Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

GEORGE *v.* UNITED STATES, ET AL.

CERTIORARI TO THE UNITED STATES GOVERNMENT

No. 05–35. Argued May 4, 2018—Decided May 16, 2018

After Sufferpoop resigned from the Senate, President TimGeithner appointed ConnerRusso (hereinafter Russo) to complete his tenure. Russo, however, at the time of his appointment, had not been a citizen for a continuous two months. HHPrinceGeorge filed this lawsuit to invalidate Russo's appointment under Article I, §3, cl. 3, which sets eligibility requirements for Senators. While the case was pending, Russo resigned as a Senator.

Held: The status quo is affirmed.

JUSTICE KAGAN, joined by THE CHIEF JUSTICE and JUSTICE MARSHALL, concluded that the case was moot because Russo was no longer a Senator and rules of mootness apply to anytime review cases. They would therefore take no action.

JUSTICE THOMAS concluded that the case should be dismissed because no injury existed.

JUSTICE BORK, joined by JUSTICE GORSUCH, concluded that the case was not moot, and there was an injury, but Russo's appointment was constitutionally valid. Consequently, they would let stand his appointment.

KAGAN, J., announced the judgment of the Court and delivered an opinion, in which HOLMES, C. J. and MARSHALL, J., joined. THOMAS, J., filed an opinion concurring in the judgment. BORK, J., filed an opinion concurring in the judgment, in which GORSUCH, J., joined. GINSBURG, O'CONNOR, and SOUTER, JJ., dissented from the judgment.

SUPREME COURT OF THE UNITED STATES

No. 05–35

HHPRINCEGEORGE, PETITIONER *v.* UNITED STATES, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES GOVERNMENT

[May 16, 2018]

JUSTICE KAGAN announced the judgment of the Court and delivered an opinion, in which THE CHIEF JUSTICE and JUSTICE MARSHALL join.

In his petition submitted to this Court on April 16, 2018, HHPrinceGeorge sought to invalidate ConnerRusso's appointment to the United States Senate. Due to the fact that ConnerRusso's term as a Senator has since expired, we must decide whether HHPrinceGeorge's petition is now moot.

I

On April 15, President TimGeithner decided to exercise his Article I, §3, clause 2 power in the Constitution to appoint an American citizen to the Senate seat vacated by Sufferpoop. Concerned by this appointment, Senator HHPrinceGeorge filed a petition with this Court challenging it. He argued that since ConnerRusso had recently been naturalized on April 11, 2018, he was not eligible to be a Senator under Article I, §3, clause 3 of the Constitution. Because of this, he also contended that as a sitting Senator, his vote was diluted by what he saw as an illegal appointment.

II

Article III requires a "case-or-controversy . . . [at] all stages of federal judicial proceedings." *Lewis* v. *Continental Bank Corp.*, 494 U. S. 472, 477–478 (1990). See also *Preiser* v. *Newkirk*, 422 U. S. 395, 401 (1975). Anytime review is no exception. The Constitution gives this Court the power to—"at any time it deems necessary"—"review . . . the [acts] of the Executive or Legislative branches" so it can "overturn . . . [those which are] . . . unconstitutional or unlawful." Art. III, §4. As broad as that power is, it has never been applied retrospectively. The Court has previously held that "[w]e are not in the business of pronouncing that past actions which have no demonstrable continuing effect were right or wrong." *Spencer* v. *Kemna*, 523 U. S. 1, 18 (1998).

Furthermore, "mootness, however it may have come about, simply deprives us of our power to act." *Ibid.* "Through the mere passage of time, the [petitioner] has obtained all the relief they sought." *Lane* v. *Williams*, 455 U. S. 631, 633 (1982). Through this principle, we can apply it to Senator HHPrinceGeorge's case. Through the passage of time, the dilution of the petitioner's vote has dissolved due to the expiration of ConnerRusso's Senate term. Taking both of the principles from *Lane* and *Kemna*, the petitioner has received his relief and our power to act is rendered useless due to the petition being moot.

* * *

For the foregoing reasons, the status quo is affirmed.

It is so ordered.

JUSTICE GINSBURG, JUSTICE O'CONNOR, and JUSTICE SOUTER dissent from the judgment.

SUPREME COURT OF THE UNITED STATES

No. 05–35

HHPRINCEGEORGE, PETITIONER *v.* UNITED STATES, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES GOVERNMENT

[May 16, 2018]

JUSTICE THOMAS, concurring in the judgment.

I agree with the plurality's decision to dismiss this case. In doing so, however, the plurality endorses the argument proposed by my Brother BORK that Senator HHPrince-George's "vote was diluted" by a so-called illegal appointment. *Ante*, at 1. I will not crowd the United States Reports with a second rendition of my argument for why this proposition should truly puzzle the minds of even the most inexperienced in the legal profession.

