

3.3: Standing

3.3.1 Introduction

Article III of the US Constitution grants the judiciary the power to hear “cases” and “controversies,” meaning that a dispute must be appropriate for judicial determination. This requirement means that a plaintiff must have **standing** as a prerequisite for a court to hear the case. This is a procedural legal issue, and it requires the case to be brought at the right time, or the court will dismiss the case. In other words, the dispute must be **ripe** for adjudication (i.e., the facts of the dispute are not hypothetical, and the factual circumstances have advanced sufficiently beyond mere possibilities of legally recognized harm.) On the other end of the spectrum, if the case is brought too late, the case is **moot**, which also deprives a plaintiff of standing.

✓ Example 3.3.1

Ripeness. Assume that a state is debating whether to pass a law that would require thirty hours of financial management classes before anyone is allowed to form a company. Sally wishes to form a company and hears about the debate. Sally doesn't want to take thirty hours of classes and decides to sue the state, claiming that the law is unconstitutional. The lawsuit would be dismissed because the law hasn't yet been passed and thus is not ripe for adjudication.

✓ Example 3.3.2

Mootness. Referring to Example 3.3.1, assume that the state passed the law, and then Sally filed her lawsuit. However, while her lawsuit was pending, the state repealed the law. The court would dismiss the lawsuit because any decision about whether the law was constitutional would be pointless, which makes the case moot.

Plaintiffs must establish that they have standing when they file their lawsuit. Generally, the plaintiff must *allege* that they have a genuine stake in the case's outcome because:

1. they have personally suffered a harm that is actual, concrete and particularized;
2. the harm is fairly traceable to the defendant's unlawful actions; and
3. if the plaintiff receives a favorable decision, the court has the ability to provide redress (i.e., the court has the ability to do something about it, such as ordering compensation).^[1]

3.3.1.1 Actual and Concrete Harm

Actual and concrete harm is a harm that is not hypothetical or abstract.^[2]

✓ Example 3.3.3

Mary regularly plays VR games. A company releases a new virtual reality (VR) game. During the game, players are exposed to various flashing and flickers lights and rapidly alternating colors that can cause people with photosensitive epilepsy to experience adverse effects, such as seizures. The game included a warning: "Discretion is advised: This content contains sequences of flashing lights that may trigger discomfort or seizures in individuals with certain sensitivities."

Mary has photosensitive epilepsy but purchased and played the game anyway. During the gameplay, Mary experienced severe epileptic seizures. She provides medical documentation from her neurologist, showing that her condition has worsened since playing the game, including increased frequency and severity of seizures. Since playing the game, Mary also has not been able to work regularly and has had to seek psychological care and additional neurological treatment.

In this example, Mary can meet the harm requirement for standing. She can allege that she suffered actual and concrete injuries in the form of physical and psychological harm, lost wages, and increased healthcare expenses.

Case in Point

In the 1982 U.S. Supreme Court case of Valley Forge Christian College v. Americans United for Separation of Church and State, Inc., the federal government had transferred ownership of a former military hospital, appraised at \$577,500, to a church-related college at no cost.

The respondent organization and some of its employees brought suit, alleging this appropriation of taxpayer dollars violated the Establishment Clause of the [First Amendment](#) by contravening the principle of the "separation of church and State." However, the Court did not determine whether the property transfer violated the First Amendment because mere grievances and the "psychological consequence presumably produced by observation of conduct with which one disagrees" is not an actual harm and concrete harm.

3.3.1.2 Particularized Harm

A particularized harm is a harm that specifically has affected the plaintiff individually and personally, not some other party or an entire population.^[3]

✓ Example 3.3.4

A consumer files a lawsuit against a car manufacturer, claiming that a recalled vehicle model is defective and dangerous. However, the consumer never owned, leased, or even drove that model. Because they have not *personally* suffered any harm or financial loss, the court will dismiss the case for failing to have a particularized harm.

Case in Point

In Gill v. Whitford, after the Wisconsin Legislature passed a statewide redistricting law, and a group of 12 Democrat voters filed suit, claiming that the law's partisan gerrymandering was unconstitutional. The petitioners claimed that the law harmed Wisconsin Democrats by diluting votes of Democratic constituents, thus impeding the ability to elect Democrats to the legislature. However, the 12 petitioners could not demonstrate that the "dilution of votes" statewide harmed their individual voting interests in their particular voting district. Consequently, the U.S. Supreme Court held that the petitioners did not meet the particularized harm requirement.

3.3.1.3 Causation

The plaintiff must articulate that the alleged harm is fairly traceable to the defendant's wrongful conduct. The causal connection between the defendant's conduct and the harm must be demonstrable, not speculation or conjecture.

✓ Example 3.3.5

John lives on a beachfront property in a town on the southeastern coast of the U.S., and nearby is a beachfront hotel. There is a lot of construction going on up and down the coastline. Over the last few years, John has noticed the beach on his property eroding. John sues the hotel, claiming that the hotel's construction and other activities are causing his property to erode. Although John has evidence of harm (his eroding land), it is too speculative to trace his harm to the hotel's conduct because so many other factors may be directly related to his harm, such as natural movement of the waves, rising sea levels, and construction projects unrelated to the hotel.

