

3-1-1985

Muddying the Unclear Waters of Standing: *Allen v. Wright*

Larry S. Jenkins

Follow this and additional works at: <https://digitalcommons.law.byu.edu/lawreview>



Part of the [Civil Procedure Commons](#), and the [Courts Commons](#)

Recommended Citation

Larry S. Jenkins, *Muddying the Unclear Waters of Standing: Allen v. Wright*, 1985 BYU L. Rev. 171 (1984).

Available at: <https://digitalcommons.law.byu.edu/lawreview/vol1985/iss1/4>

This Casenote is brought to you for free and open access by the Brigham Young University Law Review at BYU Law Digital Commons. It has been accepted for inclusion in BYU Law Review by an authorized editor of BYU Law Digital Commons. For more information, please contact hunterlawlibrary@byu.edu.

CASE NOTES

Muddying the Unclear Waters of Standing: *Allen v. Wright*

“The essence of the standing inquiry is whether the parties invoking the court’s jurisdiction have ‘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.’”¹

During the Burger Court era, standing requirements have developed into a three-prong test. The plaintiff must allege an injury-in-fact² that is fairly traceable to the defendant’s conduct³ and is likely to be redressed by a favorable decision.⁴ Unfortunately, these elements have been applied inconsistently.⁵ In *Allen v. Wright*⁶ Justice O’Connor compounded this inconsistency by applying the “idea of separation of powers”⁷ to “interpret the ‘fairly traceable’ component of the standing require-

1. *Duke Power Co. v. Carolina Envtl. Study Group, Inc.*, 438 U.S. 59, 72 (1978) (quoting *Baker v. Carr*, 369 U.S. 186, 204 (1962)).

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

3. *Simon v. Eastern Ky. Welfare Rights Org.*, 426 U.S. 26, 41-42 (1976).

4. *Id.* at 38.

5. For discussions on this topic, see generally Albert, *Justiciability and Theories of Judicial Review: A Remote Relationship*, 50 S. CAL. L. REV. 1139 (1977); Broderick, *The Warth Optional Standing Doctrine: Return to Judicial Supremacy?*, 25 CATH. U.L. REV. 467 (1976); Currie, *Misunderstanding Standing*, 1981 SUP. CT. REV. 41; Davis, *Standing, 1976*, 72 NW. U.L. REV. 69 (1977); LeBel, *Standing After Havens Realty: A Critique and an Alternative Framework for Analysis*, 1982 DUKE L.J. 1013; Monaghan, *Constitutional Adjudication: The Who and When*, 82 YALE L.J. 1363 (1973); Nichol, *Causation as a Standing Requirement: The Unprincipled Use of Judicial Restraint*, 69 KY. L.J. 185 (1980-81); Nichol, *Rethinking Standing*, 72 CALIF. L. REV. 68 (1984); Nichol, *Standing on the Constitution: The Supreme Court and Valley Forge*, 61 N.C.L. REV. 798 (1983); Scott, *Standing in the Supreme Court—A Functional Analysis*, 86 HARV. L. REV. 645 (1973); Tushnet, *The New Law of Standing: A Plea for Abandonment*, 62 CORNELL L. REV. 663 (1977).

6. 104 S. Ct. 3315 (1984).

7. *Id.* at 3325.

ment."⁸ Although separation of powers concerns are relevant to a standing inquiry,⁹ Justice O'Connor's analysis is both questionable and confusing. First, a standing inquiry is either separate from or incidental to a separation of powers inquiry. Second, using separation of powers to interpret the fairly traceable component of standing improperly shifts the focus of the inquiry from the plaintiff to the merits. The analysis is confusing because Justice O'Connor neither offers explanation for her analysis in this case nor gives guidance for its future application. As a result, the extent to which federal courts may deny standing in similar suits is unknown. The interpretation of O'Connor's analysis is entirely within the Court's discretion, thus making uncertain the status of plaintiffs seeking equitable relief from government action.

I. THE *Allen* CASE

The Internal Revenue Service has a policy of denying tax-exempt status to racially discriminatory private schools. Certain guidelines and procedures have been established to determine if a particular school is racially discriminatory.¹⁰ In order to main-

8. *Id.* at 3330 n.26.

9. See *Valley Forge Christian College v. Americans United for Separation of Church and State, Inc.*, 454 U.S. 464, 471-72 (1982); *Laird v. Tatum*, 408 U.S. 1, 12-13 (1972).

