

THE STANDING DICHOTOMY IN RACIAL DISCRIMINATION SUITS UNDER THE FAIR HOUSING ACT AND TITLE I OF THE HOUSING AND COMMUNITY DEVELOPMENT ACT (HCDA)

The courts and legislatures of the United States have long recognized the problem of discrimination in the sale and rental of property.¹ By enacting the Fair Housing Act (FHA),² Congress made it easier to mount a legal challenge against racially discriminatory conduct. Subsequently, courts liberalized standing requirements for FHA suits in accordance with legislative intent.³ Nevertheless, parties challenging the discriminatory use of federal grants under Title I of the Housing and Community Development Act (HCDA)⁴ face major obstacles to judicial resolution of their claims.⁵ This Note examines the divergent

1. In 1962, President John F. Kennedy issued executive order 11,063, 3 C.F.R. 652, reprinted in 42 U.S.C. § 1982 (1976), which prohibited discrimination in federally assisted housing programs. Two years later, Congress passed Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d to 2000d-5 (1982), prohibiting discrimination on the basis of race, color, or national origin. The scope of the 1964 Act, like the executive order, was limited to federally funded programs. Title VIII of the Civil Rights Act of 1968, the Fair Housing Act, 42 U.S.C. §§ 3601-3619 (1982), extended the national fair housing policy to the private sector. See *infra* notes 16 through 22 and accompanying text. Additionally, the Supreme Court in *Jones v. Alfred Mayer Co.*, 392 U.S. 409, 421-22 (1968), held that Congress passed the Civil Rights Act of 1866, 42 U.S.C. § 1982 (1982), to prohibit all discrimination against blacks in the sale or rental of property.

2. 42 U.S.C. §§ 3601-3619 (1982).

3. See *infra* notes 25-31 and accompanying text.

4. 42 U.S.C. §§ 5301-5320 (1982).

5. See *infra* notes 68 through 78 and accompanying text.

approaches taken by federal courts in analyzing standing issues under both the FHA and Title I of the HCDA and exposes their inconsistencies in light of similar policies and provisions in each Act.

I. THE DOCTRINE OF STANDING—AN OVERVIEW

Before a federal court will adjudicate her claim, a litigant must demonstrate that she has standing to bring the action.⁶ This condition stems from article III of the Constitution, which defines the judicial power of federal courts and limits their jurisdiction to actual cases and controversies.⁷ To establish a controversy, a plaintiff must prove that she has standing to sue in federal court.⁸ The threshold article III test requires a litigant to allege that she suffered an injury-in-fact,⁹ that the injury is traceable to the challenged conduct,¹⁰ and that a favorable decision is likely to redress the injury.¹¹

6. See *Valley Forge Christian College v. Americans United for Separation of Church and State, Inc.*, 454 U.S. 464, 471 (1981) (“[The Supreme Court] has always required that a litigant have ‘standing’ . . .”).

7. U.S. CONST. art. III, § 2, cl. 1 provides:

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 grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects.

8. See *Valley Forge College*, 454 U.S. at 471 (1981).

9. See *Valley Forge College*, 454 U.S. at 472; *Simon v. Eastern Kentucky Welfare Rights Org.*, 426 U.S. 26, 41-42 (1976) (the Court held that under article III, standing is determined by whether the plaintiff suffered a personal injury and consequently alleged such a personal stake in the outcome of the controversy to warrant invoking federal court jurisdiction); *Linda R.S. v. Richard D.*, 410 U.S. 614, 617 (1973) (a federal court has jurisdiction only when the plaintiff himself suffered some threatened or actual injury resulting from the “putatively illegal conduct”); *Data Processing Service v. Camp*, 397 U.S. 150, 152 (1969) (injury-in-fact may be economic or otherwise).

10. See *Valley Forge College*, 454 U.S. at 472; *Simon v. Eastern Ky. Welfare Rights Org.*, 426 U.S. 26, 41 (1976).

11. See *Simon*, 426 U.S. at 38; *Valley Forge College*, 454 U.S. at 472-73, requiring an actual injury redressable by court serve several policies inherent in article III, thus allowing the court to “decide the case with some confidence that its decision will not pave the way for lawsuits which have some, but not all, of the facts of the case actually decided by the courts.” *Id.* at 472. The article III standing requirements also ensure that the judicial process will not become a forum “for the ventilation of public grievances.” *Id.* at 473. The case and controversy requirement of article III “forecloses the

Under the Supreme Court's prudential guidelines for standing, the plaintiff must be the proper party to litigate the claim.¹² The Court requires that even if a litigant alleges an injury sufficient to meet article III standards, she may not assert a claim based upon a third party's legal rights or interests.¹³ The Court may also deny standing when the plaintiff asserts a generalized complaint, rather than an individual injury, since such an issue may require legislative resolution.¹⁴ Finally, the Court requires that the plaintiff's interest must fall within the zone of interests protected or regulated by a statute or constitutional guarantee.¹⁵

