CASES AND CONTROVERSIES

Federal decisions limit the application of the "judicial power" to "cases and controversies." *Ultiman* v. *United States*, 6 U. S. 19 (2018); see also *Kirkman* v. *Nevada Highway Patrol*, 5 U. S. 62 (2018) (*per curiam*) ("The judicial power is a power to decide not abstract questions but real, concrete Cases and Controversies"), *Clapper* v. *Amnesty Int'l USA,* 568 U. S. 398, 408 (2012). "One element of the case-or-controversy requirement" is that plaintiffs "must establish that they have standing to sue." See *Clapper, supra.* Otherwise, a plaintiff raising only a "generally available grievance about government—claiming only harm to his and every citizen's interest in proper application of the Constitution and laws, and seeking relief that no more directly and tangibly benefits him than it does the public at large—does not state an Article III case or controversy." *Lujan, supra,* at 573–574; see also *Hollingsworth* v. *Perry*, 570 U. S. 693, 706 (2013) ("[A]n asserted right to have the Government act in accordance with law is not sufficient, standing alone[.]").

If a dispute brought under the general "judicial power" is not a proper case or controversy, "the courts have no business deciding it, or expounding the law in the course of doing so." *City of Las Vegas, supra*, at 3 (2017) (quoting *DaimlerChrysler Corp*. v. *Cuno,* 547 U. S. 332, 341 (2006)).

Federal courts, outside of anytime review, do not have a freestanding power to review and annul acts of Congress on the ground that they are unconstitutional. "That question may be considered only when the justification for some direct injury suffered or threatened, presenting a justiciable issue, is made to rest upon such an act." *United States* v. *Incels Union,* 10 U. S. 16, 26 (2020); *Massachusetts* v. *Mellon*, 262 U. S. 448, 488 (1923). The party who invokes the power must be able to show not only that "the statute is invalid but that he has sustained or is immediately in danger of sustaining some direct injury as the result of its enforcement, and not merely that he suffers in some indefinite way in common with people generally." *Ibid.*

See also *Standing.*

DEFAULT JUDGMENT

Default judgment is the punishment for failing to engage with a case, a violation of societal courtesy. *United States* v. *Maxonymous,* 9 U. S. 152, 153 (2020). If a party is willing to interact with a case, however, default judgment CANNOT be issued in any way. *Maxonymous, supra,* see also *Incels Union, supra.*

Usually, the district court's decision "whether to enter a default judgment is a discretionary one." *United States* v. *Incels Union,* 10 U. S. 16, 19 (2020); *Aldabe* v. *Aldabe*, 616 F.2d 1086, 1092

(9th Cir. 1980). As such, most default judgment rulings are reviewed for abuse of discretion. However, if reviewing default under Rule 55(d), review is for clear error, see *Incels Union.*

Reviewable under 28 U.S.C. §1291.

DISMISSAL

"No case . . . shall be dismissed with prejudice unless the defendant has been put in jeopardy." *Kirkman* v. *Bank of America,* 6 U. S. 49 (2018). Otherwise, the ruling must be reversed, *Maxonymous* v. *Secret Service,* 9 U. S. 80 (2020) (*per curiam*).

DISQUALIFICATION OF COUNSEL

Judges should strive to maintain proper standards of performance by attorneys who are "representing defendants in criminal cases in their courts." *McMann* v. *Richardson*, 397 U. S. 759, 771 (1970). See also *United States ex rel. Darcy* v. *Handy*, 203 F.2d 407, 427 (CA3 1953) ("gross incompetence or faithlessness of counsel as should be apparent to the trial judge . . . call[s] for action by him"), cert. denied, 346 U. S. 865 (1953); *Ceramco Inc.* v. *Lee Pharmaceuticals*, 510 F.2d 268 (2d Cir. 1975) (explaining that "the courts have not only the supervisory power but also the duty and responsibility to disqualify counsel for unethical conduct prejudicial to his adversaries").

