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Article III and the Adequate and Independent State Grounds Doctrine

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ARTICLE III AND THE ADEQUATE AND INDEPENDENT STATE GROUNDS DOCTRINE

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TABLE OF CONTENTS

INTRODUCTION

The United States Supreme Court has constitutional and statutory authority to review the final judgments of state courts in cases

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involving federal questions.[1] Under the Adequate and Independent State Grounds Doctrine (the "State Grounds Doctrine"),[2] however, the Supreme Court will not review a final decision of a state court, notwithstanding the presence of federal questions, when the state court based its opinion on state law that is independent of the federal issues and adequate to support the judgment.[3] In other words, if the Supreme Court's opinion on the federal issues would not change the outcome of the case because the judgment rests on unreviewable state law, the Supreme Court will not review the federal issues in the case.[4]

Although the Court has referred to the constitutional ban on advisory opinions in explaining the basis of the State Grounds Doctrine,[5] the Court has never explained adequately why the State Grounds Doctrine is mandated by Article III.[6] Commentators have disagreed about the constitutional status of the State Grounds Doctrine.[7] Whether Article III requires the State Grounds Doctrine is

1. *See* U.S. CONST. art. III, §§ 1-2 (vesting the judicial power in the Supreme Court and in inferior courts established by Congress and extending the judicial power to cases arising under the Constitution and laws of the United States); 28 U.S.C. § 1257 (1994) (providing for Supreme Court review of "final judgments or decrees rendered by the highest court of a State in which review of a decision could be had"); *see also* Osborn v. Bank of the United States, 22 U.S. (9 Wheat.) 738, 906 (1824) (establishing that the constitutional jurisdiction of the Supreme Court extends to all cases in which a federal question forms "an ingredient of the original cause"); Martin v. Hunter's Lessee, 14 U.S. (1 Wheat.) 304, 331 (1816) (recognizing the power of the Supreme Court to review state court rulings); David A. Schlueter, *Judicial Federalism and Supreme Court Review of State Court Decisions: A Sensible Balance Emerges*, 59 NOTRE DAME L. REV. 1079, 1080-83 (1984) (discussing Supreme Court jurisdiction to review state court judgments). All Supreme Court review of state court decisions is by discretionary writ of certiorari. *See* Act of June 27, 1988, Pub. L. No. 100-352, § 1257, 102 Stat. 662, 662 (1988).

2. *See* Herb v. Pitcairn, 324 U.S. 117, 125 (1945) (stating that since the time of its foundation the Supreme Court has refused to review judgments of state courts that are based on "adequate and independent state grounds").

3. *See id.* (describing the State Grounds Doctrine, which bans federal review of state law decisions that rest on adequate and independent state grounds).

4. *See id.* at 126 (stating that the Supreme Court is not permitted to correct a state court's interpretation of federal law if that correction would not mandate a different judgment in the case).

5. *See id.* (referring to the ban on advisory opinions as a rationale for the State Grounds Doctrine).

6. *See* 16B CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE § 4021, at 293 (2d ed. 1996 & Supp. 1999) (noting that the Supreme Court has never fully explained the constitutional basis for the State Grounds Doctrine).

7. *Compare* Richard W. Westling, Comment, *Advisory Opinions and the "Constitutionally Required" Adequate Independent State Grounds Doctrine*, 63 TUL. L. REV. 379, 390-403 (1988) (arguing that the State Grounds Doctrine is an application of the advisory opinion ban and is therefore grounded in Article III), *with* Thomas E. Baker, *The Ambiguous Independent and Adequate State Ground in Criminal Cases: Federalism Along a Möbius Strip*, 19 GA. L. REV. 799, 806 (1985) (arguing that the State Grounds Doctrine is a prudential, rather than constitutional, doctrine), *and* Richard A. Matasar & Gregory S. Bruch, *Procedural Common Law, Federal Jurisdictional Policy, and Abandonment of the Adequate and Independent State Grounds Doctrine*, 86 COLUM. L. REV. 1291, 1322-23 (1986) (arguing that the State Grounds Doctrine is not required by the Constitution, but rather is federal common law). *See also* 16B WRIGHT ET AL., *supra* note

a significant question because if the State Grounds Doctrine is merely federal common law,[8] then it can be changed or eliminated by the Supreme Court or Congress.[9] If, however, Article III mandates the State Grounds Doctrine, then it must be understood in that context.[10] Congress is not free to statutorily alter or eliminate the doctrine in an unconstitutional manner, and the Supreme Court must interpret and apply the doctrine consistently within the limitations that Article III places on the Court's jurisdiction.[11]

The lack of a clear understanding of the constitutional limits on Supreme Court review of state court judgments has blurred the parameters of the State Grounds Doctrine.[12] Despite the Court's attempts to articulate specific rules for the application of the State Grounds Doctrine to enable state court judges to fashion opinions protecting their lawmaking autonomy, the application of the doctrine has been inconsistent and unpredictable.[13]

This Article argues that the Constitution dictates the boundaries of the State Grounds Doctrine. Without an understanding and explicit recognition of the constitutional limitations imposed on the Court's jurisdiction, the Court is prone to select erroneously cases over which it has no jurisdiction, and erroneously decline to hear cases that it has an obligation to decide. In particular, this Article explores the relationship between the State Grounds Doctrine and the Article III justiciability doctrines,[14] and concludes that the constitutional standing requirement[15] and the mootness doctrine[16] render state

6, § 4021, at 293 ("[T]he commonly offered advisory opinion rationale is both circular and misdescriptive.").

8. *See* Matasar & Bruch, *supra* note 7, at 1323 (arguing that the State Grounds Doctrine is federal common law).

9. *See id.* at 1295 (stating that if the doctrine is governed by common law, it could be developed and adapted to fit the legal and cultural climate).

10. *See* Westling, *supra* note 7, at 392 (advocating the position that the State Grounds Doctrine is founded upon Article III's proscription of advisory opinions).

11. *See* Marbury v. Madison, 5 U.S. (1 Cranch.) 137, 177-78 (1803) (pronouncing the fundamental principle that the Constitution is the supreme law of the United States and that the Congress and the Supreme Court are bound to make and interpret the law in a manner consistent with the Constitution).

12. *See* 16B WRIGHT ET AL., *supra* note 6, § 4021, at 293 (taking note of the tangled theoretical arguments underlying the State Grounds Doctrine and stating that the boundaries for Supreme Court review of state court judgments are difficult to identify).

13. *See, e.g.*, Michigan v. Long, 463 U.S. 1032, 1042 (1983) (adopting a "clear statement rule" under which state court opinions would be immune from Supreme Court review if the state court clearly stated that its judgment was based on state grounds).

14. *See* Baker v. Carr, 369 U.S. 186, 217 (1962) (noting that justiciability theories prevent the Supreme Court from reviewing issues that are outside the purview of judicial review).

15. *See* Allen v. Wright, 468 U.S. 737, 751 (1984) (stating that the standing requirement derives from Article III of the Constitution).

16. *See Ex parte* Baez, 177 U.S. 378, 390 (1900) (pronouncing the rule that "[f]ederal courts lack jurisdiction to decide moot cases because their constitutional authority extends only to

court opinions based on independent and adequate state grounds nonjusticiable in the Supreme Court. Additionally, this Article argues that once the constitutional parameters of the State Grounds Doctrine are identified, an analytical model can be fashioned that will provide for application of this doctrine consistently with the constitutional limitations on the Supreme Court's jurisdiction.

I. THE STATE GROUNDS DOCTRINE

As a threshold matter, when a litigant seeks review of a state court opinion in a case involving both federal and state issues, the Supreme Court must determine whether the state court's conclusions on the state law issues are reviewable.[17] If not, any determination under the State Grounds Doctrine as to whether the Supreme Court may review federal issues rests upon two related, but distinct, inquiries: (1) was the state ground of decision *adequate* to support the state court's judgment; and (2) was the decision of the state court grounded on state law that was *independent* of federal law.[18] Both inquiries focus primarily on whether the Supreme Court's determination of the federal issues would impact the state court's judgment.[19] Both adequacy and independence must be present before the Supreme Court is obligated to decline review.[20] If the Court concludes that the state ground was adequate to support the judgment and independent of federal law, further review of the federal issues in the case is precluded.[21]

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actual cases or controversies").

17. The Supreme Court will not review a state court judgment, despite the involvement of federal questions in the case, if the outcome can be sustained on unreviewable state law alone. *See* Eustis v. Bolles, 150 U.S. 361, 366 (1893) (explaining the "settled law" with which the Supreme Court must abide when deciding if review of a state court judgment is necessary or appropriate).

18. *See* Herb v. Pitcairn, 324 U.S. 117, 128 (1945) (stating that the Court must adhere scrupulously to the rule that it must not "review a judgment of a state court that rests on *adequate* and *independent* grounds in state law") (emphasis added); *see also* ERWIN CHEMERINSKY, FEDERAL JURISDICTION § 10.5, at 616 (2d ed. 1994) (stating that the basic rule of the State Grounds Doctrine is that the Supreme Court will not review a case if the state law ground is both independent of the federal ground and sufficient alone to support the judgment).

19. *See* CHEMERINSKY, *supra* note 18, § 10.5, at 614 (stating that the Supreme Court must decline to hear a case when the reversal of a state court's federal law ruling would not change the outcome).

20. *See* Fox Film Corp. v. Muller, 296 U.S. 207, 210 (1935) (emphasizing the principle that the Supreme Court does not have jurisdiction to review a state court case if the non-federal ground for decision is both independent of the federal ground and also adequate to support the judgment).

21. *See id.* (stating that the Supreme Court lacks jurisdiction to review cases in which the non-federal ground for decision is independent and adequate to support the state court judgment).

A. Supreme Court Review of State Court Determinations of State Law

The State Grounds Doctrine is the product of the Supreme Court's opinion in *Murdock v. City of Memphis*,[22] which held that the Supreme Court may not review state court decisions on issues of state law.[23] Murdock sued the City of Memphis in Tennessee state court, seeking to have a trust imposed on property that Murdock's ancestors had conveyed to Memphis to establish a naval depot.[24] According to Murdock, the original conveyance to the City of Memphis stipulated that if the City failed to use the land for a naval depot, the land should be held in trust for the grantors and their heirs.[25] Ten years after the conveyance, the City of Memphis abandoned all plans to construct a naval depot.[26] Consequently, Murdock sued to have the trust imposed as set out in the original conveyance.[27] The Tennessee Supreme Court affirmed the lower court's conclusion that the City of Memphis had perfected title in the land and that the statute of limitations barred Murdock's suit.[28]

On review, the Supreme Court concluded that the issue–-whether Murdock retained an interest in the land under the original conveyance–-was one of state law.[29] Furthermore, the Court concluded that it lacked authority to review a state court's determination of a state law issue.[30] The Court based this second conclusion on its interpretation of the Judiciary Act of 1789[31] and the 1867 amendment to the Act.[32] The original 1789 Judiciary Act included an explicit prohibition on judicial authority to review state court rulings on state law issues,[33] whereas the 1867 amendments contained no such prohibition.[34] The Court, nevertheless, concluded

22. 87 U.S. (20 Wall.) 590 (1874).

23. *See id.* at 638 (finding that the Court had no authority to inquire whether the state's decision was correct because the claim of right was based on state equity jurisprudence).

24. *See id.* at 596.

25. *See id.* at 597.

26. *See id.*

27. *See id.*

28. *See id.* at 598 (sustaining a demurrer and affirming the decree to restore title to the City).

29. *See id.* at 638 (stating that the cause of action was grounded in "equity jurisprudence, and unaffected by anything found in the Constitution, laws, or treaties of the United States").

30. *See id.* (concluding that the Court had no authority to inquire about the soundness of the state court decision).

31. Judiciary Act of 1789, ch. 20, 1 Stat. 73, 85-87.

32. Act of February 5, 1867, ch. 28, 14 Stat. 385, 386-87.

33. *See Murdock*, 87 U.S. (20 Wall.) at 630 (explaining that the Judiciary Act of 1789 formed a system of appellate jurisprudence that limits the Supreme Court's jurisdiction to the correction of state courts' errors in interpreting federal law).

34. *See id.* at 630 (stating that, despite the fact that the Act of 1867 lacked the restrictive clause that was present in the Act of 1789, the Supreme Court had power only to review state court judgments that reflected an erroneous view of federal law).

that Congress intended to prohibit Supreme Court review of state court rulings on state law issues.[35] Thus, in *Murdock*, the Supreme Court declined to review the judgment of the Tennessee Supreme Court on the state law issues.[36]

Despite *Murdock*'s holding that the Supreme Court has no power to review state court determinations of state law,[37] there are numerous instances in which the Supreme Court has engaged in this type of review.[38] In particular, there are two types of review of state law the Supreme Court may undertake: (1) review of the merits of the state law question ("state law merits review");[39] and (2) review of the federal questions in the case ("federal question review").[40] Federal question review includes both jurisdictional review[41] and substantive federal question review.[42]

1. State law merits review

State law merits review involves a complete substantive review of the merits of the state court's state law holding.[43] For example, in *Indiana ex rel. Anderson v. Brand*,[44] the Court reviewed a determination

35. *See id.* (declining to infer that Congress undertook a "radical and hazardous change of a policy vital in its essential nature to the independence of the State courts" from the omission of a clause found in the earlier version of the statute).

36. *See id.* at 638 (stating that because the claim of right is unaffected by anything found in the Constitution or laws of the United States, the judgment of the Supreme Court of Tennessee must be affirmed).

37. *See id.*

38. *See, e.g.*, Lucas v. South Carolina Coastal Council, 505 U.S. 1003, 1012 (1992) (finding that the Supreme Court had authority to exercise plenary review because the plaintiff had alleged an "injury-in-fact" sufficient for standing under Article III); Standard Oil Co. of Cal. v. Johnson, 316 U.S. 481, 482-83 (1942) (holding that the case was properly appealed to the Supreme Court because it involved the issue of whether a state motor vehicle fuel tax conflicted with the United States Constitution by imposing "a burden upon instrumentalities or agencies of the United States"); State Tax Comm'n of Utah v. Van Cott, 306 U.S. 511, 514-15 (1939) (deciding that appellate jurisdiction was proper where the state court's decision was based on an interpretation of the United States Constitution and not an independent interpretation of state income tax law); Indiana *ex rel.* Anderson v. Brand, 303 U.S. 95, 98 (1938) (finding that the Supreme Court may review a state court's state law determination where the state court decided adversely to the federal right); Martin v. Hunter's Lessee, 14 U.S. (1 Wheat.) 304, 380 (1816) (establishing for the first time that it was Congress's intent that the appellate power of the Supreme Court extend to the review of state court judgments).

39. *See infra* notes 43-51 and accompanying text (describing instances when the Court will undertake a review of the merits of a state court decision).

40. *See supra* note 38 and accompanying text (discussing the propriety of Supreme Court review of state court decisions when both federal and state law questions were present).

41. *See infra* notes 65-70, 84 and accompanying text (explaining that jurisdictional review of state court decisions that contain federal issues should be reviewed by the Supreme Court).

42. *See infra* notes 71-76 and accompanying text (providing illustrative examples of substantive federal question review).

43. *See Brand*, 303 U.S at 98-104 (reviewing the merits of the Indiana Supreme Court's holding on state law issues as well as federal questions and reversing its judgment).

44. 303 U.S. 95 (1938), *rev'g* 5 N.E.2d 913 (Ind. 1937).

of the Indiana Supreme Court regarding state law contract rights.[45] In that case, a teacher brought suit claiming that the state had interfered unconstitutionally with her contract rights by firing her.[46] The issue was whether, under state law, there was a valid contract.[47] The state supreme court had concluded that, under state law, the plaintiff did not have a contract.[48] The Supreme Court, however, reviewed Indiana state law and concluded that there was a contract.[49] The Court stated that "in order that the constitutional mandate may not become a dead letter, we are bound to decide for ourselves whether a contract was made, what are its terms and conditions, and whether the State has, by later legislation, impaired its obligation."[50] Thus, the Court assumed the power to review the merits of state courts' rulings on state law when a federal right is premised on state law.[51]

The Supreme Court has not determined whether a constitutional principle dictates the circumstances in which the Supreme Court may review the state law determinations made by state courts. An easy way to explain the cases in which the Supreme Court undertakes review of state court determinations of state law is to say that the Constitution simply does not limit the Supreme Court's power to review state court determinations of state law at all. The only constitutional limits on the Court's power to review state court determinations of state law, the argument goes, are those imposed by Article III's justiciability requirements.[52] Indeed, the holding in *Murdock* was not based on the Constitution, but rather on the Court's interpretation of the Judiciary Act and the 1867 amending statute.[53]

45. *See id.* at 98 (deciding that the issue before the court was whether, under Indiana law, a public school teacher had a vested contract right).

46. *See id.* at 97.

47. *See id.* at 98.

48. *See id.* at 100 (remarking that the Supreme Court of Indiana found that a valid contract did not exist because it is the state's policy not to bind schools by contract for more than one year).

49. *See id.* at 104 (finding that the petitioner had a valid contract, the obligation of which was impaired by her termination).

