Freeman Legal Services International

Third Party Standing

Third party standing is a term of the law of civil procedure that describes when one party may file a lawsuit or assert a defence in which the rights of third parties are asserted. In the United States, this is generally prohibited, as a party can only assert his or her own rights and cannot raise the claims of right of a third party who is not before the court. However, there are several exceptions to this doctrine.

For example, a third party may sue where he has interchangeable economic interests with the injured party, as in the case of a bookseller suing to enforce the rights of his patrons to purchase a particular book from his store.

A third party may assert the rights of another person in order to vindicate them when the other person is unable to do so. For example, the US Supreme Court has held that a white person bound by a restrictive covenant not to sell realty to a black person may assert the Fifth or Fourteenth Amendment rights of black persons not before the court.

A party that represents a class in a certified class action suit may continue to represent the class even where their own stake in the suit has dissipated. A woman seeking to challenge the constitutionality of a law that prevents divorcees from remarrying within a year may continue to represent the class of similarly situated persons, even if the year passes and she is able to remarry before the case has been decided.

Ordinarily, one may not claim standing in a court to vindicate the constitutional rights of some third party. The requirement of standing is often used to describe the constitutional limitation on the jurisdiction of federal courts to "cases" and "controversies." Apart from the jurisdictional requirement, the US Supreme Court has developed a complementary rule. one of self-restraint for its own governance. which ordinarily precludes a person from challenging the constitutionality of state action by invoking the rights of others. The common thread underlying both requirements is that a person cannot challenge the constitutionality of a statute unless he shows that he himself is injured by its operation

VICARIOUS STANDING

There are recognized exceptions to the general rule in cases where the party whose rights are being invoked is not in a position to assert those right effectively. At times, "it would be difficult if not impossible for the persons whose rights are asserted to present their grievance before any court." In such cases the courts often allow third parties vicariously to vindicate the rights of a non-litigant rights possessor.

In Pierce v. Society of Sisters, a state statute required all parents to send their children to public schools. A private and a parochial school brought suit to enjoin enforcement of the act on the ground that it violated the constitutional rights of parents and guardians. No parent or guardian to whom the act applied was a party or before the Court. The Court nonetheless held that the statute was unconstitutional because it *"unreasonably interferes with the liberty of parents and guardians to direct the upbringing and education of children under their control."*

The schools were thus permitted to assert in defense of their property rights the constitutional rights of the parents and guardians.

Standing (law)

In law, standing or locus standi is a condition that a party seeking a legal remedy must show they have, by demonstrating to the court, sufficient connection to and harm from the law or action challenged to support that party's participation in the case. A party has standing in the following situations:

The party is directly subject to an adverse effect by the statute or action in question, and the harm suffered will continue unless the court grants relief in the form of damages or a finding that the law either does not apply to the party or that the law is void or can be nullified. This is called the "something to lose" doctrine, in which the party has standing because they will be directly harmed by the conditions for which they are asking the court for relief.

The party is not directly harmed by the conditions by which they are petitioning the court for relief but asks for it because the harm involved has some reasonable relation to their situation, and the continued existence of the harm may affect others who might not be able to ask a court for relief. In the United States, this is the grounds for asking for a law to be struck down as violating the First Amendment to the Constitution of the United States, because while the plaintiff might not be directly affected, the law might so adversely affect others that one might never know what was not done or created by those who fear they would become subject to the law. This is known as the "chilling effects" doctrine.

The party is granted automatic standing by act of law. Under some environmental laws in the United States, a party may sue someone causing pollution to certain waterways without a federal permit, even if the party suing is not harmed by the pollution being generated. The law allows the plaintiff to receive attorney's fees if they substantially prevail in the action. In some U.S. states, a person who believes a book, film or other work of art is obscene may sue in their own name to have the work banned directly without having to ask a District Attorney to do so.

