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Allen v. Wright: Standing beyond the Bounds of Article III

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Sections 501(a) and 501(c)(3) of the Internal Revenue Code (Code) mandate that racially discriminatory schools be denied both tax-exempt status and eligibility for tax-deductible contributions under section 170 of the Code.\(^1\) To implement these Code sections the Internal Revenue Service (IRS) has issued guidelines for determining whether a private school seeking tax-exempt status is racially discriminatory.\(^2\) These guidelines, however, have proved ineffective—

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   I.R.C. § 501(a) (1982) provides: "An organization described in subsection (c) or (d) or section 401(a) shall be exempt from taxation under this subtitle . . . ."

   I.R.C. § 501(c)(3) (1982) provides: "The following organizations are referred to in subsection (a): . . . Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, . . . or educational purposes, . . . no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation, . . . and which does not participate in, or intervene in . . . any political campaign . . . ."

   I.R.C. § 170(a)(1) (1982) provides: "There shall be allowed as a deduction any charitable contribution (as defined in subsection (c)) payment of which is made within the taxable year."

   I.R.C. § 170(c)(2) (1982) defines a "charitable contribution" as "a contribution or gift to or for the use of . . . a corporation, trust, or community chest, fund, or foundation . . . organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, . . . no part of the net earnings of which inures to the benefit of any private shareholder or individual; and which is not disqualified for tax exemption under section 501(c)(3) . . . ."

   The IRS ruled in 1971 that §§ 501(a) and 501(c)(3) required it to deny tax-exempt status to racially discriminatory schools. Rev. Rul. 71-447, 1971-2 C.B. 230. Until 1965 the IRS had granted tax exemptions to all educational institutions that satisfied the requirements enumerated in § 501(c)(3) without regard to whether the institution was racially discriminatory. From 1965 to 1967 it imposed a freeze on applications for tax-exempt status from racially discriminatory schools. From 1967 to 1970 the IRS approved applications for tax-exempt status from racially discriminatory schools unless it appeared that such schools were so connected with the state that their actions would be considered discriminatory state action and, therefore, unconstitutional. Green v. Kennedy, 309 F. Supp. 1127, 1130 (D.D.C.), appeal dismissed sub nom. Cannon v. Green, 398 U.S. 956 (1970).

   In 1970 the IRS announced that it no longer legally could justify granting tax-exempt status to racially discriminatory schools. IRS News Release (July 10, 1970), reprinted in [1970] 7 STAND. FED. TAX REP. (CCH) ¶ 6790. The reasoning behind this policy change was revealed in a 1971 revenue ruling. The IRS had determined that section 501(c)(3)'s requirement that an exempt organization be "organized and operated exclusively for religious, charitable, . . . or educational purposes" was intended to reflect the common-law notion of charity. Rev. Rul. 71-447, 1971-2 C.B. 230. This determination led the IRS to conclude that this section was designed to benefit only those organizations that operated as common-law charities. Common-law charities were subject to the restriction that their activities be consistent with public policy. Because the operation of a racially discriminatory private school violated the federal public policy against discrimination in education, the IRS ruled that such schools failed to qualify for tax exemptions and that donations to such schools were not tax deductible. Id. The IRS borrowed the reasoning of the United States District Court for the District of Columbia in Green v. Connally, 330 F. Supp. 1150 (D.D.C.), aff'd mem. sub nom. Coit v. Green, 404 U.S. 997 (1971), in making this ruling. See infra notes 13-19 and accompanying text.


   The injunction issued in Green enjoined and restrained the IRS from approving applications for tax-exempt status for private schools in Mississippi unless the school had publicized its policy of racial nondiscrimination in a manner reasonably effective in bringing the policy to the attention of minority groups; referred to its policy of nondiscrimination in its brochures, catalogues, and other advertisements; and certified that it had made no statements or taken any actions qualifying its
even schools that have been adjudged discriminatory have been able to satisfy the
guidelines and maintain their tax-exempt status. In 1977 parents of black
schoolchildren filed suit to compel the IRS to adopt more stringent guidelines.
Their case reached the Supreme Court as Allen v. Wright, but the Court de-
clined to reach the merits of the case; the Court held that neither of the two
injuries alleged by plaintiffs was sufficient to give them standing to challenge the

guidelines. The school also must have provided the IRS with data on the racial
composition of its student body, applicants for admission, and faculty and administrative staff; on
the amount of scholarship and loan funds awarded and the racial composition of students who received such awards; and on whether any of its incorporators, founders, board members, or donors of land or buildings were organizations or members of organizations that had as a goal the mainte-
nance of segregation in school education. Id. at 1179-80. The injunction defined a policy of racial
 nondiscrimination as meaning that the school "admitt[ed] the students of any race to all the rights,
 privileges, programs and activities generally accorded or made available to students at that school" and did not discriminate on the basis of race "in the administration of educational policies, applica-
tions for admission, . . . scholarship and loan programs, and athletic and extra-curricular pro-
grams." Id. at 1179. Surprisingly, the injunction did not expressly require the IRS to determine
that a school actually had implemented a policy of racial nondiscrimination before granting the
school tax-exempt status. For a discussion of the facts of Green, see infra notes 15-22 and accompa-
nying text.

guidelines were replaced by slightly stricter guidelines in 1975. See Rev. Proc. 75-50, 1975-2 C.B. 587. The 1975 guidelines generally require that schools adopt and publicize their adoption of a
policy of nondiscrimination. This policy must be included in the school's charter and made known to
the community served by the school. Schools are required to provide the IRS with a statistical
breakdown by race of their faculty, student body, administrative staff, and scholarship and loan
recipients. They also must state whether any of their incorporators, founders, board members, or
donors of land or buildings had or have as an objective the maintenance of segregated education.
Schools also must keep documents verifying their compliance with the guidelines and annually cer-
tify their compliance under penalty of perjury.

3. In statements before the Subcommittee on Oversight of the House Committee on Ways and
Means, Jerome Kurtz, Commissioner of Internal Revenue, stated:

[The Service's procedures are ineffective in identifying schools which in actual operation
discriminate against minority students . . . .]

