpus – Federal Court Review of State Convictions

Can state prisoners ask federal courts to fix mistakes made by the state courts that convicted them? When? How?

Week Twelve: Habeas Corpus – Federal Court Review of Executive Detention

Historical background and executive detention in the war on terrorism

Week Thirteen: Civil Rights Actions under 42 U.S.C. § 1983

What is the role of, and the restrictions on, federal courts in applying America's most expansive civil rights statute?