50. *Id.* at 100.

51. *See id.* (stating that when a state court entertains a case premised on a federal right and decides that case adversely based on state law, the Supreme Court has jurisdiction to review the case); *see also* Broad River Power Co. v. South Carolina, 281 U.S. 537, 540 (1930) (stating that where the constitutional protection invoked in a particular case may be denied on state grounds, it is within the jurisdiction of the Supreme Court to evaluate the merits of the state decision).

52. *See* Matasar & Bruch, *supra* note 7, at 1295 (noting that the text of Article III neither extends power to state courts over federal cases nor provides for Supreme Court appellate jurisdiction over state decisions and concluding therefrom that Article III may not be regarded as the basis for the State Grounds Doctrine).

53. *See supra* notes 32-34 and accompanying text (presenting the Court's rationale for

Thus, *Murdock* did not establish that the Constitution limits the Court's review of state court determinations of state law.

Murdock neither established nor negated a constitutional limitation on the Court's jurisdiction. The *Murdock* decision held that the Judiciary Act's 1867 amendment did not confer Supreme Court jurisdiction to review state court holdings based on state law.[54] Therefore, the Supreme Court declined to decide whether it would be constitutional for federal courts to review state court decisions based on state law.[55] Moreover, the argument that the Constitution contains no limitation on the Supreme Court's power to review state court determinations of state law is inconsistent with the constitutional nature of the federal courts as courts of limited jurisdiction.[56] Although Article III gives the Supreme Court power over certain cases involving issues of state law, such as cases involving diversity of citizenship,[57] no blanket grant of jurisdiction to review all state law determinations by state courts exists. Indeed, Article III's specific jurisdictional grants have been held to exclude jurisdiction over matters not specifically listed.[58] Furthermore, although the Court has power under Article III[59] and the Supremacy Clause[60] to review state law determinations that allegedly violate federal law, this power is not necessarily so broad as to include the power to review a state court's interpretation of state law that does not implicate federal law.

Significantly, the constitutionality of the State Grounds Doctrine does not depend on whether the Constitution or federal statutory or common law is the basis of the limitations on Supreme Court review

adhering to the State Grounds Doctrine despite Congress's omission of a restrictive clause in the Act of 1867).

54. *See* Murdock v. City of Memphis, 87 U.S. (20 Wall.) 590, 633 (1874) (reserving the question of whether, if Congress had conferred to the Supreme Court authority to review all determinations of state law through the Act of 1867, the statute would be unconstitutional).

55. *See id.*

56. *See* Aldinger v. Howard, 427 U.S. 1, 18 (1976) (explaining that the federal courts' jurisdiction is limited by the Constitution and by acts of Congress, while the jurisdiction of state courts is not so limited).

57. *See* U.S. CONST. art. III, § 2 (stating that the judicial power extends to "Controversies . . . between Citizens of different States").

58. *See* Durousseau v. United States, 10 U.S. (6 Cranch) 307, 318 (1810) (concluding that Article III's specific grant of diversity jurisdiction implicitly excludes federal jurisdiction over disputes between citizens of the same state absent a federal question).

59. *See supra* notes 57-58 and accompanying text (discussing Article III's grant of power to entertain cases arising under federal law, the Constitution, and cases involving citizens from different states).

60. *See* U.S. CONST. art. VI, cl. 2 (stating that the Constitution, laws, and treaties of the United States shall be the "supreme Law of the Land; and the Judges in every State shall be bound thereby" despite an existing conflict with state law).

of state court determinations of state law.[61] Whether a state law determination by a state court is reviewable by the Supreme Court is a threshold issue that the Court must resolve before the State Grounds Doctrine is implicated.[62] For example, if the Court deems a state law holding reviewable on the merits, then the federal issues are fully reviewable by the Supreme Court because a live controversy exists as to the state and federal issues that underlie the state court's judgment.[63] In other words, there is a substantial likelihood that a Supreme Court decision would have an impact on the outcome of the case.[64] On the other hand, if the Supreme Court determines that the state law issues are unreviewable--regardless of whether the decision not to review state law is based on the Constitution or federal statutory or common law--then the question arises as to whether justiciable federal questions are presented for Supreme Court review.[65]

2. Federal question review

The second type of review of state law that the Supreme Court might undertake is federal question review. Federal question review includes both jurisdictional review and substantive federal question review. On federal jurisdictional review, the Supreme Court assesses the independence and adequacy of state law to bar the Supreme Court's jurisdiction to review the case.[66]

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61. *See infra* notes 62-65 and accompanying text (explaining that the constitutionality of Supreme Court review of state court decisions is derived from the Court's power to entertain cases and controversies involving the laws of the United States, rather than from the statutory or common law rules surrounding the State Grounds Doctrine).

62. In particular, the Court must first determine if the state issues are subject to merits review. *See* Indiana *ex rel.* Anderson v. Brand, 303 U.S. 95, 98-99 (1938) (stating that the Supreme Court must ascertain whether a federal question was raised and resolved in the state court and whether the state court decision rested on an adequate non-federal ground). If the state issues are not subject to a merits review, then the two inquiries of the State Grounds Doctrine--independence and adequacy--must be undertaken to determine whether the party invoking the Supreme Court's jurisdiction has a sufficient personal interest in the litigation to have satisfied the Article III case and controversy requirement. *See* U.S. CONST. art. III, § 2.

63. *See* Michigan v. Long, 463 U.S. 1032, 1038 (1983) (stating that when matters of state law are bound up and entangled with federal rights, the Supreme Court is free to review the state law rulings along with the federal law rulings).

64. *See* Herb v. Pitcairn, 324 U.S. 117, 126 (1945) (noting that the Supreme Court may only review a state court's judgment if its interpretation of laws at issue would have an impact on the judgment in the case).

65. If the Court concludes that the unreviewable state grounds provide a basis for the decision that is independent of federal law and adequate to support the state court's judgment, the Supreme Court, in essence, has determined that its decision of the federal issues in the case will have no impact and the redressability element of standing is not satisfied. In other words, there is not a substantial likelihood that the Court's judgment will have an impact.

66. *See supra* notes 18-20 and accompanying text (describing what state grounds are sufficiently "independent" and "adequate" to preclude review by the Supreme Court).

It is necessary to distinguish jurisdictional review from merits review of state law. When the Supreme Court reviews the merits of state law, as in *Brand*, the Court essentially determines that even though the state court concluded that state law is 'X', the state court erred and state law is really 'Y'.[67] When the Supreme Court undertakes jurisdictional review of the adequacy and independence of state law, however, it does not assess the merits of the state court's determination of state law. Instead, the Court determines whether the state court's decision impinges on federal rights in such a way as to raise a federal question, or is entwined with federal law in a way that suggests that Supreme Court review of the federal issues (and a decision in favor of the party seeking Supreme Court review) is likely to result in reversal of the state court's judgment.[68] The Court essentially determines that the state court's conclusion that state law is 'X' is inadequate to preclude Supreme Court review of the federal issues because 'X' arguably infringes upon a federal right (or, because the conclusion 'X' is not independent of federal law).[69] This is a federal question.[70]

The other type of Supreme Court review of state law is a substantive federal question analysis. In particular, whenever review is necessary to protect the supremacy of federal law and ensure that state law does not infringe on federal rights, the Supreme Court will engage freely in the review of the state court decisions.[71] The Court firmly established this principle in *Cohens v. Virginia*.[72] In *Cohens*, two brothers were convicted in Virginia state court of selling District of Columbia lottery tickets in Virginia, a violation of Virginia law.[73] The

67. *See, e.g.*, *Brand*, 303 U.S. at 98 (concluding that a contract had been formed under Indiana law, despite the Indiana Supreme Court's determination to the contrary).

68. *See infra* notes 85-123 and accompanying text (explaining the independence and adequacy inquiries of the State Grounds Doctrine, both of which are focused primarily on the determination of whether the Supreme Court's decision on the federal questions in the case would mandate a reversal of the state court's judgment).

69. The Court might conclude that 'X' is not sufficiently independent of federal law as to preclude review of the federal issues. *See* Michigan v. Long, 463 U.S. 1032, 1039 n.4 (1983) (noting that in some cases the federal ground may be so interwoven with the state ground that the state ground is simply not "independent").

70. *See* Cohens v. Virginia, 19 U.S. (6 Wheat.) 264, 320-29 (1821) (discussing the jurisdiction to determine whether the state law was construed based on the Court's interpretation of federal law). It must be noted, however, that jurisdictional review itself cannot serve as the basis of justiciability. Standing and lack of mootness cannot be predicated on the presence of a live dispute regarding the adequacy of the state law ground of decision or its independence from federal law. *See* Henry v. Mississippi, 379 U.S. 443, 447 (1965) (stating that issues of mootness and standing are federal questions that the Court must ultimately decide).

71. *See* Eustis v. Bolles, 150 U.S. 361, 366 (1893) (explaining that state law that interferes with or infringes upon a federal right is not adequate to support the judgment of a state court).

72. 19 U.S. (6 Wheat.) 264 (1821).

73. *See id.* at 267.

brothers sought review in the Supreme Court, claiming that the United States Constitution prohibited the conviction because Congress had authorized the lottery tickets.[74] The Supreme Court concluded that it had the constitutional and statutory authority to review the conviction to ensure the protection of federal rights.[75] Thus, a state law that interferes with or infringes on a federal right is not adequate to support the judgment of a state court.[76]

B. Adequacy and Independence: Supreme Court Review of State Court Determinations of Federal Issues

Although the Court, in *Murdock*, interpreted the jurisdictional statute to preclude review of a state court's determination of state law,[77] it expressly preserved its power to review federal issues.[78] Since *Murdock*, the Court has consistently held that it may not review state court determinations of federal law issues in cases that involve both federal and state law issues when the state court's decision rests independently on adequate state law.[79] In *Fox Film Corp. v. Muller*,[80] the Court stated that "where the judgment of a state court rests upon two grounds, one of which is federal and the other non-federal in character, our jurisdiction fails if the non-federal ground is independent of the federal ground and adequate to support the judgment."[81]

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74. *See id.* at 289.

75. *See id.* at 415 (finding it essential that the Supreme Court review state court judgments that contravene the Constitution). In addition, the Court concluded that the Eleventh Amendment did not bar the Court's review of state criminal convictions. *See id.* at 412. Although the Court in *Cohens* did not explicitly undertake adequacy review, the conclusion that state law was inadequate to support the state court's judgment was inherent in the Court's analysis. *See id.* at 444 (stating that although the validity of the Virginia law that punishes a citizen of Virginia for purchasing a lottery ticket in the city of Washington, D.C. was suspect, the Supreme Court must first determine whether the state law decision infringed a federal right). The Court did not review the merits of the Virginia court's conclusion on Virginia law, but instead reviewed, as a matter of federal law, whether that conclusion impinged a federal right and was therefore invalid. *See id.* at 429.

76. *See id.* at 415 (finding the exercise of appellate power over state court judgments that contravene federal law essential to the interests of the nation).

77. *See* Murdock v. City of Memphis, 87 U.S. (20 Wall.) 590, 626 (1874) (stating that state courts, not federal courts, are the appropriate tribunals for deciding questions of state common and statutory law).

78. The *Murdock* Court stated:

> [B]y the very terms of this statute, when the Supreme Court is of opinion that the question of Federal law is of such relative importance to the whole case that it should control the final judgment, that court is authorized to render such judgment and enforce it by its own process.

Id. at 632.

79. *See* Herb v. Pitcairn, 324 U.S. 117 (1945) (refusing to review a state court opinion because it was based on independent and adequate state grounds).

80. 296 U.S. 207 (1935).

81. *Id.* at 210; *see also Herb*, 324 U.S. at 125 (stating that "[t]his Court from the time of its

Properly understood, the State Grounds Doctrine operates as a limitation on the Supreme Court's jurisdiction to review questions of federal law when the Court lacks jurisdiction to review state court rulings based on state law.[82] The independence and adequacy inquiries of the State Grounds Doctrine constitute jurisdictional review to determine whether the federal issues are justiciable despite a purported state ground of decision.[83] Whether the state law ground of decision is independent of federal law and adequate to support the state court's judgment is a federal question.[84]

1. Adequacy

A state law ground of decision is "adequate" if the Supreme Court's judgment on the federal issues would have no impact on the state court's judgment.[85] For a state ground of decision to adequately support the state court's judgment, the state ground must be broad enough to support the state court's judgment[86] and must apply consistently to various litigants.[87] In addition, a state court may not

foundation has adhered to the principle that it will not review judgments of state courts that rest on adequate and independent state grounds"); Eustis v. Bolles, 150 U.S. 361, 366 (1893) (pronouncing that the Supreme Court must not overturn a state court judgment unless a federal question was essential to the determination of the case and also that the outcome was adverse to the party claiming a right under the federal laws or Constitution) (citing *Murdock*, 87 U.S. (20 Wall.) at 593); Cook County v. Calumet & Chicago Canal Co., 138 U.S. 635, 651 (1891) (resolving that to confer federal jurisdiction over a state court ruling, it must affirmatively appear that there was a federal question necessary to the determination of the case and that judgment could not have been rendered without it).

82. *See* Michigan v. Long, 463 U.S. 1032, 1041-42 (1983) (explaining that the State Grounds Doctrine is based on the limitations of the Supreme Court's jurisdiction, such as the prohibition on issuing advisory opinions and the Article III case and controversy requirement).

83. *See supra* notes 66-70 and accompanying text (describing jurisdictional review).

84. *See* Henry v. Mississippi, 379 U.S. 443, 447 (1965) (stating that the issue of whether and when the Court may review state decisions because of noncompliance with state procedural rules is itself a federal question); *see also* Love v. Griffith, 266 U.S. 32, 33-34 (1924) (holding that where there is an assertion of federal rights in a lower court, the issue of whether those rights were denied presents a federal question for the Supreme Court).

85. *See* CHEMERINSKY, *supra* note 18, § 10.5.2, at 619 (describing an adequate state law ground as one which is "sufficient by itself to support the judgment, regardless of whether the federal law issue is affirmed or reversed"); Matasar & Bruch, *supra* note 7, at 1292-93 n.2 (stating that a decision based on state law is adequate if the judgment in the case would be affirmed even if any decision on federal law were reversed).

86. *See* Michigan v. Long, 463 U.S. 1032, 1039 n.4 (1983) (noting that Supreme Court review is appropriate "'where the non-federal ground . . . is not of sufficient breadth to sustain the judgment without any decision of the [federal ground]'") (quoting Enterprise Irrigation Dist. v. Farmers Mut. Canal Co., 243 U.S. 157, 164 (1917)).

87. *See* Ford v. Georgia, 498 U.S. 411, 424 (1991) (stating that for an adequate and independent state procedural rule to bar appellate review of constitutional claims, that rule must have been followed consistently); Hathorn v. Lovorn, 457 U.S. 255, 262-63 (1982) (explaining that a state procedural ground is not "adequate" unless the procedural rule at issue had been applied evenhandedly to all claims of the same type); Barr v. City of Columbia, 378 U.S. 146, 149 (1964) (ruling that "state procedural requirements which are not strictly or regularly followed cannot deprive us of the right to review"); NAACP v. Alabama *ex rel.* Patterson, 357 U.S. 449, 457-58 (1958) (noting that states' novel procedural requirements must

exercise discretion to preclude federal review of federal issues.[88] These requirements ensure that the state ground is genuine rather than designed to deprive the Supreme Court of review.[89]

A state substantive ground of decision generally will be adequate if it does not impinge on a federal right.[90] The adequacy of a state procedural ground, however, is more problematic.[91] For example, in *Henry v. Mississippi*,[92] the Supreme Court held that a state procedural ground will be adequate to foreclose Supreme Court review only if the procedural ground serves a legitimate state purpose.[93] Whether a legitimate state purpose supports a state procedural rule that is applied to preclude Supreme Court consideration of a federal question is, according to *Henry*, "itself a federal question."[94] Thus, the state procedural rule that purports to foreclose Supreme Court review of a federal claim *always* implicates a federal question, and the

not impede the Supreme Court's ability to review the claims of those who chose to vindicate their federal rights in state courts).

88. *See* Williams v. Georgia, 349 U.S. 375, 383 (1955) (remarking that it would exceed the discretion of a state court to refuse to hear a litigant's constitutional claim while simultaneously entertaining other issues in the case).

89. *See* CHEMERINSKY, *supra* note 18, § 10.5, at 626 (noting the concern that state courts might try to immunize their decisions from Supreme Court review by creating a novel procedural hurdle or applying a rule that is rarely followed, thereby giving rise to a seemingly adequate state law ground for decision).

