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COMMENTS

STANDING TO SUE IN THE FEDERAL COURTS: CONGRESSIONAL POWER TO REDUCE JUDICIAL BARRIERS TO JUSTICIABILITY

I. INTRODUCTION

One of the primary concerns of the framers of the Constitution was the protection of state rights against oppression by a strong federal government. As the court system was viewed as crucial to those rights, one safeguard written into the Constitution was the creation of federal courts with jurisdiction much more limited than the general jurisdiction of the state courts. Federal courts may decide only those types of cases specifically enumerated in the Constitution and those cases or controversies which the Congress shall deem appropriate. 1

Standing to sue, one aspect of federal court jurisdiction, tests whether a plaintiff will present his case with the adverseness required by the case or controversy clause of Article III. Standing, therefore, is an examination of the parties, not the merits of the action. 2 A plaintiff seeking to litigate a claim in federal court must, as a preliminary matter satisfy the court that he has standing to litigate the claim. If the plaintiff fails in this task, the federal court will not decide the merits of the claim.

Congress, in the exercise of its constitutional power to “limit and regulate” 3 the jurisdiction of the federal courts, has occasionally attempted to modify court imposed requirements of standing. 4 The Supreme Court has upheld these congressional modifications, within the narrow confines of the express language of the statutory standing provisions. Whether Congress may remove all standing barriers to federal court litigation is not clear. This comment, by looking at the historical development of the standing doctrine in the statutory context, and the federal courts response to that de-

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4. See text accompanying notes 22-45 and 57-65 infra.
velopment, attempts to discern to what extent Congress may and should modify the judicial requirements of standing.

In cases arising out of an alleged violation of plaintiff's constitutional rights, the United States Supreme Court has developed a number of requirements which must be met before a plaintiff is judged to have standing to sue. Generally to pass the standing barrier a plaintiff must allege injury to himself or some personal stake in the outcome of the litigation. The Court has also recently demanded that a plaintiff show that the injury was caused by the defendant's alleged illegal conduct or that the Court's remedial powers would effectively redress the plaintiff's claimed injury.

These two judicially imposed requirements of standing have fluctuated often during their evolution. While it is difficult to draw hard and fast rules about the Court's position, it is instructive to observe the trends in defining standing.

II. REQUIREMENT OF SHOWING INJURY

A. The Growth of the Injury or Personal Stake in the Outcome Limitation in Constitutional Cases

The Supreme Court originally took a restrictive view of standing, requiring the federal plaintiff to show that he had suffered actual injury. This requirement precluded, for example, suits by competitors to enjoin legal competition. In *Tennessee Power Co. v. TVA*, a utility company challenged on due process grounds the

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5. Sierra Club v. Morton, 405 U.S. 727 (1972). Plaintiff, an environmental group, sued to enjoin construction of resort area in natural reserve. Because plaintiff alleged no injury to itself or to any of its members, the Supreme Court denied standing.

6. Baker v. Carr, 369 U.S. 186 (1962). Voters challenged enforcement of an obsolete voter apportionment statute as violative of due process in that their votes were debased. Plaintiffs articulated sufficient stake in the outcome of the litigation to give them standing to sue in federal court.


9. Pierce v. Society of Sisters, 268 U.S. 510 (1925). Owners of private school challenged on due process grounds an Oregon statute requiring children under the age of 18 to attend public school. Society of Sisters argued that the statute hurt their business since parents of their students were removing students because of the statute, and that the statute interfered with the parents' free choice in determining the educational needs of their children. The Court ultimately upheld the plaintiff's standing because it sought to protect its business against arbitrary, unreasonable, unlawful interference rather than to enjoin enforcement of proper state power. In doing so, however, the Court noted that such business interest in potential customers is not usually sufficient to withstand standing attack.

creation of the Tennessee Valley Authority (TVA) as an unlawful interference with the company's business interests. The Court denied the plaintiff standing because damage sustained by otherwise lawful competition was insufficient to invoke the power of the federal courts. The Court acknowledged that the legislature had the power to alter the rule against competitor suits. Since the legislature had not done so in this case, standing depended on the existence of a legally protected right, such as that founded in property contract or tort rights.

