Passing The Bar: Article III Standing and California v. Texas (2020)

Michael Neely

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Professor Auerbach

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Part I. Introduction

California v Texas, Docket 19-840 (2020) is an upcoming Supreme Court case that is an appeal to the Fifth Circuit appellate review of the District Court case, Texas v. United States, No. 418-cv-00167 (2018) (Bruhl 490).[1] Therein, two plaintiffs from the state of Texas as well as the states Texas et al. challenged the constitutionality of The Patient Protection and Affordable Care Act (ACA).[2] California et al. subsequently intervened to defend the constitutionality of the ACA.[3] There are three issues before The Court, the first of which is procedural, and the second and third of which are substantive. The first issue is whether the individual and state plaintiffs have established Article III standing to challenge the minimum coverage provision of the ACA, section 5000A(a). This paper discusses the first issue at length by exploring the history of Article III standing with regard to the tests and doctrines the Court has used to grant standing to plaintiffs, ultimately arguing that, in this case, the individual plaintiffs should be denied standing, but the state plaintiffs should be granted standing.

Part II. The Issue of Standing

The Constitution does not permit the U.S. Supreme Court to assume any role it may desire. This restriction is owing to the fact that the Court is constitutionally limited in jurisdiction. The Case or Controversy Clause of Article III of the Constitution—the article laying out its function and role of the judiciary—elucidates what the Court is allowed to hear:

> 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, or which shall be made, under their Authority; . . . to Controversies to which the United States shall be a Party;--to Controversies between two or more States;--between a State and Citizens of another

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[1] Hereafter, I will refer to the "Supreme Court" simply as "the Court."

[2] The other states are: Utah, Arizona, North Dakota, South Dakota, Nebraska, Kansas, Missouri, Arkansas, Louisiana, Minnesota, Alabama, Georgia, Tennessee, South Carolina, Florida, Indiana, and West Virginia.

[3] The other states are: Hawaii, California, Oregon, Washington, Nevada, Colorado, Iowa, Minnesota, Illinois, Kentucky, Virginia, North Carolina, New York, New Hampshire, Massachusetts, Rhode Island, Connecticut, New Jersey, Delaware, Maryland, and Washington DC.

> State;--between Citizens of different States;--between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects." (Art. III, Sec. 2, cl. 1)

Because the Court is constitutionally authorized to hear and adjudicate only "cases or controversies," it cannot assume roles antithetical to last-resort adjudication, such as issuing advisory opinions to the legislative or executive branch. As such, the Court has sought to uphold its strictly prescribed role by imposing standards that must be met by plaintiffs and cases before the Court addresses the merits; for the Court to hear a case, it must first find that these standards have been met in the form of "doctrines of justiciability." There are four standards used to assess if a case or controversy is justiciable: first, plaintiffs must be granted standing; second, the case must be ripe for review; third, the case must not involve a political question; fourth, the case must not be moot.

The issue of standing—"whether the litigant is entitled to have the court decide the merits of the dispute or of particular issues" Warth v. Seldin, 422 U.S. 490 (1975) —has been a subject with which the Court has increasingly grappled in the progression of case law. There are variants of standing, such as taxpayer standing and prudential requirements or prudential standing, and the Court's relationship to each is diverse. Taxpayer standing permits taxpayers to challenge federal spending à la Article 1, Section 8 of the Constitution. Prudential standing is the invoking of judicial principles to restrict the Court's discretion, though prudential standing can be overridden by Congress via statute in. An example of prudential standing is the fact that the Court does not generally (there are some exclusions) allow for third party standing, which is when a plaintiff files a suit alleging that rights of another party are at stake ("*Standing*," Cornell). Prudential standing also precludes generalized grievances—when a person attempting to gain standing has only suffered an injury that affects a great many people in general ("Zone," Cornell). For this reason, The Court has adopted a "zone of interests test" that boils down to the fact that "the plaintiff's injury must fall under the zone of interests protected by that law" ("Zone," Cornell), and "The Supreme Court has referred to the zone of interests test repeatedly as a prudential consideration—one that is judge-made" (Revell 222). Aside from the history of taxpayer standing and prudential standing, which has periodically opened up more opportunities for plaintiffs to be granted standing and the formulation of Constitutional tests, the history of third party standing has been one that mostly raises the bar and subsequently precludes many suits from review (Mank 332). Still, even in the face of these judicial doctrines, justices are still permitted a broad basis of discretion for determining standing, especially determining the extent to which they pay deference to each doctrine knowing they are the highest court of authority:

