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LEAGUE OF WOMEN VOTERS V. CITY OF NEW ORLEANS: STANDING IN SUITS AGAINST PUBLIC OFFICIALS

The League of Women Voters and two taxpayer plaintiffs filed suit against the city of New Orleans and its mayor; the City Council and its individual members; the Board of Levee Commissioners of Orleans Parish; the Board of Assessors of Orleans Parish and the individual assessors; and the Legislative Auditor of the state claiming that, as a result of erroneous information furnished by the assessors, the 1978 millage was incorrectly and unconstitutionally fixed, causing the city and levee board to lose several million dollars in tax revenue. Accordingly, the plaintiffs sought a writ of *mandamus* directing the various government agencies and officials to furnish the proper information and recompute and adjust millages in compliance with state law. The plaintiffs were denied relief by the trial court on the grounds that the duty of the defendants was discretionary and hence not subject to mandamus.[1] The court of appeal agreed as to all defendants except the assessors, whom they found had a mandatory duty to furnish certain assessed valuations of taxable property.[2] The supreme court dismissed the action as to all defendants, holding that the plaintiffs lacked standing to bring the suit. *League of Women Voters v. City of New Orleans*, 381 So. 2d 441 (La. 1980).

In the appeal to the Louisiana Supreme Court, the defendants filed an exception of no cause or right of action, and the court held that the issue of whether the plaintiffs had stated a cause of action was pretermitted since they did not have a right of action. The court stated the question regarding the right of action narrowly: "whether the League and the two taxpayers have standing to call the various defendants into court and obtain an order against them requiring them to carry out certain governmental functions, here *essentially the raising of taxes.*"[3] The plaintiffs had alleged, as their interest in the outcome of the suit, their individual interest in receiving sufficient police, fire, and flood protection. Justice Watson, writing for the majority, held that in order

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1. Mandamus will lie only to enforce ministerial and not discretionary duties. Bagert v. Moreau, 325 So. 2d 702 (La. App. 4th Cir.), cert. denied 329 So. 2d 465, 329 So. 2d 466, 329 So. 2d 467 (1976).

2. League of Women Voters v. City of New Orleans, 375 So. 2d 1187, 1191 (La. App. 4th Cir. 1979).

3. League of Women Voters v. City of New Orleans, 381 So. 2d 441, 446 (La. 1980) (emphasis added).

to enforce a public right or duty, a plaintiff must have a "special interest . . . distinct from the interest of the public at large," and that the injuries alleged by the plaintiffs were "not peculiar to plaintiffs themselves or even to taxpayers as a class, but are common to the public at large."[4] Justice Watson cited State ex rel. *Schoeffner v. Dowling*[5] for the "peculiar interest" requirement, but then noted that *Bussie v. Long*[6] had created an exception to the requirement. The *Bussie* court held that when a public official charged with the unlawful performance or the refusal to perform a legal duty discriminates against a taxpayer by increasing his tax burden or otherwise injuriously affecting his person or property, the taxpayer need not show a peculiar interest in order to sustain a right of action. However, Justice Watson held, the League of Women Voters could not claim the *Bussie* exception to the "peculiar interest" rule since (1) they sought an increase, not a decrease, in taxes, (2) the injuries alleged were not peculiar to the plaintiffs but common to the public at large, and (3) the plaintiffs had made no showing that the revenues, if collected, would have been allocated to the particular areas in which the plaintiffs alleged their injuries.[7]

Justice Watson's first reason for denying standing is the most persuasive. The second reason, however, may demonstrate some confusion regarding the nature of the suit. Since this is a taxpayer suit, the plaintiffs should not have to allege "special and peculiar" injuries, and the suit should be considered one in which the public complains. This, at least, would be the holding of *Donaldson v. Police Jury*.[8] The third reason is probably valid, in that the likelihood that any taxes collected would be applied to police and fire protection is certainly speculative.

