The Dynamics of Standing

How Congress and the Supreme Court Determine Access to the Federal Courts

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8/15/2011

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Rules of access, including whether litigants will have standing to sue, are determined by judges during the legal process and by legislators during the legislative process. Open access encourages litigation while closed access discourages litigation. Standing has changed over time in response to decisions made by lawmakers and judges. Conceptions of judicial power should account for legislatively-created opportunities for courts to participate in the policy-making process. To demonstrate the Dynamics of Standing, this paper traces the development of standing between 1921 and 2006 and examines decisions made by the Supreme Court and Congress regarding access to the courts.

Introduction

Despite proclamations of intent to "appeal all the way to the Supreme Court," litigants are not always ensured their day in court. Rather, litigants must establish *standing to sue* by satisfying a set of constitutional and prudential requirements through which a federal court determines if a litigant is a proper party to bring a case. Recently, for example, in *Arizona Christian School Tuition Organization v. Winn et al.* (09-987 [2011]), the Supreme Court worked to determine whether taxpayers could sue regarding a State of Arizona program in which tax credits were granted to allow individuals to donate funds to support education scholarships. Some scholarships ultimately supported schools that were alleged to discriminate on the basis of religion. As the Court found that the Arizona taxpayers did not have standing to sue, litigants concerned about the use of their tax dollars were precluded from having their claims heard in a court of law. It is important to note that the question before the Court was *not* whether the State program was constitutional or unconstitutional, but was rather the preliminary question of whether those bringing the suit had standing to do so – the merits of the case were never reached by the Supreme Court.

When a court determines if an individual or group has standing to sue it is making decisions regarding *access to the federal courts*. By access to the federal courts, I mean the ability of individuals and groups to utilize the federal courts to secure judicial review of government action. Access is determined by federal judges when they make decisions whether litigants satisfy constitutional and prudential standing rules and when they make decisions about what those rules are. Access is also determined by Congress when it makes decisions to grant individuals or groups standing to sue. Congress does so as part of the legislative process in that lawmaking includes deliberations over access to the courts (Shipan 1997, 2000; Lovell 2003;

Smith 2005). Through a variety of mechanisms, including by passing laws governing class action suits and attorney's fees (Epp 1998; Smith 2006; Barnes 2007), by varying the expected costs and payoffs of litigation (Farhang 2008, 2010), or by financing litigation programs such as the Legal Services Program (Lawrence 1990) legislators make it more or less difficult for litigants to access the courts.

Scholars have demonstrated that Congress is aware of the implications of varying the parameters of access to the courts. When making decisions regarding how courts will participate in the policy process, legislators may wish to shift decision-making responsibility from the legislature to the courts (Graber 1993) or to lock-in and advance policy goals (Gillman 2002), some of which may be difficult for legislators to achieve on their own (Graber 1993; Frymer 2003; Lovell 2003; Whittington 2005). Legislators may additionally look to courts as institutions that can provide an oversight function for the executive branch (Shipan 2000; Smith 2005) or to shield the executive branch from judicial review (Melnick 1994). Congress is able to take these actions because of constitutional grants of power that create opportunities to create, staff, and fund courts and to establish their jurisdiction.

Whether courts will participate in the policy process is not a fixed notion, but rather one open to manipulation by legislators and courts themselves. When lawmakers and judges determine whether individuals and groups will have access to the federal courts, they make decisions regarding whether parties will be able to participate in the American policy process. The courts are an important venue in the public policy process as they interpret the meaning of statutes, determine their constitutionality, and participate in policy implementation. Open access to the courts makes available a venue in which to work out policy questions while limited access forecloses the possibility of the adjudication of certain issues.

This paper explores the relationship between standing to sue and access to the federal courts and in doing so, it joins a long line of legal scholarship that has examined the origins and application of standing. Legal scholars examining standing often work to describe the evolution of standing and take on the tasks of piecing together coherent descriptions of standing doctrines, critiquing or providing support for various standing decisions made by justices – some of which may be controversial or contradictory – or illuminating the origins of standing to better understand its present day application (see, e.g., Connelly 1987; Fletcher 1988-1989; Sunstein 1992-1993; Roberts 1993; June 1994; Pierce 1998-1999; Staudt 2004; Kellner 2007; Magill 2009; Ho and Ross 2009-2010; Elliott 2011). As noted above, while the discipline of political science is attentive to the various mechanisms through which legislators control access to the federal courts it has not devoted much attention to the specific topic of what legislators and judges have done to influence litigant access through standing (but see Orren 1976; Rathjen and Spaeth 1979, 1983; Smith 2006; Crowe 2007; Staszak 2010).

This paper proceeds as follows. First, I provide an overview of the development of standing doctrine from the Supreme Court's perspective, including a discussion of the major ways in which standing has changed since the 1920s. I then turn to Congress's point-of-view. In both sections, I emphasize the question of who will have access to the federal courts and how the answer to that question changes over time and across branches of government.

Standing to Sue: The Court's View

The ability of individuals and groups to access the federal courts depends in part on whether those individuals and groups have standing.[1] When a case comes to court, the court determines if the plaintiffs satisfy the constitutional requirement, under Article III of the

[1] Additional related considerations are whether a court has jurisdiction to hear a case and whether other rules of justiciability are met, which include ripeness and mootness as well as avoidance of advisory opinions, collusive suits and political questions (Mullenix et al. 1998: pages).

Constitution, that their case involve a "case" or "controversy." Fleshing out these basic Article III constitutional requirements, the Supreme Court has identified three components to constitutional standing: (1) there must be real or threatened *injury* ("injury-in-fact") which is (2) *traceable* to the actions of the defendant and (3) amenable to *remedy* in a federal court. In addition to these constitutional requirements, there are a number of "prudential," or "judge-made," standing requirements that may be relevant to the standing analysis. Parties are barred from bringing generalized grievances; the interests raised must be within the zone of interests protected by a statute or a constitutional provision; and parties are barred from litigating the interests of a third-party (Mullenix et al. 1998: pages). These principles of standing were developed over time by Supreme Court justices as they worked to determine which litigants would have access to the federal courts and under what justification.

Legal Wrongs, Common-Law, and Statutory Standing, 1922 – 1970.

Writing in the 1940s, Davis (1949) described the then operable components of standing: its constitutional underpinnings (the Article III "case" or "controversy" requirement); the "common-law principle of *damnum absque injuria*"; and statutory standing (759). Article III of the Constitution is understood to define the judicial power as limited to actual "cases" and "controversies." *Damnum absque injuria* is defined by Davis as "damage not recognized as a basis for relief" (762). Thus, in *Tennessee Electric Power Co. v. TVA* (306 U.S. 118 [1939]), while the appellants complained of competition from the TVA and attempted to sue to stop what they felt was unconstitutional action by the TVA, the Court described the competition as "damage not consequent upon the violation of any right recognized by law" (360 U.S. 137). Mere damage from economic competition, in this period, was not a legally recognized injury (Orren 1976: 730; Magill 2009: 1139). On the other hand, a legal wrong, perhaps stemming

from government action, could arise from a common-law right or could be based on statute (Magill 2009: 1136). In *Tennessee Electric Power Co.* the Court recognized these common-law and statutory sources of standing, stating that:

> The appellants [Tennessee Electric Power Co.] invoke the doctrine that one threatened with direct and special injury by the act of an agent of government which, but for statutory authority for its performance, would be a violation of his legal rights, may challenge the validity of the statute in a suit against the agent. *The principle is without application unless the right invaded is a legal right – one of property, one arising out of contract, one protected against tortious invasion, or one founded on a statute which confers a privilege* (360 U.S. 137, emphasis added).