In the United States, the current doctrine is that a person cannot bring a suit challenging the constitutionality of a law unless they can demonstrate that they are or will "imminently" be harmed by the law. Otherwise, the court will rule that the plaintiff "lacks standing" to bring the suit, and will dismiss the case without considering the merits of the claim of unconstitutionality.

Australia

Australia has a common law understanding of locus standi or standing which is expressed in statutes such as the Administrative Decisions (Judicial Review) Act 1977 and common law decisions of the High Court of Australia especially the case Australian Conservation Foundation v Commonwealth (1980). At common law, the test for standing is whether the plaintiff has a "special interest in the subject matter of the action". Under the Administrative Decisions (Judicial Review) Act 1977 to have standing the applicant must be 'a person who is aggrieved', defined as 'a person whose interests are adversely affected' by the decision or conduct complained of. This has generally been interpreted in accordance with the common law test. There is no open standing, unless statute allows it, or represents needs of a specified class of people.

The Issue is One of Remoteness.

Standing may apply to class of aggrieved people, where essentially the closeness of the plaintiff to the subject matter is the test. Furthermore, a plaintiff must show that he or she has been specially affected in comparison with the public at large.

Also, while there is no open standing per se, prerogative writs like *certiorari*, *writ of prohibition*, *quo warranto* and *habeas corpus* have a low burden in establishing standing.

Australian courts also recognise amicus curiae (friend of the court), and the various Attorneys Generals have a presumed standing in administrative law cases.

Canada

In Canadian administrative law, whether an individual has standing to bring an application for judicial review, or an appeal from the decision of a tribunal, is governed by the language of the particular statute under which the application or the appeal is brought. Some statutes provide for a narrow right of standing while others provide for a broader right of standing.

Frequently, a litigant wishes to bring a civil action for a declaratory judgment against a public body or official. This is considered an aspect of administrative law, sometimes with a constitutional dimension, as when the litigant seeks to have legislation declared unconstitutional.

Public interest standing

The Supreme Court of Canada developed the concept of public interest standing in three constitutional cases commonly called *"the Standing trilogy*": Thorson v. Attorney General of Canada, Nova Scotia Board of Censors v. McNeil, and Minister of Justice v. Borowski. The trilogy was summarized as follows in Canadian Council of Churches v. Canada (Minister of Employment and Immigration):

It has been seen that when public interest standing is sought, consideration must be given to three aspects. First, is there a serious issue raised as to the invalidity of legislation in question? Second, has it been established that the plaintiff is directly affected by the legislation or if not

does the plaintiff have a genuine interest in its validity? Third, is there another reasonable and effective way to bring the issue before the court?

Public-interest standing is also available in non-constitutional cases, as the Court found in Finlay v. Canada (Minister of Finance).

International courts

The Council of Europe created the first international court before which individuals have automatic locus standi.

Nigeria

Like in other jurisdictions, the right to approach a court is contained in the Constitution. The right to approach a court has been interpreted in several cases, this has led to the right to be view differently in different cases. In recent times, there have been different approaches to locus standi. They are:

Traditional approach — only the party who has suffered pecuniary damage or special damage can seek redress in a court of law. In the case of Airtel Networks Ltd. v. George it was held that "*a party is said to have locus if he has shown sufficient interest in the action and that his civil rights and obligations have been or are in danger of being infringed*". Under this approach, a party can only seek redress provided he has proved to the satisfaction of the court that he has suffered sufficient damage over and above any other persons in the concern action. Particularly, only the Attorney General can seek redress in any case on public affairs except the party is authorised through fiat emanates from the Attorney General.

Liberal approach — a departure or exception to the traditional approach.

