Mercer Law Review

Volume 52
Number 4 *Eleventh Circuit Survey*

Article 4

7-2001

Appellate Practice and Procedure

William M. Droze

Suzanne F. Sturdivant

Appellate Practice and Procedure

by William M. Droze*
and
Suzanne F. Sturdivant**

I. INTRODUCTION

In 2000 the United States Court of Appeals for the Eleventh Circuit was called upon to decide high profile and difficult issues. It helped determine the fate of young Elian Gonzalez[1] and the course of President Bush and former Vice President Al Gore's legal battles for the presidency.[2] Yet some of these decisions—and many others—turned on less sensational procedural questions. This Article examines the role that procedural issues have played in the court's recent opinions. It is intended to help practitioners gauge trends in the court's approach to interlocutory matters; timeliness of notice of appeal and presentation of argument; the doctrines of standing, ripeness, and mootness; and standards of review on appeal.

II. PROCEDURAL ISSUES IN THE ELECTION CASES

In the late fall of 2000, the Eleventh Circuit Court of Appeals faced some complex procedural issues when it heard appeals from several of the cases that arose from disputed presidential election results in Florida. In *Siegel v. Lepore*,[3] the court considered under what circum-

---

* Partner in the law firm of Troutman Sanders L.L.P., Atlanta, Georgia. University of North Carolina (A.B., 1984); University of Georgia School of Law (J.D., cum laude, 1987).

** Associate in the law firm of Troutman Sanders L.L.P., Atlanta, Georgia. Agnes Scott College (B.A. 1991); Georgia State University College of Law (J.D., 2000).

1. *See* Gonzalez v. Reno, 212 F.3d 1338 (11th Cir. 2000), *aff'd en banc*, 215 F.3d 1243 (11th Cir. 2000).

2. *See* Harris v. Florida Elections Comm'n, 235 F.3d 578 (11th Cir. 2000); Touchston v. McDermott, 234 F.3d 1130 (11th Cir. 2000); Siegel v. LePore, 234 F.3d 1163 (11th Cir. 2000).

3. 234 F.3d 1163 (11th Cir. 2000).

stances it could not review a final judgment of a state court and when it should abstain from cases involving state law issues. Then presidential candidate George W. Bush, vice presidential candidate Dick Cheney, and several Florida voters asked the court to enjoin local authorities in four Florida counties from manually recounting presidential ballots cast on November 7, 2000. Among other things, plaintiffs claimed that the manual recounts violated their rights under the Due Process and Equal Protection clauses of the Fourteenth Amendment.[4] The district court had refused to halt the recounts, and the Eleventh Circuit Court of Appeals affirmed.[5]

The court began by considering whether it had subject matter jurisdiction, noting that the *Rooker-Feldman* doctrine prevented all federal courts except the United States Supreme Court from reviewing "the final judgments of state courts."[6] The court stated this doctrine also applied to claims that are "inextricably intertwined with a state court judgment."[7] Although plaintiffs sought review of the federal district court's refusal to grant an injunction, their constitutional claims were apparently "inextricably intertwined" with the Florida Supreme Court's decision requiring Florida Secretary of State Katherine Harris to accept late results of manual recounts.[8] Ordinarily, this could have weakened the court's ability to assert subject matter jurisdiction over plaintiffs' constitutional claims. However, because the United States Supreme Court had vacated the Florida Supreme Court's decision by the time the Eleventh Circuit Court of Appeals decided *Siegel*, the court found it "unclear . . . that any final judgments giving rise to *Rooker-Feldman* concerns . . . exist[ed]."[9]

The court then addressed whether the mootness doctrine defeated its subject matter jurisdiction over plaintiffs' claims.[10] Defendants, members of several Florida counties' canvassing boards, argued that plaintiffs' claims were moot because the counties already had completed the manual recounts and certified the results with the state Elections Canvassing Commission.[11] At the time, however, then Vice President

---

4. *Id.* at 1168-69.

5. *Id.* at 1168; *see also Touchston*, 234 F.3d 1133, 1134 (rejecting plaintiffs' request for an emergency injunction to block manual recounts and to prevent county officials from certifying results of manual recounts).

6. *Id.* at 1172 (citing District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 486 (1983); Rooker v. Fidelity Trust Co., 263 U.S. 413, 415-16 (1923)).

7. *Id.*

8. *Id.*

9. *Id.*

10. *Id.*

11. *Id.*

Al Gore had filed suit in several Florida state courts to contest election results.[12] Because the Florida courts had not resolved those suits at the time the court of appeals reviewed this case, the "ever-shifting circumstances" surrounding plaintiffs' claims ensured that the court was addressing a "live" controversy.[13] The court, therefore, found that the issue was not moot.[14]

Siegel also presented the court of appeals with abstention issues.[15] Defendants argued that even if the court had subject matter jurisdiction over plaintiffs' claims, it should have abstained from hearing the case under the *Burford* doctrine.[16] The *Burford* doctrine gives federal courts the discretion to dismiss a case (1) if the matter "presents difficult questions of state law bearing on policy problems of substantial public import" and (2) if resolving the case in federal court would "disrupt state efforts to establish a coherent policy."[17] The court stated that this doctrine should be applied as "'an extraordinary and narrow exception to the duty of a District Court to adjudicate a controversy properly before it.'"[18]

The court also noted that the doctrine "protect[s] complex state administrative processes from undue federal interference."[19] It found, however, that plaintiffs' appeal did not impair defendants' ability to conduct elections and resolve related disputes because plaintiffs challenged only "discrete practices" sanctioned by a specific statute—not the entire election process.[20] Moreover, the court stated that the case did not undermine Florida's ability to achieve uniform results throughout the disputed counties because defendants were actually challenging the alleged absence of "strict and uniform standards for . . . conducting . . . recounts."[21]