II. STANDING TO SUE UNDER THE FAIR HOUSING ACT

The Fair Housing Act (FHA), passed by Congress as Title VIII of the Civil Rights Act of 1968,¹⁶ prohibits discrimination based on race, color, religion, or national origin in the rental, sale, or financing of residential housing.¹⁷ The Act encompasses both public and private residences with only limited exceptions.¹⁸ Further, the FHA prohibits

conversion of the courts of the United States into judicial versions of college debating forums." *Id.*

12. See *Valley Forge College*, 454 U.S. at 474; *Gladstone, Realtors v. Village of Bellwood*, 441 U.S. 91, 99-100 (1979). In *Gladstone*, the Court explained the use of prudential principles in standing determinations as a way in which the judiciary seeks "to avoid deciding questions of broad social import where no individual rights would be vindicated and to limit access to the federal courts to those litigants best suited to assert a particular claim." *Id.*

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

14. See *Valley Forge College*, 454 U.S. at 475, citing *Warth v. Seldin*, 422 U.S. at 499.

15. *Data Processing Serv. v. Camp*, 397 U.S. 150, 153 (1970). This "zone of interest" test is analogous to the older "legal injury" requirement the Court relied upon in determining basic article III standing issues prior to the *Data Processing Service* decision. The legal injury analysis covered only violations of a legal right protected by common law or statute. See *Davis, The Liberalized Law of Standing*, 37 U. CHI. L. REV. 450, 457 (1970) (discussion of the differences between injury-in-fact and legal injury article III analysis). In *Data Processing Service* the Court recognized that interference with the economic interest of freedom from competition was an injury-in-fact for article III standing purposes, even though the interference failed to constitute a legal injury. *Data Processing Service*, 397 U.S. at 153, 154.

16. 42 U.S.C. §§ 3601-3619 (1982).

17. *Id.* at §§ 3603, 3604, 3605, and 3606.

18. 42 U.S.C. § 3603(b)(1) exempts any single-family house sold or rented by its owner. Section 3603(b)(2) exempts owner-occupied dwellings of four families or less. Section 3607 exempts non-commercial housing operated by a religious organization or by a private club.

racial steering, a practice whereby persons such as real estate agents direct potential buyers to different areas of a community according to their race.¹⁹ Congress provided for the Act's enforcement through administrative²⁰ and judicial²¹ channels, each of which functions as an alternative avenue of relief.²²

The Supreme Court's liberal interpretation of the FHA's enforcement provisions effectively eliminated all prudential barriers to standing under the Act. The Court in *Trafficante v. Metropolitan Life Insurance Co.*²³ and *Gladstone, Realtors v. Village of Bellwood*²⁴ found that the FHA extended standing as far as permitted by article III.²⁵ In

19. See *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 366 n.1 (1982) (defining racial steering); *Gladstone, Realtors v. Village of Bellwood*, 441 U.S. 91, 94 (1979); Note, *Racial Steering: The Real Estate Broker and Title VIII*, 85 YALE L.J. 808, 809 (1976).

20. Title VIII, § 810, 42 U.S.C. § 3610, entitled "Enforcement" provides in part:

(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 may file a complaint with the Secretary of the Department of Housing and Urban Development (HUD) . . . [W]ithin thirty days after receiving a complaint . . . the Secretary shall investigate the complaint and give notice in writing to the person aggrieved whether he intends to resolve it.

(d) . . . If within thirty days after a complaint is filed with the Secretary . . . the Secretary has been unable to obtain voluntary compliance with this title, the person aggrieved may, within thirty days thereafter, commence a civil action . . . to enforce the rights granted or protected by this title.

21. Title VII § 812, 42 U.S.C. § 3612 "Enforcement by private persons" provides:

(a) The rights granted by §§ 3603, 3604, 3605, and 3606 of this title may be enforced by civil actions. . . . [A] civil action shall be commenced within 180 days after the alleged discriminatory housing practice occurred.

Title VIII § 813, 42 U.S.C. § 3613 "Enforcement by Attorney General . . ." provides:

(a) Whenever the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights granted by this subchapter and such denial raises an issue of general public importance, he may bring a civil action . . . against the person or persons responsible for such pattern or practice or denial of rights. . . .

22. *Gladstone*, 441 U.S. at 104-08. The Court found no congressional intent to condition access to the courts on a failure of an administrative resolution. *Id.* at 106. Rather, the legislative history suggests that all Title VIII complainants were to have available immediate judicial review. "The alternative, administrative remedy was then offered as an option to those who desire to use it." *Id.* at 106.

23. 409 U.S. 205 (1972).

24. 441 U.S. 91 (1979).

25. *Trafficante*, 409 U.S. at 209 (the words authorizing an aggrieved person to bring suit exhibit "Congressional intention to define standing as broadly as is permitted by Article III of the Constitution"); *Gladstone*, 441 U.S. at 109 (citing *Trafficante* for the

Trafficante the Court granted standing under section 810 of the Act to both a black and a white tenant of the same housing unit who allegedly suffered injury by the racially discriminatory management of the facilities.²⁶ The Court reasoned that while members of minority groups most often experience discriminatory housing practices, white tenants also have an interest in fair housing. Therefore, the exclusion of minorities from the apartment complex injured both the white and black residents.²⁷

Relying on *Trafficante*, the *Gladstone* Court broadly construed the standing requirement under section 812.²⁸ The Court granted standing to the Village of Bellwood and four of its residents to challenge the alleged racial steering practices of real estate agents.²⁹ The plaintiffs' allegations that the agents' conduct caused Bellwood to lose its integrated character were sufficient to satisfy the minimal article III injury-in-fact requirement.³⁰ The Court did not decide whether two black plaintiffs who lived outside of the community had standing. These plaintiffs sued as "testers," persons not actually seeking housing but investigating the alleged steering practices by posing as potential home buyers.³¹ Despite these two decisions, lower federal courts continued to require that a plaintiff show either a direct injury to her rights under the FHA, or that she resided in a community adversely affected by such a violation.

proposition that standing under § 812, like that under § 810, is "as broad as is permitted by Article III . . .").

