NOTE

Voter Standing: A New Means for Third Parties to Challenge the Tax-Exempt Status of Nonprofit Organizations?

Introduction

The Internal Revenue Service (IRS) prohibits tax-exempt organizations from engaging in lobbying activities.[1] "The IRS has been known to wink at this absolute proscription, especially when it sees a violation by an established religious body."[2] Certain pro-abortion rights groups felt that the IRS was tolerating lobbying by the Catholic Church, the groups' leading adversary, while denying pro-abortion lobbying. The groups, a consortium of twenty-nine individuals and organizations (referred to collectively as Abortion Rights Mobilization, Inc. (ARM)), brought suit against the IRS and the two principal national organizations of the Catholic Church, the United States Catholic Conference (USCC) and the National Conference of Catholic Bishops (NCCB).[3]

In the first of a series of cases known collectively as *ARM*,[4] the pro-abortion plaintiffs contended that the IRS had erroneously and illegally granted tax-exempt status to the Catholic Church because the church is actively engaged in its nationwide "Pastoral Plan" to outlaw abortion

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1. I.R.C. § 501(c)(3) (West 1988). Substantially unchanged from the 1976 version, § 501(c)(3) allows an organization tax-exempt status as long as "no substantial part of the [organization's] activities . . . is carrying on propaganda, or otherwise attempting, to influence legislation . . . and [the organization] does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office." *See infra* notes 12-25 and accompanying text.

2. Schwarz & Hutton, *Recent Developments in Tax-Exempt Organizations*, 18 U.S.F. L. REV. 649, 668 (1984); *see also* Evans, *Challenge to IRS Enforcement of Ban on Political Activities by Churches Poses Difficult Questions for High Court*, 38 TAX NOTES 1194, 1196 (1987).

3. Abortion Rights Mobilization, Inc. v. Regan, 544 F. Supp. 471, 473 (S.D.N.Y. 1982).

4. Abortion Rights Mobilization, Inc. v. Regan, 544 F. Supp. 471 (S.D.N.Y. 1982) (*ARM I*); Abortion Rights Mobilization, Inc. v. Regan, 552 F. Supp. 364 (S.D.N.Y. 1982) (*ARM II*); Abortion Rights Mobilization, Inc. v. Regan, 603 F. Supp. 970 (S.D.N.Y. 1985) (*ARM III*); Abortion Rights Mobilization, Inc. v. Baker, 110 F.R.D. 337 (S.D.N.Y. 1986) (*ARM IV*); *In re* United States Catholic Conference, 824 F.2d 156 (2d Cir. 1987) (*ARM V*); United States Catholic Conference v. Abortion Rights Mobilization, Inc., 108 S. Ct. 2268 (1988) (*ARM VI*).

through lobbying and participation in political campaigns.[5] The plaintiffs asserted that the IRS had not permitted tax-exempt organizations with opposing views on the abortion controversy to lobby or otherwise influence the political process.[6] The defendants answered by challenging the plaintiffs' standing to sue since the plaintiffs represented a third party; that is, the plaintiffs' tax-exemption was not in question.[7] The district court found voter standing, stating, "[P]laintiffs have alleged government action which has improperly biased the political process against the discrete group to which they belong."[8] The Second Circuit rejected a challenge to the district court's determination of plaintiffs' standing, but did so on a procedural ground.[9]

This procedural aspect of the case was argued before the Supreme Court along with the underlying issue of "whether ARM has standing to sue the IRS to compel it to revoke the church's exempt status."[10] The Supreme Court addressed the procedural issue but remanded the issue of standing with no guidelines regarding the legitimacy of voter standing in this context.[11]

This Note examines the policy, procedure, and enforcement of tax-exemption for nonprofit, charitable organizations and analyzes the *ARM* cases with regard to both the doctrine of standing in third-party suits and the legislative policy favoring nonprofit, charitable organizations. Part I sets forth the legislative provisions for tax-exemption of charitable organizations, the Court's interpretation of those provisions, and the procedure for an organization to attain, and retain, exemption status. Part II discusses the concept of standing as it applies to third parties challenging the tax-exempt status of an organization. Part III discusses the voter-standing strategy used in the *ARM* cases and the disposition of the standing issue in the district court, court of appeals, and Supreme Court. Finally, Part IV assesses *ARM* in light of the purposes of federal tax-exempt status to conclude that the Supreme Court should ultimately reject voter standing as a new avenue for third parties to challenge the tax-exempt status of nonprofit, charitable organizations.

5. *ARM I*, 544 F. Supp. at 475.

6. *Id.*

7. *Id.* at 476.

8. *Id.* at 481.

9. *ARM V*, 824 F.2d 156 (2d Cir. 1987) (the matter on appeal involved whether nonparty witnesses, USCC and NCCB (who were dismissed as defendants in *ARM I*) had standing on appeal to challenge a district court's subject matter jurisdiction over the lawsuit in which the witnesses had been compelled to furnish evidence).

10. Payne, *Supreme Court Hears Argument in Catholic Church Lobbying Case*, 39 TAX NOTES 436, 436 (1988).

11. *ARM VI*, 108 S. Ct. 2268 (1988).

I. Tax-exempt Status

Congress has provided a significant benefit to certain nonprofit organizations through two key provisions in the Internal Revenue Code. Section 501(c)(3) states that certain charitable organizations that provide beneficial services to the public are eligible to be exempt from taxation.[12] Section 170(c)(2) allows taxpayers who contribute to these organizations to enjoy a tax deduction for their donations.[13] The Supreme Court has recognized that "[b]oth tax exemptions and tax deductibility are a form of subsidy that is administered through the tax system. A tax exemption has much the same effect as a cash grant to the organization . . . ."[14] These tax benefits are allowed because the legislature recognizes that charitable organizations perform many of the same public services as governmental institutions.[15] The Supreme Court has found that "in enacting both section 170 [allowing deductibility] and section 501(c)(3) [tax-exemption], Congress sought to provide tax benefits to charitable organizations, to encourage the development of private institutions that serve a useful public purpose or supplement or take the place of public institutions of the same kind."[16] Such economic benefits provide strong

12. Organizations are exempt from the payment of income taxes if they meet certain criteria set forth in I.R.C. § 501(c)(3) (West 1988). In pertinent part, that section applies to:

> (3) Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals . . . .

Id.

13. Under I.R.C. § 170(c) (West 1988), charitable contributions are deductible if they are to or for the use of:

> (2) A corporation, trust, or community chest, fund, or foundation—
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> (A) created or organized in the United States or in any possession thereof, or under the law of the United States, any State, the District of Columbia, or any possession of the United States;
>
> (B) organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals . . . .

Id.

14. Regan v. Taxation With Representation of Washington, 461 U.S. 540, 544 (1983); *see also ARM I*, 544 F. Supp. 471, 475 (S.D.N.Y. 1982) (tax-exempt organizations receive a double benefit from § 501(c)(3) exemption and tax-deductible contributions).

15. A Congressional report summarized the purpose of tax-exemption:

> The exemption from taxation of money or property devoted to charitable and other purposes is based upon the theory that the Government is compensated for the loss of revenue by its relief from financial burden which would otherwise have to be met by appropriations from public funds, and by the benefits resulting from the promotion of the general welfare.

H.R. REP. NO. 1860, 75th Cong., 3d Sess., pt. 2, at 742 (1939).

16. Bob Jones Univ. v. United States (*Bob Jones II*), 461 U.S. 574, 587-88 (1983). Tax-exemption has been allowed for organizations that provide charitable, religious, educational,

incentives to nonprofit organizations both to attain and retain tax-exempt status and thus to receive tax-exempt, tax-deductible contributions.

To achieve section 501(c)(3) exemption status, an organization must first request a letter of determination from the IRS.[17] If the IRS makes a favorable determination, the determination is effective "as of the date the organization was formed if [the organization's] activities were consistent with exemption."[18] The IRS will specify the effective date if the organization must modify its activities in order to qualify.[19]

Once an organization attains status under sections 501(c)(3) and 170(c)(2) it is subject to review by the IRS on an annual basis. Each year the IRS determines if an organization's exemption status will remain unchanged, require modification, or be revoked. Recourse from a revocation determination is restrictive; an organization must first exhaust administrative appeal procedures before turning to the courts.[20] The nonprofit organization must receive notice,[21] an indication of whether the revocation is prospective or retroactive,[22] and district office review.[23]

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labor, agricultural, public utilities, scientific, social welfare, and other services. *See generally* P. TREUSCH & N. SUGARMAN, TAX-EXEMPT CHARITABLE ORGANIZATIONS 4 (1979).

17. Organizations desiring tax-exempt status apply to the IRS key district office administering the location of the organization's principal place of business. Rev. Proc. 84-46, 1984-1 C.B. 541. The district offices review applications but they refer to the National Office on questions not covered by published precedent. *Id.* The National Office reviews each key district determination to assure uniformity in the application of rulings and precedents before a letter is issued to the applying organization. M. SALTZMAN, IRS PRACTICE AND PROCEDURE (1981 & 1988 Cum. Supp. No. 1), ¶ 3.04[3][g].