The problem of standing to sue public officials has a long and sometimes confusing history in Louisiana jurisprudence, as witnessed by the disagreement among the majority, the concurrence, and dissents in *League*, as well as by the differences as to the breadth of the *League* decision voiced by the courts of appeal. The *League* decision is not strong precedent: the court split 4-1-2, and Justice Calogero's concurrence, which would leave the court of appeal's decision undisturbed, is perhaps better defined as a dissent in part and a concurrence in part, since he apparently would have granted the writ against the assessors, while dismissing it against the other plaintiffs. Dissenting Justices Dixon and Dennis are of the view that the plaintiffs have standing. Dixon finds that the " 'special and peculiar' interest of plaintiffs in *Bussie v. Long* . . . was no more 'special and peculiar' than that of plaintiffs in this

4. Id. at 447.
5. 158 La. 706, 104 So. 624 (1925).
6. 286 So. 2d 689 (La. App. 1st Cir. 1973), cert. denied, 288 So. 2d 354 (1974).
7. *League*, 381 So. 2d at 447.
8. 161 La. 471, 709 So. 34 (1926).

case.'"[9] Dennis quotes from *Stewart v. Stanley* for the proposition that Louisiana allows standing to taxpayers when they assert injuries other than increased taxes:

> [A] taxpayer may resort to judicial authority to restrain public servants from transcending their lawful powers or violating their legal duty in any unauthorized mode which would increase the burden of taxation or otherwise unjustly affect the taxpayer or his property. The fact that the taxpayer's interest might be small and not susceptible of accurate determination is not sufficient to deprive him of the right. The action is regarded as having a public character and as being a proceeding in which the public complains.[10]

If the supreme court seems ambivalent about the requirements for standing in taxpayer suits, the courts of appeal, in subsequent cases, have been no more decisive. *Pierce v. Board of Supervisors*, a first circuit decision, follows *League* closely, citing it for the proposition that a taxpayer without a special and individual interest lacks standing "to champion a cause pertaining to the population at large," and finding that *League* overruled an earlier line of cases.[11] On the other hand, in *Davis v. Franklin Parish School Board*, the second circuit "respectfully disagree[d]" with the *Pierce* court's contention that the earlier line of cases, which allowed standing to taxpayers without a showing of a special or peculiar interest, had been overruled by *League*.[12] The *Davis* court allowed a taxpayer to challenge a school board lease, limiting the special interest requirement of *League* to situations in which plaintiffs seek to *compel* a mandated act rather than to *restrain* an unlawful one. As the plaintiff sought to restrain a public body, the suit was allowed.

Before *League*, there were numerous Louisiana decisions in which plaintiffs were denied or granted standing in actions against public officials, but a survey of the jurisprudence reveals no clear pattern. Generally, however, plaintiffs who bring actions against public officials have been divided into two categories: (1) those who seek to enforce a private right, and (2) those who seek to enforce a public right.[13] A

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9. 381 So. 2d at 449 (Dixon, J., dissenting).

10. 199 La. 146, 159, 5 So. 2d 531, 535 (1941).

11. 392 So. 2d 465, 467 (La. App. 1st Cir. 1980).

12. 412 So. 2d 1131, 1133 (La. App. 2d Cir.), cert. denied, 415 So. 2d 942 (La. 1982).

13. 52 Am. Jur. 2d Mandamus §§ 388-91 (1970) actually names three categories, the third being suits to enforce duties owed to the state in its sovereign capacity. As the third category has not been well developed in Louisiana jurisprudence, it will not be treated in this note. For an example of a duty owed to the state in its sovereign capacity, see State ex rel. Schoeffner v. Dowling, 158 La. 706, 104 So. 624 (1925), where the court held that the duty to appoint a public health officer was to be enforced by the executive branch, and not by a taxpayer suit. A fourth category, instances in which a citizen or, more commonly, "any interested party," is granted standing by statute, can be identified.

special and peculiar interest is required only of those in the first category, those who seek to enforce a private right. On the other hand, those who seek to enforce a public right need allege merely that an illegal act has threatened to increase their tax burden or has otherwise injuriously affected them. To a large extent, incongruous decisions in this area can be attributed to instances in which the courts have failed to recognize that the test for one who sues to enforce a public right is different from that used when one sues to enforce a private right. However, it should also be noted that the courts have generally failed to confront the policy issues behind the tests and furthermore, that the outcome in taxpayer or citizen suits is actually or should be determined by a weighing of various policy considerations, including judicial restraint, judicial efficiency, the availability of the political process as a source of a remedy, and the source of the duty allegedly owed by public officials.