During the 1960's, the Court moved toward a less restrictive view of standing. Rather than requiring the plaintiff to show legal wrong, the Court required only that the plaintiff show some personal stake in the outcome of the litigation. This rule was first announced in 1962 in *Baker v. Carr* in which Tennessee taxpayers and voters challenged an ancient state voter apportionment statute. The statute, enacted in 1901, had not been modified since passage even though the population of Tennessee had grown substantially and had been widely redistributed. Plaintiffs alleged that this growth and redistribution without concomitant modification of the apportionment statute denied them equal protection of the laws by diluting the value of their votes.

*Jenkins v. McKeithen* followed the *Baker* definition of standing. In *Jenkins*, a union member challenged a Louisiana statute creating a committee to investigate possible criminal law violations in labor-management relations. The plaintiff had not been injured by operation of the statute but potentially could have been subject to criminal prosecution under the statute. The Court held that this possible criminal prosecution met the *Baker* test of a sufficient stake in the outcome of the litigation to ensure the adverseness required by the case or controversy clause.

Since 1973, the Court has retreated from its position of leniency toward standing, and now looks more toward a showing of injury as required in *Tennessee Power Co*. Four years after *Jenkins* was decided, the mother of an illegitimate child challenged on equal protection grounds the application of a state nonsupport statute. Linda R. S., the plaintiff, alleged that state officials system-

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11. *Id.* at 140.
12. *Id.* at 141.
13. *Id.* at 137.
atically refused to enforce the statute as to fathers of illegitimate children. Since the father of her child refused to make support payments, plaintiff alleged that the nonenforcement of the statute caused her a severe financial burden. The Court explained that although the plaintiff had demonstrated injury she had failed to show that enforcement of the statute's criminal sanction would alleviate her injury. Injury alone, which would not be redressed by the remedy requested, was insufficient to meet the requirements of standing to sue.

In 1974, in United States v. Richardson, a taxpayer attempted to force the Central Intelligence Agency to disclose its expenditures. The taxpayer justified his request under the statement and accounts clause of the Constitution. The Court held that the personal stake requirement of Baker was the outermost limit of standing. To sue in federal court, a plaintiff must allege injury setting him apart from the rest of the population. A claim by a citizen, for example, that he has been injured as a result of a tax expenditure would be insufficient, absent some specific constitutional limitation, to support standing to sue. If the injury being claimed is shared by all other citizens, then the courts regard such a claim to be a "generalized grievance," and, therefore, impermissible.

Since 1926, the Court has fluctuated in its definition of standing to sue in cases brought under the Constitution. From the requirement of showing a "legal wrong" in Tennessee Power Co. to the mere showing of interest or personal stake in the outcome of

20. Flast Cohen, 392 U.S. 83 (1968). Taxpayers sought to enjoin the expenditure of federal tax funds to finance subjects in religious schools. The Court held that because the plaintiffs alleged that the expenditures violated specific limitation on tax expenditures contained in the Constitution (in this case the establishment and free exercise clause), the plaintiffs as taxpayers had standing to sue. See also Frothingham v. Mellon, 262 U.S. 447 (1923).
21. Schlesinger v. Reservists Comm. to Stop the War, 418 U.S. 208 (1974). Individual plaintiffs and an association of present and former members of the military reserves sued on behalf of taxpayers and citizens alleging that the military reserve members of the Congress violated the incompatibility clause of the Constitution, and were subject to undue influence by the executive branch. U.S. CONST. art. I, § 6. As in Richardson, the Court held that the plaintiffs lacked standing because they had failed to allege concrete injury setting them apart from the general population. 418 U.S. at 180.
the controversy of *Baker* the Court has articulated a wide range of standards. Currently the Court seems to be settling on a standard that falls somewhat between that of *Tennessee Power Co* and *Baker*. In requiring a showing of injury the Court retreats from the personal stake standard of *Baker* and moves toward *Tennessee Power Co.*, stopping short of enumerating the type of injury that is appropriate.