10. The Court quotes and paraphrases the relevant portions of the policies and guidelines as follows:

The IRS policy requires that a school applying for tax-exempt status show that it "admits the students of any race to all the rights, privileges, programs, and activities generally accorded or made available to students at that school and that the school does not discriminate on the basis of race in administration of its educational policies, admissions policies, scholarship and loan programs, and athletic and other school-administered programs."

Allen, 104 S. Ct. at 3319 (quoting Rev. Rul. 71-447, 1971-2 C.B. 230).

The guidelines provide that "[a] school must show affirmatively both that it has adopted a racially nondiscriminatory policy as to students that is made known to the general public and that since the adoption of that policy it has operated in a bona fide manner in accordance therewith." The school must state its nondiscrimination policy in its organizational charter, and in all of its brochures, catalogues, and other advertisements to prospective students. The school must make its nondiscrimination policy known to the entire community served by the school and must publicly disavow any contrary representations made on its behalf once it becomes aware of them. The school must have nondiscriminatory policies concerning all programs and facilities, including scholarships and loans, and the school must annually certify, under penalty of perjury, compliance with these requirements.

The IRS rules require a school applying for tax-exempt status to give a breakdown along racial lines of its student body and its faculty and administrative staff, as well as of scholarships and loans awarded. They also require

tain tax-exempt status, a private school must adopt a racially nondiscriminatory policy disclosed to the general public, operate in a bona fide manner consistent with the policy, and continue to show through its records that it is operating in accordance with the policy.¹¹

The respondents, parents of black children who attend public schools undergoing desegregation, brought a nationwide class action in federal district court against the secretary of the treasury and the commissioner of the Internal Revenue Service. The parents alleged that (1) many communities' racially segregated private schools were created or expanded at the time public schools were undergoing desegregation; (2) many of these private schools received tax exemptions either directly or indirectly through the tax-exempt status of "umbrella" organizations that operated or supported the schools; (3) despite IRS policy, guidelines, and procedures, some of the tax-exempt racially segregated private schools maintained racially discriminatory policies; and (4) granting tax exemptions to these schools was unlawful.¹²

The respondents also alleged that the government conduct harmed them in two ways. The challenged conduct

(a) constitute[d] tangible federal financial aid and other support for racially segregated educational institutions, and

(b) foster[ed] and encourage[d] the organization, operation, and expansion of institutions providing racially segregated educational opportunities for white children avoiding attendance in desegregating public school districts and thereby interfere[d] with the efforts of federal courts, HEW and local school authorities to desegregate public school districts which have been operating racially dual school systems.¹³

Respondents sought a declaration that the challenged IRS tax-exemption practices were unlawful. Respondents also asked

the applicant school to state the year of its organization, and to list "incorporators, founders, board members, and donors of land or buildings," and state whether any of the organizations among these have an objective of maintaining segregated public or private school education. The rules further provide that, once given an exemption, a school must keep specified records to document the extent of compliance with the IRS guidelines. Finally, the rules announce that any information concerning discrimination at a tax-exempt school is officially welcomed.

Allen, 104 S. Ct. at 3319-20 (quoting Rev. Proc. 75-50, 1975-2 C.B. 587) (citations omitted).

11. *Allen*, 104 S. Ct. at 3319-20 (quoting Rev. Proc. 75-50, 1975-2 C.B. 587).

12. *Allen*, 104 S. Ct. at 3321-22.

13. *Id.* at 3322 (quoting Brief for Appellee at 38-39) (quotation marks omitted).

for an injunction requiring denial of tax exemptions to racially discriminatory private schools based on new guidelines outlined in their request.

The IRS reviewed the challenged policies and proposed new procedures designed to tighten requirements for the tax-exempt eligibility of private schools. But Congress passed a resolution blocking the procedures from going into effect. The district court dismissed the complaint after waiting for more than a year for Congress to either approve the procedures proposed by the IRS or formulate new proposals to strengthen IRS guidelines. The district court concluded that the plaintiffs lacked standing because Congress's resolution blocking the procedures from going into effect indicated that the requested relief was contrary to the will of Congress. As a result, any federal court intervention would have violated separation of powers.¹⁴

The United States Court of Appeals for the District of Columbia reversed the district court's decision, concluding that the respondents had standing because of "the denigration they suffer as black parents and schoolchildren when their government graces with tax-exempt status educational institutions in their communities that treat members of their race as persons of lesser worth."¹⁵ The Supreme Court granted certiorari and reversed the decision of the court of appeals.¹⁶

