



# Mootness: An Explanation of the Justiciability Doctrine

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## Summary

A case pending before a federal court may at some point in the litigation process lose an element of justiciability and become “moot.” Mootness may occur when a controversy initially existing at the time the lawsuit was filed is no longer “live” due to a change in the law or in the status of the parties involved, or due to an act of one of the parties that dissolves the dispute. When a federal court deems a case to be moot, the court no longer has the power to entertain the legal claims and must dismiss the complaint. However, the U.S. Supreme Court over time has developed several exceptions to the mootness doctrine. This report provides a general overview of the doctrine of “mootness,” as the principle is understood and used by federal courts to decide whether to dismiss certain actions for lack of jurisdiction.

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## Introduction

### The Justiciability Doctrines

Under Article III of the U.S. Constitution, the jurisdiction of federal courts is limited to actual, ongoing cases and controversies.<sup>1</sup> From this constitutional requirement comes several “justiciability” doctrines that may be invoked in federal court actions that could prevent plaintiffs from maintaining a legal claim against defendants.<sup>2</sup> The four justiciability doctrines are standing, ripeness, political question, and mootness. These doctrines will render a controversy “nonjusticiable” if a court decides that any one of them applies.

*Standing* addresses whether the plaintiff is the proper party to assert a claim in federal court.<sup>3</sup> *Ripeness* considers whether a party has brought an action too early for adjudication.<sup>4</sup> The political question doctrine makes nonjusticiable controversies that involve an issue constitutionally committed to the political branches of government.<sup>5</sup>

There are two types of mootness: Article III mootness and prudential mootness.<sup>6</sup> As the name implies, the former is derived from the constitutional requirement that judicial power be exercised only in “cases” or “controversies.”<sup>7</sup> The latter concerns a federal court’s discretion to withhold

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<sup>1</sup> U.S. CONST. art. III, § 2, cl. 1 (“The Judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction; to Controversies to which the United States shall be a Party;—to Controversies between two or more States; between a State and Citizens of another State; between Citizens of different States,—between Citizens of the same State claiming Land under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.”).

<sup>2</sup> Justiciability “is the term of art employed to give expression to [the] limitation placed upon federal courts by the case-and-controversy doctrine.” *Flast v. Cohen*, 392 U.S. 83, 95 (1968). Whether a legal claim is justiciable is, in essence, asking “whether it is a claim that may be resolved by the courts.” *Nixon v. United States*, 506 U.S. 224, 226 (1993).

<sup>3</sup> Standing has three components: injury in fact, causation, and redressability. First, the plaintiff must allege (and prove) an “injury in fact”—a concrete harm that has been or imminently will be suffered by him or her. Second, there must be causation—a connection between the plaintiff’s injury and the complained-of conduct of the defendant. And third, there must be redressability—a likelihood that the requested judicial relief will redress the injury. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992).

<sup>4</sup> An example of an unripe case is when a federal court is asked to render a declaratory judgment that a statute or regulation is invalid or unconstitutional, yet it is unlikely that the plaintiff will suffer a hardship without pre-enforcement review of that law.

<sup>5</sup> *Baker v. Carr*, 369 U.S. 186, 217 (1962) (“Prominent on the surface of any case held to involve a political question is found a textually demonstrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially discoverable and manageable standards for resolving it; or the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; or the impossibility of a court’s undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or an unusual need for unquestioning adherence to a political decision already made; or the potentiality of embarrassment from multifarious pronouncements by various departments on one question.”).

<sup>6</sup> *Ali v. Cangemi*, 419 F.3d 722, 723 (8<sup>th</sup> Cir. 2005).

<sup>7</sup> *Liner v. Jafco*, 375 U.S. 301, 306 n. 3 (1964). For an argument that the mootness doctrine should not be constitutionally based, see Evan Tsen Lee, *Deconstitutionalizing Justiciability: The Example of Mootness*, 105 HARV. L. REV. 605 (1992). Former Chief Justice William Rehnquist asserted that the mootness doctrine is not constitutionally based, or not sufficiently based only on Article III, such that the Supreme Court should not dismiss cases that have become moot after the Court has taken them for review. *Honig v. Doe*, 484 U.S. 305, 329 (1988) (Rehnquist, C.J., concurring). Justice Antonin Scalia, however, rejected that view in a dissent in that case, emphasizing that the mootness doctrine has “deep roots in the common-law understanding, and hence the constitutional understanding, of what makes (continued...)”

use of judicial power in suits that—while not actually moot—should be treated as moot for “prudential” reasons.