Disqualification of counsel is reviewed for abuse of discretion. *United States* v. *Incels Union, supra.* Disqualification is acceptable when

- Counsel for either party is grossly incompetent or faithless
- Counsel's actions provide prejudice to his adversary
- Counsel submits motions that are frivolous in nature

NOT IMMEDIATELY APPEALABLE PURSUANT TO 28 U.S.C. §1291. See *Richardson-Merrell, Inc.* v. *Koller*, 472 U. S. 424, 440-41 (1985), see also *Flanagan* v. *United States,* 465 U. S. 259, 266 (1984) ("[a]n order disqualifying counsel lacks the critical characteristics that make orders ... immediately appealable").

Reviewed for abuse of discretion. See *United States* v. *Incels Union,* 10 U. S. 16 (2020).

DISQUALIFICATION OF JUDGE

Disqualification is mandatory for conduct that calls a judge's impartiality into question. *United States* v. *Microsoft Corp.,* 254 F.3d 34, 116 (D.C. Cir. 2001) (*per curiam*). Section 455 does not prescribe the scope of disqualification. Rather, Congress "delegated to the judiciary the task of

fashioning the remedies that will best serve the purpose" of the disqualification statute. *Id* (quoting *Liljeberg* v. *Health Services Acquisition Corp.*, 486 U. S. 847, 862 (1988)).

An affidavit submitted under §144 does not immediately constitute a judge's recusal; the facts and reasoning for such an affidavit "must give fair support to the charge of a bent of mind that may prevent or impede impartiality of judgment." *Berger* v. *United States*, 255 U.S. 22, 33-34 (1921). Only if the judge views the affidavit as sufficient is he required to recuse.

Judge is not required to recuse based on emotional remarks made within the court. See *Liteky* v. *United States,* 510 U. S. 540, 555-556 (1994) ("Not establishing bias or partiality… are expressions of impatience, dissatisfaction, annoyance, and even anger, that are within the bounds of what imperfect men and women… sometimes display. A judge's ordinary efforts at courtroom administration… remain immune").

Personal bias and prejudice from 28 U.S.C. § 144 or § 455 requires that "the alleged bias and prejudice to be disqualifying… stem from an extrajudicial source and result in an opinion on the merits on some basis other than what the judge learned from his participation in the case." *United States* v. *Grinnell Corp.,* 384 U. S. 563, 583 (1966).

The judge who presides at a trial may, upon completion of the evidence, be exceedingly ill disposed towards the defendant, who has been shown to be a thoroughly reprehensible person. But the judge is not thereby recusable for bias or prejudice, since his knowledge and the opinion it produced were properly and necessarily acquired in the course of the proceedings, and are indeed sometimes (as in a bench trial) necessary to completion of the judge's task. *Liteky, supra,* at 550-551. Also not subject to deprecatory characterization as "bias" or "prejudice" are opinions held by judges as a result of what they learned in earlier proceedings. It has long been regarded as normal and proper for a judge to sit in the same case upon its remand, and to sit in successive trials involving the same defendant. *Id.*

NOT IMMEDIATELY APPEALABLE PURSUANT TO 28 U.S.C. §1291. See *Firestone Tire & Rubber Co.* v. *Risjord*, 449 U. S. 368, 378, n.13 (1981), *In re Cement Antitrust Litigation,* 673 F.2d 1020, 1023-1025 (9th Cir. 1982). Ultimately, if dissatisfied with the district judge's decision and confident that the litigation will be greatly disrupted, a party may seek a writ of mandamus from the court of appeals. It is for just such an exceptional circumstance that the writ was designed. *Id,* see also *In re Cement Antitrust Litigation,* 688 F.2d 1297, 1300 (9th Cir. 1982).