> Determining standing in a particular case may be facilitated by clarifying principles or even clear rules developed in prior cases. Typically, however, the standing inquiry required careful judicial examination of a complaint's allegations to ascertain whether the particular plaintiff is entitled to an adjudication of the particular claims asserted. Is the injury too abstract, or otherwise not appropriate, to be considered judicially cognizable? Is the line of causation between the illegal conduct and injury too attenuated? Is the prospect of obtaining relief from the injury as a result of a favorable ruling too speculative? These questions and any others relevant to the standing inquiry must be answered by reference to the Art. III notion that federal courts may exercise power only "in the last resort, and as a necessity," and only when adjudication is consistent with a system of separate powers and [the dispute is one] traditionally thought to be capable of resolution through the judicial process" <u>Flast v. Cohen,</u> 392 U.S. 83 (1968). (Hellman et al. 77)

Part III. A History of Article III Standing

The Court's formulation of standing doctrines was built piecemeal, beginning with the notion of an injured plaintiff. While it is historically accurate that the first chief reference of standing came to fruition in the taxpayer form in <u>Massachusetts v. Mellon,</u> 262 U.S. 447 (1923) (more popularly known in the D.C. Circuit, <u>Frothingham v. Mellon,</u> 288 F. 252 (1923), <u>Mellon</u> (1923) was also the first case in which the Court wholly denied the concept of taxpayer standing to challenge federal spending before eventually being overridden by the Article 1, Section 8 caveat in <u>Flast v. Cohen,</u> 392 U.S. 83 (1968) (O'Brien 106). In truth, <u>Fairchild v. Hughes,</u> 258

U.S. 126 (1922) was the first case that fomented The Court's contemporary standards. The Court there held that a plaintiff cannot put forth a lawsuit in Court simply for the reason that he or she holds an interest in seeing whether a statute or amendment is valid. The implication is that the plaintiff him or herself must have been directly injured in order to be granted standing. Indeed, in two cases thereafter —<u>FCC v. Sanders Bros. Radio Station,</u> 309 U.S. 470 (1940) and <u>Scripps-Howard Radio, Inc. v. FCC,</u> 316 U.S. 4 (1942)—the Court ruled that any party at risk of injury would have sufficient standing to sue (Haddock 1435-36).

After the Court declared that an injury has been done to the plaintiff, the Court would stipulate that this injury must be causally engendered by the defendant in question. Spotlighting the necessity for the adversarial nature of a lawsuit, <u>Seldin</u> declared that a plaintiff cannot be granted standing to sue a defendant if he or she has not been directly injured by that very defendant (Haddock 1430-31). In <u>Simon v. Eastern Ky. Welfare Rights Organization,</u> 426 U.S. 26, 96 S. Ct. 1917 (1976), the Court adhered to these now unequivocal terms in denying standing to plaintiff indigents for failing to demonstrate a directly traceable relationship from the injury they sustained to the defendants they are suing (Elliott 560). In <u>Valley Forge Christian College v. Americans United for Separation of Church and State,</u> 454 U.S. 464, 102 S. Ct. 752 (1982), the Court denied standing to plaintiffs charging an Establishment Clause violation due to their suit being directed not at a statute but at an agency decision as well as failing to challenge Article 1, Section 8, which, as <u>Flast</u> (1968) made clear, is the sole source of taxpayer standing (O'Brien 141). In <u>Allen v. Wright,</u> 468 U.S. 737 (1984), the Court held that one cannot be conferred standing for demonstrating merely a generalized grievance; instead, they must demonstrate an invasion of a personal right at the hands of the alleged defendant (Elliott 560).