90. *See* Cohens v. Virginia, 19 U.S. (6 Wheat.) 264, 415 (1821) (establishing the Supreme Court's power to review state law that infringes a federal right). In cases involving substantive state law that allegedly is "inadequate" to preclude federal court review of the federal issues, the inadequacy is often apparent and the Court need not undertake extensive analysis regarding the adequacy of state law. *See Long*, 463 U.S. at 1040-41 (stating that when a state court decision seems to be based on federal law and when the adequacy of the state law ground is not clear from the face of the opinion, the Supreme Court will assume that the state court's decision was based on its interpretation of the federal law at issue). Rather, the Court assumes the inadequacy and addresses the federal question. *See id.* Thus, whenever review is necessary to protect the supremacy of federal law and ensure that state law is not infringing on federal rights, the Supreme Court will engage freely in review of the decisions of state courts. *See id.* at 1041. When the Supreme Court reviews state court decisions in this context, however, it is not reviewing the merits of state law, but is assessing the validity of state law vis-à-vis federal law.

91. *See* Henry v. Mississippi, 379 U.S. 443, 447 (1965) (emphasizing the need to distinguish between state substantive and procedural law in determining whether there is an independent and adequate state ground for the decision). A number of commentators, however, have argued that there should be no difference in analyzing the adequacy of a state substantive or procedural ground. *See, e.g.*, Terrance Sandalow, Henry v. Mississippi *and the Adequate State Ground: Proposals for a Revised Doctrine*, 1965 SUP. CT. REV. 187, 197 (arguing that the substance-procedure distinction "has a surface plausibility that, on further examination fails to withstand analysis"); Herbert Wechsler, *The Appellate Jurisdiction of the Supreme Court: Reflections on the Law and the Logistics of Direct Review*, 34 WASH. & LEE L. REV. 1043, 1054 (1977) (arguing that "the problem of federal-state relations is the same . . . whether the antecedent state law issue is substantive or procedural").

92. 379 U.S. 443 (1965).

93. *See id.* at 447 (deciding that in every case the Court must inquire whether a state procedural right serves a legitimate state interest before it undertakes review of whether that procedural right impinges a federal right).

94. *See id.*

Court's review is always appropriate to assess whether a state's procedural rule is adequate to foreclose review of a federal question.[95]

This does not mean that the Court never will uphold and enforce the state court's procedural holding. On the contrary, there are sound reasons for upholding state procedural rules, including efficiency,[96] predictability,[97] and finality.[98] A state procedural rule, however, may not preclude review of a federal right without implicating a question of federal law as to the legitimate state interest served by the procedural rule.[99] This principle serves the important federal interest of not permitting states to manufacture procedural impediments to frustrate federal rights.[100]

2. Independence

Similar to the adequacy inquiry, the independence inquiry of the State Grounds Doctrine focuses primarily on the determination of whether the Supreme Court's resolution of the federal issues involved in the case will affect the state court's judgment.[101] The independence prong examines whether the state supreme court based its holding on state law that is insulated from federal review, or whether the state law issues were dependent on and intertwined with federal law.[102] Federal issues do not impact a state court judgment that is based entirely on state law and is not intertwined with the federal law issues or dependent on the state court's interpretation of federal law.[103]

In *Michigan v. Long*,[104] the Court attempted to clarify the circumstances justifying Supreme Court review of state court

95. *See id.*

96. *See* 16B WRIGHT ET AL., *supra* note 6, § 4021, at 302 (stating that efficiency is promoted by permitting states to develop and apply "a uniform and integrated set of rules to litigation in a single case").

97. *See id.* (stating that allowing the state courts to apply state procedural rules enables state courts and local counsel, who are familiar with state procedural rules, to identify and apply the correct procedural rules).

98. *See id.* (noting that the interest in finality underlies all procedural rules and allowing a state court to apply its own procedural rules enables the state to control and predict litigation in state court with the finality necessary to protect litigants and the court's judgments).

99. *See id.* § 4021, at 303 (stating that there is no reason to consider state procedural rules more seriously than federal rules if the former could justify refusal of the federal question).

100. *See Henry*, 379 U.S. at 447 (stating that allowing a state procedural rule to preclude review of a federal right "prevents implementation of the federal right").

101. *See* CHEMERINSKY, *supra* note 18, § 10.5.3, at 630 (noting that a state ground of decision will not be deemed independent unless it was explicitly relied upon by the state court to the exclusion of any interpretation of federal laws at issue).

102. *See id.* (explaining what constitutes an independent state ground for decision).

103. *See id.* (stating that a state ground will be considered independent only if it is based entirely on state law and is not tied to federal law).

104. 463 U.S. 1032 (1983).

judgments.[105] The Court noted three instances when Supreme Court review of a state court's judgment is available despite the presence of state law issues in the case: (1) if the state court decided the case on a federal ground even though a state ground of decision was available, but not relied upon by the state court;[106] (2) if the state court "'felt compelled by what it understood to be federal constitutional considerations to construe . . . its own law in the manner that it did'";[107] and (3) "'where the non-federal ground is so interwoven with the [federal ground] as not to be an independent matter.'"[108] Each of these circumstances describes a situation in which the state ground of decision is not sufficiently independent of the federal ground so as to preclude Supreme Court review.[109]

In some cases, it is unclear whether the state court intended its interpretation of state law to be independent of federal law. This uncertainty is present when the state court discusses federal law in the course of resolving the state issues or discusses both state and federal law issues but does not make the basis of its decision explicit.[110]

The Supreme Court's approach in such situations has evolved over time.[111] For example, beginning with *Eustis v. Bolles*[112] in 1893 and

105. *See id.* at 1039 (noting the inadequacy of using an ad hoc method to determine the Supreme Court's jurisdiction to review state court decisions that involve federal issues).

106. *See id.* at 1039 n.4 (stating that if the state court acted according to its interpretation of the federal interests at issue, then there would be no question as to the appropriateness of federal jurisdiction) (citing Delaware v. Prouse, 440 U.S. 648, 652 (1979)); *see also* Beecher v. Alabama, 389 U.S. 35, 37 n.3 (1967) (concluding that the Supreme Court could exercise jurisdiction over a state court decision if the state court relied on federal law as the basis of its judgment despite an adequate and available state ground).

107. *Long*, 463 U.S. at 1039 n.4 (quoting *Prouse*, 440 U.S. at 653); *see also* South Dakota v. Neville, 459 U.S. 553, 558 n.5 (1983) (reviewing federal issues because the state court relied on its interpretation of federal law in interpreting its own state law); *Prouse*, 440 U.S. at 652-53 (concluding that "at the very least the [Delaware] court felt compelled by what it understood to be federal constitutional considerations to construe . . . its own law in the manner it did").

108. *Long*, 463 U.S. at 1039 n.4 (quoting Enterprise Irrigation Dist. v. Farmers Mut. Canal Co., 243 U.S. 157, 164 (1917)). This ground for review is quite similar to the justification the Court has given for reviewing the state law issues themselves. *See, e.g.*, Indiana *ex rel.* Anderson v. Brand, 303 U.S. 95, 100 (1938) (reviewing state court determinations of state law contract rights "in order that the constitutional mandate" of the contract clause, U.S. CONST. art. I, § 10, "may not become a dead letter"). *Brand* supports the proposition that when matters of state law are bound up and entangled with federal rights, the Supreme Court is free to review the state law rulings along with the federal law rulings. *See generally id.* at 96 (discussing the Supreme Court's jurisdiction to review state court judgments when the state court judgments are not based on an independent state ground).

109. *See supra* notes 106-08 and accompanying text (describing the three instances in which a state court decision is so linked with federal issues that it triggers Supreme Court review of the state court judgment).

110. *See* CHEMERINSKY, *supra* note 18, § 10.5.3, at 632 (stating that a crucial issue is how the State Grounds Doctrine applies in cases where it is unclear whether the state law ground incorporates federal law or whether it is intended to be an independent basis for decision).

111. *See* Coleman v. Thompson, 501 U.S. 722, 732 (1991) (stating that before the decision in

continuing until 1940, the Court employed the presumption that the state ground of decision was independent of federal law.[113] In 1940, the Supreme Court shifted its approach and began vacating the state court's judgment and remanding for clarification of the basis of the state court's decision.[114] Shortly thereafter, the Court again changed its approach and would grant either a continuance and require the petitioner to obtain clarification from the state court,[115] or a review of the state court's opinion to determine whether the state court intended to base its decision on independent state law.[116]

Subsequently, in *Michigan v. Long*,[117] the Court articulated a new approach in ambiguous ground cases. Under the *Long* approach, a state court may insulate its decision from Supreme Court review by including a plain statement of an independent state law basis for its decision.[118] Absent such a plain statement, the Supreme Court will assume that the state court did not intend to base its decision on independent state grounds and will review the federal issues.[119] The Court characterized *Long* as creating a "conclusive presumption"[120] that the Supreme Court has jurisdiction to review the federal issues notwithstanding a state ground of decision unless the state court included a clear and express statement that its decision was "based on bona fide separate, adequate, and independent grounds."[121] This

Long, the Supreme Court had adopted various inconsistent and unsatisfactory courses of action for responding to ambiguous state court decisions, including dismissal of the case, remand to the state court for clarification, and independent investigations of state law).

112. 150 U.S. 361 (1893).

113. *See id.* at 367 (stating that "if the independent state ground on which [the state court decision] might have been based was a good and valid one . . . this court will not assume jurisdiction of the case . . ."); *see also* Lynch v. New York *ex rel.* Pierson, 293 U.S. 52, 55 (1934) (dismissing the writ of certiorari as improvidently granted because the record failed to show Supreme Court jurisdiction).

114. *See* Minnesota v. National Tea Co., 309 U.S. 551, 557 (1940) (vacating the judgment of the Supreme Court of Minnesota because the judgment did not rest on an independent interpretation of state law).

115. *See* Herb v. Pitcairn, 324 U.S. 117, 128 (1945) (emphasizing the need for clarification from the state courts when their basis for decision was unclear).

116. *See* Delaware v. Prouse, 440 U.S. 648, 663 (1979) (holding that the Delaware Supreme Court based its decision regarding the legality of an officer's stop and subsequent arrest of an individual for possession of marijuana on Delaware's Constitution and the Fourth Amendment); Zacchini v. Scripps-Howard Broad. Co., 433 U.S. 562, 568 (1977) (noting that an Ohio Supreme Court decision regarding the unlawful appropriation of professional property rested solely on federal grounds).

117. 463 U.S. 1032 (1983).

118. *See id.* at 1041 (stating that the inclusion of a plain statement in a state court's decision when it relies on federal precedents for guidance will insulate the decision from federal court review).

119. *See id.* at 1042 (explaining that the Court will determine expressly its authority to review a case based on the inclusion or absence of a plain statement in the state court's opinion).

120. *See* Coleman v. Thompson, 501 U.S. 722, 732 (1991).

121. *Long*, 463 U.S. at 1041. The Court further stated that when a state court judgment seems to be grounded primarily in federal law and when the adequacy and independence of

view promotes the federalism interest underlying the State Grounds Doctrine insofar as it permits state courts to insulate their opinions from Supreme Court review simply by including the required plain statement in their opinions.[122] Arguably, however, the *Long* presumption is inconsistent with the Court's obligation to monitor its own jurisdiction.[123]

C. The Rationale for the State Grounds Doctrine

Primary justifications for the State Grounds Doctrine include respect for state courts' autonomy (the "federalism rationale"),[124] the avoidance of unnecessarily deciding constitutional questions (the

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the state law ground is unclear from the state court's opinion, the Court will assume that the state court reached its decision because its interpretation of federal law mandated that outcome. *See id.* at 1042.

122. *See* Lisa A. Kloppenberg, *Avoiding Constitutional Questions*, 35 B.C. L. REV. 1003, 1062 (1994) (noting "that state courts can use the doctrine to insulate their judgments from Supreme Court review"). *But see* Felicia A. Rosenfeld, Note, *Fulfilling the Goals of* Michigan v. Long*: The State Court Reaction*, 56 FORDHAM L. REV. 1041, 1042 (1988) (concluding, on the basis of an exhaustive study of state courts' reactions to *Long*, that "most state courts fail to indicate clearly the basis for their constitutional rulings" despite *Long*'s plain statement rule).

123. Justice O'Connor noted in her majority opinion in *Long*, that "[i]t is, of course, 'incumbent upon this Court . . . to ascertain for itself . . . whether the asserted non-federal ground independently and adequately supports the judgment.'" *Long*, 463 U.S. at 1038 (quoting Abie State Bank v. Bryan, 282 U.S. 765, 773 (1931)).

124. *See Coleman*, 501 U.S. at 739 (noting that respect for the interests of the state court justifies the application of the independent and adequate State Grounds Doctrine in federal habeas corpus cases); Pennsylvania v. Finley, 481 U.S. 551, 571 (1987) (Stevens, J., dissenting) (stating that a presumption against appellate jurisdiction over cases decided on state grounds preserves the respect owed to state courts); Delaware v. Van Arsdall, 475 U.S. 673, 699 (1986) (Stevens, J., dissenting) (arguing that review of state court judgments that rest on independent and adequate state grounds would threaten the comity between state and federal courts); *Long*, 463 U.S. at 1040 (fashioning a presumption for assessing the independence of state grounds of decision, which would allow the Court to avoid scrutinizing the state's law and be more "respectful" of the state court); Fay v. Noia, 372 U.S. 391, 466 (1963) (Harlan, J., dissenting) (noting that "once the Court determines that a state ground is adequate and independent, 'the Constitutional limit of [the Court's] power in this sphere' has been reached [because] the Constitution . . . recognizes and preserves the autonomy and independence of the states") (quoting Baltimore & O.R. Co. v. Baugh, 149 U.S. 368, 401 (1893)) (citing Erie v. Tompkins, 304 U.S. 64, 78-79 (1938)); Willis v. Aiken, 8 F.3d 556, 561 (7th Cir. 1993) (noting that the *Long* holding was based on "avoid[ance of] the federal judiciary's becoming enmeshed unnecessarily in state decisional law . . ."); *see also* Ann Althouse, *Tapping the State Court Resource*, 44 VAND. L. REV. 953, 985-86 (1991) (explaining that the State Grounds Doctrine results in state court autonomy and encourages the states to recognize rights founded upon state law instead of federal law); Michael G. Collins, *Article III Cases, State Court Duties, and the Madisonian Compromise*, 1995 WIS. L. REV. 39, 179-80 (remarking that the State Grounds Doctrine provides a principle for direct review that respects state court insistence on compliance with its own procedures and thereby allows the Supreme Court to honor a state's choices regarding procedure); Evan Tsen Lee, *Deconstitutionalizing Justiciability: The Example of Mootness*, 105 HARV. L. REV. 603, 648 (1992) (stating that the State Grounds Doctrine is premised on reasons for avoiding judicial review, which include judicial federalism); Calvin R. Massey, *State Sovereignty and the Tenth and Eleventh Amendments*, 56 U. CHI. L. REV. 61, 77-78 (1989) (stating that the Tenth Amendment to the United States Constitution tacitly sanctions the State Grounds Doctrine and other doctrines respecting the sovereignty of the states).

"avoidance doctrine rationale"),[125] and the avoidance of issuing advisory opinions (the "advisory opinion rationale").[126]

1. Federalism rationale

The Supreme Court and various commentators have recognized the significance of state lawmaking autonomy, and the constitutional plan recognized the federalist nature of the American judicial system with separate federal and state courts.[127] Although the Supreme Court undoubtedly has the power to review decisions of the state courts under certain circumstances, inherent tensions exist.[128] State courts attempt to exercise their autonomy and create state law, while federal courts attempt to fulfill their constitutional obligation to protect federal rights and ensure the supremacy of federal law.[129] In an effort to manage this tension and delineate workable boundaries in which federal and state courts can each exercise concurrent

125. *See* City of Mesquite v. Aladdin's Castle, Inc., 455 U.S. 283, 294 (1982) (noting that a state law ground of decision enables the Court to fulfill its "policy of avoiding the unnecessary adjudication of federal constitutional questions"); *see also* Kloppenberg, *supra* note 122, at 1061-65 (explaining that the State Grounds Doctrine is an application of the avoidance doctrine).

126. Many Supreme Court opinions state that the prohibition on issuing advisory opinions justifies adherence to the State Grounds Doctrine. *See* Lambrix v. Singletary, 520 U.S. 518, 523 (1997) (discussing the lack of Supreme Court jurisdiction to issue an opinion on any matter based on an independent state ground because such an opinion would be advisory in nature); *Coleman*, 501 U.S. at 729 (stating that Supreme Court review of a state law judgment resting on independent state grounds essentially would be an advisory opinion); *Finley*, 481 U.S. at 569 (noting the Supreme Court's apprehension of interfering with state court judgments based on independent state grounds because the effect of its review of such cases would be that of rendering an advisory opinion); Uhler v. AFL-CIO, 468 U.S. 1310, 1311 (1984) (stating that decisions on federal questions that arise in state court cases that rest on an independent state ground would "amount to no more than advisory opinions"); *Aladdin's Castle*, 455 U.S. at 297 (noting the long-held view that review of state court decisions based on independent state grounds amounts to an advisory opinion); Henry v. Mississippi, 379 U.S. 443, 446-47 (1965) (expressing the Court's inability to review a state court decision based on an independent state ground because of the prohibition on advisory opinions); *Fay*, 372 U.S. at 429-30 (stating that the State Grounds Doctrine is a consequence of the Court's obligation not to render advisory opinions); Herb v. Pitcairn, 324 U.S. 117, 125-26 (1945) (noting that the Supreme Court is prohibited from rendering advisory opinions). *But see* Matasar & Bruch, *supra* note 7, at 1369 (arguing that the *Long* Court mistakenly relied on the advisory opinion rationale as the basis for the State Grounds Doctrine); Lee, *supra* note 124, at 648 (arguing that the advisory opinion rationale for the adequate and independent State Grounds Doctrine is "essentially useless," because the doctrine is "entirely premised on other reasons for avoiding review of such judgments, such as judicial federalism").