Justice O'Connor, writing for the majority, held that the respondents lacked standing to sue. Justice O'Connor concluded that the respondents' first alleged injury, federal aid and support for racially segregated schools, was not a personal injury to the respondents.¹⁷ In addition, Justice O'Connor found that the respondents' second alleged injury, fostering and encouraging racial segregation of schools, although judicially cognizable, was not shown through specific pleading to be fairly traceable to the

14. *Allen*, 104 S. Ct. at 3323 (citing *Wright v. Miller*, 480 F. Supp. 790 (D.D.C. 1979)). Justice O'Connor wrote:

The District Court thereupon considered and granted the defendants' motion to dismiss the complaint, concluding that respondents lack standing, that the judicial task proposed by respondents is inappropriately intrusive for a federal court, and that awarding the requested relief would be contrary to the will of Congress expressed in the 1979 ban on strengthening IRS guidelines.

Allen, 104 S. Ct. at 3323.

15. *Allen*, 104 S. Ct. at 3324 (quoting *Wright v. Regan*, 656 F.2d 820, 827 (D.C. Cir. 1981)).

16. *Allen*, 104 S. Ct. at 3324.

17. *Id.* at 3326-27.

challenged policies, procedures, and guidelines of the IRS.¹⁸ This note examines Justice O'Connor's analysis of the second alleged injury, which led to her illogical separation of powers argument.

II. ANALYSIS

Prior to *Allen*, plaintiffs were required to allege a direct injury or specifically plead causation between an indirect injury and asserted illegal conduct to satisfy the fairly traceable component of standing.¹⁹ Justice O'Connor went beyond this analysis by holding that separation of powers principles "interpret the 'fairly traceable' component of the standing requirement."²⁰ This assertion conflicts with the historical relationship between standing and separation of powers that even Justice O'Connor recognized early in the *Allen* opinion.²¹ Standing has historically involved an inquiry separate from or incidental to a separation of powers inquiry. The separate inquiry approach is logical because standing analysis has historically focused on the plaintiff, whereas the separation of powers inquiry has emphasized the disputed issues. A separation of powers inquiry unnecessarily clouds the already muddy waters of standing.²² Furthermore, Justice O'Connor's absence of explanation and guidance for future application leaves the Court with too much interpretive latitude in subsequent cases.

A. *The Court's Reasoning*

The Court recognized that the second alleged injury, fostering and encouraging segregated education, was judicially cognizable, saying that it was "one of the most serious injuries recognized in our legal system."²³ However, Justice O'Connor maintained that "[t]he links in the chain of causation between the challenged Government conduct and the asserted injury [were] far too weak for the chain as a whole to sustain respondents' standing."²⁴ She would have granted standing if the respondents had alleged the line of causation more specifically.

18. *Id.* at 3328.

19. *Warth v. Seldin*, 422 U.S. 490, 518 (1975).

20. *Allen*, 104 S. Ct. at 3330 n.26.

21. *Id.* at 3325 ("[T]he law of Art. III standing is built on a single basic idea—the idea of separation of powers.").

22. *See supra* note 5.

23. *Allen*, 104 S. Ct. at 3328.

24. *Id.* at 3329.

The diminished ability of respondents' children to receive a desegregated education would be fairly traceable to unlawful IRS grants of tax exemption *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. *Respondents have made no such allegation.*²⁵

Since respondents did not sufficiently allege facts to show that removal of tax-exempt status would make "an appreciable difference in public-school integration,"²⁶ the injury was not fairly traceable to IRS policies and procedures. Based on previous case law, Justice O'Connor could have ended her discussion of the fairly traceable requirement on that note.²⁷ However, she continued her analysis and attempted to define the fairly traceable component of standing in terms of separation of powers.

The opinion claims that "[t]he idea of separation of powers . . . explains why . . . [the] respondents' alleged injury [cannot] 'fairly . . . be traced to the challenged action' of the IRS."²⁸ In a footnote Justice O'Connor wrote, "we rely on separation of powers principles to interpret the 'fairly traceable' component of the standing requirement."²⁹ Justice O'Connor opined that "the Government has traditionally been granted the widest latitude in the 'dispatch of its own internal affairs.'"³⁰ Consequently, the federal courts should restrain themselves from hearing cases "brought, not to enforce specific legal obligations whose violation works a direct harm, but to seek a restructuring of the apparatus established by the Executive Branch to fulfill its legal duties."³¹ Yet the Court's observations do not explain how or

25. *Id.* at 3328 (emphasis added).