The court also considered whether it should abstain under the *Pullman* doctrine, which allows a federal court to defer to a state court's resolution of state law issues.[22] Under this doctrine, a federal court may abstain if (1) the case presents an "unsettled question of state law"

---

12. *Id.* at 1173.
13. *Id.*
14. *Id.* at 1172.
15. *Id.* at 1173.
16. *Id.* The Supreme Court originally articulated the doctrine to which the Eleventh Circuit referred in *Burford v. Sun Oil Co.*, 319 U.S. 315, 333-34 (1943). 234 F.3d at 1173.
17. 234 F.3d at 1173.
18. *Id.* (quoting County of Allegheny v. Frank Mashuda Co., 360 U.S. 185, 188 (1959)).
19. *Id.*
20. *Id.*
21. *Id.*
22. *Id.* at 1174.

and (2) the state law question is dispositive or would "materially alter" any constitutional questions presented.[23] The court noted that the doctrine helped avoid conflict between federal and state functions, kept the federal government from interfering with important state functions, and prevented premature decisions on constitutional questions.[24] Although the court stated that the *Pullman* doctrine represented defendants' "most persuasive justification" for abstention, it nevertheless found that abstention was "particularly inappropriate" in a case that alleged a constitutional violation of plaintiffs' voting rights.[25] Thus the court refused to abstain and considered the appeal.[26]

III. APPELLATE TREATMENT OF INTERLOCUTORY MATTERS

Federal courts of appeals have jurisdiction to review cases after district courts issue final decisions.[27] In some cases they may also have jurisdiction to hear interlocutory appeals, which are those filed before the lower court renders final judgment. This jurisdiction originates from several sources. First, 28 U.S.C. § 1292(a)(1) gives federal courts of appeals jurisdiction to hear appeals from "[i]nterlocutory orders of the district courts of the United States . . . granting, continuing, modifying, refusing or dissolving injunctions, or refusing to dissolve or modify injunctions, except where a direct review may be had in the Supreme Court."[28] In 2000, however, the Eleventh Circuit Court of Appeals did not hear an interlocutory appeal based on jurisdiction under this statute.[29]

The court did review an appeal brought under 28 U.S.C. § 1292(a)(3), which gives federal courts of appeals jurisdiction over challenges to "[i]nterlocutory decrees of such district court or the judges thereof determining the rights and liabilities of the parties to admiralty cases in which appeals from final decrees are allowed."[30] In *Beluga Holding,*

---

23. *Id.*

24. *Id.*

25. *Id.*

26. *Id.* The court also reviewed an appeal challenging the provision of the Florida Administrative Code that set deadlines for absentee ballots. *See Harris*, 235 F.3d at 579. Although at first blush the case appeared to involve a pure question of state law, the court found that it had jurisdiction because the state rule was actually derived from a federal court order. *Id.*

27. *See* 28 U.S.C. § 1291 (1994).

28. *Id.* § 1292(a)(1).

29. *But see In re* Atlas, 210 F.3d 1305 (11th Cir. 2000) (finding that court had no jurisdiction to hear an appeal of a bankruptcy order under 28 U.S.C. § 1292(a) because the bankruptcy order did not qualify as an appealable injunction).

30. 28 U.S.C. § 1292(a)(3).

Ltd. v. Commerce Capital Corp.,[31] the Eleventh Circuit Court of Appeals noted that other courts have interpreted this provision narrowly, and it ultimately found that it lacked jurisdiction to review the district court's decision.[32] The court noted that the case began as a suit in admiralty because it involved an action to foreclose on a ship's mortgage.[33] Appellant, however, asked the court to review the district court's decision to grant summary judgment on a related claim for conversion of stock certificates.[34] Thus, even though one of appellant's claims was "cognizable in admiralty," the court found that it did not have jurisdiction under 28 U.S.C. § 1292(a)(3) because the order that appellant appealed actually resolved a related nonadmiralty claim.[35]

Under certain circumstances, a federal court of appeals may review an order even if it does not fall within the classes defined in Section 1292(a).[36] Section 1292(b) gives a court of appeals discretion to review an order that otherwise would not be appealable when a district judge determines that it "involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation."[37] When the district court certifies the matter for appeal, the appellant must appeal within ten days.[38] The appeal does not stay the district court proceedings unless the district court or court of appeals so orders.[39] With little explanation, the Eleventh Circuit Court of Appeals found that it had jurisdiction over appeals under 28 U.S.C. § 1292(b) at least twice in 2000.[40]

Under the collateral order doctrine, a federal appeals court may review a district court's order even if (1) the order is not final, (2) it does not fall within the class of orders listed under 28 U.S.C. § 1292(a), or (3) it has not been certified for appeal by a district court under 28 U.S.C. § 1292(b).[41] The Supreme Court recognized this doctrine in *Cohen v.*

---

31. 212 F.3d 1199 (11th Cir. 2000).
32. *Id.* at 1200, 1202-04.
33. *Id.* at 1202-03.
34. *Id.* at 1200.
35. *Id.* at 1203-04.
36. *See* 28 U.S.C. § 1292(b).
37. *Id.*
38. *Id.*
39. *Id.*
40. *See* Ayres v. General Motors Corp., 234 F.3d 514, 516 (11th Cir. 2000); United States v. Mills, 221 F.3d 1201, 1203 (11th Cir. 2000). *But see* Oladeinde v. Birmingham, 230 F.3d 1275, 1284 (11th Cir. 2000).
41. *See* Cohen v. Beneficial Life Indus. Loan Corp., 337 U.S. 541, 545-47 (1949).