It was ultimately Lujan v. Defenders of Wildlife, 504 U.S. 555 (1992) that explicated the general standards for standing by creating the constitutional test contemporaneously adduced (Lorio 83). The case centered on The U.S. Defenders of Wildlife, who sought to enjoin the Court to strike down an amendment that allowed for tampering with wildlife habitation. To assess their standing, the Court articulated a tripartite test for standing, and this tripartite test is, as Justice Scalia wrote in the Court's majority opinion, as follows:

> First, the plaintiff must have suffered an "injury in fact," an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not "conjectural" or "hypothetical." Second, there must be a causal connection between the injury and the conduct complained of, the injury has to be fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court. Third, it must be "likely," as opposed to merely "speculative," that the injury will be "redressed by a favorable decision. (Lorio 83)

Because Defenders of Wildlife did not live near the site they seek to protect, the Court found that their injury would not be "actual or imminent." As such, plaintiffs were denied standing.

The Court's history on standing since Lujan (1992) has been variable. On the one hand, in the years following Lujan (1992), the Court seemed to relax and expand the tripartite test. For example, in FEC v. Akins, 524 U.S. 11 (1998), the Court held that:

> . . . individuals had standing to challenge the FEC's failure to require a private political organization to disclose its campaign activities, as the plaintiffs claimed was required by law. The Court reasoned that their injury "consists of their inability to obtain information" that "the statute requires that [the political organization] make public." Despite the fact that this "informational injury" was widely shared, the Court determined that it was "sufficiently concrete and specific" to satisfy Article III. Even so, the Court was careful to distinguish between palpable injuries, like the withholding of information, which happened to be widely shared, and other injuries that are more "abstract and indefinite." For example, injuries arising from a mass tort would be widely shared, but because of the concrete nature of that injury, standing would never be in doubt. By contrast, the Court in Akins was clear that an injury "to the interest in seeing that the law is obeyed" would not qualify as an injury in fact." (Haddock 1438).

Moreover, in Ortiz v. Fibreboard Corp., 527 U.S. 815 (1999), the Court noted, but did not decide, the question of whether Article III applies to absent class members (Evangelis 388). In Massachusetts v. EPA, 549 U.S. 497 (2007), the Court expanded Lujan's doctrine of procedural rights (the Court's standards) by claiming that "Congress has the power to define injuries and articulate chains of causation that will give rise to a case or controversy where none existed before" (McDougall 173). Furthermore, in First American Financial Corp v. Edwards, 567 U.S. 756 (2012), the Court declined to decide whether the plaintiff had standing; instead, the justices issued a per curiam opinion that dismissed the writ of *certiorari* as "improvidently granted" (Ballard Spahr LLP).[4]

On the other hand, Lujan's (1992) tripartite test has largely not been easy to pass; in fact, many cases have been denied an appraisal of their merits for precisely the reason that the plaintiffs were denied standing. In Elk Grove Unified School District v. Newdow, 542 U.S. 1 (2004), the Court denied standing to an establishment clause violation (Revell 237). In Arizona Christian School Tuition Organization v. Winn, 563 U.S. 125 (2011), the Court denied standing plaintiffs to Arizona taxpayers who sought to challenge the expenditure of state funds to private religious schools. In Hollingsworth v. Perry, 570 U.S. 693, 133 S. Ct. 2652 (2013), the Court denied standing to proponents of California's ban on same-sex marriage, also known as Proposition 8, arguing that they lacked a direct stake in the outcome of the appeal. Their interest, according to the Court, was too general rather than particular: because it was no different from any other citizen who thought ideologically alike, plaintiffs' injury was not particularized and thus not sufficient to be conferred standing (Evangelis 386).