Locus standi may be granted to any person who challenges any unconstitutionality provided the person is subject to the constitution. This expands locus standi on constitutional issues. Justice Aboki of the Court of Appeal said "the requirement of (strict) locus standi become unnecessary in constitutional issues as it will merely impede judicial function". **Likewise, any person can challenge infringement of fundamental human rights.**

United Kingdom

In British administrative law, an applicant needs to have a sufficient interest in the matter to which the application relates. This sufficient interest requirement has been construed liberally by the courts. As Lord Diplock put it:

[i]t would ... be a grave danger to escape lacuna in our system of public law if a pressure group ... or even a single public spirited taxpayer, were prevented by outdated technical rules of locus standi from bringing the matter to the attention of the court to vindicate the rule of law and get the unlawful conduct stopped.

In the law of contract, the doctrine of privity meant that only those who were party to a contract could sue or be sued upon it. This doctrine was substantially amended by the

Contracts (Rights of Third Parties) Act 1999 which allows beneficiaries under a contract to enforce it.

Almost all criminal prosecutions are brought by the state via the Crown Prosecution Service, so private prosecutions are rare. An exception was the case of Whitehouse v Lemon where Mrs Mary Whitehouse, a self-appointed guardian of suburban morality, was permitted to bring a private prosecution for "blasphemous libel" against the publisher of Gay News, Denis Lemon.[34] Victims of crime have standing to sue the perpetrator and they may claim criminal injuries compensation from the state. If the state fails properly to bring a case, the victim or his family may have standing to bring a private prosecution, as in the case of Stephen Lawrence.

United States

In United States law, the Supreme Court has stated, "In essence the question of standing is whether the litigant is entitled to have the court decide the merits of the dispute or of particular issues."

There are a number of requirements that a plaintiff must establish to have standing before a federal court. Some are based on the case or controversy requirement of the judicial power of Article Three of the United States Constitution, § 2, cl.1. As stated there, *"The Judicial Power shall extend to all Cases . . .[and] to Controversies . . ."* The requirement that a plaintiff have standing to sue is a limit on the role of the judiciary and the law of Article III standing is built on the idea of separation of powers. Federal courts may exercise power only "in the last resort, and as a necessity".

The American doctrine of standing is assumed as having begun with the case of Frothingham v. Mellon. However, legal standing truly rests its first prudential origins in Fairchild v. Hughes, (1922) which was authored by Justice Louis Brandeis. In Fairchild, a citizen sued the Secretary of State and the Attorney General to challenge the procedures by which the Nineteenth Amendment was ratified. Prior to it, the doctrine was that all persons had a right to pursue a private prosecution of a public right. Since then the doctrine has been embedded in judicial rules and some statutes.

Standing requirements

There are three standing requirements:

Injury-in-fact: The plaintiff must have suffered or imminently will suffer injury—an invasion of a legally protected interest that is (a) concrete and particularized, and (b) actual or imminent (that is, neither conjectural nor hypothetical; not abstract). The injury can be either economic, non-economic, or both.

Causation: There must be a causal connection between the injury and the conduct complained of, so that the injury is fairly traceable to the challenged action of the defendant and not the result of the independent action of some third party who is not before the court.

Redressability: It must be likely, as opposed to merely speculative, that a favourable court decision will redress the injury.

Prudential limitations

Additionally, there are three major prudential (judicially created) standing principles. Congress can override these principles via statute:

Prohibition of third-party standing: A party may only assert his or her own rights and cannot raise the claims of a third party who is not before the court; exceptions exist where the third party has interchangeable economic interests with the injured party, or a person unprotected by a particular law sues to challenge the over-sweeping of the law into the rights of others. For example, a party suing over a law prohibiting certain types of visual material, may sue because the 1st Amendment rights of theirs, and others engaged in similar displays, might be damaged.

Additionally, third parties who do not have standing may be able to sue under the next friend doctrine if the third party is an infant, mentally handicapped, or not a party to a contract. One example of a statutory exception to the prohibition of third party standing exists in the qui tam provision of the Civil False Claims Act.

Prohibition of generalized grievances: A plaintiff cannot sue if the injury is widely shared in an undifferentiated way with many people. For example, the general rule is that there is no federal taxpayer standing, as complaints about the spending of federal funds are too remote from the process of acquiring them. Such grievances are ordinarily more appropriately addressed in the representative branches.

