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I. INTRODUCTION

Since the early 1950's many advances have been made in the struggle to end racial discrimination as exemplified by the great volume of legislation and case law dealing with the issues of civil rights, fair housing, and equal employment opportunity. The response to this progress has varied. Some people have welcomed these advances while others have merely accepted them. Many individuals have responded by devising discriminatory schemes that are not easily detected, rather than abide by the law and halt their wrongdoing. Consequently, unlawful discrimination persists.

Gladstone Realtors v. Village of Bellwood\(^2\) involved the discriminatory practice of racial "steering." Racial steering is a practice whereby a real estate broker falsely represents to a prospective buyer that the only homes available are those located in areas already populated by members of that buyer's racial or ethnic group.\(^3\) Prompted by the belief that two Chicago area real estate brokerage firms illegally "steered" homebuyers to different areas of the Village of Bellwood according to their race, some black and some white residents of Bellwood tested their belief by engaging the services of these firms. The real estate firms did allegedly steer them to different areas of Bellwood according to their race.\(^4\) Prospective black homebuyers were shown homes only in an integrated area of Bellwood, and the white buyers were shown homes only in Bellwood's predominantly white areas.\(^5\)

In Gladstone, the Village of Bellwood, several of its residents, one resident of a neighboring town, and the Metropolitan Leadership Council for Open Communities (Leadership Council) sued the firms.\(^6\) They claimed that the steering violated the Fair Housing

3. Id. at 91.
4. Id. at 95.
5. Id.
6. Plaintiffs were the Village of Bellwood, one black resident of Bellwood, four white residents of Bellwood, one black resident of neighboring Maywood, and the Metropolitan Leadership Council for Open Communities, a nonprofit organization dedicated to eliminating housing problems in the Chicago metropolitan area.
Act of 1968 (the Act). The Act declares it unlawful to discriminate in the sale or rental of a dwelling on the basis of race, color, religion, sex or national origin. This prohibition extends to the terms and conditions of any sale and the provision of services in connection with such sale. The plaintiffs charged that the firms' discriminatory conduct had wrongfully and illegally manipulated the housing market in the village and had deprived the individuals of their rights to select housing without regard to race and to enjoy the social and professional benefits of living in an integrated society.

The suit was brought under section 812 of the Act which provides: "The rights granted by sections 3603, 3604, 3605 and 3606 of this title may be enforced by civil actions in appropriate United States district courts without regard to the amount in controversy and in appropriate State or local courts of general jurisdiction." Section 812 is one of two courses of action open to individuals under the Act. The other avenue of relief, section 810, provides for administrative resolution of housing discrimination controversies. Under section 810, any aggrieved person who the Act defines as one "who claims to have been injured by a discriminatory housing practice or who believes that he will be irrevocably injured by a discriminatory housing practice . . . may file a complaint with the Secretary [of the Department of Housing and Urban Development (HUD)]." If the Secretary decides to resolve the complaint, his department may do so "by informal methods of conference, conciliation and persuasion." If HUD does not act upon the complaint or fails to procure a voluntary agreement through informal methods the complainant may seek relief in the judicial system.

The District Court for the Northern District of Illinois granted the defendants' motion for summary judgment on the grounds that the plaintiffs were not within the class of persons to whom Congress had extended the right to sue under section 812. Noting that none of the plaintiffs had been discriminated against in the actual sale of a dwelling, the court held that their injuries were only indirect results of racial discrimination. It stated that such indirect vic-

9. 441 U.S. at 95.
13. Id.
tims may be said to be included in the "person aggrieved" language of section 810, but that they did not have standing to sue under section 812 which was limited to direct victims of discrimination.\(^\text{15}\) The court expressly adopted the reasoning of *TOPIC v. Circle Realty*,\(^\text{16}\) a case involving facts similar to the *Gladstone* case.\(^\text{17}\) In *TOPIC*, the United States Court of Appeals for the Ninth Circuit ruled that Congress had intended section 812 to be available only to those persons "who are the direct objects of the practices it makes unlawful."\(^\text{18}\) The plaintiffs in *TOPIC* did not genuinely wish to purchase houses, and therefore, they were not the direct objects of discrimination. The court reasoned that to allow indirect victims to proceed directly to federal court under section 812 would destroy the statutory pattern of the Act.\(^\text{19}\) The district court in *Gladstone* did not discuss whether the plaintiffs' allegations of injury met the constitutional standing requirements.

On appeal, the United States Court of Appeals for the Seventh Circuit affirmed in part and reversed in part, holding that section 812 applied to indirect victims.\(^\text{20}\) The court cited the United States Supreme Court decision in *Trafficante v. Metropolitan Life Insurance Co.*\(^\text{21}\) in which the Court had held that standing under section 810 of the Act should be construed as broadly as permitted by article III. This generous construction opened section 810 to indirect victims.\(^\text{22}\) The *Gladstone* court then held that sections 810 and 812 were alternative remedies open to the same class of plaintiffs.\(^\text{23}\) If indirect victims were entitled to sue under section 810, they were also allowed to proceed under section 812. The court concluded, however, that the residents lacked standing in their capacity as testers and so were not allowed to plead that they had been deprived of their right to select housing without regard to race.\(^\text{24}\) The court reasoned that because the residents never intended to