Beneficial Life Industrial Loan Corp.,[42] and the Eleventh Circuit Court of Appeals applied it several times in 2000.[43] Under *Cohen* a court of appeals may review orders that "(1) finally determine claims entirely collateral to and separable from the substance of other claims in the action, (2) require review because they present significant, unsettled questions, and (3) cannot be reviewed effectively once the case is finally decided."[44] In *Crawford & Co. v. Apfel*,[45] an employer and its insurance carrier repeatedly sought to intervene in an employee's social security disability case. The district court ultimately found that the corporations were proper parties.[46] On appeal the court of appeals found that the issue of whether "third-party corporations" could participate in the employee's disability hearings was a collateral issue because it had nothing to do with the merits of the employee's disability claim.[47] In addition, the court found that the issue presented "significant, unsettled questions" because the district court's "broad mandate" would "create a fundamental change in the social security disability hearing."[48] Finally, the court found that the issue would be "otherwise unreviewable" unless it assumed jurisdiction under the collateral issue doctrine.[49] Because the court found that all three of the *Cohen* prongs were satisfied, it had jurisdiction to review the district court's decision under the collateral order doctrine.[50]

IV. TIMELINESS OF NOTICE OF APPEAL AND PRESENTATION OF ARGUMENT

If a party wishes to appeal a decision, Rule 4(a)(1)(A) of the Federal Rules of Appellate Procedure requires it to file a timely notice of appeal with the district court's clerk within thirty days after the judgment or order is entered.[51] If the appealing party fails to do so, the appellate

42. *Id.*

43. *See* Crawford & Co. v. Apfel, 235 F.3d 1298, 1303 (11th Cir. 2000); Singleton v. Apfel, 231 F.3d 853, 856 (11th Cir. 2000); Venus Lines Agency v. CVG Industria Venezolana de Aluminio, 210 F.3d 1309, 1313 n.1 (11th Cir. 2000).

44. *Crawford*, 235 F.3d at 1303 (citing *Cohen*, 337 U.S. at 546).

45. 235 F.3d 1298 (11th Cir. 2000).

46. *Id.* at 1300-01.

47. *Id.* at 1303.

48. *Id.*

49. *Id.*

50. *See id.*

51. FED. R. APP. P. 4(a)(1)(A).

court may not have sufficient jurisdiction to hear the case.[52] The Eleventh Circuit has stated that this rule should be "strictly applied."[53]

On several occasions, however, the Eleventh Circuit Court of Appeals construed the timely notice of appeal requirements broadly. In *Cannabis Action Network, Inc. v. City of Gainesville,*[54] for example, the court upheld the district court's decision to grant the appellant an extension of time to appeal.[55] It noted that courts apply two different standards to an appellant's motion for extension of time, depending upon when it is filed.[56] If an appellant files a motion for extension of time before the thirty-day period has run, a court evaluates it under a "good cause" standard.[57] On the other hand, if an appellant files a motion for extension of time after the thirty-day period has run, a court evaluates it under an "excusable neglect" standard.[58] Because the appellant in *Cannabis* had filed its motion for extension of time after the thirty-day period had passed, the court applied the excusable neglect standard.[59] The court stated that under this standard, it should take into account "'all relevant circumstances surrounding the party's omission, . . . the danger of prejudice to the [nonmovant], the length of the delay and its potential impact on judicial proceedings, the reason for the delay, . . . and whether the movant acted in good faith.'"[60] Among other things, the court found the effect that an extension would have on the judicial process would be "de minimus," especially because the litigation had continued for "many years."[61] In addition, the court found that appellant had a legitimate reason for the delay: It had attempted to file its notice of appeal within the thirty-day period, but the other party filed a motion to amend, which rendered appellant's original notice "premature, and therefore, ineffective."[62] Because the "post-judgment history of [the] case [had] been confusing," the court deemed appellant's

52. *See* United States v. Phillips, 225 F.3d 1198, 1199 (11th Cir. 2000).

53. *Id.* at 1200; *see also In re* Williams, 216 F.3d 1295, 1298 (11th Cir. 2000) (dismissing appeal because appellants did not file notice of appeal within the ten-day period required by Rule 8002(a) of the Federal Rules of Bankruptcy Procedure).

54. 231 F.3d 761 (11th Cir. 2000).

55. *Id.* at 768.

56. *Id.* at 766.

57. *Id.*

58. *Id.*

59. *Id.*

60. *Id.* at 767 (quoting Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd., 507 U.S. 380 (1993)).

61. *Id.*

62. *Id.* at 767-68.

tardiness excusable and affirmed the district court's decision to allow for an extension.[63]

The court also addressed what effect an honest mistake may have on a party's failure to file a timely notice of appeal. In *In re Old Naples Securities, Inc.*,[64] appellants mistakenly filed their appeal in bankruptcy court, rather than district court. As a result, the notice of appeal did not reach the district clerk until one day after the thirty-day limitation expired.[65] The court, however, found appellants' conduct excusable because they initially filed their appeal within the thirty-day period, the district court received the notice of appeal only one day late, and the misfiling was the result of a clerical error.[66]

