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Standing to Sue under Section 812 of the Fair Housing Act: Gladstone, Realtors v. Village of Bellwood

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III. CONCLUSION

In *Transportation Insurance Co. v. Maksyn* the Texas Supreme Court decided that repetitious mental traumatic activities cannot produce a compensable occupational disease under section 20 of the Texas Workers' Compensation Act. Notwithstanding the legislature's espoused intention to liberalize occupational disease coverage via the 1971 amendatory acts, the court ruled that the 1955 *Bailey* decision still defines the scope of compensable neuroses; thus only nervous disabilities traceable to a specific time, place, and cause are eligible for compensation. In requiring an isolated traumatic event to ensure that a claimant's nervous disease is work related, the court has disregarded the fact that cumulative stress and anxiety can produce disabilities as serious as those precipitated by a sudden traumatic event. Furthermore, problems in establishing causation are minimized in cases where the employment environment of disabled claimants revolves entirely about stressful conditions. Since the legislature has made clear that *all* occupational diseases arising out of and in the course of employment are to be compensated, the court should reconsider this issue and allow each claim to be approached on its individual merits.

Patricia Sonders

Standing to Sue Under Section 812 of the Fair Housing Act: *Gladstone, Realtors v. Village of Bellwood*

The Chicago suburb of Bellwood and residents of the village and surrounding areas brought separate actions under section 812 of the Fair Housing Act of 1968¹ against two real estate brokerage firms, alleging racially discriminatory real estate practices in violation of section 804 of the Act.² The individual plaintiffs, including both black and white residents of Bellwood and a black resident of a nearby town, had approached both real estate firms and expressed an interest in purchasing homes in Bellwood.

1. 42 U.S.C. § 3612(a) (1976). The text of the statute is set forth at note 46 *infra*.

2. *Id.* § 3604 provides:

As made applicable by section 3603 of this title and except as exempted by sections 3603(b) and 3607 of this title it shall be unlawful—

(a) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, or national origin.

(b) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, or national origin.

(c) To make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on

These individuals were not actually interested in home ownership but were acting as testers³ to determine if the brokers were steering home buyers into segregated neighborhoods on the basis of race. At trial, the village of Bellwood claimed it had suffered injury in that its housing market had been wrongfully and illegally manipulated to the economic and social detriment of its citizens.⁴ The individual plaintiffs alleged that, while acting as testers, they had been denied the right to select housing without regard to race and, as actual residents, had been deprived of the social and professional benefits of living in an integrated society.⁵ The district court granted summary judgment for defendants in both cases, holding that plaintiffs were not direct victims of the alleged discriminatory practices and, therefore, were not within the class of persons to whom Congress had extended the right to sue under section 812 of the Act.⁶ The court of appeals consolidated the two cases and reversed and remanded, holding that Congress intended that standing to sue under section 812 of the Act should be accorded to both direct and indirect victims of discrimination.⁷ Additionally the court found that, while individual plaintiffs lacked standing to sue in their capacity as testers, they were entitled to prove that they, as residents of the affected community, were indirect victims who had been harmed by defendants' discrimination.⁸ *Held, affirmed in part.*⁹ Passage of

race, color, religion, sex, or national origin, or an intention to make any such preference, limitation, or discrimination.

(d) To represent to any person because of race, color, religion, sex, or national origin that any dwelling is not available for inspection, sale or rental when such dwelling is in fact so available.

(e) For profit, to induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, sex, or national origin.

3. Claimants were acting as testers in that they were not actually seeking housing; instead, they pretended to be looking for housing in order to determine whether defendants were racially steering buyers.

4. The village of Bellwood sued in its corporate capacity. The defendants therefore argued to the court of appeals that Bellwood lacked standing because it was not a "person" as defined by § 802(d) of the Fair Housing Act, 42 U.S.C. § 3602 (1976). *Village of Bellwood v. Gladstone Realtors*, 569 F.2d 1013, 1020 n.8 (7th Cir. 1978). The court rejected this argument since the Act included a corporation within its definition of "person," and Bellwood was a municipal corporation. Upon appeal to the Supreme Court, defendants qualified their argument and contended that Bellwood did not have standing because it was not a private person entitled to sue under § 812. The Court stated that, since the issue was raised belatedly, the question of whether Bellwood was a private person was not properly before the Court; therefore, the Court declined to address it.

5. The Supreme Court noted that it was obliged to construe the complaint favorably since the Court was reviewing the complaint on defendant's motion for summary judgment. With this express qualification, the Court construed plaintiffs' use of the word "society" as referring to the harm done specifically to the residents of the Bellwood neighborhood. If the Court had construed the term more broadly, it might have denied standing since allegations of generalized harm traditionally have been found insufficient to establish standing.

6. 569 F.2d at 1015.

7. *Id.* at 1020.

8. *Id.* at 1019-20.

9. The Court affirmed the court of appeals' finding of standing as to the individuals living within Bellwood as well as to the village itself. Nevertheless, the Court reversed the lower court's grant of standing to those complainants living outside the target area since they

section 812 indicates an intention by Congress to grant standing to sue to as broad a class as is permitted under section 810. The allegations by the individuals residing in the target area of the loss of social and professional benefits as a result of racial steering, as well as the village of Bellwood's allegations that it had been robbed of its racial balance and stability, are sufficient to establish standing to sue. *Gladstone, Realtors v. Village of Bellwood*, 99 S. Ct. 1601, 60 L. Ed. 2d 66 (1979).

