

The United States had long recognized the ruling faction in a foreign country as that country's government, despite an ongoing civil war. Throughout the civil war, the ruling faction controlled the majority of the country's territory, and the United States afforded diplomatic immunity to the ambassador representing the ruling faction.

A newly elected President of the United States decided to recognize a rebel group as the government of the foreign country and notified the ambassador from the ruling faction that she must leave the United States within 10 days. The ambassador filed an action in federal district court for a declaration that the ruling faction was the true government of the foreign country and for an injunction against enforcement of the President's order that she leave the United States. The United States has moved to dismiss the action.

If the court dismisses the action, what will be the most likely reason?

- A. The action involves a nonjusticiable political question.
- B. The action is not ripe.
- C. The action is within the original jurisdiction of the U.S. Supreme Court.
- D. The ambassador does not have standing.

Explanation:

Article III of the Constitution grants federal courts the power to decide actual cases and controversies. But the political-question doctrine **prohibits** federal courts from **adjudicating political questions**—ie, issues that (1) the **Constitution reserves** to the **legislative and executive branches** or (2) **lack judicially discoverable and manageable standards** for resolution. When this occurs, the federal court must dismiss the suit.

Here, the ambassador's suit for a declaratory judgment and an injunction concerned the President's recognition of a rebel group as the foreign country's true government. But such power is reserved to the executive branch under the Constitution, and there are no standards to help a court resolve this dispute. Therefore, the court will most likely dismiss this action because it involves a nonjusticiable political question.

(Choice B) Under Article III's case-or-controversy requirement, a suit must be ripe for adjudication. This means that the plaintiff must have suffered actual harm or an immediate threat thereof. Here, the ambassador's action *is* ripe because she has been ordered to leave the U.S. within 10 days (immediate threat of harm).

(Choice C) The U.S. Supreme Court has **original jurisdiction** over cases affecting ambassadors, so the ambassador's suit could have been filed directly in the Supreme Court. But original jurisdiction over ambassadors is not exclusive, so a lower federal court could also adjudicate this case if it was justiciable.

(Choice D) The ambassador *does* have **standing** because she suffered an injury-in-fact (expulsion) that was caused by the challenged action (President's order) and is redressable by the remedy sought (injunction).

Educational objective:

Under the political-question doctrine, federal courts cannot decide issues that (1) the Constitution reserves to the other branches of government or (2) lack judicially discoverable and manageable standards for resolution. Therefore, suits presenting these nonjusticiable political questions must be dismissed.

References

- Jones v. United States, 137 U.S. 202, 212 (1890) (stating that the recognition of a foreign government and its representatives is a nonjusticiable political question).
- Baker v. Carr, 369 U.S. 186, 210–17 (1962) (discussing the political-question doctrine).
- 32 Am. Jur. 2d Fed. Courts § 574 (2019) (listing examples of political questions).

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Justiciability and jurisdiction of federal courts

