What's Moot and What's Not: The Law of Mootness in New Hampshire

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I. Introduction

"[M]ootness [is] the 'doctrine of standing in a time frame: The requisite personal interest that must exist at the commencement of the litigation (standing) must continue throughout its existence (mootness).'"[1]

Because of the doctrine's constitutional foundation at the federal level, and its lack of constitutional foundation in New Hampshire, the analysis of federal and state cases differ. Moreover, this difference produces much more permissive results for the state litigant.

This article lists the exceptions to the federal mootness doctrine. It then categorizes the wide array of New Hampshire opinions on the matter, listing cases and situations which will be found moot, and those that will not.[2] Only a few New Hampshire cases which deal with mootness say anything about the law of mootness; most make no more than a conclusory finding that a case is, or is not, moot. The cases described below are not set forth because they explain the law, but because they are concise examples of the court's approach to the mootness issue.

II. Federal and New Hampshire Mootness Doctrines Compared

Federal and State mootness law have some aspects in common, but they also differ substantially. Federal law is based on Article III of the U.S. Constitution which provides that the "judicial power of the United States...shall extend to...cases [and] controversies...."[3] The "cases and controversies" requirement prohibits federal courts from rendering advisory opinions,[4] and therefore constitutionalizes the mootness doctrine.[5]

New Hampshire courts, however, are not bound by Article III. In fact, the New Hampshire Constitution specifically provides for advisory opinions,[6] which are routinely given, provided they are properly requested.[7] Unlike the federal system, mootness is not a constitutional issue for New Hampshire courts. Instead, in New Hampshire "the question of mootness is not subject to rigid rules but seems rather, to be regarded as one of convenience and discretion."[8]

The lack of a constitutional basis for the mootness doctrine requires a different analysis of mootness issues on the federal and state levels. In federal cases, the general analysis, once a party has shown that the requisite personal interest will not continue throughout the course of the litigation,[9] is to presume a case is mooted by Article III *unless* an exception to the mootness doctrine can be located.[10]

In New Hampshire cases, the analysis is different, and produces much more permissive results. On the state level, it appears that the party raising the issues of mootness must locate a specific reason, from among a limited list, why a case should

be mooted. See Section III below. The responding party will then find a list of "special reasons"[11] why the case should not be dismissed for mootness, which is much longer and more generous than the list of federal exceptions. See Section IV below.

III. New Hampshire Cases in Which Mootness Doctrine Applies

The New Hampshire cases in which the court has found that the mootness doctrine applies can be placed into several general categories.

A. Just Plain Moot

There are, of course, a number of cases which have been found moot because it is clear that the issues are moot, or that "a determination...by [the] court has...become unnecessary and would serve no useful purpose."[12] The death of a party in the case where the cause of action does not survive the party's death will moot the case.[13] When the parties settle an action[14] or stipulate that it is moot,[15] it will be found moot.

Mere lapse of time may moot a case. In *Partridge v. Portsmouth*,[16] the Portsmouth City Council revoked Partridge's license to operate a taxicab for the calendar year 1932. By the time of the court's decision on January 3, 1933, the case had become moot, raising the question of whether the court delayed decision in order to moot the case.

Similarly, the occurrence of relevant events may moot a case. In *Appeal of Hinsdale Federation of Teachers*,[17] the local teachers' union sought to change its affiliation from one to another larger state-wide union. Administrative rules required that the Public Employees Labor Relations Board (PELRB) make a series of findings to determine whether a formal election of the local was required. Before the PELRB had decided the issue, the teachers went ahead and held an election, making the issue of whether an election was necessary moot.

B. Relief Requested

Where a party seeking relief gets the relief requested, the case will be found moot.[18] In *Durell v. City of Dover*,[19] the plaintiff, Iris Durell, filed a complaint with the Human Rights Commission claiming that sex discrimination was the reason she was fired from the Dover Police Department. To determine the feasibility of a civil suit against the city, she requested personnel records on herself and other employees, which the city had provided to the commission in its defense of Durell's complaint. During oral argument, it was revealed that the commission had found no probable cause to pursue the complaint. The city then expressed its willingness to disclose the information Durell had requested provided the commission ended its proceedings. During the pendency of the appeal the court learned that the commission had done so, leading it to presume that Durell would receive the information she sought.