I. STANDING: CONSTITUTIONAL REQUIREMENTS AND PRUDENTIAL CONCERNS

The purpose of standing is to determine whether the plaintiff is the proper person to raise the issues in a suit.¹⁰ In determining whether a litigant has standing, the courts consider both constitutionally imposed limitations and judicially created prudential principles.¹¹ The constitutional question is whether the plaintiff has made out a case or controversy between himself and the defendant within the meaning of article III of the United States Constitution.¹² To establish a constitutionally sufficient case or controversy, the plaintiff must allege a personal stake in the outcome so 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."¹³ The Supreme Court has developed a two-pronged test to determine if the constitutional limitations have been met.¹⁴ First, the plaintiff must allege an injury in fact.¹⁵ The injury in fact requirement is satisfied not only by an economic injury¹⁶ but also by an aesthetic or recreational injury.¹⁷ Secondly, the injury must be capable of

failed to make sufficient allegations of actual harm. The Court expressly declined to decide whether individuals who reside outside the target area have standing to sue, but indicated it might do so if the district court, on remand, allowed the two individuals to amend their complaints to include allegations of actual harm.

10. *Flast v. Cohen*, 392 U.S. 83, 99-100 (1968); see Note, *Congressional Access to the Federal Courts*, 90 HARV. L. REV. 1632, 1635 (1977).

11. *Warth v. Seldin*, 422 U.S. 490, 498-99 (1975); see Comment, *Standing to Challenge Exclusionary Land Use Devices in Federal Courts After Warth v. Seldin*, 29 STAN. L. REV. 323 (1977), which summarizes the constitutional and prudential limitations of standing.

12. U.S. CONST. art. III, § 2, cl. 1 grants power to the judiciary to hear all cases or controversies arising under the Constitution: "Section 2. [1] The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution . . . [and] to Controversies to which the United States shall be a Party"

13. *Baker v. Carr*, 369 U.S. 186, 204 (1962); see *Muskrat v. United States*, 219 U.S. 346, 361 (1911).

14. See Note, *supra* note 10, at 1635 n.24.

15. *Association of Data Processing Serv. Orgs. v. Camp*, 397 U.S. 150, 152 (1970).

16. *Id.*

17. *Sierra Club v. Morton*, 405 U.S. 727 (1972). The Court in a four-three decision written by Justice Stewart ruled that the Sierra Club had not alleged a sufficient injury in fact as a result of the development of a ski resort in a wilderness area and, therefore, had not established standing to sue to enjoin the construction of the project. The Court stated, that a noneconomic injury, such as aesthetic or recreational harm, could give rise to standing, but found that the Sierra Club failed to allege any such personalized injury. *Id.* at 734-35. See *The Supreme Court, 1971 Term—Federal Statutes and Government Regulation*, 86 HARV. L. REV. 50, 234-41 (1972), for a discussion of the Sierra Club's allegations.

redress by a favorable decision.¹⁸

In addition to the constitutional limitations on standing, the plaintiff must satisfy judicially imposed limitations evidencing prudential concerns.¹⁹ These limitations are an attempt by the judiciary to avoid deciding questions of broad social import when there will be no vindication of individual rights and to restrict access to the federal courts to those litigants who are best suited to assert a particular claim.²⁰ Such limitations require that the plaintiff (1) assert an injury peculiar to himself or a distinct group of which he is a part,²¹ (2) assert his own legal interests rather than the interests of third parties,²² (3) demonstrate that the asserted interest is "arguably within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question,"²³ and (4) demonstrate that a causal link exists between the action of the defendant and the harm suffered.²⁴ These prudential standing rules, however, are not of constitutional magnitude.²⁵ Therefore, courts have developed four major exceptions that allow the courts to circumvent these rules.²⁶ First, a court can grant standing to a plaintiff to litigate the rights of third parties when a violation of those rights would directly affect the litigant and would indirectly affect a third party's rights.²⁷ Secondly, courts may grant standing to litigate third party rights if the challenged practice affects a close relationship between the litigant and the third party whose rights are raised.²⁸ Thirdly, a court may grant standing to a litigant if the third party has some

18. *Simon v. Eastern Ky. Welfare Rights Org.*, 426 U.S. 26, 38 (1976) (plaintiffs were denied standing when they failed to show that denial of hospital services was not traceable to IRS Revenue Ruling that allegedly encouraged denial of services to indigents).

19. *Warth v. Seldin*, 422 U.S. 490, 498-99 (1975). For a brief summary of this case, see note 33 *infra*.

20. *Duke Power Co. v. Carolina Environmental Study Group*, 438 U.S. 59, 80-81 (1978) (plaintiffs had standing to challenge the constitutionality of the Price-Anderson Act encouraging the development of nuclear energy since they were able to show that they had suffered immediate adverse effects from the thermal pollution of two lakes in the vicinity).

21. *Frothingham v. Mellon*, 262 U.S. 447 (1923) (taxpayer's interest in federal spending too remote and indefinite to allow him to attack such measures).

22. *Tileston v. Ullman*, 318 U.S. 44 (1943) (doctor denied standing when he sought declaratory relief that a state ban on contraceptives violated his patients' constitutional rights).