EMOTIONAL DISTRESS/PSYCHOLOGICAL TRAUMA CASES

Emotional distress claims "become jurisdiction of United States Clan Managers." *Volts* v. *Kirkman*, 9 F.4d ___, ___ (Fed. Cir., 2019) (slip op. at 5). Emotional distress claims have the

potential of causing reparations beyond the limitations of roleplay, and therefore must be handled appropriately by Clan Management. *Id.*

FIRST AMENDMENT CLAIMS

As a general matter the First Amendment prohibits government officials from subjecting an individual to retaliatory actions for engaging in protected speech. *Nieves* v. *Bartlett,* 587 U. S. ___, ___ (2019) (slip op. at 5). If an official takes adverse action against someone based on that forbidden motive, and "non-retaliatory grounds are in fact insufficient to provoke the adverse consequences," the injured person may generally seek relief by bringing a First Amendment claim. *Id.*

To prevail on such a claim, a plaintiff must establish a "causal connection" between the government defendant's "retaliatory animus" and the plaintiff 's "subsequent injury." *Id.,* see also *Hartman* v. *Moore*, 547 U. S. 250, 259 (2006). It is not enough to show that an official acted with a retaliatory motive and that the plaintiff was injured—the motive must cause the injury. Specifically, it must be a "but-for" cause, meaning that the adverse action against the plaintiff would not have been taken absent the retaliatory motive. *Hartman,* 547 U. S., at 260 (recognizing that although it "may be dishonorable to act with an unconstitutional motive," an official's "action colored by some degree of bad motive does not amount to a constitutional tort if that action would have been taken anyway").

Existence of probable cause to arrest defeats a First Amendment retaliatory arrest claim. *Nieves,* 587 U. S., at ___ (slip op. at 16).

FINAL ORDERS

Under 28 U.S.C. § 1291, the court of appeals has jurisdiction over "all final decisions of the district courts . . . except where a direct review may be had in the Supreme Court." *Firestone Tire & Rubber Co.* v. *Risjord*, 449 U.S. 368, 373 (1981). Section 1291 has been interpreted to confer appellate jurisdiction over a district court decision that "ends the litigation on the merits and leaves nothing for the court to do but execute the judgment." *Ray Haluch Gravel Co.* v. *Central Pension Fund,* 571 U. S. 177, 184 (2013), *Coopers & Lybrand* v. *Livesay*, 437 U.S. 463, 467 (1978) (citations omitted), *Catlin* v. *United States,* 324 U. S. 229, 233 (1945). A district court decision may also be considered final where its result is that appellant is "effectively out of court." *Moses H. Cone Mem'l Hosp*. v. *Mercury Constr. Corp*., 460 U.S. 1, 9 (1983).

MOOTNESS

“Mootness is a jurisdictional question because the Court is not empowered to decide moot questions or abstract propositions . . . [as] the exercise of judicial power depends upon the existence of a case or controversy.” *Heave* v. *United States,* 5 U. S. 85 (2018) (quoting *North Carolina* v. *Rice*, 404 U.S. 244, 246 (1971) (internal quotation marks omitted)). Indeed, "federal courts are without power to decide questions that cannot affect the rights of litigants in the case before them." *DeFunis* v. *Odegaard,* 416 U. S. 312, 316 (1974). 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." *Id.*

PLEADING STANDARD

Civil Pleadings:

Rule 8(a) requires that each pleading for relief includes:

(1) a short and plain statement of the grounds for the court's jurisdiction, unless the court already has jurisdiction and the claim needs no new jurisdictional support;

(2) a short and plain statement of the claim showing that the pleader is entitled to relief; and

(3) a demand for the relief sought, which may include relief in the alternative or different types of relief.

See also *Twombly standard.*

PRELIMINARY INJUNCTION

A preliminary injunction is "an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." *Winter* v. *Natural Resources Defense Council, Inc.,* 555 U. S. 7, 22 (2008), It is never awarded as of right. *Incels Union,* 10 U. S., at 23, *Winter,* 555 U. S., at 24, *Munaf* v. *Geren,* 553 U. S. 674, 689-690 (2008). Usually, the purpose of a preliminary injunction is merely to preserve the relative positions of the parties until a trial on the merits can be held. *Benisek* v. *Lamone,* 585 U. S. ___, ___ (2018) (*per curiam*) (slip op. at 5), *University of Tex.* v. *Camenisch,* 451 U. S. 390, 395 (1981).