### B. Legislative Modification of the Injury Requirement of Standing

The Supreme Court's strict requirement that the plaintiff show injury is one limitation on standing. Article III Section 2 of the Constitution, however, empowers Congress to limit and regulate the jurisdiction of the federal courts. Where Congress perceives that a social goal is best attained by allowing a wider category of plaintiffs to sue to enforce the statute, it will include in the act a standing provision mitigating the Court's requirement. Federal courts, when deciding cases arising under these statutes, will look carefully at the words of the statute and the congressional intent to decide whether a particular plaintiff has standing. To ensure that the plaintiff is presenting a case or controversy overbroad standing will not be implied. This statutory analysis usually results in a broader definition of standing than would be possible absent the statutory provision.²²

Statutes purporting to define standing under their provisions are of two types: Those granting standing to persons aggrieved or adversely affected and those granting standing to any person.

#### 1. Statutes Providing Standing to Persons Aggrieved or Adversely Affected

##### a. Federal Communications Act

The Federal Communications Act (FCA) provides that appeals may be taken to the U.S. Court of Appeals for the District of Columbia from decisions and orders of the Federal Communications Commission (FCC) "[b]y any other person who is aggrieved or whose interests are adversely affected by any order of the Commission granting or denying any [relicensing] application."²³


An early decision decided under the FCA is *FCC v. Sanders Brothers Radio Station.*\(^{24}\) There, the Court in upholding the radio station's standing, noted that Congress had, when it passed the FCA, intended to afford competitors a right of action as the only parties likely to have sufficient interest to challenge FCC orders. In 1966, the U.S. Court of Appeals for the District of Columbia extended the reasoning of *Sanders Brothers* to uphold FCC licensing challenges by the listening public. In *Office of Communication of the United Church of Christ v. FCC* \(^{25}\) the plaintiff, a radio listener, objected to the relicensing of a radio station. Plaintiff alleged that programs involving racial discrimination and denying the opportunity of responsible reply deprived the listening public of the right to hear balanced programming. Noting that the purpose of the statute was protection of the public interest, the court found a right of action in the plaintiff as a representative of that public interest.

The Federal Communications Act, as interpreted by the courts, has removed all but the barest requirement of showing injury or personal stake in the outcome of the litigation. Anyone within the potential listening range of a radio station may intervene to contest a licensing decision by the FCC.

b. *Administrative Procedure Act*

The Administrative Procedure Act is similar to the Federal Communications Act in its standing provision. It provides for suit by a person who suffers legal wrong or is adversely affected or aggrieved by agency action.\(^{26}\) A person seeking judicial review under the Administrative Procedure Act must show that his injury was intended to be prevented by the statute authorizing the agency action.

Since 1970, a number of plaintiffs have sought standing to challenge agency action under the Administrative Procedure Act. In *Data Processing Service Organizations, Inc. v. Camp* \(^{27}\) an organization of data processing vendors challenged a ruling that banks could sell data processing services to other banks and their customers. Data Processing Service Organizations alleged economic

\(^{24}\) 309 U.S. 470 (1940). Competing radio stations in neighboring town sought to intervene in and contest hearing granting license to new radio station in Dubuque, Iowa.

\(^{25}\) 359 F.2d 994 (D.C. Cir. 1966).


\(^{27}\) 397 U.S. 150 (1970).
injury to its members who had lost contracts made prior to the ruling. The Supreme Court found that competitor interests were within the interests sought to be protected by the Bank Service Corporation Act of 1962. Following the reasoning of Sanders Brothers, the Court upheld plaintiff's standing to sue under section 10 of the Administrative Procedure Act and the Bank Service Corporations Act.

