# CONTROLLING LEGAL PRINCIPLES

## *Free Exercise Clause Decision – The "Contemplation of Justice"*

### *Valley Forge Coll. v. Americans United, 454 U.S. 464 (1982)*

Held: Respondents do not have standing, either in their capacity as taxpayers or as citizens, to challenge the conveyance in question. Pp. 454 U. S. 471-490.

(a) The exercise of judicial power under Art. III is restricted to litigants who can show "injury in fact" resulting from the action that they seek to have the court adjudicate. Pp. 454 U. S. 471-476.

(b) Respondents are without standing to sue as taxpayers, because the source of their complaint is not a congressional action but a decision by HEW to transfer a parcel of federal property, and because the conveyance in question was not an exercise of Congress' authority conferred by the Taxing and Spending Clause, but by the Property Clause. Cf. Flast v. Cohen, supra. Pp. 454 U. S. 476-482.

(c) Nor have respondents sufficiently alleged any other basis for standing to bring suit. Although they claim that the Constitution has been violated, they claim nothing else. They fail to identify any personal injury suffered as a consequence of the alleged constitutional error, other than the psychological consequence presumably produced by observation of conduct with which one disagrees. That is not injury sufficient to confer standing under Art. III. While respondents are firmly committed to the constitutional principle of separation of church and State, standing is not measured by the intensity of the litigant's interest or the fervor of his advocacy. Pp. 454 U. S. 482-487.

(d) Enforcement of the Establishment Clause does not justify special exceptions from the standing requirements of Art. III. There is no place in our constitutional scheme for the philosophy that the business of the federal courts is correcting constitutional errors, and that "cases and controversies" are at best merely convenient vehicles for doing so, and, at worst, nuisances that may be dispensed with when they become obstacles to that transcendent endeavor. And such philosophy does not become more palatable when the underlying merits concern the Establishment Clause. Pp. 454 U. S. 488-490.

619 F.2d 252, reversed.

REHNQUIST, J., delivered the opinion of the Court, in which BURGER, C.J., and WHITE, POWELL, and O'CONNOR, JJ., joined. BRENNAN, J., filed a dissenting opinion, in which MARSHALL and BLACKMUN, JJ., joined, post, p. 454 U. S. 490. STEVENS, J., filed a dissenting opinion, post, p. 454 U. S. 513.

Article III of the Constitution limits the "judicial power" of the United States to the resolution of "cases" and "controversies." The constitutional power of federal courts cannot be defined, and indeed has no substance, without reference to the necessity "to adjudge the legal rights of litigants in actual controversies." Liverpool S.S. Co. v. Commissioners of Emigration, 113 U. S. 33, 113 U. S. 39 (1885). The requirements of Art. III are not satisfied merely because a party requests a court of the United States to declare its legal rights, and has couched that request for forms of relief historically associated with courts of law in terms that have a familiar ring to those trained in the legal process. The judicial power of the United States defined by Art. III is not an unconditioned authority to determine the constitutionality of legislative or executive acts. The power to declare the rights of individuals and to measure the authority of governments, this Court said 90 years ago, "is legitimate only in the last resort, and as a necessity in the determination of real, earnest and vital controversy." Chicago & Grand Trunk R. Co. v. Wellman, 143 U. S. 339, 143 U. S. 345 (1892). Otherwise, the power "is not judicial . . . in the sense in which judicial power is granted by the Constitution to the courts of the United States." United States v. Ferreira, 13 How. 40, 54 U. S. 48 (1852).

As an incident to the elaboration of this bedrock requirement, this Court has always required that a litigant have "standing" to challenge the action sought to be adjudicated in the lawsuit. The term "standing" subsumes a blend of constitutional requirements and prudential considerations, see Warth v. Seldin, 422 U. S. 490, 422 U. S. 498 (1975), and it has not always been clear in the opinions of this Court whether particular features of the "standing" requirement have been required by Art. III ex proprio vigore, or whether they are requirements that the Court itself has erected and which were not compelled by the language of the Constitution. See Flast v. Cohen, supra, at 392 U. S. 97.