Congress could therefore confer standing through statute. As Davis notes, "a statute may create new interests or rights, thereby giving standing to one otherwise barred either by lack of case or controversy or by damnum absque injuria" (Davis 1949: 764).[2] The specific language Congress chooses to grant standing varies from Act to Act with statutes often allowing for judicial review by a person who is "aggrieved" (Davis 1949: 765-6). The Public Utility Act of 1935, for example, allowed for "[a]ny person or party aggrieved by an order issued by the [Securities and Exchange] Commission [to] obtain judicial review of such order in the circuit court of appeals of the United States within any circuit wherein such person resides or has his principal place of business, or in the United States Court of Appeals for the District of Columbia" (*Public Utility Act of 1935*: 834-5). The Act confers standing, states that judicial review is available regarding an agency order, and specifies in which courts review is to be had.

In its decisions during this period, the Supreme Court relied upon the common-law and statutory sources of standing introduced above. For example, in *Edward Hines Yellow Pine Trustees v. United States* (263 U.S. 143 [1923]), the Court found that an Illinois lumber company lacked standing to sue as they could not "show that the [Interstate Commerce Commission] order

[2] However, as later Supreme Court decisions made more explicit, Congress cannot legislate standing in such a way that touches the basic Article III requirements. As will be discussed in Section 2, this development is part and parcel of questions over which branch determines who has access to the federal courts.

alleged to be void subject[ed] them to legal injury, actual or threatened" (263 U.S. 148). A similar lack of legal injury meant that the appellants in *Alexander Sprunt & Son, Inc. v. United States* (281 U.S. 249 [1930]) were precluded from pursuing their claims against the Interstate Commerce Commission (ICC) in court. And in *Perkins v. Lukens Steel Company* (310 U.S. 113 [1939]), iron and steel manufacturers who desired judicial review of the Department of Labor's wage determination were denied standing (310 U.S. 117). The Court ruled "that no legal rights of respondents were shown to have been invaded or threatened" and that "[r]espondents, to have standing in court, must show an injury or threat to a particular right of their own, as distinguished from the public's interest in the administration of the law" (310 U.S. 125).

On the other hand, the Supreme Court found that litigants did have standing stemming from statutory grants. *The Chicago Junction Case* (264 U.S. 258 [1923]), for example, turned in part on the presence of statutory language "declar[ing] that any party to a proceeding before the [Interstate Commerce] Commission may, as of right, become a party to 'any suit wherein is involved the validity of such [an] order'" (264 U.S. 267). A line of cases concerning the Federal Communications Commission (FCC) and the Communications Act of 1934 similarly depended on relevant statutory language. In *FCC v. Sanders Brothers Radio Station* (309 U.S. 470 [1940]), the Court decided that under the Communications Act of 1934 licensees have standing under Section 402 (b) of the Act which allows for judicial review "(1) by an applicant for a license or permit or (2) 'by any other person aggrieved or whose interests are adversely affected by any decision of the [Federal Communications] Commission granting or refusing any such application'" (309 U.S. 477). Similar language is found in *Columbia Broadcasting System v. United States* (316 U.S. 407 [1942]), in which the Court recognized that section 402 (a) of the

Communications Act of 1934 granted standing and allowed judicial review of a FCC order that would vastly affect CBS's ability to do business.[3]

Justices most likely had multiple motivations for developing standing doctrine. At base, through standing, the justices work to determine which issues will be heard in court and which will not. Expanding on this premise, scholars have suggested that an early purpose of standing was to, in the words of Professor Sunstein, "insulate progressive and New Deal legislation from frequent judicial attack" (Sunstein 1992-1993: 179) while others have found that the insulation thesis describes only a short period of time between the 1930s and 1940s (Ho and Ross 2009-2010: 595-6). Alternatively, the motivation of justices could have been simply a response to the complex legal questions raised by the New Deal (Fletcher 1988-1989: 225-6), including the question who would be allowed to participate in the regulation of society.

During this time period standing was thus based on both common law and statute, and tied to Article III. To the extent that demonstrating a legal wrong was necessary, standing was *limited* to those who demonstrated standing through a property right, a contract, a tort, or through statute.

Injury-in-fact, 1970 – 1972.

In *Association of Data Processing Service Organizations Inc. v. Camp* (397 U.S. 150 [1970]) and *Barlow v. Collins* (397 U.S. 159 [1970]), decided the same day, the Supreme Court departed from its historical reliance on a legal wrong to demonstrate standing. In *Data Processing*, the Court first recognized the constitutional underpinnings of standing stating that

[3] For additional cases in this vein, see *Scripps-Howard Radio, Inc. v. FCC* (316 U.S.4 [1941]), in which the Court recognized the limited manner in which Congress granted standing, in that "the Communications Act of 1934 did not create new private rights. The purpose of the Act was to protect the public interest in communications. By § 402 (b) (2) Congress gave the right of appeal to persons 'aggrieved or whose interests are adversely affected' by Commission action … But these private litigants have standing only as representatives of the public interest" (316 U.S. 14). See, too, *FCC v. NBC* (319 U.S. 239 [1943]), in which the Court again referred to section 402 (b) (2) of the Communications Act of 1934 to support the conclusion that certain parties have standing to sue (319 U.S. 246).

"the question of standing in the federal courts is to be considered in the framework of Article III which restricts judicial power to 'cases' and 'controversies'" (397 U.S. 151).[4] Second, the Court asked whether the plaintiff "alleges that the challenged action has caused him injury in fact, economic or otherwise" (397 U.S. 152), placing emphasis on "injury-in-fact" which may take economic or non-economic forms. This may include "'aesthetic, conservational, and recreational" values (397 U.S. 154). The Court continued:

> The "legal interest" test goes to the merits. The question of standing is different. It concerns, apart from the "case" or "controversy" test, the question whether the interest sought to be protected by the complainant is arguably within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question (397 U.S. 153).