The protected interest test stated in Data Processing was applied in Sierra Club v. Morton in which an environmental organization sued to enjoin development of a resort area in a natural reserve. The Court held that when an organization such as Sierra Club sues as a representative of its members, it must show injury specifically to its members' interests, not injury only to the general public. Since Sierra Club's members had suffered no injury to a protected interest, it had no standing to assert a third party interest.

Another environmental case, United States v. SCRAP represents the high water mark of standing under the Administrative Procedure Act. There, the Court upheld the standing of students challenging an Interstate Commerce Commission (ICC) ruling refusing to suspend a surcharge on railroad freight shipments. The students alleged that the surcharge discouraged the use of recycled goods by increasing the price of those goods to prohibitive levels. This, SCRAP alleged, threatened the natural resources in the Washington, D.C., parks which were used by the plaintiffs for recreation. ICC had failed to file an environmental impact statement in violation of the National Environmental Policy Act of 1969 prior to issuing the ruling. Looking at the alleged injury to the students, the Court found that although the injury was remote and attenuated, SCRAP had alleged injury to an interest of its members which was arguably sought to be protected by the National Environmental Policy Act of 1969. So long as the injury even though a

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28. In Data Processing, the Court referred to the interests sought to be protected by the statute as the zone of interests protected by the statute. Although the zone of interests language appears in only one or two of the Supreme Court standing decisions made subsequent to Data Processing, the analysis employed in subsequent statutory standing cases follows the pattern set forth in Data Processing.
29. 12 U.S.C. § 1864 (1976). "No bank service corporation may engage in any activity other than the performance of bank services for banks. Id.
31. Id. at 734-41.
mere trifle, is to an interest arguably protected by the relevant statute, the plaintiff has standing under the Administrative Procedure Act.34

2. Statutes Providing Standing to Any Person

a. Clean Air Act

Recently a number of environmental cases have arisen in the lower federal courts under the Clean Air Act. The Clean Air Act grants standing to enforce emission control standards to "any person."35 As with statutes granting standing to persons aggrieved or adversely affected, federal courts seek, in cases arising under these broad standing statutes, to determine whether the plaintiff's interest is intended to be protected by Congress. Because these statutes potentially grant noninterested plaintiffs standing to sue, federal courts must examine carefully a plaintiff's claim that he fits within the meaning of the statute and the case or controversy clause.

In Metropolitan Washington Coalition for Clean Air v. District of Columbia,36 the U.S. Court of Appeals for the District of Columbia Circuit upheld citizen suits under the Clean Air Act. In that case, plaintiff sued under the citizen suit provision of the Act to force closing of an incinerator allegedly in violation of the approved clean air implementation plan of the District of Columbia. The court noted that in the face of governmental action, citizen suit provisions relax the usual requirements of standing and allow any person to sue in the public interest as a private attorney general. The broad standing provisions of the Clean Air Act were also upheld as they pertained to a transportation control plan in Friends of the Earth v. Carey.37

Although the Tenth Circuit has hypothetically questioned the standing of a New York subway rider challenging an air pollution implementation plan in Arizona,38 the decisions thus far have not

34. 412 U.S. at 689 n.14, (quoting Davis, Standing: Taxpayers and Others, 35 U. Chi. L. Rev 601, 613 (1968)).
[A]ny person may commence civil action on his own behalf—(1) against any person who is alleged to be in violation of (A) an emission standard or limitation under this chapter or (B) an order issued by the Administrator or State with respect to such standard or limitation.
Id.
37 535 F.2d 165 (1st Cir. 1976).
provided any impediment to that type of action. One commentator questions the constitutionality of the standing provisions of the Clean Air Act. The writer concludes, however, that the traditional reluctance of federal courts to entertain borderline "cases or controversies" must yield to congressional determination that a traditional showing of injury is inappropriate.

b. False Claims Act

The False Claims Act provides that any person may bring suit in his own behalf in the name of the United States to recover funds fraudulently taken from the United States. By bringing suit under this Act, the plaintiff-informer is entitled, in the court's discretion, to a reward of a portion of the money recovered by the United States. Because an informer is not directly injured by the fraud against the United States, his sole interest in the suit is in the reward he may receive at the conclusion of the suit.