26. 409 U.S. at 212. The tenants each alleged that the owner of a San Francisco apartment complex discriminated against non-whites on the basis of race in the rental of units within the complex.

27. *Id.* at 209-10.

28. *Gladstone*, 441 U.S. at 109; see *supra* note 25 and notes 20 and 21 for the provisions of §§ 810 and 812.

29. *Gladstone*, 441 U.S. at 111, 115. The Court defines racial steering as "directing prospective home buyers interested in equivalent properties to different areas according to their race." *Id.* at 94.

30. *Id.* at 115. In rejecting the defendant's argument that *Trafficante* limited standing to residents of the same apartment building, the Court stated:

The Constitutional limits of respondent's standing to protest the intentional segregation of their community do not vary simply because that community is defined in terms of city blocks rather than apartment buildings. Rather, they are determined by the presence or absence of a 'distinct and palpable injury.'

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

31. *Gladstone*, 441 U.S. at 111. The Court did not address the question because the plaintiffs did not emphasize the testers' claim in their briefs.

The Supreme Court decided the issue of tester standing in *Havens Realty Corporation v. Coleman*.³² Two individuals, one black and one white, who worked as testers for a non-profit group, Housing Opportunities Made Equal (HOME), sued an apartment complex owner for engaging in racial steering.³³ The black plaintiff alleged that the apartment manager falsely stated that no apartments were available. On the same day, however, the apartment manager informed the white tester that apartments were available.³⁴ Both testers and HOME also alleged that Havens' practices "deprived them of the important social, professional, business, economic, political and aesthetic benefits of interracial associations that arose from living in integrated communities free from discriminatory housing practices."³⁵

In reviewing *Trafficante*³⁶ and *Gladstone*,³⁷ the *Havens Realty* Court confirmed that standing to sue under the FHA required only that one establish an injury-in-fact resulting from the defendant's actions.³⁸ The Court determined that the black tester suffered such an injury when the defendant violated her statutorily created right to truthful housing information.³⁹ Since section 804 of the Act⁴⁰ only prohibits the dissemination of false housing information, the Court denied standing to the white tester because he failed to show how being told the truth injured him.⁴¹ Determining that HOME had organizational standing to sue, the Court held that the group suffered an injury-in-fact if the defendant's steering practices impaired HOME's ability to provide counseling and referral services to people seeking low and moder-

32. 455 U.S. 363 (1982).

33. *Id.* at 366-68. See 42 U.S.C. § 3604(d) (1982) which prohibits representing "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 a dwelling is in fact so available."

34. *Havens Realty*, 455 U.S. at 368.

35. *Id.* at 369.

36. 409 U.S. 205 (1972); see *supra* note 25 and accompanying text.

37. 441 U.S. 91 (1979); see *supra* notes 25, 28 and accompanying text.

38. The Court in *Havens Realty* stated, "[T]he plaintiff [must] allege that as a result of the defendant's actions he has suffered a 'distinct and palpable injury.'" 455 U.S. at 372, citing *Warth v. Seldin*, 422 U.S. 490, 501 (1975).

39. *Havens Realty*, 455 U.S. at 373, 374. The Court looked to congressional intent to answer the question of tester standing. Recognizing that an injury-in-fact could exist "solely by virtue of statutes creating legal rights, the invasion of which creates standing . . .," the Court determined that § 3604(d) creates a right to truthful information about the availability of housing. *Id.* See *supra* note 33.

40. Title VIII § 804, 42 U.S.C. § 3604 (1982); see *supra* note 33.

41. *Havens Realty*, 455 U.S. at 374.

ate income housing.⁴²

Although it purported to adhere to case law extending standing under the FHA⁴³ to the "fullest extent permissible under Article III,"⁴⁴ the Court in *Havens Realty* denied a white tester standing because she was told the truth.⁴⁵ One commentator views this decision as resurrecting the use of prudential rules to determine the existence of FHA standing.⁴⁶ Moreover, it is difficult to reconcile the fact that the Court granted the black tester standing, based solely upon a violation of a statutory right to truthful housing information, when the black tester was not in fact seeking a place to live.⁴⁷ Thus, the *Havens Realty* decision appears to stretch article III to its limits.

The Supreme Court applies the article III standing requirements alone in some cases, and in combination with prudential conditions in others. This confusion is evidenced by lower courts' attempts to apply

42. *Id.* at 379. HOME also sued in its representative capacity for its members, but settled with the defendants, agreeing not to seek injunctive relief; therefore, the Court did not consider their representative standing. *Id.* at 378. See *infra* note 91.