A clear indication that our rules require strengthening is the fact that a number of
private schools continue to hold tax exemption even though they have been held by Federal
courts to be racially discriminatory. This position is indefensible.

Proposed IRS Revenue Procedure Affecting Tax-Exemption of Private Schools: Hearings Before the Subcomm. on Oversight of the House Comm. on Ways and Means, 96th Cong., 1st Sess. 5 (1979)
[hereinafter cited as Hearings]. The IRS attempted to revise its guidelines in 1978. See 43 Fed. Reg. 37,296 (1978) (proposed Aug. 21, 1978). After evaluating public response to the proposed revisions, the IRS released a new set of guidelines that were to take effect on January 1, 1980. These guidelines established that a school which was formed or substantially expanded during public school desegre-
gation and had an insignificant minority enrollment would be classified "reviewable" and rebuttably presumed discriminatory if the IRS determined that its creation or expansion was related in fact to the
desegregation of public schools in the area. Such schools were to be provided an opportunity to
explain their low minority enrollment and to document their efforts to recruit minority students
12, 1979); see generally Hearings, supra, at 5 (statement of Jerome Kurtz, Commissioner of the
Internal Revenue Service) (explaining what proposed guidelines would require and how they
would be implemented). Congress blocked the implementation of these guidelines, however, by amending the Treasury Appropriations Bill to withhold funds for their enforcement until October 1980. See
Similar spending restrictions, including a restriction on use of funds to enforce court orders entered
after August 1978, continued in effect until January 1, 1984. Id.


IRS guidelines.6

This Note reviews the Supreme Court's discussion of standing in *Wright*7 and analyzes the Court's application of its standing test to the facts of *Wright*.8 The Note criticizes the Court's overly stringent application of the causation element of its standing test.9 It concludes that the Court's decision unduly impairs access to the courts by victims of unlawful government conduct and leaves the government free to lend substantial support to racially discriminatory institutions.10

The IRS guidelines challenged by the *Wright* plaintiffs were adopted in 1975 to effectuate an IRS ruling that a school applying for tax-exempt status must demonstrate that it admits the students of any race to all the rights, privileges, programs, and activities generally accorded or made available to students at that school and that the school does not discriminate on the basis of race in administration of its educational policies, admissions policies, scholarship and loan programs, and athletic and other school-administered programs.11 This ruling was made in 1971 following the IRS's announcement in 1970 that it could "no longer legally justify" its former policy permitting racially discriminatory schools to be granted tax-exempt status.12 The 1970 policy change was made after the United States District Court for the District of Columbia in *Green v. Kennedy*13 preliminarily enjoined the IRS from continuing to grant tax-exempt status to racially discriminatory schools in Mississippi.14

The district court decided the merits of *Green* in 1971.15 Plaintiffs in *Green*...
were parents of black schoolchildren who sought to enjoin the IRS from granting tax-exempt status to racially discriminatory private schools in Mississippi. They alleged that the IRS's pre-1970 policy was unconstitutional and contrary to statute. In light of the federal policy against racial segregation in schools, the court held that the Code's provisions could not be construed in a manner that would give racially discriminatory schools the same tax benefits given to charitable organizations.

The court made it clear that any contrary interpretation of the Code would "raise serious constitutional questions": "If the [IRS] had not adopted its July, 1970, interpretation, and if this court had acquiesced in the pre-1970 interpretation, we would in all likelihood have been required by the Constitution to enter a decree ordering the Service to cease violating plaintiffs' constitutional rights." The court issued a permanent injunction allowing the IRS to grant tax-exempt status to private schools in Mississippi only if the school had publicized its adoption of a policy of nondiscrimination and had provided the IRS with sufficient information to determine whether the school actually had established such a policy. The Supreme Court summarily affirmed the district court's opinion.

Plaintiffs in Green reopened the case in 1976 alleging that the IRS was failing to comply with the court's injunction. Wright was filed shortly thereafter; the United States District Court for the District of Columbia consolidated about during the pendency of Bob Jones Univ. v. United States, 103 S. Ct. 2017 (1983), in which plaintiff university asserted a right to tax-exempt status despite its religiously mandated racially discriminatory policies. Again, the IRS argued that its reversal made the case moot and urged dismissal. The Supreme Court, however, declined to vacate the case as moot. Bob Jones Univ. v. United States, 456 U.S. 922 (1982). William Coleman, Jr., was invited to present arguments in favor of the IRS's former position to preserve the adversarial nature of the case. Id. McCoy and Devins also have criticized the Court's refusal to hold Bob Jones moot. McCoy & Devins, supra, at 464.

The flip-flops in IRS policy during the pendency of Green and Bob Jones illustrate the danger of allowing cases to be rendered moot based on administrative changes of position on issues not governed by express statutory language or judicial decisions. The viewpoint advocated by McCoy and Devins would allow the IRS to escape litigation of an issue ad infinitum simply by announcing a policy change each time it is faced with hostile litigation.

Ten days after the announcement that the IRS no longer would deny tax-exempt status to racially discriminatory private schools, the Reagan Administration proposed legislation that expressly would have denied tax-exempt status to racially discriminatory schools. S. 2024, 97th Cong., 2d Sess. (1982), reprinted in [1982] 10 STAND. FED. TAX REP. (CCH) ¶ 6155. Congress responded to the proposed bill by asserting that current Code provisions already prohibited the granting of such exemptions. S. Con. Res. 59, 97th Cong., 2d Sess. (1982). The Supreme Court settled the disagreement by holding in Bob Jones that current statutes did require the IRS to deny tax-exempt status to racially discriminatory schools. Bob Jones, 103 S. Ct. at 2030-31.