127. *See* THE FEDERALIST NO. 82 (Alexander Hamilton) (arguing that states would have concurrent powers unless prohibited therefrom); LAURENCE H. TRIBE, AMERICAN CONSTITUTIONAL LAW 23 (2d ed. 1988) (noting that the Constitution regards states as distinct institutions with lawmaking authority).

128. *See supra* note 1 and accompanying text (noting that the Supreme Court has constitutional and statutory authority to review state court decisions that involve federal questions).

129. *See generally* MARTIN H. REDISH, FEDERAL JURISDICTION: TENSIONS IN THE ALLOCATION OF JUDICIAL POWER 260-79 (2d ed. 1990) (discussing tension between state and federal laws, such as state tax laws and individuals' constitutional rights to property).

autonomy within their own sphere of authority, the Supreme Court has articulated a number of doctrines limiting the federal courts' reach in matters implicating the autonomy of state courts.[130] The State Grounds Doctrine is one such boundary because it enables state courts to create a body of state law independent of federal law and protected from federal review.[131]

Despite the constitutional dimension to the federalism rationale, it is difficult to draw a constitutional line based on federalism that explains the State Grounds Doctrine. In fact, once the State Grounds Doctrine is implicated, concerns of limiting a state court's freedom to articulate state law have already given way to questions of whether the presence and centrality of federal issues justify review of the federal issues.[132] Thus, although federalism might underlie the Court's decision not to review the merits of state law issues, federalism does not justify the Court's refusal to review the federal issues in these cases. Importantly, the State Grounds Doctrine prohibits the Supreme Court's review of federal issues once it has determined that the state law issues are unreviewable.[133] Therefore, while constitutional federalism may determine whether the Court may review the state law issues, once that determination has been made, federalism does not limit the Court's review of federal issues.

2. Avoidance doctrine rationale

The notion that the Court should avoid unnecessarily deciding

130. For example, a number of the abstention doctrines were created out of respect for the autonomy of state courts and other aspects of state governmental autonomy and authority. *See* Younger v. Harris, 401 U.S. 37, 43-44 (1971) (holding that a federal court may not enjoin state criminal prosecutions except under extraordinary circumstances where the failure to do so would result in great and immediate irreparable injury); Burford v. Sun Oil Co., 319 U.S. 315, 334 (1943) (ruling that a federal court should abstain in cases involving complex, uncertain state law issues that implicate unified state administrative procedures aimed at regulating a local problem of state public concern); Railroad Comm'n of Tex. v. Pullman Co., 312 U.S. 496, 501 (1941) (holding that a federal court should stay a federal proceeding when there is substantial uncertainty as to state law and the state court's clarification of the state law might enable the federal court to avoid a federal constitutional ruling). In addition, various doctrines applicable to habeas corpus review are designed to protect state autonomy and the ability of state courts to obtain and protect state criminal convictions. *See, e.g.*, Michigan v. Doran, 439 U.S. 282, 293-94 (1978) (Blackmun, J., concurring) (discussing accommodation between the Fourth Amendment and the Extradition Clause and the tension between federal and state court jurisdiction in the context of habeas corpus review).

131. *See* Scott H. Bice, *Anderson and the Adequate State Ground*, 45 S. CAL. L. REV. 750, 757 (1972) (stating that the State Grounds Doctrine permits a state court that is not motivated by a desire for judicial economy to insulate its decision from review by any other tribunal or political process); *see also supra* note 124 (citing cases recognizing the federalism rationale for the State Grounds Doctrine).

132. *See id.* at 758-61 (suggesting various alternatives to alleviate Supreme Court interference in state law, including changes in the Court's petition for certiorari policy).

133. *See id.* at 756.

constitutional questions does not provide a constitutional rationale for the State Grounds Doctrine.[134] As Justice Brandeis noted in concurrence, in *Ashwander v. Tennessee Valley Authority*,[135] a case may be properly within the federal courts' jurisdiction but present a constitutional issue, the merits of which ought to be avoided as a matter of judicial restraint.[136] Undoubtedly, the State Grounds Doctrine promotes the goal of avoiding unnecessary federal questions.[137] The avoidance doctrine rationale, however, is not of constitutional dimension.[138]

3. Advisory opinion rationale

The only basis on which the State Grounds Doctrine may be considered constitutionally mandated is pursuant to the Article III limitations on judicial power. The Supreme Court has referred frequently and consistently to the advisory opinion ban as the rationale for the State Grounds Doctrine.[139] Essentially, the argument is that if the Court were to render an opinion on an issue that would have no impact on the outcome of the case, it would be issuing an impermissible advisory opinion. The Supreme Court, in *Herb v. Pitcairn*,[140] articulated this advisory opinion rationale for the State Grounds Doctrine:

> The reason [that the Court will not review judgments of state courts that rest on adequate and independent state grounds] is found in the partitioning of power between the state and federal judicial systems and in the limitations of our own jurisdiction. Our

134. *See* Mesquite v. Aladdin's Castle, Inc., 455 U.S. 283, 294 (1982) (referring to the avoidance doctrine as a "self-imposed limitation" on the Court's jurisdiction).

135. 297 U.S. 288 (1936).

136. *See id.* at 341-56 (Brandeis, J., concurring) (discussing a series of rules that the Supreme Court has adopted under which the Court may avoid answering constitutional questions presented in a case). Certainly the federal courts are free to engage in constitutional dicta, but deciding a case which is based on unreviewable adequate and independent state law goes beyond constitutional dicta. The parties have lost their personal stake in the litigation and the Court's judgment is not substantially likely to have an impact or bring about some change. *See* Lee, *supra* note 124, at 607 (noting that a plaintiff must demonstrate a personal stake in the outcome of litigation to have standing in federal court). As such, the case is not properly within the federal judicial power. *See generally* Bice, *supra* note 131, at 758 (discussing the purpose of the State Grounds Doctrine and the lack of jurisdiction for federal court intrusion in state matters).

137. *See supra* note 125 (citing authority discussing the avoidance doctrine rationale for the State Grounds Doctrine).

138. *See generally* Kloppenberg, *supra* note 122, at 1061-65 (arguing that the avoidance doctrine rationale is not based on a constitutional mandate).

139. *See* Fay v. Noia, 372 U.S. 391, 429-30 (1963) (stating that "[t]he adequate state ground rule is a consequence of the Court's obligation to refrain from rendering advisory opinions"); *see also supra* note 126 (referring to various instances in which the Supreme Court substantiated the State Grounds Doctrine by citing the ban on advisory opinions).

140. 324 U.S. 117 (1945).

> only power over state judgments is to correct them to the extent that they incorrectly adjudge federal rights. And our power is to correct wrong judgments, not to revise opinions. We are not permitted to render an advisory opinion, and if the same judgment would be rendered by the state court after we corrected its views of federal laws, our review could amount to nothing more than an advisory opinion.[141]

More recently, the Court reiterated that it lacks the power to review a state law determination that is sufficient to support a state court judgment because resolution of federal questions in such a case would not affect the outcome and therefore, would amount to nothing more than an advisory opinion.[142] In other words, because the Court is without authority to review and amend the state court's decision on the state law issue, the Court's analysis of the federal issue would amount to an advisory opinion because it would have no impact on the outcome of the case.[143]

Despite the Court's consistent reliance on the advisory opinion ban as justification for the State Grounds Doctrine, the Court never has explained clearly why an advisory opinion results from a Supreme Court opinion on a federal issue when the state court's judgment rests on independent and adequate state grounds.[144] Indeed, some commentators have rejected the advisory opinion rationale.[145] For

141. *Id.* at 125-26.

142. *See* Coleman v. Thompson, 501 U.S. 722, 729 (1991) (discussing the advisory opinion rationale for State Grounds Doctrine).

143. *See id.*; *see also* Florida v. Meyers, 466 U.S. 380, 381-82 (1984) (adopting the advisory opinion rationale for the principle that the Supreme Court may not review some state court judgments).

144. The Supreme Court has loosely used the term "advisory opinion" to describe not only cases that fall outside the Article III power of the federal courts, but also to refer to matters that for prudential reasons, the Court deems unreviewable. *See* Lee, *supra* note 124, at 644-45 (noting that the "Supreme Court has characterized advisory opinions to include: [any] judgment subject to review by a co-equal branch of there maybe an adequate and independent state ground of decision . . . ; dicta; [and] [a]ny decision on the merits of a case that is moot or unripe, or in which one of the parties lacks standing," and arguing that only the first two represent advisory opinions in the constitutional sense).

145. *See* 16B WRIGHT ET AL., *supra* note 6, § 4021, at 293 (calling the advisory opinion rationale "circular and misdescriptive"). Another argument that the State Grounds Doctrine is not constitutionally required suggests that review of state court judgments containing both federal and non-federal issues is no different than reviewing the judgment of a lower federal court. *See* Matasar & Bruch, *supra* note 7, at 1296-97. It could not seriously be contended that if a lower federal court bases its judgment on a state law ground the case is nonjusticiable in the Supreme Court because all the issues presented in the case are fully reviewable by the Supreme Court; there is no bar to the Supreme Court's review of the state law judgments of a lower federal court. *See id.* The concerns of federalism and lack of statutory authority that lead the Supreme Court to refrain from reviewing state court judgments on state law issues are simply not present when the Supreme Court is reviewing a federal court's determination of a state law issue. *See id.* Therefore, the standing and mootness requirements are satisfied when a case comes to the Supreme Court from a lower federal court.

example, Richard Matasar and Gregory Bruch have argued that the primary features of the advisory opinion ban—"ensuring an adversarial presentation of actual disputes" and "promoting finality of judicial action essential to the maintenance of separation of powers within the national system"—would not be offended by Supreme Court review of federal issues despite an independent and adequate state law basis for a state court's judgment.[146] Thus, it is necessary to explore the advisory opinion rationale and determine why the State Grounds Doctrine implicates the constitutional ban on advisory opinions. Part II of this Article explains why, with reference to the Article III standing requirement and mootness doctrine, which represent the Court's doctrinal implementation of the advisory opinion ban, the State Grounds Doctrine is a consequence of the constitutional limitations on the federal judicial power.

II. JUSTICIABILITY AND THE STATE GROUNDS DOCTRINE

Article III limits the federal judicial power to "cases" and "controversies."[147] The Supreme Court has stated that the case and controversy limitation serves two purposes: (1) to ensure that issues are presented in an adversary context capable of resolution by the judiciary;[148] and (2) to promote separation of powers.[149]

The core of Article III's case and controversy requirement is the ban on advisory opinions. The Supreme Court has distinguished a justiciable controversy from a non-justiciable advisory opinion as follows:

> A "controversy" in [the Article III] sense must be one that is appropriate for judicial determination. A justiciable controversy is thus distinguished from a difference or dispute of a hypothetical or abstract character; from one that is academic or moot. The controversy must be definite and concrete, touching the legal relations of parties having adverse legal interests. It must be a real and substantial controversy admitting of specific relief through a decree of a conclusive character, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts.[150]

146. *See* Matasar & Bruch, *supra* note 7, at 1302 (noting the historical context which suggests the purpose of the advisory opinion ban).

147. *See* U.S. CONST. art. III, § 2.

148. *See* United States Parole Comm'n v. Geraghty, 445 U.S. 388, 395-97 (1980) (discussing the effects of the case and controversy limitation).

149. *See id.* at 396 (stating that the case and controversy requirement "defines the 'role assigned to the judiciary in a tripartite allocation of power to assure that the federal courts will not intrude into areas committed to the other branches of government'") (quoting Powell v. McCormack, 395 U.S. 486, 496 (1969)).

150. Aetna Life Ins. Co. v. Haworth, 300 U.S. 227, 240-41 (1937) (defining justiciable

A justiciable case requires an actual dispute between adverse litigants and a substantial likelihood that a favorable federal court decision will have an effect.[151] The first requirement, that there be an actual dispute between adverse litigants, stems from the Supreme Court Justices' response to then-Secretary of State Thomas Jefferson's 1793 request for advice on several questions of relevance to President Washington's administration.[152] Justice Jay's response, which was delivered to President Washington on behalf of the Justices of the Supreme Court, stated firmly that the Constitution prohibited the rendering of advice in the form sought.[153]

The second requirement, that there be a substantial likelihood that a favorable judgment will have some effect, stems from *Hayburn's Case*.[154] In *Hayburn's Case*, Congress authorized the federal courts to review claims for Revolutionary War veterans' benefits and make recommendations to the Secretary of War,[155] who was free to disregard the federal courts' recommendations.[156] Although the Supreme Court did not rule on the constitutionality of the procedure at issue, five of the six Supreme Court Justices concluded that the procedure was "not of a judicial nature."[157]

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controversy for purposes of upholding the Declaratory Judgment Act, 28 U.S.C.A. §§ 2201-2202 (West 1994 & Supp. 1999)).

151. *See* CHEMERINSKY, *supra* note 18, § 2.2, at 52 (stating that Article III's case or controversy requirement means that "there must be an actual dispute between adverse litigants, and there must be a substantial likelihood that a favorable court decision will have some effect").

152. *See* Letter from Justices of the Supreme Court to President George Washington (Aug. 8, 1793), *reprinted in* STEWART JAY, MOST HUMBLE SERVANTS: THE ADVISORY ROLE OF EARLY JUDGES app. at 179-80 (1997) (responding to Secretary of State Thomas Jefferson's request for answers to legal questions by maintaining that the Constitution divides power between the three branches of government and that the judicial branch may not provide advice to the President).

153. The 1793 letter from the Justices stated in part:

> The Lines of Separation drawn by the Constitution between the three Departments of Government—their being in certain Respects checks upon each other—and our being Judges of a court in the last Resort—are Considerations which afford strong arguments against the Propriety of our extrajudicially deciding the questions alluded to; especially as the Power given by the Constitution to the President of calling on the Heads of Departments for opinions, seems to have been purposely as well as expressly limited to the *executive* Departments.

Id., *reprinted in* STEWART JAY, MOST HUMBLE SERVANTS: THE ADVISORY ROLE OF EARLY JUDGES app. at 179-80 (1997).

154. 2 U.S. (2 Dall.) 409 (1792).

155. *See id.* at 410 (analyzing whether Congress had the right to assign the judicial branch the duty of distributing benefits to widows, orphans, and invalid veterans because this duty is not included in the constitutional description of judicial duties).

156. *See id.* (considering the Court's ability to review an act of Congress that provided Revolutionary War veterans with pensions pursuant to federal circuit court review and affirmation or reversal of that review by the Secretary of War).

157. *See id.* at 411; *see also* Chicago & S. Air Lines v. Waterman Corp., 333 U.S. 103, 110-11 (1948) (holding nonjusticiable claims for review of Civil Aeronautics Board rulings because the President had statutory power to review and reject the federal court's ruling); United States v.

Despite occasional arguments to the contrary,[158] the view that Article III excludes from the properly limited role of the Supreme Court the power to provide advisory opinions is well supported by the debates at the Constitutional Convention[159] and has never been questioned seriously by the Supreme Court.[160] Indeed, the advisory opinion ban—encompassing the requirement that there be an actual dispute between adverse litigants in which there is a substantial likelihood that a favorable judgment will have an impact—goes directly to the twin purposes of the case and controversy requirement itself. The requirement limits the "business of the federal courts to 'questions presented in an adversary context and in a form historically viewed as capable of resolution through the judicial process,'"[161] and promotes separation of powers by "assur[ing] that

Ferreira, 54 U.S. (13 How.) 39, 48 (1851) (holding nonjusticiable claims under a federal statute which provided for judicial review of war damage claims against the United States, but making the federal courts' determinations subject to review and revision by the Secretary of the Treasury). *But see* Lee, *supra* note 124, at 647 n.246 (arguing that *Hayburn's Case* should be interpreted more narrowly to preclude the exercise of federal judicial power only when the judgment of the federal court would be subject to review or revision by a coordinate branch of the federal government).

158. *See* JAMES BRADLEY THAYER, LEGAL ESSAYS 54 (1972) (commenting that if Jefferson's questions to the Court had been of a different character—i.e., easier to answer—or at a less tense moment in history, the Justices' response might have been materially different and would have changed the evolution of the advisory opinion ban as a central defining tenant of the federal judicial power); Lee, *supra* note 124, at 644-51 (arguing that although there is a constitutional dimension to the advisory opinion ban, "the Court has been extremely sloppy in its use of the phrase 'advisory opinions,'" and many of the scenarios in which the Court has used the term "advisory opinions" do not invoke the constitutional ban on advisory opinions); Robert J. Pushaw, Jr., *Why the Supreme Court Never Gets Any "Dear John" Letters: Advisory Opinions in Historical Perspective*, 87 GEO. L.J. 473, 474 (1998) (arguing that although constitutional and political theory impacted the Justices' reaction to Jefferson's inquiry, political ideology was the primary influence).