In 1943, the Supreme Court upheld standing under the False Claims Act in United States ex rel. Marcus v. Hess. The Court noted in its decision that informer's statutes, which provide for action by a person who has no interest in the controversy other than that provided by the statute, have long existed in England and this country. Since it is within the power of the legislature to enact such a statute, the Court should not refuse to give effect to its provisions.

The Court has interpreted the case or controversy clause of

40. Id. at 1278.
41. 31 U.S.C. § 231 (1976). The Informer Act recodified the False Claims Act of 1940. Id. § 232. In 1970, the Act was amended to require the plaintiff-informer to notify the U.S. Attorney General of the pending action. Id. § 232(c). The government has 60 days to respond, and, if it chooses, to take over prosecution of the case in the name of the United States. Id. An award is precluded if the suit is predicated on information in the possession of the United States at commencement of the suit. Id. The informer potential reward is reduced from 50% to 25% of the recovery if suit is carried on by the individual, or to 10% of the recovery, if the government prosecutes the suit. Id. § 232(E)(1) & (2).
42. 317 U.S. 537 (1943).
43. Id. at 541, n.4 (quoting Marvin v. Trout, 199 U.S. 212, 225 (1905)).
44. Id. at 542.
45. Id. at 548. The Fifth Circuit recently upheld standing under the False Claims Act. United States ex rel. Weinberger v. Equitax, Inc., 557 F.2d 456 (5th Cir. 1977). Informer plaintiff alleged fraud in defendant's billing the government for services rendered by defendant in collection of information on prospective government employees. Id.
the Constitution to require that a federal plaintiff raising a constitutional claim show that he has sustained some personal injury to withstand an attack on his standing to sue. Occasionally the Court has intimated that Court-drawn requirements of standing may be modified by Congress in its constitutional power to limit and regulate the jurisdiction of the federal courts. Where Congress has acted, the Supreme Court requires, at most, only a showing of minimal injury to some congressionally protected interest. Under statutes such as the Clean Air Act\textsuperscript{46} and the Informer's Acts\textsuperscript{47} which allow any person to sue to enforce these statutes, the federal courts appear to dispense entirely with the judicially imposed requirement of showing injury.

III. REQUIREMENT OF SHOWING CAUSATION OR EFFECTIVENESS OF REMEDY

A. Growth of the Doctrine of Causation in Constitutional Cases

In 1973, in \textit{Linda R. S. v. Richard D.\textsuperscript{48}} the United States Supreme Court held that in addition to the requirement that a federal plaintiff show injury the plaintiff must show that his particular injury could be effectively redressed by the federal court's action. Since that time, the Court has expanded this causation aspect of standing and used it to preclude federal litigation in a number of situations.

In 1975, various plaintiffs sued to nullify an allegedly invalid exclusionary zoning statute. The Court in \textit{Warth v. Seldin}\textsuperscript{49} ruled that the plaintiffs lacked standing to sue because they failed to demonstrate that their injury had been caused by the allegedly illegal action of the defendant. In the Court's words:

\begin{quote}
[I]ndirectness of the injury does not necessarily deprive the person harmed of standing to vindicate his rights. But it may make it substantially more difficult to meet the minimum requirement of Art. III: to establish that, in fact, the asserted injury was the consequence of the defendant's actions, or that prospective relief will remove the harm.\textsuperscript{50}
\end{quote}

\textsuperscript{46} 42 U.S.C.A. § 7604(a) (West Supp. 1979).
\textsuperscript{48} 410 U.S. 614 (1973).
\textsuperscript{49} 422 U.S. 490 (1975).
\textsuperscript{50} \textit{Id.} at 505.
In *Simon v. Eastern Ky. Welfare Rights Organization*, indigents sued the Secretary of the Treasury and the Commissioner of Internal Revenue. They challenged a Treasury ruling that decreased the services which nonprofit hospitals were required to give to indigents. The Court reaffirmed *Warth*, and held that the plaintiffs lacked standing because they had failed to show that the defendants had caused their injury.