18. Id. at 1171.
19. Id. at 1179-80; see supra note 2.
dated the two actions in April 1977.\textsuperscript{22}

Plaintiffs in \textit{Wright} were black parents whose children attended public school in desegregating school systems. The parents sought an injunction prohibiting the IRS from granting tax-exempt status to racially discriminatory private schools and requiring the IRS to adopt more rigid guidelines for determining whether a school was racially discriminatory. They alleged that IRS guidelines permitted schools to acquire tax-exempt status "merely on the basis of adopting and certifying—but not implementing—a policy of nondiscrimination," and thus did not comply with section 501(c)(3)'s requirement that racially discriminatory schools be denied tax-exempt status.\textsuperscript{23} The essence of plaintiffs' complaint was that the grant of federal tax exemptions to such schools unconstitutionally supported racially segregated educational institutions by fostering and encouraging the "organization, operation and expansion" of racially segregated schools for "white children avoiding attendance in desegregating public school districts."\textsuperscript{24}

The district court dismissed the case in November 1979 on the grounds that the \textit{Wright} plaintiffs lacked standing and had presented a nonjusticiable issue.\textsuperscript{25} The \textit{Green} plaintiffs' action survived, however, because the court ruled that they had standing to litigate their rights under the injunction.\textsuperscript{26}

The United States Court of Appeals for the District of Columbia Circuit reversed the dismissal of \textit{Wright}.\textsuperscript{27} The court of appeals relied on the Supreme Court's summary affirmance of \textit{Green} and the Supreme Court's decisions in \textit{Gilmore v. City of Montgomery}\textsuperscript{28} and \textit{Norwood v. Harrison}\textsuperscript{29} in holding that the \textit{Wright} plaintiffs had standing. The court categorized \textit{Simon v. Eastern Kentucky Welfare Rights Organization},\textsuperscript{30} a Supreme Court decision that weighed against granting standing, as part of a "divergent" line of precedent that was the "wrong frame" for the \textit{Wright} case.\textsuperscript{31}

The Supreme Court rejected the analysis of the court of appeals. Applying a three-pronged constitutional test of standing,\textsuperscript{32} the Court concluded that

\begin{itemize}
\item\textsuperscript{22} See id.
\item\textsuperscript{23} Wright, 104 S. Ct. at 3321 (quoting appellants' brief).
\item\textsuperscript{24} Id. at 3322.
\item\textsuperscript{26} Wright v. Regan, 656 F.2d 820, 822 (D.C. Cir. 1981), rev'd sub nom. Allen v. Wright, 104 S. Ct. 3315 (1984). The \textit{Green} plaintiffs ultimately were successful in getting most of the relief they requested. See id.
\item\textsuperscript{27} Id. at 838.
\item\textsuperscript{28} 417 U.S. 556 (1974).
\item\textsuperscript{29} 413 U.S. 455 (1973).
\item\textsuperscript{31} Wright v. Regan, 656 F.2d 820, 828-29 (D.C. Cir. 1981), rev'd sub nom. Allen v. Wright, 104 S. Ct. 3315 (1984). The court of appeals also held that the issues raised in \textit{Wright} were justiciable. Id. at 838.
\item\textsuperscript{32} See infra text accompanying note 33. Article III of the Constitution limits the jurisdiction of federal courts to "cases" and "controversies." U.S. CONST. art. III, § 2. The Supreme Court's standing test is intended to determine whether the issue before the Court is being presented in the context of a case or controversy. See L. Tribe, \textit{American Constitutional Law} § 3-18, at 80
\end{itemize}
plaintiffs had failed to allege an injury that gave them standing to challenge the IRS guidelines. The Court's standing test required that (1) the injury suffered by plaintiffs be "distinct and palpable," (2) that the injury be "fairly traceable" to the challenged conduct, and (3) that relief from the injury be "likely" to result from a favorable decision.\(^3^3\) The first prong requires that the injury suffered by the plaintiff be judicially cognizable. The second and third prongs form the causation element of the standing inquiry—they are not satisfied unless the plaintiff's injury was caused by the defendant's conduct. Thus these three prongs ensure the existence of a genuine case or controversy.\(^3^4\)

As read by the Court, the complaint in \textit{Wright} described two injuries resulting from the IRS's allegedly unlawful conduct: "First, . . . [plaintiffs] are harmed by the mere fact of Government financial aid to discriminatory private schools. Second, . . . the federal tax exemptions to racially discriminatory private schools in their communities impair their ability to have their public schools desegregated."\(^3^5\) The Court held that the first injury was not judicially cognizable. Interpreted as "a claim . . . to have the Government avoid the violation of law,"\(^3^6\) the first injury asserted a right that the Court refused to recognize as a basis for standing. The Court stated that the "'assertion of a right to a particular kind of Government conduct, which the Government has violated by acting differently, can not alone satisfy the requirements of Article III without draining those requirements of meaning.'"\(^3^7\)

The Court also interpreted the first injury as presenting a claim of stigmatization resulting from racial discrimination. Although the Court recognized this type of injury as sufficient to confer standing, it concluded that stigmatic injury conferred standing only on persons who alleged that they personally had been denied equal treatment. The Court believed that to allow this type of injury to confer standing on persons who did not allege a personal denial of equal treatment would "transform the federal court into '. . . a vehicle for the vindication of . . . concerned bystanders'" and would extend standing to all members of the racial group against which the government allegedly was discriminating.\(^3^8\)

(1978). Thus, the doctrine of standing focuses on whether a party has a sufficient stake in the outcome of a controversy to pursue judicial resolution. \textit{Id.} § 3-17, at 79. It has been suggested that the Constitution's requirement of a case or controversy is not a requirement that a party have a personal stake in the controversy. \textit{See} Berger, \textit{Standing to Sue in Public Actions: Is it a Constitutional Requirement?}, 78 \textit{Yale L.J.} 816 (1969).

\(^{33}\). \textit{Wright}, 104 S. Ct. at 3325.
\(^{34}\). \textit{See} L. Tribe, \textit{supra} note 32, § 3-21, at 96-97.
\(^{35}\). \textit{Wright}, 104 S. Ct. at 3326.
\(^{36}\). \textit{Id.}
\(^{37}\). \textit{Id.} at 3327 (quoting Valley Forge Christian College v. Americans United for Separation of Church & State, Inc., 454 U.S. 464, 483 (1982)).
\(^{38}\). \textit{Id.} (quoting United States v. Students Challenging Regulatory Agency Procedures, 412 U.S. 669, 687 (1973)).