\(^{15}\) 441 U.S. at 93.
\(^{16}\) 532 F.2d 1273 (9th Cir. 1976).
\(^{17}\) Plaintiffs were a civil rights organization and various individuals. The organization sent teams of prospective home buyers of equal financial means but different race to area real estate firms. Their tests showed that the brokers were engaging in racial steering. *Id.* at 1274.
\(^{18}\) *Id.* at 1275.
\(^{19}\) *Id.* at 1276.
\(^{21}\) 409 U.S. 205 (1972).
\(^{22}\) *Id.* at 212.
\(^{23}\) 569 F.2d at 1019.
\(^{24}\) *Id.* at 1015-16.
purchase the homes which they looked at, the defendants’ conduct had not deprived them of this right and they had suffered no injury in that regard.\textsuperscript{25} The court stated, however, that the other injuries alleged by the individuals were sufficient to satisfy the injury standard of the article III “case or controversy” requirement.\textsuperscript{26} Article III limits the jurisdiction of federal courts to “cases and controversies.” The United States Supreme Court has held that such a case or controversy can exist only if the complaining party can show a “distinct and palpable injury.”\textsuperscript{27} The \textit{Gladstone} court noted the importance of the right to enjoy the benefits of an integrated society and held that the deprivation of this right was a sufficient injury under article III.\textsuperscript{28} The court also concluded that the Leadership Council’s allegation of injury was insufficient to satisfy article III.

The defendants sought review in the United States Supreme Court. The Supreme Court, noting the importance of the standing questions raised under the Act and the conflicts between \textit{Gladstone}, \textit{TOPIC} and \textit{Trafficante}, granted certiorari\textsuperscript{29} and affirmed the decision of the appellate court.

\section*{II. THE SUPREME COURT DECISION}

Before any party can bring suit in federal court, he must satisfy the standing to sue requirements. In \textit{Gladstone} the Supreme Court explained that these requirements consist of the constitutional requirement of injury in fact and prudential standing rules promulgated by the federal courts.\textsuperscript{30} Prudential rules are those not mandated by the constitution but which the federal courts have developed over the years to help resolve standing issues and limit access to federal court. Among these rules are the requirements that the plaintiff allege an injury peculiar to himself,\textsuperscript{31} and that he assert his own legal interests.\textsuperscript{32} Also, these interests must be arguably within the zone of interests intended to be protected or regulated by the relevant statute.\textsuperscript{33} Because these prudential rules are not constitutionally mandated, Congress has

\begin{itemize}
\item \textsuperscript{25} \textit{Id.}
\item \textsuperscript{26} \textit{Id.} at 1016-17.
\item \textsuperscript{27} \textit{Warth v. Seldin}, 422 U.S. 490, 501 (1975).
\item \textsuperscript{28} 569 F.2d at 1016.
\item \textsuperscript{29} \textit{Gladstone Realtors v. Village of Bellwood}, 436 U.S. 956 (1978).
\item \textsuperscript{30} 441 U.S. at 99-100.
\item \textsuperscript{31} 422 U.S. 490, 499 (1975).
\item \textsuperscript{32} \textit{Id.} at 498.
\end{itemize}
the power to dispense with them and grant statutory standing to persons who do not satisfy the rules when such a grant will effectuate congressional policy.\textsuperscript{34} Congress cannot grant standing to someone who does not meet the constitutional requirements.\textsuperscript{35}

The \textit{Gladstone} opinion is effectively divided into two parts. In the first part, the Court determined that, in passing the Act, Congress intended to define standing under section 812 as broadly as permitted by the Constitution. The second part of the opinion sets out the Court's finding that the village and the individual residents did meet the constitutional requirements.

\textbf{A. Standing Under Section 812}

In the first part of the opinion, the Court held that the absence of the "person aggrieved" language from section 812 did not mean that section contemplated a more restrictive class of plaintiffs than section 810.\textsuperscript{36} Section 812 provided only for enforcement of rights granted by other sections of the Act. The defendants argued that the right to enjoy the benefits of an integrated society had not been expressly granted by the Act, and therefore, the individual plaintiffs could not sue under section 812.\textsuperscript{37} The Court held, however, that the right to be free from direct discrimination may have been violated with respect to actual prospective buyers and that the individual plaintiffs had been injured as a result of this action. It was sufficient that the defendants had violated someone's rights, and as a result, that the plaintiffs had been injured.\textsuperscript{38}

The Court's decision upheld the Act's enforcement scheme. The Court found that Congress had always intended all plaintiffs to have direct access to the courts, and that the administrative remedy had been added later as an option for those who desired it.\textsuperscript{39} The Court also declined to accept the defendants' argument that Congress intended to restrict direct access in an attempt to reduce the potential for harassment, and that if section 812 was open to all plaintiffs, no party would use the administrative remedies available under section 810.\textsuperscript{40} Thus, the Court ruled that Congress had intended to dispense with all prudential standing rules in cases

\begin{itemize}
\item \textsuperscript{34} 441 U.S. at 100.
\item \textsuperscript{35} \textit{Id}.
\item \textsuperscript{36} \textit{Id} at 102.
\item \textsuperscript{37} \textit{Id} at 103 n.9.
\item \textsuperscript{38} \textit{Id}.
\item \textsuperscript{39} \textit{Id} at 106.
\item \textsuperscript{40} \textit{Id} at 103-04 n.11.
\end{itemize}
brought under the Act. Accordingly, the plaintiffs needed only to meet the requirements of article III to have standing under the Act. 41