The requirement of injury-in-fact is a constitutional one. That is, the Supreme Court's opinion in *Data Processing* elaborated on the basic constitutional idea that a case or controversy is required, stating that only with an injury-in-fact can Article III be satisfied (Alpert 1988-1989: 290; Fletcher 1988-1989: 230). In contrast, the Court did not link the zone of interests test to Article III making it a prudential requirement (Connelly 1987: 143-4; Kusiak 1991: 678; Mullenix et al. 1998: page numbers). *Barlow v. Collins* applied the injury-in-fact and zone of interests tests to a dispute between tenant farmers and the Secretary of Agriculture over a rule change that the farmers argued would go against their interests. The opinion, written by Justice Douglas (as was *Data Processing*), found that the farmers met the Article III requirements and were within the zone of interests protected by the Food and Agriculture Act of 1965 (397 U.S. 164). Although the Act did not expressly or impliedly grant the right of judicial review, the

[4] The Court at this point drew a parallel the recent decision in *Flast v. Cohen* (392 U.S. 83 [1968]), discussed below in the context of taxpayer standing, in that standing requires cases be "'presented in an adversary context and in a form historically viewed as capable of judicial resolution'" (397 U.S. 152).

Court nonetheless found that it was implicit in the statutory scheme that the Secretary protect the farmers' interests (397 U.S. 164).

Data Processing and *Barlow* are perhaps best understood in tandem with two additional cases, *Baker v. Carr* (369 U.S. 186 [1962]) and *Flast v. Cohen* (392 U.S. 83 [1968]). Although in *Baker v. Carr* injury-in-fact language was not used, the Court did cast standing doctrine in permissive language and was therefore able to find standing for the plaintiffs where lower courts had been not. While other courts might have asked whether a legal right or wrong existed – indeed, that was the route taken by the District court which first considered redistricting in Tennessee – the Court in *Baker* asked:

> Have the appellants alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions? (369 U.S. 204).

In *Flast v. Cohen*, to be discussed in more detail below in the context of taxpayer standing, the Supreme Court found that taxpayers did have standing in certain circumstances Distinguishing the case before them from *Frothingham v. Mellon* (262 U.S. 447 [1923]), the Court in *Flast* allowed that taxpayers were not categorically denied from having standing to sue. Together, these four cases represent a shift towards more access to the federal courts as the Supreme Court lowered the threshold litigants were required to cross on their way to court (Singer 1968-1969; Davis 1970; Tucker 1972). Discussing these and other standing cases decided by the Court, McCann (1986) describes the "legal coup" that occurred when courts, from the late 1960s, "recognize[d] various collective environmental, consumer, aesthetic, and recreational interests as valid legal claims for review" (64). Along with increased statutory extensions of standing (discussed below), this liberalization of standing by judges went far in opening access to the courts.

Traceability and Redressability, 1972 – 1976 (and beyond).

While the threshold for standing was lowered during the late 1960s and early 1970s, additional constitutional and prudential requirements would soon emerge as the Supreme Court began to flesh out the new formula. The Supreme Court has identified two additional components to constitutional standing in that an injury-in-fact must be traceable to the actions of the defendant and amenable to remedy in a federal court.

In *Sierra Club v. Morton* (405 U.S. 727 [1972]), the Supreme Court denied standing to the Sierra Club which had invoked the Administrative Procedure Act's (the APA) judicial review provision in an attempt to secure review of a proposed recreational development project in the Mineral King Valley of the Sierra Nevada Mountains (405 U.S. 727-731). The Court first laid out its requirements for standing, stating that in order to invoke the APA's judicial review provisions a plaintiff would have to demonstrate injury-in-fact and meet the zone of interests test (405 U.S. 733). For the Court, the case hinged on whether or not the Sierra Club or any of its members would in fact be injured by the development of Mineral Valley (405 U.S. 735). Regardless of existence of the APA as a source for standing, without injury-in-fact (a constitutional requirement), the Sierra Club's case could not proceed (405 U.S. 735).

In *Linda R.S. v. Richard D.* (410 U.S. 614 [1973]), the Supreme Court utilized the reasoning in *Sierra Club* to support its denial of standing to a woman suing to stop the alleged discriminatory application of a child-support program. Standing was denied by the Court as Linda R.S. "failed to allege a significant nexus between her injury and the government action which she attacks" (410 U.S. 618). The Court argued that the appellant lacked standing because she "has made no showing that her failure to secure support payments results from the

nonenforcement, as to her child's father" of the Texas statute in question (410 U.S. 618). Lacking traceability and redressability, the suit could not proceed.

Other cases offered justices the opportunity to elaborate on the requirements of traceability and redressability, including *U.S. v. Students Challenging Regulatory Agency Procedures (SCRAP)* (412 U.S. 669 [1973]). Challenging a ICC decision that would allow a proposed increase in railroad rates to go into effect, members of SCRAP alleged that "economic, recreational, and aesthetic harm [would] directly" result from the proposed rate changes (412 U.S. 670). Specifically, SCRAP argued that the quality of the environment in the Washington, D.C. area in which its members lived would be negatively affected as raising railroad rates would lead to environmental damage (412 U.S. 678). Distinguishing *Sierra Club*, the Court found that SCRAP demonstrated that its members used the areas in question and that the agency action caused the harm complained of (412 U.S. 688).

In *Simon v. Eastern Kentucky Welfare Rights Organization (EKWRO)* (426 U.S. 26 [1976]), EKWRO attempted to sue under the Internal Revenue Code of 1954 and the APA to challenge an agency rule that seemingly made it easier for hospitals to claim tax-exempt status even if they did not provide chartable services to indigents (426 U.S. 26). The Court asserted that "when a plaintiff's standing is brought into issue the relevant inquiry is whether … the plaintiff has shown an injury to himself that is likely to be redressed by a favorable decision" (426 U.S. 38). Without the chance that a court could solve the problem brought before it, Article III's requirements are not met and standing cannot be granted. Injury, traceability and redressability were also an issue in *Allen v. Wright* (468 U.S. 737 [1983]) in which the Court argued respondents did not link the IRS's tax-exempt policy to specific decisions by private schools to discriminate based on race, nor could a court provide a remedy.

Distinct from its historical use of Article III, the Court has in recent years adopted a separation-of-powers foundation for standing, a development that helps to illustrate the manner in which Supreme Court justices themselves actively determine the rules of standing. In addition to citing Article III's case or controversy requirement, the Court began to rely on the idea that courts must not take on the functions assigned to or associated with the other branches of government. To the extent that litigants asked the Court to do so, standing would be denied. In *Allen v. Wright*, Justice O'Connor referenced separation-of-powers as a source for Article III standing in that "the law of Art. III standing is built on a single basic idea—the idea of separation of powers" (468 U.S. 752). In contrast to Justice O'Connor's discussion of standing that came just prior to this mention of separation-of-powers, *no citations* accompany her statement about separation-of-powers. For his part, Justice Brennan's dissent dismisses reliance on separation-of-powers "as if the mere incantation of that phrase provides an obvious solution to the difficult questions presented by these cases" (468 U.S. 766). Connelly (1987) writes that "[t]hese separation of powers concerns figure most prominently in the Court's generalized grievance cases holding that individual citizens lack standing *qua* citizens to challenge even governmental action that is unlawful" (160). Indeed, Justice Scalia applied this line of reasoning in *Lujan v. Defenders of Wildlife* (504 U.S. 555 [1992]), discussed below.

