

**Chapter 6: Limitations In Seeking Relief**  
**Internet Tip (textbook p. 244)**

**CASE 1 of 2**

*American Postal Workers Union v. Frank*  
968 P.2d 1373  
United States Court of Appeals, First Circuit  
July 6, 1992

Frank M. Coffin, Senior Circuit Judge

The American Postal Workers Union seeks declaratory and injunctive relief requiring the United States Postal Service to stop mandatory drug testing of applicants for employment., Because we find that the Union lacks standing, we are constrained to dismiss this case without reaching the sensitive constitutional issue at the heart of the litigation.

*I. Background*

This lawsuit challenges, as violative of Fourth Amendment privacy rights, the Postal Service's policy of requiring job applicants to submit to urinalysis drug testing. The Union represents individuals who presently are postal service employees. Some of those employees underwent drug testing before they were hired, but this lawsuit does not request damages for the asserted violation of their rights. Rather, the Union seeks a declaration that the policy is unconstitutional, and an injunction barring future testing of applicants. The Union thus pursues remedies that will benefit only would be Union members.

The district court, in a ruling from the bench, granted summary judgment for the Postal Service. Although the court referred to "a problem with standing," it nevertheless reached the merits to conclude that the balance of interests weighed in favor of the Postal Service's need to exclude drug using individuals from employment. Accordingly, the court held that the Postal Service's pre employment drug testing is a reasonable search under the Fourth Amendment...

*II. Discussion*

*A. Principles of Standing*

*Case or Controversy*

Article III of the Constitution confines federal courts to deciding only actual cases and controversies. *Allen v. Wright*, 468 U.S. 737 (1984). This limitation on federal jurisdiction underlies the standing doctrine, which is designed to assure that issues are presented to the court "in the context of a specific live grievance." . . .

Standing is thus a threshold question in every federal case, requiring the court to determine "whether the plaintiff has 'alleged such a personal stake in the outcome of the controversy' as to warrant his invocation of federal court jurisdiction and to justify exercise of the court's remedial powers on his behalf." . . .

The standing inquiry has three elements. A litigant must [1] "show that he personally has suffered some actual or threatened injury as a result of the putatively illegal conduct of the

defendant' and [2] that the injury 'fairly can be traced to the challenged action' and [3] 'is likely to be redressed by a favorable decision.'"

The personal injury prong of the inquiry has triggered the most Supreme Court scrutiny and a substantial body of precedent devoted to defining the nature of the requisite harm. . . . The alleged injury, for example, must be real, and immediate rather than abstract or conjectural. A mere interest in a situation no matter how deeply felt, or how important the issue will not substitute for actual injury.... The Court has noted that

"the decision to seek review must be placed 'in the hands of those who have a direct stake in the outcome.' *Sierra Club v. Morton*, 405 U.S. 727.... (1972). It is not to be placed in the hands of 'concerned bystanders,' who will use it simply as a 'vehicle for the vindication of value interests.'"

The less visited second and third components of the standing inquiry – “traceability” and “redressability” -- denote two forms of causation. [T]he former examines the causal connection between the assertedly unlawful conduct, and the alleged injury, whereas the latter examines the causal connection between the alleged injury and the judicial relief requested.

When a litigant has met all three requirements, it can fairly be assumed that a case or controversy has been established, and that "the particular plaintiff is entitled to an adjudication of the particular claims asserted." . . .

#### *Associational Standing*

The Union does not contend that it has suffered any "personal" injury from the drug testing. Instead, it invokes the doctrine of "associational," or "representational," standing, which permits organizations, in certain circumstances, to premise standing entirely upon injuries suffered by their members....

This doctrine does not eliminate the constitutional requirement of a live case or controversy between the parties, but it recognizes that injury to an organization's members may satisfy Article III and allow the organization to litigate in federal court on their behalf....

The test for associational standing is like the basic standing inquiry~ tripartite. The plaintiff association must show that (a) at least one of its members possesses standing to sue in his or her own right i.e., that the member can satisfy the three requirements of injury, traceability *and redressability*; (b) the interests the suit seeks to vindicate are germane to its purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit....

To establish its right to bring the instant action, the Union must demonstrate compliance with these prerequisites. As we discuss in Section B below, it cannot do so. Because the Union members are unable to meet the redressability prong of the basic standing inquiry, they lack standing. As a result, the Union is unable to fulfill the first condition for associational standing that at least one member possess standing to sue as an individual. In light of this deficiency, we do not consider whether the Union could satisfy the other two prongs of the associational standing test.

#### *B. Union Members' Standing*

If the question at this juncture were simply whether any of the Union's members could allege harm from the disputed policy, we might well resolve the standing issue in its favor. Among the Union's present membership are individuals who submitted to the drug test. These members have a concrete claim of injury that they were subjected to an unreasonable search in violation of the Fourth Amendment.

Supreme Court caselaw teaches, however, that while the past injury suffered by these members would give them standing to bring actions for damages, it is an insufficient predicate for equitable relief. In *Los Angeles v. Lyons*, 461 U.S. 95, (1983), the Court reaffirmed the principle that past exposure to harm will not, in and of itself, confer standing upon a litigant to obtain equitable relief "[a]bsent a sufficient likelihood that he will again be wronged in a similar way."

The *Lyons* holding derives from the third prong of the standing inquiry, conditioning justiciability on whether the plaintiff's injury is likely to be redressed by the requested relief. It is based on the obvious proposition that a prospective remedy will provide no relief for an injury that is, and likely will remain, entirely in the past....