In 1978, an environmental group sued the investor-owned public utility engaged in constructing a nuclear power plant, seeking a declaration that the liability limitations of the Price-Anderson Atomic Energy Act violated due process and equal protection. The Court in *Duke Power Company v. Caroline Environmental Study Group* found that plaintiffs had alleged sufficient injury in the environmental impact of the proposed nuclear plant to meet the first half of the standing test set forth in *Warth* and *Simon*. On the question of causation, the Court noted that a plaintiff could satisfy the causation element of standing by either showing, as in *Warth* and *Simon*, that his injury could be traced to the challenged action of the defendant, or by showing, as in *Linda R. S.* that exercise of the Court's powers would effectively redress his claimed injury. The district court had found a "but for" causal connection between the Price-Anderson Act and the nuclear plant construction. Because this finding of a causal connection was not clearly erroneous, the Court held it sufficient to satisfy the causation requirement.

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51. 426 U.S. 26 (1976). In *Simon*, the Court applied the "injury in fact caused by the defendant" analysis to the standing question, even though plaintiffs sought standing under § 10 of the Administrative Procedure Act (APA). 5 U.S.C. § 702 (1976). 426 U.S. at 41. Standing under the APA would ordinarily subject plaintiffs to the lesser "protected interest" showing required in cases arising under statutory definitions of standing. The Court in *Simon* did not recognize plaintiffs as persons aggrieved or adversely affected under the provisions of statute governing the actions of the Internal Revenue Service. *Id.* The Court quoted from *Linda R. S.*, at least in the absence of statute expressly conferring standing, federal plaintiffs must allege some threatened or actual injury resulting from the putatively illegal actions before federal court may assume jurisdiction. *Id.* (quoting *Linda R. S. v. Richard D.*, 410 U.S. 614, 617 (1973)). The Court applied standing analysis used in cases arising under the Constitution. Under the causation articulated in *Warth*, plaintiffs in *Simon* failed to show either that defendants' actions caused the alleged injury or that the requested relief would effectively redress plaintiffs' injury, therefore, plaintiffs lacked standing to sue. 426 U.S. at 44-45.


54. *Id.* at 72.
Before 1976, the Court required that the plaintiff show either a personal stake in the outcome of the litigation or injury in fact. Warth and Simon added a causation aspect to the judicially imposed injury requirement of standing. The Duke Power case emphasized that the causation requirement could be satisfied by either a showing that plaintiff’s injury was traceable to defendant’s action or that the injury would be redressed by the remedy sought.

B. Dealing with Causation or Effectiveness of Remedy Through Legislation

The causation requirement, articulated in Linda R. S. v. Warth, Simon and Duke Power does not present a barrier to standing to sue in cases arising under statutory grants of standing. In articulating the requirement of standing, the Warth Court held that while federal courts could only act where the plaintiff’s injury could be traced to the alleged illegal conduct of the defendant, this causation requirement could be modified by Congress.

One of the petitioners in Warth, Metro Act, a public interest group concerned with raising consciousness toward problems of discrimination in housing, represented a group of residents of Penfield, New York. These members alleged injury from Penfield’s exclusionary zoning policies because they were being denied the benefits of living in a racially and ethnically integrated community. The Supreme Court recognized that for an association to have standing to sue as a representative of its members, it must assert a distinct injury to itself or to one or more of its members. While admitting that the denial of the benefits of living in an integrated community might constitute sufficient injury for standing under the Fair Housing Act as interpreted in Trafficante v. Metropolitan