At issue in *Wuelper v. University of New Hampshire*[20] was whether the compulsory collection by the university of a student activity fee, which might be used to finance political speakers, violated students' rights of free association. Wuelper and other students sought an injunction to restrain the university from releasing student activity fee funds to pay for speeches the next day by Abbie Hoffman, David Dellinger, and Jerry Rubin, anti-war figures who had gained publicity during their trial in Chicago. The funds were deposited with the clerk of court, and the speeches took place. Months later, the university asked the court to refund the money. The university said it would not pay the speakers because they had violated an unrelated federal district court order, and because the funds had not been properly authorized by the university. Because the money "has not and will not be used by the university to pay" the speakers, the case was dismissed as moot.

C. Unique Legal Situation

When a case presents unique legal issues such that it is unlikely to be repeated, the court will not reach the issues.[21] In *Appeal of Tancrede*,[22] for instance, members of the clerical staff at the Department of Corrections requested an upgrade reclassification of their jobs. Shortly thereafter, a temporary legislative moratorium on state employee reclassification took effect, causing the Director of Personnel to take no action on the employees' request. At issue was the scope of the moratorium legislation, and whether it was an unconstitutional retrospective law. The court refused to consider the merits because by the time the appeal was heard the moratorium had expired and it appeared that the Director of Personnel was going to consider the employees' request.

A species of the unique legal situation category is when the law or practice which the appellant claims is impinging on his rights has been changed or discontinued, and is not likely to be re-instated. In that case, the court will decline to render an opinion.[23] For instance, in *Keene v. Gerry's Cash Market*,[24] the market stayed open after 2:00 p.m. on Sundays, in violation of a city ordinance. The city filed criminal charges, and the market sought to enjoin enforcement of the ordinance on grounds that it was improperly adopted. Subsequently, the city repealed the ordinance making the market's plea for injunction moot.

D. Unique Factual Situation

Similarly, when a case presents unique factual issues the court will decline to decide them.[25] For example, in *Littlefield v. N.H. Interscholastic Athletic Association*,[26] a 20-year old high school student was barred from playing on the Pembroke Academy basketball team because the school rules barred participation to those older than 19. The student claimed the school violated his equal protection and due process rights. By the time of the appeal, the basketball season was over and the student would have graduated before the beginning of the next basketball season. The court refused to "reach out and decide the issues" because the age eligibility rule is rarely challenged.

In *Town of Bedford v. Lynch*,[27] the Lynches had bought a parcel of land in Bedford, which they leased to an advertising company for use as a storage depot. At issue was whether Bedford's zoning ordinance forbade such use. By the time of the appeal, the advertising company had not occupied the premises for four years and there was no indication that they desired to reoccupy it. The court found that "were the owners to succeed in [the case] they still could not rent the pre-

mises to the...[a]dvertising [c]ompany." The court thus found the case moot, and refused to construe the application of the town's ordinance to the Lynches' parcel.

E. Failure to Prosecute

Finally, the court will not consider the merits of a case where a party has not been "assiduous in seeking a trial court adjudication that would have avoided mootness."[28] *Dolcino v. Thalasinos*,[29] is the converse of the more common failure to prosecute case. In *Dolcino* the defendant was committed to the New Hampshire Hospital because his mental condition made him dangerous to himself and others. Shortly thereafter, he was transferred to the custody of the Veterans Administration, which released him. By the time of the appeal he was living and apparently causing no harm in Claremont, yet his attorneys sought to set aside the original commitment order. The court said that although it had to assume the defendant initially wanted to fight the commitment order, it had no assurance that by the time of the appeal there was a defendant interested in its decision. Accordingly the case was dismissed as moot.

IV. New Hampshire Cases Where Mootness Doctrine Does Not Apply

New Hampshire cases which deal with the State mootness doctrine, and in which the court has reached the merits of the case after an allegation of mootness, fall into eight categories. For convenience, the eight categories are placed in two groups: 1) those cases in which the merits were reached for reasons that are the same as the federal exceptions to the Article III mootness doctrine[30]; and 2) those cases in which the merits were reached for reasons that do not exist at federal law.

A. Reasons New Hampshire Courts Will Not Dismiss for Mootness Which Are the Same As Federal Exceptions to the Mootness Doctrine

1. Secondary or Collateral Injuries

Even when a case has been otherwise mooted, the New Hampshire Supreme Court, as in the federal system,[31] will reach its merits when a party will suffer some secondary or collateral injury. This is nothing more than saying that the case was not moot; the party continues to face some adverse consequence from the opposing party's action albeit perhaps not in the same kind or magnitude as that originally complained about.[32]

In *Petition of Donovan*,[33] various State agencies sought to revoke Donovan's license to operate the Donovan Group Home because of allegations that the Home violated regulations concerning the care of developmentally disabled persons. During the proceedings, Donovan's license to run the Home had expired, and Donovan had not re-applied, otherwise making the case moot. The court found that had the agencies' revocation of Donovan's license been allowed to stand, it would have been detrimental to him in future licensing proceedings. Citing these remaining injuries, the court reached the merits of his claim.