Case in Point

Murthy v. Missouri involved the states of Missouri and Louisiana, and five social media users, suing several federal Executive Branch officials and agencies, claiming that the officials and agencies violated the First Amendment by pressuring social media platforms to suppress protected speech. During the 2020 election season and the COVID-19 pandemic, social media platforms announced that they would enforce their pre-existing content moderation policies against users who posted false and misleading content. For example, various platforms deleted posts that is considered false, including posts related to purported treatments, cures, and the utility of social distancing and masks.

Also during this time, government officials interacted with social media platforms about their efforts to suppress vaccine misinformation out of concern for public health. Also, agencies—including the FBI—communicated with platforms about concerns about election-related misinformation posted by social media users. The plaintiffs contended that the government's involvement unconstitutionally interfered with their free speech rights and wanted a court injunction to cease the government's alleged interference.

The Supreme Court ruled that the plaintiffs failed to demonstrate that if their speech had been suppressed, they could not establish whether it was fairly traceable to the government officials and agencies that they sued, as opposed to the social media platforms, which were already moderating content.

3.3.1.4 Redressability

In addition to the requirements discussed above, the plaintiff's must show that if the court would find in favor of the plaintiff, the plaintiff's requested remedy would redress the alleged harm. For example, if the plaintiff requests that the court issue an injunction against the defendant's conduct, an injunction would remedy or prevent future harm.

✓ Example 3.3.6

Sally lives in an area of the U.S. that has increasingly suffered from severe droughts and wildfires related to global climate change. Sally sues the U.S. government, alleging that the U.S.'s foreign aid policies to other countries have worsened climate change, leading to the droughts and wildfires. Even if the court issues an injunction to cease the foreign aid, the injunction

would have little to no impact on climate change in Sally's region because of the complex, global factors affecting the climate that are beyond the government's control.

Cases in Point

Newdow v. Roberts

Michael Newdow (and other individuals, collectively referred to as "Newdow") intended to attend or otherwise view the January 20, 2009 presidential inauguration ceremony of Barack Obama. Meanwhile, leading up the inauguration, various entities were preparing for the inaugural ceremony and related activities (e.g., military services, equipment, security, etc.). Federal statutes authorize this organization and planning, however, none of these laws require it. In fact, no law requires an inaugural ceremony to take place at all; it is a matter of tradition. The President-elect has the discretion to proceed with a ceremony and to choose what to include in the ceremony.

Here, the preparations included arranging for two ministers to lead prayers and for the Chief Justice of the United States, John Roberts, to administer the oath of office, which customarily ends with the phrase, "So help me God." However, Newdow filed suit against Chief Justice Roberts and a multitude of individuals and entities involved in organizing and administering the ceremony, requesting the court to issue an injunction to prohibit ceremonial prayers and the reference to God during the oath office, both for this and future inaugurations. Newdow claimed that the religious aspects of the ceremony violated the Establishment Clause of the [First Amendment](#).

Among the legal issues the D.C. Circuit Court of Appeals decided was that Newdow did not standing because an injunction would not have redressed the purported constitutional injury. If a President-elect wishes to proceed with these ceremonial rituals, then the law permits them; the law neither requires them nor prohibits them, including whether the Chief Justice is the individual to administer the oath of office. An injunction against the defendants would only prevent *those* individuals carrying out ceremonial plans and rituals; it would not prevent anyone else, for example, from issuing the oath of office or saying prayers. Therefore, the requested injunction would not redress any alleged harm. Consequently, Newdow did not have standing.

Allen v. Wright

The issue in this case was whether parents of Black students had standing to challenge the IRS's tax-exempt status for discriminatory private schools. At the time, the Internal Revenue Code included guidelines and procedures for determining when a school's practices were deemed "racially nondiscriminatory," and if a school failed to meet these standards and procedures, the IRS would deny tax-exempt status to the school.

The parents of Black children who were attending public schools in seven States in school districts undergoing desegregation brought a nationwide class action in Federal District Court against government officials, alleging that the IRS standards and procedures were insufficient, allowing various private schools continuing to receive tax-exempt status despite engaging in discriminatory practices. The parents' argued that this encouraged White children to leave the public schools and instead attend discriminatory private schools, harming Black children's opportunity to receive an education in desegregated public schools.

Notably, the parents did not allege that their children had ever applied or would ever apply for admission to any private school. Thus, it was merely speculative that the alleged harm—education in a desegregated school—would be fairly traceable to the IRS unlawfully granting tax-exempt status to discriminatory private schools (see [Causation](#), above).

The Court also held that the parents could not establish that a favorable decision would redress the alleged harm. If the IRS did revoke tax exemptions to the discriminatory schools, there was no guarantee that private schools would stop discriminating or that racial integration in the public schools would improve (particularly with respect to the schools in the parents' respective school districts).

Remember

It is important to remember that whether standing exists does *not* depend on whether the plaintiff ultimately will produce sufficient evidence to prove their case. The court determines standing based on whether the allegations in the complaint, *if* proven, would make the case sufficient for adjudication.

Notes

1. Library of Congress. (n.d.). [Overview of standing](#). Constitution Annotated. ↩
2. Library of Congress. (n.d.). [Concrete injury](#). Constitution Annotated. ↩
3. Library of Congress. (n.d.). [Particularized injury](#). Constitution Annotated. ↩

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