18. M. SALTZMAN, *supra* note 17, at ¶ 3.04[3][g].

19. *Id.*

20. In 1974, the Supreme Court held in two cases that courts could not restrain the IRS from revoking either an organization's § 501(c)(3) exempt status, or its qualification for tax-deductible contributions. Bob Jones Univ. v. Simon (*Bob Jones I*), 416 U.S. 725 (1974) and Alexander v. "Americans United" Inc., 416 U.S. 752 (1974). An affected organization could only obtain judicial review in a tax-deficiency proceeding or a suit for a refund. In response, Congress passed I.R.C. § 7428, which provides a declaratory judgment procedure (limited to the organization whose qualifications or status is at issue) that allows judicial review of both the initial determination and each annual redetermination of the exemption status of a nonprofit organization. The statute requires that the organization pursue its claim through the regular administrative procedures before judicial review is available. M. SALTZMAN, *supra* note 17, at ¶ 3.04[3][g][ii].

21. Acceptable methods of notice are listed in Rev. Proc. 84-46, which requires that revocation or modification of a ruling or determination letter may be made by (1) a notice to the taxpayer to whom the ruling or determination letter originally was issued, (2) enactment of legislation or ratification of a tax treaty, (3) a Supreme Court decision, (4) issuance of temporary or final regulations, or (5) issuance of a revenue ruling revenue procedure, or other statement published in the *Internal Revenue Bulletin*. Rev. Proc. 84-46, 1984-1 C.B. 541.

22. Rev. Proc. 80-25 provides that revocation ordinarily will take effect no later than the time at which the organization received written notice that its exemption ruling or determination letter might be revoked or modified. But revocation may be retroactive if the organization (a) omitted or misstated a material fact, (b) operated in a manner materially different from that originally represented, or (c) engaged in a prohibited transaction for the purpose of diverting

Tax-exempt status comes with specified limitations, including a prohibition against lobbying and related political activities. A section 501(c)(3) nonprofit, charitable organization is prohibited from "participat[ing] in, or interven[ing] in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office."[24] Justice Rehnquist summarized the Court's position on the matter by writing, "In short, Congress chose not to subsidize lobbying as extensively as it chose to subsidize other activities that nonprofit organizations undertake to promote the public welfare."[25]

If an organization has its section 501(c)(3) tax-exempt status revoked because it has violated the limitations, the organization has both administrative and judicial recourse.[26] Neither of these procedures provides for suits by third parties wishing to challenge an organization's exempt status.[27] Before a third party can mount such a challenge, it must demonstrate an independent right to bring a suit under the doctrine of standing.

II. Doctrine of Standing

The concept of standing arose from the requirement that federal

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corpus or income from its exempt purpose involving a substantial part if its corpus or income. Rev. Proc. 80-25, 1980-1 C.B. 667.

23. Rev. Proc. 84-46, 1984-1 C.B. 541 (provides guidelines for review).

24. I.R.C. §§ 501(c)(3) and 170(c)(2) (West 1988). The IRS has revoked tax-exempt status. One high profile organization, The Sierra Club, lost its tax-exemption in 1966 because the club used its tax-deductible donations to advance its views through the political system (supporting a state park referendum and legislation creating national parks, active involvement in influencing state and national legislative proposals, and employment of a lobbyist in Washington, D.C.). R. HOLBERT, TAX LAW AND POLITICAL ACCESS: THE BIAS OF PLURALISM REVISITED 38-39 (American Politics Series No. 04-023, vol. 2, 1975); *see also* B. HOPKINS, THE LAW OF TAX-EXEMPT ORGANIZATIONS § 14.2 (5th ed. 1987) (lists other disqualifying activities).

The lobbying limitation was repeatedly attacked as an infringement on the first amendment rights of § 501(c)(3) organizations until the Supreme Court decided Regan v. Taxation With Representation of Washington, 461 U.S. 540 (1983) (Section 501(c)(3) does not violate the First Amendment but disallows subsidization of First Amendment activity with public funds).

25. *Regan*, 461 U.S. at 544.

Additionally, a § 501(c)(3) nonprofit organization "may create section 501(c)(4) affiliates to carry out their lobbying, and the two entities may co-exist and even share offices, directors, office space and common goals without loss of exemption. The only restriction is that tax-deductible contributions may not find their way into the lobbying affiliate's bank account." Schwarz & Hutton, *supra* note 2, at 666; *see also Regan*, 461 U.S. at 543-44.

26. *See supra* note 20.

27. I.R.C. § 7428 does not provide a cause of action, express or implied, to third parties who wish to challenge the IRS determination of an exempt nonprofit organization. *See supra* note 20.

courts only have constitutional power to decide cases or controversies.[28] The Supreme Court has stated that the "standing inquiry must be answered by reference to the Art[icle] III notion that federal courts may exercise power only 'in the last resort, and as a necessity.' "[29] Additionally, Article III standing can be attained "only when adjudication is 'consistent with a system of separated powers and [the dispute is one] traditionally thought to be capable of resolution through the judicial process.' "[30]

An inquiry into standing is therefore a determination of whether the plaintiff is in a position to bring his case or controversy before the court.[31] As one commentator has expressed, "The doctrine of standing simply defines who has the power to trigger the process of judicial review—who, in other words, may act individually or, at times, for the community."[32]

In *Flast v. Cohen*,[33] Chief Justice Warren wrote, "[The words 'cases' and 'controversies'] in part . . . define the role assigned to the judiciary in a tripartite allocation of power to assure that the federal courts will not intrude into areas committed to the other branches of government."[34]

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28. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—[between a State and Citizens of another State;—]*between Citizens of different States;—between citizens of the same State claiming Lands under the Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

U.S. CONST. art. III, § 2, cl. 1. *Changed by the Eleventh Amendment.

29. Allen v. Wright, 468 U.S. 737, 752 (1984) (quoting Chicago & Grand Trunk R. Co. v. Wellman, 143 U.S. 339, 345 (1892)).

30. *Id.* at 752 (quoting Flast v. Cohen, 392 U.S. 83, 97 (1968)); *see also* Valley Forge Christian College v. Americans United for Separation of Church and State, Inc., 454 U.S. 464, 472-73 (1982).

31. Standing doctrine "reflects the general proposition that a citizen not directly subject to regulation may under some circumstances go to court to challenge government action or inaction." Stephan, *Nontaxpayer Litigation of Income Tax Disputes*, 73 YALE L. & POL'Y REV. 73 (1984).

32. Dow, *Standing and Rights*, 36 EMORY L.J. 1195, 1196 (1987).

33. 392 U.S. 83 (1968).

34. *Id.* at 94-95. In Schlesinger v. Reservists Committee to Stop the War, 418 U.S. 208 (1974), the Court denied standing to plaintiffs in their capacity as United States citizens in a suit under Article I, § 6, challenging the ineligibility of a reservist from holding office "since 'every provision of the Constitution was meant to serve the interests of all,' recognition of 'citizen' standing 'has no boundaries' and would therefore 'distort the role of the Judiciary in its relationship to the Executive and the Legislature and open the Judiciary to an arguable charge of providing government by injunction.' " *Id.* at 226-27. In United States v. Richardson, 418 U.S. 166 (1974), decided the same day, the Court addressed the fact that in some controversies no private party would have standing: "[T]he absence of any particular individ-

The Burger Court refined the standing doctrine in *Allen v. Wright*[35] by stating that it is "built on a single basic idea—the idea of separation of powers,"[36] reemphasizing " 'the proper—and properly limited—role of the courts in a democratic society.' "[37]

Justice Rehnquist, writing for the majority in *Valley Forge Christian College v. Americans United for Separation of Church and State, Inc.* noted "that the concept of 'Art[icle] III standing' has not been defined with complete consistency."[38] But he wrote, "[O]f one thing we may be sure: Those who do not possess Art[icle] III standing may not litigate as suitors in the courts of the United States";[39] their claims may be more appropriately redressed by the executive or legislative branches.[40]

A. Requirements of Standing

To ascertain whether a plaintiff has constitutional standing, the threshold question is whether "a party has a sufficient stake in an otherwise justiciable controversy to obtain judicial resolution of that controversy."[41] The focus is "on the party seeking to get his complaint before a federal court" rather than "on the issues he wishes to have adjudicated."[42]

The Supreme Court has outlined the requirements for attaining Article III standing. First, "[The plaintiff] personally [must have] suffered some actual or threatened injury as a result of the putatively illegal con-

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ual or class to litigate these claims gives support to the argument that the subject matter is committed to the surveillance of Congress, and ultimately to the political process." *Id.* at 179.

The trend toward separation of powers as the basis for denying standing led one commentator to observe, "[T]he bizarre consequence of recent standing decisions is that they tell injured plaintiffs to turn to the very political process about which they are attempting to complain." Dow, *supra* note 32, at 1213.

35. 468 U.S. 737 (1984).

36. *Id.* at 752.

37. *Id.* at 752, 750 (quoting Warth v. Seldin, 422 U.S. 490, 498 (1975)). *See generally* Scalia, *The Doctrine of Standing as an Essential Element of the Separation of Powers*, 17 SUFFOLK U.L. REV. 881 (1983).

38. 454 U.S. 464, 475 (1982). In his treatise on constitutional law, Laurence H. Tribe asserted that "unless the Court modifies or attempts to clarify its approach, standing doctrine will likely remain a mystery to litigants and lower courts." L. TRIBE, AMERICAN CONSTITUTIONAL LAW § 3-14, at 111 (2d ed. 1988); *see also* Note, *"More Than an Intuition, Less Than a Theory": Toward a Coherent Doctrine of Standing*, 86 COLUM. L. REV. 564, 569 (1986) ("From these few, cryptic words are derived several of the most arcane, complex, and unsettled doctrines in American constitutional law.").