159. *See* Comment, *The Advisory Opinion and the United States Supreme Court*, 5 FORDHAM L. REV. 94, 101-02 (1936) (noting a suggestion at the Constitutional Convention of 1787 to adopt a provision "allowing the Executive to obtain advisory opinions from the Supreme Court" that was not incorporated into the Constitution).

160. *See id.* at 103. The Comment describes two "extraordinary incident[s]" in which the Supreme Court appears to have varied from its position on the impropriety of issuing advisory opinions. *See id.* First, in 1822, President Monroe drafted a pamphlet that expressed his negative views regarding a bill that would have extended federal power over turnpikes within state boundaries and he sent a copy of this pamphlet to the Justices of the Supreme Court. *See id.* Justice Marshall responded, expressing his agreement with President Monroe's views. *See id.* Justice Story acknowledged receipt of the pamphlet without expressing an opinion on the views expressed by the President. *See id.* Thereafter, Justice Johnson, in consultation with other Justices, forwarded a joint opinion to the President addressing the issues raised in the pamphlet. *See id.* The second incident occurred in 1877 when the result of the Hayes-Tilden election was in question. Congress created an Electoral Commission to decide the result of the election. *See id.* The members of the Commission were five Justices of the Supreme Court. Each member of the Commission—i.e., each Supreme Court Justice—voted along his own political party lines and implicitly provided an advisory opinion as to the substantive issues required to resolve the dispute surrounding the election. *See id.*

161. United States Parole Comm'n v. Geraghty, 445 U.S. 388, 396 (1980) (quoting Flast v. Cohen, 392 U.S. 83, 95 (1968)).

the federal courts will not intrude into areas committed to the other branches of government."[162] In short, the advisory opinion ban, in its constitutional form, limits the jurisdiction of the federal courts to matters of a judicial nature.[163]

When a judgment rests on adequate and independent state grounds,[164] a Supreme Court determination of the federal issues would amount to an advisory opinion[165] because there is no actual dispute between adverse litigants,[166] and there is not a substantial likelihood that a Supreme Court decision resolving the federal issues would have an effect.[167] Thus, these cases fail to satisfy the Article III case or controversy requirement.[168]

Some commentators have suggested that a Supreme Court opinion may be "rendered advisory" when, on remand to the state court, the state court reinstates its original judgment.[169] This view, however, misconstrues the nature of the advisory opinion ban.[170] The State

162. *Id*.

163. In his report on the constitutional debates, James Madison noted that the federal judicial power was "constructively limited to cases of a Judiciary nature." *See* 2 THE RECORDS OF THE FEDERAL CONVENTION OF 1787, at 430 (Max Farrand ed., rev. ed. 1966); *see also Hayburn's Case*, 2 U.S. (2 Dall.) 409, 411 (1792) (concluding that it would not be appropriate for federal courts to consider and rule on Revolutionary War veterans' benefits claims when the courts' determinations would be subject to review and revision by the Secretary of War, because such action by the federal courts was not "of a judicial nature"). *But see* Lee, *supra* note 124, at 639-40 (discussing the circumstances upon which Madison's report was based and concluding that Madison's statement may have represented his own wishful thinking more than a consensus among the framers).

164. *See* Michigan v. Long, 463 U.S. 1032, 1040-41 (1983) (maintaining that adequate and independent state grounds exist where a state court decision contains a plain statement that the federal cases cited are used only for guidance and do not themselves compel the result).

165. *See* Herb v. Pitcairn, 324 U.S. 117, 125-26 (1945) (stating that the Court renders an advisory opinion when it reviews state court judgments that rested on adequate and independent state grounds); Westling, *supra* note 7, at 383 & n.11 (maintaining that the Court does not review state court decisions that are based on adequate and independent state grounds because the Court does not want to imply a distrust in the integrity or ability of state court judges).

166. *See* Valley Forge Christian College v. Americans United for Separation of Church and State, Inc., 454 U.S. 464, 473 (1982) (stating that allowing claims by non-adverse parties without a personal stake in the outcome would convert the judicial system into a public debate forum). *But see* Matasar & Bruch, *supra* note 7, at 1302-03 (arguing that an actual dispute exists in federal appellate review of state court decisions resting on adequate and independent state grounds because parties do not litigate hypothetical cases on appeal).

167. *See, e.g.*, Simon v. Eastern Ky. Welfare Rights Org., 426 U.S. 26, 45-46 (1976) (denying standing to parties challenging a federal tax statute because it was not substantially likely that a decision favorable to the parties would have the desired effect).

168. *See* U.S. CONST. art. III, § 2 (delineating the extent of the powers of the federal judiciary); Westling, *supra* note 7, at 394 (stating that advisory opinions are banned by the case or controversy requirement).

169. *See, e.g.*, Rosenfeld, *supra* note 122, at 1043 (maintaining that a Supreme Court decision that reverses a state court judgment would become an advisory opinion if, on remand, the state court decided to reinstate its original decision based solely on state constitutional grounds).

170. The Supreme Court must, in light of the principles developed to identify a justiciable claim, determine whether its opinion would be an impermissible advisory opinion. *See*

Grounds Doctrine[171] implicates Article III because the parties lose the personal stake required by Article III,[172] not because the Court's determination of the federal issues is not binding on the state courts.[173] Certainly, any opinion by the Supreme Court on an issue of federal law is binding on all state and federal courts.[174] The focus of the State Grounds Doctrine, however, is on whether the Supreme Court's opinion will influence the outcome of the case such that the parties retain a personal stake that assures an adversarial presentation of the relevant issues.[175]

The Supreme Court must, in light of the principles developed to identify a justiciable claim, determine whether its opinion would be an impermissible advisory opinion or whether the case presents a justiciable claim. In doing so, the Court must examine the record from the state court and determine whether the state court based its opinion on state law that will be unaffected by a determination of the Supreme Court (advisory opinion) or whether the Supreme Court's opinion on the federal issues is sufficiently likely to influence the outcome (justiciable controversy). The standing[176] and mootness[177] doctrines have evolved to enable federal courts to distinguish

Westling, *supra* note 7, at 404 (stating that rendering advisory opinions is an illegitimate exercise of judicial power); *see generally* Lea Brilmayer, *The Jurisprudence of Article III: Perspectives on the "Case or Controversy" Requirement*, 93 HARV. L. REV. 297, 300 (1979) (noting that Article III allows the federal judiciary to resolve abstract constitutional issues only if a dispute between individuals exists).

171. *See* Fox Film Corp. v. Muller, 296 U.S. 207, 210 (1935) (stating that if a state court decision is based on both federal and state grounds, the Court may not review the decision if the state ground is independent and adequate to support the state court's judgment).

172. *See* Allen v. Wright, 468 U.S. 737, 751-52 (1984) (noting that federal courts are not the proper place to bring generalized grievances); *see also Simon*, 426 U.S. at 39 (maintaining that Article III requires that the plaintiff in a judicial action profit personally from the case).

173. *See, e.g.*, Brown v. Adams, 324 F. Supp. 803, 807 (D. Conn. 1971) (stating that rulings by the Supreme Court bind all inferior federal courts and state courts); *cf.* Antonin Scalia, *The Doctrine of Standing as an Essential Element of the Separation of Powers*, 17 SUFFOLK U. L. REV. 881, 891 (1983) (stating that the purpose of the standing requirement is to allow courts to perform their functions well, rather than to prevent the courts from intruding in affairs best left to the legislative and executive branches).

174. *See, e.g.*, *Brown*, 324 F. Supp. at 807 (stating that rulings by the Supreme Court are the "final law of the land") (citing United States v. American Radiator & Standard Sanitary Corp., 278 F. Supp. 241, 251 (W.D. Pa. 1967)).

175. *See* Westling, *supra* note 7, at 397 n.78 (arguing that the purpose of the State Grounds Doctrine is to ensure that decisions by the Court on federal questions will affect the outcome of litigation after remand to the state courts).

176. *See generally* Warth v. Seldin, 422 U.S. 490, 498 (1975) ("In its constitutional dimension, standing imports justiciability: whether the plaintiff has made out a 'case or controversy' between himself and the defendant within the meaning of Art. III. This is the threshold question in every federal case, determining the power of the court to entertain the suit.").

177. *See generally* Richard H. Fallon, Jr., *Of Justiciability, Remedies, and Public Law Litigation: Notes on the Jurisprudence of Lyons*, 59 N.Y.U. L. REV. 1, 25 n.124 (1984) ("Mootness doctrine addresses two kinds of questions. The first involves the liveness of issues, that is, whether there is a continuing course of conduct the lawfulness of which remains in doubt. The second concerns the continuing 'personal stake' of the parties in having the issues resolved.").

justiciable cases and controversies from attempts to invoke the federal courts' jurisdiction in a manner that would lead to the improper rendering of advisory opinions.[178] As the remainder of this Part will explain, standing and mootness are not satisfied when a state court's judgment rests on adequate and independent state law.[179] Cases resting on adequate and independent state law, therefore, are nonjusticiable in the Supreme Court.

A. Standing

The focus of the standing inquiry is whether "a party has a sufficient stake in the otherwise justiciable controversy to obtain judicial resolution of that controversy."[180] This "personal stake" satisfies the Article III requirements of an actual dispute between adverse litigants and a likelihood that the Court's judgment will have an impact.[181]

The "irreducible constitutional minimum"[182] standing requirement, articulated by the Supreme Court, consists of the following three elements: "first, the plaintiff must have suffered an 'injury in fact'. . . . Second, there must be a causal connection between the injury and the conduct complained of . . . . Third, it must be 'likely,' as opposed to merely 'speculative,' that the injury will be redressed by a favorable decision."[183]

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178. *See Warth*, 422 U.S. at 498.

179. *See* Hall v. Beals, 396 U.S. 45, 48 (1969) (holding that a case must be dismissed if it loses its character as a present live controversy, so that it does not become an advisory opinion involving abstract legal ideas); *cf.* Scalia, *supra* note 173, at 890-93 (describing the effect that the standing doctrine has on the relationship between the three branches of government).

180. *See* Sierra Club v. Morton, 405 U.S. 727, 731 (1972); *see also Warth*, 422 U.S. at 498 ("[T]he standing question is whether the plaintiff has 'alleged such a personal stake in the outcome of the controversy' as to warrant his invocation of federal-court jurisdiction and to justify exercise of the court's remedial powers on his behalf.") (quoting Baker v. Carr, 369 U.S. 186, 204 (1962)).

181. *See Sierra Club*, 405 U.S. at 732; Flast v. Cohen, 392 U.S. 83, 95 (1968) (holding that Article III limits standing in federal courts to cases where the dispute is presented in an adversary context and can be judicially resolved).

182. *See* Lujan v. Defenders of Wildlife, 504 U.S. 555, 560 (1992).

183. *Id.* at 560-61; *see also* Valley Forge Christian College v. Americans United for Separation of Church and State, Inc., 454 U.S. 464, 472 (1982) (maintaining that the three elements of standing assure that legal questions are resolved in a "concrete factual context"). The standing requirement is equally applicable in civil and criminal cases. *See* Whitmore v. Arkansas, 495 U.S. 149, 155 (1990) (applying the same standard for standing in a criminal case as that used in civil cases). State Grounds Doctrine cases are often criminal cases. *See, e.g.*, Michigan v. Long, 463 U.S. 1032, 1037-44 (1983) (involving the question of whether the State Grounds Doctrine barred review of a state criminal conviction arising from search and seizure of marijuana); Burton v. Senkowski, No. CV-94-3836, 1995 WL 669908, at *5 n.1 (E.D.N.Y. Nov. 5, 1995) (holding that the State Grounds Doctrine requires that the Court defer to the state court's dismissal of petitioner's Sixth Amendment claim to a public trial relating to criminal convictions for robbery and assault); Carter v. State, No. 05-94-00060-CR, 1995 WL 89802, at *1 (Tex. App. Mar. 1, 1995) (maintaining that the appellant must maintain adequate and separate

It is the third element—the redressability requirement—that the State Grounds Doctrine implicates. This redressability requirement mandates that the federal court's decision produces some change or impact on the outcome of the case.[184] The likelihood that the judgment will have an effect, in turn, ensures that there is a live controversy between adverse litigants, in the constitutional sense.[185] If the judgment will not have an impact, the parties have no personal stake to guarantee adversariness and ensure that the matters presented for resolution are of a judicial nature.[186] In this way, the redressability requirement ensures that a federal court will not render an advisory opinion.

Therefore, the redressability requirement is a constitutional requirement.[187] The Supreme Court has referred consistently to redressability as a constitutional element of standing,[188] and the redressability element promotes the constitutional advisory opinion ban by requiring that there be a substantial likelihood that a favorable federal court decision will have an impact.[189]

In *Lujan v. Defenders of Wildlife*,[190] Justice Scalia, writing for a plurality of Justices, addressed the redressability element.[191] The plaintiff in *Lujan*[192] challenged a rule promulgated by the Secretary of the Interior (the "Secretary") that interpreted a section of the

arguments for applying laws on state and federal grounds relating to seizure of cocaine allegedly in violation of the United States Constitution and state constitution); People v. Torres, 543 N.E.2d 61, 62-69 (N.Y.2d 1989) (reasoning that policy on state and federal constitutional privacy grounds does not have to be uniform if the states want to adopt a more protective standard).

184. *See* Flast v. Cohen, 392 U.S. 83, 95 (1968) (stating that there is not a justiciable controversy when the plaintiff seeks an advisory opinion).

185. *See Sierra Club*, 405 U.S. at 732 (maintaining that having a personal stake in the controversy's outcome will ensure an adversarial context and a dispute that can be judicially resolved).

186. *See Flast*, 392 U.S. at 101 (holding that for a federal court to hear a case, the plaintiff must have a personal stake in the controversy and the parties must be adverse).

187. *But see* Fallon, *supra* note 177, at 21-47 (arguing that the redressability element should not be considered part of the constitutional standing requirement).

188. *See Lujan*, 504 U.S. at 560 (holding that redressability is one of three factors that make up the constitutional minimum for standing); Allen v. Wright, 468 U.S. 737, 751 (1984) (stating that a core component of the standing requirement is that the injury will likely be redressed by the requested relief); Simon v. Eastern Ky. Welfare Rights Org., 426 U.S. 26, 41-42 (1976) (maintaining that Article III's case or controversy standard requires federal courts to act by addressing injuries traceable to the defendant's action).

189. *See Simon*, 426 U.S. at 38 (stating that a plaintiff may satisfy standing with an injury that will likely be redressed by a positive verdict); *see also Sierra Club*, 405 U.S. at 740 (maintaining that a plaintiff seeking review must be affected personally by the judgment).

190. 504 U.S. 555 (1992).

191. *See id.* at 561 (defining redressability element as a requirement that it be "'likely,' as opposed to merely 'speculative,' that the injury will be 'redressed by a favorable decision'") (citing *Simon*, 426 U.S. at 38-43).

192. *See id.* at 559 (describing the plaintiff as an "organization dedicated to wildlife conservation and other environmental causes").

Endangered Species Act of 1973 ("ESA").[193] The ESA provided that each federal agency consult with the Secretary to "insure that any action authorized, funded, or carried out by" the agency "is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species."[194] The Secretary had interpreted this section to require consultation with a federal agency only when the agency was undertaking action in the United States or on the high seas.[195] The plaintiff, however, contended that the statute required consultation on all projects, including projects in foreign countries, which were excluded from consultation under the Secretary's interpretation.[196] Essentially, the plaintiff sought an interpretation of the ESA requiring federal agencies to consult with the Secretary before funding development projects that adversely affected endangered or threatened species anywhere in the world.[197]

The *Lujan* Court concluded that the plaintiff, an environmental group, the members of which included scientists who wanted to study endangered species in foreign countries, lacked standing to maintain the action because it did not satisfy the injury-in-fact element of the standing requirement.[198] Justice Scalia went on to discuss the plaintiff's failure to satisfy the redressability element.[199] According to Justice Scalia, there were two impediments to redressability. First, the statute in question and the interpretation that would result from the *Lujan* litigation were not necessarily binding on other federal agencies.[200] Therefore, a federal court judgment interpreting the

193. *See* Endangered Species Act of 1973, 16 U.S.C. § 1536 (1994)..

194. *See id*. § 1536(a)(2).

195. *See Simon*, 426 U.S. at 558-59 (describing the interpretation and noting that it came after only one year of the statute's existence).

196. *See id*. at 559 (stating that the plaintiff argued that the new interpretation was incorrect in its geographic scope and that the initial interpretation that the statute was meant to be enforced with regard to projects abroad should be reinstated).

197. *See id*. at 558-59 (noting that the plaintiff argued that the statute was meant to protect species in the United States as well as in foreign nations).