The statute of limitations in § 812, 42 U.S.C. § 3612 (1982), barred the black tester's claims because the violations were based on incidents that occurred more than 180 days from the date the suit was filed. *Id.* at 381. However, the Court did not use the 180 day limitation to bar to the claims of "neighborhood" plaintiffs, or to bar the claims by HOME because their injuries were based on a continuing series of violations on a number of occasions, at least one of which was within the 180 day period. *Id.*

43. 42 U.S.C. §§ 3601-3619 (1982).

44. See *Gladstone, Realtors v. Bellwood*, 441 U.S. 91 (1979); *Trafficante v. Metropolitan Life Ins. Co.*, 409 U.S. 205 (1972); see *supra* notes 25, 28 and accompanying text.

45. *Havens Realty*, 455 U.S. at 375. See *supra* note 39.

46. See Lebel, *Standing After Havens Realty: A Critique and An Alternative Framework for Analysis*, 6 DUKE L.J. 1013, 1023 (1982). The author opined if the Court was "[t]o remain consistent with its past decision, [it] should acknowledge that a denial of standing [to the white tester] for this reason does not proceed from a Constitutional basis . . ." *Id.* Lebel believes that the Court based its denial on prudential principles. *Id.* In this way, the judiciary can avoid questions of broad social import without vindicating individual rights, and limit access to the courts to those litigants best suited to assert a particular claim. See *supra* notes 12-15 and accompanying text for a discussion of the prudential standing requirements.

47. See *Civil Rights—Racial Discrimination—Fair Housing Act of 1968—Standing for Testers*, 21 DUQ. L. REV. 294, 307 (1982). This article discusses the confusion over the difficulty in actually discerning the plaintiff's injury, and therefore, her personal stake in the outcome ". . . beyond that of a concerned citizen interested in ensuring equal housing opportunities for everyone." The author believes that the Court apparently shared the lower court's view "that fair housing was such an important policy concern that it warranted the extension of standing to testers, but preferred to justify their decision with [article III] standing requirements."

the *Havens Realty* rationale.⁴⁸ The ability of a litigant to demonstrate standing under the FHA, however, remains much easier than under Title I of the Housing and Community Development Act,⁴⁹ under which the Supreme Court has yet to resolve inconsistencies.

III. STANDING TO SUE UNDER TITLE I OF THE HOUSING AND COMMUNITY DEVELOPMENT ACT

Congressional enactment of the Fair Housing Act⁵⁰ reflected the nation's growing concern over the effects of discriminatory housing practices on inner cities and the urban poor.⁵¹ The FHA proscriptions against discrimination in the sale or rental of property alone, however, were inadequate to remedy the adverse physical effects on minority and low income housing.⁵² Congress responded to the deterioration of

48. See *Anderson v. City of Alpharetta*, 770 F.2d 1575 (11th Cir. 1985) (standing denied to the NAACP in its representative capacity and to its individual members for failing to show any direct injury and for failing to overcome the prudential barrier to raising the "putative" rights of third parties); *Smith v. City of Cleveland Heights*, 760 F.2d 720, 722-24 (6th Cir. 1985) (a black resident, not himself steered away from the city, satisfied article III standing requirements by establishing a "stigmatic" injury suffered because the city's policy directly affected "his interest in his own self-respect, dignity, and individuality." The court held plaintiff's stigmatic injury sufficient to support standing); *Heights Community Congress v. Hillstop Realty, Inc.*, 774 F.2d 135, 139 (6th Cir. 1982) (reiterating the principle of broad article III standing under the FHA, court granted standing to the City of Cleveland and a non-profit organization based on their potential to be injured by defendant's alleged fair housing violations, holding the plaintiffs alleged sufficient facts to establish actual or threatened injury); *Ohio Fair Housing Congress v. Pierce*, 639 F. Supp. 215, 219 (N.D. Ohio 1986) (court denied standing to non-profit housing corporation, holding that plaintiff's injury was not an injury-in-fact to the organization as defined in *Havens Realty*, but only a hindrance to abstract goals and interests of the organization); *Protect Basic Tenants Union v. R.I. Housing*, 636 F. Supp. 1453, 1459 (D.R.I. 1986) (citing *Havens Realty* for the principle that in a FHA suit, court need not consider prudential standing concerns; plaintiff only has to meet constitutional requirements. The court granted standing to a non-profit housing organization which alleged sufficient injury to itself caused by defendants' denial of open and integrated housing to low income minorities in a racially discriminatory manner).

49. 42 U.S.C. §§ 5301-5320 (1982).

50. Title VIII of the Civil Rights Act of 1968, 42 U.S.C. §§ 3601-3619 (1982).

51. See *Developments in Law-Zoning*, 91 HARV. L. REV. 1681 (1978) (discussion of the development of housing laws and their impact on exclusionary zoning practices of suburbs which perpetuate urban ghettos and poverty).

