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Civil Procedure: Time to Stand Back: Unnecessary Gate-Keeping to Oklahoma Courts

*[S]tanding . . . is an answer to the very first question that is sometimes rudely asked when one person complains of another's actions: "What's it to you?"*¹

I. Introduction

The word "standing" does not appear in the U.S. Constitution, nor does it appear in the Oklahoma Constitution. Despite definitive pronouncements by the U.S. Supreme Court that state courts are not bound by federal standing principles,² the Oklahoma Supreme Court has implemented state standing requirements that precisely mirror the federal standing doctrine.³ Implementing the federal standing doctrine into Oklahoma state law has effectively denied potential plaintiffs access to the state court system. This note argues that Oklahoma courts should more distinctively define this state's standing requirements by reinstating the standing guidelines applied in Oklahoma prior to the adoption of the federal standing doctrine, thereby allowing plaintiffs with legitimate grievances redress through the state judiciary.

Part II of the note evaluates the current state of federal standing law. It provides an overview of the constitutional and prudential elements of federal standing, followed by a summary of the justifications behind imposing standing requirements as a basis to determine who may obtain judicial review in federal court. Part III reviews the development of standing requirements under Oklahoma law. This part describes Oklahoma's adherence to federal standing jurisprudence and details instances when Oklahoma courts have denied state judicial review by applying the federal standing requirements. Part IV concludes with a critical analysis of Oklahoma's conformity to federal standing requirements. This critique focuses on the different policy objectives behind federal versus state governance. It also suggests reasons why

1. Antonin Scalia, *The Doctrine of Standing as an Essential Element of the Separation of Powers*, 17 SUFFOLK U. L. REV. 881, 882 (1983).

2. *Asarco Inc. v. Kadish*, 490 U.S. 605, 617 (1989) ("[T]he constraints of Article III do not apply to state courts."); see also *N.Y. State Club Ass'n, Inc. v. City of New York*, 487 U.S. 1, 8 n.2 (1988) ("[T]he special limitations that Article III of the Constitution imposes on the jurisdiction of the federal courts are not binding on the state courts.").

3. See generally Helen Hershkoff, *State Courts and the "Passive Virtues": Rethinking the Judicial Function*, 114 HARV. L. REV. 1833, 1838 (2001) (noting that "[m]any state courts do conform the scope of their judicial function to the Article III model").

Oklahoma courts should develop more state-specific standing requirements than that which the U.S. Supreme Court mandates for claims brought in the federal court system.

II. History of the Standing Doctrine

Standing is the threshold requirement⁴ that focuses on *who* is entitled to seek judicial relief for an alleged violation of law.⁵ Standing is one of three components included within the larger rubric of justiciability.⁶ To ensure that federal courts hear only cases of a truly “judicial nature,” the litigant and his claim must satisfy the justiciability requirements before seeking resolution of a dispute.⁷ Thus, the standing requirement serves as one limitation on the power of federal courts to resolve only certain claims.⁸

A. Requirements of Federal Standing

Standing in the federal court system incorporates two distinct components — “[the] constitutional limitations on federal-court jurisdiction and prudential limits on its exercise.”⁹ Whereas application of the constitutional component of standing is mandatory, assessment of the prudential component is discretionary.¹⁰ This section summarizes these two basic components within the current federal standing doctrine.

4. See *Allen v. Wright*, 468 U.S. 737, 750-51 (1984) (recognizing standing as the “most important” justiciability doctrine). The Court explained, “In essence the question of standing is whether the litigant is entitled to have the court decide the merits of the dispute or of particular issues.” *Id.* (quoting *Warth v. Seldin*, 422 U.S. 490, 498 (1975)).

5. Henry P. Monaghan, *Constitutional Adjudication: The Who and When*, 82 YALE L.J. 1363, 1364 (1973) (stating that the standing doctrine defines the “who” inquiry).

6. Robert J. Pushaw, Jr., *Article III’s Case/Controversy Distinction and the Dual Functions of the Federal Courts*, 69 NOTRE DAME L. REV. 447, 447 (1994) (“Justiciability includes the doctrines of standing, ripeness, and mootness . . .”).

7. The U.S. Supreme Court, in *Muskrat v. United States*, 219 U.S. 346, 355 (1911), noted that the Constitution creates the Supreme Court and it cannot exercise any powers that are not judicial in nature.

8. *Allen*, 468 U.S. at 750 (“The case-or-controversy doctrine states fundamental limits on federal judicial power in our system of government.”).

9. The U.S. Supreme Court identified this two-fold inquiry in *Warth v. Seldin*.

In essence the question of standing is whether the litigant is entitled to have the court decide the merits of the dispute or of particular issues. This inquiry involves both constitutional limitations on federal-court jurisdiction and prudential limits on its exercise. In both dimensions it is founded in concern about the proper — and properly limited — role of the courts in a democratic society.

Warth, 422 U.S. at 498 (citation omitted).

10. *Id.* at 501.

1. A Constitutional Minimum: The Article III “Case or Controversy” Requirement

The constitutional component of standing originates under Article III, Section 2 of the United States Constitution, which grants federal courts jurisdiction over certain categories of “cases and controversies.”¹¹ The “case-or-controversy” requirement is known as the “core component” of standing, and potential litigants must satisfy this requirement before a federal court may adjudicate their claim.¹² Litigation that does not present a valid case or controversy is not within the jurisdiction of the federal courts and, therefore, must be dismissed because the litigant has not presented a justiciable claim to the court.¹³

Through decisional law, the U.S. Supreme Court has provided guidance in defining a case or controversy. One early decision, *Muskrat v. United States*,¹⁴ broadly defined a case or controversy as

the claims of litigants brought before the courts for determination by such regular proceedings as are established by law or custom for the protection or enforcement of rights, or the prevention, redress, or punishment of wrongs. . . . The term implies the existence of present or possible adverse parties, whose contentions are submitted to the court for adjudication.¹⁵

Recently, the U.S. Supreme Court provided a more specific explanation of what standing has come to mean under the case-or-controversy requirement

11. Article III, Section 2 reads in relevant part:

The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treatises 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 . . .