39. *Valley Forge*, 454 U.S. at 475-76.

40. *Id.* at 473-75.

41. Sierra Club v. Morton, 405 U.S. 727, 731 (1972); *see also* Warth v. Seldin, 422 U.S. 490, 498-99 (1975) (quoting Baker v. Carr, 369 U.S. 186, 204 (1962)) ("[plaintiff must] 'allege[] 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.").

42. Flast v. Cohen, 392 U.S. 83, 99 (1968).

duct of the defendant"[43] (injury in fact). Second (a two-prong test), the injury "fairly can be traced to the challenged action,"[44] (causation) and the injury "is likely to be redressed by a favorable decision"[45] (redressability). Once the plaintiff satisfies these requirements, he "may still lack standing under . . . prudential principles."[46] The Court considers the consequences of granting standing in the individual case according to two general guidelines: avoiding decisions on broad social questions "where no individual rights would be vindicated"[47] and limiting federal court access "to those litigants best suited to assert a particular claim."[48]

1. Injury in fact: Is the injury too abstract?[49]

In order to satisfy the injury-in-fact requirement, "a litigant must . . . demonstrate, regardless of the actual existence of a claimed injury or its subjective importance, an individuated harm impacting specifically upon him and of a tangible, concrete nature."[50]

Guidelines provided by the Court as to what constitutes an injury are vague: an injury must be "distinct and palpable"[51] and cannot be "abstract," "conjectural," or "hypothetical."[52] The Court cautioned that "these terms cannot be defined so as to make application of the constitutional standing requirement a mechanical exercise"[53] and pointed to the extensive case law for guidance.

An injury, though not flowing from the terms of the law, may nonetheless occur as a result of the law's application. For example, the Court has held as injuries in fact the following: an employee's loss of employment as the result of a law that directly affected only his employer,[54] plaintiffs' suffering adverse changes in economic relationships because of

43. Gladstone, Realtors v. Village of Bellwood, 441 U.S. 91, 99 (1979); *see also Valley Forge*, 454 U.S. at 472; Allen v. Wright, 468 U.S. 737, 751 (1984).

44. Simon v. Eastern Kentucky Welfare Rights Org., 426 U.S. 26, 41 (1976); *see also Valley Forge*, 454 U.S. at 472; *Allen*, 468 U.S. at 751.

45. *Simon*, 426 U.S. at 38; *see also Valley Forge*, 454 U.S. at 472; *Allen*, 468 U.S. at 751.

46. *Gladstone, Realtors*, 441 U.S. at 99-100.

47. *Id.*

48. *Id.*

49. *Allen*, 468 U.S. at 752.

50. L. TRIBE, *supra* note 38, at § 3-16 at 114; *see also* Warth v. Seldin, 422 U.S. 490, 501 (1975).

51. *Warth*, 422 U.S. at 501; *see also Allen*, 468 U.S. at 751; *Gladstone, Realtors*, 441 U.S. at 100.

52. *Allen*, 468 U.S. at 751 (citing City of Los Angeles v. Lyons, 461 U.S. 95, 101-02 (1983) and O'Shea v. Littleton, 414 U.S. 488, 494 (1974)).

53. *Allen*, 468 U.S. at 751.

54. *See, e.g.*, Truax v. Raich, 239 U.S. 33 (1915) (challenge of an equal protection clause in an Arizona statute that placed a ceiling on the percentage of aliens allowed in a work force allowed by a soon-to-be-discharged alien employee).

the effect a law had on their economic livelihood,[55] and interference by operation of a law on a business' prospective business activities.[56]

Although the plaintiff must allege a tangible, concrete injury, that injury can be prospective in nature. The Court has held allegations of future injuries sufficient to grant standing. In allowing a suit by nursing home residents to prevent their involuntary transfer to other nursing home facilities, the Court found a concrete though prospective injury and stated, "One does not have to await the consummation of threatened injury to obtain preventative relief."[57]

2. Causation/Redressability

The Supreme Court has emphasized that the second requirement for Article III standing is a two-prong inquiry: first, a determination that the injury was caused by the challenged governmental action and second, that the remedy sought will redress the problem.[58]

a. Causation: Is the line of causation between the illegal conduct and injury too attenuated?[59]

Injury in fact must be coupled with the requirement that there is a direct causal relationship between the injury by the challenged governmental action or operation of law.[60] The Court has noted that "to meet the minimum requirement of Art[icle] III[, the plaintiff must] establish

55. *See, e.g.,* Association of Data Processing Serv. Orgs. v. Camp, Inc., 397 U.S. 150 (1970) (adverse impact to existing data processors' economic interests because of the prospect of competition with regulated national banks created the personal stake required to challenge the validity of agency rulings that allowed the competition); *see also* Barlow v. Collins, 397 U.S. 159 (1970) (suit by tenant farmers challenging federal expansion of landlord lease powers); Hardin v. Kentucky Utilities Co., 390 U.S. 1 (1968) (interference with private utility monopoly through government subsidy of TVA).

56. *See, e.g.,* Bacchus Imports, Ltd. v. Dias, 468 U.S. 263 (1984) (liquor wholesalers challenged a tax that raised prices only on import liquor sold to retailers); Secretary of State of Maryland v. Joseph H. Munson Co., Inc., 467 U.S. 947 (1984) (challenge of statute imposing fundraising limits that could be waived only in circumstances where raising contributions was effectively prevented); Bryant v. Yellen, 447 U.S. 352 (1980) (challenge of federal water supply restriction to land exceeding 160 acres under single ownership).

57. Blum v. Yaretsky, 457 U.S. 991, 1000 (1982) (quoting Pennsylvania v. West Virginia, 262 U.S. 553, 593 (1923)).

The possibility of criminal prosecution may also satisfy the injury-in-fact requirement; *see* Babbitt v. United Farm Workers National Union, 442 U.S. 289 (1979) (union challenged regulations limiting labor representation in elections, consumer publicity, and boycotts). *But see* City of Los Angeles v. Lyons, 461 U.S. 95 (1983) (standing disallowed in injunction on police use of chokeholds by a chokehold victim because he could not prove he would ever be subject to a chokehold again).

58. Allen v. Wright, 468 U.S. 737, 757-59 (1984); *see also* Simon v. Eastern Kentucky Welfare Rights Org., 426 U.S. 26 (1976) (both causation and redressability required to attain Article III standing; Congress cannot confer standing by statute).

59. *Allen,* 468 U.S. at 752.

60. Warth v. Seldin, 422 U.S. 490, 505-07 (1975); *see also Allen,* 468 U.S. at 751.

that, in fact, the asserted injury was the consequence of the defendants' actions . . . ."[61] The causation element for standing is the traditional tort law requirement. The court must find that the injury the plaintiff seeks to litigate would not have occurred but for the defendant's action. The plaintiffs will not satisfy this element if they rely "on little more than the remote possibility, unsubstantiated by allegations of fact, that their situation might have been better had [the defendants] acted otherwise, and might improve were the court to afford relief."[62]

b. Redressability: Is the prospect of obtaining relief from the injury as a result of a favorable ruling too speculative?[63]

To meet the second prong, it is essential that the plaintiff show "an injury to himself that is likely to be redressed by a favorable decision."[64] Standing will fail if the remedy sought will not redress the plaintiff's injury.

3. Prudential Limitations

The first two requirements, injury in fact and causation/redressability, are the constitutional requirements of Article III standing. The Supreme Court has imposed additional limitations on standing for prudent administration of the judiciary.[65] These prudential restraints are designed to prevent standing when no specific individual's rights would be vindicated[66] and to limit federal court access to those plaintiffs who are "best suited to assert a particular claim."[67] The Court has termed such prudential limitations nonconstitutional.[68]

First, if a plaintiff presents " 'abstract questions of wide public significance' which amount to 'generalized grievances,' pervasively shared and most appropriately addressed in the representative branches[,]"[69] a court will deny standing. Even after proving that the plaintiff himself has suffered an injury in fact, if "the harm asserted amounts only to a generalized grievance shared by a large number of citizens in a substantially equal measure[,]"[70] the plaintiff will not attain standing for failure to

61. *Warth*, 422 U.S. at 505.

62. *Id.* at 507.

63. *Allen*, 468 U.S. at 752.

64. Simon v. Eastern Kentucky Welfare Rights Org., 426 U.S. 26, 38 (1976).

65. *Allen*, 468 U.S. at 751 ("Standing doctrine embraces several judicially self-imposed limits on the exercise of federal jurisdiction . . . .").

66. Gladstone, Realtors v. Village of Bellwood, 441 U.S. 91, 99-100 (1979).

67. *Id.* at 100.

68. *See Allen*, 468 U.S. at 750-51; *see also* Dow, *supra* note 32, at 1198.

69. Valley Forge Christian College v. Americans United for Separation of Church and State, Inc., 454 U.S. 464, 475 (1982) (quoting Warth v. Seldin, 422 U.S. 490, 499-500 (1975)); *see also Allen*, 468 U.S. at 751.

70. Duke Power Co. v. Carolina Environmental Study Group, 438 U.S. 59, 80 (1978).

overcome this prudential limitation.