The court also read the thirty-day requirement expansively in an effort to prevent a waste of judicial resources. In *Reynolds v. Golden Corral Corp.*,[67] the court noted that the thirty-day time limit starts running from the date that the district court enters its final judgment in a separate document, as required by Federal Rules of Civil Procedure 58 and 79(a).[68] However, in this case, the district court issued its opinion and order, but it never entered a final judgment. The appellant filed her notice of appeal more than thirty days after the court issued its opinion.[69] On appeal, however, the Eleventh Circuit Court of Appeals refused to require the appellant to "undergo the formality of obtaining a separate judgment . . . and . . . [filing] a new notice of appeal."[70] Instead, it found that it had jurisdiction over the case even though the district court had failed to enter a formal judgment that would have caused the thirty-day period to begin.[71]

V. JUSTICIABILITY

Article III of the Constitution provides that federal courts may exercise their judicial power only if an actual case or controversy exists.[72] This requirement prohibits the courts from issuing advisory opinions. Judicial interpretation of Article III has spawned three doctrines that restrict access to federal courts: standing, ripeness, and

63. *Id.*
64. 223 F.3d 1296 (11th Cir. 2000).
65. *Id.* at 1302 n.7.
66. *Id.*
67. 213 F.3d 1344 (11th Cir. 2000).
68. *Id.* at 1345.
69. *Id.*
70. *Id.* at 1346.
71. *Id.*
72. U.S. CONST. art. III, § 2, cl. 1.

mootness. The Eleventh Circuit Court of Appeals invoked each of these doctrines in 2000.

A. *Standing*

The court of appeals has called standing "perhaps the most important of the [Article III jurisdictional] doctrines."[73] To establish Article III standing, a plaintiff must present specific, concrete facts showing that the defendant's conduct resulted in demonstrable, particular injury.[74] A plaintiff must show "(1) an injury in fact; (2) a causal connection between the injury and the conduct complained of; and (3) that the injury is likely to be redressed by a favorable decision."[75] If, however, a plaintiff fails to satisfy Article III standing requirements in its initial complaint, the Eleventh Circuit Court of Appeals has held that a district court must allow the plaintiff to attempt to cure the defect in an amended complaint.[76] The court has also noted that federal courts have an independent duty to address standing issues throughout a case, even if no party raises jurisdiction issues.[77]

In *Wilson v. Minor*,[78] the court found that plaintiffs had standing "to protect their interests in being free from an illegal court-imposed electoral system."[79] The district court initially determined that an Alabama county's at-large vote for county commissioners diluted minority voting strength; it thus tried to remedy the situation with an injunction that divided the county into five single-member districts.[80] Plaintiffs, white residents of the county, filed suit in district court, claiming that the court-ordered system violated the Voting Rights Act because it changed the number of elected commissioners from four to five. The district court agreed and vacated the injunction.[81] On appeal the court of appeals rejected the argument that plaintiffs did not have standing to challenge the injunction.[82] The dissenting opinion suggested that plaintiffs had not shown that they suffered a "concrete and

---

73. Wilson v. Minor, 220 F.3d 1297, 1303 n.11 (11th Cir. 2000) (quoting United States v. Hays, 515 U.S. 737, 742 (1995)) (internal quotation marks omitted).

74. Miccosukee Tribe of Indians of Florida v. Florida State Athletic Comm'n, 226 F.3d 1226, 1228 (11th Cir. 2000).

75. *Id.*

76. Stevens v. Premier Cruises, Inc., 215 F.3d 1237, 1239 (11th Cir. 2000).

77. *Wilson*, 220 F.3d at 1303 n.11.

78. 220 F.3d 1297 (11th Cir. 2000).

79. *Id.* at 1303 n.11.

80. *Id.* at 1300.

81. *Id.*

82. *Id.* at 1303 n.11.

particularized injury."[83] The majority, however, found that plaintiffs had standing because they lived in the area governed by the illegal election scheme, and the system "plainly . . . affected" their "voting powers."[84]

Standing also arose in a commercial dispute before the court of appeals. In *Bowen v. First Family Financial Services, Inc.*,[85] plaintiffs sued over defendant's practice of making consumers sign arbitration agreements before defendant extended them credit.[86] The court held that plaintiffs had standing to "challenge the legality" of defendant's policy because defendant required them to sign the agreements as a condition of credit, and plaintiffs actually complied.[87]

The court also found, however, that plaintiffs did not have standing to question the arbitration agreement's enforceability because no evidence showed that defendant "ha[d] invoked, or threatened to invoke, the arbitration agreement to compel the plaintiffs to submit any claim to arbitration."[88] The court held that "perhaps or maybe chance" that the defendant would seek to enforce the agreement did not qualify as an "actual or imminent" injury in fact.[89] Thus, under *Bowen*, the court may analyze separately the standing issue for each claim a plaintiff raises. Plaintiffs who assert multiple claims may have standing to raise some but not others.

The court also had opportunity to address standing in class action suits. In *Prado-Steiman v. Bush*,[90] the court vacated plaintiffs' class certification because it found they may have raised claims for which no named class representative possessed standing.[91] The court stated that the class representative must have individual standing to raise all of the class's legal claims.[92] A court must analyze each claim separately and assume jurisdiction only if "at least one named plaintiff has suffered the

---

83. *Id.*

84. *Id.* at 1304 n.11; *see also* Dillard v. Baldwin County Comm'n, 225 F.3d 1271, 1273-74 (11th Cir. 2000) (reversing district court's decision that intervenors did not have standing to challenge court-imposed election system and finding that intervenors had standing because the system affected their voting rights).

85. 233 F.3d 1331 (11th Cir. 2000).

86. *Id.* at 1334.

