SUPREME COURT OF MAYFLOWER

IN RE M1KEASWELL

ON PETITION FOR WRIT OF MANDAMUS TO THE DISTRICT COURT FOR THE DISTRICT OF NEW HAVEN COUNTY

No. 07-08. Decided March 18, 2023.

The petition for a writ of mandamus is denied.

JUSTICE TURNTABLE5000, with whom THE CHIEF JUSTICE joins, concurring in the denial of the writ of mandamus.

In this case, petitioner comes before us requesting a writ of mandamus directing the District Court for the District of New Haven County to rule on a pending motion to dismiss. Within his petition for a writ of mandamus, petitioner contends that the circumstances surrounding this issue "require[s] its issuance." Pet. App. at 4. We deny the petition for a writ of mandamus under the mootness doctrine.

I

Petitioner applied for a writ of mandamus on February 21. Petitioner was the subject of criminal proceedings against him. Petitioner filed for a motion to dismiss the case, as well as a motion to strike evidence, before then District Court Judge JasonDeLuca. See Motion to Dismiss, *State of Mayflower* v. *m1keaswell*, Mayfl. D. Ct. CR-46374-23 (2023); see also Motion to Strike, *ibid*. Petitioner submitted both of these motions within the pre-trial period. The District Court judge had not ruled on these motions within the pre-trial period triggering Petitioner's writ of mandamus.

The presiding judge then resigned shortly after the submission of the writ of mandamus. We accordingly deny this writ of mandamus as it has been mooted by subsequent de-

velopments, 7 M. S. C. ___ (2023), including the State's decision to enter *nolle prosequi*. See State's Entry of Nolle Prosequi, *State of Mayflower* v. *m1keaswell*, Mayfl. D. Ct. CR-46374-23 (2023).

II

A

Our state constitution is analogous to that of our federal constitution with respect to the case-or-controversy requirement of Article III. See Mayf. St. Const., Art. XI., Sec. 2 ("The judicial power shall extend to all cases . . . [and] to [all] controversies[.]"); cf. U. S. Const., Art. III., Sec. 2 ("The judicial power shall extend to all cases . . . [and] to [all] controversies[.]"). Our "judicial power is limited to [c]ases and [c]ontroversies." *Ipadpuppydogdude1alt* v. *Department of State*, 6 M. S. C. 79, 83 (2022). Indeed, "[t]he law of Art. III standing is built on a single basic idea—the idea of separation of powers." *Ibid*., (citing *Raines* v. *Byrd*, 521 U. S. 811, 820 (1997) (internal quotation marks omitted)). After all, the "[s]eparation of powers is in no sense a formalism," rather it is a tenet that has "distinguished our system from all others conceived up to the time of our Constitution." *Nixon* v. *Adminstrator of General Services*, 433 U. S. 425, 507 (1977) (Blackmun, J., concurring in part and concurring in judgment). Ergo, we must not only limit our ambit to issues that satisfy Art. III standing, but we must also limit it to "*live*" issues. *Powell* v. *McCormack*, 395 U. S. 486, 496 (1969) (emphasis added). This Court does not retain jurisdiction over any cases that lack a live controversy, as we are not to issue advisory opinions[1] "on abstract propositions of

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[1] One notable distinction regarding our state constitution and our federal Constitution, which revolves around our inherent ability to answer advisory questions "when required by the Governor, Lieutenant Governor, Attorney General, or the State Senate by Resolution." Mayf. St. Const., Art. XI, Sec. 9. In the past, we have taken steps to answer such advisory questions while acknowledging the limitations of our ambit with respect

law." *Hall* v. *Beals*, 396 U. S. 45, 48 (1969) (*per curiam*). A matter is not moot "[a]s long as parties have a concrete interest, however small, in the outcome of the litigation." *Chafin* v. *Chafin*, 568 U. S. 165, 172 (2013) (internal quotation marks omitted). A "dispute between the parties in a case must remain alive until its ultimate final disposition," *New York State Rifle & Pistol Association, Inc.* v. *City of New York*, 590 U. S. ___, ___ (2020) (dissenting op., at 12) and a case is truly dead "when it is impossible for a court to grant any effectual relief whatever to the prevailing party." *Ibid*., (quoting *Knox* v. *Service Employees*, 567 U. S. 298, 307 (2012)).