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A recent line of decisions, however, has resolved that ambiguity, at least to the following extent: at an irreducible minimum, Art. III requires the party who invokes the court's authority to "show that he personally has suffered some actual or threatened injury as a result of the putatively illegal conduct of the defendant," Gladstone, Realtors v. Village of Bellwood, 441 U. S. 91, 441 U. S. 99 (1979), and that the injury "fairly can be traced to the challenged action" and "is likely to be redressed by a favorable decision," Simon v. Eastern Kentucky Welfare Rights Org., 426 U. S. 26, 426 U. S. 38, 426 U. S. 41 (1976). [Footnote 9] In this manner does Art. III limit the federal judicial power

"to those disputes which confine federal courts to a role consistent with a system of separated powers and which are traditionally thought to be capable of resolution through the judicial process."

Flast v. Cohen, 392 U.S. at 392 U. S. 97.

Because it assures an actual factual setting in which the litigant asserts a claim of injury in fact, a court may decide the case with some confidence that its decision will not pave the way for lawsuits which have some, but not all, of the facts of the case actually decided by the court.

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The Art. III aspect of standing also reflects a due regard for the autonomy of those persons likely to be most directly affected by a judicial order. The federal courts have abjured appeals to their authority which would convert the judicial process into "no more than a vehicle for the vindication of the value interests of concerned bystanders." United States v. SCRAP, 412 U. S. 669, 412 U. S. 687 (1973). Were the federal courts merely publicly funded forums for the ventilation of public grievances or the refinement of jurisprudential understanding, the concept of "standing" would be quite unnecessary. But the "cases and controversies" language of Art. III forecloses the conversion of courts of the United States into judicial versions of college debating forums. As we said in Sierra Club v. Morton, 405 U. S. 727, 405 U. S. 740 (1972):

"The requirement that a party seeking review must allege facts showing that he is himself adversely affected . . . does serve as at least a rough attempt to put the decision as to whether review will be sought in the hands of those who have a direct stake in the outcome."

Beyond the constitutional requirements, the federal judiciary has also adhered to a set of prudential principles that bear on the question of standing. Thus, this Court has held that

"the plaintiff generally must assert his own legal rights and interests, and cannot rest his claim to relief on the legal rights or interests of third parties."

Warth v. Seldin, 422 U.S. at 422 U. S. 499. [Footnote 10]

Finally, the Court has required that the plaintiff's complaint fall within "the zone of interests to be protected or regulated by the statute or constitutional guarantee in question." Association of Data Processing Service Orgs. v. Camp, 397 U. S. 150, 397 U. S. 153 (1970).

Art. III standing may

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not litigate as suitors in the courts of the United States. [Footnote 13] Article III, which is every bit as important in its circumscription of the judicial power of the United States as in its granting of that power, is not merely a troublesome hurdle to be overcome, if possible, so as to reach the "merits" of a lawsuit which a party desires to have adjudicated; it is a part of the basic charter promulgated by the Framers of the Constitution at Philadelphia in 1787, a charter which created a general government, provided for the interaction between that government and the governments of the several States, and was later amended so as to either enhance or limit its authority with respect to both States and individuals.

The Court again visited the problem of taxpayer standing in Flast v. Cohen, 392 U. S. 83 (1968). The taxpayer plaintiffs in Flast sought to enjoin the expenditure of federal funds under the

Elementary and Secondary Education Act of 1965, which they alleged were being used to support religious schools in violation of the Establishment Clause. The Court developed a two-part test to determine whether the plaintiffs had standing to sue. First, because a taxpayer alleges injury only by virtue of his liability for taxes, the Court held that

"a taxpayer will be a proper party to allege the unconstitutionality only of exercises of congressional power under the taxing and spending clause of Art. I, § 8, of the Constitution.

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"

Id. at 392 U. S. 102. Second, the Court required the taxpayer to

"show that the challenged enactment exceeds specific constitutional limitations upon the exercise of the taxing and spending power, and not simply that the enactment is generally beyond the powers delegated to Congress by Art. I, § 8."

Id. at 392 U. S. 102-103.