Second, where a particular statute or constitutional provision is at issue, a court will deny standing if the plaintiff does not present a claim falling "within the zone of interests to be protected or regulated by the [law] or constitutional guarantee . . . ."[71] In performing this zone-of-interests inquiry, the court investigates legislative purpose to determine whether the plaintiff has a recognized right of action.[72] The Supreme Court has found "[t]he essential inquiry [to be] whether Congress 'intended for [a particular] class [of plaintiffs] to be relied upon to challenge agency disregard of the law.' "[73] In assessing whether the plaintiff is asserting a right within a protected zone of interest, the Court often asks whether Congress contemplated the action at issue when drafting the law. The Court has concluded that "the test denies a right of review if the plaintiff's interests are so marginally related to or inconsistent with the purposes implicit in the statute that it cannot reasonably be assumed that Congress intended to permit the suit."[74]

Third, standing may be denied if a plaintiff rests his claim "on the legal rights or interests of third parties."[75] This limitation is designed narrowly to define circumstances in which one party will have standing to assert the legal rights of another. The Supreme Court has held that "even when the plaintiff has alleged injury sufficient to meet the 'case or controversy' requirement, . . . the plaintiff generally must assert his own legal rights and interests, and cannot rest his claim to relief on the legal rights or interests of third parties.' "[76] The Court considered this a desirable limitation when the rights of third parties are implicated in order to avoid "the adjudication of rights which those not before the Court may not wish to assert, and [to] assur[e] that the most effective advocate of the rights at issue is present to champion them."[77]

B. Third-Party Standing

Although the Court will deny standing to a plaintiff asserting the rights of another when that person is better situated to sue, the court may find standing when the plaintiff is a third party to the defendant's actions or the operation of law. In determining whether a plaintiff can attain

71. *Valley Forge*, 454 U.S. at 475 (quoting Association of Data Processing Serv. Orgs. v. Camp, Inc., 397 U.S. 150, 153 (1970)); *see also Allen*, 468 U.S. at 751.

72. Stephan, *supra* note 31, at 83.

73. Clarke v. Sec. Indus. Ass'n, 479 U.S. 388, 399 (1987) (quoting Block v. Community Nutrition Inst., 467 U.S. 340, 347 (1984) (citing Barlow v. Collins, 397 U.S. 159, 167 (1970))).

74. *Clarke*, 479 U.S. at 399.

75. *Valley Forge*, 454 U.S. at 474 (quoting Warth v. Seldin, 422 U.S. 490, 499 (1975)); *see also Allen*, 468 U.S. at 751.

76. Duke Power Co. v. Carolina Envtl. Study Group, 438 U.S. 59, 80 (1978) (quoting *Warth*, 422 U.S. at 499).

77. *Duke Power*, 438 U.S. at 80.

standing to assert the rights of third parties (*jus tertii* standing),[78] the Court weighs several factors. First, the Court determines the likelihood that the rights of the third party will be impaired if the plaintiff is not allowed to assert those rights. Second, the Court evaluates the importance of the relationship between the plaintiff and the third party and whether vindication of the third party's rights will remove the injury suffered by the plaintiff. Finally, if the plaintiff's interest is closely analogous to the third party's interests so that the plaintiff is an effective proponent of the latter's rights, the Court will grant standing.[79]

1. Taxpayer Standing

Though the Court generally has been lenient in granting personal standing, the reverse is true in both taxpayer standing and federal income tax cases brought by third parties. One commentator has observed that "[i]ndeterminancy in the application of doctrine does not obscure one indisputable feature of the standing cases: outside the tax area, the Court has shown substantial, albeit intermittent, leniency in granting standing, but in tax cases the Court has never found an acceptable occasion for private enforcement."[80] A taxpayer has standing to challenge laws regarding his own taxation,[81] and may, in that capacity, have sufficient interest to challenge governmental spending on the theory that his own taxes might be reduced if the challenged spending were curtailed.[82]

Although a taxpayer might challenge his own taxation, the Court has made third-party standing, in which a plaintiff challenges another party's tax status, essentially unattainable. A line of Supreme Court deci-

78. BLACK'S LAW DICTIONARY 776 (5th ed. 1979); *see generally* Monaghan, *Third Party Standing*, 84 COLUM. L. REV. 277 (1984); Sedler, *The Assertion of Constitutional Jus Tertii: A Substantive Approach*, 70 CALIF. L. REV. 1308 (1982).

79. *See generally* Singleton v. Wulff, 428 U.S. 106 (1976); L. TRIBE, *supra* note 38, at § 3-19; J. NOWAK, R. ROTUNDA, & J. YOUNG, CONSTITUTIONAL LAW § 2.12(f)(3), at 81 (3d ed. 1986).

80. Stephan, *supra* note 31, at 83. Despite federal restrictions, many states allow taxpayer standing in challenges of state and local tax expenditures. *See* Comment, *Taxpayers' Suits: Standing Barriers and Pecuniary Restraints*, 59 TEMP. L.Q. 951, 962 (1986).

81. *See, e.g.*, Bacchus Imports, Ltd. v. Dias, 468 U.S. 263, 267 (1984) (liquor wholesaler taxpayer had standing to challenge excise tax on wholesale liquor sales).

82. Flast v. Cohen, 392 U.S. 83 (1968) (taxpayer allowed to challenge under the Establishment Clause a federal aid-to-education program that allocated a portion of the aid to parochial schools); United States v. Butler, 297 U.S. 1 (1936) (taxpayers granted standing to challenge a federal program of payment to farmers to reduce acreage allotments).

In *Flast*, the Court developed a two-part nexus test whereby a taxpayer may challenge the constitutionality of a federal tax or expenditure only if a logical nexus exists between the status of the taxpayer and the claim. *Flast*, 392 U.S. at 102-03. The Supreme Court has not allowed any plaintiff to meet the stringent requirements of the test since *Flast* for fear of the extensive litigation that could result if every federal taxpayer were allowed to challenge every federal government taxing and spending program. *See* Valley Forge Christian College v. Americans United for Separation of Church and State, Inc., 454 U.S. 464 (1982).

sions[83] makes it "almost impossible for third parties to meet the jurisdictional prerequisite of standing to sue."[84] In *Simon v. Eastern Kentucky Welfare Rights Org.*,[85] the plaintiffs (indigents who had been refused service at private hospitals) sought reversal of a revenue ruling that had conferred charitable status only to hospitals that offered free emergency room service (not free full service).[86] The Court ruled that the plaintiffs lacked standing, individually or as a class, to attack the institutions' tax exemptions.[87]

In rejecting the plaintiffs' bid for standing, the Court found both the injury-in-fact and causation elements unsatisfied. The Court held that it was "purely speculative whether the denials of service" to the plaintiffs were caused by the revenue ruling.[88] Additionally, the causal link between the tax exemption and denial of service to indigents was too tenuous and whatever injuries the plaintiffs had suffered were not fairly traceable to the government's allegedly flawed ruling.[89] "Moreover, the complaint suggests no substantial likelihood that victory in this suit would result in respondents' receiving the hospital treatement they desire."[90] Because the plaintiffs failed to meet the Article III case or controversy requirements, the Court denied standing.[91] Justice Stewart, concurring in *Eastern Kentucky*, wrote that he could not "now imagine a case . . . where a person whose own tax liability was not affected ever could have standing to litigate the federal tax liability of someone else."[92]

2. *Voter Standing*

Voter standing is not third-party standing per se. It is a theory that third parties can use to gain standing. A plaintiff may assert voter standing when government action or inaction has affected his ability to participate effectively in the political process. Although the plaintiff is in the position of a third party because the challenged action governs another group, he asserts a first-person injury because the resulting benefit to that group has affected him directly.[93]

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83. *See, e.g.*, Allen V. Wright 468 U.S. 737 (1984); Simon V. Eastern Kentucky Welfare Rights Org., 426 U.S. 26 (1976).

84. Schwarz, *Recent Developments in Tax-Exempt Organizations*, 19 U.S.F. L. REV. 299, 325 (1985); *see also* Stephan, *supra* note 31, at 73 (doctrine of standing has barred third-party suits in federal income tax suits).

85. 426 U.S. 26 (1976).

86. *Id.*

87. *Id.*

88. *Id.* at 42.

89. *Id.* at 42-45.

90. *Id.* at 45-46.

91. *Id.* Since the constitutional elements of the doctrine of standing were not met, the Court did not evaluate the prudential limitations.

92. *Id.* at 46.

93. *See generally* Monaghan, *supra* note 78; Sedler, *supra* note 78.

In *Baker v. Carr*,[94] the seminal case for voter standing, a group of Tennessee citizens challenged a state apportionment scheme because it "effect[ed] a gross disproportion of representation to voting population" that impaired the effectiveness of their votes by "placing them in a position of unjustifiable inequality vis-à-vis" voters in other counties.[95] The plaintiffs sued " 'on their own behalf and on behalf of all qualified voters of their respective counties, and . . . of the State of Tennessee who are similarly situated . . . .' "[96]

The standing inquiry turned on the first prong of the Article III requirements, whether the plaintiffs "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[.]"[97] After determining the first prong, the Court found "[i]t would not be necessary to decide whether [the plaintiffs'] allegations of impairment of their votes by the 1901 apportionment will, ultimately, entitle them to any relief, in order to hold that they have standing to seek it."[98]

The plaintiffs were found to have standing because they asserted " 'a plain, direct and adequate interest in maintaining the effectiveness of their votes,'[99] not merely a claim of 'the right, possessed by every citizen, to require that the Government be administered according to law . . . .' "[100] In granting standing, the Court did not differentiate between the plaintiffs' standing as individuals and as third parties on behalf of others.[101]

III. Third-Party Standing Under the *ARM* Cases

"Some of the most politically sensitive tax cases in recent years have been suits by third parties [some who have alleged voter standing] challenging the IRS's grant of tax-exempt status to organizations that allegedly fail to meet the requirements of section 501(c)(3)."[102] In the *ARM* cases,[103] involving the volatile issue of abortion, the plaintiffs asserted that lobbying and other political activities in favor of anti-abortion by the

94. 369 U.S. 186 (1962).