52. *Id.* at 1681-82. See 42 U.S.C. § 3608(d) (1982), which places a duty on the Secretary of the Department of Housing and Urban Development to "administer the programs and activities relating to housing and urban development in a manner affirmatively to further the purposes of this subchapter."

housing by passing Title I of the Housing and Community Development Act of 1974 (HCDA).⁵³

The purposes of HCDA are to consolidate existing federal aid programs, establish new funding for developing viable urban communities, and eliminate slums and blighted conditions while conserving and expanding housing for persons of low and moderate incomes.⁵⁴ Congress conditions the use of federal grants and assistance under the HCDA on the recipients' compliance with section 109, which prohibits discrimination under any program or activity funded in whole or in part with federal monies.⁵⁵ Section 109 also requires that HCDA recipients comply with the provisions of the Fair Housing Act.⁵⁶ Unlike the FHA, the HCDA lacks a private enforcement provision, making it difficult for litigants to challenge the racially discriminatory use of federal development funds.⁵⁷

Prior to establishing standing, a plaintiff suing under the HCDA for racially discriminatory use of federal grant monies must prove the existence of a private cause of action.⁵⁸ In *Montgomery Improvement Association v. U.S. Department of Housing and Urban Development*⁵⁹ the Fifth Circuit held that the plaintiffs had a private cause of action under the anti-discrimination section of the HCDA.⁶⁰ The court ap-

53. 42 U.S.C. §§ 5301-5320 (1982).

54. See S. REP. NO. 693, 93rd Cong., 2d Sess., reprinted in 1974 U.S. CODE CONG. & ADMIN. NEWS 4273.

55. Title I § 109, 42 U.S.C. § 5309 (1982).

56. 42 U.S.C. § 5304(b)(2) (1982), provides that any "grant will be conducted and administered in conformity with . . . Public Law 90-284 [the Fair Housing Act]." The most far-reaching funding programs are Community Development Block Grants (CDBG), which provide funding under § 5306 of the HCDA to maintain and finance existing programs until completion; and Urban Development Action Grants (UDAG), under § 5318, which provide money to help fund new projects likely to attract investment. See H.R. REP. NO. 236, 95th Cong., 1st Sess., reprinted in 1977 U.S. CODE CONG. & ADMIN. NEWS 2884.

57. 42 U.S.C. § 5309(b), provides for enforcement of subsection A (the non-discrimination clause), by the Secretary of the Department of Housing and Urban Development (HUD), who may operate through the state governor, refer the matter to the U.S. Attorney General, or take other action, including the termination or reduction of funding.

58. See *Peoples Housing Dev. Corp. v. City of Poughkeepsie*, 425 F. Supp. 482, 488 (S.D.N.Y. 1976) (the court determined that because no private cause of action existed under the HCDA, inquiry into plaintiff's standing to sue was unnecessary).

59. 645 F.2d 291 (5th Cir. 1981).

60. *Id.* at 294. See 42 U.S.C. § 5309 (1982).

plied the four-part test articulated in *Cort v. Ash*⁶¹ in determining whether to imply private cause of action from a statute.⁶² The Supreme Court in *Cort* held that a private cause of action may exist where Congress passes a statute for a specified purpose. The *Montgomery* court reasoned that because Congress passed the HCDA specifically to prohibit the expenditure of federal funds in a discriminatory manner, the plaintiffs could pursue their claims.⁶³ The court also concluded that "nothing in the Act suggest[ed] any Congressional purpose to deny a private cause of action" in this case, since Congress intended to benefit plaintiffs like these⁶⁴ by granting "persons of low and moderate income certain rights" and prohibiting the discriminatory use of funds.⁶⁵

In contrast, the First Circuit adopted a strikingly different position regarding the existence of a private cause of action under the HCDA.⁶⁶ In *Latinos Unidos de Chelsea v. Secretary of Housing*⁶⁷ the court refused to allow the plaintiff to maintain a private cause of action.⁶⁸ The court rejected the Fifth Circuit's analysis, reasoning that the language of section 109 must be viewed in context.⁶⁹ The *Latinos* court, there-

61. 422 U.S. 66 (1975).

62. *Montgomery*, 645 F.2d at 294. The *Cort* factors are:

(1) Is the plaintiff one of the class for whose especial benefit the statute was enacted?

(2) Is there any indication of legislative intent, explicit or implicit, either to create such a remedy, or deny one?

(3) Is it consistent with the underlying purposes of the legislative scheme to imply such a remedy for the plaintiff?

(4) Is the cause of action one traditionally relegated to state law in an area basically the concern of the states, so that it would be inappropriate to infer a cause of action based solely on federal law?

Cort, 422 U.S. at 78 (1975).

63. *Id.* at 295. The court also relied heavily on *Cannon v. University of Chicago*, 441 U.S. 677 (1979), which held that a woman alleging sexual discrimination by the college had a private cause of action because the college received federal educational funds. The college's actions violated § 901(a) of Title IX of the Education Act of 1972, 20 U.S.C. § 1681 (1982). *Montgomery*, 645 F.2d at 295. The *Montgomery* court ruled § 901(a) identical to § 109 of the HCDA, 42 U.S.C. § 5309, and therefore the *Cannon* rationale applied to *Montgomery*. 645 F.2d at 295.

64. *Id.* at 296.

65. *Id.* at 297. See U.S.C. §§ 5301, 5304, and 5309.