A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest. *Incels Union,* 10 U. S., at 23, see also *Benisek* v. *Lamone,* 585 U. S. ___, ___-___ (2018) (*per curiam*) (slip op. at 2-3), *Winter,* 555 U. S., at 20, *Munaf*, 553 U. S, at 689-690. The Court should also consider the

overall public interest. *Trump* v. *International Refugee Assistance Project*, 582 U. S. ___, ___ (2017) (*per curiam*) (slip op. at 9). However, when "the Government is the opposing party," the assessment of "harm to the opposing party" and "the public interest" merge. *Nken* v. *Holder*, 556 U.S. 418, 435 (2009). When the government is the nonmovant in a request for a preliminary injunction, the harm to the opposing party and public interest merge and are considered "one and the same." *Pursuing America's Greatness* v. *Fed. Election Comm*., 831 F.3d 500, 511 (D.C. Cir. 2016). That is because "the government's interest is the public interest." Id. In assessing these factors, courts consider the impacts of the injunction on nonparties as well. See id. at 511–12.

A preliminary injunction will never be afforded to a plaintiff if the current predicament "appears of its own making." *Epic Games, Inc.* v. *Apple Inc.,* 4:20-cv-05640-YGR, 2020 WL 5073937, at *3 (N.D. Cal. 2020), see also *Second City Music, Inc.* v. *City of Chicago,* 333 F.3d 846, 850 (2003) ("Only the injury inflicted by one's adversary counts for this purpose").

Review of an order granting, denying, or modifying a preliminary injunction (and injunctions in general) are reviewed for abuse of discretion. *Incels Union, supra,* at 19, *Ellipso, Inc.* v. *Mann,* 480 F.3d 1153, 1157 (D.C. Cir. 2007), *Serono Labs., Inc*. v. *Shalala*, 158 F.3d 1313, 1318 (D.C. Cir. 1998), *Transohio Sav. Bank* v. *Dir., Office of Thrift Supervision*, 967 F.2d 598, 614 (D.C. Cir. 1992). However, factual determinations are reviewed under the clearly erroneous standard, while questions of law are reviewed essentially *de novo*. *Ellipso, supra.*

Injunctions are immediately appealable without need of the collateral order doctrine. See 28 U.S.C. §1292.

PERMANENT INJUNCTION

According to well-established principles of equity, a plaintiff seeking a permanent injunction must satisfy a four-factor test before a court may grant such relief. A plaintiff must demonstrate: (1) that it has suffered an irreparable injury; (2) that remedies available at law, such as monetary damages, are inadequate to compensate for that injury; (3) that, considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and (4) that the public interest would not be disserved by a permanent injunction. *eBay Inc.* v. *MercExchange, L.L.C.,* 547 U. S. 388, 391 (2006). The decision to grant or deny permanent injunctive relief is an act of equitable discretion by the district court, reviewable on appeal for abuse of discretion. *Id.,* see also *Weinberger* v. *Romero-Barcelo*, 456 U. S. 305, 320 (1982). Generally, injunctive relief will never be afforded to a plaintiff if the current predicament "appears of its own making." *Epic Games, Inc.* v. *Apple Inc.,* 4:20-cv-05640-YGR, 2020 WL 5073937, at *3 (N.D. Cal. 2020). *Second City Music, Inc.* v. *City of Chicago,* 333 F.3d 846, 850 (2003) ("Only the injury inflicted by one's adversary counts for this purpose").

RULE 12 DISMISSAL

Under Rule 12(b), a court may dismiss a claim for the following reasons:

(1) lack of subject-matter jurisdiction;

(2) lack of personal jurisdiction;

(3) improper venue;

(4) insufficient process;

(5) insufficient service of process;

(6) failure to state a claim upon which relief can be granted; and

(7) failure to join a party under Rule 19.

The most common reasons for dismissal are based on Rule 12(b)(1), lack of subject-matter jurisdiction, and 12(b)(6), failure to state a claim upon which relief can be granted.