### **Article III Mootness**

Usually, a case or controversy must exist throughout all stages of federal judicial proceedings, and not just when the lawsuit is filed or when review is granted by an appellate court.<sup>8</sup> The dispute must concern “live” issues, and generally, the plaintiffs must have a personal interest in the outcome of the case.<sup>9</sup> The Supreme Court has described mootness as follows:

The “personal stake” aspect of mootness doctrine ... serves primarily the purpose of assuring that federal courts are presented with disputes they are capable of resolving. One commentator has defined mootness as “the doctrine of standing set in a time frame: The requisite personal interest that must exist at the commencement of the litigation (standing) must continue throughout its existence (mootness).”<sup>10</sup>

When a legal claim becomes moot while awaiting appellate review, the established practice is for the federal appeals court to reverse or vacate the judgment below and to remand the case to the district court with an instruction to dismiss the action.<sup>11</sup> That consequence is because a moot case does not qualify as a “case or controversy” under Article III; due to the lack of jurisdiction, federal courts have no power to consider the merits of a constitutionally moot case.<sup>12</sup>

Cases may be rendered moot because of a change in the status of the parties or in the law, or because of an act of one of the parties that dissolves the controversy. The following paragraphs provide examples of these scenarios.

#### ***Change in the Status of the Parties***

When a white law school applicant challenged the constitutionality of a public law school’s affirmative action admissions policy, he was admitted to the school pursuant to a trial court ruling that found in his favor. During his second year of law school, the state’s supreme court reversed the lower court’s decision. By the time the Supreme Court granted certiorari to hear the case, the student was in his final school term. The Court dismissed the case as moot because “the petitioner will complete his law school studies at the end of the term for which he has now registered regardless of any decision this Court might reach on the merits of this litigation....”<sup>13</sup>

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(...continued)

a matter appropriate for judicial disposition.” *Honig*, 484 U.S. at 339 (Scalia, J., dissenting).

<sup>8</sup> *Lewis v. Continental Bank Corp.*, 494 U.S. 472, 477 (1990).

<sup>9</sup> *Id.*

<sup>10</sup> *United States Parole Comm’n v. Geraghty*, 445 U.S. 388, 397 (1980), quoting Henry P. Monaghan, *Constitutional Adjudication: The Who and When*, 82 *YALE L. J.* 1363, 1384 (1973).

<sup>11</sup> *Arizonans for Official English v. Arizona*, 520 U.S. 43, 71 (1997), quoting *United States v. Munsingwear, Inc.*, 340 U.S. 36, 39 (1950).

<sup>12</sup> *Powell v. McCormack*, 395 U.S. 486, 496 n.7 (1969).

<sup>13</sup> *De Funis v. Odegaard*, 416 U.S. 312, 319 (1974).

### ***Change in the Law***

A lawsuit was filed claiming that the suspension and termination of disability benefit payments under the Social Security Act violated the procedural due process rights of the recipients. Before oral argument before the Supreme Court, the Secretary of Health, Education, and Welfare adopted new regulations governing the procedures to be followed by the Social Security Administration in determining whether to suspend or terminate disability benefits. In light of this development, the Court held “that the appropriate course is to withhold judicial action pending reprocessing, under the new regulations, of the determinations here in dispute. If that process results in a determination of entitlement to disability benefits, there will be no need to consider the constitutional claim that claimants are entitled to an opportunity to make an oral presentation.”<sup>14</sup>