In *School Dist. #42 v. Murray*,[34] a public school guidance counselor was placed on probation for the 1983-84 school year. The dispute concerned whether the probation violated the collective bargaining agreement between the school district and the teacher's union. After arbitration failed, the school petitioned the court to enjoin arbitration. By the time a permanent injunction was granted in 1985, 1983-84 was in the past. The court reached the merits of the case because the teacher's "employment record notes his status for that year" and that constituted "a continuing injury with potentially adverse consequences."[35]

2. Capable of Repetition Yet Evading Review

Both federal[36] and New Hampshire[37] courts will reach the merits of a case based on the notion that a dispute is capable of repetition yet evading review. In *Royer v. State Department of Employment Security*,[38] Royer and others in his class sought to stop the agency's practice of terminating unemployment benefits without prior notice and hearing. By the time the case was appealed, Royer was employed and had received all the benefits to which he was entitled. The court nonetheless reached the merits, ruling that the case was was capable of repetition yet evading review.

Relying on federal precedent,[39] the New Hampshire Supreme Court in *Royer* found that there were two prongs in determining whether a case will be found not moot. First, the court held that there was a "reasonable expectation that [Royer] may again be subjected to the challenged action."[40] On this prong, the New Hampshire and federal standards are the same.[41] On the second prong, however, New Hampshire and federal courts differ. A federal court must find that the injury is of inherently limited duration so that it is likely always to become moot before the litigation is completed.[42] The somewhat lower *Royer* standard is that "[t]he challenged action [is] too short in duration to be fully litigated prior to its expiration."[43]

In *Chambers v. Gregg*,[44] a state legislator and others requested copies of the Governor's budget pursuant to New Hampshire's right-to-know law. The Governor's office refused, and the legislators filed a petition for the records in the superior court, which petition was granted. The Governor complied with the court order but appealed the ruling to the supreme court. Without analyzing the mootness issue in detail, the court found that the case was capable of repetition yet evading review and went on to consider the merits.

3. Allegedly Illegal Practice Ceased, But Free to Resume

The federal courts recognize an exception to the mootness doctrine that applies when the allegedly injurious practice has ceased, but the alleged *provocateur* is free to resume the practice. The exception will apply unless it is "absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur."[45]

In *Hess v. Turner*,[46] Hess was stopped by a police officer who had seen him commit several questionable driving practices. The officer smelled alcohol and asked Hess to take a blood-alcohol test; Hess refused. Refusal carried a penalty of 90 days loss of license. Hess claimed that the officer, and the standard "Implied Consent Rights" form failed to notify him that the 90 days loss of license was in *addition* to other penalties and could

not run concurrently. Hess claimed that the statute requiring an officer to "inform [the arrestee] of the consequences of his refusal to permit a test was not complied with in his case." The state Attorney General subsequently issued a recommendation to police departments that they revise their standard implied consent form to include such a warning, and Hess claimed that this recommendation made his case moot. The court found, however, that "the way the attorney general chooses, in his discretion, to implement [the statutory warning] does not determine for us what the statute compels the State to do. The attorney general's action has not mooted the case."

In *Appeal of Golding*,[47] Golding, as a state employee, claimed that his application to a newly opening job position should be given preference over the applications from people outside of the agency. Subsequently, the legislature dissolved the position contingent upon federal funding. The court reached the merits of Golding's claim saying that "[i]f federal funds become available . . . our decision will affect the legal rights of the parties."

Neither of these cases is squarely on point because in both cases the allegedly unlawful behavior did not fully cease. Nonetheless, they do illustrate that if given the opportunity, the New Hampshire Supreme Court will probably reach the merits of a case in which allegedly unlawful behavior has ceased but may resume.

