Justiciability: Barriers to Administrative and Judicial Review

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Overview

- Standing
- Mootness
- Ripeness
Standing

- Does the party bringing suit have a concrete stake in the outcome for a true case or controversy to exist
- Focuses judicial resources
- Prevents judiciary from interfering with decisions of political branches
Standing

- Three part test
  - Injury in fact that is “concrete and particularized” and “actual or imminent, not conjectural or hypothetical”
  - Injury is fairly traceable to the challenged conduct of the defendant
  - Injury is likely to be redressed by a favorable judicial decision
- Organizations can bring suit on behalf of their members
  - Members must have standing in their own right, interests are germane to organization’s purpose, and individual members are not required to participate
Standing on one claim is standing for all?

- NEPA challenges of government analysis of climate change impacts
- *CBD v. DOI*, 563 F.3d 466 (D.C. Cir. 2009) – no standing for climate change impacts alone
- *WildEarth Guardians v. Jewell*, 738 F.3d 298 (D.C. Cir. 2013) – for NEPA challenges (and procedural injury), if standing can be established for one claim then the claims related to climate change impacts can also proceed
  - Procedural harm must be tied to a concrete and particularized substantive injury
  - Standing sufficient to challenge analysis of local environmental impacts
  - No standing based on effects of climate change, but court could hear climate change claims based on local impacts injury
Standing

Standing for climate change claims when no local claims are brought?

- *WildEarth Guardians v. BLM* (No. 15-8109 10th Cir.)

  - Only climate change claims are before the Tenth Circuit
  - Standing rests on local environmental impacts
  - Looking to stretch D.C. Circuit rationale
  - Is there concrete and particularized injury resulting from alleged failure to consider climate change impacts
  - Is plaintiffs’ injury detached or connected to the procedural injury complained of
Standing

- *US Forest Service v. Cottonwood Environmental Law Center* (No. 15-1387, U.S. Sup. Ct., cert. petition pending)
  - Ninth Circuit held that Plaintiffs had standing to bring ESA consultation claims against programmatic action that authorized no site-specific project and no concrete effects on Plaintiffs
  - Seeks to apply *Summers* decision and correct the “Ninth Circuit’s continued adherence to its flawed approach to standing and ripeness”
  - US asserts that there must be a linkage between the project and the claimed injury, and a concrete and particular project must be connected to the procedural loss
  - Conflicts with Sixth, Seventh, and D.C. Circuits’ application of *Summers*
Standing

- Standing before the Interior Board of Land Appeals (IBLA)
  - Standing test tracks Article III, but is derived from federal regulations
    - 43 C.F.R. 4.410(a)
  - No clean distinction between standing and ripeness – ripeness usually subsumed in standing inquiry
  - *Board of County Commissioners of Pitkin County, Colorado*, 186 IBLA 288 (2015) – challenge to Suspensions of Operations for oil and gas leased parcels
    - IBLA rejected all theories of standing:
      1. (i) no real and immediate injuries from lease suspensions;
      2. (ii) no injury from diversion of organizational resources; and
      3. (iii) no injury from loss of sales tax revenue
Mootness

- First cousin of standing – doctrine of standing set in a time frame
- A case is moot if a change in circumstances means that a judicial ruling will no longer affects the rights of the litigant
- A case is not moot as long as the parties have a concrete interest, however small, in the outcome of the litigation
- Not mooted by voluntary cessation of unlawful conduct
- Moot case can still be heard if challenged action is capable of repetition yet is likely to evade judicial review
Mootness

Recent example in litigation over EPA’s MATS standards

- D.C. Circuit upheld MATS; Supreme Court reversed
- Remand without vacatur by D.C. Circuit, subsequent challenge to Sup. Ct., and EPA submitted supplemental cost analysis
- EPA argued that cert petition was mooted by cost analysis; Petitioners argued capable of repetition
- Sup. Ct. declined to hear the case
Ripeness

- Is judicial intervention timely?
- Prevents courts from getting involved in abstract disagreements and protect agencies from judicial interference
- Two part test: (i) fitness of the issues for judicial decision; and (ii) hardship to the parties of withholding court consideration
- Fitness test considers whether issue is purely legal, whether it would benefit from a more concrete setting, and whether the agency action is final
- Hardship test focuses on whether postponing judicial review would impose an undue burden on the parties or would benefit the court
- Hardship test is satisfied in an agency action has a direct, coercive effect on a party
Ripeness

- Recent example in *Hawkes* case before Supreme Court – 136 S. Ct. 1807
  - Court analyzed finality only, but ripeness was fully briefed by the parties
- Implicates scope of hardship requirement
  - Whether an agency action that compels a certain response, which the party would not take but for the agency action, satisfies the hardship requirement
- The Corps offered an overly formalistic approach to ripeness
- *Hawkes* is in tension with prior ripeness decisions in *National Park Hospitality Ass’n* and *Toilet Goods Ass’n*
Questions?

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