Scholarship has contended that the Court's denial of standing on grounds of prudence can be as political as it is procedural. When political motives can cloud a particular case, the Court can refuse to either deny standing or grant it even when the plaintiffs arguably should not have been granted it:

[4] Hereafter, *cert.* for short.

> Consider the situation in which all plaintiffs in a given case may well lack standing but some potential plaintiffs somewhere probably have it. In *King v. Burwell*, the 2015 case challenging the availability of subsidies under the Affordable Care Act, there were serious doubts about the standing of most of the plaintiffs, perhaps all of them. Let us suppose that careful investigation would have shown that none of the plaintiffs had standing. Still, the government would have little incentive to seek dismissal on that ground. Plenty of other potential plaintiffs throughout the country certainly had standing to challenge the subsidies, and, win or lose, the government had an interest in obtaining the Supreme Court's definitive resolution of the subsidies' legality. (Bruhl 484-85)

When the Court denies standing, it will often remand the case to inferior courts to decide for them. For instance, Spokeo, Inc. v. Robins, 578 U.S. __ (2016) regarded Thomas Robins' lawsuit against the website Spokeo, a site that publishes personal and private information about people. Robins charged that the site spread false information about him. Although the issue involved whether Congress could permit a cause of action in the form of a violation of a federal statute that would then be sufficient to confer Article III standing, the Court remanded the case back to the Court of Appeals for not deciding whether the plaintiffs had standing (Plave 487). In a more recent class-action suit, Frank v. Gaos, 586 U.S. __ (2019), the Court once again remanded the suit to a lower court, holding that the question of standing is still in consideration (Plave 488). Evidently, when the Court does not want to address the merits for whatever reason, denying standing best precludes an appraisal of the at times contentious merits.

Part IV. Opinion on Article III Standing in California v. Texas

Justice Neely delivers the opinion of the court.

Today we resolve the issue of standing with regard to the individual and state plaintiffs challenging the minimum coverage provision of the ACA, section 5000A(a). Since there are two sets of plaintiffs in question, our opinion will be twofold. The first aspect of this issue we are asked to resolve is whether the individual plaintiffs, in this case, have established Article III standing.

As The Court made clear in Seldin, for a plaintiff to achieve standing he "must assert his own legal rights and interests, and cannot rest his claim to relief on the legal rights or interests of third parties." Indeed, the text says *he* in the singular sense, implying that as long as one party, even if there may be multiple, has met all three prongs established in Lujan, the Court may confer standing to at least this one party. Although there is some new scholarship from individuals such as A.P. Bruhl making the case for why each plaintiff should be conferred standing first before a court proceeds to the merits, it has been long-established precedent for this Court to grant standing so long as one party passes the standards because, although judgments are concededly person-specific, in this case, all plaintiffs are seeking the same declaratory relief in striking down the minimum coverage provision. Because this Court used the one plaintiff rule in Sebelius (2012), it is fitting that we do so here.

We have recently instructed that "in an era of frequent litigation [and] class actions, … courts must be more careful to insist on the formal rules of standing, not less so" Winn (2011). As such, we adhere to our formal rules with utmost rigidity no less in this case than we would in any other.

In this vein, we conclude that the individual plaintiffs have not demonstrated an injury-in-fact sufficient to be conferred standing. We concede that being singled out and penalized for not signing up for private health insurance is a particularized form of injury, for though it may be endemic to many, Akins (1998) was quite clear in precluding the notion that widespread injuries cannot themselves be particular and imminent:

> . . . The Court was careful to distinguish between palpable injuries, like the withholding of information, which happened to be widely shared, and other injuries that are more "abstract and indefinite." For example, injuries arising from a mass tort would be widely shared, but because of the concrete nature of that injury, standing would never be in doubt. By contrast, the Court in Akins was clear that an injury "to the interest in seeing that the law is obeyed" would not qualify as an injury in fact. (Haddock 1438)