66. See *Latinos Unidos de Chelsea v. Secretary of Hous. & Urban Dev.*, 799 F.2d 774 (1st Cir. 1986).

67. *Id.* at 793.

68. See 42 U.S.C. § 5309.

69. *Latinos*, 799 F.2d at 793.

fore, concluded that since the HCDA's primary objective was to develop "viable urban communities,"⁷⁰ rather than to benefit a particular class, Congress did not intend to confer federal rights and a private cause of action to litigants.⁷¹

Some courts deciding racial discrimination claims under Title I of the HCDA⁷² avoid adjudicating the merits by utilizing a strict standing analysis, rather than by denying a private cause of action to the plaintiffs. In HCDA litigation, courts focus on the last two prongs of the article III standing requirements—the ability to trace the alleged injury to the illegal conduct, and the probability that a favorable decision would redress the injury⁷³—rather than on the sole injury-in-fact threshold used in fair housing cases.⁷⁴

In *Jaimes v. Toledo Metropolitan Housing Authority*⁷⁵ the plaintiffs sued under the HCDA, charging that the Housing Authority acted in a

70. *Id.* at 794. The court stated that section 5309(a) reflects "the requirement that federal fund recipients not discriminate, rather than an intent to benefit a special class. By the time the HCDA was passed the language adopted for section 5309(a) was, in effect, boilerplate non-discrimination language, and we thus attribute little to the choice of form." *Id.*

The court in *NAACP, Boston Chapter v. Pierce*, 624 F. Supp. 1083, 1089 (D. Mass. 1985), held that no implied right of action exists against HUD for violations of the HCDA under § 808 of the FHA. The *Pierce* court found that section 808, 42 U.S.C. § 3608, places an affirmative duty on the Secretary of HUD "to administer the programs and activities relating to housing and urban development in a manner" that furthers the FHA's purpose.

In *Nabke v. U.S. Dept. of Hous. & Urban Dev.*, 520 F. Supp. 5, 9 (W.D. Mich., S.D. 1981), the court held that the HCDA lacks an implied private remedy. The court distinguished *Cannon*, *supra* note 63, despite the similarity of HCDA § 109 and § 901(a) of Title IX. The court found no evidence of congressional intent to provide a private cause of action under the HCDA, and stated that awarding damages would be inconsistent with the purpose of the program by diverting resources.

Peoples Hous. Dev. Corp. v. City of Poughkeepsie, 425 F. Supp. 482 (S.D.N.Y. 1976) applied the *Cort* factors and held no private cause of action exists under § 5309(a) for a developer challenging a city's alleged discriminatory rejection of a proposed low income housing project. The court found that the intended occupants of the contemplated housing financed under the HCDA were the only class of persons within the statute's primary protection. 425 F. Supp. at 491. Furthermore, the court found nothing in the legislative history of statute's language to support a finding of congressional intent to maintain a private cause of action. *Id.* Finally, the plain language of the statute includes only procedures and remedies which the Secretary may pursue. *Id.*

71. *Latinos*, 799 F.2d at 794.

72. 42 U.S.C. §§ 5301-5320 (1982).

73. *See supra* notes 12-15 and accompanying text.

74. *See supra* notes 23-44 and accompanying text.

75. 758 F.2d 1086 (6th Cir. 1985).

racially discriminatory manner by failing to urge certain municipalities to construct public housing.⁷⁶ The Sixth Circuit held that the plaintiffs lacked standing due to their failure to demonstrate a causal connection between the alleged injury and the challenged conduct.⁷⁷ Furthermore, the plaintiffs failed to meet the redressability test. The *Jaimes* plaintiffs were unable to show whether a court order directed to the Housing Authority ordering it to apply for housing building permits would be effective, since local law did not require municipalities to provide low income housing to their residents.⁷⁸

District courts apply the standing requirements more liberally than do the federal circuit courts to litigants challenging the use of federal grants under the HCDA. In *Coalition for Block Grant Compliance v. Department of Housing and Urban Development*⁷⁹ the trial court found a private cause of action does exist under the HCDA.⁸⁰ Furthermore, the judge granted standing to the plaintiffs who alleged that HUD's approval of grant applications contained inaccurate assessments of the expected needs for low income housing.⁸¹ The court relied on the dis-

76. *Id.* at 1097.

77. *Id.*

78. *Id.* See also *City of Hartford v. Town of Glastonbury*, 561 F.2d 1032, 1052, cert. denied, 434 U.S. 1034 (1976). *Hartford* denied standing to challenge the effect of noncompliance with grant application procedures on low income residents because the plaintiffs failed to trace their alleged injury to the unlawful conduct of the defendants. The court also denied standing because the plaintiffs failed to demonstrate the redressability of their injury. In *Huntington Branch NAACP v. Town of Huntington*, 530 F. Supp. 838, 843 (E.D.N.Y. 1981), plaintiffs lacked standing to challenge HUD's decision approving the Huntington "zero" goals for new or rehabilitated construction because even if HUD forced the town to include new goals, it would "not change the current status quo since there are no [HUD] funds available . . . to subsidize such housing."

79. 450 F. Supp. 43 (E.D. Mich., S.D. 1978).