87. *Id.*; *see also* Coalition for the Abolition of Marijuana Prohibition v. City of Atlanta, 219 F.3d 1301, 1309 (11th Cir. 2000) (finding that plaintiffs had standing to challenge ordinance because they sought to engage in the kind of speech that the ordinance curbed).

88. 233 F.3d at 1339.

89. *Id.* at 1339-40.

90. 221 F.3d 1266 (11th Cir. 2000).

91. *Id.* at 1266, 1280.

92. *Id.* at 1279.

injury that gives rise" to each claim.[93] Because the court found that this was a fact issue, it remanded the case to the district court.[94]

The court of appeals also instructed trial courts how to handle standing issues that turned on factual disputes. In *Bischoff v. Osceola County*,[95] plaintiffs filed suit to challenge the constitutionality of several traffic laws. After raising questions sua sponte about plaintiffs' standing, however, the trial court determined that plaintiffs had no concrete injury because they had not been threatened with arrest.[96] It based its decision on "warring affidavits," including one from a police officer that stated that he only arrested people who broke the laws and one from plaintiffs claiming that the police had threatened to arrest them.[97] The court found that the trial court should have held an evidentiary hearing to resolve the factual dispute rather than relying on the paper record.[98] When evidence about a party's standing is "squarely in contradiction," a court should make its "credibility findings" by having the witnesses testify at an evidentiary hearing rather than by reviewing their affidavits.[99]

A plaintiff that challenges a criminal statute must show that he or she faces a credible threat of arrest. In *White's Place, Inc. v. Glover*,[100] plaintiff, an incorporated adult entertainment club, challenged a city ordinance that prohibited citizens from opposing a police officer. Police threatened to arrest several of plaintiff's employees for opposing police at a demonstration in front of the business.[101] The Eleventh Circuit Court of Appeals, however, found that, because the threats of arrest and criminal prosecution were "personal in consequence," the corporate plaintiff had no standing to challenge the ordinance.[102] Further, because the corporation "ha[d] not, and could not, be arrested for opposing a police officer," plaintiff's injury was "too speculative to provide a basis for standing."[103]

---

93. *Id.* at 1280.

94. *Id.*; *see also* Carter v. West Publ'g Co., 225 F.3d 1258, 1266-67 (11th Cir. 2000) (holding that plaintiffs lacked standing as a class and as individuals to bring time-barred EEOC claim).

95. 222 F.3d 874 (11th Cir. 2000).

96. *Id.* at 876-77.

97. *Id.*

98. *Id.* at 882.

99. *Id.* at 881.

100. 222 F.3d 1327 (11th Cir. 2000).

101. *Id.* at 1328-29.

102. *Id.* at 1330.

103. *Id.*; *see also* Galindo-Del Valle v. Attorney General, 213 F.3d 594, 598 (11th Cir. 2000) (holding that plaintiff had no standing to challenge constitutionality of law that was not applied in his case); Moore v. American Fed'n of Television & Radio Artists, 216 F.3d

The court also addressed standing in a Fourth Amendment case, *United States v. Cooper*.[104] Two criminal defendants filed a motion to suppress drugs seized from a hotel room but offered no evidence that they had rented or paid for the room personally.[105] Because the court found no proof that the room was "theirs," as defendants claimed, they had no expectation of privacy.[106] The court thus held that the district court did not err when it denied defendants' motion to suppress for lack of standing.[107]

The court also reiterated the requirements for establishing "next friend standing" in *Hauser v. Moore*.[108] Plaintiffs purported to act as the "next friends" of death row inmate Dan Patrick Hauser when they sought and obtained a stay of execution.[109] On appeal, however, the court of appeals found that they had no standing to intervene.[110] The court stated that a "next friend" must (1) adequately explain why the "real party in interest cannot appear on his own behalf" and (2) be "truly dedicated to the best interests" of that party.[111] The court questioned whether plaintiffs, including Hauser's biological mother, who gave him up for adoption, were "truly dedicated" to Hauser's best interests.[112] For example, it found that a desire to "block the imposition of the death penalty in an 'attempt to define justice'" motivated two of the plaintiffs.[113] Even defendant encouraged the court to "'see [the] petition for what it [was], an anti-death penalty crusaders [sic] attempt to overwhelm the courts with volumes of paper work . . . and subvert a competent defendants [sic] right to self-representation.'"[114] The court also noted that the district court found defendant was competent to stand trial and represent himself pro se.[115] It thus held that Hauser's purported "next friends" had no standing to intervene on his behalf.[116]

1236, 1244-45 (11th Cir. 2000) (finding that beneficiaries of ERISA plan had no standing to sue on behalf of the plan for delinquent contributions because legislative history showed that Congress did not intend ERISA statute to confer standing on beneficiaries).

104. 203 F.3d 1279 (11th Cir. 2000).

105. *Id.* at 1282, 1284.

106. *Id.*

107. *Id.* at 1285.

108. 223 F.3d 1316 (11th Cir. 2000).

109. *Id.* at 1317, 1320.

110. *Id.* at 1323.

111. *Id.* at 1322 (quoting Whitmore v. Arkansas, 495 U.S. 149, 163-64 (1990)).

112. *Id.*

113. *Id.*

114. *Id.* at 1318. Hauser personally filed a Motion to Vacate Stay of Execution and argued that plaintiffs had no standing to act on his behalf. *Id.* at 1317-19.

115. *Id.* at 1323.