Courts rarely use Rule 12(b)(1) as a ground to dismiss a complaint. It is usually used to dismiss a plaintiff's complaint that is "'patently insubstantial,' presenting no federal question suitable for decision." *Best* v. *Kelly*, 39 F.3d 328, 330 (D.C.Cir.1994) (quoting *Neitzke* v. *Williams*, 490 U.S. 319, 327 n. 6 (1989)). This standard requires that the "claims be flimsier than 'doubtful or questionable'—they must be 'essentially fictitious.' " *Id.*

When analyzing a motion to dismiss under Rule 12(b)(1) grounds, courts must accept as true all factual allegations within plaintiff's complaint. *Leatherman* v. *Tarrant Cty. Narcotics Intelligence & Coordination Unit*, 507 U. S. 163, 164 (1993), see also *Wright* v. *Foreign Service Grievance Bd*., 503 F. Supp. 2d 163, 170 (D.D.C. 2007), *Shekoyan* v. *Sibley Intern. Corp*., 217 F. Supp. 2d 59, 63 (D.D.C. 2002), and must grant plaintiff "the benefit of all inferences that can be derived from the facts alleged." *Sparrow* v. *United Air Lines, Inc*., 216 F.3d 1111, 1113 (D.C. Cir. 2000). In addition, the complaint should be "liberally construed in favor of the plaintiff." *Jenkins* v. *McKeithen*, 395 U. S. 411, 421 (1969).

As there is no statutory direction for procedure upon an issue of jurisdiction, the mode of its determination is left to the trial court. *Land* v. *Dollar,* 330 U. S. 731, 735, n.4 (1947). Following District of Columbia Circuit precedent, while the district court may consider materials outside the pleadings in deciding whether to grant a motion to dismiss for lack of jurisdiction, *Jerome Stevens Pharms. Inc.* v. *Food & Drug Admin.,* 402 F.3d 1249, 1253 (D.C. Cir. 2005), the court must still accept all factual allegations as true. *Id.* (quoting *United States* v. *Gaubert,* 499 U. S. 315, 327 (1991) (citations and internal quotation marks omitted)).

For Rule 12(b)(6) dismissal, see *Twombly Standard.*

SEARCHES/PROBABLE CAUSE

A police officer has probable cause to conduct a search when "the facts available to [him] would `warrant a [person] of reasonable caution in the belief'" that contraband or evidence of a crime is present. *Florida* v. *Harris,* 568 U. S. 237, 243 (2013). The test for probable cause is not reducible to "precise definition or quantification." "Finely tuned standards such as proof beyond a reasonable doubt or by a preponderance of the evidence . . . have no place in the [probable-cause] decision." *Illinois* v. *Gates*, 462 U. S. 213, 235 (1983). All we have required is the kind of "fair probability" on which "reasonable and prudent [people,] not legal technicians, act." *Id.*, at 238, 231 (internal quotation marks omitted).

The determination of probable cause is therefore under a totality of the circumstances standard. *Harris,* 568 U. S., at 244. Probable cause, the Supreme Court emphasized, is "a fluid concept—turning on the assessment of probabilities in particular factual contexts—not readily, or even usefully, reduced to a neat set of legal rules." *Id.*

Similarly, an affidavit in a criminal case would have probable cause if it leads the judge to believe the facts available to him lead him to believe that contraband or evidence of a crime is present.

STANDING

The general doctrine of standing determines whether a litigant is entitled to "have the court decide the merits of the dispute or of particular issues." *Incels Union,* 10 U. S., at 24 , *Warth* v. *Seldin,* 422 U. S. 490, 498 (1975). The law of Article III standing, which is built on separation-of-powers principles, serves to prevent the judicial process from being used to usurp the powers of the political branches. *Clapper* v. *Amnesty Int'l U.S.A.,* 568 U. S. 398, 408 (2013). In keeping with the purpose of this doctrine, the Supreme Court's standing inquiry has been especially rigorous when reaching the merits of the dispute would force it to decide whether an action taken by one of the other two branches of the Federal Government was unconstitutional. *Id.*

