

Sec. 2—Judicial Power and Jurisdiction

Cl. 1—Cases and Controversies

pute capable of judicial resolution”; that is, his continuing interest adequately assures that “sharply presented issues” are placed before the court “in a concrete factual setting” with “self-interested parties vigorously advocating opposing positions.”⁵⁷⁶

The immediate effect of these cases was that litigation in which class actions are properly certified or in which they should have been certified would rarely be mooted if the named plaintiff (or in effect his attorney) chose to pursue the matter, even though the named plaintiff could no longer obtain any personal relief from the decision sought.⁵⁷⁷ The cases further raised the prospect of a possible weakening of the “personal stake” requirement in other areas, such as the representation of third-party claims in non-class actions and the initiation of some litigation in the form of a “private attorneys general” pursuit of adjudication.⁵⁷⁸ In *Genesis Healthcare Corp. v. Symczyk*,⁵⁷⁹ however, the Court appeared to cabin a more flexible concept of mootness to class actions.⁵⁸⁰

Retroactivity Versus Prospectivity.—One of the distinguishing features of an advisory opinion is that it lays down a rule to be applied to future cases, much as does legislation generally. It should therefore follow that an Article III court could not decide purely prospective cases, cases which do not govern the rights and disabili-

⁵⁷⁶ 445 U.S. at 403. Justices Powell, Stewart, Rehnquist, and Chief Justice Burger dissented, *id.* at 409, arguing there could be no Article III personal stake in a procedural decision separate from the outcome of the case. In *Deposit Guaranty Nat’l Bank v. Roper*, 445 U.S. 326 (1980), in an opinion by Chief Justice Burger, the Court held that a class action was not mooted when defendant tendered to the named plaintiffs the full amount of recovery they had individually asked for and could hope to retain. Plaintiffs’ interest in shifting part of the share of costs of litigation to those who would share in its benefits if the class were certified was deemed to be a sufficient, continuing “personal stake,” although the value of this interest was at best speculative. Compare *Genesis Healthcare Corp. v. Symczyk*, 569 U.S. ___, No. 11–1059, slip op. (2013).

⁵⁷⁷ The named plaintiff must still satisfy the class action requirement of adequacy of representation. *United States Parole Comm’n v. Geraghty*, 445 U.S. 388, 405–407 (1980). On the implications of *Geraghty*, which the Court has not returned to, see Hart & Wechsler (6th ed.), *supra* at 194–198.

⁵⁷⁸ *Geraghty*, 445 U.S. at 404 & n.11; see also 445 U.S. at 419–24 (Justice Powell dissenting).

⁵⁷⁹ 569 U.S. ___, No. 11–1059, slip op. (2013).

⁵⁸⁰ In *Genesis Healthcare Corp.*, the plaintiff sought damages under a provision of the Fair Labor Standards Act that authorized her to file on behalf of herself and “other employees similarly situated.” The plaintiff’s individual claim was assumed to have been made moot by the defendant’s subsequent offer of a full settlement to her, with the consequence, according to the five-Justice majority, that plaintiff’s collective-action allegations no longer were justiciable in the absence of additional claimants opting in. Unlike a class in a class action, the catch-all of “other employees similarly situated” has no independent legal status under a collective-action suit apart from those filing written consent with the court.