23. *Association of Data Processing Serv. Orgs. v. Camp*, 397 U.S. 150, 153 (1970) (plaintiffs, sellers of data processing service, had standing to challenge a ruling by the Comptroller of Currency that permitted national banks to make data processing services available to other banks since plaintiffs were able to show economic injury).

24. *Simon v. Eastern Ky. Welfare Rights Org.*, 426 U.S. 26, 41-42 (1976). *But see* *Duke Power Co. v. Carolina Environmental Study Group*, 438 U.S. 59, 79 n.25 (1978), wherein the Court notes that there is some disagreement over whether the nexus test is constitutionally mandated or a prudential limitation.

25. *Warth v. Seldin*, 422 U.S. 490, 499 (1975).

26. For a discussion of the first three exceptions, see Comment, *Standing and the Propriety of Judicial Intervention: Reviving a Traditional Approach?*, 52 NOTRE DAME LAW. 944, 946-51 (1977). For a discussion of the fourth exception, see *Linda R.S. v. Richard D.*, 410 U.S. 614, 617 n.3 (1973).

27. *Griswold v. Connecticut*, 381 U.S. 479 (1965) (officers of a Planned Parenthood League had standing to assert rights of married persons in general in attacking state law that banned sale of contraceptives; officers' rights were directly affected because they were being prosecuted for aiding and abetting the violation of the statute).

28. *Pierce v. Society of Sisters*, 268 U.S. 510 (1925) (Society of Sisters had standing to

serious obstacle to standing and cannot assert his own right.²⁹ Fourthly, Congress may, by legislation, grant an express right of action to persons who otherwise would be barred by prudential standing rules.³⁰ While prudential requirements may thus be abrogated if the courts so decide, in no event can the constitutional limitations be circumvented.³¹

In recent years, the question of standing has become more important because the courts have relied increasingly on standing to narrow the scope of federal jurisdiction.³² One of the most important recent decisions to apply standing narrowly and thereby deny access to the courts is *Warth v. Seldin*,³³ in which the Supreme Court denied standing to plaintiffs because they lacked a sufficient stake in the outcome to invoke federal jurisdiction.³⁴ *Warth* requires a plaintiff to "allege specific, concrete facts demonstrating that the challenged practices harm *him*, and that he personally would benefit in a tangible way from the courts' intervention" in order to be granted standing.³⁵ The present status of the "actual injury to plaintiff's interest" test as set out in *Warth*, however, is uncertain. In *Village of*

challenge state law that required parents and guardians to send all school-age children to public schools in district in which they resided).

29. *Barrows v. Jackson*, 346 U.S. 249, 257 (1953) (white litigant had standing to sue for violation of constitutional rights of black third party who was trying to purchase real estate from litigant, since third party's rights would otherwise go unvindicated).

30. *Trafficante v. Metropolitan Life Ins. Co.*, 409 U.S. 205 (1972) (tenants in complex that was discriminating in rental of apartments had standing to sue as indirect victims under § 810 of the Fair Housing Act). See generally Note, *Implying Standing to Sue from Statutory Authority: Applicability of a "Fair Reading" Standard*, 54 NOTRE DAME LAW. 102 (1978).

31. *Warth v. Seldin*, 422 U.S. 490, 501 (1975).

32. See Blum, *The New Criteria For Standing in Exclusionary Zoning Litigation*, 11 SUFFOLK L. REV. 1 (1976); Comment, *supra* note 26, at 945. See also Comment, *Standing: A Key to Flexible Jurisdiction—The Aftermath of Warth v. Seldin*, 9 SW. U.L. REV. 1247, 1276 (1977), regarding the court's selective use of standing, in which the author stated:

An examination of similar fact situations in recent cases, in which standing has been granted in one instance and denied in another, compels the conclusion that, in its most controversial applications, standing is employed by the Court to rationalize a grant or denial of jurisdiction *after the Court has reached a decision on the merits*. When the Court has perceived an urgent need to intervene, it has managed to adjust its standing requirements to grant review. *Flast v. Cohen* is the most striking example; *Roe v. Wade* and *Baker v. Carr* are others. Conversely, when a compelling need to intervene is not perceived, standing proves to be a flexible tool to control and limit jurisdiction. Given the Court's view of its restrictive role, it is not surprising that abstentions predominate.

(Emphasis in the original.)

33. 422 U.S. 490 (1975). Three groups of plaintiffs brought suit under 42 U.S.C. § 1982 (1976), which is part of the Civil Rights Act of 1866, wherein all citizens are guaranteed the right to buy, sell, and own real and personal property. The suit was brought against the incorporated town of Penfield, New York, alleging that the town's restrictive single-family unit zoning policy effectively excluded persons of low and moderate incomes. The Court denied standing in *Warth* based on both constitutional limitations and prudential considerations.

34. 422 U.S. at 508.

35. *Id.* (emphasis in the original). Commentators reacted with concern that the *Warth* decision signaled a new means for the courts to avoid consideration of suits on broad public issues. See Broderick, *The Warth Optional Standing Doctrine: Return to Judicial Supremacy?*, 25 CATH. U.L. REV. 467, 467 (1976), expressing apprehension that "the Court may now be prepared to make judicial economy an ultimate criterion for 'awarding' standing, a suggestion that provides ample cause for alarm."