95. *Id.* at 207.

96. *Id.* at 204-05 (citation omitted).

97. *Id.* at 204.

98. *Id.* at 208 (prudential limitations evolved in later cases).

99. *Id.* (citation omitted).

100. *Id.* (citation omitted).

101. *Id.* at 206.

102. Schwarz, *supra* note 84, at 325 (referring to Allen v. Wright, 468 U.S. 737 (1984) (racial discrimination), *ARM I*, 544 F. Supp. 471 (S.D.N.Y. 1982), and *ARM II*, 552 F. Supp. 364 (S.D.N.Y. 1982)); *see also* Stephan, *supra* note 31, at 73 (adding Simon v. Eastern Kentucky Welfare Rights Org., 426 U.S. 26 (1976)).

103. *See supra* note 4.

Catholic Church violated section 501(c)(3). The plaintiffs' position as taxpayers challenging another taxpayer's status seemed to make their standing to sue unlikely, however, the *ARM* plaintiffs used a unique strategy—voter standing, rather than taxpayer standing—to advance their right to sue.

A. The *ARM* Facts

In 1980, ARM filed suit against the United States Government, the United States Catholic Conference (USCC), and the National Conference of Catholic Bishops (NCCB) to revoke the tax-exempt status of the Roman Catholic Church on the ground that the Church had violated the anti-electioneering provision of Internal Revenue Code Section 501(c)(3).[104]

The plaintiffs alleged that the Church, in accordance with its "Pastoral Plan," was "lobbying and participating in partisan political campaigns on behalf of candidates supporting the Roman Catholic Church's position on abortion and in opposition to candidates with contrary views."[105]

Despite this activity, the IRS "annually since March 25, 1946, has ruled that 'the agencies and instrumentalities and all educational, charitable and religious institutions operated, supervised, or controlled by or in connection with the Roman Catholic Church in the United States . . . are entitled to exemption from Federal income tax under . . . section 501(c)(3) . . . .' "[106]

ARM sued both the Government and the Catholic Church in order to force the Church to forego either its political activities or its tax-exempt status.[107] The plaintiffs also asserted a concurrent refusal by the IRS to extend tax-exempt status to those on the other side of this volatile issue: "[N]o organization with views on the abortion controversy [different from those of the Catholic Church] has been granted tax-exempt sta-

104. *ARM I*, 544 F. Supp. 471 (S.D.N.Y. 1982); *see supra* note 25 and accompanying text.

105. *ARM I*, 544 F. Supp. at 475. The Pastoral Plan was promulgated by the NCCB in 1975 to organize the Catholic Church's pro-life activities. The plan outlines three major efforts, one of which is a program to influence the legislative, judicial and administrative areas to advance the Catholic Church's views on abortion. The program is strikingly similar in substance to that of The Sierra Club. *See supra* note 24. The plan has been implemented, and pursuant to it the Church has engaged in lobbying and political activities. *See* McRae v. Califano, 491 F. Supp. 630, 703-28 (E.D.N.Y. 1980), *rev'd on other grounds sub nom.* Harris v. McRae, 448 U.S. 297 (1980) (description of some of the Church's electoral and legislative activities).

106. *ARM I*, 544 F. Supp. at 475 (the church defendants submitted as an exhibit a letter from T. Kern, District Director, (IRS to USCC, June 16, 1980), that stated, "USCC is the recipient of the Revenue Ruling letter that certifies the church's exempt status.").

107. *ARM I*, 544 F. Supp. at 475. The district court dismissed the complaint against the church defendants in *ARM I*. *Id.* at 473. Later, the court refused to certify its procedural holdings for interlocutory review. *ARM II*, 552 F. Supp. 364 (S.D.N.Y. 1982).

tus under Section 501(c)(3) while being permitted to participate in electoral politics."[108] As a result of this inequitable application of the Internal Revenue Code, the plaintiffs alleged that they had "been denied access to a means of contributing tax-deductible funds to promote free choice candidates"[109] while the Catholic Church can be used to "funnel [tax-deductible] donations to support candidates opposed to abortion . . . ."[110]

B. *ARM* Voter Standing Theory

In this private enforcement action, the plaintiffs sought to "step in the shoes of the IRS" to revoke the church defendants' section 501(c)(3) status and its qualification under section 170(c)(2) to receive tax-deductible donations.[111] Knowing that it would be difficult to satisfy the nexus requirement to attain taxpayer standing,[112] the plaintiffs used the voter standing theory to assert their rights as third parties.[113] As voters, the plaintiffs contended that the unequal treatment of the IRS regarding tax-exemption directly affected their ability to obtain tax-deductible donations which in turn affected their political clout.[114] The voter standing theory shifted the emphasis from the plaintiffs as third parties to the plaintiffs directly injured by inequitable operation of the law.

To assess the plaintiffs' standing, the district court applied the doctrine of standing's three-part constitutional inquiry, then considered the results in light of prudential limitations.

1. Constitutional Requirements

a. Injury in fact

The plaintiffs alleged that by allowing tax-exempt status for the Catholic Church under sections 501(c)(3) and 170(c)(2) despite the church's political activities, while denying such status and political latitude to the plaintiffs, the IRS has "distorted the electoral and legislative process by creating a system in which members of the public have greater incentive to donate funds to the Roman Catholic Church than to politically active abortion rights groups . . . ."[115] The plaintiffs had thus suffered economic injury because "each dollar contributed to the church

108. *ARM I*, 544 F. Supp. at 475.
109. *Id.*
110. *Id.*
111. *Id.* at 476.
112. *See supra* note 82.
113. *ARM I*, 544 F. Supp. at 476. The plaintiffs also asserted establishment clause and equal protection standing and withdrew a fourth theory, taxpayer standing. *Id.* at n.1. This Note focuses only on voter standing, which is the unique aspect of the *ARM* litigation, and does not discuss or analyze the other standing strategies used.
114. *ARM I*, 544 F. Supp. at 482.
115. *Id.*

[was] worth more than one given to non-exempt organizations."[116]

The district court found this injury sufficient to meet the first constitutional requirement. Relying on *Baker v. Carr*,[117] the court found that "[b]oth cases [*ARM I* and *Baker*] center on allegations that some arbitrary government action diluted the strength of voters in one group at the expense of those in another."[118] Although the plaintiffs' injury was based on issues, rather than on geography as expressed in *Baker*, the district court observed, "The bottom line is that plaintiffs have alleged government action which has improperly biased the political process against the discrete group to which they belong."[119] The defendants argued that *Baker* required "a showing of mathematical dilution of voting strength as a prerequisite of voter standing[,]"[120] but the court ruled that the "precision with which an injury can be defined is irrelevant to the concreteness of the injury . . . ."[121]

b. Causation/Redressability

In analyzing the second constitutional requirement, causation/redressability, the district court noted that the plaintiffs were not "objecting to the [Catholic] church's political activity *per se* and [were not] seeking relief in the form of a legislatively guaranteed right to abortion" but instead "asserted a more circumscribed grievance and request."[122]

The court found that the plaintiffs had met the causation element by showing that "the government defendants' tax policy is the source of the distortion in the political process that plaintiffs complain of."[123] The plaintiffs also met the redressability element since "[a]n injunction against that discriminatory policy [would] restore the proper balance between adversaries in the abortion debate [,]"[124] because each would receive equal tax treatment.

2. Prudential Limitations

After finding that the plaintiffs had satisfied the constitutional requirements for voter standing, the court next evaluated whether the plaintiffs had met the prudential factors.[125] First, the court found that "[a]lthough a large number of citizens likely share the injuries alleged by

116. *Id.*
117. 369 U.S. 186 (1962).
118. *ARM I*, 544 F. Supp. at 481.
119. *Id.*
120. *Id.* at 482.
121. *Id.*
122. *Id.*
123. *Id.*
124. *Id.*
125. *See supra* notes 65-77 and accompanying text.

the . . . voters . . . , these are not 'generalized grievances' such that there will be any lack of sharp controversy."[126] The court reasoned that the doctrine of standing should not restrict access "if the court is satisfied that plaintiffs bring a live and pointed controversy to it"[127] and stated, "There is not the slightest reason to believe that the wide dispersion of plaintffs' injuries will diffuse the contest before the court."[128] Thus, the plaintiffs had overcome the first prudential limitation.