B

The subsequent developments have indisputably mooted this matter. When we determine matters of justiciability, we must concede that "some wrongs and imperfections have been called nonjusticiable." *Caperton* v. *AT Massey Coal Co., Inc.*, 556 U. S. 868 (2009) (Scalia, J., dissenting). Justiciability has been described as "a concept of uncertain meaning and scope." *Flast* v. *Cohen*, 392 U. S. 83, 95 (1968). We turn to *Flast* in determining whether a party's questions are justiciable. We can only hear questions that are justiciable and those that are not must be dismissed.

The Court in *Flast* described that there is no justiciable controversy when parties request for an "adjudication of only a political question, when the parties are asking for an advisory opinion, when the question sought to be adjudicated has been mooted by subsequent developments, and when there is no standing to maintain the action." *Id*., at 95, 392 U. S. 83.

Here, we face a matter where the subject of the writ of

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to Art. XI., Sec. 2, of our state constitution. See *Ex Parte Syneths*, 6 M. S. C. 25 (2022).

mandamus has since resigned, thus, relinquishing his position's authority to comply with mandamus, as well as the State's subsequent entry of *nolle prosequi*. The issue certainly is not live anymore. The requested relief cannot be granted as well. "A mandamus does not confer power upon those to whom it is directed." *United States* v. *County of Clark*, 95 U. S. 769, 773 (1878). Instead, "[i]t only enforces the exercise of power *already existing*, when its exercise is a duty." *Ibid*., (emphasis added). Here, a former District court Judge cannot comply with the mandamus as he is no longer in a position to comply with the duties and performances of his past office. Thus, we are at odds with the requests of the Petitioner and the available remedies at our disposal. It would seem that "it is impossible for [this] [C]ourt to grant any effectual relief." *Knox*, *supra*, at 307, 567 U. S. 298. Therefore, this matter is mooted.

III

Ordinarily, in determining whether the jurisdictional ambit of this Court permits us to consider the merits of the mandamus at this stage, we decline to extrapolate further. When determining whether mandamus is proper, we turn to *Cheney* v. *United States District Court*, 542 U. S. 36 (2004). However, we are barred by the fact that this Court is limited to hear live issues.[2] We cannot consider a question that is outside of our purview, as we are "without power to give advisory opinions," unless it comports with our state constitution. *Asbury Hospital* v. *Cass County*, 326 U. S. 207,

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[2] One exception remains with respect to issues that are "capable of repetition," yet they "evad[e] review." *Alvarez* v. *Smith*, 558 U. S. 87, 93 (2009); cf. *Federal Election Comm'n* v. *Wisconsin Right to Life, Inc.*, 551 U. S. 449, 462 (2007); *Southern Pacific Terminal Co.* v. *ICC*, 219 U. S. 498, 515 (1911). However, the petitioner has not demonstrated that such an issue is capable of repetition, nor can it necessarily evade review. The matter at hand is unfortunate with the resignation of a judge, however, we are bound by the language of the constitution.

213 (1945). We are unable to "decide moot questions," especially ones that do not "affect the rights of the litigants in the case before it." *St. Pierre* v. *United States*, 319 U. S. 41, 43 (1943); *United States* v. *Alaska SS Co.*, 253 U. S. 113 (declining to hear a mooted case).

As demonstrated, we are without authority to hear the merits of a mooted case; it is far past our scope to violate the "constitutional command that the judicial power extends only to cases or controversies." *Powell* v. *McCormack*, 395 U. S. 486, 564, n. 7 (1969). Accordingly, we deny the writ of mandamus.