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PRINCIPLES OF

Federal Jurisdiction

SECOND EDITION

JAMES E. PFANDER

Article III.

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PRINCIPLES OF FEDERAL JURISDICTION

Second Edition

By

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Preface

This book provides an introduction to the principles of federal jurisdiction, aimed primarily at law students in advanced courses. It seeks to convey two related bodies of knowledge. First, the book offers students an overview of certain canonical features of jurisdictional law. Most courses in federal jurisdiction include discussions of *Marbury v. Madison* (1803), *Erie R. Co. v. Tompkins* (1938), the Madisonian Compromise, the abstention doctrines, and the jurisdictional rules of standing, ripeness, and mootness. Knowledge of these rules, which structure (and sometimes frustrate) an individual's attempt to invoke the power of federal courts, will serve students well on bar exams and in practice. Such knowledge will also enable the student to evaluate the impact of changes in the rules. If Congress or the Supreme Court curtails access to federal trial courts, for example, students should know that the decision may put more pressure on the Court's appellate docket as the only federal forum in which litigants can seek review of state court decisions.

Second, and more importantly, the book will encourage students to make sophisticated arguments about the evolution of jurisdictional law. Law school graduates tend to think that the rules of law in their casebooks will remain fixed for the foreseeable future. But dramatic changes in law can occur in a very short time, occasioned by the government's responses to world events and subtle changes in legal culture. If the Bush Administration's response to terrorist attacks illustrates the impact of world events, shifting attitudes toward diversity jurisdiction provide a serviceable example of cultural change. A generation ago, many saw diversity jurisdiction as a waste of federal judicial resources, and influential organizations such as the American Law Institute (ALI), the Judicial Conference of the United States, and the Federal Courts Study Committee called for its legislative repeal. See ALI (1969). Today, diversity jurisdiction has enjoyed something of a rebirth. Not only has Congress redrawn jurisdictional boundaries to expand federal diversity jurisdiction over class actions, the federal courts have relaxed some doctrines to give parties easier access to federal diversity dockets.

This book attempts to convey both the canonical doctrines and the argumentative possibilities that together make up the princi-

ples of federal jurisdiction. In addition to providing background information on the leading doctrines, the book will set out the principles articulated in the cases and the impact those principles have had on the shape of jurisdictional law. By necessity in a book of relatively compact size, the discussion will focus on the field's leading cases and will omit many issues of detail that one can readily find in more encyclopedic treatises. Decisions of the Supreme Court provide the foundation for much of the discussion, but the book also draws on the work of scholars to probe judicial pronouncements. For simplicity, I have cited judicial decisions by name, year of decision, and court, if not the Supreme Court. I have cited scholarly authorities by referring to the author's last name and the year of publication. More complete citations appear in tables at the back of the book.

A word about my sources, and debts of gratitude. Like Justice Ginsburg, I am a devoted fan of the Hart & Wechsler casebook, both as a teaching tool and as a scholarly reference. I have relied on it extensively in framing and thinking through the problems addressed in this book, and wish to acknowledge my debt to its current authors, Dick Fallon, John Manning, Dan Meltzer, and David Shapiro. My indebtedness also runs to the authors of the many other fine casebooks in the field; I have often turned to them to challenge my thinking and deepen my understanding. Finally, let me mention my hope that the field's senior scholars will continue to review and criticize the contributions of new scholars. The practice sets a praiseworthy standard of unselfish engagement and helps to sustain the tradition of excellence that characterizes scholarship on the law of federal jurisdiction.

Special thanks to Akhil Amar, Willy Fletcher, Vicki Jackson, John Jeffries, Henry Monaghan, Marty Redish, Judith Resnik, Suzanna Sherry and William Van Alstyne for words of encouragement, to Eddie Hartnett and Bob Pushaw for unstinting collegiality, and to Jane Brock for expert secretarial help. Thanks most of all to my family for maintaining an attitude of bemused toleration.

JIM PFANDER

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Chapter One

THE ARCHITECTURE OF ARTICLE III

1.1 Introduction

To a degree some may find surprising, the text, history, and structure of Article III continue to play an important role in arguments about the scope of federal jurisdiction and the nature of judicial authority. Justice Felix Frankfurter explained the instinct behind this focus on text, history, and structure more than half a century ago: he characterized the words of Article III as technically framed to establish clear limits on the federal judicial power and contrasted such technical precision with the Constitution's more generalized references to liberty, property, and due process of law. See *National Mutual Ins. v. Tidewater Transfer Co.* (1949) (dissenting opinion). Although many observers share Frankfurter's view of the comparative specificity of Article III, the sheer number of competing accounts of the federal judicial power would seem to belie any claim of technical precision and clarity. See Brest (1980). Disputes over Congress's power to strip the federal courts of jurisdiction feature plausible but quite different accounts of the text of Article III. As with many interpretive tasks, then, the interpretation of Article III often begins, but rarely ends, with the text and history of the judicial article. This chapter introduces the text and the way it structures current thinking about federal jurisdiction.

1.2 The Vesting Clause

Article III of the Constitution provides the framework of the federal judicial system (and influences the organizational structure of this book). The first section of Article III declares that the "judicial Power" shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. Known as the vesting clause, this richly evocative provision performs a wide range of functions. Perhaps most importantly, the vesting clause establishes the federal judiciary as one of three independent departments of the federal government with a special set of powers all its own. The judicial power differs from the legislative and executive power that Articles I and II vest in the Congress and President, respectively. The parallel vesting of three