116. *Id.*

B. Ripeness

The ripeness doctrine is often used to prevent a court from reviewing a law before it is actually enforced. Ripeness is closely linked to standing because a court may find that a case is not ripe if the plaintiff's injury is too speculative. The ripeness doctrine "'prevent[s] the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements.'"[117]

Ripeness arose in several cases before the court in 2000.[118] In one, *American Charities for Reasonable Fundraising Regulation, Inc. v. Pinellas County*,[119] the court found that plaintiff's challenge of a county ordinance was ripe because plaintiff had shown "sufficient proof of a credible threat of prosecution."[120] Specifically, plaintiff submitted an affidavit from an employee who had written a county employee to ask if plaintiff had to comply with the disputed ordinance. Plaintiff's employee later talked to the county employee, who not only told her who had to comply with the ordinance, but also informed her about civil and criminal penalties for noncompliance.[121] Noting that plaintiff's inquiry about compliance was answered by "'someone with knowledge and authority to speak for the County,'" the court found the threat of prosecution sufficiently credible to make the case ripe for decision.[122]

In *Ward v. County of Orange*,[123] on the other hand, the court questioned whether the case was ripe and remanded it.[124] In *Ward* plaintiff, an adult entertainment club, claimed that a city ordinance requiring "adult performance establishments" to apply for a license violated the First Amendment on its face and as applied.[125] The court, however, stated that "'without the presentation of a binding conclusive administrative decision, no tangible controversy exists.'"[126] The court thus

---

117. 219 F.3d at 1315 (quoting Abbott Labs. v. Gardner, 387 U.S. 136, 148-49 (1967), abrogated by Califano v. Sanders, 430 U.S. 99 (1977)).

118. *See* American Charities for Reasonable Fundraising Regulations, Inc. v. Pinellas County, 221 F.3d 1211, 1214 (11th Cir. 2000); Coalition for the Abolition of Marijuana Prohibition, 219 F.3d at 1315-16; Ward v. County of Orange, 217 F.3d 1350, 1356 (11th Cir. 2000); Gulf Power Co. v. Federal Communications Comm'n, 208 F.3d 1263, 1272-73 (11th Cir. 2000).

119. 221 F.3d 1211 (11th Cir. 2000).

120. *Id.* at 1214.

121. *Id.* at 1214-15.

122. *Id.* at 1215 (quoting Digital Properties, Inc. v. City of Plantation, 121 F.3d 586, 590 (11th Cir 1997)).

123. 217 F.3d 1350 (11th Cir. 2000).

124. *Id.* at 1356.

125. *Id.* at 1352-53.

126. *Id.* at 1356 (quoting *Digital Properties*, 121 F.3d at 590).

determined that plaintiff's as-applied claim may not have been ripe if the county had a procedure that allowed plaintiff to ask members of the zoning board whether it needed a license.[127] If this sort of procedure existed and plaintiff had not followed it, then plaintiff's claim would not be ripe because no "county official with sufficient authority" had rendered a decision.[128]

C. Mootness

The mootness doctrine prevents federal courts from hearing cases that do not present an actual controversy. A case becomes moot if "the issues presented are no longer live or the parties lack a legally cognizable interest in the outcome."[129] The Eleventh Circuit Court of Appeals invoked the mootness doctrine several times in 2000 because of either a change in circumstances or a change in applicable law.[130] In *IAL Aircraft Holding, Inc. v. Federal Aviation Administration*,[131] the court found that a controversy about an airplane's registration in the United States became moot when the plane's owner, IAL Aircraft Holding, Inc., sold it to someone in Brazil.[132] The court had previously issued a mandate that required the FAA to register the plane.[133] At the time the court issued its opinion, however, it was unaware that IAL had sold the plane.[134] The court recalled its mandate because it found that the case became moot at the moment of sale.[135] This change in circum-

127. *Id.*

128. *Id.*; *see also* Gulf Power Co., 208 F.3d at 1279 (finding that utility companies' challenge of FCC formula to determine rent for wires on utility poles not ripe because plaintiffs could not show that rent formula would result in an unconstitutional taking in every case).

129. 219 F.3d at 1301 (quoting County of L.A. v. Davis, 440 U.S. 625, 631 (1979)).

130. *See Crawford & Co.*, 235 F.3d at 1303; *Siegel*, 234 F.3d at 1172; Florida Ass'n of Rehabilitation Facilities, Inc. v. State of Florida Dep't of Health & Rehabilitative Servs., 225 F.3d 1208, 1216-17 (11th Cir. 2000); *Coalition for the Abolition of Marijuana Prohibition*, 219 F.3d at 1309-10; Telfair v. First Union Mortgage Corp., 216 F.3d 1333, 1343 (11th Cir. 2000); IAL Aircraft Holding, Inc. v. Federal Aviation Admin., 216 F.3d 1304, 1306 (11th Cir. 2000); Jefferson County v. Acker, 210 F.3d 1317, 1318 n.1 (11th Cir. 2000); Lettman v. Reno, 207 F.3d 1368, 1372 (11th Cir. 2000); Darden v. Ford Consumer Fin. Co., 200 F.3d 753, 759 (11th Cir. 2000).

131. 216 F.3d 1304 (11th Cir. 2000).

132. *Id.* at 1306.

133. *Id.* at 1305.