Second, the court noted that while the "zone of interest" hurdle was erected because "of the judiciary's limited competence to resolve societal . . . disputes and [to recognize] the superiority of other mechanisms to make complex social choices[,] [n]ot all issues of broad public importance [are] better left to the executive and the legislature."[129] In *ARM I*, the court found the resolution best left to the judiciary because the plaintiffs were seeking "a judicial determination of whether defendants have observed Congress' commands [regarding established policy under section 501(c)(3)]."[130]

The court easily overcame the last hurdle, finding that "[t]his lawsuit does not present the potential problem of a disinterested plaintiff advocating the interests of persons not before the court."[131] Instead the court found the *ARM I* plaintiffs well situated to argue the case because "[t]he action . . . involve[d] no rights that the rightholder would not wish to assert or that the plaintiffs [were] likely not to press vigorously."[132]

The court found that twenty individual plaintiffs had voter standing "to contest the alleged infringement of their right to participate in the political process on equal terms with all others and free from arbitrary government interference."[133] Additionally, three organizations—ARM, Nassau-NOW, and the Women's Health Network, Inc.—had standing "to represent their voter-members injured by the challenged government conduct."[134]

126. *ARM I*, 544 F. Supp. at 484.

127. *Id.*

128. *Id.*

129. *Id.* at 485.

130. *Id.*

131. *Id.*

132. *Id.*

133. *Id.* at 491.

134. *Id.* The court had earlier noted that while organizations cannot attain voter standing in their own right, they can establish standing through representation of their members. *Id.* at 480 n.9. The three organizations were allowed voter standing because they "are devoted to promoting women's rights, including the right to a legal abortion [and] [g]iven the political orientation of this organizational purpose, these entities have powerful claims to represent voter-members . . . ." *Id.*

C. *ARM* Procedural History and Disposition

In addition to finding that the *ARM I* plaintiffs had standing, the district court denied the Government's motion to dismiss. Soon thereafter, however, the Supreme Court handed down a new decision on section 501(c)(3) status and standing. The Court's ruling in *Allen v. Wright*[135] prompted the Government to return to court to seek a redetermination of standing in *ARM I*.

1. The Allen v. Wright *Decision*

In *Allen*,[136] the Supreme Court rejected a third-party challenge of IRS policies that permitted schools alleged to discriminate on the basis of race to maintain their tax exemptions. The Court denied standing to the parents of black children in public school districts undergoing desegregation.[137]

Like *ARM I*, *Allen* involved citizens who sought to force the government to revoke the section 501(c)(3) status of a nonprofit organization. The plaintiffs asserted that the IRS was not enforcing a section 501(c)(3) limitation that applies to tax-exempt schools. This caveat on an institution's exempt status requires that the school show that it:

> [A]dmits 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.[138]

The plaintiffs contended that they, representing all similarly situated blacks, had been denigrated by the IRS's underenforcement of the Code, or alternatively, that their children had a diminished ability to receive an education in a racially integrated school.[139] As in *ARM I*, the plaintiffs asked for declaratory relief.

The Supreme Court denied standing in *Allen* on both claims; the first failed the injury-in-fact requirement. The Court found the claim of denigration to be not "judicially cognizable,"[140] stating, "This Court has repeatedly held that an asserted right to have the Government act in accordance with law is not sufficient, standing alone, to confer jurisdic-

135. 468 U.S. 737 (1984).

136. *Id.*

137. *Id.*

138. Rev. Rul. 71-447, 1971-2 C.B. 230, *quoted in* Allen v. Wright, 468 U.S. 737, 740 (1984).

139. *Allen*, 468 U.S. at 746-49. The plaintiffs relied on an earlier case, Coit v. Green, 404 U.S. 997 (1971), *summarily aff'g* Green v. Connally, 330 F. Supp. 1150 (D.D.C. 1971) (identical fact pattern to *Allen*, yet the Court distinguished *Coit* from *Allen* on the ground that *Coit* only applied to private schools in the specific region).

140. *Allen*, 468 U.S. at 754.

tion on a federal court."[141]

The Court found that the plaintiffs' second claim failed to satisfy the causation requirement of Article III standing. Relying on *Simon v. Eastern Kentucky Welfare Rights Org.*[142] the Court stated:

> The diminished ability of respondents' children to receive a desegregated education would be fairly traceable to unlawful IRS grants of tax exemptions only if there were enough racially discriminatory private schools receiving tax exemptions in respondents' communities for withdrawal of those exemptions to make an appreciable difference in public school integration.[143]

As a result, "[t]he links in the chain of causation between the challenged Government conduct and the asserted injury are far too weak for the chain as a whole to sustain respondents' standing."[144]

Allen reconfirmed the foreclosure of third-party standing in taxation suits.[145] One commentator made the sweeping statement that "[a]fter [*Allen*] it was widely assumed that there were virtually no circumstances where private citizens could successfully challenge IRS policy unless their own individual tax liabilities were at stake."[146]

2. *Voter Standing in* ARM *After* Allen

After its victory in *Allen*, the Government refiled the *ARM* case,[147] renewing its motion to dismiss the complaint for lack of standing. The Government asserted that *Allen* should prevent plaintiffs' voter standing in *ARM I* in light of the *Allen* Court's interpretation of the causation/redressability prong of the constitutional analysis of standing.

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141. *Id.*

142. 426 U.S. 26 (1976). The *Allen* Court noted that its earlier decision "held that standing to challenge a Government grant of a tax exemption to hospitals could not be founded on the asserted connection between the grant of tax-exempt status and the hospitals' policy concerning the provision of medical services to indigents." *Allen*, 468 U.S. at 759 (1984); *see supra* notes 85-92 and accompanying text.

143. *Allen*, 468 U.S. at 758.

144. *Id.* at 759 (the Court did not address either the third prong of the doctrine of standing, redressability, or the prudential limitations after it found that plaintiffs failed the first two prongs of the Doctrine); *but see* Stephan, *supra* note 31, at 88 ("At first blush, *Allen*, like *Eastern Kentucky*, before it, seems to forbid all forms of enforcement standing. But by relegating the issue to an ad hoc and malleable causation inquiry, while not addressing the more definitive zone-of-interests test, *Allen* may contain the seeds of a future expansion of enforcement standing.

These openings permit other courts and Congress to consider whether to cabin judicial review of tax disputes within the present limits, or to broaden the opportunities for nontaxpayers to challenge the government's interpretation of the law.").

145. *See supra* notes 83-84 and accompanying text; *see generally* Stephan, *supra* note 31, at 80-88 (before *Allen*, the Court had given plenary consideration to only one tax enforcement case, *Eastern Kentucky* in which the Court suggested an unwillingness, if not a flat refusal, to recognize such suits.).

146. Schwarz, *supra* note 84, at 326.

147. *ARM III*, 603 F. Supp. 970 (S.D.N.Y. 1985).

Despite the holding in *Allen*, the court upheld the *ARM I* court's decision that the plaintiffs had standing. Judge Carter "refused to bar the door in a potentially explosive area,"[148] and distinguished *Allen* on its facts, noting that "the Court did not close the door on private suits challenging government grants of tax exemption . . . but used traditional analysis in concluding that the *Allen* plaintiffs lacked standing."[149]

The district court then followed the traditional standing analysis to review *ARM I* in light of *Allen*. In each element of its analysis, the court distinguished the plaintiff's voter standing theory. On injury in fact, the court noted that "it has consistently been held that voters have standing to contest the alleged infringement of their right to participate in the political process on equal terms with all others free from arbitrary government interference."[150] The court then collapsed the injury-in-fact requirement with the causation/redressability requirement. First, it reiterated that the plaintiffs' injury was "the alleged arbitrary inequality of the plaintiffs in the political process vis-a-vis the Catholic Church created by the IRS's grant of tax exemption to the latter."[151] Then, the court noted that "[t]he judicially cognizable injury in *Allen* was segregated schooling which was neither created nor remediable by IRS action alone."[152] The court distinguished the injury in *ARM I* from *Allen* because"[t]he injury alleged in *ARM* [was on] unequal footing in the political arena, a condition completely traceable and within the control of the IRS."[153]

The court also held that the plaintiffs had "surmounted the three prudential limitations that can defeat standing even when the Article III case or controversy standards are met."[154] First, the *ARM III* plaintiffs' injuries were not generalized grievances:

> [P]laintiffs, despite articulated desires to be politically active on behalf of their pro-choice views, can not do so without risking their valuable [section] 501(c)(3) status. This personal denial of equal treatment is precisely the type of standing required by *Allen* since parent plaintiffs in that case "were not personally denied equal treatment by the challenged discriminatory conduct."[155]

Second, "[t]he question of whether plaintiffs are addressing other parties' rights was answered squarely in the negative by *ARM*,"[156] since the court had found the *ARM I* plaintiffs well situated to argue the

148. Schwarz, *supra* note 84, at 326.

149. *ARM III*, 603 F. Supp. at 971.

150. *Id.* at 973 (citing *ARM I*, 544 F. Supp. at 480-81 (citing Baker v. Carr, 369 U.S. 186 (1962))).

151. *Id.* at 973-74.

152. *Id.* at 974.

153. *Id.*

154. *Id.*

155. *Id.* (citing Allen v. Wright, 468 U.S. 737, 755 (1984)).

156. *Id.*

case.[157] Therefore, the court did not reconsider the question.