B. Constitutional Standing Requirements

The second part of the opinion dealt with whether the village and the residents met the article III requirements. In order to satisfy article III, a party must show that he “suffered some actual or threatened injury as a result of the putatively illegal conduct of the defendant.” 42

The village alleged that the defendants’ conduct had wrongfully altered its housing market. Such action could have the effect of deflecting prices downward and diminishing the municipality’s tax base. The individual residents of the affected area alleged a deprivation of their right to enjoy the social and professional benefits of living in an integrated society. Both of these allegations of injury were held to be sufficient to satisfy article III. 43

The complaints had alleged that only a portion of Bellwood would be injured by the defendants’ actions. The two individual plaintiffs who did not reside in that area were denied standing because they had not made a sufficient showing of injury. 44

III. THE INJURY REQUIREMENT

As evidenced by the Gladstone decision, satisfying the standing requirements is the first major hurdle facing a party who seeks relief in the federal court system. Unless a party meets the standing requirements he is prohibited from pleading his case. The Gladstone opinion embodies two distinct facets of the law of standing. The first part of the opinion recognizes a relatively recent trend in standing cases toward an emphasis on statutory interpretation and Congress’ power to grant standing. 45 The second part recognizes that Congress cannot grant standing to a party who does

41. Id. at 109.
42. Id. at 99.
43. Id. at 115.
44. The Court noted that the complaints alleged no injury to the area in which these two plaintiffs resided. Id. at 112 n.25. There was no allegation that people residing outside the affected area of Bellwood had been deprived of their rights to live in an integrated society. The Court stated that it would not foreclose consideration of their standing if, on remand, the district court allowed them to amend their complaints to include allegations of actual injury. Id.
not meet the article III injury in fact requirement. The injury requirement is one of the oldest principles of the law of standing to sue in federal court. Although numerous approaches to the standing problem have been advocated over the past two decades, only injury in fact seems to have been consistently applied. This article analyzes the injury aspect of the standing requirements, its origins, its purposes and its faults. The conclusion of the article suggests an alternative standard that allows more willing and able plaintiffs to seek relief in federal court, and at the same time, accomplishes the goals of the injury requirement.

A. Origin

It has been recognized since the early days of our judicial system that review in the federal courts is limited to controversies between opposing parties. The concept of standing as a distinct element of the case or controversy clause arose out of the case of *Frothingham v. Mellon.* In *Frothingham*, the plaintiff sought to enjoin the federal government from giving funds to states which adopted programs to combat infant and maternal mortality. The United States Supreme Court held that the plaintiff did not have standing because she could not allege a sufficiently direct injury. She could not prove that she suffered in a manner different from any other member of the general public. In the absence of such an injury there could be no case or controversy under article III. Justice George Sutherland's opinion does not clearly explain the derivation of this injury requirement. Despite its cloudy origin, the injury requirement has consistently been applied by the courts, although the decisions have been contradictory in other respects. The Court once held that the injury must be to a legal right, but this distinction was later abandoned. The Court has mandated that the injury must be distinct and not one shared by the general public. Later, the Court held that it made no difference whether

47. Chicago & Grand Trunk Ry. v. Wellman, 143 U.S. 339 (1892); *Marbury v. Madison*, 1 U.S. (1 Cranch) 368 (1803).
48. *262 U.S. 447 (1923).*
49. *Id. at 487-88.*
50. *Id. at 487.*
the injury was shared by the general public. In all cases injury had to be alleged.

In 1939 Justice Felix Frankfurter asserted that the concept of standing and the injury requirement were mandated by the Constitution. Injury in fact is not mentioned specifically in the Constitution, nor for that matter, is the concept of standing. Nevertheless, Justice Frankfurter asserted that it was implied in the case or controversy clause of article III. It was Justice Frankfurter's position that the framers of the Constitution expected the courts to look to English legal practice for elucidation in defining the case or controversy clause. Justice Frankfurter stated that the English courts, as they existed at the time of the framing of the Constitution, required a showing of injury before a suit could be brought. He concluded that the framers intended such a requirement when they inserted the case or controversy clause.

Raoul Berger, a renowned constitutional scholar, contends that Frankfurter was mistaken. Berger's research shows that, in some cases, the English courts allowed suits by strangers without a showing of injury. These suits could be brought under the ancient writs of mandamus, prohibition and certiorari. Under these writs suits could be brought to review administrative functions, compel elections, and "to prevent disorder . . . on all occasions where the law has established no specific remedy and where in justice and good government there ought to be one." Berger concludes