26. *Id.*

27. See *Simon v. Eastern Ky. Welfare Rights Org.*, 426 U.S. 26, 41-45 (1976); see also *Warth v. Seldin*, 422 U.S. 490, 518 (1975).

28. *Allen*, 104 S. Ct. at 3329.

29. *Id.* at 3330 n.26. The text of this footnote reads:

We disagree with . . . suggestions that separation of powers merely underly [sic] standing requirements, have no role to play in giving meaning to those requirements, and should be considered only under a distinct justiciability analysis. . . . Moreover, our analysis of this case does not rest on the more general proposition that no consequence of the allocation of administrative enforcement resources is judicially cognizable. . . . Rather, we rely on separation of powers principles to interpret the "fairly traceable" component of the standing requirement.

30. *Allen*, 104 S. Ct. at 3330 (quoting *Rizzo v. Goode*, 423 U.S. 362, 378-79 (1976), which quoted *Cafeteria Workers v. McElroy*, 367 U.S. 886, 896 (1961)).

31. *Allen*, 104 S. Ct. at 3330.

why separation of powers aids in interpreting the fairly traceable standing element. In a dissenting opinion, Justice Stevens expressed considerable doubt about what the majority intended and proposed three conflicting interpretations.³²

B. *A Critical Analysis of the Court's Opinion*

An examination of the relationship between standing and separation of powers prior to *Allen* demonstrates that the Court's analysis is flawed. This relationship shows that Justice O'Connor's application of separation of powers to a standing inquiry was questionable. It is thus important to understand the possible effects of *Allen*. Justice O'Connor provides very little guidance and explanation of her reasoning, thereby allowing the Court unfettered discretion to apply the analysis to future cases.

1. *The historical relationship between standing and separation of powers*

Chief Justice Warren best articulated the proper relationship between standing and separation of powers in *Flast v. Cohen*:³³

The jurisdiction of federal courts is defined and limited by Article III of the Constitution. In terms relevant to the question for decision in this case, the judicial power of federal courts is constitutionally restricted to "cases" and "controversies." . . . Embodied in the words "cases" and "controversies" are two complementary but somewhat different limitations. In part those words limit the business of federal courts to questions presented in an adversary context and in a form historically viewed as capable of resolution through the judicial process [including standing]. And in part those words define the role assigned to the judiciary in a tripartite allocation of power to assure that the federal courts will not intrude into areas

32. *Id.* at 3345-48 (Stevens, J., dissenting). Justice Stevens devoted the major portion of his opinion to discussing what the Court might have intended when it said it was relying on the concept of separation of powers to interpret the fairly traceable component of standing. First, he suggested that the Court "could simply be expressing the idea that if the plaintiff lacks Article III standing to bring a lawsuit, then there is no 'case or controversy' within the meaning of Article III." *Id.* at 3345. Second, "the Court could be saying that it will require a more direct causal connection when it is troubled by the separation of powers implications of the case before it." *Id.* Finally, "the Court could be saying that it will not treat as legally cognizable injuries that stem from an administrative decision concerning how enforcement resources will be allocated." *Id.* at 3347.

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

committed to the other branches of government [separation of powers].³⁴

This relationship between standing and separation of powers has been clarified by subsequent Burger Court decisions. In *Warth v. Seldin*³⁵ Justice Powell wrote that standing is "founded in concern about the proper—and properly limited—role of the courts."³⁶ In *Valley Forge Christian College v. Americans United for Separation of Church and State, Inc.*³⁷ Justice Rehnquist determined that the concept of case or controversy was the "bedrock requirement" of article III with the doctrine of standing merely incidental to it.³⁸ "In this manner does Art. III limit the federal judicial power 'to those disputes which confine federal courts to a role consistent with a system of separated powers and which are traditionally thought to be capable of resolution through the judicial process.'"³⁹ In *Allen* Justice O'Connor also recognized that standing helps "state fundamental limits on federal judicial power in our system of government"⁴⁰ and indicated that "the law of Art. III standing is built on a single basic idea—the idea of separation of powers."⁴¹

The relationship derived from these quotations is that standing is part of the article III case or controversy requirement, and that requirement, as Justice Rehnquist indicated, is a mechanical device employed by the Founders to ensure a "system of separated powers."⁴² Thus, it seems that Justice O'Connor employed an inverted analysis when she explained the fairly traceable requirement of standing using the "idea of separation of powers."⁴³ *Flast* validates such criticism:

The question whether a particular person is a proper party to maintain the action [standing] does not, by its own force,

34. *Id.* at 94-95 (emphasis added).

