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Larry Hayes

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will be processed,[51] and stamp warnings on outgoing correspondence.[52] In addition, the court suggests that, given the establishment of a proper set of circumstances, courts may sanction the reading of inmate mail by prison officials.[53]

Although these additional restrictions weaken the impact of the decision, they cannot erase the constitutional constraints imposed upon prison officials in connection with their overseeing of prisoner correspondence within the six categories. It is not inconceivable that other courts will adopt the Fifth Circuit two-fold approach of the right of access to the courts and the right to enjoy free expression and petition for redress of grievances in their attempt to resolve prisoner complaints. Whether these courts choose to expand the applicability of this decision to other areas such as general public correspondence, press interviews, and visitation rights, remains to be seen. But whatever other courts decide, it is clear that the action of the court in *Taylor*, in going beyond the Supreme Court's holdings in *Martinez* and *Wolff* and establishing a constitutional basis for protecting certain prisoner correspondence rights, should have a significant impact upon future prisoner rights litigation.

Barry Paul Hitchings

FEDERAL COURTS—Standing Conferred By Statute—To Assert Standing Under Statute, Plaintiff Must Trace Injury to Defendant and Demonstrate that Favorable Decision Will Provide Relief

Simon v. Eastern Kentucky Welfare Rights Organization, — U.S. —, 96 S. Ct. 1917, 48 L. Ed. 2d 450 (1976).

A class action suit was brought against the Secretary of the Treasury and the Commissioner of Internal Revenue by several indigent individuals and organizations representing such individuals. The plaintiffs asserted that the

51. Taylor v. Sterrett, 532 F.2d 462, 474, 482 (5th Cir. 1976).

52. *Id.* at 480.

53. *Id.* at 477. The Fifth Circuit does not clarify what it may consider a proper set of circumstances. Other cases have presented situations where courts have permitted prison officials to read prisoner correspondence. *See* Sostre v. McGinnis, 442 F.2d 178, 201 (2d Cir. 1971), *cert. denied*, 404 U.S. 1049 (1972); Cox v. Crouse, 376 F.2d 824, 826 (10th Cir.), *cert. denied*, 389 U.S. 865 (1967); Baker v. Beto, 349 F. Supp. 1263, 1270 (S.D. Tex. 1972), *vacated on other grounds sub nom.* Sands v. Wainright, 491 F.2d 417 (5th Cir. 1973); Conklin v. Hancock, 334 F. Supp. 1119, 1122 (D.N.H. 1971).

Internal Revenue Service (IRS) violated the Internal Revenue Code and the Administrative Procedure Act (APA) by issuing a ruling which classified hospitals as tax exempt if the institutions provided only emergency medical care free to indigents. The complainants argued that since the IRS no longer defined a charitable hospital as one which provides full services without charge to those unable to pay, the defendants were encouraging hospitals to deny such services to indigents. In the district court defendants' motion to dismiss included a challenge to plaintiffs' standing, but the court granted summary judgment for the plaintiffs.[1] The court of appeals also found that plaintiffs had standing but reversed the lower court's decision.[2] Both parties petitioned for writ of certiorari. Defendants challenged the lower courts' decisions on the issue of standing to sue. Held—*Vacated and remanded.* To assert standing conferred by statute, the plaintiff must trace the injury to the challenged action of the defendant and demonstrate that a favorable decision will provide relief.[3]

The concept of standing has been described by the United States Supreme Court as a "complicated specialty of federal jurisdiction . . . ."[4] One element of this doctrine is the limitation on federal jurisdiction embodied in the United States Constitution:[5] the plaintiff must demonstrate a "case" or "controversy" between the defendant and himself to secure access to the federal judicial system.[6] The second element of the concept of standing involves its utilization as a rule of self restraint by the federal courts.[7] Plaintiffs lack standing to challenge governmental actions considered by the court to be a function of the executive or legislative branches and therefore not subject to judicial intervention.[8]

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1. Eastern Ky. Welfare Rights Organization v. Shultz, 370 F. Supp. 325, 327 (D.D.C. 1973), *rev'd sub nom.* Eastern Ky. Welfare Rights Organization v. Simon, 506 F.2d 1278 (D.C. Cir. 1974), *vacated and remanded,* — U.S. —, 96 S. Ct. 1917, 48 L. Ed. 2d 450 (1976).