58. Id.
59. Berger, supra note 56.
60. Berger uses these writs as examples of situations in which someone who did not satisfy the requirement of locus standi could bring suit. All of these writs involve the actions of government officials. A writ of prohibition may be used to halt an excess of power, as when an official attempts to act beyond the limits of his power or when a court goes beyond its jurisdiction. A writ of certiorari can be used to halt any abuse of power. A writ of mandamus, unlike the other two, is not a restraint on power but is used to compel action by one who has a duty to act. A court would act on these writs whether or not a party satisfied the requirements of locus standi. Id. at 821 n.31 (citing Regina v. Thames Magistrate's Ct. ex rel. Greenbaum [1957] Local Gov't Rep. 129, 132, 135-36).
61. Id. at 821.
62. Id. at 824.
63. Id. at 825 (citing Rex v. Barker, 97 Eng. Rep. 823, 824-25 (1792)).
that the concept of standing and injury advocated by Justice Frankfurter had no counterpart in the English legal system at the time of the framing of the Constitution and, in any event, such a concept was not familiar to the framers. 64

B. Analysis of the Injury Requirement: Its Goals and Its Failures

In order to evaluate accurately the injury in fact requirement, one must examine the purposes which the rule is intended to serve. It is a safeguard against advisory opinions, it minimizes the caseload of federal courts, and it ensures that the controversy is presented in a form capable of judicial resolution.

The injury requirement has been defended by the argument that it guards against the giving of advisory opinions by the courts. 65 An advisory opinion is a legal opinion handed down by a court, concerning a hypothetical matter, which has no binding force or effect. It is merely the opinion of a judge as to what the finding of the court would be if that matter came before the court in an actual case. Generally, the goal of a party who requests an advisory opinion is to determine what the current status of the law is on a particular issue. The court uses the injury requirement to avoid giving an advisory opinion by stating that since the party has not yet been injured, he may not ask the court for an opinion on the matter. He must proceed in ignorance of the law, and if an injury is sustained, he may then ask the court for a determination of the issue. Although the injury requirement may serve to keep the court dockets clear for only justiciable cases, this is not the primary purpose of the rule against advisory opinions. The primary purpose of the rule, as Berger points out, 66 is to prevent the Supreme Court from giving Congress or the President advice about the constitutionality of legislation or other matters before those matters are acted upon by those branches of government. The framers thought that prior advice would bias the Court if it was called upon at a later date to determine the constitutionality of the measure. 67 The primary purpose of the rule has to do with our system of separation of powers and checks and balances, and has nothing to do with whether the plaintiff is a proper party to bring suit. 68

64. Id. at 827.
67. Id.
68. Each branch of our government has a separate function. Due to this separa-
Another justification for the injury requirement is that it diminishes the caseload of the federal courts. In recent years the federal court caseload has increased dramatically. The courts presumably wish to devote more time to fewer cases in order to ensure adequate judicial review. Varying interpretations and applications of the injury requirement and conceptual difficulties inherent in defining an injury only cause the legal community more confusion, which results in a multitude of suits which present standing questions to be answered. In this way the rule is self-defeating.

The injury requirement has also been defended on the basis that it ensures that the challenge will be made "in a form historically viewed as capable of judicial resolution." The Court has stated that the requirement of injury ensures the existence of that concrete adverseness between the parties that guarantees "that the questions will be framed with the necessary specificity, that the issues will be contested with the necessary adverseness and that the litigation would be pursued with the necessary vigor. . . ."

The injury requirement does not ensure specific framing of issues, nor is the injury requirement the only way to ensure the necessary adverseness. A judge cannot tell in advance, by examining the status of the parties, how the issues will be framed. Problems relating to the formulation of issues raised by the pleadings may be adequately resolved by means of a pre-trial conference. Cases in

69. The number of cases filed in the courts of appeals has increased 486.7% since 1940; there was also a sizable increase in 1979 over the figures reported for 1978. In the district courts, the number of civil cases filed has increased 345.3% since 1940, 77.1% since 1970, and 11.5% since 1978. Criminal cases filed in the District Courts exhibited a 9.2% decrease attributable to a number of factors. These increases have occurred despite the fact that an increasing workload is being handled by federal magistrates. See [1979] ANN. REP. DIRECTOR AD. OFF. UNITED STATES COURTS, at 2-11.


73. Id. at 106.

74. Adequate formulation of issues is one of the tasks that can be and is in-

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which there is no measure of adverseness, when the parties are willing to spend their time and money for a nonmeritorious suit, may be disposed of under the rules of "ripeness" 75 and the rules against collusive suits. 76 Assuming that some level of adversity does exist, the injury requirement is an inaccurate barometer of the necessary level of adversity. 77 Certainly there are other interests deemed not to be "injuries" which would assure adversity as much as, if not more than, some of the slight injuries deemed to be sufficient by the courts. 78 The absence of injury does not necessarily mean the suit will not be contested with the necessary vigor. The attorneys are still subject to the same code of professional responsibility and fear of malpractice suits as they are when their clients have suffered injury. These standards ensure that the attorney provides his client with vigorous representation throughout the litigation. As for the parties, the expense, time and trouble involved in bringing a lawsuit in federal court will presumably dissuade frivolous suits. 79

To summarize, the Supreme Court has stated that the injury requirement is mandated by the case or controversy clause of article III, but research has cast doubt upon that proposition. The injury requirement is presently used to serve many purposes. There are other means of dealing with these problems which the injury requirement is supposed to solve. In fact, it is unsuitable for some
tended to be accomplished in the pre-trial conference provided for in the Federal Rules of Civil Procedure. FED. R. CIV. P. 16.