198. *See id*. at 564 (explaining the reasons why the plaintiff did not satisfy the standing requirement). The Court explained why the plaintiff failed to satisfy the standing requirement as follows:

> [T]he affiants' profession of an "intent" to return to the places they had visited before—where they will presumably, this time, be deprived of the opportunity to observe animals of the endangered species—is simply not enough. Such "some day" intentions—without any description of concrete plans, or indeed even any specification of *when* the some day will be—do not support a finding of the "actual or imminent" injury that our cases require.

Id.

199. *See id*. at 571 (holding that relief granted by the district court would not redress the injury-in-fact because the remedy required termination of funding by individual agencies that did not supply all the funding to the foreign projects).

200. *See id*. at 569 (suggesting that a resolution by the district court would not remedy the

ESA to require the Secretary to consult with federal agencies regarding foreign projects would not always result in the consultation desired by the plaintiff.[201] Second, the plaintiff failed to show that United States funding of foreign products was so significant that, if eliminated, the lack of funding would stop the foreign projects and result in less harm to the endangered or threatened species.[202] In other words, there was not a substantial likelihood that a favorable judgment (i.e., a decision interpreting the ESA to require the Secretary to consult with federal agencies regarding foreign projects) would produce a decline in the destruction of endangered or threatened species due to federal agencies' consultation with the Secretary.

Similarly, when a litigant seeks review by the Supreme Court of a state court's judgment that rests on independent and adequate state law grounds, the personal stake, as defined by the redressability element of the standing requirement, is lacking. In particular, the Court's determination that unreviewable state law grounds are independent and adequate to support the state court's judgment represents a determination that there is not a substantial likelihood that a favorable Supreme Court judgment (i.e., a judgment revising the state court's determination of the federal issues) will have an impact on the state court's judgment (i.e., cause a reversal of the state court's judgment).[203]

B. Mootness

The mootness doctrine is closely related to the standing requirement described above.[204] The mootness doctrine ensures that the standing requirement, which must be satisfied at the outset of the litigation, continues to be satisfied throughout the litigation.[205]

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alleged injury because the agencies would not necessarily be bound by the decision).

201. *See id.*

202. *See id.* (stating that the injury was too speculative because the agencies only supplied a fraction of the total funds necessary for the foreign projects).

203. *See* Simon v. Eastern Ky. Welfare Rights Org., 426 U.S. 26, 45-46 (1976) (stating that a plaintiff has standing if a favorable decision will redress the plaintiff's injury); Sierra Club v. Morton, 405 U.S. 727, 740 (1972) (holding that the Court's decision must affect the plaintiff personally).

204. *See* Warth v. Seldin, 422 U.S. 490, 499 n.10 (1975) (describing the "close affinity" between standing and mootness); *see also* Brilmayer, *supra* note 170, at 298-99 (stating that standing and mootness have the unified purpose of assuring that the plaintiff has a personal stake in the controversy); Fallon, *supra* note 177, at 26 (maintaining that standing and mootness have similar functions because they both require "concrete adverseness" and limit judicial involvement); Note, *Mootness on Appeal in the Supreme Court*, 83 HARV. L. REV. 1672, 1673 n.12 (1970) (claiming that the mootness doctrine, like the standing doctrine, cannot be categorized or defined specifically).

205. *See Warth*, 422 U.S. at 499 n.10 (defining the question of mootness as whether the need

Mootness is "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)."[206] The mootness doctrine ensures that the plaintiff's personal stake and the live controversy between adverse litigants, as defined by the three elements of standing, continue throughout the litigation.[207] A "moot" case is one in which the "factual or legal context changes in such a way that a justiciable question no longer is before the court."[208] In order for a case to become moot, there must have been a justiciable controversy at the outset of the litigation that, as a result of a change in circumstances, is no longer a live controversy between adverse litigants.[209]

Taken together, the standing and mootness requirements fulfill the objectives of the Article III case or controversy requirement by ensuring that genuine adversariness exists at the outset and continues throughout the course of litigation.[210] Thus, standing and mootness mandate that a case resting on independent and adequate state law grounds is not justiciable.

Although the standing requirement may have been satisfied earlier in the litigation, the requirement must continuously be met during the pending litigation, both at the trial and appellate levels.[211] The Court stated in *DeFunis v. Odegaard*[212] that "'[e]ven in cases arising in the state courts, the question of mootness is a federal one which a federal court must resolve before it assumes jurisdiction.'"[213] Thus, when considering whether to review a state court judgment, the

for judicial intervention persists throughout the litigation).

206. Henry P. Monaghan, *Constitutional Adjudication: The Who and When*, 82 YALE L.J. 1363, 1384 (1973).

207. *See* United States Parole Comm'n v. Geraghty, 445 U.S. 388, 396 (1980) (stating that the issue of mootness relates to circumstances where there is no longer a live controversy or the parties no longer have a legally cognizable interest in the outcome) (citing Powell v. McCormack, 395 U.S. 486, 496 (1969)).

208. *See* Richard K. Greenstein, *Bridging the Mootness Gap in Federal Court Class Actions*, 35 STAN. L. REV. 897, 898 (1983); *see also* Mills v. Green, 159 U.S. 651, 653 (1895) (stating that a federal court should not proceed with a case when an event occurs while the appeal is pending that makes it impossible for the federal court to grant any effectual relief).

209. *See* Don B. Kates, Jr. & William T. Barker, *Mootness in Judicial Proceedings: Toward a Coherent Theory*, 62 CAL. L. REV. 1385, 1387 (1974) (arguing that a party should not be able to continue a case when the relevant issue is resolved while the case is pending or when the parties' interests become "not sufficiently adverse to ensure proper and effective presentation of the arguments for each side").

210. *See Geraghty*, 445 U.S. at 397 (stating that Article III limits federal court jurisdiction to cases where adjudication is presented in an adversarial context).

211. *See supra* notes 205-06 and accompanying text (defining mootness as requiring the standing requirement to continue throughout the litigation).

212. 416 U.S. 312 (1974), *vacating as moot* 507 P.2d 1169 (Wash. 1973).

213. *Id.* at 316 (quoting North Carolina v. Rice, 404 U.S. 244, 246 (1971)).

Supreme Court must determine whether the parties retain a personal stake in the litigation.[214]

DeFunis involved an unsuccessful law school applicant's state court challenge, on federal constitutional grounds, to the University of Washington's admissions policy.[215] Pursuant to a trial court order, the plaintiff began law school while appeals were pending.[216] The Washington Supreme Court held that the school's policy did not violate the Constitution.[217] By the time the case reached the Supreme Court, the plaintiff was in his final term of law school.[218] The University had stated that it would permit the plaintiff to finish law school and obtain his degree regardless of the outcome of the case.[219] Consequently, the Court found that the Article III case or controversy requirement was no longer satisfied and declined to reach the merits of the case,[220] despite Washington's "great public interest" in the Court's resolution of the federal issues.[221] The Court stated that a judgment determining the legal issues involved was "no longer necessary to compel [the] result, and could not serve to prevent it."[222] In other words, the parties no longer had "adverse legal interests" as required by Article III.[223]

Although *DeFunis* was not a State Grounds Doctrine case,[224] it serves to illustrate how the concept of mootness applies in the State Grounds Doctrine context. Just as a favorable determination by the Supreme Court in *DeFunis* would have had no effect on the plaintiff's opportunity to complete law school and obtain his degree, when a state court has based its judgment on unreviewable state law that is independent of federal law and adequate to support the state court's

214. *See* Sierra Club v. Morton, 405 U.S. 727, 732 (1972) (requiring a plaintiff to have a personal stake in the dispute to have standing); Flast v. Cohen, 392 U.S. 83, 99-100 (1968) (maintaining that the parties must have a personal stake in the controversy and that the federal courts will not rule on "friendly suits" or those that are "feigned or collusive in nature").

215. *See DeFunis*, 416 U.S. at 314.

216. *See id.* at 314-15 (noting that the trial court granted an injunction to the plaintiff that allowed him to commence his studies in the fall of 1970).

217. *See DeFunis*, 507 P.2d at 1186-88.

218. *See DeFunis*, 416 U.S. at 315-16.

219. *See id.* at 315-17 & nn.2-3.

220. *See id.* at 316-20 (refusing to consider the substantive constitutional issues because the school had agreed to allow the plaintiff to complete his law school education regardless of the outcome of the case).

221. *See id.* at 316 (stating that the Washington Supreme Court specifically identified the "great public interest" in the issues raised).

222. *See id.* at 316.

223. *See id.* at 317 ("The controversy between the parties has . . . ceased to be 'definite and concrete' and no longer 'touch[es] the legal relations of parties having adverse legal interests.'") (quoting Aetna Life Ins. Co. v. Howarth, 300 U.S. 227, 240-41 (1937)).

224. There was no assertion that the Washington Supreme Court's decision upholding the school's admissions policy was based on state law. *See id.*

judgment, a favorable decision by the Supreme Court is not likely to have an impact or bring about a favorable result for the party seeking review of the federal questions. Thus, the party seeking review does not have a personal stake, in the constitutional sense, despite the presence of a public interest in the outcome of the federal issues or the fact that the absence of Supreme Court review leaves ambiguity in the law.[225] In addition, the prevailing party in state court does not have a continuing personal stake in the litigation; any incentive to litigate vanished when the state court issued a favorable judgment that will not be affected by the Supreme Court's determination of the federal issues.[226]

Although the Supreme Court has identified clearly and consistently the three core standing elements as incidents of Article III's limitations on judicial power,[227] the Court has been less clear about what components of the mootness doctrine stem from Article III.[228] In addition, although the Court has referred consistently to Article III as the basis of the mootness doctrine,[229] it has recognized this doctrine as being more flexible than the standing doctrine.[230] This

225. *See* Lujan v. Defenders of Wildlife, 504 U.S. 555, 562-64 (1992) (holding that the plaintiff was not affected directly by the Secretary's actions and thus, did not have a personal stake in the outcome); *see also* Sierra Club v. Morton, 405 U.S. 727, 732 (1972) (maintaining that the plaintiff must have a personal stake in the dispute for the case to be justiciable).

226. *See* Flast v. Cohen, 392 U.S. 83, 101 (1968) (arguing that for a dispute to be justiciable, the plaintiff must be affected by the outcome).

227. *See Lujan*, 504 U.S. at 560 (stating that the three standing requirements are: (1) that the plaintiff suffered an "injury-in-fact," (2) a causal connection between the injury and the allegedly wrongful conduct, and (3) that the injury will likely be redressed by a favorable decision). Arguably, however, the Court has been less clear in defining and applying the three constitutional elements. *See, e.g.*, Valley Forge Christian College v. Americans United for Separation of Church and State, Inc., 454 U.S. 464, 475 (1982) ("We need not mince words when we say that the concept of 'Art[icle] III standing' has not been defined with complete consistency in all the various cases decided by this Court."); JOSEPH VINING, LEGAL IDENTITY: THE COMING OF AGE OF PUBLIC LAW 1 (1978) (noting that "[j]udicial behavior [regarding standing] is erratic, even bizarre," and that "[t]he opinions and justifications do not illuminate" the reasons why judges allow standing in certain cases and not in others); Gene K. Nichol, Jr., *Abusing Standing: A Comment on* Allen v. Wright, 133 U. PA. L. REV. 635, 639-41 & n.30 (1985) (describing the inconsistencies in applying the standing requirements).

228. *See* Susan Bandes, *The Idea of a Case*, 42 STAN. L. REV. 277, 246 (1990) ("The ambiguous constitutional status of the mootness doctrine complicates the matter.").

229. *See* DeFunis v. Odegaard, 416 U.S. 312, 316 (1974) ("The inability of the federal judiciary 'to review moot cases derives from the requirement of Art[icle] III of the Constitution under which the exercise of judicial power depends upon the existence of a case or controversy.'") (quoting Liner v. Jafco, Inc., 375 U.S. 301, 306 n.3 (1964)); *see also* North Carolina v. Rice, 404 U.S. 244, 246 (1971) (noting that mootness questions must be resolved before federal courts can operate within their constitutional authority); Powell v. McCormack, 395 U.S. 486, 496 n.7 (1969) (stating that the Court lacks jurisdiction to consider the merits of a moot case because doing so goes against the constitutional requirement that "judicial power extends only to cases or controversies"); Sibron v. New York, 392 U.S. 40, 50 n.8 (1968) (stating that the Court is fully justified in foreclosing adjudication on an issue when it becomes moot).

230. *See* United States Parole Comm'n v. Geraghty, 445 U.S. 388, 400 (1980) (referring specifically to "the flexible character of the Art[icle] III mootness doctrine"); *see also* Fallon,

flexibility has led to the question of whether the mootness doctrine is a constitutional requirement or a prudential limitation on federal jurisdiction.[231] The answer to this question is central to determining whether the State Grounds Doctrine is a constitutional requirement because it is an application of the mootness doctrine.

The "flexibility" attributed to the mootness doctrine stems from the Court's application of three exceptions to the doctrine:[232] (1) "capable of repetition yet evading review"; (2) "voluntary cessation of challenged conduct"; and (3) "collateral consequences."[233] The first exception—"capable of repetition yet evading review"—posits that an otherwise moot case will not be subject to dismissal on mootness grounds if the same plaintiff might again suffer the same injury, but again full appellate review will be unavailable because, for example, the injury is short-lived and will always vanish before full appellate review is completed.[234] Under the second exception, the defendant's voluntary cessation of the challenged conduct will not result in the case's dismissal as long as the defendant would be free to resume the challenged conduct after dismissal. However, the court may dismiss the case provided that the defendant can show that there is no reasonable expectation that the challenged conduct will be resumed.[235] Finally, the "collateral consequences" exception prevents the dismissal of a case for mootness even though the plaintiff's primary injury has disappeared, as long as some injury remains that could be redressed by a favorable judgment.[236]

None of these exceptions permits the conclusion that a state court's judgment resting on independent and adequate state law grounds presents a justiciable case or controversy for Supreme Court review. The first exception—"capable of repetition yet evading review"—relates primarily to the injury requirement and applies only when the injury is fleeting and has disappeared before full appellate review can be completed.[237] As the State Grounds Doctrine does not

supra note 177, at 26-28 & n.30 (noting that the Court has decided mootness issues more flexibly than standing issues).

231. *See* Honig v. Doe, 484 U.S. 305, 329-32 (1988) (Rehnquist, C.J., concurring) (noting that earlier cases did not state that mootness was based on Article III); *see also* Lee, *supra* note 124, at 609 (arguing that the mootness doctrine is not required by Article III, but rather operates on a prudential basis).

232. *See* CHEMERINSKY, *supra* note 18, § 2.5.1, at 127 (stating that "flexibility is manifested [by] exceptions to the mootness doctrine").

233. *See id.* §§ 2.5.2-2.5.4, at 128-39.

234. *See id.* § 2.5.3, at 131-32.

235. *See id.* § 2.5.4, at 136.

236. *See id.* § 2.5.2, at 128.

237. *See* Southern Pac. Terminal Co. v. ICC, 219 U.S. 498, 514-15 (1911) (holding that short

involve fleeting injury, the "capable of repetition yet evading review" exception is inapplicable in the State Grounds Doctrine context.

The "voluntary cessation of challenged conduct" exception is likewise inapplicable because this exception applies when one party voluntarily ceases challenged conduct.[238] In the State Grounds Doctrine context, the injury is redressed by the judgment of the state court and not by either party voluntarily ceasing the challenged conduct.[239] Thus, it is the Court's inability to affect the state decision that precludes review, not the conduct of either party.

Finally, the "collateral consequences" exception is inapplicable for two reasons: (1) because the notion of collateral consequences relates to the injury requirement (the idea is that although the plaintiff's main injury might have gone away, the plaintiff has another "collateral" injury remaining) rather than the redressability requirement; and (2) because the exception requires that the continuing collateral consequences be redressable by a judgment of the federal court.[240] In the State Grounds Doctrine context, if a collateral injury remains, it is not likely to be redressed by the Supreme Court's decision. Thus, the State Grounds Doctrine fails to avoid the mootness bar under any of the currently recognized exceptions.

In a concurring opinion in *Honig v. Doe*,[241] Chief Justice Rehnquist argued that, in light of the mootness exceptions, the mootness doctrine is a prudential limitation on the federal courts' jurisdiction.[242] *Honig* involved two California school children (Smith and Doe) who had been expelled from public schools for allegedly dangerous and disruptive conduct related to their disabilities.[243] The plaintiffs claimed that the expulsions were prohibited by a provision of the Education of the Handicapped Act ("EHA"), which states that a disabled child may remain in his or her current school placement

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term orders of the Interstate Commerce Commission were capable of repetition yet evading review and therefore, not moot).

238. *See* United States v. W.T. Grant Co., 345 U.S. 629, 632-33 (1953) (affirming the dismissal of a suit because the defendant had ceased illegal activity during the course of litigation).

239. *See* CHEMERINSKY, *supra* note 18, § 10.5.1, at 613-14 (explaining that the Supreme Court may not hear a case when to do so will result in the same outcome as under state law).

240. *See* Sibron v. New York, 392 U.S. 40, 51 (1968) (holding that review was appropriate even after defendant had served his sentence because "there was a good chance that there would be 'ample opportunity to review' the question presented on the merits in a future proceeding") (citing St. Pierre v. United States, 319 U.S. 41, 43 (1943)).