Zone of interest test: There are in fact two tests used by the United States Supreme Court for the zone of interest

Zone of injury: The injury is the kind of injury that Congress expected might be addressed under the statute.

Zone of interests: The party is arguably within the zone of interest protected by the statute or constitutional provision.

Recent development of the doctrine

In 1984, the Supreme Court reviewed and further outlined the standing requirements in a major ruling concerning the meaning of the three standing requirements of injury, causation, and redressability.

In the suit, parents of black public school children alleged that the Internal Revenue Service was not enforcing standards and procedures that would deny tax-exempt status to racially discriminatory private schools. The Court found that the plaintiffs did not have the standing necessary to bring suit. Although the Court established a significant injury for one of the claims, it found the causation of the injury (the nexus between the defendant's actions and the plaintiff's injuries) to be too attenuated. "The injury alleged was not fairly traceable to the Government conduct respondents challenge as unlawful".

In another major standing case, Lujan v. Defenders of Wildlife, 504 U.S. 555 (1992), the Supreme Court elaborated on the redressability requirement for standing. The case involved a challenge to a rule promulgated by the Secretary of the Interior interpreting §7 of the Endangered Species Act of 1973 (ESA). The rule rendered §7 of the ESA applicable only to actions within the United States or on the high seas. The Court found that the plaintiffs did not have the standing necessary to bring suit, because no injury had been established. The injury claimed by the plaintiffs was that damage would be caused to certain species of animals and that this in turn injures the plaintiffs by the reduced likelihood that the plaintiffs would see the species in the future. The court insisted though that the plaintiffs had to show how damage to the species would produce imminent injury to the plaintiffs. The Court found that the plaintiffs did not sustain this burden of proof. "The 'injury in fact' test requires more than an injury to a cognizable interest. It requires that the party seeking review be himself among the injured". The injury must be imminent and not hypothetical.

Beyond failing to show injury, the Court found that the plaintiffs failed to demonstrate the standing requirement of redressability. The Court pointed out that the respondents chose to challenge a more generalized level of government action, "the invalidation of which would affect all overseas projects". This programmatic approach has "obvious difficulties insofar as proof of causation or redressability is concerned".

In a 2000 case, Vermont Agency of Natural Resources v. United States ex rel. Stevens, 529 U.S. 765 (2000),[44] the United States Supreme Court endorsed the "partial assignment" approach to qui tam relator standing to sue under the False Claims Act — allowing private individuals to sue on behalf of the U.S. government for injuries suffered solely by the government.

Taxpayer standing

The initial case that established the doctrine of standing, Frothingham v. Mellon, was a taxpayer standing case.

Taxpayer standing is the concept that any person who pays taxes should have standing to file a lawsuit against the taxing body if that body allocates funds in a way that the taxpayer feels is improper. The United States Supreme Court has held that taxpayer standing is not by itself a sufficient basis for standing against the United States government. The Court has consistently found that the conduct of the federal government is too far removed from individual taxpayer returns for any injury to the taxpayer to be traced to the use of tax revenues, e.g., United States v. Richardson.

In DaimlerChrysler Corp. v. Cuno, the Court extended this analysis to state governments as well. However, the Supreme Court has also held that taxpayer standing is constitutionally sufficient to sue a municipal government in a federal court.[57]

States are also protected against lawsuits by their sovereign immunity. Even where states waive their sovereign immunity, they may nonetheless have their own rules limiting standing against simple taxpayer standing against the state. Furthermore, states have the power to

determine what will constitute standing for a litigant to be heard in a state court, and may deny access to the courts premised on taxpayer standing alone.