75. Ripeness refers primarily to the time when the suit is brought. When the real issue in the case depends upon some contingent future event, the courts prefer to wait for that future event. It will then be easier to evaluate the practical merits of the positions of each party and the controversy will no longer be ill-defined. See United Pub. Workers v. Mitchell, 330 U.S. 75, 89-91 (1947).

76. The courts have a duty to dispose of a case in which "the public interest has been placed at hazard by the amenities of the parties to a suit conducted under the domination of only one of them." United States v. Johnson, 319 U.S. 302, 305 (1943) (per curiam). Neither will the courts accept a suit where both sides argued and agreed. See Moore v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 47 (1971); Lord v. Veazie, 49 U.S. 251, 254 (1850).

77. Where no adversity exists, the suits may be disposed of under the rules of ripeness and the rules against collusive suits. See notes 75 & 76 supra. Where there is adversity, the injury requirement is an inadequate measuring stick. See notes 72-76 supra & notes 78-105 infra and accompanying text.

78. See notes 98-100 infra and accompanying text.

79. Once a party has invested time and money in a lawsuit, this expenditure would serve to motivate him to carry through with the litigation, at least as much as the injury in SCRAP. See generally Scott, Standing in the Supreme Court—A Functional Analysis, 86 HARV. L. REV. 645 (1973).
of the purposes for which it is used. What makes the requirement even more undesirable is that the courts have applied it in varying forms that suggest no real consistency. A survey of recent cases will illustrate this point.

C. Recent Cases Interpreting Standing to Sue: The Injury Requirement and Other Criteria

In the early development stages of the standing doctrine the Supreme Court held that in order to acquire standing the plaintiff was required to allege an injury to a legal right, "one of property, one arising out of contract, one protected against tortious invasion or one founded on a statute which confers a privilege." In *Baker v. Carr*, the Supreme Court abandoned these requirements. The Court stated that the article III requirements were satisfied if the party alleged a personal stake in the outcome of the controversy. This personal stake would "assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions." In 1970 the Court returned to the restrictive requirement of injury. In *Association of Data Processing Service Organizations v. Camp*, the Court stated that it was necessary for the plaintiff to make a 'showing of injury. The Court did not demand that the injury be to a legal interest as defined in earlier cases. The Court held that the injury must be to an interest that is at least arguably within the zone of interests intended to be protected by the relevant statute. The plaintiff in *Data Processing* sought standing under the Administrative Procedure Act. Therefore, they had to show that the interests they sought to protect were intended to be protected by that Act.

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80. The injury requirement is not effective in diminishing the caseload of the federal courts nor in adequately assuring adverseness. The injury requirement also rejects cases under the guise of the prohibition against advisory opinions. See notes 65-79 supra and accompanying text.
82. 369 U.S. 186 (1962).
83. Id. at 204.
84. Id.
86. See note 81 supra and accompanying text.
87. 397 U.S. at 153.
88. The Administrative Procedure Act provides for suit by anyone who is adversely affected or aggrieved by the actions of a federal agency. 5 U.S.C. § 702 (1976).
In cases arising under the Constitution the Court has imposed more demanding criteria. In *Linda R. S. v. Richard D.*, the mother of an illegitimate child sued to force the district attorney to prosecute the child’s father for failure to contribute support. The mother alleged that the state’s practice of enforcing the law only against the fathers of legitimate children was a violation of her equal protection rights. The Court required the mother to make a showing of injury and a showing that the injury was caused by the state’s actions. Although the mother could show that she was injured by the lack of support payments, she could not show that this resulted from the state’s practice of nonenforcement against the fathers of illegitimate children. The Court further refined this test in *Warth v. Seldin*. In *Warth* the plaintiffs were required to show that they had suffered an injury, that this injury was caused by the defendant and that the requested judicial intervention would adequately redress the injury. The Court has continued to follow this test, although the causation requirement has been weakened somewhat. In *Duke Power Co. v. Caroline Environmental Study Group* the plaintiffs challenged the constitutionality of the Price-Anderson Act. The defendant was an investor owned public utility engaged in constructing two nuclear power plants in North and South Carolina. The plaintiffs were an environmental group and several persons residing in the area where the plants were being built. They alleged that construction of the plants would cause them injuries and that the plants would not be built in the absence of the Price-Anderson Act which they alleged was unconstitutional on several grounds. The Court required a showing of injury, causation and what the redress could be. The Court ruled that to show causation the plaintiff need only show that there was a “fairly traceable” causal connection between the challenged conduct and the injury. To establish what the redress could be, the Court stated that the plaintiff need show only that there is a “substantial likelihood” that the relief requested would redress the injury.