In the area of standing to sue public officials, the simplest of the situations is that of the first category, in which a plaintiff seeks to enforce a private right. If the right is truly a personal one, then the plaintiff should be able to state a special and peculiar interest. A number of Louisiana cases exemplify this rule. A plaintiff alleging breach of contract or tortious injury by a public official clearly has standing to sue unless barred by a constitutional, statutory, or jurisprudential doctrine of sovereign immunity or other, more specific bars.[14] Even when sovereign immunity was in effect in Louisiana, citizens with particular interests were not always without relief, for it was held, however paradoxically, that a "suit by a citizen to recover possession of real property, or to enforce a real right, against officers or agents of the state, who assert title and possession in behalf of the state, is not a suit against the state . . . ."[15] Also, where a public official grants a contract to a party who has not made a legal bid, a party who has made a legal bid has standing to sue for rescission.[16] Additionally, public employees have standing to compel mayors and council members to approve and disburse pay increases required by statute.[17] What these cases have in common is the special or peculiar interest which sets the individual apart from the general public. That is, some act or omission of the state has harmed or threatens to harm the plaintiff individually and does not harm the public generally. Thus, when the injury sustained or the right sought to be enforced is private, standing should be measured by the standards involved in a lawsuit between two private parties.

The more difficult situation—the one with which this note is primarily concerned—arises when a plaintiff seeks to enforce a duty owed

14. See, e.g., Everett v. Goldman, 359 So. 2d 1256 (La. 1978).
15. Richardson v. Liberty Oil Co., 143 La. 130, 78 So. 326 (1918) (court syllabus).
16. State ex rel. Brenner v. Noe, 186 La. 102, 171 So. 708 (1936).
17. Prevost v. Baton Rouge City Council, 106 So. 2d 758 (La. App. 1st Cir. 1958).

to the public generally or to all taxpayers in a certain jurisdiction. In these cases the injury alleged or the right sought to be enforced is not unique or particular to the plaintiff, but is sustained by or owed to the public generally. Perhaps the most frequently cited—and most frequently misunderstood—case in this area is *State ex rel. Schoeffner v. Dowling.*[18] It is important to note exactly what the court in *Schoeffner* held, as it often has been cited for a proposition for which it may not stand. Though the *League* majority cites *Schoeffner* for the proposition that a taxpayer must have a special or peculiar interest to enforce a duty owed the public at large, the plaintiff in *Schoeffner* was held not to be suing "in behalf of the public but solely on his own behalf as an individual citizen and taxpayer."[19]

In *Schoeffner* the plaintiff, alleging that he was a taxpayer and a citizen, sought a writ of mandamus requiring the state health officer to appoint a parish board of health pursuant to the state constitution. However, the plaintiff had not alleged that he was suing on behalf of the public, and his standing was evaluated as if he were attempting to enforce a private right. Once the court held that the plaintiff was suing "on his own behalf," it was inevitable that it should find he lacked standing, as there was "no allegation of fact to be found in the petition going to show any special pecuniary or financial interest of relator . . . ."[20] Thus, *Schoeffner* does not stand for the proposition that one suing on behalf *of the public* to enforce a public right must allege a "special and peculiar interest," but only for the proposition that one suing on his *own behalf* to enforce such a right must show such injuries. The *Schoeffner* court was perhaps overly ingenious in distinguishing between the plaintiff who would succeed because he pleaded that his suit was "in behalf of the public" and a plaintiff who would fail because he sued "on his own behalf as an individual citizen and taxpayer."[21] Whether a plaintiff who sues as a taxpayer should be denied standing for such a technical deficiency in the pleadings is questionable, and other cases have held that, in a taxpayer suit, the action should be "regarded as having a public character, and as being a proceeding in which the public complains."[22]