134. *Id.*

135. *Id.* at 1306-07.

stances divested the court of its jurisdiction because "IAL no longer suffered from a [redressable] injury."[136]

A change in applicable statutes, too, can render a case moot. In *Coalition for the Abolition of Marijuana Prohibition v. City of Atlanta*,[137] the court considered whether a constitutional challenge to a city ordinance was rendered moot by the city council's enactment of a superseding statute. Plaintiff, a nonprofit organization, sponsored an event called the "Pot Festival" in an Atlanta park for several years. The City of Atlanta asked plaintiff to apply for a permit pursuant to its 1994 Outdoor Festivals ordinance. Plaintiff did so, but the City rejected the permit because of public safety concerns.[138] When plaintiff subsequently challenged the ordinance in the Northern District of Georgia, the court found parts of it constitutional and parts of it unconstitutional as a prior restraint.[139] While the case was on appeal, the city repealed the ordinance and replaced it with one that purported to address the district court's constitutional concerns.[140] The Eleventh Circuit Court of Appeals found that a new statute moots a case "only to the extent that it removes challenged features of the prior law."[141] A case is not moot if the new law "leaves objectionable features of the prior law substantially undisturbed."[142] The court found that, because the new ordinance did not address plaintiff's constitutional claims, plaintiff's case was not moot.[143]

Finally, the court addressed mootness in a decision that could affect class action litigation. In *Telfair v. First Union Mortgage Corp.*,[144] it held that class certification can become a moot issue if a court first

---

136. *Id.* at 1306; *see also Siegel*, 234 F.3d at 1173 (finding President Bush's challenge to Florida recounts not moot even though disputed counties had completed recounts because of "ever-shifting circumstances" of suits contesting the election); *Lettman*, 207 F.3d at 1392 (finding petition for review of administrative order moot after agency vacated order).

137. 219 F.3d 1301 (11th Cir. 2000).

138. *Id.* at 1305.

139. *Id.* at 1306.

140. *Id.* at 1309.

141. *Id.* at 1310 (quoting Naturist Soc'y, Inc. v. Fillyaw, 958 F.2d 1515, 1520 (11th Cir.1992)).

142. *Id.* at 1311 (quoting *Naturalist Soc'y, Inc.*, 958 F.2d at 1520).

143. *Id.* at 1315; *see also Florida Ass'n of Rehabilitation Facilities*, 225 F.3d at 1217 (stating that repeal of federal law did not moot plaintiff's claim for violations that occurred before repeal because Congress explicitly provided that that law would apply to all violations that occurred before repeal). *But see Acker*, 210 F.3d at 1318 n.1 (affirming rejection of party's request for stay where legislation that could have mooted claim was pending but had not yet been passed).

144. 216 F.3d 1333 (11th Cir. 2000).

considers the merits of the case and grants summary judgment.[145] "It [is in a] court's discretion," the court stated, "to consider the merits of the claims before their amenability to class certification."[146]

VI. STANDARDS OF REVIEW

The Eleventh Circuit Rules require that parties include a statement of the standard of review for each contention presented in briefs submitted to the court.[147] This Article furnishes these standards to assist practitioners.

In 2000 the court set forth the de novo standard of review in the following contexts: review of a district court's jurisdiction and its decision that plaintiffs could not intervene as proper parties;[148] review of a district court's decision to grant summary judgment;[149] review of a district court's decision that a settlement agreement did not violate the Federal Employers' Liability Act;[150] review of a district court's dismissal of a complaint for failure to state a claim;[151] review of a district court's denial of a party's renewed judgment as a matter of law or, alternatively, for a new trial;[152] review of a claim of insufficient evidence to sustain a conviction;[153] review of a tax court's interpretation and application of the Internal Revenue Code;[154] review of a district court's application of admiralty law;[155] review of habeas petitioner's ineffective assistance of counsel claim;[156] review of a district court's decision that petition for federal habeas corpus relief was time-barred;[157] review of a district court's denial of a motion for

145. *Id.* at 1343.

146. *Id.*

147. *See* 11TH CIR. R. 28-1(i)(iii).

148. *Crawford & Co.*, 235 F.3d at 1298.

149. Cash v. Smith, 231 F.3d 1301, 1304 (11th Cir. 2000); Succar v. Dade County Sch. Bd., 229 F.3d 1343, 1344 (11th Cir. 2000); Chapman v. AI Transp., 229 F.3d 1012, 1023 (11th Cir. 2000); Wesson v. Huntsman Corp., 206 F.3d 1150, 1152 (11th Cir. 2000); Dickerson v. Alachua County Comm'n, 200 F.3d 761, 765 (11th Cir. 2000); McCaleb v. A.O. Smith Corp., 200 F.3d 747, 750 (11th Cir. 2000).

150. Sea-Land Serv., Inc. v. Sellan, 231 F.3d 848, 851 (11th Cir. 2000).

151. Grossman v. Nationsbank, 225 F.3d 1228, 1231 (11th Cir. 2000).

152. Munoz v. Oceanside Resorts, Inc., 223 F.3d 1340, 1344 (11th Cir. 2000).

153. United States v. Nolan, 223 F.3d 1311, 1313-14 (11th Cir. 2000).

154. Fabry v. Commissioner of Internal Revenue, 223 F.3d 1261, 1263 (11th Cir. 2000).

155. All Underwriters v. Weisberg, 222 F.3d 1309, 1310 (11th Cir. 2000).

156. Williamson v. Moore, 221 F.3d 1177, 1180 (11th Cir. 2000).

157. Steed v. Head, 219 F.3d 1298, 1300 (11th Cir. 2000); Hepburn v. Moore, 215 F.3d 1208, 1209 (11th Cir. 2000).

judgment as a matter of law;[158] review of a district court's denial of qualified immunity;[159] review of a district court's order compelling arbitration;[160] review of the Board of Immigration Appeals interpretation of Immigration and Nationality Act;[161] review of a district court's application of federal sentencing guidelines;[162] review of a district court's application of statute of limitations;[163] review of a district court's procedure for choosing alternate jurors.[164]