Because the drug testing policy is applied only to job applicants, no Union member faces a realistic risk of future exposure to it. Consequently, the declaratory and injunctive relief sought by the Union will not alleviate its members' injuries. Like *Lyons*, the Union members have five claims for damages. The presence of viable damages claims, however, does not establish a "present case or controversy regarding [equitable] relief." . . . For such relief, therefore, the Union's members, and thus the Union, lack standing....

The Union argues that this case differs in a significant respect from *Lyons* and other cases in which plaintiffs sought equitable relief based on past injury. The focus in those cases, according to the Union, was on the unlikely recurrence of the challenged conduct. Here, however, because the Postal Service continues to perform pre employment drug testing on a daily basis, there is "a very real and substantial conflict for which the issuance of declaratory relief would be particularly appropriate." . . .

That the Postal Service consistently imposes the drug test on applicants demonstrates that a live dispute exists, but it does not demonstrate that the Union has a direct stake in the dispute. The Union does not explain how its members all of whom, by definition, are postal service employees, rather than applicants are

hurt by the continuing use of the test on non member job applicants. Nothing in the relevant caselaw suggests that guaranteed repetition of the injury to someone lessens the need for a particularized dispute between the plaintiff and defendant.

We recognize that the Union has a serious claim of constitutional magnitude. Even an important substantive issue cannot be brought to federal court, however,, if a plaintiff fails to satisfy Article III's requirements....

While the concept of standing defies precise definition or mechanical application . . . , the court made it quite clear in *Lyons* that the baseline requirements are unyielding. A plaintiff must demonstrate a concrete injury caused by the defendant 'and remediable by the requested relief to satisfy Article III. Measuring the facts of this case against those well-established foundational criteria requires us to conclude that the Union lacks standing.

*Accordingly, the judgment of the district court granting summary judgment for defendants is vacated, and the cause is remanded with instructions to dismiss the complaint for lack of jurisdiction.*

## CASE 2 of 2

*Hurst v. Capitell*

539 So.2d 264

Supreme Court of Alabama

January 15, 1989

Per Curiam

Melissa Hurst, a minor, through her grandmother, sued her stepfather, Alfred Capitell, for damages based upon claims of sexual abuse. She also sued her natural mother, Mary Jane Capitell, claiming damages based upon her alleged aiding and abetting in Mr. Capitell's sexual abuse and based upon Mrs. Capitell's alleged willful and 'Wanton conduct and negligent performance of her duties as a mother, all of which allegedly allowed the abuse to occur. The trial court dismissed the action as to Mrs. Capitell and granted summary judgment in favor of Mr. Capitell, based upon the parental immunity doctrine because of his *in loco parentis* status. Melissa appeals from those rulings and asks us to reconsider the philosophy supporting the parental immunity doctrine and to abolish it.

The parental immunity doctrine had its genesis in the United States in *Hewellette v. George*, 68 Miss. 703, 9 So. 885 (1891), in which a minor daughter was precluded from suing her deceased mother's estate for damages resulting from mental suffering and injury to her character incurred during her confinement in an asylum for 11 days caused by her mother. The court gave this reason for its holding:

"The peace of society, and of the families composing society, and a sound public policy, designed to subserve the repose of families and the best interests of society, forbid to the minor child a right to appear in court in the assertion of a claim to civil redress for personal injuries suffered at the hands of the parent. The state, through its criminal laws, will give the minor child protection from parental violence and wrongdoing, and this is all the child can be heard to demand."

The parental immunity doctrine was not based upon English common law, statutes, or previous cases; rather, it was judicially created by the Mississippi Supreme Court. In fact, even the *Hewellette* opinion recognized the limitation on the application of parental immunity to those cases involving unemancipated children:

"If ... the relation of parent and child had been finally dissolved, insofar as that relationship imposed the duty upon the parent to protect and care for and control, and the child to aid and comfort and obey, then it may be the child could successfully maintain an action against the parent for personal injuries. But so long as the parent is under obligation to care for, guide, and control, and the child is under reciprocal obligation to aid and comfort and obey, no such action as this can be maintained."

The first Alabama case addressing the issue of parental immunity, . . . quoted from a New Hampshire case that states a similar reason for the rule: ...

"the disability of a child to sue the parent for an injury negligently inflicted by the latter upon the former while a minor is not absolute, but is imposed for the protection of family control and harmony, and exists only where the suit, or the prospect of a suit, might disturb the family relations ...

Because the doctrine was judicially created, it is not exclusively a legislative issue and it may be judicially qualified. Since our decision . . . to defer to the Legislature on this issue, the Legislature has declined to act in regard to the doctrine, while the incidents of sexual abuse involving children have continued to occur. To leave children who are victims of such wrongful, intentional, heinous acts without a right to redress those wrongs in a civil action is unconscionable, especially where the harm to the family fabric has already occurred through that abuse. Because we see no reason to adhere to the doctrine of parental immunity when the purpose for that immunity is no longer served, as in Melissa's case, we are today, creating an exception to the doctrine limited to sexual abuse cases only.

In creating this exception for sexual abuse cases, we believe it is unnecessary to spell out a separate body of procedure and substantive rules to govern such cases. Traditional rules of tort law relating to intentional infliction of personal injury are generally sufficient for the governance of such claims and the defenses asserted thereto....

In creating this exception to the parental immunity doctrine, we make no distinction between natural or adoptive parents or stepparents; the plethora of such cases as Melissa's indicates that sexual abuse is not a respecter of parental status. Thus, civil suits by children against parents for sexual abuse are not confined to a particular category Of "parent.01 Therefore, the trial court's dismissal in favor of Mary Jane Capitell and its summary judgment for Alfred Capitell are both reversed and the case is remanded for trial.

Reversed and remanded.