*Arlington Heights v. Metropolitan Housing Development Corp.*³⁶ the Court applied the *Warth* test to an individual plaintiff under facts similar to those in *Warth*,³⁷ but reached an opposite conclusion. The Court held that the plaintiff had demonstrated a sufficient personal stake in the controversy to assert his right to be free of arbitrary zoning practices.³⁸ Commentators differ as to whether *Arlington Heights* applied the same strict standard as *Warth*. One writer has argued that the same standard was applied and that the difference in results was attributable to greater specificity in pleading in *Arlington Heights*,³⁹ while a second writer has argued that *Arlington Heights* is a relaxation of the *Warth* test.⁴⁰ Regardless of the precise nature of the test, stricter requirements of standing have enabled courts to limit the scope of their jurisdiction and thereby avoid deciding a case on its merits.⁴¹

II. THE FAIR HOUSING ACT

A. General Background

In 1968, Congress passed the Fair Housing Act,⁴² which prohibits discrimination based on race, color, religion, national origin, and sex in the

36. 429 U.S. 252 (1977). Metropolitan Housing Development Corporation (MHDC), a nonprofit housing developer, was interested in constructing a racially integrated, low-to-moderate-cost housing project. MHDC requested Arlington Heights to rezone the project site from a single-family to a multiple-family designation. The village denied the request for rezoning, whereupon the development corporation and three potential residents brought suit, alleging violations of, *inter alia*, the fourteenth amendment and the Fair Housing Act. The Supreme Court held that MHDC had no racial identity and was therefore not a direct target of the alleged discrimination. The Court avoided deciding whether such circumstances would bar MHDC from asserting the constitutional rights of its prospective minority tenants, since one individual plaintiff did have standing to sue. This individual demonstrated a sufficient injury in fact in that his search for housing near his employment had been hindered by the village's refusal to change the zoning and allow the project to be built. *Id.* at 264.

37. While the fact situations in *Warth* and *Arlington Heights* were similar, plaintiffs in *Warth* brought their suit under 42 U.S.C. §§ 1981-1983 (1976), whereas plaintiffs in *Arlington Heights* alleged violations of the fourteenth amendment and § 804 of the Federal Housing Act, 42 U.S.C. § 3604 (1976). The Supreme Court in *Arlington Heights* remanded on the statutory question of whether there had been a violation of § 804 since the court of appeals did not decide this question.

38. 429 U.S. at 264. *But see* Note, *Standing and Equal Protection: What One Gives the Other Takes Away*, 23 LOYOLA L. REV. 1067, 1073 n.44 (1977), in which the author contends that the alleged injury held sufficient for standing in *Arlington Heights* is no more specific than the injury alleged in *Warth*.

39. *See* Comment, *Exclusionary Zoning and a Reluctant Supreme Court*, 13 WAKE FOREST L. REV. 107, 121 (1977), viewing *Arlington Heights* as following *Warth's* strict standard, thus narrowing the concept of standing and blocking most zoning challenges before they can be decided on the merits.

40. *See* Note, *supra* note 38, at 1072, in which the author contends that *Arlington Heights* demonstrates the Supreme Court's intent to relax *Warth's* stringent requirements.

41. *See* *Warth v. Seldin*, 422 U.S. 490, 519 (1975), in which Justice Douglas stated in his dissent that the case should be decided on its merits and that standing should not be a barrier to the dispensing of justice. *See also* Note, *Village of Arlington Heights v. Metropolitan Housing Development Corp.: Exclusionary Zoning—Constitutional Classism and Racism*, 21 HOW. L.J. 256, 264 (1978).

42. 42 U.S.C. §§ 3601-3619 (1976).

sale, rental, financing, or brokerage of housing.⁴³ Instead of relegating enforcement of the Act to the Secretary of Housing & Urban Development (HUD), Congress provided for private individuals to enforce the rights granted by the Act⁴⁴ by action under one of two enforcement provisions of the Act: either section 810⁴⁵ or section 812.⁴⁶

Section 810 provides for a combined administrative and judicial review of a complaint filed by a "person aggrieved."⁴⁷ The initial complaint is filed as an administrative matter with the Secretary of HUD.⁴⁸ If the Secretary's efforts at conciliation between the parties are ineffective,⁴⁹ the

43. *Id.* §§ 3604-3606. Section 3604 prohibits discrimination in sale or rental of housing, § 3605 in financing of housing, and § 3606 in provision of brokerage services.

44. *See* *Trafficante v. Metropolitan Life Ins. Co.*, 409 U.S. 205, 209 (1972), in which Justice Douglas reasoned that private attorneys general suits were virtually the only means of enforcement of the Act and therefore were needed to protect against indirect as well as direct harm. *See also* Note, *Third Party Suits Under Section 3612 of the Fair Housing Act of 1968*, 5 *FORDHAM URB. L.J.* 337, 344 (1977).

45. 42 U.S.C. § 3610 (1976) provides:

(a) Any person who claims to have been injured by a discriminatory housing practice or who believes that he will be irrevocably injured by a discriminatory housing practice that is about to occur (hereafter "person aggrieved") may file a complaint with the Secretary. . . . Within thirty days after receiving a complaint, or within thirty days after the expiration of any period of reference under subsection (c) of this section, the Secretary shall investigate the complaint and give notice in writing to the person aggrieved whether he intends to resolve it. If the Secretary decides to resolve the complaint, he shall proceed to try to eliminate or correct the alleged discriminatory housing practice by informal methods of conference, conciliation, and persuasion.