4. Class Action

In the federal system, the mootness doctrine is very relaxed, or does not apply, to class action suits, so long as the action is brought by a class that has been properly certified. If so, the entire class is the actual plaintiff. Thus, if facts arise that would moot the case of the named plaintiff, the law regards the action as still live and not moot.[48]

There have been few class actions brought in New Hampshire courts and consequently there has been no decision on the question in New Hampshire. *Royer v. State Department of Employment Security*[49] came close. It was a class action possibly made moot because the named plaintiff and others got the remedy they sought. The court reached the merits of the dispute, but specifically declined to rule on whether class actions are excused from the mootness doctrine. Instead, it found the case not moot on other grounds.

B. Reasons New Hampshire Courts Will Not Dismiss for Mootness Which Do Not Exist In Federal Courts

1. Cases Raising Issues of Public Interest

New Hampshire law has a general "public interest exception to the mootness doctrine."[50] The exception appears to have originated in *H.P. Hood & Sons, Inc. v. Boucher*.[51] There, the court found a "matter of vital public interest is at stake,"[52] in reaching the issue of a party's entitlement to a milk-selling license even though the party had, by the time of the appeal, already procured the license. While the originating case imposed a relatively high standard of "a vital public interest,"[53] subsequent cases have relaxed the standard to a "pressing public interest,"[54] later to a "sufficient public interest,"[55] and at times to an unmodified "public interest."[56]

For example, in *Appeal of Campaign for Ratepayers Rights*,[57] the Campaign for Ratepayers Rights (CRR) appealed a ruling of the Public Utilities Commission. The commission had required that CRR be represented by an attorney in order to be granted full intervenor status in the commission's rate-making hearings and had denied CRR's request for intervenor funding. While the appeal was pending, the merits of the underlying case went forward without the participation of CRR. The court found a "sufficient public interest" in the case to construe the practice-of-law statute and to delineate the requirements of commission rules when public interest organizations apply for intervenor funding.

2. Cases Raising Issues of Governmental Integrity

New Hampshire courts will reach the merits of a case when it concerns the public franchise or "governmental integrity."[58] In *Curran v. Auclair*, the court was asked to decide whether the State violated New Hampshire's anti-trust and competitive bidding statutes during a bid for a 1980 contract to transport liquor for the Liquor Commission. Five years after the suit was initially filed, the plaintiff sought to amend its pleading to include contracts extending into 1985. By the time of the appeal, the contracts in question were long since expired, making the case "entirely moot."[59] The court reached the merits of the case, however, explaining:

> "We are...reluctant to dismiss this appeal without any reference to the merits, because of a concern that it might appear that the court was intentionally avoiding an issue of governmental integrity."[60]

Governmental integrity, as a reason to hear otherwise moot cases, has been applied in numerous cases.[61]

3. Cases Raising Significant Constitutional Issues

A third occasion where New Hampshire courts may reach otherwise moot questions is when the case raises significant constitutional issues.[62] The federal courts have rejected this as an exception to the Article III mootness doctrine.[63]

In *State v. Gagne*,[64] for example, Wilma Gagne was arrested for arson, a felony. The defendant was arraigned in the Manchester District Court, which had no jurisdiction to try felony charges, and a probable cause hearing was scheduled. Before the probable cause hearing, defense counsel requested the court to order an evaluation to determine the defendant's competency to stand trial, arguing that the defendant has a constitutional right to not appear at any adversary hearing if she is legally incompetent. Before the hearing, the defendant was indicted by the grand jury, negating the necessity for a probable cause hearing, and rendering the issue moot. The supreme court, on an interlocutory transfer, reached the issues in the case, however, saying that "[t]he defendant raises an issue of significant constitutional dimension which justifies a decision on the merits."

4. Avoid Future Litigation

Finally, New Hampshire has a general policy of deciding an otherwise moot case when a decision will avoid future litigation.[65] Often when a case is remanded, or likely to be retried upon reversal, the court will decide an issue in order to give the lower court guidance, and to avoid a later appeal.[66] However, if "the course of the retrial is too uncertain in anticipation and its outcome may render the questions moot," the court will consider it "inexpedient and contrary to good practice to answer them."[67]

V. Conclusion

While there is a mootness doctrine in both federal and state law, they differ. It is much more likely that a case which is potentially moot will get its merits reached in a New Hampshire court than a federal court. This difference stems from two causes. The first is that because New Hampshire courts are not burdened by Article III of the federal constitution, state and federal mootness differs in its analysis. The second is that New Hampshire courts have found cases not moot for reasons that do not qualify as exceptions to the federal mootness doctrine. Three of these reasons (*i.e.*, cases that raise issues of the public interest, issues of governmental integrity, and significant constitutional questions) have been widely applied, and have allowed New Hampshire litigants to get definitive court opinions on a broad array of topics that probably could not be litigated in federal court.

