Mootness and Ripeness

Paul Gowder

Hypo: Iowa City enacts an ordinance licensing a 48-hour “suspicion detention” in the city jail: if a police officer thinks you look suspicious, s/he can lock you up for two days to investigate you. Needless to say, this policy is flaminly unconstitutional.

Plaintiff, a victim of a suspicion detention, files suit seeking an injunction against the practice. Before the case can be heard, the 48-hour period expires, and s/he’s released from jail. Is the case justiciable?

Discussion

The defendant city is likely to argue that plaintiff’s claim for injunctive relief is moot, because there is no longer any relief that the Court can grant. The plaintiff is already out of jail, and while s/he might have a claim for damages, that isn’t the lawsuit that’s been filed—the lawsuit that’s been filed is for an injunction!

The plaintiff is likely to claim that the injury is “capable of repetition, yet evading review.” That is, because the harm is so short, it’s difficult for a court to review it before it stops, and so there’s unlikely to be any way for a court to hear it. The complexities of this argument are beyond the scope of our coverage in this course, but suffice it to say that the defendant city will argue that it is unlikely that this particular plaintiff will be subject to the same illegal behavior again. See DeFunis v. Odegaard, 416 U.S. 312 (1974) (student’s race discrimination claim against state law school admissions was moot when he had been admitted pursuant to a temporary injunction that had been stayed and was in final quarter of law school when case was heard in Supreme Court, notwithstanding possibility that similar discrimination may happen to others). The result of this hypo is fairly debatable.

Mootness is the doctrine we invoke when a plaintiff has standing at the onset of litigation for a particular claim, but, in a sense, “loses” standing midway through because there’s no longer any relief for the court to grant. By contrast, a case is threatened on standing grounds when there’s no standing at the beginning of litigation. Thus, compare this hypo with City of Los Angeles v. Lyons, 461 U.S. 95 (1983),
holding that victim of illegal police chokehold lacked standing to sue for injunctive relief to prevent future chokeholds (although he did have standing to sue for damages). Lyons filed his suit months after he was choked, and, the Court held, there was no reason to think he’d get choked in the future; accordingly, the case wasn’t moot, instead, he’d never had standing in the first place.¹

Mootness is usually only a problem for claims for injunctive relief. Obviously, a damages claim cannot be mooted (unless the defendant outright settles the case by paying the claim), because that’s purely retrospective relief—there’s always something for the court to grant. It is because injunctions are prospective relief that there’s the risk that the world might swoop in and grant the relief that plaintiff is asking the court to grant, mootng the case.

One important rule is that voluntary cessation of unlawful conduct is not sufficient to moot a case, for obvious reasons—otherwise the defendant might just turn around and do it again when the case is dismissed. However, there are some subtleties here: sometimes we will say a case is moot when the defendant really conclusively ends the conduct, like by repealing a statute alleged to be unconstitutional.

Ripeness

Ripeness is kind of the opposite of mootness; the claim is not “you used to have a concrete claim, but you don’t anymore,” but, rather, “you might have a claim in the future, but not yet.”

The material in the casebook on this is worth a read, however, we won’t spend any time on it here because I think that ripeness, practically speaking, in most real cases is just another word for standing, i.e., the absence of a concrete/imminent injury, especially after Lujan and Clapper. For a recent example of a ripeness case, see National Park Hospitality Association v. Department of Interior, 538 U.S. 803 (2003).

¹Lyons gets cited quite a lot in standing doctrine, but it’s also an incredibly problematic case. For one, there was a massive racial bias issue that the courts did not consider: the LAPD was notorious for using dangerous chokeholds on black men like the plaintiff. As Justice Marshall pointed out in dissent, 16 people had died in the last 8 years following LAPD chokeholds; 12 of them were black men. When then LAPD-chief Daryl Gates was asked about this racial pattern, his response, infamously, was the claim that the “veins or arteries of blacks do not open up as fast as they do in normal people.” (As reported by Erwin Chemerinsky in The Case Against the Supreme Court.) In light of this evidence of racially biased use of police discretion, it seems likely that Lyons, like every African-American in Los Angeles, was in unusual danger of police chokeholds relative to the rest of the population.