Generally, private litigants do not have standing to assert the rights of others. For example, in Sierra Club v. Morton, 405 U.S. 727 (1972), the Sierra Club was denied standing to assert the rights of third parties who used Mineral King Valley. The Club would have had to allege that its members visited and recrested in the valley to have standing. This third-party rule, however, is a "'rule of practice'" rather than a "'principle ordained by the Constitution'"; the Court has recognized exceptions to the rule in a few situations. L. Tribe, \textit{supra} note 32, § 3-26, at 103 (quoting United States v. Raines, 362 U.S. 17, 22 (1960)). For example, the Court has allowed persons who them-
Blacks in one state would have standing to challenge the tax-exempt status of schools in other states: a result that article III does not permit.

The Court characterized plaintiffs' second injury as "not only judicially cognizable," but also "one of the most serious injuries recognized in our legal system." The diminished ability of plaintiffs' children to receive an education in a racially integrated school was a distinct and palpable injury that satisfied the first prong of the Court's standing test. This injury, however, did not satisfy the Court's causation requirement. The Court stated that the line of causation between this injury and the IRS's grant of tax exemptions to racially discriminatory schools was too attenuated to form a basis for standing; it characterized plaintiffs' injury as "highly indirect" and "resulting from the independent action of some third party not before the court." The required line of causation would be present only if plaintiffs had alleged that "there were enough racially discriminatory private schools receiving tax exemptions in [their] communities for withdrawal of [tax-exempt status] to make an appreciable difference in public-school integration." Concerned about this injury's redressability—the likelihood that a favorable decision would provide relief—the Court noted that it was "entirely speculative" whether withdrawal of tax exemptions from racially discriminatory schools would affect public school integration.

The Court underscored its conclusion that the line of causation drawn was insufficient by applying the doctrine of separation of powers to its analysis of article III requirements. In the Court's view the proper role of the federal courts does not include deciding claims such as the one brought in Wright: "The Constitution . . . assigns to the Executive Branch, and not to the Judicial Branch, the duty to 'take Care that the Laws be faithfully executed.' We could not recognize [plaintiffs'] standing . . . without running afoul of that structural principle."

Justices Brennan and Stevens filed dissenting opinions. Justice Brennan criticized the Court's use of generalizations about separation of powers to cloud the standing issue and to avoid recognizing of the true nature of the injuries alleged. He did not discuss the Court's refusal to find standing as to the first injury, but attacked the Court's conclusion that granting tax benefits to racially discriminatory private schools did not detrimentally affect the integration of public schools. Justice Brennan noted that "[c]ommonsense alone would recog-
nize that the elimination of tax-exempt status for racially discriminatory private schools would serve to lessen the impact that those institutions have in defeating efforts to desegregate the public schools.\textsuperscript{45}

Justice Stevens criticized both the Court's causation analysis and its invocation of separation of powers doctrine to bolster its holding. He viewed the issue as whether plaintiffs had alleged that the government was "subsidiz[ing] the exodus of white children from schools that would otherwise be racially integrated."\textsuperscript{46} He concluded that as a matter of "elementary economics," the cash grants given to racially discriminatory schools by way of tax exemptions and tax-deductible contributions made those schools more affordable and therefore more popular.\textsuperscript{47} Justice Stevens further contended that the Court's separation of powers argument had no relevance to the issue of standing. He acknowledged that\textit{ Wright} raised legitimate concerns of justiciability and usurpation of executive discretion, but believed that the Court had only confused the issue of standing by failing to address those concerns directly.

The standing test applied by the Court in\textit{ Wright} is the product of a series of decisions in the 1970s. These decisions first liberalized standing requirements by replacing the legal-interest test with an injury-in-fact test, but later retreated from this liberalization by tightening the causation requirement.\textsuperscript{48} In\textit{ Association of Data Processing Service Organizations, Inc. v. Camp.}\textsuperscript{49} the Court rejected its former legal-interest test\textsuperscript{50} in favor of a two-pronged standing test. To have standing under the new test a plaintiff was required to demonstrate injury-in-fact and an interest to be protected that fell within the zone of interests safeguarded by the statutory or constitutional provision under which he sought relief. Under this liberal test persons living in an apartment complex had standing to challenge the landlord's exclusion of nonwhites as an infringement of their right to interracial association;\textsuperscript{51} students who camped and hiked in the Washington, D.C., metropolitan area had standing to challenge the approval of an increase in railroad freight charges for recyclable goods as an injury to their right to enjoy the environment;\textsuperscript{52} and persons who camped in national parks might have had standing to challenge the commercial development of those parks as an infringement of their right to enjoy the environment.\textsuperscript{53}

As early as 1973, however, the Court signaled a retreat from these liberal holdings by placing new emphasis on causation and strengthening the line of

\begin{itemize}
\item \textsuperscript{45} Id. at 3337 (Brennan, J., dissenting).
\item \textsuperscript{46} Id. at 3342 (Stevens, J., dissenting).
\item \textsuperscript{47} Id. at 3344 (Stevens, J., dissenting).
\item \textsuperscript{49} 397 U.S. 150 (1970).
\item \textsuperscript{50} The legal-interest test requires a plaintiff to demonstrate injury to a legally protected interest to gain standing.\textit{ Tennessee Elec. Power Co. v. Tennessee Valley Auth.}, 306 U.S. 118, 137 (1938).
\item \textsuperscript{51} Trafficante v. Metropolitan Life Ins. Co., 409 U.S. 205 (1972).
\item \textsuperscript{52} United States v. Students Challenging Regulatory Agency Procedures, 412 U.S. 669 (1973).
\item \textsuperscript{53} Sierra Club v. Morton, 405 U.S. 727 (1972). Although plaintiffs in\textit{ Sierra Club} were denied standing because the Club failed to allege that its members used the valley threatened by development, the Court stated in dicta that such an allegation would have been sufficient basis for standing.
\end{itemize}
causation required by article III. In Linda R.S. v. Richard D. the Court held that the mother of an illegitimate child did not have standing to challenge Texas court decisions that construed a child support statute as applying only to married parents. The Court reasoned that although a favorable ruling might allow the State to prosecute the child's father for failure to pay support, it would not ensure that the mother would receive support payments. Therefore, Linda R.S.'s injury was not redressable.