Endnotes

1. *United States Parole Comm. v. Geraghty*, 445 U.S. 388, 397 (1980) *quoting* Monaghan, Constitutional Adjudication: The Who and When, 82 Yale L.J. 1363, 1384 (1973).

2. R. Wiebusch, New Hampshire Practice: Civil Practice and Procedure, § 2021(12) (1992/1993 supp.) contains a rough analysis of New Hampshire's mootness law. The analysis, however, is not satisfying, and does not comprehensively take into account the entire body of New Hampshire mootness law.

3. *See e.g. SEC v. Medical Comm. for Human Rights*, 404 U.S. 403, 407 (1972); *Hall v. Beals*, 396 U.S. 45, 48 (1969); *Amalgamated Assn. of Street, Elec. Ry. and Motor Coach Employees of Am. v. Wisconsin Employment Relations Bd.*, 340 U.S. 416, 418 (1951).

4. *Flast v. Cohen*, 392 U.S. 83, 96-97 (1968).

5. In *Honig v. Doe*, 108 S.Ct. 592, 607-08 (1988), however, Justice Rehnquist, in a concurrence, argued that the mootness doctrine is primarily "pragmatic" and not constitutionally based.

6. "Each branch of the legislature as well as the governor and council shall have authority to require the opinions of the justices of the supreme court upon important questions of law and upon solemn occasions." *N.H. Const.*, Part 2nd, Art. 74. This provision generally has been applied to questions relating to pending legislation.

The constitutions of seven states permit advisory opinions: Colorado, Florida, Maine, Massachusetts, New Hampshire, Rhode Island, and South Dakota. Alabama and Delaware permit advisory opinions by statute. The North Carolina Court renders advisory opinions without explicit authority, a practice which other states have used in the past, but which has been abandoned by court decision, legislation, or constitutional amendment. P.Bator, D.Meltzer, P.Mishkin & D.Shapiro, *Hart & Wechsler's The Federal Courts and the Federal System* 70 (3d ed. 1988).

New Hampshire Supreme Court Rule 34 allows for certification of questions of law by federal courts. Although a certified question may be moot, the New Hampshire Supreme Court will probably decide it out of deference to the federal court. *Panto v. Moore Business Forms*, 130 N.H. 730, 731 (1988).

7. *In re School Law Manual*, 63 N.H. 574, 576 (1885) (rules and forms drawn up by commissioner under terms of the legislation, which supreme court was asked to approve, were probably a legislative attempt to preclude later litigation).

8. *See H.P. Hood & Sons, Inc. v. Boucher*, 98 N.H. 399, 401 (1953) (citing 53 Harvard L.Rev. 628, 629 (1940)).

9. There is, of course, a body of law outside of the scope of this article concerning whether and when the Article III "case and controversy" clause applies.

10. *See* Note, Cases Moot on Appeal: A Limit on the Judicial Power, 103 U.Pa.L.Rev. 772 (1955) (categorizing cases).

11. *Attorney General v. Fogarty*, 73 N.H. 607 (1905).

12. *Gobin v. Hancock*, 96 N.H. 450 (1951).

13. *Hall v. County of Hillsborough*, 122 N.H. 448 (1982); *Estate of Kelley v. Hillsborough Cty. Pers. Comm.*, 120 N.H. 779 (1980); *Marshall v. Thalasinos*, 116 N.H. 671 (1976).

14. *Utica Mutual Insurance Co. v. Plante*, 106 N.H. 525 (1965) (insurance claims settled during pendency of appeal).

15. *Realco Equities, Inc. v. John Hancock Mut. Life Ins. Co.*, 130 N.H. 345, 352 (1988); *King v. Smalldon*, 97 N.H. 121 (1951).

16. *Partridge v. Portsmouth*, 86 N.H. 594 (1933).

17. *Appeal of Hinsdale Fed. of Teachers*, 133 N.H. 272 (1990).