While the trend has been towards tightening by the Supreme Court of the standing requirements and denial of standing (see, e.g., *O'Shea v. Littleton* 414 U.S. 488 [1973], *Warth v. Seldin* 422 U.S. 490 [1975], *Leeke v. Timmerman* 454 U.S. 83 [1981], *Los Angeles v. Lyons* 461 U.S. 95 [1983]), the Court *has* found standing in cases since 1975 (see, e.g., *Gladstone Realtors v. Village of Bellwood* 441 U.S. 91 [1979], *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Curran et al.* 456 U.S. 353 [1982], *Federal Election Commission v. Akins* 524 U.S. 11 [1998],

and *Massachusetts v. EPA* 549 U.S. 497 [2007]). At the same time, standing has often been denied to those attempting to sue on behalf of other people (such as prisoners on death row) as the Court has found that such litigants must meet a two part test. First, there must be a reason why the person at the center of the case cannot appear himself and second, the "next-friend must be truly dedicated to the best interests of the person on whose behalf he seeks to litigate" (*Whitmore v. Arkansas* 495 U.S. 149, 163 [1990] and see *Demosthenes v. Baal* 495 U.S. 731 [1990], and *Kowalski v. Tesmer* 543 U.S. 125 [2004]). And the Court dealt with cases involving the ability of members of Congress to sue regarding action taken by the executive branch (*Burke v. Barnes* 479 U.S. 361 [1986], *Raines v. Byrd* 521 U.S. 811 [1997]) or their ability to challenge the constitutionality of legislation outright (*McConnell v. Federal Election Commission* 540 U.S. 93 [2003]).

The Case of Taxpayer Standing, 1921 – 2011

Before turning to a discussion of standing from Congress's perspective, it is worthwhile to consider the case of federal taxpayer standing. From *Frothingham* to *Arizona Christian School Tuition Organization* the standards for taxpayer standing have been interpreted and reinterpreted, varying the ability of taxpayers to access the courts. In *Frothingham*, Mrs. Frothingham alleged status as a taxpayer in order to challenge the constitutionality of a federal law which she claimed violated her Fifth Amendment right against taking of property without due process of law. In finding that federal taxpayers should not be allowed to sue, the Supreme Court argued that an individual taxpayer's interest in the money of the Treasury is shared with millions of others, is comparatively minute and indeterminable, and that the effect of governmental programs on future tax rates is "fluctuating and uncertain" (262 U.S. 487). The

Court also expressed worry about the dangers of the precedent of allowing one taxpayer to sue – that it would lead to an overwhelming number of similar lawsuits.

As noted by the Supreme Court in *Flast v. Cohen*, *Frothingham* "has stood for 45 years as an impenetrable barrier to suits against Acts of Congress brought by individuals who can assert only the interest of federal taxpayers" (392 U.S. 85). In *Flast*, the Court specifically asked whether "the *Frothingham* barrier should be lowered when a taxpayer attacks a federal statute on the grounds that it violates the Establishment and Free Exercise Clauses of the First Amendment" (392 U.S. 85). The Supreme Court created a two-part test: "the taxpayer must first establish a logical link between their status as a taxpayer and the type of legislative enactment attacked … [and] must establish a nexus between their status and the precise nature of constitutional infringement alleged" (392 U.S. 102). The Court elaborated on both points, stating that the logical link could be established only with respect to congressional action under the Taxing and Spending Clause of the Constitution[5] and the constitutional nexus could only be established if the legislative enactment violates some other limitation expressed in the Constitution.

The specificity of statements in *Flast* would be used in subsequent cases to *limit* the ability of individuals and groups to sue based on their status as taxpayers. In *United States v. Richardson* (418 U.S. 166 [1974]) and *Schlesinger v. Reservists Committee to Stop the War* (418 U.S 208 [1974]), taxpayers were found not to have standing because they failed in part to satisfy the two-part test outlined above. In *Richardson*, the respondent attempted to ferret out information on the CIA's budget which was not published along with information about the rest of the government's expenditures, seemingly in violation of the Statement and Account Clause.[6]

[5] United States Constitution Article I, Section 9, Clause 1.
[6] United States Constitution Article I, Section 9, Clause 7.

Since the respondent was not relying on the Taxing and Spending Clause, as required by *Flast*, the suit could not move forward. Similarly, in *Schlesinger*, the Court found that the nexus test was not satisfied. In that case, respondents attempted to sue to challenge the service by members of Congress in the Armed Forces Reserve, violating the Incompatibility Clause (418 U.S. 208).[7] The Court characterized the *Flast* test as creating "certain limited circumstances" under which taxpayers could sue (418 U.S. 227). These were not met in that the respondents did not challenge the Taxing and Spending power but instead an executive branch decision that allowed members of Congress to serve in the Armed Forces Reserves (418 U.S. 228).

Attempting to challenge the transfer of government property to a religious school, respondents in *Valley Forge Christian College v. Americans United for Separation of Church and State* (454 U.S. 464 [1982]) failed, according to the Supreme Court, to pass the either part of *Flast's* two-part test. The Court concluded that respondents were challenging an agency determination, not an Act of Congress, and were not challenging activity falling under the Taxing and Spending Clause of the Constitution. (454 US. 479-80). Recently, in *Hein v. Freedom from Religion Foundation, Inc.* (551 U.S. ___ [2007]), plaintiffs attempted to challenge an Executive Order establishing offices and programs related to faith-based community groups (551 U.S. ___). As the program being challenged was not a congressional program made pursuant to the Taxing and Spending power, the Court ruled against standing. Finally, as described in the Introduction, in *Arizona Christian School Tuition Organization v. Winn et al.*, the Court decided that the Arizona taxpayers did not have standing as the program consisted of a tax credit as opposed to a government expenditure.

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[7] United States Constitution Article I, Section 6

This account of standing from the Supreme Court's perspective helps illustrate the manner in which these constitutional and prudential requirements have been developed by the Supreme Court itself. While Congress is active in its own way, as is discussed below, the Court's determinations are important as they represent judicial conclusions regarding access to the courts. When judges make decisions about what rules of standing will be and when they apply those rules to specific cases, they are active participants in the process of determining which issues will be adjudicated. For the Supreme Court, which enjoys almost complete discretionary control over its docket, the power to establish and apply rules of standing thus represents an additional source of judicial power. That judicial power may be exercised either to insulate the executive branch from review or to subject the executive branch to varying levels of judicial scrutiny and in the case of federal taxpayer standing to allow or preclude judicial review of government taxing and spending programs. Additionally, decisions to limit or grant access have an impact on how Congress's policies are implemented and on Congress's ability to determine access to the courts according to its own criteria.

Access to the Federal Courts: The View From Congress

Judges develop rules of standing when they determine if litigants will have access to court. These rules state the constitutional threshold litigants must pass as well as the additional, prudential, requirements litigants must satisfy. Standing is also determined by Congress when it makes decisions as part of the legislative process to grant individuals or groups standing to sue (McCann 1986; Connelly 1987; Dumont 1988-1989; June 1994; Pathak 2009-2010). Congress grants standing when it designates by law that a person *aggrieved* and/or *adversely affected* by government action may bring suit in a court of law, often designating the court in which the

person or group may sue.[8] For example, the Food and Drug Administration Amendments Act of 2007 states that "any person aggrieved by an order assessing a civil penalty may file a petition for de novo judicial review of such an order with the United States Court of Appeals for the District of Columbia Circuit or for any other circuit in which such person resides or transacts business" (*Food and Drug Administration Amendments Act of 2007*: 942).