The causation test was developed further by the Court in Warth v. Seldin. Plaintiffs in Warth were denied standing to challenge exclusionary zoning ordinances that prevented the construction of low-cost housing and thus prevented plaintiffs from finding suitable housing. The Court denied standing because of its uncertainty that the relief desired would result from a favorable decision. Altering the zoning rules, the Court stated, would not guarantee plaintiffs access to housing.

The requirement that the plaintiff's injury be "fairly traceable" to the defendant's conduct became part of the Court's standing analysis in Simon v. Eastern Kentucky Welfare Rights Organization. Plaintiffs in Simon were indigents who had been denied nonemergency medical care at hospitals that enjoyed tax-exempt status. The hospitals enjoyed this privilege because they were designated "charitable" under revised IRS guidelines. The challenged guidelines granted hospitals charitable status even if they restricted admissions to paying patients so long as the hospital offered full-time emergency treatment to anyone in need of emergency care. Plaintiffs argued that the new guidelines injured them by encouraging hospitals to deny treatment to indigents. The Court held that plaintiffs' inability to receive medical care could not fairly be traced to the IRS's revision of its guidelines because there was no evidence that the decision to deny admission to indigents would have been different if the IRS had denied the hospitals' charitable status. The Court believed it "purely speculative" that a change in IRS guidelines would result in the admission of indigents. As in Linda R.S. and Warth, relief of the Simon plaintiffs' injury would depend in part on the response of third parties to a favorable Court ruling; therefore, the causation requirement was not satisfied.

The causation requirement, though harsh, has not presented an absolute

54. For an excellent article on the development of the causation requirement, see Nichol, supra note 48.
56. Linda R.S. has been cited by Professor Tribe to illustrate a potential double standard in the causation requirement. Professor Tribe notes that if the father of Linda R.S.'s child had brought an action for a declaratory judgment, he would have had standing to challenge the statute. The basis for his standing would have been the assumption that criminal sanctions change behavior—the very assumption rejected by the Court in denying standing to Linda R.S. Professor Tribe concludes that this result is "palpably unfair." L. Tribe, supra note 32, § 3-21, at 93.
57. 422 U.S. 490 (1975).
58. Id. at 505-07.
60. Prior guidelines did not consider hospitals charitable unless they provided as much care to indigents as their financial resources allowed. Id. at 42.
61. Id.
bar to plaintiffs who suffer an indirect injury. For example, in *Duke Power Co. v. Carolina Environmental Study Group*62 citizens alleging an injury to their environment resulting from the operation of nuclear power plants were held to have standing to challenge the constitutionality of the Price-Anderson Act.63 The holding was based on evidence demonstrating that but for the Act, construction of the nuclear facilities in plaintiffs' neighborhoods would not be completed.64 In *Village of Arlington Heights v. Metropolitan Housing Development Corp.*65 plaintiff company was allowed standing to attack an exclusionary zoning scheme because it could identify a specific project it intended to construct once the scheme was removed. This allegation gave the complaint the "essential dimension of specificity" the Court had found missing in *Warth*.66

There are also a number of cases in which the causation requirement has been abbreviated or ignored. In *Gladstone, Realtors v. Village of Bellwood*67 the village and some of its residents claimed that their right to the benefits of living in an integrated society was being infringed by the racial steering practices of certain real estate brokers. The Court upheld plaintiffs' claim without requiring plaintiffs to show with specificity that the changing composition of their neighborhood was the result of defendants' steering practices or that the composition of the neighborhood would remain integrated if defendants ceased their steering practices.

Standing requirements were not discussed in *Norwood v. Harrison*,68 in which the Court held that the parents of school children were entitled to an injunction prohibiting the State of Mississippi from providing free textbooks to students attending racially discriminatory private schools. The issue whether the parents had suffered a distinct injury, fairly traceable to the state's conduct and redressable by the Court, was not addressed. Similarly, the Court made no mention of article III standing requirements when it summarily affirmed the grant of an injunction against the IRS in *Green v. Coit*.69

The Court's inconsistent application of its article III standing test, specifically the causation element of the test, has led to criticism that the Court employs standing analysis in an "unprincipled" effort to "screen from [its] docket claims which [it] substantively disfavors."70 The Court's analysis in *Wright* lends support to this criticism.71

The Court's conclusion in *Wright* that government support of racially dis-

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66. *Id.* at 263 (quoting Schlesinger v. Reservists to Stop the War, 418 U.S. 208, 221 (1974)).
68. 413 U.S. 455 (1973).
70. L. TRIBE, supra note 32, § 3-21, at 93.
71. See *Wright*, 104 S. Ct. at 3341 (Brennan, J., dissenting); see also McCoy & Devins, supra note 15, at 467 ("[I]f the Supreme Court . . . holds that the plaintiffs in *Wright* are without standing, it will be guilty of the ultimate irony.").
STANDING TO CHALLENGE THE IRS

72. The first injury alleged by plaintiffs was harm resulting from unconstitutional government financial aid to racially discriminatory private schools. See supra text accompanying note 35.

73. For criticism of racial denigration as a basis for standing, see McCoy & Devins, supra note 15, at 447-53.

74. Wright, 104 S. Ct. at 3335 (Brennan, J., dissenting). Justice Brennan stated: "Thus, the Court's 'parade of horribles' concerning black plaintiffs from Hawaii challenging tax exemptions granted to schools in Maine, is completely irrelevant for purposes of Article III standing in this action. Indeed, even if relevant, that criticism would go to the scope of the class certified . . . ." Id. at 3335 n.3 (Brennan, J., dissenting).

The Court also expressed concern that recognizing a stigmatic injury as a basis for standing would confer standing nationwide on all members of the minority group against which the government allegedly was discriminating. The Court, however, has not always been troubled by the number of plaintiffs who may qualify to bring a particular cause of action. In United States v. Students Challenging Regulatory Agency Procedures (SCRAP), 412 U.S. 669 (1973), the Court specifically noted that the plaintiffs could not be deprived of standing simply because everyone who used the "scenic resources of the country" could assert the same injury. Id. at 687-88. The Court stated: "To deny standing to persons who are in fact injured simply because many others are also injured, would mean that the most injurious and widespread Government actions could be questioned by nobody. We cannot accept that conclusion." Id. at 688.