80. *Id.* at 50. The court did not conduct the type of analysis undertaken in *Montgomery Improvement Ass'n v. HUD*, 645 F.2d 291 (5th Cir. 1981), or *Latinos Unidos de Chelsea v. Secretary of Housing*, 799 F.2d 774 (1st Cir. 1986). See *supra* notes 59-70 and accompanying text. The court in *Coalition* merely stated: "It is clear to us that plaintiffs have a cause of action to challenge a grant after it has been approved." *Coalition*, 450 F. Supp. at 50. One possible explanation is that the plaintiffs, in addition to suing under the HCDA, charged that HUD's actions violated the Fair Housing Act, 42 U.S.C. §§ 3601-3619 (1982). The court, however, did not make this distinction and granted relief for HUD's violation of the HCDA.

81. 450 F. Supp. at 52. The plaintiffs, the NAACP, and minority residents of Detroit, specifically charged that Livonia, a Detroit suburb, filed a deficient grant application by failing to set forth goals to meet the low income housing needs of families expected to reside in Livonia. *Id.* at 46. The plaintiffs felt this failure effectively barred their future residence in the city and deprived them "of their rights to live in a racially

senting opinion of Second Circuit Judge Oakes in *City of Hartford v. Town of Glastonbury*,⁸² in which the majority denied plaintiffs standing under the HCDA.⁸³ Judge Oakes believed that Congress passed Title I of the HCDA specifically to encourage cities receiving block grant money to plan for minority and low income housing.⁸⁴ The *Coalition* court therefore determined that if plaintiffs lacked standing under the HCDA, Congressional intent could never be realized.⁸⁵ The court granted standing by combining the injury-in-fact threshold with the prudential requirement that the plaintiffs be within the zone of interests protected by the statute.⁸⁶ The court did not require the plaintiffs to demonstrate a causal connection or the redressability of their claim. Rather, the court accepted the plaintiffs' allegations that HUD's violation caused their injury. Plaintiffs met the zone of interest requirement by showing that they were potential residents of the area targeted for grant expenditures.⁸⁷

The Massachusetts district court's decision in *NAACP v. Harris*⁸⁸ was even more liberal than *Coalition*. In *Harris*, the court held that the plaintiff's demonstration of injury-in-fact alone established standing to challenge discriminatory administration of grants under two HCDA programs.⁸⁹ Relying on the Supreme Court's decision in *Havens Realty*,⁹⁰ the *Harris* court ruled that the NAACP may sue in its own right, as well as in a representative capacity for its constituents, merely by alleging that the organization suffered an injury from the discrimi-

and economically integrated environment." *Id.* at 47. HUD's approval of Livonia's application, therefore, violated the HCDA. *Id.*

82. 561 F.2d 1032 (2d Cir.), *cert. denied*, 434 U.S. 1034 (1976); *see supra* note 78.

83. 561 F.2d 1032.

84. *City of Hartford*, 361 F.2d at 1056-59.

85. *Coalition*, 450 F. Supp. at 51. The court said: "We will not assume that Congress passed a statute it knew could not be enforced." *Id.*

86. *Id.* *See supra* note 15 and accompanying text.

87. *Coalition*, 450 F. Supp. at 51-52; *see Fox v. U.S. Dept. of Hous. & Urban Dev.*, 468 F. Supp. 907, 914 (E.D. Mich. 1979) (relying on *Coalition* for the proposition that "affected individuals have standing to challenge HUD's approval of a grant under the 1974 Act [HCDA]").

88. 567 F. Supp. 637 (D. Mass. 1983).

89. *Id.* at 639-40. The allegations included the failure of the City of Boston to condition the receipt of Community Development Block Grants (CDBG) on the improvement of the circumstances for black residents of the City, and the failure to provide low income housing for minorities under the urban Development Action Grant (UDAG) program.

90. 455 U.S. 363 (1982); *see supra* note 42 and accompanying text.

natory practices.⁹¹ As in the *Coalition* decision,⁹² the *Harris* court did not require a causal connection or redressability to determine the plaintiff's standing.⁹³ The *Harris* court, however, went even further by not imposing prudential barriers to the plaintiff's standing.⁹⁴

An analysis of the decisions under Title I of the HCDA⁹⁵ does little to suggest a framework for reconciliation. With some courts refusing to recognize the existence of a private cause of action⁹⁶ and others demanding a litigant to demonstrate how enjoining the discriminatory use of grant funds would improve the person's already bleak situation,⁹⁷ a plaintiff cannot rely with any certainty on case law.⁹⁸

IV. CONCLUSION

From a policy standpoint, it is difficult to understand how the courts justify allowing a person to sue for racial discrimination under the FHA⁹⁹ merely by showing that she suffered an injury, while denying a racial discrimination claim challenging the use of federal funds under Title I of the HCDA.¹⁰⁰ The different types of statutory enforcement provisions¹⁰¹ may partially explain the technical discrepancies in standing analysis under each Act. Nevertheless, courts should read the two statutes together, for several reasons: HCDA section 104 explicitly requires full compliance with the provisions of the Fair Housing

91. NAACP v. Harris, 567 F. Supp. 637, 640 (D. Mass. 1983); see *supra* note 42. The Court in *Havens Realty Corporation v. Coleman*, 455 U.S. 363 (1982), did not consider the question of representational standing. The Supreme Court decided that issue in *Sierra Club v. Morton*, 405 U.S. 727, 731-41 (1972), holding that if an organization successfully alleged that it or its members suffered an injury, the Court would recognize standing.

