

When a federal district court grants or denies class certification, Federal Rule of Civil Procedure 23(f) allows the losing party to ask the court of appeals for permission to appeal immediately. Otherwise, the parties must litigate the case to a final judgment—the named plaintiffs’ individual claims if certification has been denied, or the class claims if certification has been granted—in order to obtain appellate review of the district court’s class certification determination. But the Ninth Circuit created an exception to this rule by authorizing a plaintiff who has had class certification denied to dismiss his or her individual claims with prejudice and then to file an appeal from that self-generated judgment.

Today, the Supreme Court held that this “voluntary dismissal” tactic cannot create appellate jurisdiction because such dismissals do not result in a final judgment—which is what 28 U.S.C. § 1291 requires for an appeal as of right. Although all eight participating Justices agreed on the outcome, they took different approaches to get there.

In an opinion for five Justices authored by Justice Ginsburg, the Court held that “[p]laintiffs in putative class actions cannot transform a tentative interlocutory order ... into a final judgment within the meaning of § 1291 simply by dismissing their claims with prejudice—subject, no less, to the right to ‘revive’ those claims if the denial of class certification is reversed on appeal.” The Court explained that the “tactic would undermine § 1291’s firm finality principle, designed to guard against piecemeal appeals, and subvert the balanced solution Rule 23(f) put in place for immediate review of class-action orders.”

The majority did not reach the question whether plaintiffs’ voluntary-dismissal tactic deprived the court of appeals of jurisdiction under Article III’s cases-and-controversies requirement. But in an opinion concurring in the judgment, Justice Thomas (joined by Chief Justice Roberts and Justice Alito) concluded that, although the plaintiffs’ voluntary dismissal was technically a “final decision” within the meaning of Section 1291, there was no appellate jurisdiction because the Ninth Circuit lacked Article III jurisdiction over plaintiffs’ individual claims. The plaintiffs’ decision to “consent[] to the judgment against them” eliminated any adversity between the parties—both sides had agreed that the claims should be dismissed with prejudice. The fact that plaintiffs asserted an “interest in reversing the order striking their class allegations” was not enough, in the concurring Justices’ view, because “[c]lass allegations, without an underlying individual claim, do not give rise to a ‘case or controversy’” within the meaning of Article III.

Justice Gorsuch did not participate in the case.