The party invoking federal jurisdiction bears the burden of establishing its existence. *Steel, Co.* v. *Citizens for Better Environment*, 523 U. S. 83, 104 (2000). For a litigant to successfully establish standing within a federal court, they must first present "a harm suffered by the plaintiff that is 'concrete' and 'actual or imminent,' not 'conjectural' or 'hypothetical.'" *Steel Co*., 523 U. S., at 103; *United States* v. *City of Las Vegas*, 4 U. S. 1, 4 (2017). Second, the harm must be "fairly traceable to the defendant's challenged action," and third, it must be "redressable by a

favorable ruling." *Monsanto, Corp.* v. *Geertson Seed Farms,* 561 U. S. 139, 149 (2010), *Horne* v. *Flores*, 557 U. S. 433, 445 (2009) (citing *Lujan* v. *Defenders of Wildlife*, 504 U. S. 555, 560–561 (1992)).

In cases involving constitutional challenges, federal courts do not have the power per se to review and annul acts of Congress on the ground that they are unconstitutional. "That question may be considered only when the justification for some direct injury suffered or threatened, presenting a justiciable issue, is made to rest upon such an act." *Massachusetts* v. *Mellon*, 262 U. S. 448, 488 (1923). The party who invokes the power must be able to show not only that "the statute is invalid but that he has sustained or is immediately in danger of sustaining some direct injury as the result of its enforcement, and not merely that he suffers in some indefinite way in common with people generally."

See also *Cases and Controversies.*

TWOMBLY STANDARD

The pleading standard Rule 8 of the Federal Rules of Civil Procedure announces does not require "detailed factual allegations," but it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation. *Ashcroft* v. *Iqbal,* 556 U. S. 662, 678 (2009) (quoting *Bell Atlantic Corp* v. *Twombly,* 550 U. S. 544, 555 (2006)). A pleading that offers "labels and conclusions" or "a formulaic recitation of the elements of a cause of action will not do." *Id.*

To survive a motion to dismiss under Rule 12(b)(6), a complaint must contain sufficient factual matter, accepted as true, to "state a claim to relief that is plausible on its face." A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. The plausibility standard is not akin to a "probability requirement," but it asks for more than a sheer possibility that a defendant has acted unlawfully. *Id,* (internal citations omitted).

While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations. *Id.* Legal conclusions "couched as factual allegations" will never suffice. *Papasan* v. *Allain,* 478 U. S. 265, 286 (1986), *Trudeau* v. *Fed. Trade Comm'n,* 456 F.3d 178, 193 (2006).

The judge must accept the complaint's well-pleaded allegations as true and "draw all reasonable inferences from those allegations in the plaintiff's favor," *Banneker Ventures, LLC* v. *Graham*, 798 F.3d 1119, 1129 (D.C. Cir. 2015), and also note that plausibility requires "more than a sheer possibility that a defendant has acted unlawfully," but it is not a "probability requirement." *Banneker Ventures, supra.*

For Rule 12(b)(1) dismissal, see *Rule 12 Dismissal.*

UNITED STATES* v. *CABOT

Previously, federal prosecutions and municipal prosecutions for the same crime were enabled through the separate offenses doctrine outlined in *Heath* v. *Alabama,* 474 U. S. 82 (1985). See *United States* v. *District of Columbia,* 5 U. S. 95, 105 (2018). This rule was underpinned by the dual sovereignty doctrine, recently "upheld by *Gamble* v. *United States,* 587 U. S. ___ (2018)." *United States* v. *Cabot,* 10 U. S. ___, ___ (2020) (slip op. at 21).

As originally understood, then, an "offence" is defined by a law, and each law is defined by a sovereign. So where there are two sovereigns, there are two laws, and two "offences." *Gamble* v. *United States,* 587 U. S., at ___ (slip op. at 4). *Cabot*'s holding was based off of this dual-sovereignty doctrine, and off of *District of Columbia,* so inherently there was going to at least be SOME jurisdiction. However, the majority found that defendant's arguments were lacking in attempting to overturn nearly two years of precedent, Cf. *Gamble,* 587 U. S., at ___-___ (slip op. at 11-31).