92. 450 F. Supp. 43 (E.D. Mich., S.D. 1978).

93. See *supra* note 87 and accompanying text.

94. See *Coalition for Block Grant Compliance v. Department of Hous. and Urban Dev.*, 450 F. Supp. 43, 51 (E.D. Mich., S.D. 1978). In *Coalition* the court utilized the prudential "zone of interest" test along with the requirement of an injury-in-fact to determine the plaintiff's standing. *Coalition*, 450 F. Supp. at 51. See *supra* notes 12-15 and accompanying text for a discussion of the use of prudential rules in standing analysis.

95. 42 U.S.C. §§ 5301-5320 (1982).

96. See *supra* notes 66-71 and accompanying text.

97. See *supra* notes 73-78 and accompanying text.

98. See *supra* notes 59-65 and 85-94 and accompanying text.

99. 42 U.S.C. §§ 3601-3619 (1982).

100. 42 U.S.C. §§ 5301-5320 (1982).

101. See *supra* notes 20, 21, and 57.

Act;¹⁰² section 808 of the FHA requires HUD to administer its urban development programs in furtherance of fair housing policy;¹⁰³ and the HCDA's non-discrimination provision contains language reflecting an underlying policy similar to the purpose declared in the Fair Housing Act.¹⁰⁴

Standing to sue is a condition precedent to the judicial resolution of a claim.¹⁰⁵ Courts do not determine standing on the merits of the case. Rather, standing merely concerns the ability of a litigant to get into court. If a federally funded million dollar urban development¹⁰⁶ project affects an area's residents in a racially discriminatory manner, is it really in the best interests of society or the judicial system to deny them standing to sue under the Housing and Community Development Act?

Courts must reconcile different standing rules under the HCDA¹⁰⁷ and under the Fair Housing Act.¹⁰⁸ Unless Congress clarifies its intent, or the Supreme Court decides the issue, the standing dichotomy will remain unresolved. Even if the Supreme Court recognizes the existence of a private cause of action under the HCDA¹⁰⁹ and holds that the article III standing requirements apply to litigants,¹¹⁰ demonstrating the redressability of HCDA claims will remain difficult.

Courts have further confused the current status of standing under the HCDA. For example, a court following *Jaimes* may require a plaintiff seeking to challenge the discriminatory use of federal grants to show personal benefit from an injunction.¹¹¹ Of course, the court may disregard the redressability issue altogether by following the decisions

102. See 42 U.S.C. § 5304(b)(2) (1982); see *supra* note 56.

103. See 42 U.S.C. § 3608(d) (1982); see *supra* note 52.

104. See 42 U.S.C. § 5309(a) which prohibits discrimination against any person "under any program or activity funded in whole or in part by funds made available . . ." under the HCDA.

105. See *supra* note 6 and accompanying text.

106. In 1985 an estimated \$3,900,000,000 was spent on the Community Development Block Grant Program. STATISTICAL ABSTRACT OF THE UNITED STATES 1986 (106th ed.) at 268.

107. 42 U.S.C. §§ 5301-5320 (1982).

108. 42 U.S.C. §§ 3601-3619 (1982).

109. See *Latinos Unidos de Chelsea v. Secretary of Housing*, 799 F.2d 774 (1st Cir. 1986); *contra* *Montgomery Improvement Ass'n v. Dep't Hous. & Urban Dev.*, 645 F.2d 291 (5th Cir. 1981); see *supra* notes 59-71 and accompanying text.

110. See *supra* notes 8-10 and accompanying text.

111. See 758 F.2d 1086 (6th Cir. 1985); see *supra* notes 75-78 and accompanying text.

in *Coalition*¹¹² and *Harris*.¹¹³ The latter approach seems consistent with the Court's adoption of the injury-in-fact test as the sole measure of standing in *Havens Realty*,¹¹⁴ *Gladstone, Realtors*,¹¹⁵ and *Trafficante*.¹¹⁶ The injury-in-fact test complies with congressional intent to define standing broadly under the FHA. Arguably, therefore, the Supreme Court should extend the liberalized FHA standing requirements to claims under the HCDA, given Congress' desire that the HCDA programs comply with the provisions of the FHA. Although this approach may not guarantee consistent application of the standing doctrine,¹¹⁷ basic guidelines for HCDA claims will, at last, be established.

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112. 450 F. Supp. 43 (E.D. Mich., S.D. 1978); *see supra* notes 79-87 and accompanying text.

113. 567 F. Supp. 637 (D. Mass. 1983); *see supra* notes 88-94 and accompanying text.

114. 455 U.S. 363 (1982); *see supra* note 38 and accompanying text.

115. 441 U.S. 91 (1979); *see supra* notes 24, 25 and accompanying text.

116. 409 U.S. 205 (1972); *see supra* notes 23, 25 and accompanying text.

117. *See supra* notes 46-48 and accompanying text.

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