2. Eastern Ky. Welfare Rights Organization v. Simon, 506 F.2d 1278, 1291 (D.C. Cir. 1974), *vacated and remanded,* — U.S. —, 96 S. Ct. 1917, 48 L. Ed. 2d 450 (1976) (revenue ruling upheld as not contrary to the Code).

3. Simon v. Eastern Ky. Welfare Rights Organization, — U.S. —, —, 96 S. Ct. 1917, 1927, 48 L. Ed. 2d 450, 464 (1976).

4. United States *ex rel.* Chapman v. FPC, 345 U.S. 153, 156 (1953) (suit by association of rural electric cooperatives and Secretary of Interior to set aside order granting license for dam). Generally, standing only becomes an issue when a citizen is seeking judicial review of an administrative action or determination of the constitutionality of an action. C. WRIGHT, LAW OF FEDERAL COURTS § 13, at 39 (2d ed. 1970).

5. Article III, § 2 of the Constitution provides in part: "The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, . . . under their Authority; . . .—to Controversies to which the United States shall be a Party;—to Controversies between two or more States . . . ." U.S. CONST. art. III, § 2, cl. 1.

6. O'Shea v. Littleton, 414 U.S. 488, 493 (1974).

7. Barrows v. Jackson, 346 U.S. 249, 255 (1953).

8. *See, e.g.,* Perkins v. Lukens Steel Co., 310 U.S. 113, 132 (1940) (prospective bidders on government contract lacked standing to challenge administrative determina-

The Court through the years has struggled to define standing precisely, but commentators have felt that each time it is defined it becomes more complicated.[9] To have standing to sue, the plaintiff must first show that he has sustained an injury or is in immediate danger of sustaining one.[10] The questions that continually confront the Court concern the kind of interest which is worthy of protection and the type of injury that is required.[11] The injury has been described as the invasion of a legal right such as "one of property, one arising out of contract, one protected against tortious invasion, or one founded on a statute which confers a privilege."[12]

The Court has also recognized standing created by statutory enactment.[13] In the Administrative Procedure Act, Congress created a right of judicial review for citizens detrimentally affected by agency action.[14] In *Association of Data Processing Service Organizations, Inc. v. Camp*,[15] a two-pronged test of standing under the APA was enunciated.[16] First, the challenged action must have caused the plaintiff "injury in fact, economic or otherwise," and second, the plaintiff's interest must be "arguably within the zone of interest to be protected or regulated by the statute or constitutional guarantee in question."[17] The decision in *Data Processing* exemplified the Court's expansion of the range of injuries cognizable to confer standing.[18] Liberalization of the law of standing culminated with the case of *United States v. Students Challenging Regulatory Agency Procedures (SCRAP)*.[19] There, five law

tion of wages which suppliers must pay); Alabama Power Co. v. Ickes, 302 U.S. 464, 478-79 (1938) (competitors lacked standing to challenge loans to municipal corporations); Massachusetts v. Mellon, 262 U.S. 447, 488 (1923) (taxpayer lacked standing to restrain federal payments for maternity program).

9. *See generally* Albert, *Standing to Challenge Administrative Action: An Inadequate Surrogate for Claim for Relief*, 83 YALE L.J. 425, 493 (1974); Hasl, *Standing Revisited—The Aftermath of Data Processing*, 18 ST. LOUIS U.L.J. 12, 40 (1973); Comment, *Recent Standing Cases and a Possible Alternative Approach*, 27 HASTINGS L.J. 213 (1975); Comment, *Federal Standing—1976*, 4 HOFSTRA L. REV. 383, 390 (1976).

10. Massachusetts v. Mellon, 262 U.S. 447, 488 (1923) (injury must be different and more direct than one shared by public in general).