90. Id. at 618.
91. 422 U.S. 490 (1975).
92. Id. at 508.
95. 438 U.S. at 72-82.
96. 438 U.S. at 75.
97. Id. at 75 n.20.
The "causation-redressability" test is not used when suit is brought under a statute which explicitly grants standing. It is only used when the suits arise under the Constitution. The injury test is applied in both categories. This has led to some inequitable results, as exemplified by a comparison of two recent cases, Linda R. S. and United States v. SCRAP. 98

In SCRAP, the Court upheld the standing of five law school students who sought to enjoin the Interstate Commerce Commission from issuing an order which would allow railroads to collect certain surcharges. The students alleged that increased rates would make it less worthwhile to ship and use recyclable goods. As a result, more natural resources would have to be used to produce these goods. The students maintained that these natural resources could be taken from the Washington area which they used for recreational purposes and that the increased use of nonrecyclable goods could result in more refuse being dumped in that recreational area. 99 The students asserted that they would be injured because their enjoyment of these scenic recreational sites would be hindered. 100 The Supreme Court was satisfied that the injury requirement had been met. In Linda R. S., the Court reasoned that prosecution of the father would result only in his incarceration, and that if the father was jailed, the chances of receiving any future support was only speculative. 101

These two cases cannot be reconciled. Surely the mother in Linda R. S. was as severely injured as the students in SCRAP. Yet the Court accepted the admittedly attenuated chain of injury in SCRAP, but in Linda R. S. failed to consider that the father may have made the support payments if he was confronted with the alternative of going to jail. The Court viewed the causation element in SCRAP with less scrutiny than in Linda R. S. because it found that the students' interests were among those arguably within the "zone of interests" intended to be protected by the National Environmental Policy Act of 1969. 102

The Court, in effect, is allowing Congress to decide who has standing by determining who has to meet the causation require-

99. Id. at 688.
100. Id.
101. 410 U.S. at 618.
102. 42 U.S.C. §§ 4321-4361 (1976). The Court ruled that since the interest is protected by the statute, the plaintiff has standing under the Administrative Procedure Act. 412 U.S. at 689.
ment. The question of causation has to do with the merits of the case, not the nature of the parties and their ability to pursue the litigation adequately. The Court has stated that the question of standing relates only to the status of the party and not to the merits of his case. If this is so, the causation element should play no part in determining whether a party has standing to sue.

IV. PROPOSED ALTERNATIVE STANDARD

Between 1960 and 1980 the Supreme Court has constantly vacillated between extremes in the area of standing in search of an equitable standard. The attempts to formulate a fair and reasonable standing doctrine have consisted mainly of coupling the injury requirement with various other criteria. As has been seen, the several different threshold requirements that plaintiffs have had to overcome during this period include: Injury in fact to a legal interest; injury to an interest intended to be protected by statute; injury in fact and a showing that this injury was caused by the defendant; injury in fact, a showing of causation and a showing that judicial relief will redress the injury; and a relaxation of the causation-redressability elements requiring plaintiffs to show only that their injury is "fairly traceable" to the defendant's conduct and that there is a "substantial likelihood" that judicial relief will redress the wrong done to them. Except for a brief period in the early 1960's, the plaintiff has always been required to show injury. Despite these efforts, the Court has not been able to formulate a satisfactory standing doctrine. The reason for this may be that the requirement of injury presents a problem.

The injury requirement raises various problems worthy of legal analysis. Its most disappointing aspect is that it denies plaintiffs who are willing and able to press suit access to federal court. To alleviate this situation, the Court should dispense with the injury standard as a threshold requirement.

The Court has stated that the injury requirement assures that the issues will be contested with the necessary adverseness and the litigation will be pursued with the necessary vigor. This is not

103. In his dissent in Warth, Justice Brennan states that requiring the plaintiff to show causation is the same as requiring him to prove his case on paper before he even gets into court. 422 U.S. at 528. See Comment, Standing to Sue in the Federal Courts: Congressional Power to Reduce Judicial Barriers to Justiciability, 2 WESTERN NEW ENG. L. REV. 71 (1980).
105. See Comment, supra note 103, at 84-85.
106. See note 73 supra.
necessarily true. Presumably, the presence of injury instills the injured party with sufficient motivation to contest the suit with vigor and ensure adverseness. Motivation is the key. The Court should look beyond injury to the totality of the facts and circumstances to determine whether the party is sufficiently motivated.

In *Sierra Club v. Morton*, Justice Harry Blackmun wrote a compelling dissent which provides a basis for arguing that a showing of sufficient motivation rather than injury should suffice to satisfy the jurisdictional requirements. Justice Blackmun proposed that any party which could make a showing of a provable, sincere, dedicated and established status with respect to the subject matter should be allowed to contest environmental issues.

It would be desirable to carry this standard one step further and grant standing to any party who could show a "sincere and significant interest" in the subject matter of the litigation. This standard would ensure adverseness much more so than does the injury requirement as applied in cases like *SCRAP*. In determining whether the party's interest is significant, the court should look at the nexus between the status of the party and the nature of the wrong alleged. The court could then make a determination of whether a reasonable person in the plaintiff's position would be sufficiently motivated to institute and maintain a suit in federal court to redress that wrong. The court should view the party's interest as falling somewhere along a continuum of interest. At one end of the continuum would fall those interests which can be deemed to be significant to all persons, such as the right not to be deprived of life, liberty or property without due process of law. At the other end of the continuum would fall those interests which we would not expect to raise much furor, such as, affronts to one's political, moral or aesthetic sensibilities. This is not to say that those interests which fall at the lower end of the continuum could not be sufficient to support a claim of standing. The court should look to the totality of the facts and circumstances and the status of the party to determine whether that party's interest is significant. For example, absent any extenuating circumstances, the NAACP could not be said to have a significant interest in preserving our environment in its natural state, however, an organization such as

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108. Id. at 758.
109. This continuum of interest approach has been suggested by other commentators. See Tucker, *The Metamorphosis of the Standing to Sue Doctrine*, 17 N.Y.L. FORUM 911, 919 (1972).
the Sierra Club could successfully allege such an interest. The status of the Sierra Club as an organization devoted to this goal gives it a significant interest in any action which may hinder the attainment of this goal.

