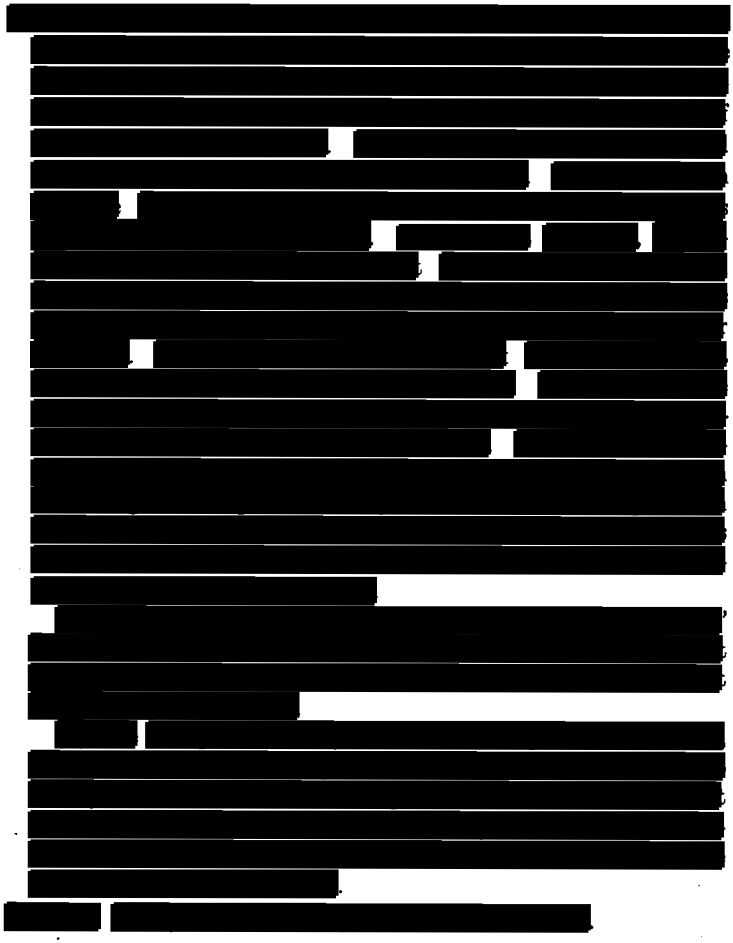
DeFUNIS ET AL. *v.* ODEGAARD ET AL.

CERTIORARI TO THE SUPREME COURT OF WASHINGTON

No. 73-235. Argued February 26, 1974—Decided April 23, 1974



Josef Diamond argued the cause for petitioners. With him on the briefs was *Lyle L. Iversen.*

Slade Gorton, Attorney General of Washington, argued the cause for respondents. With him on the brief was *James B. Wilson,* Senior Assistant Attorney General.*

*Briefs of *amici curiae* urging reversal were filed by *Milton A. Smith, Gerard C. Smetana,* and *Jerry Kronenberg* for the Chamber of Commerce of the United States; by *J. Albert Woll, Laurence Gold,* and *Thomas E. Harris* for the American Federation of Labor and Congress of Industrial Organizations; by *Theodore R. Mann* for the American Jewish Congress; by *David I. Caplan* for the Jewish Rights Council; by *Anthony J. Fornelli, Thaddeus L. Kowalski,* and *Samuel Rabinove* for the Advocate Society et al.; and by *Alexander M. Bickel, Philip B. Kurland, Larry M. Lavinsky,* and *Arnold Forster* for the Anti-Defamation League of B'nai B'rith.