11. Davis, *The Liberalized Law of Standing*, 37 U. CHI. L. REV. 450, 468-71 (1970).

12. Tennessee Elec. Power Co. v. TVA, 306 U.S. 118, 137-38 (1939).

13. *E.g.*, Hardin v. Kentucky Util. Co., 390 U.S. 1, 6 (1968) (competitor granted standing to challenge power sales which violated statutory restrictions); FCC v. Sanders Bros. Radio Station, 309 U.S. 470, 477 (1940) (rival station challenged grant of license to competitor station).

14. The Administrative Procedure Act states in part that "[a] person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof." Administrative Procedure Act, 5 U.S.C. § 702 (1970).

15. 397 U.S. 150 (1970).

16. *Id.* at 152-53.

17. *Id.* at 152-53.

18. *E.g.*, Sierra Club v. Morton, 405 U.S. 727, 734 (1972) (aesthetic injury to environment); Barlow v. Collins, 397 U.S. 159, 164-65 (1970) (economic injury); Flast v. Cohen, 392 U.S. 83, 103 (1968) (injury to federal taxpayer).

19. 412 U.S. 669 (1973).

students challenged a ruling of the Interstate Commerce Commission (ICC) which allowed a surcharge on railroad rates. The petitioners claimed the order would result in discrimination against the hauling of recyclable goods and thereby damage the environment. According to the students, such discrimination would increase the consumption of natural resources and result in the proliferation of refuse and litter. The plaintiffs contended that their use and enjoyment of the parks and natural surroundings in the Washington, D.C., metropolitan area would be harmed by the ICC ruling. The Court recognized that the line of causation between the agency action and the claimed injury was "attenuated" but nevertheless found that the petitioners had standing.[20] The Court appeared to be recognizing the right of any citizen to challenge the actions of an administrative agency even though the claimed injury was remote.[21]

The trend of recent cases, however, has been toward a restriction of standing.[22] For example, *United States v. Richardson*[23] held the claimant must be in danger of suffering a "particular concrete injury" as a result of the challenged action.[24] Abstract injury or harm that is speculative was rejected by the Court in *Schlesinger v. Reservists Committee to Stop the War*[25] as insufficient injury in fact.[26] An injury shared by all citizens is, by definition, abstract, and unless a party can show some distinction between his position and that of the group, he lacks standing.[27] The injury alleged must also be such that judicial intervention will provide the plaintiff with a tangible personal benefit.[28]

Prior to the decision in *Simon v. Eastern Kentucky Welfare Rights Organization*,[29] this restrictive tendency had not been applied in cases brought under statutes conferring a right of review.[30] In *Eastern Kentucky* the plaintiffs

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20. *Id.* at 688.

21. B. SCHWARTZ, ADMINISTRATIVE LAW § 162, at 476 (1976). For discussions advocating a liberal viewpoint regarding standing, see Jaffe, *The Citizen as Litigant in Public Actions: The Non-Hohfeldian or Ideological Plaintiff*, 116 U. PA. L. REV. 1033 (1968); Scott, *Standing in the Supreme Court—A Functional Analysis*, 86 HARV. L. REV. 645 (1973).

22. *See* Warth v. Seldin, 422 U.S. 490, 528 (1975) (Douglas, J., dissenting); Schlesinger v. Reservists Comm. to Stop the War, 418 U.S. 208, 239-40 (1974) (Marshall, J., dissenting); United States v. Richardson, 418 U.S. 166, 237 (1974) (Brennan, J., dissenting); O'Shea v. Littleton, 414 U.S. 488, 509-12 (1974) (Douglas, J., dissenting).

23. 418 U.S. 166 (1974).

24. *Id.* at 177 (plaintiff must demonstrate injury is not grievance common to general public).

25. 418 U.S. 208 (1974).

26. *Id.* at 217.

27. *Id.* at 220-21.

28. Warth v. Seldin, 422 U.S. 490, 508 (1975).

29. — U.S. —, 96 S. Ct. 1917, 48 L. Ed. 2d 450 (1976).