57. 422 U.S. at 499.
58. id. at 500.
59. id. at 511.
60. The Fair Housing Act is typical of the statutes granting standing to person aggrieved or adversely affected under its provisions. The Fair Housing Act provides that on failure of administrative remedy, any person aggrieved by discriminatory housing practice may commence suit in United States district court. 42 U.S.C. § 3610 (1976).
Life Insurance Co. \(^{61}\) the Court in Warth held that this injury would not suffice when alleging a constitutional violation.\(^{62}\)

In Trafficante one black and one white tenant of an apartment building sued their landlord, alleging injury in being denied the advantages of living in an integrated neighborhood. Although neither plaintiff had been discriminated against by the landlord, the Court held that plaintiffs had alleged sufficient injury to bring them within the scope and intent of the Act. Justice White, in his concurring opinion, said that absent the Civil Rights Act of 1968, he would be unable to conclude that petitioners complaint presented a case or controversy.\(^{63}\) Thus, the Court is willing to give effect to express statutory language defining standing to sue under the Act’s provisions.

A recent decision of the Court extends Trafficante to the situation presented in Warth. In Gladstone, Realtors v. Village of Bellwood,\(^{64}\) residents of Bellwood, Illinois, and the town itself sued two real estate agencies in the town for steering white clients toward white areas of the town, and black clients toward integrated areas of the town. Racial steering of this type created racial imbalance in Bellwood’s housing situation, and deprived the individual plaintiffs of the benefits of living in an integrated community. The plaintiffs brought suit under section 812 of the Fair Housing Act, arguing that the person aggrieved or adversely affected language of section 810 should be read into section 812, which is silent on the question of who has standing to sue under its provisions. The Court found the plaintiffs argument persuasive in light of the legislative history of the Fair Housing Act.\(^{65}\)

No language in Trafficante or Gladstone refers to the causation element where standing is claimed under the language of a statute. The implication from the results in these cases and Warth is that where Congress clearly intends to provide standing to a class of plaintiffs, that intent will not be thwarted by judicially imposed rules governing standing. Language in Warth taken in connection with the decisions in Trafficante and Gladstone indicates that the Warth plaintiffs would have had standing to sue under the Fair Housing Act. The error committed by the Warth

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\(^{62}\) Id. at 514.

\(^{63}\) Id. at 212.

\(^{64}\) 99 S. Ct. 1601 (1979).

\(^{65}\) Id. at 1609-13.
plaintiffs was in relying solely on constitutional claims. The judicially imposed causation aspect of standing to sue is alleviated by statute even though there is no specific language in the statute dealing with the causation aspect. Congressional intent to define the level of injury necessary to allow suit is sufficient also to remove the requirement of showing that plaintiff’s injury was causally related to the defendant’s illegal action, or that exercise of the court’s remedial power would effectively redress plaintiff’s injury.

IV CONCLUSION

Standing to sue, as a rule of justiciability grew out of the case or controversy clause of the Constitution. To constitute a case or controversy issues before the federal court must be couched with specificity and adverseness. When a defendant questions a plaintiff’s standing to sue, he raises doubt about the plaintiff’s ability to present adequately a concrete, adverse position before the court.

Originally to have standing, a plaintiff had to aver some injury to a legally protected interest. This requirement of legal injury was softened somewhat during the sixties by a number of Supreme Court decisions which held that a personal stake in the outcome of the litigation was sufficient to supply the adverseness demanded by the case or controversy clause. This personal stake standard for standing to sue was hailed as a new day in federal litigation, removing all but the least intrusive of barriers to standing to sue.

Recent decisions in cases arising under the Constitution, however, have erected a number of new standing barriers to suit in the federal courts. The personal stake requirement articulated in the Baker case has been supplanted by a strict requirement of showing actual injury to the plaintiff. In addition, a requirement that the plaintiff show that his particularized, actual injury be causally related to the defendant’s putatively illegal act, or that his injury be redressed by the court’s remedial action has been thrust upon the federal plaintiff. A showing of causation goes beyond the initial inquiry of justiciability into the fitness and ability of plaintiff to carry on a suit as an adverse party to defendant. To require a