(d) If within thirty days after a complaint is filed with the Secretary or within thirty days after expiration of any period of reference under subsection (c) of this section, the Secretary has been unable to obtain voluntary compliance with this subchapter, the person aggrieved may, within thirty days thereafter, commence a civil action in any appropriate United States district court, against the respondent named in the complaint, to enforce the rights granted or protected by this subchapter, insofar as such rights relate to the subject of the complaint. . . . Such actions may be brought without regard to the amount in controversy in any United States district court for the district in which the discriminatory housing practice is alleged to have occurred or be about to occur or in which the respondent resides or transacts business.

46. *Id.* § 3612 provides:

(a) The rights granted by sections 3603, 3604, 3605, and 3606 of this title may be enforced by civil actions in appropriate United States district courts without regard to the amount in controversy and in appropriate State or local courts of general jurisdiction. A civil action shall be commenced within one hundred and eighty days after the alleged discriminatory housing practice occurred: *Provided, however*, that the court shall continue such civil case brought pursuant to this section or section 3610(d) of this title from time to time before bringing it to trial if the court believes that the conciliation efforts of the Secretary or a State or local agency are likely to result in satisfactory settlement of the discriminatory housing practice complained of in the complaint made to the Secretary or to the local or State agency and which practice forms the basis for the action in court. . . .

47. *Id.* § 3610. For the definition of "person aggrieved," see note 45 *supra*.

48. 42 U.S.C. § 3610 (1976).

49. *Id.* The Act does not specify what constitutes an ineffective effort at conciliation, which may cause problems for parties filing under § 810. One author argued:

It may seem less unfair to demand that complainant pursue the remedial process he has himself chosen. However, requiring an actual attempt at concilia-

complainant is free to proceed to federal court for a judicial resolution.⁵⁰

Section 812 differs from section 810 in that it does not require a complainant initially to seek relief through the administrative process; rather, it allows the complainant direct access to the federal courts.⁵¹ Section 812 does not use the language of "person aggrieved" as found in section 810,⁵² however, and this omission creates confusion as to whether these two sections apply to the same class of plaintiffs. While the early cases confronting this problem held that sections 810 and 812 provided alternative procedures for those who had been directly injured,⁵³ it was unclear whether individuals sustaining indirect injuries had standing to sue under either section.

B. *Persons Aggrieved*

In *Trafficante v. Metropolitan Life Insurance Co.*⁵⁴ the Supreme Court for the first time focused on the issue of standing for indirect victims of violations of the Fair Housing Act. The Court held that, even though complainants were already tenants in an apartment that was practicing discrimination in its rental policies, they still had standing to sue under section 810 as indirect victims in that they had lost the social, business, and professional benefits of living in an integrated community.⁵⁵ The Court resolved the issue of whether these alleged injuries were intended to be protected by section 810 by broadly construing the term "person ag-

tion makes it impossible for the complainant in deciding whether to resort to the Secretary to calculate how long the process of conciliation might take. The complainant and the Secretary may well disagree over whether conciliation has failed. If the Secretary is given control over this determination and, hence, over the complainant's access to court, complainants will avoid the agency conciliation remedy, and the interest in voluntary compliance evidenced in title VIII will suffer.

Note, *Discrimination in Employment and in Housing: Private Enforcement Provisions of the Civil Rights Act of 1964 and 1968*, 82 HARV. L. REV. 834, 850 (1969).

50. 42 U.S.C. § 3610(d) (1976) provides that such actions may be brought without regard to the amount in controversy.

51. See note 46 *supra*.

52. See note 45 *supra*.

53. See *Wheatley Heights Neighborhood Coalition v. Jenna Resales Co.*, 429 F. Supp. 486 (E.D.N.Y. 1977); *Fair Hous. Council of Bergen County, Inc. v. Eastern Bergen County Multiple Listing Serv., Inc.*, 422 F. Supp. 1071 (D.N.J. 1976).

54. 409 U.S. 205 (1972). *Trafficante* was originally filed by two tenants under §§ 810 & 812, 42 U.S.C. §§ 3610, 3612 (1976). Intervenors subsequently joined the action, one of whom filed under § 812. *Trafficante v. Metropolitan Life Ins. Co.*, 446 F.2d 1158, 1161 n.5 (9th Cir. 1971). The Ninth Circuit agreed with the district court, which held that none of the plaintiffs had standing. The Supreme Court reversed, focusing on § 810 and mentioning § 812 without distinguishing it. Two district court cases interpreted the Court's action in *Trafficante* as approving standing for indirect victims under § 812. *Wheatley Heights Neighborhood Coalition v. Jenna Resales Co.*, 429 F. Supp. 486, 490 (E.D.N.Y. 1977); *Fair Hous. Council of Bergen County, Inc. v. Eastern Bergen County Multiple Listing Serv., Inc.*, 422 F. Supp. 1071, 1082 (D.N.J. 1976). Two authors, however, contended that the Court denied standing under § 812 in *Trafficante*. Note, *Trafficante v. Metropolitan Life Ins. Co.: White Ghetto Tenants—Standing to Protest Landlord's Rental Discrimination*, 22 CLEV. ST. L. REV. 359 (1973); Note, *Trafficante v. Metropolitan Life: Standing Under the Civil Rights Act*, 5 COLUM. HUMAN RIGHTS L. REV. 539, 541 (1973).