30. *See, e.g.*, ACLU v. FCC, 523 F.2d 1344, 1347-48 (9th Cir. 1975); Korioth v. Briscoe, 523 F.2d 1271, 1275 n.11 (5th Cir. 1975); Ramer v. Saxbe, 522 F.2d 695, 700-03 (D.C. Cir. 1975).

claimed actual injury in the form of denial of access to hospital services and argued that they were within the zone of interest protected by the statute.[31] The Supreme Court found that the plaintiffs had not established their standing and therefore could not challenge the IRS ruling.[32]

The Court recognized that judicial review was granted by the APA to any citizen "adversely affected or aggrieved by agency action," but held that the threshold requirement for standing was "actual injury redressable by the court."[33] The language of the decision indicates the Court's desire to limit intervention of the judiciary in areas it considers reserved for the executive or legislative branch. The Court spoke of "overstepping its assigned role" should it adjudicate a case in which the plaintiff would not profit by a favorable decision.[34]

What constitutes an actual injury cognizable under the APA was the main question confronting the Court in *Eastern Kentucky*. The Court reasoned that the injury suffered by the plaintiffs resulted from the actions of the hospitals and that such an injury by itself was not sufficient to meet the constitutional "case or controversy" requirement in an action brought against the defendants.[35] The plaintiff must allege some connection between his threatened or actual injury and the challenged agency action before a federal court will intervene.[36]

In testing the sufficiency of the plaintiffs' allegations the Court reasoned that any order to the IRS to enjoin the favorable tax treatment of the hospitals would not necessarily result in free medical care to the indigents.[37] The plaintiffs' contention that the ruling encouraged the hospitals to deny ser-

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31. Simon v. Eastern Ky. Welfare Rights Organization, — U.S. —, —, 96 S. Ct. 1917, 1925, 48 L. Ed. 2d 450, 461-62 (1976).

32. Since the Court found the plaintiffs lacked standing, it did not find it necessary to reach the defendant's other contentions. The defendants had argued that an IRS ruling could not be challenged by a third party since this would be destructive of the revenue system. The Court expressed no opinion in this regard. *Id.* at —, 96 S. Ct. at 1923, 48 L. Ed. 2d at 459.

The defendants also characterized the action as barred by the Anti-Injunction Act, 26 U.S.C. § 7421(a) (1970), the Declaratory Judgment Act, 28 U.S.C. § 2201 (1970), and the doctrine of sovereign immunity. The lower court had rejected these arguments but the Supreme Court did not reach these contentions. Simon v. Eastern Ky. Welfare Rights Organization, — U.S. —, —, 96 S. Ct. 1917, 1924, 48 L. Ed. 2d 450, 460 (1976).

33. Simon v. Eastern Ky. Welfare Rights Organization, — U.S. —, —, 96 S. Ct. 1917, 1924, 48 L. Ed. 2d 450, 460-61 (1976).

34. *Id.* at —, 96 S. Ct. at 1925, 48 L. Ed. 2d at 461.

35. *Id.* at —, 96 S. Ct. at 1927, 48 L. Ed. 2d at 462.

36. *Id.* at —, 96 S. Ct. at 1925-26, 48 L. Ed. 2d at 462. The Court pointed out that no hospitals were defendants in the suit and that the claim regarding the failure of the hospitals to supply indigent care was being pressed against officials of the Department of the Treasury. *Id.* at —, 96 S. Ct. at 1925, 48 L. Ed. 2d at 462. In his dissenting opinion, Justice Brennan noted that such a claim did not present a cause of action against the hospitals. *Id.* at —, 96 S. Ct. at 1932, 48 L. Ed. 2d at 470.

37. *Id.* at —, 96 S. Ct. at 1926, 48 L. Ed. 2d at 463.

vice was termed "purely speculative" by the Court, as was any assumption that an injunction against the ruling would result in delivery of free medical care to indigents.[38]

In reaching its decision the Court relied on the principles expressed in *Linda R.S. v. Richard D.*[39] and *Warth v. Seldin.*[40] In *Linda R.S.* the mother of an illegitimate child sought a mandatory injunction requiring the district attorney to prosecute the child's father for nonsupport. The mother contended that application of the statute in question to fathers of legitimate children only was a violation of her constitutional rights. Standing was denied since the expectation that prosecution would result in payment of child support was considered speculative.[41] In *Warth* standing was denied to plaintiffs who sought to invalidate a restrictive zoning ordinance. The Court concluded the complainants failed to demonstrate a specific concrete injury resulting from the ordinance and failed to show that tangible personal benefits would accrue from judicial intervention.[42]