68. See text accompanying notes 14 & 15 supra.
70. See text accompanying notes 16-21 supra.
71. See text accompanying notes 48-54 supra.
plaintiff to show causation is to require him to prove his case before entering the courtroom. If, as the Court itself has said, standing speaks to the nature of the parties to a case and not to the merits of the action, the causation element of standing cannot be justified, and should be eliminated. 72

Congress, under Article III of the Constitution, has the power to limit and regulate the jurisdiction of the federal courts. Some legislation is most easily effectuated by suit by a broad category of plaintiffs. It is not practical, for example, for Congress to set up watch dog committees to monitor every possible abuse of environmental standards throughout the country. Much environmental litigation occurs because concerned citizens notify the federal regulatory agencies of abuses taking place. To facilitate the implementation of its policies, Congress provides for a broader than normal category of plaintiffs to sue to enforce the statute.

While the Court has severely limited federal litigation arising under the Constitution, it seems amenable to broad definition of classes of federal plaintiffs having standing to sue under federal statutes. 73 The injury and causation requirements defined by the Court all but disappear where congressional intent to broaden the allowable category of plaintiffs is clear. The extent to which Congress can exercise that power is unclear. It is clear that Congress may pass statutes like the Informer's Acts which provide the only interest a plaintiff has in the litigation. 74 It is also clear that Congress need not specially deal with the causation element of standing to sue so long as the intent to include a broad category of plaintiffs is clear. 75

One commentator 76 has suggested that Congress could pass a statute providing that any citizen or resident of the United States has an interest in the fair interpretation and administration of the laws and Constitution of the United States, and that any potential violation of those statutes or Constitution creates injury in the citizen or resident. Any citizen or resident, therefore, has injury suffi-

72. As stated by Mr. Justice Brennan in his dissent in Warth to require plaintiffs to show causation is "to require them to prove their case on paper in order to get into court at all, reverting to the form of fact pleading long abjured in the federal courts." 422 U.S. at 528.
74. See text accompanying notes 41-45 supra.
75. See text accompanying notes 57-65 supra.
cient to have standing to sue to challenge the interpretation or administra-

tion of the laws and the Constitution of the United States. Whether this type of all purpose standing statute would withstand a constitutional challenge is not clear. Statutes with a similar effect in narrow areas of the law such as the Clean Air Act and the Informer's Acts have been upheld, but these statutes have not been tested to the full boundaries of their language. Furthermore, it may not be prudent to open up the federal courts to suits by parties who are less than actively interested in the outcome of the litigation. Certainly to the extent that a noninterested or nonadverse party attempts to invoke the jurisdiction of the federal courts, he may be barred by other aspects of justiciability such as collusiveness or ripeness. These limitations, however, do not completely supplant the standing aspect of federal court jurisdiction, and may therefore, not adequately limit the jurisdiction of the federal courts.

Perhaps rather than provide for universal standing to all persons in all areas of federal litigation, it would better serve the purposes of Congress and the public to broaden the ability of public interest groups to sue to enforce the provisions of federal statutes. Public interest groups like Sierra Club, while not injured by a particular environmental law infraction, represent a category of plaintiffs who will adequately and vigorously represent the views of parties who are in fact injured by the illegal action. There is no harm in allowing these groups to act as private attorneys general to represent the interests of injured parties in their area of expertise.

The Court has often differentiated between constitutional limitations on standing and "prudential rules" of standing governing actions brought by parties seeking to assert the rights or legal interests of others to obtain relief for injury to themselves. Rather than passing statutes broadening the definition of injury which has been labelled a constitutional limitation of standing, and risking invalidation as exceeding the case or controversy clause, the Congress should concentrate on reducing the Court imposed prudential rules of standing. Furthermore, the Congress might urge a return to the Baker standard, which required the plaintiff to show a personal stake in the outcome, in dealing with suits arising under United States statutes. This approach would assure the integrity of the case or controversy clause while producing a broad effectuation of congressional intent.

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77. 422 U.S. at 509.