55. 409 U.S. at 208.

grieved"⁵⁶ to include any person suffering injuries under the Fair Housing Act, regardless of whether he was a direct or indirect victim.⁵⁷ Despite the Court's unambiguous holding in *Trafficante* that section 810 covered both direct and indirect victims, it remained unclear whether that holding applied to section 812 as well.⁵⁸

C. *Post-Trafficante Developments*

Although two district courts⁵⁹ in cases subsequent to *Trafficante* applied its rationale to section 812, concluding that section 812 gave standing to indirect victims suffering injuries under the Act, the Ninth Circuit Court of Appeals disagreed. In *TOPIC v. Circle Realty*⁶⁰ the court held that one claiming to be an indirect victim under the Act did not have standing to sue under section 812. The court relied on what it referred to as the narrower language of section 812; this section does not use the broad term "person aggrieved," nor does it require an exhaustion of administrative procedures or state or local remedies as does section 810.⁶¹ Thus, the court reasoned that, since section 812 provides for immediate access to the courts, that section must be interpreted as providing a remedy only to those suffering immediate direct harm from discriminatory practices.⁶²

III. GLADSTONE, REALTORS V. VILLAGE OF BELLWOOD

In *Village of Bellwood v. Gladstone Realtors*⁶³ the Seventh Circuit concluded that section 812 extends standing to indirect victims of racial discrimination, a result contrary to the Ninth Circuit holding in *TOPIC*. To resolve the intercircuit conflict, the Supreme Court granted certiorari to hear *Gladstone*. Writing for the majority, Justice Powell⁶⁴ affirmed the

56. See Jaffe, *Standing to Secure Judicial Review: Private Actions*, 75 HARV. L. REV. 255, 257-58 (1961), noting various interpretations of "person aggrieved" at common law.

57. The Court relied heavily on *Hackett v. McGuire Bros.*, 445 F.2d 442 (3d Cir. 1971), which held that a former employee could assert the rights of a present employee under the Equal Employment Opportunity Act of 1964, which allows suits by "persons claiming to be aggrieved." The Court also relied heavily on the fact that HUD had treated plaintiffs as "persons aggrieved" within the meaning of § 810, stating that "such construction is entitled to great weight." 409 U.S. at 209.

58. Several intervening plaintiffs asserted standing under § 812 but not § 810. The Court focused exclusively on § 810 in reaching its holding and failed to clarify whether there was standing under § 812 as well, thus causing subsequent confusion in cases that followed *Trafficante*.

59. See *Wheatley Heights Neighborhood Coalition v. Jenna Resales Co.*, 429 F. Supp. 486 (E.D.N.Y. 1977); *Fair Hous. Council of Bergen County, Inc. v. Eastern Bergen County Multiple Listing Serv., Inc.*, 422 F. Supp. 1071 (D.N.J. 1976).

60. 532 F.2d 1273 (9th Cir.), cert. denied, 429 U.S. 859 (1976).

61. 532 F.2d at 1275-76.

62. *Id.*

63. 569 F.2d 1013 (7th Cir. 1978).

64. It is interesting to note that Justice Powell has written the opinions for all of the recent important standing cases. See *Warth v. Seldin*, 422 U.S. 490 (1975); *Simon v. Eastern Ky. Welfare Rights Org.*, 426 U.S. 26 (1976); *Village of Arlington Heights v. Metropolitan Hous. Dev. Corp.*, 429 U.S. 252 (1977). See also Powell's concurrence in *Trafficante*, wherein Powell concurs that he would not have found standing to sue but for the statute. 409 U.S. at 212.

Seventh Circuit, approving the broader construction of section 812.⁶⁵ First, the Court looked to the statute to determine if section 812 was intended to include indirect victims of discriminatory practices within its scope.⁶⁶ In determining that respondents had standing to sue under the statute, the Court examined the statutory language and found unconvincing the defendants' argument that section 812 should be construed more narrowly than section 810 because it does not contain the broad term "person aggrieved."⁶⁷ The Court reasoned that this omission was of little significance since the grammatical construction of the sentence, specifically, the use of the passive voice, obviated the need for a direct reference to potential plaintiffs.⁶⁸

Secondly, the Court sought to ascertain the congressional intent in enacting the statute.⁶⁹ Although the legislative history of the Act does not squarely address the issue of standing,⁷⁰ the Court found various indications that Congress intended sections 810 and 812 to be alternative remedies.⁷¹ Not only did the chairman of the House Judiciary Committee view the two sections as alternative remedies,⁷² but HUD had also consistently treated them as such.⁷³ Additionally, the early fair housing legislative proposals provided only for civil suits as the method of enforcement.⁷⁴ The administrative remedy was added later, apparently as a more expeditious and less burdensome alternative for complainants.⁷⁵ The Court therefore concluded that, in the absence of specific evidence to support the argument

65. 99 S. Ct. 1601, 60 L. Ed. 2d 66 (1979).

66. *Id.* at 1608-13, 60 L. Ed. 2d at 77-82.

67. *Id.* at 1609, 60 L. Ed. 2d at 78.

68. *Id.* This hardly seems to be conclusive since the use of the passive voice in no way rules out the use of "person aggrieved." Even given this grammatical construction, Congress could have easily included "person aggrieved" in § 812.

69. *Id.* at 1611-12, 60 L. Ed. 2d at 80-81.