Access to the federal courts may be thought of as a continuum ranging from closed access to open access. Open access makes available to litigants a venue in which to state their claims, which often involve the actions of administrative agencies and thus raise questions of ability to challenge government decisions. Closed access forecloses the opportunity for judicial review of litigants' concerns. For example, the Pipeline Safety Improvement Act of 2002 states that "[a]ny person aggrieved or adversely affected by an order issued … may obtain review of the order in the United States Court of Appeals for the circuit in which the violation, with respect to which the order was issued, allegedly occurred or in the circuit in which the complainant resided on the date of such violations" but limits judicial review to this procedure, stating that "[a]n order of the Secretary of Labor with respect to which review could have been obtained under subparagraph (A) shall not be subject to judicial review in any criminal or other civil proceeding" (*Pipeline Safety Improvement Act of 2002*: 2922). In some instances, Congress precludes judicial review altogether (see, e.g., Chutkow 2008). For example, the decision to prosecute a U.S. national who kills or attempts to kill a U.S. national outside of the United States is left to the discretion of the U.S. Attorney General, in consultation with the Secretary of State.

[8] These are not the exclusive means by which Congress grants standing. According to Connelly, "Congress has … enacted even broader statutory review provisions granting standing to 'any person' or to 'any party opposed[.]' Courts have tended not to distinguish between the specific phraseology of these statutory review provisions, but instead generally have interpreted such provisions to authorize judicial review of agency action to the maximum extent permitted by Article III" (Connelly 1987: 158 footnotes omitted).

This decision, by law, "is not subject to judicial review" (*Violent Crime Control and Law Enforcement Act of 1994*: 177).

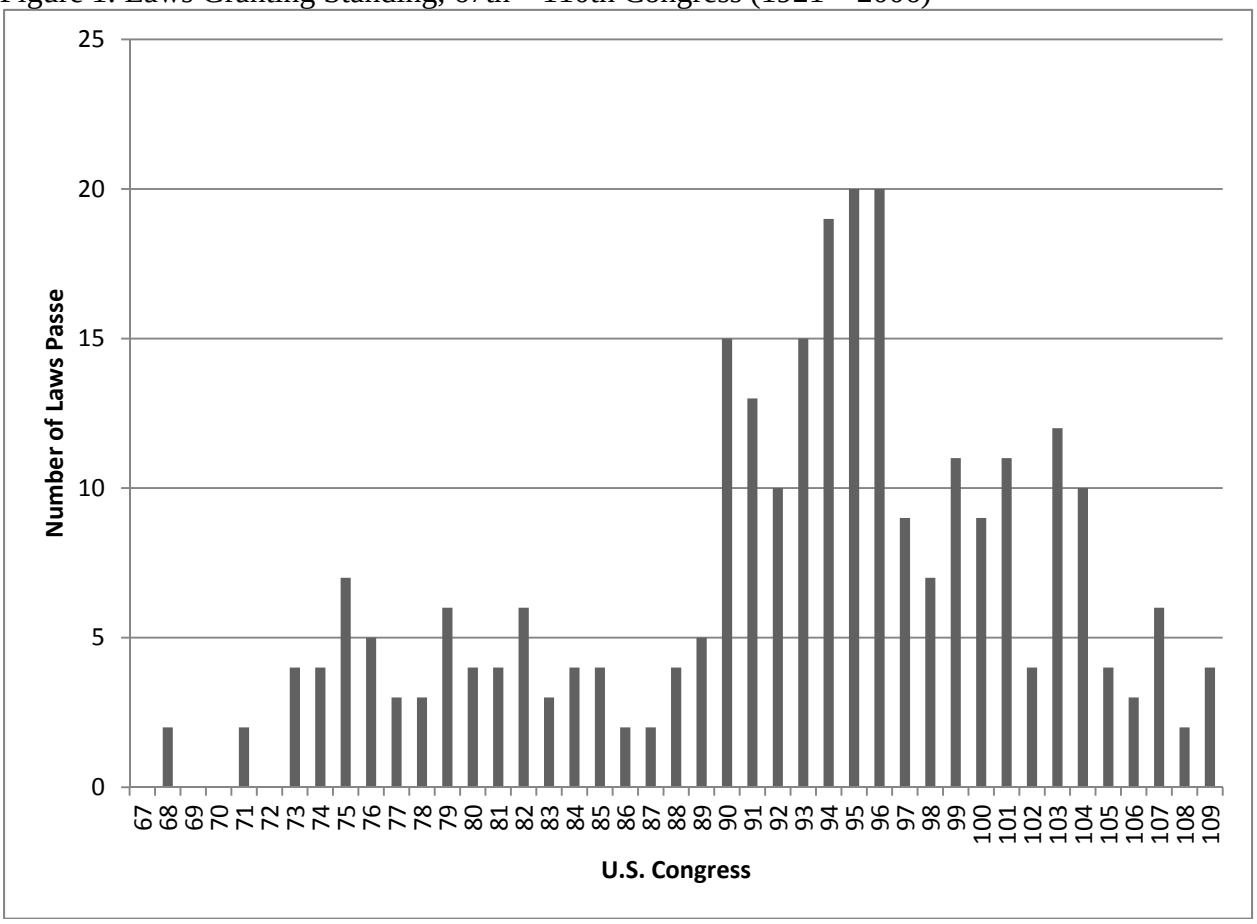
Congress's ability to grant standing has been bounded in important ways by court decisions on its limits. Recall the distinction between constitutional and prudential standing with constitutional standing being linked to Article III and prudential standing serving as judge-made requirements. According to Connelly (1987), "Congress may enact legislation granting standing in a certain area without regard to otherwise applicable prudential barriers. Congress may not, however, eliminate the constitutional minima of injury, causation, and redressability" (144-5). At various times, the Supreme Court has been explicit about what Congress is able to do under the Constitution but also consistently references the Article III limits (Connelly 1987: 161). For example, in *Data Processing*, the Court stated that "Congress can, of course, resolve the [standing] question one way or another, save as the requirements of Article III dictate otherwise" (397 U.S. 154). In *Warth v. Seldin* (422 U.S. 490 [1974]), the Court noted that "Congress may grant an express right of action to persons who otherwise would be barred by prudential standing rules. Of course, Article III's requirement remains: the plaintiff still must allege a distinct and palpable injury to himself" (422 U.S. 501 and see, e.g., *Gladstone, Realtors v. Village of Bellwood* 441 U.S. 91, 100 [1978] and *ASARCO Inc. et al. v. Kadish et al.* 490 U.S. 605, 613 [1988]). To the extent that judges determine what the Article III requirements are and to the extent that they successfully declare congressional action as satisfying (or not satisfying) those requirements, judges at times have therefore enjoyed the opportunity to mark the limits of legislative power. These and other judicial statements regarding standing, to be described below, have worked to define the boundaries of what Congress is able to do.[9]