The plaintiffs in Flast satisfied this test because "[t]heir constitutional challenge [was] made to an exercise by Congress of its power under Art. I, § 8, to spend for the general welfare," id. at 392 U. S. 103, and because the Establishment Clause, on which plaintiffs' complaint rested, "operates as a specific constitutional limitation upon the exercise by Congress of the taxing and spending power conferred by Art. I, § 8," id. at 392 U. S. 104. The Court distinguished Frothingham v. Mellon, supra, on the ground that Mrs. Frothingham had relied not on a specific limitation on the power to tax and spend, but on a more general claim based on the Due Process Clause. 392 U.S. at 392 U. S. 105. Thus, the Court reaffirmed that the "case or controversy" aspect of standing is unsatisfied

"where a taxpayer seeks to employ a federal court as a forum in which to air his generalized grievances about the conduct of government or the allocation of power in the Federal System."

Id. at 392 U. S. 106.

Unlike the plaintiffs in Flast, respondents fail the first prong of the test for taxpayer standing. Their claim is deficient in two respects. First, the source of their complaint is not a congressional action, but a decision by HEW to transfer a parcel of federal property. [Footnote 15] Flast limited taxpayer standing to challenges directed "only [at] exercises of congressional power." Id. at 392 U. S. 102. See Schlesinger v. Reservists Committee to Stop the War, 418 U.S. at 418 U. S. 228 (denying standing because the taxpayer plaintiffs "did not challenge an enactment under Art. I, § 8, but rather the action of the Executive Branch").

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In finding that respondents had alleged something more than "the generalized interest of all citizens in constitutional governance," Schlesinger, supra, at 418 U. S. 217, the Court of Appeals relied on factual differences which we do not think amount to legal distinctions. The court

decided that respondents' claim differed from those in Schlesinger and Richardson, which were predicated, respectively, on the Incompatibility and Accounts Clauses, because

*"it is, at the very least, arguable that the Establishment Clause creates in each citizen a 'personal constitutional right' to a government that does not establish religion."*

619 F.2d at 265 (footnote omitted). The court found it unnecessary to determine whether this "arguable" proposition was correct, since it judged the mere allegation of a legal right sufficient to confer standing.

This reasoning process merely disguises, we think with a rather thin veil, the inconsistency of the court's results with our decisions in Schlesinger and Richardson. The plaintiffs in those cases plainly asserted a "personal right" to have the Government act in accordance with their views of the Constitution; indeed, we see no barrier to the assertion of such claims with respect to any constitutional provision. But assertion of a right to a particular kind of Government conduct, which the Government has violated by acting differently, cannot alone satisfy the requirements of Art. III without draining those requirements of meaning.

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Nor can Schlesinger and Richardson be distinguished on the ground that the Incompatibility and Accounts Clauses are in some way less "fundamental" than the Establishment Clause. Each establishes a norm of conduct which the Federal Government is bound to honor -- to no greater or lesser extent than any other inscribed in the Constitution. To the extent the Court of Appeals relied on a view of standing under which the Art. III burdens diminish as the "importance" of the claim on the merits increases, we reject that notion. The requirement of standing "focuses on the party seeking to get his complaint before a federal court, and not on the issues he wishes to have adjudicated." Flast v. Cohen, supra, at 392 U. S. 99. Moreover, we know of no principled basis on which to create a hierarchy of constitutional values or a complementary "sliding scale" of standing which might permit respondents to invoke the judicial power of the United States. [Footnote 20]

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"The proposition that all constitutional provisions are enforceable by any citizen simply because citizens are the ultimate beneficiaries of those provisions has no boundaries."

Schlesinger v. Reservists Committee to Stop the War, 418 U.S. at 418 U. S. 227.

The complaint in this case shares a common deficiency with those in Schlesinger and Richardson. Although respondents claim that the Constitution has been violated, they claim nothing else. They fail to identify any personal injury suffered by them as a consequence of the alleged constitutional error, other than the psychological consequence presumably produced by observation of conduct with which one disagrees. That is not an injury sufficient to confer standing under Art. III, even though the disagreement is phrased in

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constitutional terms.