### ***An Act That Dissolves the Controversy***

A prison inmate was transferred by corrections authorities, without notice or an opportunity for a hearing, from a medium security prison to a maximum security prison. The inmate filed a lawsuit alleging a violation of his due process rights under the Fourteenth Amendment of the U.S. Constitution; however, while his appeal was pending, he was transferred twice, first back to the medium security facility and thereafter to a minimum security institution. The Supreme Court held that the suit no longer presented a case or controversy, and thus dismissed the case as moot.<sup>15</sup>

### **Prudential Mootness**

Equitable, or prudential mootness, has been referred to as the “cousin of the mootness doctrine” and described as

relating to the court’s discretion in matters of remedy and judicial administration. Unlike Article III mootness, [it] address[es] not the power to grant relief but the court’s discretion in the exercise of that power. In some circumstances, a controversy, not actually moot, is so attenuated that considerations of prudence and comity for coordinate branches of government counsel the court to stay its hand, and to withhold relief it has the power to grant.<sup>16</sup>

Thus, while a case may not be moot for failure to meet Article III’s requirements, a court may nevertheless “treat [the case] as moot for prudential reasons” and decline to exercise judicial power in the case.<sup>17</sup>

The doctrine of prudential mootness is often applied in cases where the federal court declines to grant the plaintiff’s request for declaratory judgment or injunctive relief because the defendant “has already changed or is in the process of changing its policies or where it appears that any repeat of the actions in question is otherwise highly unlikely.”<sup>18</sup> The Supreme Court has explained

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<sup>14</sup> Richardson v. Wright, 405 U.S. 208, 209 (1972).

<sup>15</sup> Preiser v. Newkirk, 422 U.S. 395 (1975).

<sup>16</sup> Chamber of Commerce v. U.S. Dep’t of Energy, 627 F.2d 289, 291 (D.C. Cir. 1980).

<sup>17</sup> United States v. (Under Seal), 757 F.2d 600, 603 (4<sup>th</sup> Cir. 1985). These prudential reasons “have to do both with [a court’s] inability to give an effective remedy under the circumstances now developed and with the imprudence of deciding on the merits a difficult and sensitive constitutional issue whose essence has been at least substantially altered by supervening events; which is not likely to recur in its original form in respect of” the parties involved. *Id.*

<sup>18</sup> Building & Constr. Dep’t v. Rockwell Int’l Corp., 7 F.3d 1487, 1492 (10<sup>th</sup> Cir. 1993), *citing* United States v. W.T. (continued...)

that the burden on the party asking the court to dismiss a case on prudential mootness grounds is a “heavy one,” as the movant (usually the defendant) must “demonstrate that there is no reasonable expectation that the wrong will be repeated.”<sup>19</sup>

## Exceptions to the Mootness Doctrine

The Supreme Court has recognized several exceptions to the mootness doctrine that, if found to apply to a case, would permit federal court adjudication of the dispute.

### Possibility of Collateral Legal Consequences

In *Sibron v. New York*, an individual convicted of unlawful possession of heroin had completed service of his prison sentence prior to Supreme Court review of the case. The Court explained that the case was not moot:

Although the term has been served, the results of the conviction may persist. Subsequent convictions may carry heavier penalties, civil rights may be affected. As the power to remedy an invalid sentence exists, we think, respondent is entitled to an opportunity to attempt to show that this conviction was invalid.<sup>20</sup>

This exception to the mootness doctrine thus applies in the criminal context, when there is a “possibility that any collateral legal consequences will be imposed on the basis of the challenged conviction.”<sup>21</sup> Even a “remote” possibility of such consequences is enough to save a criminal case from becoming moot.<sup>22</sup>

### Conduct Capable of Repetition, Yet Evading Review

Some disputes or injuries may arise in the short-term and have the potential for recurrence, but always fail to last long enough to permit federal judicial review. In such a situation, federal courts have justified an exception to the mootness doctrine. A classic example is the landmark abortion case, *Roe v. Wade*. The Supreme Court explained why the exception should be invoked in this instance:

[W]hen, as here, pregnancy is a significant fact in the litigation, the normal 266-day human gestation period is so short that the pregnancy will come to term before the usual appellate process is complete. If that termination makes a case moot, pregnancy litigation seldom will survive much beyond the trial stage, and appellate review will be effectively denied. Our law

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*Grant Co.*, 345 U.S. 629(1953); *A.L. Mechling Barge Lines, Inc. v. United States*, 368 U.S. 324 (1961); *Chamber of Commerce v. U.S. Dep’t of Energy*, 627 F.2d 289 (D.C. Cir. 1980); *New Mexico v. Goldschmidt*, 629 F.2d 665 (10<sup>th</sup> Cir. 1980).