[9] To be clear, the Supreme Court *has* at times recognized Congress's power to grant standing. In *Federal Elections Commission v. Akins* (524 U.S. 11[1997]), for example, the Court disagreed with the Federal Election Commission's

In the midst of this constitutional dialogue over Congress's power to grant standing and the limits of that power, Congress has nonetheless actively granted standing through statute. For the period between 1921 and 2006, I identified 277 Public Laws in which standing was granted through the a search of the U.S. Public Laws for the terms "aggrieved" or "adversely affected." Figure 1 charts the number of laws in which standing was granted for the 67^{th} – 109^{th} Congresses (1921 – 2006). There are generally three periods of activity, as evidenced in Figure 1: a period in which the administrative state was developing and Congress granted some standing by statute; a second period in which Congress was much more active in granting standing; and a third period in which Congress still grants standing but with less frequency.

assertion that Congress was without the power to grant standing to those seeking information from the Commission (524 U.S. 20). At the same time, the Court did not miss the opportunity to remind its audience of the minimum requirements of Article III (524 U.S. 20).

Figure 1: Laws Granting Standing, 67th – 110th Congress (1921 – 2006)



Source: Data compiled by the author.

Standing in Congress, 1921 – 1962.

Between the 67th and the 87th Congresses (1921-1962), Congress granted standing in sixty-three laws. As noted in the previous section, access to the federal courts between 1921 and 1962 was also limited according to the standards elaborated by judges. The legal wrong test, discussed above, restricted access to the courts in that courts often required some legal basis (related to property, a tort, a common-law principle, or a statute) upon which to base standing. For its part, Congress was willing to create such a statutory basis for standing, but in a limited number of laws and in limited policy areas compared to later periods. Table 1 displays the number of laws passed by policy area, as coded by the Policy Agendas Project. The highest

numbers of standing laws were passed in the area of Banking, Finance, and Domestic Commerce.

Table 1: Number of Standing Laws Passed by Policy Area 67th – 87th Congress (1921-1962).

Policy Area	*Number of Standing Laws Passed*
Banking, Finance, and Domestic Commerce	12
Labor, Employment, and Immigration	9
Agriculture	6
Government Operations	6
Defense	5
Energy	4
Macroeconomics	4
Public Lands and Water Management	4
Civil Rights, Minority Issues, and Civil Liberties	3
Space, Science, Technology, and Communications	3
Foreign Trade	2
International Affairs and Foreign Aid	2
Law, Crime, and Family Issues	2
Transportation	1
Education	0
Environment	0
Health	0
Housing and Community Development	0
Social Welfare	0

Source: Data compiled by the author. Policy Areas are Policy Agendas Project coding.

In addition to passing specific regulatory statutes that granted the right to sue to those aggrieved or adversely affected by agency action, Congress in 1946 passed the Administrative Procedure Act (the APA). The APA grants affected parties standing to challenge agency action in that "[a] person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof" (*Administrative Procedure Act* 1946: 243). Strauss (1996) provides an account of how legal and political understandings of this provision of the APA changed over time. Section 10(a) could originally be read as codifying existing law (circa 1946), "point[ing] to existing (and future) 'relevant statute[s]' containing 'adversely affected or aggrieved provisions'" or "it could be understood as making a universal judgment that persons 'adversely affected or aggrieved' in

relevant statutory terms should have standing to invoke judicial review to redress those harms" (Strauss 1996: 1402). In *Data Processing*, the Court "gave section 10(a) the broader of its possible meanings, reading it independently to confer standing" (Strauss 1996: 1404-5).

In enacting the APA, Congress codified existing practices regarding administrative law and, as described by Sunstein (1992-1993), provided for potential litigants to demonstrate standing in three ways: through a common law legal wrong, through "suffering a legal wrong within the meaning of the APA," or by showing that a different statute conferred standing upon them (181-2). Furthermore, the APA serves as a "statute of general application," meaning it applies to questions of administrative law unless it is expressly overruled by another statute (Strauss 2002: 191). In the absence of legislative grants specific to an area of regulation, litigants can attempt to claim coverage under the APA.

Standing in Congress, 1963 – 1980.

Starting in the 88th Congress and through the 96th Congress (1963-1980), Congress more frequently granted standing, reaching a peak of twenty laws in which standing was granted in both the 95th and 96th Congress. In 1962, the Supreme Court issued its groundbreaking ruling in *Baker v. Carr* which was followed by equally important standing cases such as *Flast v. Cohen*, *Data Processing*, and *Barlow v. Collins*. Thus both Congress and the Court, at this time, worked to expand access to the federal courts. The Court reworked the constitutional foundations of standing while Congress granted standing in more laws across more policy areas. In describing Congress's activity with respect to standing, the Court in *Data Processing* recognized Congress's role in increasing access to the courts:

> Where statutes are concerned, the trend is toward enlargement of the class of people who may protest administrative action. The whole drive for enlarging the category of aggrieved "persons" is symptomatic of that trend (397 U.S. 154).

While as early as 1972 in the *Sierra Club* decision, discussed above, the Supreme Court began to reduce access to the courts by adding to requirements of standing, Congress forged ahead through the end of the decade by continuing to grant standing to litigants. One hundred and twenty-one laws granting standing were passed by Congress during this time, with the majority passed in the Labor, Employment, and Immigration Policy Area (see Table 2). In addition to expanding standing, Congress took other action to increase access including changing the rules regarding awarding attorney's fees and expanding the jurisdiction of federal courts over agency decisions (Frymer, 2003; Gillman, 2002; Melnick, 1994; Shapiro, 1988; Smith, 2005; Stewart, 1975)(McCann 1986; Farhang 2008, 2010).

Table 2: Number of Standing Laws Passed by Policy Area 88th – 96th Congress (1963-1980).

Policy Area	*Number of Standing Laws Passed*
Labor, Employment, and Immigration	15
Agriculture	11
Banking, Finance, and Domestic Commerce	11
Energy	11
Environment	11
Government Operations	11
Public Lands and Water Management	10
Law, Crime, and Family Issues	8
Civil Rights, Minority Issues, and Civil Liberties	6
Foreign Trade	4
Education	3
Health	3
Housing and Community Development	3
International Affairs and Foreign Aid	3
Macroeconomics	3
Social Welfare	3
Transportation	3
Defense	2
Space, Science, Technology, and Communication	0

Source: Data compiled by the author. Policy Areas are Policy Agendas Project coding.

During this time period, Congress additionally granted standing by enumerating the ability of individuals or groups to bring *citizen suits* to enforce agency action. The Clean Air Act

of 1970, for example, includes a citizen suit provision granting standing to "any person" to enforce in district court violations by any person of an emission standard or of an order issued by the Administrator. Additionally, a suit may be brought against the Administrator "when there is alleged a failure of the Administrator to perform any act or duty under this Act which is not discretionary within the Administrator" (*Clean Air Amendments of 1970*: 1706; see also Smith 2006).[10] Eleven citizen suit provisions were enacted during the 1970s (with the twelfth coming in 1986) with the majority passed with respect to environmental regulation at seven laws. The expanded use of citizen suit provisions were, as described by Melnick (1983), part of a trend of more involvement on the part of Congress in the regulatory process with the goal of creating a mechanism through which to check the activities of the executive branch by empowering litigants (8).