Contrary to *Schoeffner*, a number of Louisiana cases have held that a plaintiff who sues on behalf of the public need not allege a special and peculiar interest in order to have standing.[23] Even the authorities cited in *Schoeffner* seem to support this proposition. "The true dis-

18. 158 La. 706, 104 So. 624 (1925).
19. Id. at 711, 104 So. at 626.
20. Id. at 709, 104 So. at 625.
21. Id. at 711, 104 So. at 626.
22. Donaldson v. Police Jury, 161 La. 471, 480, 109 So. 34, 38 (1926).
23. Woodard v. Reily, 244 La. 337, 152 So. 2d 41 (1963); Suarez v. Police Jury, 203 La. 680, 14 So. 2d 601 (1943); Donaldson v. Police Jury, 161 La. 471, 109 So. 34 (1926); Upper Audubon Ass'n v. Audubon Park Comm'n, 329 So. 2d 206 (La. App. 4th Cir. 1976), cert. denied, 333 So. 2d 240.

tinction," according to the Cyclopedia of Law and Procedure, quoted by the *Schoeffner* court, "seems to be that . . . if the general public as distinguished from the state in its sovereign capacity is affected, any member of the state may sue out the writ."[24] Thus, when one sues as a taxpayer to enforce a right due the public generally, he should not have to make a showing of a special and peculiar injury.[25]

In following *Schoeffner*, the *League* court identifies as the general rule the proposition that a plaintiff seeking to proceed against a public officer must show "some special interest . . . separate and distinct from the interest of the public at large."[26] The *League* court then proceeds to find an exception to this general rule in *Bussie v. Long*: "when a public official charged with the unlawful performance or the refusal to perform a legal duty discriminates against a taxpayer by increasing his tax burden or otherwise injuriously affecting his person or property, the taxpayer need not show such an interest in order to sustain a right of action."[27] It is perhaps more appropriate to say that *Bussie* was the rule and not the exception, at least in the earlier jurisprudence.

There are, under what appears to be the mainstream of Louisiana jurisprudence, two requirements for standing to enforce a public right: the public official's act or failure to act must (1) transcend his legal powers, and (2) injure the fiscal interests of taxpayers or the general public.[28] Louisiana courts have found public officials or bodies to have

24. 26 Cyclopedia of Law and Procedure 402 (W. Mack ed. 1907). Shortly following this quote, the court again draws verbatim from the Cyclopedia: "if the public interest is not injuriously affected . . . a private individual cannot enforce it solely in behalf of the public." Id. at 404. The consistent inverse of this proposition is that when the public interest *is* injuriously affected by an illegal act of a public officer, a citizen suing on behalf of the public will have standing.

25. *Schoeffner*, of course, states the contrary of this rule: "the great weight of authority is decidedly to the effect that, without some peculiar, special, and individual interest, a citizen, though he be a taxpayer, has no standing in court to champion a cause or subject matter which pertains to the whole people in common . . . ." 158 La. at 710, 104 So. at 626. However, this statement, despite the fact that it has been cited as the holding of *Schoeffner*, must be considered dicta since the situation of a plaintiff suing on behalf of the public was not before the court. See supra text accompanying note 20.

26. 381 So. 2d at 447. Most earlier courts would have found this requirement appropriate only when a plaintiff sued in an individual, rather than a representative capacity.

27. Id. In finding a general requirement of a special interest and an exception in the case of official acts which injuriously affect taxpayers, *League* and *Bussie* follow the first paradigm.