70. *Id.* at 1611, 60 L. Ed. 2d at 80. See Dubofsky, *Fair Housing: A Legislative History and a Perspective*, 8 WASHBURN L.J. 149, 160 (1969), in which the author indicates that the vote by the House to accept the Senate amendments to the Civil Rights Act of 1968 (which included § 812) was due principally to the murder of Dr. Martin Luther King. The *Congressional Record* reveals that several House members were upset with the cursory handling of H.R. 2516, 90th Cong., 1st Sess. (1967). Representative Latta argued that the House was "being forced to act in haste." 114 CONG. REC. 9566 (1968). See also *Crim v. Glover*, 338 F. Supp. 823, 826 (S.D. Ohio 1972), in which the court stated: "The Act was debated, as H.R. 2516, on the floor of the House of Representatives and passed in the wake of the assassination of the Rev. Martin Luther King. As to be expected, floor debate was more emotive than clarifying."

71. 99 S. Ct. at 1611-12, 60 L. Ed. 2d at 80-82.

72. 114 CONG. REC. 9560 (1968), wherein Representative Celler stated: "In addition to administrative remedies, the bill authorizes immediate civil suits by private persons"

73. 99 S. Ct. at 1612, 60 L. Ed. 2d at 81. See 24 C.F.R. § 105.16(a) (1978), wherein the regulations provide that every "person aggrieved shall be notified of . . . his right to bring court action under sections 810 and 812."

74. Three bills that contained fair housing provisions were introduced in Congress in 1966: S. 3296, 89th Cong., 2d Sess. (1966); H.R. 14770, 89th Cong., 2d Sess. (1966); H.R. 14765, 89th Cong., 2d Sess. (1966). All three bills provided for judicial enforcement only.

75. 112 CONG. REC. 18402 (1968), wherein Representative Conyers stated: "Experience with comparable State and local agencies repeatedly has shown that the administrative process is quicker and fairer. It more quickly implements the rights of the persons discriminated against and also quickly resolves frivolous and otherwise invalid complaints."

that section 812 contemplated a more restricted class of plaintiffs, the Court should not read that restriction into the statute.⁷⁶

Having determined that respondents had standing to sue under the Act, the Court then turned to a consideration of the constitutional limitations and concluded that respondents' allegations satisfied the distinct and palpable injury requirement of article III.⁷⁷ In contrast to its earlier decision in *Trafficante*, the Court thoroughly examined the question of injury in fact. As to the village of Bellwood, the Court held that defendants' steering practices might well affect property values that in turn would directly injure a municipality by diminishing its tax base.⁷⁸ Additionally, the Court held that the loss of racial balance and stability in a particular geographic location was sufficient to satisfy the injury requirement of article III and to confer standing on the village.⁷⁹ The Court concluded that the loss of social and professional benefits satisfied the injury requirement as to the individuals, as did the diminution of value of the individual plaintiffs' homes as a result of the illegal steering.⁸⁰

Justice Rehnquist, joined by Justice Stewart, dissented and reached the same conclusion as the *TOPIC* court that section 812 should be construed more narrowly than section 810.⁸¹ The dissent's argument differed from the *TOPIC* opinion, however, in that the dissent would hold that, while the article III requirement had been met in *Gladstone*,⁸² the statutory requirements had not.⁸³ Thus, the dissent would hold that the plaintiffs should be denied standing based on prudential principles.⁸⁴ The dissent relied both on the plain meaning of the statute and on the structural argument that different remedies available under the two sections are evidence that Congress would not set up a specific administrative scheme and, at the same time, allow complainants to bypass the procedure completely under a separate enforcement section.⁸⁵ This argument apparently ignores the fact that swift action might be more easily attained through HUD, rather than the federal courts, even though section 814 provides for speedy handling of all suits brought under the Fair Housing Act. Furthermore, the dissent noted that broader relief is available under section 812.⁸⁶ Plaintiffs may be

76. 99 S. Ct. at 1611-13, 60 L. Ed. 2d at 80-82.

77. *Id.* at 1613-16, 60 L. Ed. 2d at 82-86.

78. *Id.* at 1613, 60 L. Ed. 2d at 83.

79. *Id.* at 1614, 60 L. Ed. 2d at 84; see *Linmark Assocs., Inc. v. Township of Wil-lingboro*, 431 U.S. 85, 94 (1977), in which the Court recognized the importance of promoting stable and racially integrated housing.

80. 99 S. Ct. at 1614-16, 60 L. Ed. 2d at 84-86; see *Trafficante v. Metropolitan Life Ins. Co.*, 409 U.S. 205, 210 (1972), in which the Court held such allegations sufficient to satisfy constitutional limits of standing.

81. 99 S. Ct. at 1622, 60 L. Ed. 2d at 94; see text accompanying notes 60-62 *supra*.

82. 99 S. Ct. at 1618-19, 60 L. Ed. 2d at 89-90.

83. The court in *TOPIC* expressed doubt whether constitutional limitations had been satisfied, but did not reach the issue because of its holding that the statutory limitations had not been satisfied. 532 F.2d at 1275.

84. 99 S. Ct. at 1619, 60 L. Ed. 2d at 90-91. For a discussion of prudential principles, see text accompanying notes 19-26 *supra*.

85. 99 S. Ct. at 1620-22, 60 L. Ed. 2d at 91-94.