Briefs of *amici curiae* urging affirmance were filed by *William J. Brown,* Attorney General, and *Andrew J. Ruzicho, Earl M. Manz,* and *Stephen J. Simmons,* Assistant Attorneys General, for the State of Ohio; by *John P. Harris* for the city of Seattle; by *Fletcher N. Baldwin, Jr.,* and *Chesterfield Smith* for the American Bar Assn.; by *Archibald Cox, James N. Bierman, James A. Sharaf,* and *Daniel Steiner* for the President and Fellows of Harvard College; by *J. Harold Flannery* for the Center for Law and Education, Harvard University; by *Frank Askin* and *Norman Amaker* for the Board of Governors of Rutgers, the State University of New Jersey, et al.; by *Edgar S. Cahn* and *Jean Camper Cahn* for the Deans of the Antioch School of Law; by *Erwin N. Griswold* and *Clifford C. Alloway* for the Association of American Law Schools; by *John Holt Myers* for the Association of American Medical Colleges; by *Howard A. Glickstein* for a Group of Law School Deans; by *Harry B. Reese* and *Peter Martin* for the Law School Admission Council; by *Sanford Jay Rosen, Herbert Teitelbaum,* and *Melvin L. Wulf* for the Mexican American Legal Defense and Educational Fund et al.; by *Cruz Reynoso* and *Robert B. McKay* for the Council on Legal Education Opportunity; by *Roswell B. Perkins, Kenneth C. Bass III, David S. Tatel,* and *R. Stephen Browning* for the Lawyers' Committee for Civil Rights Under Law; by *Jack Greenberg, James M. Nabrit III, Charles Stephen Ralston, Jeffry A. Mintz, Louis H. Pollak,* and *John Baker* for the NAACP Legal Defense and Educational Fund, Inc.; by *Derrick A. Bell, Jr.,* for the National Conference of Black Lawyers; by *Bruce R. Greene* and *Herbert Becker* for the American Indian Law Students Assn., Inc., et al.; by *Clifford Sweet, C. Lyonel*

PER CURIAM.

In 1971 the petitioner Marco DeFunis, Jr.,[1] applied for admission as a first-year student at the University of Washington Law School, a state-operated institution. The size of the incoming first-year class was to be limited to 150 persons, and the Law School received some 1,600 applications for these 150 places. DeFunis was eventually notified that he had been denied admission. He thereupon commenced this suit in a Washington trial court, contending that the procedures and criteria employed by the Law School Admissions Committee invidiously discriminated against him on account of his race in violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

DeFunis brought the suit on behalf of himself alone, and not as the representative of any class, against the various respondents, who are officers, faculty members, and members of the Board of Regents of the University of Washington. He asked the trial court to issue a mandatory injunction commanding the respondents to admit him as a member of the first-year class entering in September 1971, on the ground that the Law School admissions policy had resulted in the unconstitutional denial of his application for admission. The trial court agreed with his claim and granted the requested relief.

Jones, Dennis R. Yeager, E. Richard Larson, Nathaniel R. Jones, Michael H. Terry, Joseph A. Matera, and *C. Christopher Brown* for the Legal Aid Society of Alameda County et al.; by *Peter Van N. Lockwood, David Bonderman, Sylvia Roberts,* and *David Rubin* for the National Organization for Women Legal Defense and Education Fund, Inc., et al.; and by *Joseph L. Rauh, Jr.,* for the National Council of Jewish Women et al.

[1] Also included as petitioners are DeFunis' parents and his wife. Hereafter, the singular form "petitioner" is used.

DeFunis was, accordingly, admitted to the Law School and began his legal studies there in the fall of 1971. On appeal, the Washington Supreme Court reversed the judgment of the trial court and held that the Law School admissions policy did not violate the Constitution. By this time DeFunis was in his second year at the Law School.

He then petitioned this Court for a writ of certiorari, and MR. JUSTICE DOUGLAS, as Circuit Justice, stayed the judgment of the Washington Supreme Court pending the "final disposition of the case by this Court." By virtue of this stay, DeFunis has remained in law school, and was in the first term of his third and final year when this Court first considered his certiorari petition in the fall of 1973. Because of our concern that DeFunis' third-year standing in the Law School might have rendered this case moot, we requested the parties to brief the question of mootness before we acted on the petition. In response, both sides contended that the case was not moot. The respondents indicated that, if the decision of the Washington Supreme Court were permitted to stand, the petitioner could complete the term for which he was then enrolled but would have to apply to the faculty for permission to continue in the school before he could register for another term.[2]

We granted the petition for certiorari on November 19, 1973. 414 U. S. 1038. The case was in due course orally argued on February 26, 1974.