In *Eastern Kentucky* the Court took the position that remote possibilities or speculative inferences would not satisfy the plaintiffs' burden of demonstrating the necessary connection between the injury and the challenged action.[43] Since the plaintiffs had not established that the ruling was responsible for the denial of services or that an injunction would result in the delivery of services, the injury was considered indirect and therefore speculative. The Court ruled that indirect injury is not fatal to standing but does make it more difficult to meet the requirements.[44]

The instant case was distinguished from *United States v. SCRAP*[45] on the basis of the pleadings. The injury in *SCRAP* was regarded as indirect but the complaint there, unlike that in *Eastern Kentucky*, "alleged a specific and perceptible harm"[46] resulting from the ICC grant of the surcharge.[47] The

38. *Id.* at —, 96 S. Ct. at 1926, 48 L. Ed. 2d at 463. The Court held that the allegation could support an inference that hospitals highly dependent on tax-deductible donations might admit the plaintiffs if that charitable status was threatened but found it speculative in the absence of additional evidence. *Id.* at —, 96 S. Ct. at 1926-27, 48 L. Ed. 2d at 463.

39. 410 U.S. 614 (1973).

40. 422 U.S. 490 (1975).

41. Linda R.S. v. Richard D., 410 U.S. 614, 618 (1973). The Court pointed out that under the statute, the offense is completed when a support payment is missed, but prosecution could result in a jail sentence rather than payment of child support. *Id.* at 618.

42. Warth v. Seldin, 422 U.S. 490, 507-10 (1975).

43. Simon v. Eastern Ky. Welfare Rights Organization, — U.S. —, —, 96 S. Ct. 1917, 1927, 48 L. Ed. 2d 450, 464 (1976).

44. *Id.* at —, 96 S. Ct. at 1927, 48 L. Ed. 2d at 464.

45. 412 U.S. 669 (1973).

46. *Id.* at 689 (claim was the loss of use and enjoyment of the natural environment by the plaintiffs).

47. Simon v. Eastern Ky. Welfare Rights Organization, — U.S. —, —, 96 S. Ct. 1917, 1927 n.25, 48 L. Ed. 2d 450, 464 n.25 (1976).

Court admitted in *Eastern Kentucky* that the line of causation between the injury and the agency action was attenuated in *SCRAP*, but stated that it could "fairly" be traced to the agency.[48] In *Eastern Kentucky* such a connection between the agency and the alleged injury could not be found by the court.[49] The majority failed to find that a decision in favor of the plaintiffs would result in a change in the health care delivery practiced by the hospitals.[50]

In his dissent Mr. Justice Brennan vigorously attacked the distinction drawn by the majority between the *Eastern Kentucky* and *SCRAP* cases, asserting that a comparison of the pleadings in each case failed to reveal sufficient distinguishing facts that would justify the majority's conclusion that the *SCRAP* injury was more direct.[51] Mr. Justice Brennan asserted that the majority had practiced a "further obfuscation of the law of standing" by the extra injury dimension required by the Court.[52] He argued that the constitutional minimum injury in fact required under a statute conferring standing is a "personal stake sufficient to create concrete adverseness."[53]

This decision will have a significant impact on actions brought under the APA and other statutes which confer standing. Prior to its decision in *Eastern Kentucky*, the Court had been moving toward the position that injury in fact should be the only test of standing.[54] The two-prong test of *Data Processing* had commonly been the test applied by the courts in suits brought under the APA, but the zone of interest requirement had been applied liberally in many instances.[55] The decision in *Eastern Kentucky* will restrict the injury in fact portion of the test by requiring the plaintiff to allege a specific injury that directly flows from the challenged action and that appears upon its face to be redressable by court decision.[56] Implicit is a requirement that

48. *Id.* at —, 96 S. Ct. at 1927 n.25, 48 L. Ed. 2d at 464 n.25.

49. *Id.* at —, 96 S. Ct. at 1927, 48 L. Ed. 2d at 464.

50. *Id.* at —, 96 S. Ct. at 1927-28, 48 L. Ed. 2d at 465.