In addition to being significant, the party's interest must also be sincere. The court would determine a party's sincerity by examining what motivated his suit. The benefit the party expects to derive from the litigation and any ulterior motives which may have prompted the suit are proper subjects for consideration. For example, Realtor A practices racial discrimination. Realtor B may deem it advantageous to file suit in order to damage the reputation of his competitor. Realtor B's interest would not be sincere. His goal is not to end Realtor A's discriminatory practices but rather to impair Realtor A's ability to compete in the marketplace. Consequently, it is conceivable that his energies would be channeled in this direction. Realtor B may dedicate himself to compiling evidence which is extremely damaging to Realtor A's reputation but has little legal relevance. If this should happen, the court would not have before it the proper facts on which to base its decision. Moreover, once this evidence has been exposed to public scrutiny, Realtor B may be satisfied that his goal, to damage his competitor's reputation, has been accomplished, and therefore, may fail to obtain the appropriate remedy or judgment. The court could also look to any history of the party's involvement in the issue in controversy, and how the party has conducted itself in the past with respect to that issue. Any evidence that the party had initiated prior suits solely for their nuisance value would militate against a grant of standing.

Deciding when a significant interest exists is no more difficult than deciding when a party has been sufficiently injured. The Court's tendency to vacillate between strict and lenient interpretations of the injury requirement make that standard difficult to define. The sincere and significant interest standard is conceptually easier to grasp and allows for encompassing many more deserving parties among those entitled to bring suit.

The courts would not be faced with a great increase in litigation. The time, trouble, and expense involved in bringing a lawsuit in federal court would serve to discourage many potential plaintiffs. Strict adherence to the requirement that any prior suits were made in a responsible manner would force any party to choose its cases with care if it seeks to achieve its goals through the legal system.

Allowing a party who could not satisfy the injury requirement but did satisfy the sincere and significant interest test to litigate the
controversy would not mean that an injured party would have no voice in the suit.110 Any injured party would be allowed to intervene under a broad interpretation of the Federal Rules.111 If there is "sufficient doubt" about the adequacy of representation,112 the injured party should be allowed to intervene. This sufficient doubt standard was broadly interpreted in Trbovich v. UMW.113 Trbovich involved a suit against a union alleging unfair election practices. A union member was allowed to intervene when the Supreme Court perceived that the members' lawyer, who was the Secretary of Labor,114 was under an obligation "to protect the 'vital public interest in assuring free and democratic union elections that transcends the narrower interest of the complaining union member.' "115 Adequacy of representation is not necessarily correlative to the presence of injury and the courts have recognized this fact. In Franks v. Bowman Transportation Co.,116 the Supreme Court allowed an employee to continue to represent other employees in a class action after he had been hired and fired for cause and no longer had any personal stake in the controversy.

The sincere and significant interest standard would allow the initiation of suits by groups, such as the Leadership Council which was denied standing in Gladstone.117 Given the opportunity to bring suit on their own behalf, these parties would be better able to channel their energies and make full use of their investigatory abilities and expertise to discover and rectify unfair housing practices, and less time trying to find representative injured parties and persuading these parties to sue. The individual plaintiffs in Gladstone were denied standing to sue in their capacity as testers. This determination would not necessarily result from the application of the sincere and significant interest standard. Their concerted effort to discover and document the discriminatory practices prevalent in the area attests to their sincerity. The Court could find that their

110. An injured party could join as plaintiff or if necessary the complaining party could have the injured party joined. FED. R. CIV. P. 19, 20.
111. Federal Rule 24 allows intervention when the intervenor has an interest in the subject of the action and when he is not adequately represented by the existing parties. See FED. R. CIV. P. 24.
112. Trbovich v. UMW, 404 U.S. 528, 538 & n.10 (1972).
113. 404 U.S. 528 (1972).
114. The Court stated that in these types of cases "the Secretary of Labor in effect becomes the union members' lawyer." Id. at 539.
115. Id.
117. 569 F.2d at 1017.
status as testers gave them a significant interest in the outcome of the controversy.