18. *State v. Peterson*, 135 N.H. 713 (1992) (inmate received a hearing on his parole, the relief he was seeking); *State v. Schulte*, 120 N.H. 344 (1980) (inmate was paroled, making transfer issue moot); *State v. Steeves*, 119 N.H. 592 (1979) (defendant stipulated to terms of the previously disputed commitment order); *Milan v. Berlin Airport Authority*, 104 N.H. 320 (1962) (Authority had paid disputed fees); *Laconia v. Boston & Maine Railroad*, 81 N.H. 408 (1925) (petition by Laconia to Public Service Commission to order railroad to repair its bridge over Daniel Webster Highway at Wiers; by time of appeal, repairs had been done); *Hazen v. Concord Railroad*, 63 N.H. 390 (1885) (tort case moot because appellant already recovered claim for the loss incurred).

19. *Durell v. City of Dover*, 130 N.H. 700 (1988).

20. *Wuelper v. Univ. of N.H.*, 112 N.H. 471 (1972),

21. *Timberlane Regional Educational Association v. State*, 115 N.H. 77, 79 (1975) (Pursuant to Board of Education regulation authorizing the practice, school board revoked teacher's teaching certificates as part of contract dispute; during pendency of the appeal the Board declared that it would not commence decertification proceedings, rescinded the authorizing regulation, promulgated new regulations providing for suspension rather than revocation, and instructed Commissioner of Education to seek legislation to reflect new policies of the board); *Tice v. Thomson*, 120 N.H. 313 (1980) (claim to hearing for dismissal from political appointment moot when governor abolished the position by executive order).

22. *Appeal of Tancrede*, 135 N.H. 602 (1992).

23. *Cushing v. Gregg*, 137 N.H. 429 (1993) (Legislature repealed agency's authority to issue disputed bonds and disbanded the agency during pendency of the appeal; the enabling legislation of the replacement agency "squarely addresses" the issues raised); *Real Estate Planners v. Town of Newmarket*, 134 N.H. 696 (1991) (zoning ordinance at issue changed by town after judgment, which was then on appeal, and no challenge to new ordinance had been made); *Appeal of Vicon Recovery Systems, Inc.*, 130 N.H. 801 (1988) (agency order at issue had been rescinded); *State in the interest of Jane Doe*, 118 N.H. 330 (1978) (statute limiting payment to child's group home was repealed); *State v. Schena*, 110 N.H. 73 (1969) (statute repealed); *State v. Berge*, 109 N.H. 570 (1969) (statute repealed). *But see Lebanon v. Lebanon Water Works*, 98 N.H. 328 (1953) (allegation that change in the law rendered issues moot; however court found the law which was changed did not effect the case).

24. *Keene v. Gerry's Cash Mkt., Inc.*, 113 N.H. 165 (1973).

25. *Magrauth v. Magrauth*, 136 N.H. 757 (1993) (issue of whether a marital property distribution was lawful in that it did not specify when a marital asset was to be sold was made moot by the sale of the property); *Gosselin v. Gosselin*, 136 N.H. 350 (1992) (issue of whether order incarcerating divorce defendant for failure to pay amount he claimed he did not have was an abuse of court discretion mooted when he paid the amount); *Gobin v. Hancock*, 96 N.H. 450 (1951) (Habeas Corpus petition moot because the defendant was no longer incarcerated); *Street Commissioners of Portsmouth v. Dale*, 93 N.H. 92 (1944) (issue of whether public works money ought to have been appropriated with certain limitations became moot when city council appropriated the money without limitations).

26. *Littlefield v. N.H. Interscholastic Athletic Ass'n*, 117 N.H. 183 (1977).

27. *Town of Bedford v. Lynch*, 113 N.H. 364, 366 (1973).

28. *Kenneth E. Curran, Inc. v. Auclair Transp., Inc.*, 128 N.H. 743, 747 (1986). *See also Town of Bedford v. Lynch*, 113 N.H. 364 (1973).

29. *Dolcino v. Thalasinos*, 114 N.H. 353 (1974).

30. There are four exceptions to the mootness doctrine recognized in federal law. E. Chemerinsky, *Federal Jurisdiction* 111 (1989). Because state law is not based on Article III, state reasons for reaching the merits of a case are not properly called "exceptions."

31. *See e.g. Carafas v. LaVallee*, 391 U.S. 234, 237-238 (1968) (convict allowed to present petition for Habeas Corpus even though he had been released from custody because "[i]n consequence of his conviction, he cannot engage in certain businesses; he cannot serve as an official of a labor union for a specified time; he cannot vote in any election held in New York State; he cannot serve as a juror.... On account of these 'collateral consequences,' the case is not moot."); *Super Tire Engineering Co. v. McCorkle*, 416 U.S. 115 (1974), (employer's suit to enjoin unionized workers from receiving welfare benefits during strike was not made moot by the strike ending because a decision in the matter could affect future labor-management negotiations).