51. *Id.* at —, 96 S. Ct. at 1936, 48 L. Ed. 2d at 474 (Brennan, J., concurring in part, dissenting in part).

52. Id. at —, 96 S. Ct. at 1928, 48 L. Ed. 2d at 465 (Brennan, J., concurring in part, dissenting in part). Mr. Justice Brennan agreed that the plaintiffs had not met their burden of establishing that the ruling encouraged hospitals to deny services, but would have granted summary judgment rather than dismiss on the basis of standing. *Id.* at —, 96 S. Ct. at 1932, 48 L. Ed. 2d at 469 (Brennan, J., concurring in part, dissenting in part).

53. *Id.* at —, 96 S. Ct. at 1933, 48 L. Ed. 2d at 471 (Brennan, J., concurring in part, dissenting in part). The often repeated "personal stake" phrase describing the Constitutional minimum requirement for standing was first announced in Baker v. Carr, 369 U.S. 186, 204 (1962).

54. Davis, *The Liberalized Law of Standing*, 37 U. CHI. L. REV. 450, 471 (1970).

55. Hasl, *Standing Revisited—The Aftermath of Data Processing*, 18 ST. LOUIS U.L.J. 12, 38 (1973).

56. *See* Simon v. Eastern Ky. Welfare Rights Organization, — U.S. —, —, 96 S. Ct. 1917, 1927-28, 48 L. Ed. 2d 450, 464-65 (1976).

the plaintiff demonstrate the probability that the defendant would act to the plaintiff's benefit were a favorable decision rendered.

One problem with the decision in *Eastern Kentucky* is the burden placed upon the plaintiff. He must not only demonstrate a connection between his injury and the agency action but, in addition, must prove that a defendant would behave in a particular manner if the requested relief were granted.[57] This is particularly difficult when, as in this case, a third party is involved. *Eastern Kentucky* indicates that if the plaintiffs had been able to show that the hospitals would have provided services had the revenue ruling been declared invalid, they would have been successful.[58] The question that remains, though, and the one which is perhaps the basis of Justice Brennan's comment on "obfuscation," is what must be contained in the plaintiff's pleadings to show an injury considered to be redressable by the court.

The dissent points out that Congress often uses incentive-oriented legislation to achieve desired objectives.[59] Under the majority position a citizen would have a difficult task if he challenged an administrative agency decision that allegedly frustrated such desired objectives by rendering the incentives offered by Congress to third parties meaningless. The party contesting the agency action would be required under the *Eastern Kentucky* decision to demonstrate that the third party would react differently in the absence of such incentives.

Arguments have been advanced for the position that minimum injury in fact should be the only requirement for standing under the APA.[60] It has been argued that citizens today feel powerless in the face of federal bureaucracy, and therefore those aggrieved should be allowed liberal access to the judicial system to challenge the agency action.[61] Also, the administrative agencies have been found to be susceptible to the influence of special interest groups; if this be the case, then action through the courts would be the most direct and effective attack.[62]

The Supreme Court in *Eastern Kentucky* has extended the trend of *Richardson*, *Reservists*, and *Warth* toward restriction of standing. Even in actions brought under the APA, the Supreme Court is restricting access to the federal courts through the exercise of judicial restraint on the theory that many of the differences between citizens and government are best handled through

57. *Id.* at —, 96 S. Ct. at 1926, 48 L. Ed. 2d at 463.

58. *See id.* at —, 96 S. Ct. at 1927-28, 48 L. Ed. 2d at 464-65.

59. *See id.* at —, 96 S. Ct. at 1937, 48 L. Ed. 2d at 475 (Brennan, J., concurring in part, dissenting in part).

60. *See* Jaffe, *The Citizen as Litigant in Public Actions: The Non-Hohfeldian or Ideological Plaintiff*, 116 U. PA. L. REV. 1033 (1968); Scott, *Standing in the Supreme Court—A Functional Analysis*, 86 HARV. L. REV. 645 (1973).

61. Jaffe, *The Citizen as Litigant in Public Actions: The Non-Hohfeldian or Ideological Plaintiff*, 116 U. PA. L. REV. 1033, 1044 (1968).

62. *Id.* at 1044.