This standard could be particularly helpful in cases in which the residents live in a segregated area by choice. If the residents of Bellwood had preferred to live in a segregated area, it is unlikely that the suit would ever have been brought. If the residents were unwilling to integrate their community, it is likely that the village would have thought it politically wise to accommodate the residents. Thus, the two parties who were granted standing would not have brought suit and the discrimination could have continued.118

Often, the discrimination is so discreet that the victim never realizes that he has been discriminated against.119 In other situations the victim may not sue because the time and trouble involved in bringing a lawsuit would not be worth the gain which would result from a favorable verdict. In instances in which the desired dwelling has already been sold, the burden of litigation to redress the past discrimination without the possibility of specific performance might not be worth the trouble. For these reasons, a grant of standing to responsible groups and testers would greatly effectuate the policy of the Act “to provide, within constitutional limitations, for fair housing throughout the United States.”120

Applying the sincere and significant interest standard to individuals is considerably more difficult than applying it to groups. Unlike groups, individuals do not have a readily identifiable purpose, such as, the Sierra Club’s interest in preserving our environment, the NAACP’s devotion to achieving racial equality or the

118. The Fair Housing Act does allow for action by the Attorney General for equitable relief. 42 U.S.C. § 3613 (1976). This section allows suits only when necessary to correct a pattern or practice of discrimination or when the action is deemed to constitute an issue of general public importance. The Attorney General has wide discretion to decide what is an issue of general public importance. United States v. Northside Realty Assocs. Inc., 474 F.2d 1164 (5th Cir. 1973). It has been noted that which cases the Attorney General will bring depends upon his personal preferences and the efficiency of his staff. Dubofsky, Fair Housing: A Legislative History and a Perspective, 8 WASHBURN L.J. 149, 166 (1969). The fact that this office is understaffed is also cause for concern. See Trafficante v. Metropolitan Ins. Co., 409 U.S. 205, 209 (1972); Chandler, Fair Housing Laws: A Critique, 24 HASTINGS L.J. 159, 195 (1973).

119. The process of racial steering is so subtle that the victim never realizes that he has been discriminated against. The process itself is alarmingly simple. The salesman does not offer any specific information until he is certain of the buyer’s race. He shows the buyer homes only in the “appropriate area” and tells the buyer that any other available homes of which the buyer is aware are in poor condition, are “bad deals” beyond his price range or have “just been sold.”

National Organization for Women’s struggle to achieving equality between the sexes. These groups can easily show a sincere and significant interest in any subject matter or controversy that conflicts with or threatens their readily ascertainable raison d’être. This is not necessarily true with individuals. This being so, the court should apply the reasonable person standard. The court should consider whether a reasonable person in the plaintiff’s position would be sufficiently motivated to institute and maintain a suit. Consideration should be given to the fact that the plaintiff has in fact sought judicial relief. Considering the investment of time and money which a federal lawsuit entails, it is reasonable to assume that the plaintiff has weighed this factor in his own mind before instituting the suit and has come to the determination that the vindication of his interest is worth the expense. This would seem to assure that the party is sufficiently motivated.121 Inability to show a long-standing interest and history of involvement in the subject matter should not hinder the plaintiff’s acquisition of standing. He should be required to show that prior involvement, if any, demonstrates that his suit is meritorious and not spurious. In cases in which the plaintiff’s sincerity is suspect and no history of involvement can be shown, the court could, as an additional safeguard, require a showing that the plaintiff had undertaken responsible efforts outside the courtroom, if any were available, to rectify the situation. Outside efforts of a conciliatory nature would tend to show that the plaintiff is sincerely interested in the subject matter of the suit and not in its nuisance value.

The two individual plaintiffs who were denied standing in Gladstone because they resided outside of the affected area may have been granted standing under the sincere and significant interest test. They need not show an injury, but only a significant interest in fair housing in Bellwood, the sincerity of that interest and possibly a demonstration of responsible efforts to rectify the situation.122

Although an injured party would not be foreclosed from participating in the suit, it is in cases in which the injured party is unable or unwilling to sue that this standard would play its greatest role. It would open the courts to a number of deserving plaintiffs

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121. See generally Scott, supra note 79.

122. All relevant factors that might affect the party’s motivation should be taken into account, including geographical proximity of the two communities and whether the realtors were operating in Maywood as well.
who seek to effectuate important social policies and would assure
that the suit would be presented in an adversarial context and "in a
form historically viewed as capable of judicial resolution." 123

V. CONCLUSION

The Court in Gladstone applied the traditional standing test
which requires that the plaintiff show that he has suffered an injury
due to the conduct of the defendant. The result was that in the ab­sence of a direct victim, only those persons who could possibly
have something to gain from preserving the discrimination were al­lowed to bring suit. The sincere and significant interest standard
would not have produced this result.

The sincere and significant interest standard tests the party's
motivation. It demands a determination of whether the party has
an interest in the controversy and whether that interest is sufficient
to ensure an adversary proceeding. This is done by scrutinizing
both the events which prompted the party to bring suit, and his
relationship to the controversy. The injury requirement is too strict
a standard to use as a threshold requirement, and it too easily
lends itself to use for other purposes. The sole purpose of the sin­cere and significant interest test is to determine whether the par­ties have that concrete adverseness that assures the courts of the
effective advocacy on which they depend to make their decisions.

Discriminatory practices have become so sophisticated that
they are not readily discernible to the victim. There is a need to
allow those persons who are experienced in such matters to take
the initiative and proceed to court to put an end to these practices.
Discrimination is repulsive to the values upon which this nation
and our judicial system are founded. Numerous public leaders have
exhorted the people of the United States to join together to end
this disgraceful practice. Yet, the standing policy of the federal
courts hinders such action. If the Court would grant standing to
those with sincere and significant interests in halting unlawful dis­crimination, then the burden would be removed from the often un­knowing injured party and placed on the American people as a
whole.

Vernon Gorton