32. *Jackson v. Federal Ins. Co.*, 127 N.H. 230 (1985) (suit for damages had been dismissed, making it moot, but remaining request for attorney's fees still live).

33. *Petition of Donovan*, 137 N.H. 78 (1993).

34. *School Dist. #42 v. Murray*, 128 N.H. 417 (1986).

35. *Id.* at 419.

36. The archetypal examples are in voting cases, where the election from which the complainant has been barred is long since over by the time the case comes to court, *see e.g. Moore v. Ogilvie*, 394 U.S. 814 (1969), and abortion cases, where the woman seeking an abortion has long since reached her term by the time the case comes to court, *see e.g., Roe v. Wade*, 410 U.S. 113 (1973).

37. *Guy J. v. Commissioner*, 131 N.H. 742 (1989) (At issue was jurisdictional boundaries between the Department of Health and Human Services and the Department of Education in areas of the education of two developmentally disabled persons. "[W]e have not questioned whether the cases have slipped into mootness as fiscal years have passed and the terms of the relevant governmental appropriations may have changed. If such considerations were sufficient to render the cases moot, the issues raised would probably recur, since both plaintiffs are [still] potential applicants for services from the two departments, and would just as probably evade resolution.). *See also Smith (Truglia) v. Truglia*, 135 N.H. 18 (1991). *Cf. Cushing v. Gregg*, 137 N.H. 429 (1993) (Legislature repealed agency's authority to issue disputed bonds and disbanded the agency during pendency of the appeal; because enabling legislation of replacement agency "squarely addresse[d]" the issues raised, the matter was not capable of repetition).

38. *Royer v. State Department of Employment Security*, 118 N.H. 673, 675 (1978).

39. *Weinstein v. Bradford*, 423 U.S. 147 (1975).

40. *Royer v. State Department of Employment Security*, 118 N.H. 673, 675 (1978).

41. *See e.g. Weinstein v. Bradford*, 423 U.S. 147 (1975); *Murphy v. Hunt*, 455 U.S. 478, 482 (1982) ("there must be a reasonable expectation or a demonstrated probability that the same controversy will recur involving the same complaining party").

42. *See e.g. Roe v. Wade*, 410 U.S. 113 (1973).

43. *Royer v. State Department of Employment Security*, 118 N.H. 673, 675 (1978).

44. *Chambers v. Gregg*, 135 N.H. 478 (1992).

45. *City of Mesquite v. Aladdin's Castle, Inc.*, 455 U.S. 283, 289 n.10, (1982).

46. *Hess v. Turner*, 129 N.H. 491 (1987).

47. *Appeal of Golding*, 121 N.H. 1055 (1981).

48. Greenstein, Bridging the Mootness Gap in Federal Court Class Actions, 35 Stan.L.Rev. 897 (1983).

49. *Royer v. State Department of Employment Security*, 118 N.H. 673 (1978).

50. *Proctor v. Butler*, 117 N.H. 927, 930 (1977).

51. *H.P. Hood & Sons, Inc. v. Boucher*, 98 N.H. 399 (1953).

52. *Id.* at 401.

53. *Id.* at 401.

54. *State v. Swift*, 101 N.H. 340, 342 (1958) (a "pressing public interest involved" in determining whether police can exceed speed limits to catch fleeing suspect, even though suspect already found not guilty); *State v. White*, 113 N.H. 663 (1973) (citing *State v. Swift, supra*) (although land taken by State could not, by the time case reached supreme court, be returned to its owners, takings procedure is matter of pressing public interest).

55. *Silva v. Botsch*, 120 N.H. 600, 601 (1980) ("sufficient public interest" to reach issue of the tenure of selectman, even though term had expired); *Harriman v. City of Lebanon*, 122 N.H. 477 (1982); *Appeal of Campaign for Ratepayers Rights*, 137 N.H. 707 (1993). *See also Landaff School District v. State Bd. of Educ.*, 111 N.H. 317 (1971) (merits reached because they were of "sufficient public moment").

56. *Hinse v. Burns*, 108 N.H. 58, 59 (1967) ("in the public interest to consider the question" of how long is a permissible delay in determining competency to stand trial, even though competency had already been determined); *Appeal of Seacoast Anti-Pollution League*, 126 N.H. 789 (1985) ("the public interest warrants our consideration of the . . . issues raised"). *See also Weeks Dairy v. Milk Control Board*, 107 N.H. 348 (1966) ("a decision of these issues would serve the ends of justice").