35. 422 U.S. 490 (1975).

36. *Id.* at 498.

37. 454 U.S. 464 (1982).

38. *Id.* at 471.

39. *Id.* at 472 (quoting *Flast*, 392 U.S. at 97).

40. *Allen*, 104 S. Ct. at 3324.

41. *Id.* at 3325.

42. *Valley Forge*, 454 U.S. at 472 (quoting *Flast*, 392 U.S. at 97).

43. *Allen*, 104 S. Ct. at 3329. "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." *Id.* Justice O'Connor also wrote "we rely on separation of powers principles to interpret the 'fairly traceable' component of the standing requirement." *Id.* at 3330 n.26.

raise separation of powers problems related to improper judicial interference in areas committed to other branches of the Federal Government. Such problems arise, if at all, only from the substantive issues the individual seeks to have adjudicated. Thus, in terms of Article III limitations on federal court jurisdiction, the question of standing is related only to whether the dispute sought to be adjudicated will be presented in an adversary context and in a form historically viewed as capable of judicial resolution.⁴⁴

In other words, a standing inquiry should never incorporate a separation of powers inquiry because standing relates only to the party bringing suit, while separation of powers addresses disputed issues. Chief Justice Warren illustrated this distinction as follows:

[W]hen standing is placed in issue in a case, the question is whether the person whose standing is challenged is a proper party to request an adjudication of a particular issue and not whether the issue itself is justiciable. Thus, a party may have standing in a particular case, but the federal court may nevertheless decline to pass on the merits of the case because, for example, it presents a political question.⁴⁵

Political questions are an obvious example of a judicial doctrine of restraint resting on separation of powers. The Burger Court acknowledged this distinction between standing and other doctrines of judicial restraint when it wrote, "Unlike other associated doctrines, for example, that which restrains federal courts from deciding political questions, standing 'focuses on the party seeking to get his complaint before a federal court and not on the issues he wishes to have adjudicated.'"⁴⁶ And again, "either the absence of standing or the presence of a political question suffices to prevent the power of the federal judiciary from being invoked by the complaining party."⁴⁷

It is unclear what Justice O'Connor specifically intended in her separation of powers analysis.⁴⁸ According to her opinion,

44. *Flast*, 392 U.S. at 100-01.

45. *Id.* at 99-100.

46. *Simon v. Eastern Ky. Welfare Rights Org.*, 426 U.S. 26, 37-38 (1976) (quoting *Flast*, 392 U.S. at 99).

47. *Schlesinger v. Reservists Comm. to Stop the War*, 418 U.S. 208, 215 (1974) (emphasis added).

48. See *supra* note 32 for a discussion of Justice Stevens's attempts to rationalize Justice O'Connor's intent.

this method of analysis should be used whenever injunctive relief from executive branch administrative actions is sought.⁴⁹ However, any attempt to interpret the fairly traceable component of standing through separation of powers analysis violates the historical relationship between the two doctrines. When examining standing elements, attention should be directed solely to the plaintiff's qualifications to bring suit. Justice O'Connor's analysis completely ignores the plaintiff's qualifications and instead focuses attention on the type of litigation presented and the appropriateness of federal court intervention.⁵⁰ Such an analysis is contrary to *Flast* and subsequent cases.

2. *The effect of Allen on subsequent litigation*

As discussed above, Justice O'Connor could have denied relief based on lack of standing without mentioning separation of powers.⁵¹ Instead, Justice O'Connor joined the two concepts and ignored the historical relationship between them. Even worse, her only guideline for subsequent application of the analysis was that such reasoning applies when a plaintiff "seek[s] a restructuring of the apparatus established by the Executive Branch to fulfill its legal duties."⁵² Justice Stevens argued that this was not an "appropriate test" because "separation of powers tolerates quite a bit of 'restructuring' in order to eliminate the effects of racial segregation."⁵³ Justice O'Connor hinted that in *Allen* and similar cases the plaintiff's injury would have to be directly caused by the defendant in order for the standing requirement to be met.⁵⁴ But such language is inconsistent with her own conclusion that the *Allen* plaintiffs could have been granted standing if they had specifically pleaded line of causation, whether indirect or not.⁵⁵ This inconsistency renders Justice O'Connor's suggested guidance for future application meritless.