75. 347 U.S. 483 (1954).

76. Id. at 494.

77. Id.
the places where they camp is diminished.\textsuperscript{78}

The Court did not reject completely the validity of this injury, but it held that such an injury could confer standing only on persons who allege a personal denial of equal treatment. Each of the cases cited by the Court as support for this conclusion, however, involved plaintiffs whose complaints sought to compel defendants to afford equal protection to parties not before the Court.\textsuperscript{79} This situation did not exist in \textit{Wright} because plaintiffs alleged a direct injury to themselves, not a denial of the rights of others.

The complaint in \textit{Wright} posed a unique question: Can government be held accountable for perpetuating the injuries suffered by blacks when the government endorses their treatment as second class citizens? The Court held in \textit{Wright} that the government is accountable only for those injuries caused by its own denial of equal treatment and not for the injuries caused when it facilitates discrimination by private organizations. This holding unfairly and unreasonably limits the class of "distinct and palpable" injuries the Court is willing to redress.

The Court's refusal to grant standing on the basis of the second injury\textsuperscript{80} alleged in \textit{Wright} is unjustifiable. The Court in \textit{Wright} applied the causation element of its standing test far more strenuously than article III demands and consequently left meritorious plaintiffs without relief. It ruled that the second injury failed to satisfy the causation element of its standing test because plaintiffs' complete relief would be dependent on the response of third parties to the Court's ruling. This decision insulates the government from liability for having indirectly supported third parties in the commission of acts that the government cannot lawfully support directly.\textsuperscript{81} Although the Court recognized that interference with the racial balance of public schools infringes on the right of children in

\textsuperscript{78} These were the facts in United States v. Students Challenging Regulatory Agency Proce-
dures (SCRAP), 412 U.S. 669 (1973). The Court recognized in S\textsc{crap} that this injury was a sufficient basis for standing. \textit{Id.} at 686-87. For further discussion of the facts in S\textsc{crap}, see infra text accompanying notes 91-92.

\textsuperscript{79} The Court cited Moose Lodge No. 107 v. Irvis, 407 U.S. 163 (1972); O'Shea v. Littleton, 414 U.S. 488 (1974); and Rizzo v. Goode, 423 U.S. 362 (1976). In \textit{Moose Lodge} the Court held that a black plaintiff who had not sought and did not intend to seek membership in the lodge did not have standing to challenge the constitutionality of the lodge's discriminatory membership policies, even though he had alleged that the lodge's actions constituted "state action" under 42 U.S.C. § 1983 (1982). Plaintiff had not alleged any injury to himself resulting from the lodge's membership policies and thus was attempting to assert the right of other blacks to be equally considered for membership. \textit{Moose Lodge}, 407 U.S. at 165-71.

In \textit{O'Shea} plaintiffs sought to challenge the discriminatory administration of criminal justice in Cairo, Illinois. Although plaintiffs purported to represent a class that included persons who had suffered discriminatory treatment, none of the named plaintiffs alleged that they had suffered or were threatened with such treatment. Therefore, they failed to allege any injury to themselves resulting from the county's discriminatory practices. \textit{O'She\textsc{a}}, 414 U.S. at 494-95.

Plaintiffs in \textit{Rizzo} sought injunctive relief for violations of the civil rights of Philadelphia citi-
zens by city policemen. The Court determined that plaintiffs had failed to present a case or controversy because the threat of any future injury to plaintiffs was too remote. Therefore, the Court held that plaintiffs lacked a stake in the outcome sufficient to confer standing. \textit{Rizzo}, 423 U.S. at 372-73.

\textsuperscript{80} The second injury alleged by plaintiffs was that the federal tax exemptions to racially discrimi-
natory private schools in their communities impaired their children's ability to attend desegre-
gated public schools. \textit{See supra} text accompanying note 35.

\textsuperscript{81} Other authors have noted that the Court's application of the causation requirement has had the effect of insulating the government from liability for contributing to the injury of plaintiffs. \textit{See L. \textsc{tribe}, supra} note 32, § 3-21, at 96-97; Nichol, \textit{supra} note 48, at 223.
public schools to receive an education in an integrated environment, it concluded that the causal relationship between infringement of this right and government support of racially discriminatory schools was "attenuated at best."82 Plaintiffs alleged that the tax exemptions given to racially discriminatory private schools "foster[ed] and encourage[d] the organization, operation, and expansion" of racially discriminatory schools and interfered with the desegregation of public schools,83 but the Court found their pleading defective because it failed to allege that "there were enough racially discriminatory private schools receiving tax exemptions in [plaintiffs'] communities for withdrawal of those exemptions to make an appreciable difference in public-school integration."84 Under this reasoning plaintiffs were required to allege not only that the government's conduct interfered with public school desegregation, but also that eliminating the conduct would have a major impact on public school integration.

To require this type of specificity in pleading revives past notions of fact pleading and forces plaintiffs to prove their cases on the merits to survive motions to dismiss.85 Requiring plaintiffs to show more than a line of causation such that a favorable decision would "contribute in a significant manner to remedying or preventing the injury alleged" goes beyond the article III causation requirement.86 Article III requires only that the courts avoid rendering gratuitous judgments by ensuring that plaintiffs allege an injury that is "fairly" or reasonably traceable to the defendant's conduct and that the court's ruling is "likely" to result in relief.87 Plaintiffs' allegation in Wright that tax exemptions facilitated the activities of racially discriminatory private schools and thereby diminished the ability of their children to receive an education in an integrated school satisfied this requirement.

The government grants tax exemptions for the very purpose of promoting the activities of the institutions that are exempted.88 The exemptions make it
less expensive for the institution to operate and allow donors to contribute larger sums by making their contributions tax deductible. By making the activity of these schools less expensive, the government makes them more affordable. Basic economic theory demonstrates that if an activity is more affordable more people will engage in it. To the extent that tax exemptions allow racially discriminatory private schools to charge less tuition or provide better services, the government's unlawful activity aids in increasing the enrollments of such schools and diminishes the opportunity for children to attend integrated public schools.