57. *Appeal of Campaign for Ratepayers Rights*, 137 N.H. 707 (1993) (It should be disclosed that the author was attorney for the appellant.).

58. *Kenneth E. Curran, Inc. v. Auclair Transp., Inc.*, 128 N.H. 743, 747 (1986).

59. *Id.* at 746.

60. *Id.* at 747 (citations omitted).

61. *Chambers v. Gregg*, 135 N.H. 478 (1992) (court reached issue of legislator's timely access to executive budget projections, even though records had already been obtained); *Williams v. City of Dover*, 130 N.H. 527 (1988) (court decided on standard for conflicts of interest for city councilman concerning zoning regarding his full-time employer, even though term had expired); *Silva v. Botsch*, 120 N.H. 600 (1980) (court reached issue of the proper term of selectman member of county planning board, even though selectman's tenure had expired); *Keene Pub. Corp. v. Keene Dist. Ct.*, 117 N.H. 959 (1979) (district court ordered court closed during probable cause hearing of a defendant whose case the court thought would get significant publicity and therefore prejudice potential jurors if the defendant was to be indicted and tried; even though the case was potentially moot, the court said it "raises urgent and important issues that we feel should be resolved"); *Green v. Shaw*, 114 N.H. 289 (1974) (court reviewed lawfulness of acts of mayor of Rochester even though acts had presumably been ratified by his subsequent reelection); *O'Neil v. Thompson*, 114 N.H. 155 (1974) (court reached issue of legality of hiring freeze, even though the freeze had been revoked); *Herron v. Northwood*, 111 N.H. 324 (1971) (court reached issue of propriety of selectmen deciding budget issues during a closed meeting, even though meeting the plaintiff sought to attend had long since passed); *Basinow v. Manchester*, 111 N.H. 184 (1971) (court reached dispute regarding mayoral succession upon death of elected mayor, even though term of the appointed mayor had expired and a new mayor had been properly elected); *Sugar Hill Improvement Association v. Lisbon*, 104 N.H. 40 (1962) (court reached issue of legitimacy of citizen vote to secede from a town and form another, even though Legislature accomplished same during pendency of the case). *C.f. Street Commissioners of Portsmouth v. Dale*, 93 N.H. 92 (1944) (issue of whether public works money ought to have been appropriated subject to certain conditions became moot when city council appropriated the money subject to no conditions; court did not consider whether case raised matters of governmental integrity).

62. *Moody v. Cunningham*, 127 N.H. 550, 553 (1986) (court decided whether untried indictment is constitutionally sufficient to revoke parole, even though defendants were no longer incarcerated); *Royer v. State Department of Employment Security*, 118 N.H. 673, 675 (1978) (court reached issue of state's constitutional authority to terminate unemployment benefits without notice, even though the benefits had been paid); *Martel v. Hancock*, 115 N.H. 237 (1975) (supreme court reached issue whether superior court, which has concurrent jurisdiction with supreme court over habeas corpus petitions, had jurisdiction to review actions of the Parole Board, even though criminal petitioner had been discharged from prison, because case raised "important" constitutional question).

63. *See Hall v. Beals*, 396 U.S. 45 (1969) (Brennan, J., dissenting).

64. *State v. Gagne*, 129 N.H. 93 (1986).

65. *Williams v. City of Dover*, 130 N.H. 527, 530 (1988); *Silva v. Botsch*, 120 N.H. 600, 601 (1980); *Herron v. Northwood*, 111 N.H. 324, 327 (1971); *State v. Swift*, 101 N.H. 340, 342 (1958); *Hayes v. State*, 109 N.H. 353 (1969). *See also Dover v. Wentworth-Douglass Hosp. Trustees*, 114 N.H. 123 (1974) (court reached issue of city control over public hospital employee records, even though not included in the reserved case, so that "future litigation may be avoided").

66. *See e.g. Knox Leasing v. Turner*, 132 N.H. 68, 70 (1989) ("Given the substantial likelihood that the issue...will...again come before the trial court and given that...the issues presented have been briefed and argued already, we see little to be accomplished by dismissing this appeal for want of controversy."); *Allstate Ins. Co v. Aubert*, 129 N.H. 393 (1987); *State v. Wheeler*, 120 N.H. 496, 499 (1980).

67. *Lemire v. Haley*, 92 N.H. 10 (1942).