Finally, the court reiterated its finding that a voter standing suit such as *ARM I* fell within the "zone of interest" Congress established for section 501(c)(3):

> Although the complaint implicates social policy issues, it does not call for judicial selection of an appropriate policy. Congress has already made that choice and set out the correct policy in [section] 501(c)(3); plaintiffs ask only for a judicial determination of whether defendants have observed Congress' commands concerning taxes and engaging in political activity. The prudential barriers do not restrict a court from adjudicating a claim merely because of the interplay between the litigation and social controversy.[158]

The court upheld voter standing and denied the Government's motion to dismiss.

3. *Subsequent Judicial Review*

Although the IRS did not directly seek review of the district court's ruling on the plaintiff's standing, the issue was raised as a basis for challenging a separate court order. The district court held the church organizations (USCC and NCCB), dismissed as defendants in *ARM I*, in contempt for refusing to comply with the plaintiffs' requests for discovery.[159] The USCC and NCCB challenged the contempt order on the ground that because the *ARM* plaintiffs lacked standing,[160] the district court lacked fundamental subject matter jurisdiction to issue the order.[161]

The court of appeals then had to decide whether the USCC and NCCB had standing to challenge the plaintiffs' standing. The court found that a witness party (such as the church organizations) could challenge a contempt order only to the extent that it asserted no "colorable jurisdiction [in the district court] over the underlying lawsuit."[162] The court also held that a mere challenge to the plaintiffs' right to sue would be an insufficient ground upon which to base the alleged lack of jurisdiction below.[163]

The court of appeals affirmed the lower court's finding by summarizing the case:

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157. *Id.*

158. *Id.* at 975 (citing *ARM I*, 544 F. Supp. 471, 485 (S.D.N.Y. 1982)).

159. *ARM V*, 824 F.2d 156 (2d Cir. 1987) (The dismissed church defendants appealed when they were held in contempt of court for refusing to comply with third party subpoenas during discovery of the ongoing litigation and were fined $50,000 per day for each day of further noncompliance).

160. *ARM V*, 824 F.2d at 160.

161. *Id.*

162. *Id.* at 165.

163. *See Id.*

> Plaintiffs' suit is more than a citizen effort to have the tax laws enforced and more than a taxpayer effort to complain of tax exemptions of others that might violate the Establishment Clause. The plaintiffs have claimed direct, personal injury arising from the fact that the federal defendants' failure to enforce the political action limitations of section 501(c)(3) has placed the plaintiffs at a competitive disadvantage with the Catholic Church in the arena of public advocacy on important public issues. That is a substantial basis on which to predicate standing. We need determine no more than that to conclude that the District Court had at least a colorable basis for the exercise of subject matter jurisdiction over the plaintiffs' suit.[164]

The Supreme Court granted certiorari "to resolve whether a nonparty witness may defend against a civil contempt adjudication by challenging the subject-matter jurisdiction of the District Court."[165]

The Supreme Court heard the procedural issue along with the underlying issue of whether the *ARM I* plaintiffs had standing to sue the IRS to compel it to revoke the tax-exempt status of the Church.[166] The nonparty church defendants (USCC and NCCB), supported by the government defendants, reiterated their argument that the district court lacked subject matter jurisdiction because the ARM plaintiffs lacked standing.[167] During the oral arguments, the plaintiffs focused on the procedural issue being appealed and only briefly touched the standing issue.[168]

The Supreme Court reversed the court of appeals' decision, ruling that a nonparty found to be in contempt can challenge the contempt order by asserting a lack of subject matter jurisdiction in the court that issued it.[169] The Court declined to address the underlying standing issue and remanded the case to the court of appeals to "determine whether the District Court had subject matter jurisdiction in the underlying action."[170] The Court gave no new guidelines regarding the assessment of voter standing in this context.

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164. *Id.* at 165-66 (footnote omitted).

165. *ARM VI*, 108 S. Ct. 2268, 2269 (1988).

166. *See* Brief for the Federal Respondents at 1, *ARM VI*, 108 S. Ct. 2268 (1988) (No. 87-416); Respondents' Brief in Opposition at 1, *ARM VI*, 108 S. Ct. 2268 (1988) (No. 87-416); *see also* Payne, *supra* note 10, at 436.

167. *See ARM VI*, 108 S. Ct. at 2269; Payne, *supra* note 10, at 436.

168. Payne, *supra* 10, at 437. Payne observed that "most of the Court . . . seemed skeptical of the church's sweeping jurisdictional claims," and predicted that the Court "may be willing to put the standing problem aside for now and uphold the principle of a single appeal." *Id.*

169. *ARM VI*, 108 S. Ct. at 2270.

170. *Id.* at 2273.

IV. Analysis

If the *ARM* case again reaches the Supreme Court, and if the Court considers the question of voter standing in third-party challenges of nonprofit tax exemption, the Court likely will reverse the lower court's finding of standing. The district court's determination of voter standing can be interpreted quite differently when reexamined in light of the legislative intent of tax exemption, the stance of the Supreme Court on standing in third-party tax suits, and the current trend of the Court toward interpreting standing as a separation of powers issue.

A. Tax exemption

Significantly, the Court has not yet granted standing to any third party challenging the tax-exempt status of a charitable organization.[171] The notable reluctance of the Supreme Court to allow standing in such cases has been much analyzed and criticized,[172] but is well founded on strong policy supporting charitable organizations.[173]

Additionally, the Court should not attempt to override clear legislative policy. The legislature supports the public purposes nonprofit organizations serve by providing subsidies through tax exemptions under the Internal Revenue Code. In the face of first amendment attacks on the section 501(c)(3) lobbying limitations, the Supreme Court not only upheld the provisions as constitutional,[174] but also recognized the tax-exempt provisions of the Internal Revenue Code as an important method of subsidy to nonprofit organizations.[175]

B. Constitutional Standing

The district court found voter standing, both before and after *Allen*,[176] and the court of appeals did not reverse that finding,[177] which

171. Recently, the Supreme Court has decided only two cases other than the *ARM* cases involving third-party enforcement of IRS activities: Allen v. Wright, 468 U.S. 737 (1984) and Simon v. Eastern Kentucky Welfare Rights Org., 426 U.S. 26 (1976); the Court denied standing in both.

172. *See* Asimow, *Standing to Challenge Lenient Tax Rules: A Statutory Solution*, 57 TAXES 483 (1979); Davis, *Standing, 1976*, 72 NW. U.L. REV. 69 (1977); Easterbrook, *The Supreme Court, 1983 Term—Forward: The Court and the Economic System*, 98 HARV. L. REV. 4, 40-42 (1984); Houck, *With Charity for All*, 93 YALE L.J. 1415, 1526-30 (1984); Lynch, *Nontaxpayer Suits: Seeking Injunctive and Declaratory Relief Against IRS Administrative Action*, 12 AKRON L. REV. 1 (1978); McCoy & Devins, *Standing and Adverseness in Challenges of Tax Exemptions for Discriminatory Private Schools*, 52 FORDHAM L. REV. 441 (1984); Nichol, *Abusing Standing: A Comment on* Allen v. Wright, 133 U. PA. L. REV. 635 (1985); Stephan, *supra* note 31; Note, *The Judicial Role in Attacking Racial Discrimination in Tax-Exempt Private Schools*, 93 HARV. L. REV. 378 (1979).

173. *See supra* notes 12-27 and accompanying text.

174. *See supra* notes 24-25 and accompanying text.

175. Regan v. Taxation with Representation of Washington, 461 U.S. 540, 544-45 (1983).

176. 468 U.S. 737 (1984); *see supra* notes 111-158 and accompanying text.

prompts another look at the district court's original standing analysis.

1. Constitutional Requirements

The district court's determination of the first element of Article III standing, injury in fact, merits another look. The court found that the ARM plaintiffs suffered injury as voters because of unequal treatment: the IRS allows the Catholic Church to receive tax-deductible donations that it can funnel toward lobbying anti-abortion politicians and legislation, while it denies tax-exempt status to the ARM groups as long as they receive tax-deductible funds.[178]

Both the plaintiffs and the district court relied on *Baker v. Carr*,[179] yet the cases are distinguishable. *Baker* involved plaintiffs who were voters residing in a county with a "gross disproportion of representation to voting population."[180] Their injury was their inequitable voting power vis-à-vis voters in other counties.[181] The *ARM* plaintiffs claimed voter standing, yet the injury they described did not involve a dilution of their voting power, but rather an inequality in their ability to receive tax-deductible donations.[182] The *ARM* plaintiffs also claimed that this subsidization of the Catholic Church's political activities had "distorted the electoral and legislative process . . .,"[183] yet no connection is made to discern harm to the plaintiffs as voters.[184]

Thus presented, the plaintiffs' injury seems less specific and more generalized. The Supreme Court disallowed the generalized injury presented in *Allen v. Wright*[185] and stated, "Recognition of standing in such circumstances would transform the federal courts into 'no more than a vehicle for the vindication of the value interests of concerned bystanders.' "[186] In response to *Allen*, the district court upheld the injury-

177. *See supra* note 164 and accompanying text.

178. *See supra* notes 114-118 and accompanying text.

179. 369 U.S. 186 (1962).

180. *Id.* at 207.

181. *Id.*

182. *See supra* notes 114-119 and accompanying text; *see also* Brief for the Federal Respondents at 10, *ARM VI*, 108 S. Ct. 2268 (1988) (No. 87-416).

183. *ARM I*, 544 F. Supp. 472, 482 (S.D.N.Y. 1982); *see supra* note 114 and accompanying text; *see also* Respondents' Brief in Opposition at 52, *ARM VI*, 108 S. Ct. 2268 (1988) (No. 87-416).