86. *Id.* at 1621, 60 L. Ed. 2d at 92.

awarded both injunctive relief and monetary damages, as well as court costs and attorneys' fees. Such broad relief, the dissent reasoned, should be reserved for direct victims of discrimination.⁸⁷ Finally, the dissent examined and rejected plaintiffs' claim of standing under 42 U.S.C. § 1982,⁸⁸ holding that they had failed to demonstrate a racially motivated interference with property rights.⁸⁹

The Court's interpretation of section 812 will have far-reaching effects.⁹⁰ As a result of the *Gladstone* decision indirect victims of housing discrimination, such as those who have been denied the advantage of living in an integrated society, now have immediate access to the federal courts, which could prove to be a formidable weapon. An alleged violator, instead of facing the more informal administrative procedure, can now be faced immediately with a lawsuit brought by an indirect victim, which will impose expense and require effort on his part. The defendant will of course need to retain counsel, and he quickly can be subjected to the full discovery process. Whereas the violator faces these same burdens under section 810, he is first given a chance to comply with the Act before suit can be filed against him. While the majority in *Gladstone* dismisses the possibility that complainants might use section 812 for harassment, that possibility is clearly present.

Another result of *Gladstone* may be the increased use of testers to prove racial discrimination in subsequent suits. While the decision has already been heralded as making it much easier to use testing techniques to build cases against realtors,⁹¹ *Gladstone* does not give standing to testers in their capacity as testers; rather, testers may have standing, but only if they are able to fulfill the case or controversy requirement of article III.⁹² If a tester cannot show such an injury, he does not have standing.⁹³ The Court expressly declined to decide whether a tester living outside of an affected area has standing to sue under section 812.⁹⁴ Thus, this matter remains for future decisions to resolve.

Most significantly, *Gladstone* indicates that the Supreme Court is using a broader approach to standing than that taken in *Warth v. Seldin*. *Warth* has been viewed as "the watershed case in the law of standing,"⁹⁵ which

87. *Id.*

88. 42 U.S.C. § 1982 (1976) provides: "All citizens of the United States shall have the same right . . . as is enjoyed by white citizens . . . to inherit, purchase, lease, sell, hold, and convey real and personal property."

89. 99 S. Ct. at 1622, 60 L. Ed. 2d at 94. The plaintiffs had sought standing under § 1982, but since standing was granted under § 812 there was no reason for the Court to reach the § 1982 argument. *Id.* at 1616 n.33.

90. For example, based on the holding in *Gladstone*, the Fifth Circuit reversed a district court opinion in which standing to sue had been denied to a nonprofit corporation that sued a real estate firm allegedly engaged in racial steering. *Broadmoor Improvement Ass'n v. Weber & Assocs.*, 597 F.2d 568 (5th Cir. 1979).

91. WG&L Real Estate Outlook, 1979, at 12, col. 3.

92. 99 S. Ct. at 1614 n.25, 60 L. Ed. 2d at 84 n.25.

93. *Id.*

94. *Id.*; see note 9 *supra*.

95. See Blum, *supra* note 32, at 10.

might signal an end to federal adjudication of all cases involving generalized or indirect injury and might indicate that access to courts to vindicate constitutional rights depends on judicial favor rather than on constitutional rule.⁹⁶ The Court's opinion in *Gladstone* is a clear indication that neither a rigid view of statutory construction nor the placement of heavy burdens on those seeking to show injury in fact will be used invariably to preclude review of controversial cases on their merits. Whereas either statutory standing or constitutional limitations could have been used as "a precision instrument of subtle judicial activism, cutting off at the threshold the very possibility of asserting major constitutional rights,"⁹⁷ the Supreme Court liberally interpreted the statute and did not strictly scrutinize the causal nexus between the action of the defendant and the injury. Thus, the court allowed the village of Bellwood and its residents to reach the substantive issue of discriminatory practices affecting the area. While *Gladstone* primarily involves the interpretation of one statutory provision in the Fair Housing Act, on a broader level it seems to signal that the alarm caused by the possible repercussion of *Warth* was unfounded. It is significant to note that had the dissent prevailed the concern that standing is being used by the courts to avoid controversial issues would have been justified; only by applying the broader interpretation of standing was the Supreme Court able to allow an issue of vital social importance to be reached.

IV. CONCLUSION

With the passage of the 1968 Fair Housing Act, suits by private individuals have been the primary means of enforcement to end racial discrimination in housing. In *Trafficante* the Supreme Court recognized the right of individuals to assert injuries as indirect victims under section 810, thus broadening the class of plaintiffs who have standing to sue under that section. In *Gladstone* the Supreme Court continued the line of reasoning begun in *Trafficante* by holding that individuals asserting injuries as indirect victims had standing to sue under section 812 as well, thereby providing immediate access to the federal courts for all parties affected by racially discriminatory housing practices. The *Gladstone* decision therefore should have an impact on facilitating the ultimate goal of the Fair Housing Act, to end racial discrimination in the housing market nationwide. On a broader level, the case expresses a willingness on the part of the Supreme Court to confront issues of great social importance rather than to use standing as a barrier to preclude their consideration. Although the Court in *Gladstone* was presented with plausible arguments for denying standing, it instead granted standing, thus enabling the lower court to reach the merits of a case raising a controversial social issue. Such a posture could well indicate

96. See Broderick, *supra* note 35, at 467.

97. See *id.*