28. Woodard v. Reily, 244 La. 337, 152 So. 2d 41 (1963); Carso v. Board of Liquidation, 205 La. 368, 17 So. 2d 358 (1944); Stewart v. Stanley, 199 La. 146, 5 So. 2d 531 (1941); Graham v. Jones, 198 La. 507, 3 So. 2d 761 (1941); Borden v. Louisiana Bd. of Educ., 168 La. 1005, 123 So. 655 (1929); Donaldson v. Police Jury, 161 La. 471, 109 So. 34 (1926); Bienvenu v. Police Jury, 126 La. 1103, 53 So. 362 (1910); Saxon v. City of New Orleans, 124 La. 717, 50 So. 663 (1909); Hudson v. Police Jury, 107 La. 387, 31 So. 868 (1902); State ex rel. Orr v. City of New Orleans, 50 La. Ann. 880, 24 So. 666 (1898); Upper Audubon Ass'n v. Audubon Park Comm'n, 329 So. 2d 206 (La. App. 4th Cir.), cert. denied, 333 So. 2d 240 (La. 1976). See Cully v. City of New Orleans, 173 So. 2d 46 (La. App. 4th Cir.), cert. denied, 175 So. 2d 109 (La. 1965); Sutton v. Buie, 136 La. 234, 66 So. 956 (1914).

transcended their legal powers and have therefore granted standing to taxpayers in a number of instances. If a public body violates a constitutional provision, a taxpayer may have standing to contest the validity of the body's act.[29] If a public body makes an illegal expenditure, a taxpayer may sue to enjoin it or to have it declared illegal: "we cannot see that any harmful result will be obtained by permitting taxpayers who support the Government to complain of the illegal expenditure of public monies. If a taxpayer cannot complain—who else would have the right?"[30] Taxpayers may attack a contract made in an unauthorized proceeding or in violation of a statute.[31] Though early cases forbade attacks against state officials while allowing attacks on municipal officials, taxpayers were later allowed to attack an allegedly unconstitutional act of the state legislature.[32] When municipal officials use a building for a purpose other than that designated by an election, a taxpayer may challenge the illegal use.[33]

The second requirement for standing in a case where a plaintiff seeks to enforce a public right is an injury to the public fisc. According to mainstream *pre-League* jurisprudence, the plaintiff need not plead a special injury; he need only claim that the act or failure to act "will increase the burden of taxation or otherwise injuriously affect the taxpayers or their property."[34] Once he shows that the tax burden is affected, no matter how slightly, a plaintiff should have successfully met the requirement of alleging an injury: "a taxpayer who contributes a part of the funds involved—no matter how infinitesimal—has a definite interest he can assert in this cause."[35]

Whether a non-pecuniary injury will suffice to establish standing is not clear. Early cases allowed standing to citizens who complained that certain streets were closed when a railroad right of way was granted and to citizens who sought to keep a park open by preventing the building of a civic auditorium.[36] A more recent case, however, held that the construction of a community center on property which had been

29. State ex rel. Orr v. City of New Orleans, 50 La. Ann. 880, 24 So. 666 (1898); Graham v. Jones, 198 La. 507, 3 So. 2d 761 (1941).

30. Stewart v. Stanley, 199 La. 146, 161, 5 So. 2d 531, 536 (1941).

31. Donaldson v. Police Jury, 161 La. 471, 109 So. 34 (1926); Bienvenu v. Police Jury, 126 La. 1103, 53 So. 362 (1910); Hudson v. Police Jury, 107 La. 387, 31 So. 868 (1902).

32. Sutton v. Buie, 136 La. 234, 66 SO. 956 (1914); Borden v. Louisiana State Bd. of Educ., 168 La. 1005, 123 So. 655 (1929).

33. Sugar v. City of Monroe, 108 La. 677, 32 So. 961 (1902). But see Cully v. City of New Orleans, 173 So. 2d 46 (La. App. 4th Cir.), cert. denied, 175 So. 2d 109 (La. 1965).

34. Donaldson v. Police Jury, 161 La. 471, 109 So. 34, 38 (1926). See State ex rel. Orr v. City of New Orleans, 50 La. Ann. 880, 24 So. 666 (1898).