Thus, I agree insofar as to say that this case is rightly dismissed, but not for the reasons offered by JUSTICE KAGAN. This case, instead, should have been dismissed for the same reason it should not have been taken in the first place: No valid injury ever existed. For if one is to assume that dilution occurred, then one must logically accept that every Senator will have an injury to assert; the "dilution" caused by ConnerRusso regardless of who filled the seat. And so my colleagues, both in the plurality and in the concurrence below, appear to wish to take up a new responsibility: Firing every new Senator. Indeed, had ConnerRusso not resigned his seat, this Court may have very well been prepared to rob him of his office; such a robbery would be predicated on the notion that the injury to be relieved was dilution. Though, one must *also* wonder where the nexus lies between the injury of vote dilution—and our role would

have been to relieve that injury, had we ruled with the petitioner—and the merits of the respondent's qualifications to serve. The Court, sadly, leaves unanswered that question, in both its analysis here and its original granting of the case. (I surmise this is so because the answer would be plainly untenable.) Nevertheless, I must concur in the dismissal.

SUPREME COURT OF THE UNITED STATES

No. 05–35

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[May 16, 2018]

JUSTICE BORK, with whom JUSTICE GORSUCH joins, concurring in the judgment.

A decision holding ConnerRusso's Senate appointment unconstitutional would be an unprecedented and uninvited excess of this Court's discretion. If grounds exist to affirm the status quo, we should—our job is to "say what the law is," not what the parties think it should be. See *Marbury* v. *Madison*, 1 Cranch 137, 177 (1803). No amount of poor argumentation from either side can ever justify a wrong entry by this Court. Luckily in this case, we don't have to worry about that. We benefit from strong points raised on both sides, both in the briefs and during oral argument.

Throughout this case, respondents have emphasized one point which I must agree with (and which petitioner seems to concede also):

> "The Constitution does not have a consecutive citizenship requirement but instead an accumulative conservative requirement of citizenship." Tr. of Oral Arg. at 8. See also Tr. of Oral Arg. at 2, 3, 4, 5.

Indeed, talk of the Senate Eligibility Clause's citizenship requirement as an "accumulative" requirement appeared on almost every page of our oral argument transcript and was emphasized by *both* sides. I am inclined to agree and must countenance that fact of law as not only significant

but dispositive of these proceedings. The record undisputedly shows that ConnerRusso was a citizen many months ago. Petitioner did not (and cannot) prove that he renounced his citizenship before reaching the Senate Eligibility Clause's threshold and his claim must fail.

I

Before delving into the precise law at issue in this case, I must respond to the plurality's assertion that the case is moot. Even a slight examination of the United States Reports would do well to show that the plurality's position is untenable. We have repeatedly emphasized, in case after case, that when the seamless "termination" of an existent controversy would "effectively den[y] . . . [a litigant] review" of an act "capable of repetition," mootness does not take hold. *Roe* v. *Wade*, 410 U. S. 113, 125; *Southern Pacific Terminal Co.* v. *ICC*, 219 U. S. 498, 515 (1911). See *Moore* v. *Ogilvie*, 394 U. S. 814, 816 (1969); *Carroll* v. *Princess Anne*, 393 U. S. 175, 178–179 (1968); *United States* v. *W. T. Grant Co.*, 345 U. S. 629, 632–633 (1953). How could it? If in this case mootness applied simply because ConnerRusso resigned, then—although *he* is eligible to serve—it would open the door to future illegal Senate appointments which could escape review by resignation and then reappointment after dismissal.

In the analogous case of *Honig* v. *Doe*, 484 U. S. 305, Justice Rehnquist explained in a concurring opinion that the "capable of repetition, yet evading review" exception to mootness simply recognizes that if a controversy is "alive" when a corresponding lawsuit is filed, regardless of whether "supervening events" change that fact, courts have "authority to hear the case." *Id.*, at 329–330. And after a thorough examination of the original basis for the mootness doctrine, which I see no value in repeating, he suggested "go[ing] still further" and "relaxing the test of mootness where the events giving rise to the claim of mootness have occurred after our

decision to grant certiorari or to note probable jurisdiction." *Id.*, at 330. The plurality's claim of mootness in this case, in contrast, is *ipse dixit*. All would agree, and none could seriously dispute, that the events which would render this case technically (but not in fact) "moot" occurred well after we decided to grant certiorari. In the intervening time, we accepted briefs, held oral arguments, disposed of motions, and conducted a vote on the merits. I am left wondering, then, what the real reason is for the plurality's mootness decision.

II

Alas, the merits of this case lead me to the same judgment as the plurality and so I join its judgment but not its opinion.

The Senate Eligibility Clause states, in relevant part, that "[n]o person shall be a Senator who shall not have . . . been two Months a Citizen of the United States." Art. I, §3, cl. 3. In regards to this, I do not understand the hoopla. Few provisions in the Constitution are as clear as this one. If you have been a citizen for at least two months, you can be a Senator. Nowhere does any part of this text connote a requirement of consecutivity. A few analogies will do the trick:

- "Have you been to Italy?"—This obviously means that if you have *ever* been to Italy, you should respond "yes." By petitioner's and the dissenters' logic, unless you just got back from Italy, your answer should be "no." 'Nuff said.
- "Where have you been to?"—A list of places you have visited, not just the ones which you visited on your last vacation.
- "How long have you been an attorney?"—If you served multiple stints as an attorney but served as a teacher in between (3 years as an attorney, 1 as a

> teacher, and then 2 more as an attorney), your answer might be more nuanced than someone who just served a consecutive 3 years as an attorney, but your answer ultimately would still be 5 (if you can do proper addition).

Since the law unequivocally embraces an accumulative citizenship requirement and because petitioner has not proven that ConnerRusso's previous period of citizenship ended before two months, I would affirm his appointment.