241. 484 U.S. 305 (1988).

242. *See id.* at 329-32 (Rehnquist, C.J., concurring) (claiming that the Court should either abandon the mootness doctrine or at least relax it further than present jurisprudence allows).

243. *See id.* at 312-15.

pending review of a decision to remove the child.[244] By the time the case reached the Supreme Court, the plaintiffs had grown beyond school age; plaintiff Smith was twenty years old and plaintiff Doe was twenty-four years old.[245] The majority held that Smith's claim was "capable of repetition yet evading review" because he was still entitled to EHA benefits.[246] Thus, according to the Court, Smith's claim was not moot.[247] The majority, however, held Doe's claim moot because Doe was "no longer entitled to the protections and benefits of the EHA," and thus, did not have an ongoing justiciable controversy.[248]

In his concurrence, Chief Justice Rehnquist argued for a reconsideration of the mootness doctrine and suggested that the mootness doctrine is not required by Article III.[249] Otherwise, Chief Justice Rehnquist argued, the exceptions to the mootness doctrine are unjustifiable:

> If our mootness doctrine were forced upon us by the case or controversy requirement of Article III itself, we would have no more power to decide lawsuits which are "moot" but which also raise questions which are capable of repetition but evading review than we would to decide cases which are "moot" but raise no such questions.[250]

In light of his assessment of the mootness doctrine as prudential in nature, Chief Justice Rehnquist proposed a new exception to the mootness doctrine that would permit the Court to continue to entertain cases that would become moot after the Court grants certiorari or notes probable jurisdiction in the case.[251] According to Chief Justice Rehnquist, entertaining these cases would avoid the squandering of judicial resources after the decisional process is underway.[252]

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244. *See id.* at 312 ("[D]uring the pendency of any proceedings conducted pursuant to [section 1415] . . . the child shall remain in the then current educational placement of such child . . . .") (quoting 20 U.S.C. § 1415(e)(3) (1994)).

245. *See id.* at 318.

246. *See id.* (holding that because Smith was less than 21 years old the possibility still existed pursuant to § 1412(b)(2) of the EHA that he would again suffer a deprivation of EHA rights).

247. *See id.* ("[Smith's] claim under the EHA, therefore, is not moot if the conduct he originally claimed of is 'capable of repetition, yet evading review.'").

248. *See id.*

249. *See id.* at 330 (Rehnquist, C.J., concurring) (arguing that if the mootness doctrine is based on the case and controversy requirement of Article III, then a claim must actually exist, not merely be "capable of repetition").

250. *Id.* (Rehnquist, C.J., concurring).

251. *See id.* at 330-32 (Rehnquist, C.J., concurring) (arguing that preservation of the Court's "unique resources, [including] the time spent preparing to decide cases by reading briefs, hearing oral argument, and conferring," justified this proposed exception to mootness).

252. *See id.* at 332 (Rehnquist, C.J., concurring) (noting that "unique resources . . . are squandered in every case in which it becomes apparent after the decisional process is underway that we may not reach the question presented").

If mootness is prudential and such an exception existed, it would apply in the State Grounds Doctrine context. In the State Grounds Doctrine context, the litigants already have spent time and money preparing to argue their case before the Supreme Court. The Court also has spent time and judicial resources considering the independence and adequacy of the state law grounds of decision, and in the process, may have spent considerable judicial resources considering the merits.[253]

In his dissenting opinion in *Honig*, Justice Scalia disagreed with Chief Justice Rehnquist regarding the mootness doctrine. Justice Scalia argued that the mootness doctrine *is* constitutionally based and that exceptions to the mootness doctrine must, therefore, require the plaintiff to retain a personal stake throughout the litigation to ensure that a justiciable case or controversy remains.[254] According to Justice Scalia, the "capable of repetition yet evading review" exception only applies when the plaintiff can establish a "'demonstrated probability' or a 'reasonable expectation' that the same controversy will recur."[255] Under this standard, Justice Scalia concluded that Article III is satisfied:

> Where the conduct has ceased for the time being but there is a demonstrated probability that it *will* recur, a real-life controversy between parties with a personal stake in the outcome continues to exist, and [A]rticle III is [not] violated . . . . [T]he probability of recurrence between the same parties is essential to our jurisdiction as a court . . . .[256]

Under this view, the live controversy and personal stake requirements must be met throughout the litigation, whether the analysis comes under the mootness or standing rubric, because both doctrines attempt to satisfy the "constitutional understanding of what makes a matter appropriate for judicial disposition."[257]

To conclude that mootness is prudential, mootness must be separated constitutionally from standing.[258] One argument is that as long as the constitutional standing requirements are satisfied at the outset of the litigation, the constitutional case or controversy

253. These expenses would occur in any case that raises justiciability issues and thus, would be equally applicable to all prudential justiciability requirements.

254. *See Honig*, 484 U.S. at 332-42 (Scalia, J., dissenting) (claiming that "we have no power under Art[icle] III of the Constitution to adjudicate a case that no longer presents an actual, ongoing dispute between the named parties").

255. *See id.* at 341 (Scalia, J., dissenting).

256. *Id.* (Scalia, J., dissenting).

257. *See id.* at 339 (Scalia, J., dissenting).

258. *See* DeFunis v. Odegaard, 416 U.S. 312, 316 (1974) (ruling upon issues of mootness and standing).

requirement is satisfied, even if circumstances change and the case is later rendered moot.[259] The Supreme Court has, however, rejected this view.[260] Moreover, this argument is inconsistent with the case or controversy requirement in general and the advisory opinion ban in particular.[261]

Suppose, for example, that a plaintiff files suit in federal court. At the time the suit is filed there is a genuine dispute between the parties and the standing requirement is met. Suppose, however, that while the case is on appeal the parties settle the case, but agree, as a condition of the settlement, to continue the appeal in a collusive manner (the defendant hoping to generate favorable precedent that will help in other litigation and the plaintiff willing to go along to protect a favorable settlement). Such collusion at the outset of the litigation would unquestionably violate Article III's advisory opinion ban, which precludes feigned or collusive lawsuits.[262] It is difficult to posit a constitutional argument that the result should be different in a situation where the collusion began after the litigation was underway. A better argument, therefore, is that the mootness doctrine has a constitutional core that comports with the constitutional core of the standing requirement to ensure that the standing requirement is satisfied throughout the litigation.[263]

Nevertheless, the Court has consistently maintained a much lower threshold to avoid dismissal on mootness grounds than to establish standing. For example, one of the exceptions to the mootness

259. *See id*. (referring to state common law that allows jurisdiction in cases of great public interest) (citing Defunis v. Odegaard, 507 P.2d 1169, 1177 n.6 (1973)). Even under this rationale, state grounds cases would arguably be distinguishable from cases originating in the federal district court. State grounds cases are first subjected to the Article III case or controversy requirement when they are presented for Supreme Court review, whereas cases originating in the district court are subjected to the Article III justiciability limitations at the outset of the litigation. *See id*.

260. *See id*. ("The inability of the federal judiciary 'to review moot cases derives from the requirement of Art[icle] III of the Constitution under which the exercise of judicial power depends upon the existence of a case or controversy.' . . . '[T]he question of mootness is a federal one which a federal court must resolve before it assumes jurisdiction.'") (quoting Liner v. Jafco, Inc., 375 U.S. 301, 306 n.3 (1964) and North Carolina v. Rice, 404 U.S. 244, 246 (1971)).

261. *See* Herb v. Pitcairn, 324 U.S. 117, 126 (1945) ("We are not permitted to render an advisory opinion, and if the same judgment would be rendered by the state court after we corrected its views of federal laws, our review could amount to nothing more than an advisory opinion.").

262. *See* United States v. Johnson, 319 U.S. 302, 305 (1943) (dismissing as nonjusticiable a suit brought at the request of, and directed and financed by, the defendant because "it [was] not in any real sense adversary").

263. *See Rice*, 404 U.S. at 246 (stating that "federal courts are without power to decide questions that cannot affect the rights of litigants in the case before them"); Fallon, *supra* note 177, at 14 (stating that "the Supreme Court has found that Article III requires adversariness in fact").

doctrine is "voluntary cessation of challenged conduct."[264] Under this exception, if the defendant voluntarily ceases the challenged conduct, but is free to resume it, the case will not be dismissed on mootness grounds.[265] The rationale for this exception is that it would be unfair to permit a defendant to defeat a claim by voluntarily refraining from engaging in the challenged conduct while remaining free to resume the conduct once the litigation is dismissed.[266] Before the Court will dismiss a case based on the defendant's voluntary cessation of the challenged conduct, the *defendant* must establish that there is no "reasonable expectation" that the challenged conduct will be resumed or reoccur.[267] This standard permits cases to continue on a much lower showing of imminent injury than that required to establish standing to seek prospective relief, in which the relevant inquiry is whether the *plaintiff* can establish an "actual or imminent" injury.[268]

Los Angeles v. Lyons provides an example.[269] In *Lyons*, the plaintiff sued the City of Los Angeles for injuries caused by a police officer applying a chokehold on him during a traffic stop.[270] The plaintiff brought suit challenging the policy permitting a police officer to use deadly chokeholds in the absence of any threat of violence against

264. *See* United States v. W.T. Grant Co., 345 U.S. 629, 633-36 (1953) (refusing to declare as moot a suit in which the defendant had voluntarily ceased illegal activity but was not barred from resuming such activity in the future).

265. *See id.* at 635 (refusing to grant an injunction even though the voluntary cessation of conduct did not render the case moot).

266. *See id.* at 632 (stating that by declaring the case moot, "[t]he defendant is free to return to his old ways").

267. *See id.* at 633 ("The case may nevertheless be moot if the defendant can demonstrate that 'there is no reasonable expectation that the wrong will be repeated.'") (citation omitted).

268. *See* Lujan v. Defenders of Wildlife, 504 U.S. 555, 564 (1992) (dismissing a suit for prospective relief because the plaintiff failed to show actual imminent injury to its members even though it was able to show imminent injury to certain endangered species).

269. 461 U.S. 95 (1983).

270. The facts were stated in Justice Marshall's dissenting opinion:

> Lyons was pulled over to the curb by two officers of the Los Angeles Police Department . . . for a traffic infraction because one of his taillights was burned out. The officers greeted him with drawn revolvers as he exited from his car. Lyons was told to face his car and spread his legs. He did so. He was then ordered to clasp his hands and put them on top of his head. He again complied. After one of the officers completed a pat-down search, Lyons dropped his hands, but was ordered to place them back above his head, and one of the officers grabbed Lyons' hands and slammed them onto his head. Lyons complained about the pain caused by the ring of keys he was holding in his hand. Within five to ten seconds, the officer began to choke Lyons by applying a forearm against his throat. As Lyons struggled for air, the officer handcuffed him, but continued to apply the chokehold until he blacked out. When Lyons regained consciousness, he was lying face down on the ground, choking, gasping for air, and spitting up blood and dirt. He had urinated and defecated. He was issued a traffic citation and released.

Id. at 114-15 (Marshall, J., dissenting).

the officer.[271] In *Lyons*, the plaintiff was denied standing to seek injunctive relief despite his serious injury because he could not establish that he would be injured again in the same manner.[272] In the same case, however, the Court held that the plaintiff's claim was not moot, even though the police department had changed the challenged chokehold policy, because, according to the Court, the City of Los Angeles might resume the challenged policy after the litigation.[273] Arguably, the Court's standing and mootness holdings were not consistent if both doctrines represent the same Article III principles.[274] It seems inconsistent for the Court to say, on one hand, that Lyons did not have standing because he could not show that he would be injured again by the improper use of a chokehold,[275] but on the other hand, that the case was not moot even though the police department had stopped the use of the chokehold, thereby ensuring that Lyons would not again be subjected to the improper use of the chokehold.

One explanation for this apparent inconsistency is that the standing requirement is stricter to ensure that the plaintiff has the requisite personal stake at the outset of the litigation; then, once the requisite personal stake is established, a strong presumption attaches that the personal stake will continue throughout the litigation.[276]

271. *See id.* at 115 (Marshall, J., dissenting).

272. *See id.* at 111 ("Absent a sufficient likelihood that [the plaintiff] will again be wronged in a similar way . . . a federal court may not entertain a claim by any or all citizens who no more than assert that certain practices of law enforcement officers are unconstitutional.").

273. *See id.* at 101 ("We agree with the City that the case is not moot, since the moratorium by its terms is not permanent. Intervening events have not 'irrevocably eradicated the effects of the alleged violation.'") (citation omitted).

274. *See id.* Another example of the relaxed nature of the mootness exceptions is provided by comparing *Roe v. Wade*, 410 U.S. 113 (1973), with *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992). In *Roe*, the Court applied the "capable of repetition yet evading review" exception to mootness, under which a case will not be dismissed as moot despite the lack of continuing injury when the injury is "reasonably expected" to reoccur with regard to the same plaintiff but will again evade review by the Court. *See Roe*, 410 U.S. at 125 (holding that "[pregnancy] truly could be 'capable of repetition, yet evading review'"). In *Roe*, the plaintiff, a pregnant woman who sought a determination regarding the constitutionality of a state statute limiting her right to obtain an abortion, was no longer pregnant by the time the case reached the Supreme Court and did not have plans to again become pregnant. *See id.* at 124. The Court noted that "[p]regnancy often comes more than once to the same woman," and on that basis, concluded that the case was not moot. *See id.* at 125. Compare this with *Lujan*, in which an environmental group was denied standing to challenge an administrative interpretation of a statute because the members of the group did not have concrete plans to visit the affected areas, as was required to satisfy the "actual or imminent injury" requirement, even though the members had professed an "intent" to visit the areas in the future. *See Lujan*, 504 U.S. at 556.

275. *See Lyons*, 461 U.S. at 110.

276. Under this argument, the *Lyons* inconsistency would be resolved as follows: The case was not moot because the City and the police department were free at any time to resume the challenged chokehold policy; in fact, by its own terms the new policy limiting the use of the chokehold was not permanent. *See id.* at 101 (noting that a policy change amounted to a six month moratorium on the use of a particular type of chokehold in circumstances where the

Another, perhaps better, explanation is that the Court has been inconsistent in its approach to justiciability and needs to reassess the doctrinal exceptions and formulate a consistent justiciability jurisprudence that accurately reflects the Article III case or controversy requirement.[277]

Despite the inconsistencies in standing and mootness analysis, both doctrines share a constitutional core.[278] Specifically, the parties must retain a personal stake throughout the litigation to assure an adversarial presentation of the case.[279] This constitutional core is implicated in the State Grounds Doctrine context because a state court's decision that rests on unreviewable state law grounds, independent of the federal issues and adequate to support the state court's judgment, is not likely to be affected by Supreme Court review.[280] Thus, the parties no longer have a personal stake in the litigation and the case is moot.

III. IMPLICATIONS FOR ANALYZING CASES UNDER THE STATE GROUNDS DOCTRINE

A party seeking to invoke the jurisdiction of a federal court must establish a justiciable case or controversy.[281] A litigant may establish a

officer was not justified in using deadly force). Lyons's personal stake in the litigation—if he had one—was not diminished by the police department's voluntary and temporary change in policy; he had no assurance that the police would continue to refrain from improperly using the chokehold. *See id.* at 105 (stating that Lyons would have had standing if he could prove that there was a likelihood that the police would once again use a chokehold on him). On the other hand, the element of standing that requires that Lyons had the requisite "injury-in-fact" is tougher to satisfy, since one must have the requisite "personal stake" in the litigation before one can lose the personal stake. *See id.* The Court held that to have standing to seek prospective injunctive relief, Lyons was required to establish an imminent future injury (i.e., a likelihood that Lyons would again be illegally choked). Lyons was unable to do so. *See id.* at 105-06. If, however, Lyons could have established the requisite injury–a likelihood that he would be subjected to a future chokehold—that injury would not have been diminished by the City's voluntary change in policy. Lyons would retain his personal stake in the litigation because the City would remain free and, arguably, reasonably likely to reinstate the unconstitutional policy.

277. *See, e.g.*, *Lujan*, 504 U.S. at 589-93 (Blackmun, J., dissenting) (arguing that the Court, in imposing fresh limitations on an old doctrine, strayed outside the traditional Article III justiciability requirements, thus "resurrect[ing] a code-pleading formalism in federal court summary judgment practice").

278. *See* Honig v. Doe, 484 U.S. 305, 341 (1988) (Scalia, J., dissenting) (noting that "where the conduct has ceased for the time being but there is a demonstrated possibility that it *will* recur, a real-life controversy between parties with a personal stake in the outcome continues to exist," thus satisfying Article III).

279. *See supra* notes 204-09 and accompanying text (explaining that the mootness doctrine requires that the litigating parties have legally cognizable interests in the outcome of the case).

280. *See* CHEMERINSKY, *supra* note 18, § 10.5.1, at 613-14 (stating that an important limitation on Supreme Court review of state decisions is that "the Court must decline to hear the case if its reversal of the state court's federal law ruling will not change the outcome of the case"). Thus, if the Supreme Court cannot change the outcome of the case, then there is no case or controversy and therefore, the case is not justiciable under Article III.

