civil cases, the rule is: "When this Court applies a rule of federal law to the parties before it, that rule is the controlling interpretation of federal law and must be given full retroactive effect in all cases open on direct review and as to all events, regardless of whether such events predate or postdate our announcement of the rule."[606] Four Justices continued to adhere to *Chevron Oil*, however,[607] so that with one Justice each retired from the different sides one may not regard the issue as definitively settled.[608] Future cases must, therefore, be awaited for resolution of this issue.

Political Questions

In some cases, a court will refuse to adjudicate a case despite the fact that it presents all the qualifications that we have considered to make it a justiciable controversy; it is in its jurisdiction, presented by parties with standing, and it is a case in which adverseness and ripeness exist. Such are cases that present a "political question." Although the Court has referred to the political question doctrine as "one of the rules basic to the federal system and this Court's appropriate place within that structure,"[609] it has also been remarked that "[i]t is, measured by any of the normal responsibilities of a phrase of definition, one of the least satisfactory terms

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[606] 509 U.S. at 97. Although the conditional language in this passage might suggest that the Court was leaving open the possibility that in some cases it might rule purely prospectively, and not even apply its decision to the parties before it, other language belies that possibility. "This rule extends *Griffith's* ban against 'selective application of new rules.'" (Citing Griffith, 479 U.S. at 323.) Because *Griffith* rested in part on the principle that "the nature of judicial review requires that [the Court] adjudicate specific cases," 479 U.S. at 322, deriving from Article III's case or controversy requirement for federal courts and forbidding federal courts from acting legislatively, "'the Court has no more constitutional authority in civil cases than in criminal cases to disregard current law or to treat similarly situated litigants differently.'" 509 U.S. at 97 (quoting *Smith*, 496 U.S. at 214 (Justice Stevens dissenting)). The point is made more clearly in Justice Scalia's concurrence, in which he denounces all forms of nonretroactivity as "the handmaid of judicial activism." Id. at 105.

[607] 509 U.S. at 110 (Justice Kennedy, with Justice White, concurring); 113 (Justice O'Connor, with Chief Justice Rehnquist, dissenting). However, these Justices disagreed in this case about the proper application of *Chevron Oil*.

[608] *But see* Reynoldsville Casket Co. v. Hyde, 514 U.S. 749 (1995) (setting aside a state court refusal to give retroactive effect to a U.S. Supreme Court invalidation of that state's statute of limitations in certain suits, in an opinion by Justice Breyer, Justice Blackmun's successor); Ryder v. United States, 515 U.S. 177, 184–85 (1995) ("whatever the continuing validity of *Chevron Oil* after" *Harper* and *Reynoldsville Casket*).

[609] Rescue Army v. Municipal Court, 331 U.S. 549, 570 (1947); *cf.* Baker v. Carr, 369 U.S. 186, 278 (1962) (Justice Frankfurter dissenting). The most successful effort at conceptualization of the doctrine is Scharpf, *Judicial Review and the Political Question: A Functional Analysis*, 75 YALE L.J. 517 (1966). *See* Hart & Wechsler (6th ed.), supra at 222–248.