In response to questions raised from the bench during the cral argument, counsel for the petitioner has informed the Court that DeFunis has now registered "for his final

[2] By contrast, in their response to the petition for certiorari, the respondents had stated that DeFunis "will complete his third year [of law school] and be awarded his J. D. degree at the end of the 1973–74 academic year regardless of the outcome of this appeal."

quarter in law school." Counsel for the respondents have made clear that the Law School will not in any way seek to abrogate this registration.[3] In light of DeFunis' recent registration for the last quarter of his final law school year, and the Law School's assurance that his registration is fully effective, the insistent question again arises whether this case is not moot, and to that question we now turn.

The starting point for analysis is the familiar proposition that "federal courts are without power to decide questions that cannot affect the rights of litigants in the case before them." *North Carolina* v. *Rice,* 404 U. S. 244 246 (1971). The inability of the federal judiciary "to review moot cases derives from the requirement of Art. III of the Constitution under which the exercise of judicial power depends upon the existence of a case or controversy." *Liner* v. *Jafco, Inc.,* 375 U. S. 301, 306 n. 3 (1964); see also *Powell* v. *McCormack,* 395 U. S. 486, 496 n. 7 (1969); *Sibron* v. *New York,* 392 U. S. 40, 50 n. 8 (1968). Although as a matter of Washington state law it appears that this case would be saved from mootness by "the great public interest in the continuing issues raised by this appeal," 82 Wash. 2d 11, 23 n. 6, 507 P. 2d 1169, 1177 n. 6 (1973), the fact remains that under Art. III "[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." *North Carolina* v. *Rice, supra,* at 246.

The respondents have represented that, without regard to the ultimate resolution of the issues in this case,

[3] In their memorandum on the question of mootness, counsel for the respondents unequivocally stated: "If Mr. DeFunis registers for the spring quarter under the existing order of this court during the registration period from February 20, 1974, to March 1, 1974, that registration would not be canceled unilaterally by the university regardless of the outcome of this litigation."

DeFunis will remain a student in the Law School for the duration of any term in which he has already enrolled. Since he has now registered for his final term, it is evident that he will be given an opportunity to complete all academic and other requirements for graduation, and, if he does so, will receive his diploma regardless of any decision this Court might reach on the merits of this case. In short, all parties agree that DeFunis is now entitled to complete his legal studies at the University of Washington and to receive his degree from that institution. A determination by this Court of the legal issues tendered by the parties is no longer necessary to compel that result, and could not serve to prevent it. DeFunis did not cast his suit as a class action, and the only remedy he requested was an injunction commanding his admission to the Law School. He was not only accorded that remedy, but he now has also been irrevocably admitted to the final term of the final year of the Law School course. The controversy between the parties has thus clearly ceased to be "definite and concrete" and no longer "touch[es] the legal relations of parties having adverse legal interests." *Aetna Life Ins. Co.* v. *Haworth,* 300 U. S. 227, 240–241 (1937).

It matters not that these circumstances partially stem from a policy decision on the part of the respondent Law School authorities. The respondents, through their counsel, the Attorney General of the State, have professionally represented that in no event will the status of DeFunis now be affected by any view this Court might express on the merits of this controversy. And it has been the settled practice of the Court, in contexts no less significant, fully to accept representations such as these as parameters for decision. See *Gerende* v. *Election Board,* 341 U. S. 56 (1951); *Whitehill* v. *Elkins,* 389 U. S. 54, 57–58 (1967); *Ehlert* v. *United States,* 402 U. S. 99.

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107 (1971); cf. *Law Students Research Council* v. *Wadmond*, 401 U. S. 154, 162–163 (1971).