49. *Allen*, 104 S. Ct. at 3330.

50. *Id.* at 3329-30.

51. See *supra* notes 23-27 and accompanying text.

52. *Allen*, 104 S. Ct. at 3330.

53. *Id.* at 3346 n.10 (Stevens, J., dissenting). Justice Stevens offered several examples of instances when the Court had allowed such restructuring to take place. *Id.* at 3347 n.10 (Stevens, J., dissenting).

54. *Allen*, 104 S. Ct. at 3330. "[T]hat principle . . . counsels against recognizing standing in a case brought, not to enforce specific legal obligations whose violation works a direct harm, but to seek a restructuring of the apparatus established by the Executive Branch to fulfill its legal duties." *Id.*

55. *Id.* at 3328.

The precedent used by Justice O'Connor in support of her analysis is equally unpersuasive. She relies on dicta from *Laird v. Tatum*,⁵⁶ a case that was dismissed because the plaintiffs had not suffered a personal and direct injury. But *Laird* offers no support for the proposition that separation of powers aids in interpreting the fairly traceable component of standing. In fact, *Laird* was decided before the fairly traceable component was developed.⁵⁷ Furthermore, the *Laird* analysis followed the historical pattern that standing is separate from or incidental to a separation of powers inquiry.⁵⁸ The three other cases Justice O'Connor cites in support of her position involved concepts of federalism rather than separation of powers.⁵⁹ Such cases are applicable to the extent that they explain the role of federal courts in suits brought to enjoin executive actions,⁶⁰ but Justice O'Connor did not explain their relevance to separation of powers or standing.

Thus, the relationship between the doctrine of standing and the concept of separation of powers has been needlessly confused. This confusion, resulting from the Court's lack of explanation and guidance, raises serious doubt concerning the status of potential plaintiffs who may seek to enjoin actions of the executive branch. The abandonment of historical guidelines and lack of predetermined guidelines for applying the separation of powers analysis means the Court is free to apply Justice O'Connor's analysis in any manner consistent with its desires to reach the merits of a given case. In any event, the implications of *Allen* seem clear. Delineating a standard based on Justice O'Connor's separation of powers analysis may take years of litigation. Because of the wide latitude of possible interpretations,

56. 408 U.S. 1 (1972).

57. The Court began to develop its causation requirement in *Linda R.S. v. Richard D.*, 410 U.S. 614 (1973). Later, in *Warth v. Seldin*, 422 U.S. 490 (1975), the Court began to require the specific pleading of causation. *Id.* at 518. One year after *Warth*, the Court wrote that "the 'case or controversy' limitation of Art. III still requires that a federal court act only to redress injury that fairly can be traced to the challenged action of the defendant, and not injury that results from the independent action of some third party not before the court." *Simon v. Eastern Ky. Welfare Rights Org.*, 426 U.S. 26, 41 (1976). From this language the Court derived the term "fairly traceable." *Allen*, 104 S. Ct. at 3330 n.26.

58. See *supra* notes 33-47 and accompanying text.

59. *Allen*, 104 S. Ct. at 3330 (citing *O'Shea v. Littleton*, 414 U.S. 488 (1974); *Rizzo v. Goode*, 423 U.S. 362 (1976); *City of Los Angeles v. Lyons*, 103 S. Ct. 1660 (1983)).

60. *Allen*, 104 S. Ct. at 3330.

potential plaintiffs may no longer have a federal forum in which to challenge injuries caused by the executive branch.

III. CONCLUSION

The Court's use of separation of powers to interpret the fairly traceable component of standing is illogical and confuses the relationship between the two concepts. In the context of standing, it is wrong to apply separation of powers analysis to determine the existence of a case or controversy since, by definition, standing is a doctrine formulated to help the courts determine at what point the powers of the government should be separated. Separation of powers inquiries focus on the disputed issues. Standing focuses only on the plaintiff and his nexus to the alleged injury. By confusing the relationship between these two concepts, the Court has retained so much discretion to decide standing issues and caused so much uncertainty that actions by administrative agencies may now be beyond the reach of plaintiffs in federal courts.

Larry S. Jenkins