This line of causation, though rejected by the Court, hardly seems less direct or more attenuated than that accepted by the Court in United States v. Students Challenging Regulatory Agency Procedures (SCRAP). In SCRAP plaintiffs alleged that an increase in freight charges for recyclable waste would result in an increased use of raw materials, the natural resources for which might come from the Washington, D.C., area. They alleged that this increased use would diminish their ability to enjoy the environment in which they camped and hiked. The Court accepted these allegations as a sufficient basis for standing. Although the government argued that the Court should limit standing to those who were "significantly" affected by the challenged conduct, the Court refused stating: "[E]ven if we could begin to define what such a test would mean, we think it fundamentally misconceived. . . . 'The basic idea . . . is that an identifiable trifle is enough for standing to fight out a question of principle. . . .'" This "fundamentally misconceived" standard, however, is precisely the test adopted by the Court in Wright.

The Court suggested that plaintiffs' injury was not redressable because it was "purely speculative" whether withdrawal of tax exemptions would affect public school integration and because redressing plaintiffs' injury would require violation of separation of powers doctrine. Although plaintiffs probably could not have offered evidence as to the exact number of white students who would return to the public schools once the tax exemptions were removed, it does not follow that the relief they sought was unlikely to flow from a favorable decision. Plaintiffs sought relief for their children's diminished opportunity to re-

89. See supra note 84.
90. See Wright, 104 U.S. at 569 (Stevens, J., dissenting).
92. Id. at 689 n.14 (quoting Davis, Standing: Taxpayers and Others, 35 U. CHI. L. REV. 601, 613 (1968)).
93. In Simon v. Eastern Kentucky Welfare Rights Organization, 426 U.S. 26 (1976), Justice Brennan posed in his concurrence what he thought was a purely rhetorical question:

We may properly wonder where the Court, armed with its "fatally speculative pleadings" tool will strike next . . . . Will minority schoolchildren now have to plead and show that in the absence of illegal governmental "encouragement" of private segregated schools, such schools would not "elect to forgo" their favorable tax treatment, and that this will "result in the availability" to complainants of an integrated educational system?

Simon, 426 U.S. at 63 (Brennan, J., concurring). Justice Brennan mistakenly believed that the
ceive an education in an integrated school. If tax exemptions for racially discriminatory private schools had been withdrawn, three factors could have been expected to lead to an increase in the enrollment of white students in public schools. First, fewer racially discriminatory schools would have been established because the absence of the tax exemptions would have made it more difficult for such schools to solicit necessary contributions from corporations and individuals.94 Second, schools then in existence, particularly those with little or no endowment, would have been more likely to cease operations.95 As one study has demonstrated, educational institutions are quite vulnerable to loss of income resulting from the increased cost of donations when tax incentives to contributors are withdrawn.96 Last, fewer white students would have been able to afford the cost of discriminatory schools as the loss of contributions and the tax on revenues made attendance more expensive. These factors, which are based on elementary economic theory, make it unlikely that the withdrawal of tax exemptions could have failed to have an impact on public school integration.

The separation-of-powers analysis applied by the Court also fails to support the Court’s conclusion that the article III standing requirements were not satisfied. The idea of separation of powers traditionally is relevant to the justiciability of issues raised by the plaintiff, not to the plaintiff’s standing to bring an action.97 The Court feared that allowing standing in Wright to challenge administrative guidelines “would pave the way generally for suits challenging . . . the particular programs agencies establish to carry out their legal obligations.”98 This fear, however, focuses on whether the Court should grant the relief requested, not on whether the plaintiff has presented a case or controversy under article III.

The Court’s concern with avoiding undue interference with the executive’s discretion in enforcing the laws was appropriate because the administrative procedures of a government agency were challenged. This concern, however, has no relevance to a discussion of standing. Further, as Justice Stevens observed, the discretion given the executive “does not apply when suit is brought ‘to en-

94. Martin Feldstein has conducted a study which concludes that gifts to educational institutions are quite sensitive to the cost of giving. He predicts that an elimination of the charitable deduction would reduce donations to educational institutions by at least 50%. Feldstein, The Income Tax and Charitable Contributions: Part II—The Impact on Religious, Educational and Other Organizations, 28 Nat’l Tax J. 209, 224 (1975).
96. See supra note 94.
97. See Wright, 104 S. Ct. at 3345–46 (Stevens, J., dissenting). “The question whether a particular person is a proper party to maintain the action does not, by its own force, raise separation of powers problems related to improper judicial interference in areas committed to other branches of the Federal Government.” Flast v. Cohen, 392 U.S. 83, 100 (1968).
98. Wright, 104 S. Ct. at 3329.
force specific legal obligations whose violation works a direct harm."\textsuperscript{99}

The Court's analysis in support of its conclusion that \textit{Norwood v. Harrison}\textsuperscript{100} and \textit{Coit v. Green}\textsuperscript{101} are distinguishable from \textit{Wright} adds to the confusion and harshness of its opinion and gives rise to further criticism. In \textit{Norwood} parents of schoolchildren successfully challenged Mississippi's provision of free textbooks to students attending racially discriminatory schools. Because standing was not specifically discussed in \textit{Norwood}, the Court in \textit{Wright} relied on a footnote in \textit{Gilmore v. City of Montgomery}\textsuperscript{102} to explain the basis for standing in \textit{Norwood}: "The plaintiffs in \textit{Norwood} were parties to a school desegregation order and the relief they sought was directly related to the concrete injury they suffered."\textsuperscript{103} The Court inferred from this footnote that plaintiffs in \textit{Norwood} had acquired a right to have the State steer clear of supporting a dual educational system through a school desegregation decree and concluded that \textit{Wright} was distinguishable as its plaintiffs had not acquired any such injunctive rights.\textsuperscript{104}