281. *See Lujan*, 504 U.S. at 561 (noting that the party seeking to invoke federal jurisdiction

justiciable case or controversy and thereby invoke the jurisdiction of the Supreme Court to review a decision of a state court in one of two ways: (1) by establishing a basis for "merits" review of the state law determination of the state court;[282] or (2) by establishing that the purported state grounds of decision are either inadequate to support the state court's judgment or not sufficiently independent of the federal law issues to preclude Supreme Court review.[283]

Whether Article III permits the Supreme Court to review judgments of state courts depends on whether there is a substantial likelihood that a favorable decision by the federal court will have an impact on the outcome.[284] Whether the case is moot—because the Court's determination is not substantially likely to have any impact on the outcome—breaks down into two separate inquiries: (1) whether the state court's state law determinations are subject to "merits" review by the Supreme Court;[285] and, if not, (2) whether Supreme Court review of the federal issues in the case would amount to an advisory opinion because there is no actual dispute between adverse litigants or there is no substantial likelihood that a judgment favorable to the party seeking review will have an impact.[286] To make the second determination, the Court must look to the "independence" and "adequacy" factors as indicators of whether "it is 'likely,' as opposed to merely 'speculative,' that the injury will be redressed by a favorable decision."[287] If the Supreme Court's decision on the federal issues likely will have an impact on the state court's judgment, then the parties have the requisite personal stake in the litigation to assure adversarial presentation of the issues, as required by Article III.[288]

The test must focus on the Article III concerns, particularly the concerns raised by the redressability element of the standing

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bears the burden of satisfying the standing requirement). In the State Grounds Doctrine context, the party seeking Supreme Court review of the state court's judgment is the party seeking to invoke the jurisdiction of the federal court.

282. *See* Indiana *ex rel.* Anderson v. Brand, 303 U.S. 95, 98-100 (1938) (passing judgment on reviewing the Indiana Supreme Court's determination of a teacher's contractual rights under Indiana State Law).

283. *See supra* notes 85-123 and accompanying text (discussing the adequacy and independence requirements of the State Grounds Doctrine).

284. *See* DeFunis v. Odegaard, 416 U.S. 312, 316-17 (1974) (stressing the importance of a federal court's ability to affect the rights of litigants in an Article III analysis).

285. *See supra* notes 43-65 and accompanying text (defining and exemplifying what constitutes a "merits" review).

286. *See* Herb v. Pitcairn, 324 U.S. 117, 126 (1945) (referring to the constitutional ban on advisory opinions as a rationale for the State Grounds Doctrine).

287. *See* Lujan v. Defenders of Wildlife, 504 U.S. 555, 561 (1992).

288. *See DeFunis*, 416 U.S. at 316-17 (stating the importance of a federal court's ability to affect the rights of litigants in an Article III analysis).

requirement and the mootness doctrine.[289] The State Grounds Doctrine stands for the proposition that the Supreme Court will not review *federal* issues if the state grounds of the decision support the judgment and thus, implicitly assumes that the state law issues are not subject to "merits" review.[290] The threshold inquiry, therefore, is whether the state law issues are subject to merits review. If the state law grounds of decision are themselves subject to merits review, then the claim is justiciable because, by definition, there is a substantial likelihood that the Court's determination will have an impact. Consequently, the federal issues are reviewable as well.

If the state law issues are not subject to merits review, then they are subject to jurisdictional review to determine if they are independent of federal law and adequate to support the state court's judgment.[291] If the state law grounds of decision are inadequate to support the state court's judgment, because they arguably impinge federal rights, the state court's judgment is subject to "substantive federal question" review by the Supreme Court.[292] If the state law grounds of decision are adequate to support the state court's judgment, then the Court must determine whether they are sufficiently independent of the federal issues to suggest that the review of the federal issues will not have an impact because the state court is not likely to change its conclusion on the state law issues once corrected on the federal issues.[293]

A state court opinion that includes a *Long*[294] statement demonstrates the court's intention to ground its decision on independent state law; therefore, the *Long* statement provides a sufficient basis on which the Supreme Court may conclude that the state law is indeed independent of the federal law.[295] By including such a statement, the state court is sending a message that, despite looking to federal law as persuasive authority for its interpretation of state law, the court's determination is based on state law.[296] Thus, the

289. *See supra* Parts II.A, II.B (explaining how a case is effectively moot if the Supreme Court has no power to redress a decision because the decision is based on adequate and independent state grounds).

290. *See supra* Part I.A (discussing generally the State Grounds Doctrine).

291. *See supra* notes 66-70 (discussing jurisdictional review).

292. *See supra* notes 70-76 (discussing and defining "substantive federal question review").

293. *See supra* Part I.B (discussing adequacy and independence as a prerequisite analysis before Supreme Court review).

294. Michigan v. Long, 463 U.S. 1032 (1983).

295. *See id.* at 1038 & n.4 (illustrating instances where state law is independent of federal law).

296. *See id.* at 1041 ("If the state court decision indicates clearly and expressly that it is alternatively based on bona fide separate, adequate, and independent state grounds, [the Supreme Court] . . . will not undertake to review the decision.").

Supreme Court may conclude that its judgment on the federal issues will not have an impact on the state court's determination of state law.[297]

The absence of such a statement, however, should not give rise to a presumption of reviewability. There might be any number of reasons why the state court omitted a *Long* statement. For example, state courts may omit the *Long* statement out of a desire to obtain the Supreme Court's advice on the federal issues before it commits to an interpretation of state law. Alternatively, a state court may omit a *Long* statement because of an unawareness of the *Long* holding or poor opinion drafting.[298]

Only the first reason—a desire to obtain the Supreme Court's advice on the federal issues before committing to an interpretation—presents an appropriate basis for a presumption of justiciability.[299] On the surface, it looks as though the state court is seeking an advisory opinion from the Supreme Court.[300] There remains, however, a justiciable controversy between adverse litigants because a favorable Supreme Court decision on the federal issues is likely to have an effect on the state court.[301] In essence, the state court is, in this scenario, omitting the *Long* statement because the federal issues are not truly independent of the state issues.[302] The parties remain adverse, each interested in obtaining a favorable Supreme Court judgment on the federal issues and the favorable state court judgment that is likely to follow therefrom on remand, and thus, the case is not moot.[303]

It is the adversariness of the parties that provides the personal stake required to render the case justiciable, not merely that the state court is bound by the Supreme Court's pronouncements of federal law.[304]

297. *See id.* at 1040 ("Respect for state courts, as well as avoidance of rendering advisory opinions, have been the cornerstones of this Court's refusal to decide cases where there is an adequate and independent state ground.").

298. *See generally* Rosenfeld, *supra* note 122, at 1047-59 (studying state courts' reactions to *Long*).

299. *See id.* at 1057-59 (explaining how state courts often base opinions on federal grounds to seek Supreme Court guidance on the resolution of state issues) (citing California v. Ramos, 463 U.S. 992 (1983)).

300. *Cf. id.* at 1058 (claiming that this strategy does result in the issuance of advisory opinions).

301. Once the federal issue is resolved, the case will return to the state court for consideration of the judgment.

302. *But see* Rosenfeld, *supra* note 122, at 1058 (arguing that by intentionally intertwining state and federal law the state court hinders its own constitutional development and perpetuates confusion as to which authority should be followed).

303. *See supra* note 301 (explaining that the federal decision will be applied on remand where an outcome is still pending).

304. *See* Los Angeles v. Lyons, 461 U.S. 95, 101 (1983) ("Plaintiffs must demonstrate 'a personal stake in the outcome' in order to 'assure concrete adverseness which sharpens the

The state court is bound by the Supreme Court's conclusions of federal law in any case. The question central to the justiciability inquiry is whether the parties retain a personal stake in the litigation due to the likelihood that a favorable Supreme Court judgment will impact the state court's judgment.[305] When the state court omits the *Long* statement out of a recognition of the interdependence of the state and federal legal issues, the judicial power extends to permit the Supreme Court to review the federal issues in the case.[306]

On the other hand, other reasons for the state court's omission of a *Long* statement have nothing to do with the independence of state law and therefore, a presumption of independence in these cases would be inappropriate.[307] The Supreme Court must determine the justiciability.[308] Whether a state court's decision interpreting state law is independent of federal law and adequate to support the judgment is a question of federal law and therefore, is subject to Supreme Court review.[309] The problem with the *Long* presumption is that the Supreme Court cannot tell from the state court's opinion why the state court omitted the *Long* statement. Consequently, the Court should not presume that the absence of the *Long* statement means that the state court did not intend its judgment to be independent of

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presentation of issues' necessary for the proper resolution of constitutional issues.") (quoting Baker v. Carr, 369 U.S. 186, 204 (1962)). Even if the state court is bound by the Supreme Court's determinations regarding federal issues, the federal decision must still impact the parties at the state level because to allow otherwise would permit the rendering of advisory opinions in cases where there is no personal stake. *See* Michigan v. Long, 463 U.S. 1032, 1042 (1982) ("The jurisdictional concern is that we not render an advisory opinion, and if the same judgment would be rendered by the state court . . . our review could amount to nothing more than an advisory opinion.") (citations omitted).

305. *See Long*, 463 U.S. at 1040 (stating that "dismissal is inappropriate where there is a strong indication . . . that the federal constitution as judicially construed controlled the decision below") (citations omitted).

306. *See id.* at 1042 (holding that the Court will assume that there are no adequate and independent state grounds whenever a clear statement to the contrary is omitted and "when it fairly appears that the state court rested its decision primarily upon federal law").

307. *See id.* at 1041 (finding that while "[i]t is fundamental that state courts be left free and unfettered 'from federal review when interpreting purely state law,' it is equally [fundamental] that ambiguous or obscure adjudications by state courts do not stand as barriers to a determination by [the Supreme Court] of the validity under the federal constitution of state action") (citations omitted).

308. *See* DeFunis v. Odegaard, 416 U.S. 312, 316 (1974) ("'Even in cases arising in the state courts, the question of mootness is a federal one which a federal court must resolve before it assumes jurisdiction.'") (quoting North Carolina v. Rice, 404 U.S. 244, 246 (1971)); *Long*, 463 U.S. at 1038 ("It is, of course, 'incumbent on this Court . . . to ascertain for itself . . . whether the asserted non-federal ground independently and adequately supports the judgment.'") (quoting Abie State Bank v. Bryan, 282 U.S. 765, 773 (1931)).

309. *See Long*, 463 U.S. at 1038 (stating that the Supreme Court must analyze the independence and adequacy of a state court determination before it can hear the case); Henry v. Mississippi, 379 U.S. 443, 447 (1965) (claiming that the question of when and how defaults in compliance with state procedural rules can preclude consideration of federal questions, is itself a federal question).

federal law.[310] Thus, the *Long* presumption abdicates the Court's fundamental responsibility to determine for itself whether the Article III case or controversy requirement has been satisfied.

Significantly, the availability of a federal forum for litigating federal claims is implicated when the Court is unavailable to review state court judgments in cases involving federal issues. The federal courts are important in promoting the supremacy and uniformity of federal law, as well as protecting federal rights. These interests underscore the importance of the Court's undertaking its own independent analysis of a state court's judgment to determine whether a justiciable claim is presented.[311]

The availability of a federal forum, however, is subject to the limitations of Article III.[312] Moreover, properly applied, the State Grounds Doctrine does not interfere with the interests in federal supremacy, uniformity of federal law, and protection of federal rights. Uniformity of federal law is not undermined significantly because any opinion rendered by the state court on the federal issues is, by definition, unnecessary to the judgment,[313] and thus, is *obiter dicta*. The persuasive value of various interpretations of federal law will not undercut uniformity, but arguably will enrich the judicial process by providing a variety of rationales that may guide the Supreme Court when ultimately the issue is properly presented for resolution. Further, proper application of the State Grounds Doctrine does not interfere with federal rights or federal supremacy. A state court judgment that impermissibly interferes with a federal right is not adequate to preclude federal review.[314] Thus, a claim that

310. *See Long*, 463 U.S. at 1039-42 (requiring state courts to make an express and unambiguous statement that the grounds for the decision are based upon purely state law to preclude federal court review).

311. *See generally* Cohens v. Virginia, 19 U.S. (6 Wheat.) 264, 291 (1821) (holding that before the Court may invoke jurisdiction, "it must be shown that this is a case arising either under the Constitution, or a law of the United States").

312. *See id.* ("[T]he 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.") (citing U.S. CONST. art. III, § 2).

313. If the state court's conclusion on the federal issues is necessary to the state court's judgment, it is, by definition, not independent of the state law grounds of decision. *See* Herb v. Pitcairn, 324 U.S. 117, 125-26 (1944) (holding that although the Court may not review decisions based upon adequate and independent state grounds, the Court has the power to review state judgments to the extent that "they incorrectly adjudge federal rights"). A Supreme Court opinion on the federal issues would, therefore, be sufficiently likely to impact the state court's judgment that the parties retain the necessary personal stake in the litigation to render the case justiciable before the Supreme Court.

314. *See Cohens*, 19 U.S. (6 Wheat.) at 290-95 (discussing the Supreme Court's power to review state law that infringes a federal right); *see also Henry*, 379 U.S. at 447-48 (holding that a state procedural ground for a decision must serve a legitimate state interest to present a valid bar to the adjudication of federal rights).

state law constitutes an infringement of a federal right or an interference with federal supremacy is justiciable.[315]

In addition to the importance of a federal forum, there are other reasons why a party seeking Supreme Court review might want the Court's definitive answer to the federal questions raised in the case.[316] For instance, a party may wish to eliminate ambiguity in the law, obtain favorable precedent for future litigation, or have the personal satisfaction of a victory in the Supreme Court of the United States.[317] Although these are all "interests" in the sense that the litigant would benefit, none of them provides the "personal stake" required by Article III. Indeed, the Supreme Court has noted that even a "great public interest in the continuing issues raised by [an] appeal" does not save a case from mootness dismissal.[318] When a state court's judgment rests on adequate and independent state law grounds, the litigant's interest in obtaining Supreme Court review does not include obtaining a favorable judgment in the case; the legal tests for independence and adequacy have already been applied to determine that a favorable decision by the Supreme Court is not likely to have an impact (i.e., result in a favorable judgement for the party seeking review).[319] Consequently, the litigant does not have a personal stake—in the constitutional sense—in the litigation.

Similarly, the responding party does not have a personal stake. If there was a likelihood that Supreme Court review could impact the state court's judgment, the responding party would have an adversarial interest in the litigation to protect the favorable state court judgment. When the state court's judgment rests on

315. *See* Indiana *ex rel.* Anderson v. Brand, 303 U.S. 95, 98 (1938) (establishing federal jurisdiction over a claim concerning the validity of a contract termination pursuant to a state statute that allegedly violated Article I, section 10's prohibition of state impairment of contracts).

316. Of course, there are always benefits that flow from advisory opinions; it would save Congress a great deal of time and effort if the Supreme Court would comment on the constitutionality of pending legislation. The constitutional policy prohibiting advisory opinions, however, requires judicial restraint. *See supra* notes 150-63 and accompanying text (discussing Article III's case and controversy requirement and its limiting effect on federal judicial power).

317. A prosecutor, in particular, might have a strong interest in pursuing Supreme Court review of state court judgments reversing convictions on state law grounds. For example, a prosecutor might want to obtain guidance for law enforcement officers or to obtain federal precedent which might be used to persuade the state supreme court to uphold future convictions.

318. *See* DeFunis v. Odegaard, 416 U.S. 312, 316 (1973) (dismissing unsuccessful law school applicant's federal constitutional challenge to a school's admission practices despite the State of Washington's "great public interest" in the issues involved).

319. *See* Michigan v. Long, 463 U.S. 1032, 1040 (1982) (stating that the Court is powerless to decide federal issues when state court's judgment is based on state law because to do otherwise would result in an advisory opinion).

independent and adequate state grounds, however, the Supreme Court's determination of the federal issue will not impact the state court's judgment. Consequently, the responding party has no adversarial interest in pursuing the case. The case is over.

CONCLUSION

The State Grounds Doctrine is a limitation on the power of the Supreme Court to review a state court judgment that adequately rests on state law, independent of federal law issues in the case. The State Grounds Doctrine derives from the Article III advisory opinion ban, in general, and the constitutional standing requirement and mootness doctrine, in particular. The Article III standing redressability element demands a likelihood that a favorable federal court judgment will effect the outcome of the case. If no likelihood exists that a favorable judgment will have some effect, the parties do not have the requisite personal stake in the litigation. The mootness doctrine, at its constitutional core, requires that the standing requirement, which must be satisfied at the outset of the litigation, continues to be satisfied throughout.

In the context of the State Grounds Doctrine, these justiciability doctrines require an inquiry into the likelihood that a favorable Supreme Court opinion on the federal issues will have an impact on the state court's judgment. If the state law grounds of decision are adequate to support the state court's judgment and independent of the federal issues in the case such that a favorable Supreme Court opinion on the federal issues is not likely to change the outcome of the case, then the standing requirement is not satisfied and the case is constitutionally moot.