184. *See also* Brief for the Federal Respondents at 10, *ARM VI*, 108 S. Ct. 2268 (1988) (No. 87-416) ("This assertion does not constitute the type of direct personal injury that can support Article III standing.").

185. 468 U.S. 737 (1984); *see supra* notes 136-146 and accompanying text.

186. *Id.* at 756 (quoting United States v. Students Challenging Regulatory Agency Procedures (SCRAP), 412 U.S. 669, 687 (1973)). The Court could also apply the unusually strict reasoning it used in City of Los Angeles v. Lyons, 461 U.S. 95 (1983), and disallow voter standing on the basis that the voters must actually prove that they will not suffer inequities if the IRS revokes the exemption status of the challenged organization. *See supra* note 57 and accompanying text.

in-fact finding for voter standing, but continued to characterize it as "unequal footing in the political arena,"[187] with little explanation as to how the plaintiffs' voting power was thereby injured, except for a broad statement concerning voter standing in general.[188]

Even if the plaintiffs' injury is not a generalized harm, the causation/redressability requirements are still difficult to overcome. The plaintiffs' situation seems similar to that in *Eastern Kentucky*[189] because whether a revocation of the tax-exempt status of the Catholic Church would have any effect on the alleged inequities in the receipt of funds is "purely speculative."[190] Moreover, the plaintiffs made no showing that the remedy would affect their voting power, as opposed to their participation in political activities.[191]

2. *Prudential Limitations*

The *ARM* plaintiffs' contention that their tax status puts them on unequal footing in the political arena constitutes a "generalized grievance . . . most appropriately addressed in the representative branches."[192] If accepted, this argument would cause standing to fail under the first prudential restraint. Moreover, although the Court has recognized voter standing,[193] the voter standing alleged in the *ARM* cases may be deemed not judicially cognizable as too abstract in light of the sheer numbers of litigants who could possibly have standing under such a theory.[194]

The zone-of-interests determination also merits review. The Supreme Court recently stated the test for this restraint as whether the plaintiff's interests are so closely related to the purposes of the statute to assume that Congress would permit the suit.[195] The district court's analysis seems to construe this test to find that it is within the zone of interest

187. *ARM III*, 603 F. Supp. 970, 974 (S.D.N.Y. 1985).

188. *See supra* notes 147-158 and accompanying text.

189. 426 U.S. 26 (1976); *see supra* notes 85-92 and accompanying text.

190. Brief for the Federal Respondents at 10-11, *ARM VI*, 108 S. Ct. 2268 (1988) (No. 87-416).

191. *See supra* note 153 and accompanying text.

192. Valley Forge Christian College v. Americans United for Separation of Church and State, Inc., 454 U.S. 464, 475 (1982); *see supra* note 69 and accompanying text.

193. *See, e.g.*, Baker v. Carr, 369 U.S. 186 (1962).

194. Allowing standing in such cases could literally open the floodgates of litigation. *See infra* note 214. *See also* Evans, *supra* note 2, at 1196 ("The USCC, the NCCB, and the various religious organizations that joined in filing an *amicus curiae* brief fear that a ruling upholding ARM's challenge would lead to harassment of religious organizations and other exempt groups by political opponents through the Federal courts."); Brief for the Federal Respondents at 15 n.8, *ARM VI*, 108 S. Ct. 2268 (1988) (No. 87-416) ("permitting the present case to proceed to trial would encourage similar suits by third parties dissatisfied with the tax treatment of other groups with whose views they disagree").

195. Clarke v. Sec. Indus. Ass'n, 479 U.S. 388, 399 (1987); *see supra* notes 71-74 and accompanying text.

established for section 501(c)(3) for plaintiffs to urge its enforcement.[196] Congress clearly made no provisions for either private enforcement or for suits by third parties in section 501(c)(3).[197]

The analysis of the remaining prudential limitation, whether the plaintiffs are suited to addressing other parties' rights, also needs clarification. The statement that "the action . . . involves no rights that the rightholder would not wish to assert or that the plaintiffs are likely not to press vigorously"[198] is confusing. To which rights is the court referring: the "right" to vote, the "right" to participate in the political arena equally, or the "right" to receive tax-deductible donations? The district court's evaluation of this limitation is not clear.[199]

In summary, the finding of voter standing is tenuous and easily could be struck down under subsequent judicial review.

C. Separation of Powers

The Court's emphasis on separation of powers in disallowing standing under *Allen*[200] specifically addressed causation problems, but applies to the *ARM* cases:

> The idea of separation of powers that underlies standing doctrine explains why our cases preclude the conclusion that respondents' alleged injury 'fairly can be traced to the challenged action' of the IRS. . . . That conclusion would pave the way generally for suits challenging, not specifically identifiable Government violations of law, but the particular programs agencies establish to carry out their legal obligations. Such suits, even when premised on allegations of several instances of violations of law, are rarely if ever appropriate for federal-court adjudication.[201]

Congress provided a declaratory judgment procedure, for review of tax-exemption status, that is available only to the party whose exempt status is involved.[202] This limitation weakens the justiciability of a third-party challenge in a judicial climate emphasizing separation of powers in standing analysis.[203]

Conclusion

Although the *ARM* cases apparently demonstrated a new strategy—voter standing to allow third parties to step into the shoes of the IRS to

196. *ARM III*, 603 F. Supp. 970, 975 (S.D.N.Y. 1985); *see supra* note 158 and accompanying text.

197. *See supra* note 20 and accompanying text.

198. *ARM I*, 544 F. Supp. 471, 485 (S.D.N.Y. 1982).

199. *Id.*

200. 468 U.S. 737 (1984).

201. *Id.* at 759-60 (citation omitted).

202. *See supra* note 20.

203. *See supra* notes 28-40 and accompanying text.

challenge the tax-exempt status of nonprofit organizations—the odds are against its ultimate success.

Congress and the judicial interpretation of its legislation have described a strong public policy for the creation and subsidization (through tax provisions such as section 501(c)(3)[204], which allows a nonprofit, charitable organization to be exempt from paying federal income tax, and section 170(c)(2),[205] which allows tax-deductible contributions to that organization) of nonprofit, charitable organizations that are deemed to fulfill duties similar to those of government institutions.

Once the IRS has denied an organization's tax-exempt status under sections 501(c)(3) and 170(c)(2), the organization has redress in administrative proceedings.[206] Supreme Court review of IRS administrative proceedings is limited to the parties whose qualifications are at issue.[207] Congress has not statutorily provided third-party standing in such suits.

Third parties who wish to challenge the IRS determination must rely on the doctrine of standing to do so.[208] The third-party challenger must meet three constitutional requirements: injury in fact, causation, and redressability.[209] Once the plaintiffs have met the three constitutional tests, however, the court may nonetheless deny standing under the judicially-imposed "prudential limitations."[210]

The trend of the Supreme Court regarding standing has been toward greater leniency, with the notable exception of disallowing standing in cases involving federal income tax.[211] To date, the Court has never found standing in cases in which third parties have challenged the IRS tax-exemption determinations of nonprofit, charitable organizations.[212] *ARM VI*[213] provided the Court with its most recent opportunity to refine its criteria for standing in such cases. The plaintiffs' based their unique theory of standing on the political inequity created by the failure of the IRS to enforce section 501(c)(3) lobbying limitations on the Catholic Church. The Court declined, however, to decide whether this voter-standing theory could support a plaintiff's suit to force the IRS to review or revoke the tax-exempt status of another.[214]

Attorneys for both the Catholic Church and the Government "argued that allowing such a suit to proceed would open the courts to a rash

204. *See supra* note 12.
205. *See supra* note 13.
206. *See supra* note 20 and accompanying text.
207. *See supra* note 20.
208. *See supra* notes 28-101 and accompanying text.
209. *See supra* notes 49-64 and accompanying text.
210. *See supra* notes 65-77 and accompanying text.
211. *See supra* notes 83-84 and accompanying text.
212. *See supra* note 171.
213. 108 S. Ct. 2268 (1988).
214. *Id.*

of politically motivated suits by people challenging the tax exemptions of groups they disagree with."[215] By rendering nonprofit organizations vulnerable to such attack, voter standing could have a chilling effect on the very existence of nonprofit, charitable organizations.[216]

Taken together, the strong public policy in support of charitable organizations, the lack of legislative provisions for third-party standing to challenge the tax-exempt status of organizations, the restrictive IRS administrative procedures for tax-exempt organizations, the trend of the Court to disallow third-party standing in challenges of exemption, and the Court's emphasis on the separation-of-powers doctrine, present a formidable obstacle to third-party suits challenging tax-exempt status. Voter standing, as presented in the *ARM* cases, seems too weak to accomplish the task.

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215. *High Court Urged to Allow Trial on Catholic Church's Tax Status*, N.Y. Times, Apr. 19, 1988, at 23, col. 1 (city ed.).

216. Losing tax-exempt status "can jeopardize the very existence of an organization . . . ." M. SALZMAN, *supra* note 17, at ¶ 3.04[3][g][ii].

* B.S., University of Arizona, 1977; Member Second Year Class. The author dedicates this Note first and foremost to her husband, Bruce Teel, and to her parents, then to The Trust for Public Land and other nonprofit, conservation organizations. The author extends special thanks to Professor Leo P. Martinez for his interest and guidance.