Questions related to Congress's power to grant standing in this manner were of central concern in *Lujan v. Defenders of Wildlife* (504 U.S. 555 [1992]). In response to a 1983 interpretation of the Endangered Species Act (ESA) of 1973 by the Secretary of the Interior and the Secretary of Commerce that limited the reach of certain portions of the Act to the United States and the high seas (and not foreign nations), the respondent organization brought an action in district court. In his opinion (joined by six other justices), Justice Scalia first reviewed the

[10] The relevant portion of the statute reads "any person may commence a civil action on his own behalf (1) against any person (including (i) the United States, (ii) any other governmental instrumentality or agency to the extent permitted by the Eleventh Amendment to the Constitution) who is alleged to be in violation of (A) an emission standard or limitation under this Act or (B) an order issued by the Administrator or a State with respect to such as standard or limitation, or (2) against the Administrator when there is alleged a failure of the Administrator to perform any act or duty under this Act which is not discretionary with the Administrator. The district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce such an emission standard or limitation, or such an order, or to order that the Administrator perform such act or duty, as the case may be." Following these grants of standing and jurisdiction, the Act specifies when an action may be brought, requiring sixty days notice be given to the Administrator and other interested parties and prohibiting actions when the Administrator or State has begun a civil action on its own. Additionally, actions related to stationary sources must be brought within the judicial district where the source is located; the Administrator may intervene as a matter of right; and reasonable attorneys fees may be awarded to either party, according to the court's discretion (*Clean Air Amendments of 1970* 1970: 1706).

three requirements of standing, and then discussed the manner in which standing is more difficult to prove for those challenging government action or inaction by parties not directly subject to government action or inaction (504 U.S. 561-2). Focusing first on injury-in-fact, Justice Scalia stated that, as decided in *Sierra Club,* the "party himself seeking review [must] be himself among the injured" (504 U.S. 563 quoting *Sierra Club v. Morton*) and that respondents failed to demonstrate injury. Focusing next on redressability, Justice Scalia found that respondents, in challenging the Secretaries of Interior and Commerce were not directly going after the agencies that would fund projects that might impact endangered species (504 U.S. 568-9).

More importantly, Justice Scalia then turned to the citizen-suit provision upon which respondents relied, and upon which the Court of Appeals had found standing (504 U.S. 572). The citizen-suit provision of the ESA provided for standing in that "any person may commence a civil suit on his own behalf (A) to enjoin any person, including the United States and any other governmental instrumentality or agency … who is alleged to be in violation of any provision of this chapter" (504 U.S. 572). The lower court interpreted the provision in such a manner, according to Justice Scalia, "so that *anyone* can file suit in federal court … notwithstanding his or her inability to allege any discrete injury" from a failure of a agency to follow correct procedure (504 U.S. 572 emphasis original). In doing so, the lower court "held that the injury-in-fact requirement had been satisfied by congressional conferral upon *all* persons of an abstract, self-contained, noninstrumental 'right' to have the Executive observe the procedures required by law" (504 U.S. 573 emphasis original). Reviewing the Court's past standing cases that have touched on this question, Justice Scalia argued that "concrete injury" is required (504 U.S. 578).

Lujan has had implications for both the impact on other statutes that include citizen-suit provisions and for standing doctrine itself (Sunstein 1992-1993; Pierce 1993; Roberts 1993;

Feld 1994). In declaring that citizen-suit provision unconstitutional (Pierce 1993: 1751), the Court in one respect fired a shot across Congress's bow by making a statement regarding the limits of congressional power to grant standing through that particular method. On the other hand, Congress has not enacted a citizen-suit provision since 1986.

Standing in Congress, 1981 – 2006.

Between the 97th and 109th Congresses (1981-2006), the number of grants of standing is still high compared to the first period, but declines overall. Ninety-two laws granting standing were passed during this time with thirteen laws coming in the area of Government Operations (see Table 3). For this period, the most laws were passed during the 103rd Congress (1993-1994) at twelve laws, with ten passed during 1994 alone.

Table 3: Number of Standing Laws Passed by Policy Area 97th – 106th Congress (1981-2006).

Policy Area	*Number of Standing Laws Passed*
Government Operations	13
Banking, Finance, and Domestic Commerce	10
Transportation	9
Civil Rights, Minority Issues, and Civil Liberties	8
Environment	7
Education	5
Labor, Employment, and Immigration	5
Law, Crime, and Family Issues	5
Health	4
Public Lands and Water Management	4
Agriculture	3
Defense	3
Energy	3
Macroeconomics	3
Space, Science, Technology, and Communications	3
Foreign Trade	2
International Affairs and Foreign Aid	2
Social Welfare	2
Housing and Community Development	1

Source: Data compiled by the author. Policy Areas are Policy Agendas Project coding.

Conclusion

Legislators and judges both have engaged in determining which litigants will have access to the federal courts. Access to the courts is a political resource, the presence of which allows litigants to participate in the policy process or to have their constitutional claims heard and the absence of which prevents litigants from doing so. Standing is not static, but rather has developed because of decisions made by legislators and judges regarding whether to extend access to certain individuals and groups.

Recognizing the role of judges and legislators in determining access to the courts has implications for conceptions of judicial power. The availability of courts as policy venues depends in part on congressional grants of authority. As the data presented above makes clear, Congress routinely empowers the federal courts to adjudicate certain issues by conferring standing on potential litigants. For studies of American politics, conceiving of judicial power in this way presents a more comprehensive picture of the role of the federal courts in the policy process. As others have noted, courts should not be viewed as outlier, freelance, or rogue actors who take up policy issues and make decisions free from meaningful outside influence (see, e.g., Dahl 1957; Epstein and Knight 1998). Nor should judicial forays into new policy areas be taken as evidence of the bald exercise of judicial power alone, or at the behest solely of judges seeking out new policy areas (for examples of this type of scholarship see, e.g., Stewart 1975; Tate and Vallinder 1995). Rather, courts should be studied as part of the wider political system in which they operate. Judicial power should be conceived of as contingent on decisions made by other actors to empower the courts.

Note on data sources and data collection.

I employ three sources of data to inform the discussion on the relationship between standing and access to the federal courts. First, I make use of a set of Supreme Court cases in which standing was a topic of discussion. Justices could either be determining the sole question of whether litigants had standing without considering the merits, or justices could discuss both standing and the merits. In compiling a list of Supreme Court cases, my goal was to construct a comprehensive list that covered the development of standing from *Frothingham* to the present day. Three sources were used to create a set of sixty Supreme Court cases covering the years 1921 – 2006. The most important source was the list of Supreme Court standing cases generously provided by Daniel Ho and Erica L. Ross, a dataset which they originally compiled to support their examination of the insulation theory of the origins of standing (Ho and Ross 2009-2010). Consciously over-inclusive, Ho and Ross ultimately identified over 1500 cases in which standing was discussed. This includes a subset of 229 cases in which there was disagreement over standing between the justices on the Court.