Before the Tax Cuts and Jobs Amendment of 2017 (TCJA), the minimum coverage provision singled out individuals and forced them to sign up for health insurance by threat of penalty to the IRS. But this penalty is what forms the basis for that coercive injury in the first place; spending money for no other reason than coercion is the animation of the injury necessitated to bring forth the lawsuit. Without an injury, there is no lawsuit to be constitutionally entertained by this Court; without a case or controversy to adjudicate, there is no role for the Court in this case. The majority for the Fifth Circuit granted standing to these individuals, contending that forcing them to spend money on health insurance is itself an injury. But without the fiscal penalty, as the dissent noted there is no injury inflicted, for the plaintiffs have not experienced any injury up until the point when they are fined. Because they are not fined, the injury is absent.

Even if we were to concede that the plaintiffs are suffering an injury, they would still be denied standing. The dissent noted that any injury is self-inflicted because it is ultimately the choice of these individuals if they wish to opt into the minimum coverage provision. A self-inflicted injury, even if it meets the first prong of Lujan, does not hold water with regard to the second prong, where the injury must be causally traced to the purveyor of that injury. A self-inflicted injury does not allow for traceability to another party, for, as the nomenclature suggests, the injury is solely "self-inflicted."

For these reasons, we deny standing to the individual plaintiffs.

The second part of the standing issue is whether the state plaintiffs, in this case, have established Article III standing to challenge the minimum coverage provision of the ACA, section 5000(A).

As THE CHIEF JUSTICE put it in Massachusetts (2007), "When dealing with legal doctrine phrased in terms of what is "fairly' traceable or "likely' to be redressed, it is perhaps not surprising that the matter is subject to some debate" (McDougall 108). Indeed, the impugnable nature of justices' discretion in appraising a plaintiff's relationship to the second prong is what is at issue with regard to the state plaintiffs, and what we here adjudicate.

State plaintiffs should be granted standing. Applying the Lujan test, plaintiffs pass the first prong because they are incurring costs to which they would not incur absent the coercion of the individual mandate. The individual mandate is an injury endemic to them, and in keeping with Akins, we know that merely because the injury may be widespread does not make it any less particularized relative to those whom it does not affect. Although the dissent for the Fifth Circuit noted that the state plaintiffs do not meet the second prong of traceability, we hold that that Court erred in its analysis. That court maintained that there lacked causal evidence that would prove state citizens were enrolling in Medicaid solely due to the minimum coverage provision.

The second prong of Lujan states, "there must be a causal connection between the injury and the conduct complained of, the injury has to be fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court." We may pay particular heed to the term "causal," and note that a causal relationship does not necessarily foreclose the possibility of multiple causes engendering one effect. In fact, often enough there may be multiple causes, and as long as there is one sufficient to be linked to the injury-in-fact, the second prong has been met. Therefore, there is no need for evidence to be summoned that would reveal a sole causal relationship between those enrolling in Medicaid and the coercion of the minimum coverage provision. So long as plaintiffs demonstrate that the two are linked insofar as increasingly correlative frequency, we may suffice to say that the minimum coverage provision is having an evidently substantial effect on those who are buying health insurance. Though it may not be the only reason why there is an increase in health insurance purchases, that there is one reason at all is sufficient.

Furthermore, how one would meet the second prong by the dissent's standards is impugnable. There is no lucid method by which to illustrate that state employers are buying into Medicaid for the sole reason of the minimum coverage provision; it is always doubtful whether those who even answer in the affirmative are being honest about their motives on the record. Motives can be too abstract to assess, so the better tactic is to look at the number of individuals purchasing health insurance at the time the individual mandate was signed into law measured relative to how many were buying into or canceling it once the mandate was set to zero. If the two are proportionally congruent, there exists a causal relationship; ergo, the second prong of traceability has been sufficiently met.

For these reasons, we grant standing to the state plaintiffs.

The judgment of the Court of Appeals for the Fifth Circuit is upheld in part with regard to the individual plaintiffs but reversed in part with regard to the state plaintiffs.

It is so ordered.

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