In California, taxpayers have standing to sue for any 'illegal expenditure of, waste of, or injury to the estate, funds, or other property of a local agency'.] In Florida, a taxpayer has standing to sue if the state government is acting unconstitutionally with respect to public funds, or if government action is causing some special injury to the taxpayer that is not shared by taxpayers in general. In Virginia, the Supreme Court of Virginia has more or less adopted a similar rule. An individual taxpayer generally has standing to challenge an act of a city or county where they live, but does not have general standing to challenge state expenditures.

Standing to challenge statutes

With limited exceptions, a party cannot have standing to challenge the constitutionality of a statute unless he will be subjected to the provisions of that statute. There are some exceptions, however; for example, courts will accept First Amendment challenges to a statute on overbreadth grounds, where a person who is only partially affected by a statute can challenge the parts that do not affect him on the grounds that laws that restrict speech have a chilling effect on other people's right to free speech.

The only other way someone can have standing to challenge the constitutionality of a statute is if the existence of the statute would otherwise deprive him of a right or a privilege even if the statute itself would not apply to him. The Virginia Supreme Court made this point clear in the case of Martin v. Ziherl 607 S.E.2d 367 (Va. 2005). Martin and Ziherl were girlfriend and boyfriend and engaged in unprotected sexual intercourse when Martin discovered that Ziherl had infected her with herpes, even though he knew he was infected and did not inform her of this. She sued him for damages, but because it was illegal (at the time the case was filed) to commit "fornication" (sexual intercourse between a man and a woman who are not married), Ziherl argued that Martin could not sue him because joint tortfeasors – those involved in committing a crime – cannot sue each other over acts occurring as a result of a criminal act (Zysk v. Zysk, 404 S.E.2d 721 (Va. 1990)). Martin argued in rebuttal that because of the U.S. Supreme Court decision in Lawrence v. Texas (finding that state's sodomy law unconstitutional), Virginia's anti-fornication law was also unconstitutional for the reasons cited in Lawrence. Martin argued, therefore, she could, in fact, sue Ziherl for damages.

Lower courts decided that because the Commonwealth's Attorney does not prosecute fornication cases and no one had been prosecuted for fornication anywhere in Virginia in over 100 years, Martin had no risk of prosecution and thus lacked standing to challenge the statute. Martin appealed. Since Martin had something to lose – the ability to sue Ziherl for damages – if the statute was upheld, she had standing to challenge the constitutionality of the statute even though the possibility of her being prosecuted for violating it was zero. Since the U.S. Supreme Court in Lawrence had found that there is a privacy right in one's private, non-commercial sexual practices, the Virginia Supreme Court decided that the statute against fornication was unconstitutional. The finding gave Martin standing to sue Ziherl since the decision in Zysk was no longer applicable.

However, the only reason Martin had standing to challenge the statute was that she had something to lose if it stayed on the books.

Ballot measures

In Hollingsworth v. Perry, the Supreme Court ruled that being the proponents of a ballot measure is not by itself enough to confer legal standing. In that case, Proposition 8 had banned same-sex marriage in California, a ban that was ruled unconstitutional. The Supreme Court ruled that the proponents of Proposition 8 has no standing in court since they failed to show that they were harmed by the decision.

State law

State law on standing differs substantially from federal law and varies considerably from state to state.

California

Californians may bring "taxpayer actions" against public officials for wasting public funds through mismanagement of a government agency, where the relief sought is an order compelling the official not to waste money and fulfill his duty to protect the public fisc

On December 29, 2009, the California Court of Appeal for the Sixth District ruled that California Code of Civil Procedure Section 367 cannot be read as imposing a federal-style standing doctrine on California's code pleading system of civil procedure. In California, the fundamental inquiry is always whether the plaintiff has sufficiently plead a cause of action, not whether the plaintiff has some entitlement to judicial action separate from proof of the substantive merits of the claim advanced. The court acknowledged that the word "standing" is often sloppily used to refer to what is really *jus tertii,* and held that *jus tertii* in state law is not the same thing as the federal standing doctrine.

END