Mississippi's support of racially discriminatory schools by supplying them free textbooks is analogous to the federal government's support of such schools through tax exemptions. It hardly seems possible that the "concrete injury" suffered by plaintiffs in \textit{Norwood} differed significantly from the injury suffered by plaintiffs in \textit{Wright}. Despite the assertion by the Court that the rights of the plaintiffs in \textit{Norwood} were derived from a judicial decree, the \textit{Norwood} opinion makes it clear that plaintiffs' right to relief was derived from the Constitution: "A State's constitutional obligation requires it to steer clear, not only of operating the old dual system of racially segregated schools, but also of giving significant aid to institutions that practice racial or other invidious discrimination."\textsuperscript{105}

The Court struggled even more in differentiating standing in \textit{Green} from standing in \textit{Wright}. First, the Court stated that since \textit{Green} was "merely a summary affirmance" of a lower court holding that did not include a ruling on the issue of standing, its affirmation "lack[ed] the precedential weight of a case involving a truly adversary controversy."\textsuperscript{106} Second, the Court stated that \textit{Green} was distinguishable from \textit{Wright} on its facts because \textit{Green} concerned only Mississippi's public schools and evidence from an earlier Mississippi case had made it clear that tax support to racially discriminatory schools was having a significant impact on public school desegregation.\textsuperscript{107} Last, the Court asserted that the "history of school desegregation in Mississippi at the time of the [\textit{Green}] litigation, the nature of the IRS conduct challenged at the outset of the litigation, and

\textsuperscript{99} Id. at 3347 (Stevens, J., dissenting) (quoting from the majority opinion, id. at 3330).
\textsuperscript{100} 413 U.S. 455 (1973).
\textsuperscript{101} 404 U.S. 997 (1971).
\textsuperscript{102} 417 U.S. 556 (1974).
\textsuperscript{103} Id. at 570-71 n.10; \textit{Wright}, 104 S. Ct. at 3331.
\textsuperscript{104} \textit{Wright}, 104 S. Ct. at 3331.
\textsuperscript{105} \textit{Norwood}, 413 U.S. at 467.
\textsuperscript{106} \textit{Wright}, 104 S. Ct. at 3332.
\textsuperscript{107} The case referred to was Coffey v. State Educ. Fin. Comm'n, 296 F. Supp. 1389 (S.D. Miss. 1969) (per curiam), in which plaintiffs successfully challenged Mississippi's grant of tuition tax credits to parents who sent their children to racially discriminatory private schools.
the District Court’s particular findings, . . . amply distinguish[ed]” Green from Wright.108

Justice Brennan’s dissent raised the obvious question to this line of reasoning: How do these factors, specified by the Court as distinguishing Green from Wright, bear on the issue of standing? Although Wright was a nationwide class action and Green was limited to Mississippi, this distinction fails to show how the injury suffered by plaintiffs in Wright was less distinct and palpable, less traceable to the defendants’ unlawful conduct, or less likely to be redressed by a favorable decision than the injury suffered by plaintiffs in Green. The scope of a class action is not relevant to the issue of standing.109 If a history of reluctance to desegregate public schools is relevant at all to the issue of standing, it “weighs in favor of allowing [plaintiffs in Wright] to maintain their . . . lawsuit”;110 plaintiffs alleged that the IRS guidelines they challenged contributed to the “substantial continuation of the onerous history of school segregation in the affected school districts.”111

That IRS policy at the time of the Wright litigation differed from IRS policy at the time of the Green litigation also fails to provide a basis for distinguishing the two cases on the issue of standing.112 Plaintiffs in Wright alleged that IRS policy was “so ineffective as to be the functional equivalent” of the government’s policy at the time of Green.113 The Court’s use of the finding of the district court in Green that tax exemptions were important to racially discriminatory schools as a factor in denying standing to similarly situated plaintiffs who had never had the opportunity to present such evidence to the court made a “mockery of the standing inquiry.”114 The Green court’s factual findings strengthen the allegations made by plaintiffs in Wright and support a finding that plaintiffs had standing. As Justice Brennan noted, the Court’s discussion of the distinctions between Wright and Green “stretches the imagination beyond its breaking point.”115

The most serious consequence of the Court’s decision in Wright, however, is that it sterilizes the Court’s decision in Bob Jones University v. United States.116 In Bob Jones the Supreme Court determined that sections 501(c)(3) and 170 of the Code prohibit the IRS from granting tax-exempt status to racially discriminatory schools and from allowing donations to such schools to be considered tax deductible. Wright illustrates that the IRS may escape challenge

108. Wright, 104 S. Ct. at 3332-33.
109. See id. at 3340 n.9 (Brennan, J., dissenting).
110. Id.
111. Id. at 3341 n.9 (Brennan, J., dissenting).
112. IRS policy at the time of the Green litigation granted tax-exempt status to racially discriminatory schools. IRS policy at the time of the Wright litigation purported to deny tax-exempt status to such schools. See supra note 1.
113. Wright, 104 S. Ct. at 3340 n.9 (Brennan, J., dissenting).
114. Id.
115. Id.
on grounds that it is violating these provisions by merely giving lip service to the Bob Jones ruling; if the IRS did grant tax-exempt status to Bob Jones University or some other racially discriminatory school, no plaintiff would have standing under the Court's holding in Wright to challenge the IRS's conduct. The Court in essence has left the government free to accomplish indirectly what it is forbidden to do directly.\textsuperscript{117}

The Court in Wright used causation doctrine as a hammer to knock the teeth out of Bob Jones and shatter the value of Norwood and Green as precedent on the issue of standing. Standing doctrine remains shrouded in confusion and controversy; any court desiring to do so will be able to use the doctrine as its vehicle for avoiding decisions on the merits of cases in which government conduct is challenged. Although the Court purported to distinguish Wright from similar cases in which the Court has recognized the standing of the parties, the Court in fact imposed a harsher test of standing in Wright than it previously had imposed. The causation standard applied by the Court in Wright exceeds the scope of the article III requirements and unduly impairs access to the courts by victims of unlawful government conduct. The Court's opinion ""s slamming the courthouse door against plaintiffs who are entitled to full consideration of their claims on the merits""\textsuperscript{118} and leaves the government free to lend substantial support to racially discriminatory institutions.

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\textsuperscript{117} If the government desired to avoid the constitutional requirement that schools be integrated, providing support to racially discriminatory private schools certainly would be among its chosen methods. The Court's holding in Wright condones this conduct.