There is a line of decisions in this Court standing for the proposition that the "voluntary cessation of allegedly illegal conduct does not deprive the tribunal of power to hear and determine the case, *i. e.*, does not make the case moot." *United States* v. *W. T. Grant Co.*, 345 U. S. 629, 632 (1953); *United States* v. *Trans-Missouri Freight Assn.*, 166 U. S. 290, 308–310 (1897); *Walling* v. *Helmerich & Payne, Inc.*, 323 U. S. 37, 43 (1944); *Gray* v. *Sanders*, 372 U. S. 368, 376 (1963); *United States* v. *Phosphate Export Assn.*, 393 U. S. 199, 202–203 (1968). These decisions and the doctrine they reflect would be quite relevant if the question of mootness here had arisen by reason of a unilateral change in the *admissions procedures* of the Law School. For it was the admissions procedures that were the target of this litigation, and a voluntary cessation of the admissions practices complained of could make this case moot only if it could be said with assurance "that 'there is no reasonable expectation that the wrong will be repeated.'" *United States* v. *W. T. Grant Co.*, *supra*, at 633. Otherwise, "[t]he defendant is free to return to his old ways," *id.*, at 632, and this fact would be enough to prevent mootness because of the "public interest in having the legality of the practices settled." *Ibid.* But mootness in the present case depends not at all upon a "voluntary cessation" of the admissions practices that were the subject of this litigation. It depends, instead, upon the simple fact that DeFunis is now in the final quarter of the final year of his course of study, and the settled and unchallenged policy of the Law School to permit him to complete the term for which he is now enrolled.

It might also be suggested that this case presents a question that is "capable of repetition, yet evading

review," *Southern Pacific Terminal Co.* v. *ICC*, 219 U. S. 498, 515 (1911); *Roe* v. *Wade*, 410 U. S. 113, 125 (1973), and is thus amenable to federal adjudication even though it might otherwise be considered moot. But DeFunis will never again be required to run the gantlet of the Law School's admission process, and so the question is certainly not "capable of repetition" so far as he is concerned. Moreover, just because this particular case did not reach the Court until the eve of the petitioner's graduation from law school, it hardly follows that the issue he raises will in the future evade review. If the admissions procedures of the Law School remain unchanged,[4] there is no reason to suppose that a subsequent case attacking those procedures will not come with relative speed to this Court, now that the Supreme Court of Washington has spoken. This case, therefore, in no way presents the exceptional situation in which the *Southern Pacific Terminal* doctrine might permit a departure from "[t]he usual rule in federal cases . . . that an actual controversy must exist at stages of appellate or certiorari review, and not simply at the date the action is initiated." *Roe* v. *Wade, supra,* at 125; *United States* v. *Munsingwear, Inc.*, 340 U. S. 36 (1950).

Because the petitioner will complete his law school studies at the end of the term for which he has now registered regardless of any decision this Court might reach on the merits of this litigation, we conclude that the Court cannot, consistently with the limitations of

[4] In response to an inquiry from the Court, counsel for the respondents has advised that some changes have been made in the admissions procedures "for the applicants seeking admission to the University of Washington law school for the academic year commencing September, 1974." The respondents' counsel states, however, that "[these] changes do not affect the policy challenged by the petitioners . . . in that . . . special consideration still is given to applicants from 'certain ethnic groups.'"

Art. III of the Constitution, consider the substantive constitutional issues tendered by the parties.[5] Accordingly, the judgment of the Supreme Court of Washington is vacated, and the cause is remanded for such proceedings as by that court may be deemed appropriate.

It is so ordered.

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[redacted]

[5] It is suggested in dissent that "[a]ny number of unexpected events—illness, economic necessity, even academic failure—might prevent his graduation at the end of the term." *Post*, at 348. "But such speculative contingencies afford no basis for our passing on the substantive issues [the petitioner] would have us decide," *Hall* v. *Beals*, 396 U. S. 45, 49 (1969), in the absence of "evidence that this is a prospect of 'immediacy and reality.'" *Golden* v. *Zwickler*, 394 U. S. 103, 109 (1969); *Maryland Casualty Co.* v. *Pacific Coal & Oil Co.*, 312 U. S. 270, 273 (1941).