<sup>19</sup> *W.T. Grant Co.*, 345 U.S. at 633 (internal quotations and citation omitted).

<sup>20</sup> *Sibron v. New York*, 392 U.S. 40, 55 (1968) (quoting *United States v. Morgan*, 346 U.S. 502, 512-13 (1954)).

<sup>21</sup> *Id.* at 57.

<sup>22</sup> *Benton v. Maryland*, 395 U.S. 784, 790-91 (1969).

should not be that rigid. Pregnancy often comes more than once to the same woman, and in the general population, if man is to survive, it will always be with us.<sup>23</sup>

However, the Court has held that this exception applies only in “exceptional situations,” where the plaintiff “can make a reasonable showing that he will again be subjected to the alleged illegality.”<sup>24</sup>

## **Voluntary Cessation**

If a defendant voluntarily terminates the allegedly unlawful conduct after the lawsuit has been filed but retains the power to resume the practice at any time, a federal court may deem the case nonmoot.<sup>25</sup> The “heavy burden” of persuading the court that a case has been mooted by the defendant’s voluntary actions lies with the party asserting mootness, and the standard for such a determination is a “stringent” one: “if subsequent events ma[ke] it absolutely clear that the allegedly wrongful behavior [can] not reasonably be expected to recur.”<sup>26</sup> This exception is supported by the Supreme Court because, in addition to ensuring that the defendant is not “free to return to his old ways,” there is “a public interest in having the legality of the practices settled.”<sup>27</sup>

For example, an environmental group had filed a citizen suit under the Clean Water Act against Laidlaw, a company that operated a wastewater treatment plant, alleging that the plant had discharged far more toxic pollutants into a river than it was allowed under terms of a government-issued permit. However, after the lawsuit began, Laidlaw began to comply with the discharge limit. The Supreme Court held that this case was not moot because it was a “disputed factual matter” whether the company’s substantial compliance with its permit requirements, or its closure of the facility in question (which had occurred after the court of appeals had issued its decision), would make “it absolutely clear that Laidlaw’s permit violations could not reasonably be expected to recur.”<sup>28</sup>

## **Class Action Litigation**

When the claim of the named plaintiff in a certified class action becomes moot, the class action will not be dismissed so long as a member of the class continues to have a sufficiently adversarial relationship to constitute a live controversy. For example, a plaintiff brought a class action to challenge a one-year residency requirement in a state divorce statute, on the ground that it violated the U.S. Constitution. By the time her case reached the Supreme Court, she had long since satisfied the state’s durational residency requirement, a development that, had she filed the suit only on her own behalf, would have made the case moot because she no longer retained a personal stake in the outcome. However, the Court noted the significant fact that she had brought the lawsuit as a class action in a representative capacity, which affected the mootness determination: “When the District Court certified the propriety of the class action, the class of unnamed persons described in the certification acquired a legal status separate from the interest

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<sup>23</sup> *Roe v. Wade*, 410 U.S. 113, 125 (1973).

<sup>24</sup> *City of Los Angeles v. Lyons*, 461 U.S. 95, 109 (1983) (citation omitted).

<sup>25</sup> *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 189 (2000).

<sup>26</sup> *Id.*, citing *United States v. Concentrated Phosphate Export Assn., Inc.*, 393 U.S. 199, 203 (1968).

<sup>27</sup> *United States v. W. T. Grant Co.*, 345 U.S. 629, 632 (1953) (citation omitted).

<sup>28</sup> *Laidlaw*, 528 U.S. at 193.



asserted by [the named representative],” and therefore the Article III “cases or controversies” requirement was satisfied.<sup>29</sup>

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<sup>29</sup> *Sosna v. Iowa*, 419 U.S. 393, 399 (1975).

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