I used these 229 cases as a starting point to build a list of cases. Focusing on cases in which there is disagreement between justices is justifiable as they represent moments in which the justices are consciously grappling with questions related to standing and moments when standing doctrine may be changing. I looked next to the Supreme Court Database (*The Supreme Court Database* 2011), which can be searched by legal subject, including standing, and covers the years 1946 – 2009. Using search features made available through the website of the Supreme Court Database, 177 standing cases were identified. Finally, following the example of Ho and Ross (2009-2010: 624), I recorded the standing cases cited in a very recent article – Magill (2009) – with the idea that a recent article on standing should include a comprehensive list of

past and current standing cases. In compiling a final list, for the period between 1921 – 1946, cases were included if they were on both the Ho and Ross and Magill list. For 1946 – 2006, cases were included if they appeared on all three lists. This resulted in a set of 60 cases, a list of which is provided in the Appendix.

Second, I utilize an original dataset of U.S. Public Laws created as part of a larger project focused on jurisdiction-granting. This dataset was compiled by searching U.S. Public Laws, available on HeinOnline, for "district," or "court." Search results were read to determine the manner in which they grant standing resulting in a set of 726 laws which specifically grant jurisdiction to the federal courts, twelve of which grant standing through citizen-suit provisions. Laws were cross-referenced with the Policy Agendas Project Public Law Dataset, which codes laws according to one of 19 major topic areas and 225 minor topic areas. This allows for discussion of the policy areas in which standing is being granted. Third, I employ a second original dataset of U.S. Public Laws compiled by searching HeinOnline for "aggrieved" or "adversely." The search produced a set of 277 laws covering 1921 – 2006. These laws were also cross-referenced with the Policy Agendas Project Public Law Dataset.

List of Cases

Title	Citation	Date decided
Fairchild v. Hughes	258 U.S. 126	2/27/1922
Frothingham v. Mellon	262 U.S. 447	6/4/1923
Edward Hines Yellow Pine Trustees v. United States	263 U.S. 143	11/12/1923
The Chicago Junction Case (Baltimore & O.R.R.) v. United States	264 U.S. 258	3/3/1924
Alexander Sprunt & Son, Inc. v. United States	281 U.S. 249	4/14/1930
Alabama Power Co. v. Ickes	302 U.S. 464	1/3/1938
Tennessee Elec. Power Co. v. Tennessee Valley Authority	306 U.S. 118	1/30/1939
Coleman v. Miller	307 U.S. 433	6/5/1939
FCC v. Sanders Bros. Radio Station	309 U.S. 470	3/25/1940
Perkins v. Lukens Steel Co.	310 U.S. 113	4/29/1940
Scripps-Howard Radio Inc. v. FCC	316 U.S. 4	4/6/1942
Columbia Broadcasting System v. US	316 U.S. 407	6/1/1942
FCC v. NBC	319 U.S. 239	5/17/1943
Stark v. Wickard	321 U.S. 288	2/28/1944
Henderson v. US	339 U.S. 816	6/5/1950
Joint Anti-Fascist Refugee Committee v. McGrath	341 U.S. 123	4/30/1951
Doremus v. Board of Ed. Of Borough of Hawthorne	342 U.S. 429	3/3/1952
Poe v. Ullman	367 U.S. 497	6/19/1961
Baker v. Carr	369 U.S. 186	3/26/1962
National Motor Freight Traffic Association v. US	372 U.S. 246	2/25/1963
Hardin v. Kentucky Util. Co	390 U.S. 1	1/16/1968
Flast v. Cohen	392 U.S. 83	6/10/1968
Jenkins v. McKeithen	395 U.S. 411	6/9/1969
Association of Data Processing Service Organization Inc. v. Camp	397 U.S. 150	3/3/1970
Barlow v. Collins	397 U.S. 159	3/3/1970
Sierra Club v. Morton	405 U.S. 727	4/19/1972
Moose Lodge No. 107 v. Irvis	407 U.S. 163	6/12/1972
Linda R.S. v. Richard D.	410 U.S. 614	3/5/1973
US v. Students Challenging Regulatory Agency Procedures (SCRAP)	412 U.S. 669	6/18/1973
O'Shea v. Littleton	414 U.S. 488	1/15/1974
US v. Richardson	418 U.S. 166	6/25/1974
Schlesinger v. Reservists Committee to Stop the War	418 U.S. 208	6/25/1974
Warth v. Seldin	422 U.S. 490	6/25/1975
New York Civil Service Commission v. Snead	425 U.S. 457	4/26/1976
Simon v. Eastern Kentucky Welfare Rights Organization	426 U.S. 26	6/1/1976
Gladstone Realtors v. Village of Bellwood	441 U.S. 91	4/17/1979

Valley Forge Christian College v. Americans United for Separation of Church and State Inc.	454 U.S. 464	1/12/1982
Leeke v. Timmerman	454 U.S. 83	11/16/1981
Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Curran	456 U.S. 353	5/3/1982
Los Angeles v. Lyons	461 U.S. 95	4/20/1983
Allen v. Wright	468 U.S. 737	7/3/1984
Burke v. Barnes	479 U.S. 361	1/14/1987
ASARCO Inc. v. Kadish	490 U.S. 605	5/30/1989
Whitmore v. Arkansas	495 U.S. 149	4/24/1990
Lujan v. National Wildlife Federation (NWF)	497 U.S. 871	6/27/1990
Demosthenes v. Baal	495 U.S. 731	6/3/1990
Renne v. Geary	501 U.S. 312	6/17/1991
Wyoming v. Oklahoma	502 U.S. 437	1/22/1992
Lujan v. Defenders of Wildlife	504 U.S. 555	6/12/1992
Northeastern Florida Chapter of Associated General Contractors of America v. City of Jacksonville	508 U.S. 656	6/14/1993
Raines v. Byrd	521 U.S. 811	6/26/1997
FEC v. Akins	524 U.S. 11	6/1/1998
Spencer v. Kemna	523 U.S. 1	3/3/1998
Vermont Agency of Natural Resources v. US ex rel. Stevens	529 U.S. 765	5/22/2000
Friends of the Earth v. Laidlaw Environmental Services	528 U.S. 167	1/12/2000
McConnell v. FEC	540 U.S. 93	12/10/2003
Kowalski v. Tesmer	543 U.S. 125	12/13/2004
DaimlerChrysler Corp. v. Cuno	548 U.S. 332	5/15/2006
Massachusetts v. EPA	549 U.S. 497	4/2/2007
MedImmune, Inc. v. Genentech, Inc	549 U.S. 118	1/9/2007
Hein v. Freedom from Religion Foundation, Inc.	551 U.S. 587	6/25/2007
Arizona Christian School Tuition Organization v. Winn et al	09-987	4/42011

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