35. Woodard v. Reily, 244 La. 337, 353, 152 So. 2d 41, 47 (1963).

36. Connell v. Commission Council, 153 La. 788, 96 So. 657 (1923); Anderson v. Thomas, 166 La. 512, 117 So. 573 (1928).

willed to the city for the establishment of a trade school did not increase the tax burden and hence the alleged injury was not sufficient to confer standing.[37] A 1947 court of appeal case found that the plaintiff, a legislator suing as a taxpayer, lacked standing to force the Louisiana Secretary of State to promulgate a bill which had passed the legislature, as his interest was no different than that of any other citizen, and he did not seek to prevent the expenditure of any state funds.[38] This line of reasoning would support the assertion that an injustice which can not be measured in pecuniary terms is without redress, and there is other jurisprudence to this effect. *Marshall v. Town of Marksville* held, for example, that though taxpayers had the right to inquire into fiscal matters, they were without standing "in matters purely moral, political, or social" and were held not to have standing to bring an action to annul an election allowing the issuance of liquor licenses.[39] *Jumonville v. Hebert* held that taxpayer-plaintiffs lacked standing to obtain a writ of mandamus against public officials for the enforcement of gambling laws.[40]

It is important to remember that a taxpayer suit is regarded as having a public character and as being a proceeding in which the public complains.[41] This fact is illustrated by the test used to determine the jurisdictional amount in such cases. The size of the injury alleged is not measured by the taxpayer's often insignificant personal interest, but by the size of the injury to the public fisc.[42] Thus, one with a very small personal injury may be allowed standing if he alleges an injury to the public fisc of sufficient magnitude.

As the *League* decision was hardly unanimous, it remains to be seen whether it effects a permanent shift in the requirements for standing to sue public officials in Louisiana. *Though Pierce v. Board of Supervisors* suggests that *League* overruled several earlier cases, this suggestion

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37. Cully v. City of New Orleans, 173 So. 2d 46 (La. App. 4th Cir.), cert. denied, 175 So. 2d 109 (La. 1965).

38. Cleveland v. Martin, 29 So. 2d 516 (La. App. 1st Cir. 1947). The court also considered the fact that the plaintiff was both a legislator and an employer, noting that the former qualification might give him a special and peculiar interest, while the latter might support a finding of a pecuniary interest. (The decision rested on other grounds.) This demonstrates the fine line between the allegations necessary to support a claim to a private right and those necessary to support a claim to enforce a right of the public generally. The same plaintiff may be able to plead either, and a well-considered petition might contain pleadings supportive of claims to both private rights and rights of the public generally.

39. 116 La. 746, 41 So. 57 (La. 1906).

40. 170 So. 497 (La. App. 1st Cir. 1936).

41. Stewart v. Stanley, 199 La. 146, 5 So. 2d 531 (1941).

42. Saxon v. City of New Orleans, 124 La. 717, 50 So. 663 (1909). Sugar v. City of Monroe, 108 La. 677, 32 So. 961 (1902).

is probably incorrect.[43] *League*, however, does further define the nature of the relief which a taxpayer-plaintiff must seek in order to enforce a right of the general public. *League* holds that when taxpayers seek to compel an increase in taxes, they will be found to lack standing. However, since the plaintiffs in *League* sought to increase taxes *directly*, it is not clear whether *League* would deny standing to a party who sought relief which would *indirectly* raise taxes. That is, it may still be possible to obtain relief in the form of an act by a public official which would necessitate an expenditure, so long as that act itself is not the raising of taxes. However, taken to an extreme, *League* could be read to stand for the proposition that a taxpayer alleging an illegal act affecting the public generally would lack standing to force a public official to take any action, since most actions would have some costs associated with them. If this is indeed the case, the compel/restrain distinction raised by the *Davis* court may prove to be a valuable one: since restraining an official would almost always result in fiscal savings, while compelling would generally force some expenditure, one could compel an official to act only when one had a special and peculiar interest and was thus suing to enforce a private right.[44]

If League is read this way, it denies judicial access to many potential plaintiffs: anyone requesting relief that would have the effect of forcing public expenditure, however minute, would be denied standing. Such a solution seems harsh, especially in cases where the public expenditure would be small and the public injury great or where constitutional rights are concerned.