The court set forth the abuse of discretion standard for the following issues: review of a district court's rulings on the admission of an expert witness's testimony;[165] review of an ERISA plan administrator's decision to deny benefits based on plan interpretations;[166] review of a district court's grant of an extension of time under Rule 4(a)(5);[167] review of a district court's award of or refusal to award attorney fees;[168] review of a district court's stay of execution;[169] review of a trial court's denial of a continuance because of attorney illness;[170] review of a district court's decision to abstain;[171] review of a district court's refusal to give a proposed jury instruction;[172] review of a district court's grant or denial of a motion of civil contempt;[173] review of a district court's denial of *coram nobis* relief.[174]

The court applied a de novo standard to questions of law and a clear error standard to findings of fact in the following contexts: review of a district court's denial of a motion to dismiss based on selective prosecu-

---

158. Gupta v. Florida Bd. of Regents, 212 F.3d 571, 582 (11th Cir. 2000).

159. Maggio v. Sipple, 211 F.3d 1346, 1350 (11th Cir. 2000); Jackson v. Sauls, 206 F.3d 1156, 1164 (11th Cir. 2000).

160. Brown v. ITT Consumer Fin. Corp., 211 F.3d 1217, 1221 (11th Cir. 2000).

161. *Lettman*, 207 F.3d 1368, 1370 (noting that the court will defer to the agency's interpretation if it is reasonable).

162. United States v. Jamieson, 202 F.3d 1293, 1295 (11th Cir. 2000).

163. McCaleb v. A.O. Smith Corp., 200 F.3d 747, 750 (11th Cir. 2000).

164. United States v. Brewer, 199 F.3d 1283, 1285-86 (11th Cir. 2000).

165. Toole v. Baxter Healthcare Corp., 235 F.3d 1307, 1312 (11th Cir. 2000).

166. Adams v. Thiokol Corp., 231 F.3d 837, 842 (11th Cir. 2000).

167. Cannabis Action Network, Inc. v. City of Gainesville, 231 F.3d 761, 766 (11th Cir. 2000).

168. *In re* Celotex Corp., 227 F.3d 1336, 1338 (11th Cir. 2000); Dillard v. City of Greensboro, 213 F.3d 1347, 1353 (11th Cir. 2000).

169. Hauser v. Moore, 223 F.3d 1316, 1321 (11th Cir. 2000).

170. United States v. Bowe, 221 F. 3d 1183, 1189 (11th Cir. 2000).

171. Federal Reserve Bank of Atlanta v. Thomas, 220 F.3d 1235, 1238 (11th Cir. 2000); Boyes v. Shell Oil Prods. Co., 199 F.3d 1260, 1265 (11th Cir. 2000).

172. United States v. Futrell, 209 F.3d 1286, 1288-89 (11th Cir. 2000).

173. McGregor v. Chierico, 206 F.3d 1378, 1383 (11th Cir. 2000).

174. Alikhani v. United States, 200 F.3d 732, 734 (11th Cir. 2000).

tion;[175] review of a district court's denial of a motion to suppress;[176] review of a district court's denial of a motion to dismiss;[177] review of a tax court's findings of fact;[178] review of whether a district court's jury charge misstated the law.[179]

In addition, the court applied a clearly erroneous standard to review a district court's resolution of a claim that defendants improperly used peremptory strikes to challenge African-American jurors;[180] a plain error standard to review a district court's conviction of defendant pursuant to a plea bargain after it failed to inform defendant of his right not to plead guilty, his right to assistance of counsel, his right to confront witnesses at trial, and his right against self-incrimination;[181] an arbitrary and capricious standard to review a decision of the Office of Personnel Management to deny benefits under the Federal Employees Health Benefits Act;[182] and a de novo standard for questions of law and mixed questions of law and fact and clear error to findings of fact to review of a district court's denial of a habeas petition.[183]

---

175. United States v. Smith, 231 F.3d 800, 806-07 (11th Cir. 2000).

176. United States v. Gordon, 231 F.3d 750, 753-54 (11th Cir. 2000); United States v. Jiminez, 224 F.3d 1243, 1247 (11th Cir. 2000) (clear error for factual findings; de novo for legal conclusions); United States v. Gil, 204 F.3d 1347, 1350 (11th Cir. 2000).

177. S & Davis Int'l, Inc. v. Yemen, 218 F.3d 1292, 1298 (11th Cir. 2000).

178. Davis v. Commissioner of Internal Revenue, 210 F.3d 1346, 1347 (11th Cir. 2000).

179. United States v. Deleveaux, 205 F.3d 1292, 1296 (11th Cir. 2000).

180. Central Alabama Fair Hous. Ctr., Inc. v. Lowder Realty Co., 236 F.3d 629, 635 (11th Cir. 2000).

181. United States v. Hernandez-Fraire, 208 F.3d 945, 949 (11th Cir. 2000).

182. Muratore v. United States Office of Personnel Management, 222 F.3d 918, 921 (11th Cir. 2000).

183. Nyland v. Moore, 216 F.3d 1264, 1266 (11th Cir. 2000); Holladay v. Haley, 209 F.3d 1243, 1247 (11th Cir. 2000); Means v. Alabama, 209 F.3d 1241, 1242 (11th Cir. 2000); Cook v. Wiley, 208 F.3d 1314, 1317 (11th Cir. 2000); Mincey v. Head, 206 F.3d 1106, 1135 (11th Cir. 2000); Alanis-Bustamante v. Reno, 201 F.3d 1303, 1306 (11th Cir. 2000) (de novo when dismissal based on lack of subject matter jurisdiction).