Decisions concerning standing to sue to enforce public rights are ultimately based on policy. Where the electoral process provides adequate remedies, access to the courts can fairly be restricted. However, where the damages to the public welfare which the plaintiff alleges are especially grievious or will be beyond remedy by the time the electoral process has run its course, judicial action is more justifiable. To the extent that they encourage public participation in government without seriously impeding executive and legislative functions, taxpayer suits should be encouraged. Nonetheless, if there is a trend in the Louisiana jurisprudence, it is probably toward stricter requirements for standing to enforce a right due the public generally. This trend is evidenced by the courts'

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43. 392 So. 2d 465 (La. App. 1st Cir. 1980). *Pierce* claims that a taxpayer needs a special and peculiar interest to champion a cause pertaining to the public at large. This is a confusing (and perhaps confused) statement in that it overlooks the *Bussie* exception established by *League*. Thus, contrary to *Pierce*, the following cases, which allow taxpayer standing, should remain good law: Stewart v. Stanley, 199 La. 146, 5 So. 2d 531 (1941); Woodard v. Reily, 244 La. 337, 152 So. 2d 41 (1963); Upper Audubon Ass'n v. Audubon Park Comm'n, 329 So. 2d 206 (La. App. 4th Cir.), cert. denied, 333 So. 2d 240 (La. 1976).

44. See supra, text at note 11.

recent reliance, in at least three cases, upon the strict standards of federal jurisprudence in considering problems of standing.[45]

Although a 1923 United States Supreme Court case, *Massachusetts v. Mellon*,[46] noted that standing requirements might be lower for plaintiffs bringing actions against small political entities than for plaintiffs suing federal officials, that case is dated and it could be argued that today's state political structures are as complex as that of the federal government in 1923. The federal requirements for standing are spelled out in *Flast v. Cohen*, where the Court developed a two-part test for standing to sue federal officials.[47] First, a taxpayer must establish a link between his status as taxpayer and the legislative act attacked. Thus, only those Acts of Congress which rely on the taxing and spending clause can be attacked by a taxpayer. Secondly, the taxpayer must show that the challenged act exceeds *specific* constitutional limitations imposed on the exercise of the congressional taxing and spending powers, and not simply that "the enactment is generally beyond the powers delegated to Congress by article I, section 8."[48] Comparing the Louisiana and federal constitutional provisions on standing, the *League* court recognized that the Louisiana Constitution (Article I, section 2) guarantees access to the courts, but noted that greater protection is to be afforded to fundamental interests of constitutional importance than to non-constitutional rights. The court then distinguished between those plaintiffs with constitutional claims and those with less compelling complaints. In the latter situation, the court would restrict standing to those with a special interest apart from the interest of the general public. Though the *League* decision rests on other grounds, this dicta may indicate that, in the future, public officials who act in ways that are merely illegal (*i.e.*, not unconstitutional) may be immune from public interest suits.

Standing involves a balancing of the right to be heard with judicial and governmental efficiency, and it is difficult to devise a bright-line test which would neither deprive a worthy plaintiff of a forum nor threaten to impair the functioning of the courts and government. Whether *League* will be followed in the future may depend more upon the equities of the cases that present themselves than upon precedent. The closeness of the decision is testimony that this is an unsettled area and will probably continue to be so.

J. Keith Hardie, Jr.

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45. *Pierce*, 392 So. 2d 465; *League*, 381 So. 2d 441; Louisiana Hotel-Motel Ass'n v. Parish of East Baton Rouge, 385 So. 2d 1193 (La. 1980).

46. 262 U.S. 447, 43 S. Ct. 597 (1923).

47. 392 U.S. 83, 88 S. Ct. 1942 (1968).

48. Id. at 103, 88 S. Ct. at 1954.