U.S. CONST. art. III, § 2.

12. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992) (noting that “the core component of standing is an essential and unchanging part of the case-or-controversy requirement of Article III”).

13. *Allen*, 468 U.S. at 750 (“The case-or-controversy doctrines state fundamental limits on federal judicial power in our system of government.”); see also *Warth*, 422 U.S. at 498-99 (stating that Article III requires litigants to allege “‘such a personal stake in the outcome of the controversy’ as to warrant . . . invocation of federal-court jurisdiction and to justify exercise of the court’s remedial powers on [the plaintiff’s] behalf”) (quoting *Baker v. Carr*, 369 U.S. 186, 204 (1962)).

14. 219 U.S. 346 (1911).

15. *Id.* at 357.

in *Bennett v. Spear*.¹⁶ In *Bennett*, the Court applied a three-part inquiry to judge whether a claim presents a justiciable controversy as required by Article III.¹⁷ First, the plaintiff must show evidence of a concrete, particularized, and imminent “injury in fact”¹⁸ that is not speculative, conjectural, or hypothetical.¹⁹ Second, the injury must be caused by the defendant’s conduct rather than the result of a third party not before the court.²⁰ Third, a favorable judgment from the court must be likely to redress the alleged injury.²¹

“Injury in fact,” causation, and redressability compose the three elements that the Article III case-or-controversy requirement mandates to demonstrate standing in federal court.²² A federal court has no power to hear a claim if the party seeking review fails to satisfy this “constitutional minimum.”²³ Even if a plaintiff satisfies these Article III requirements, however, a court may nonetheless deny standing based on certain prudential restrictions.²⁴

16. 520 U.S. 154 (1997).

17. In *Bennett*, the Court analyzed the fundamental elements of the standing doctrine.

To satisfy the “case” or “controversy” requirement of Article III, which is the “irreducible constitutional minimum” of standing, a plaintiff must, generally speaking, demonstrate that he has suffered “injury in fact,” that the injury is “fairly traceable” to the actions of the defendant, and that the injury will likely be redressed by a favorable decision.

Id. at 162 (quoting *Lujan*, 504 U.S. at 560; *Valley Forge Christian Coll. v. Ams. United for Separation of Church & State, Inc.*, 454 U.S. 464, 474 (1982)); see also *Allen v. Wright*, 468 U.S. 737 (1984) (applying similar three-part test); *City of Los Angeles v. Lyons*, 461 U.S. 95, 109 (1983) (same); *Simon v. E. Ky. Welfare Rights Org.*, 426 U.S. 26 (1976) (same); *Warth v. Seldin*, 422 U.S. 490 (1975) (same).

18. *Warth*, 422 U.S. at 508 (asserting that a plaintiff must allege specific, concrete facts showing that the challenged action harms him personally).

19. *Lyons*, 461 U.S. at 109 (requiring the plaintiff to demonstrate a live and active claim).

20. *Simon*, 426 U.S. at 41-42 (stating that the case-or-controversy limit of Article III requires federal courts to redress only those injuries that are traceable to the defendant’s action and to refrain from addressing those injuries that result from the actions of an absent party).

21. *Id.* at 38 (stating that the proper question when assessing a plaintiff’s standing is “whether, assuming justiciability of the claim, the plaintiff has shown an injury to himself that is likely to be redressed by a favorable decision”).

22. *Id.*

23. See *Warth*, 422 U.S. at 498 (noting that standing is the “threshold question in every federal case, determining the power of the court to entertain the suit”); see also *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992) (stating that the doctrine of standing serves to “identify those disputes which are appropriately resolved through the judicial process”).

24. See *Bennett v. Spear*, 520 U.S. 154, 162 (1997) (“In addition to the immutable requirements of Article III, ‘the federal judiciary has also adhered to a set of prudential principles that bear on the question of standing.’”) (quoting *Valley Forge Christian Coll. v. Ams. United for Separation of Church & State, Inc.*, 454 U.S. 464, 474-75 (1982)).

2. Court-Created Prudential Considerations

In addition to the constitutional standing requirements imposed by Article III, a court may deny a plaintiff access to the federal court system based on judicially created “prudential limitations.”²⁵ The prudential aspect of standing addresses the issue of judicial self-governance or jurisdictional restraint.²⁶ When the exercise of jurisdiction would be unwise, federal courts may invoke these prudential limitations and decline to review a claim.²⁷

For example, courts may decline to review a claim brought by an *uninjured party on behalf of an injured third party*. This restriction, known as the *jus tertii* rule, requires a plaintiff to assert only her own interests, not those of third parties.²⁸ Another prudential limitation restricts claims based on *generalized grievances*. “[W]hen the asserted harm is a ‘generalized grievance’ shared in substantially equal measure by all or a large class of citizens, that harm alone normally does not warrant exercise of jurisdiction.”²⁹ Additionally, courts may require a plaintiff to demonstrate that the representative branches of government would not better address her injury, and that her injury falls within the *zone of interests* protected by the statute or constitutional guarantee upon which she bases the claim.³⁰ Whereas constitutional standing requirements are mandatory,³¹ prudential rules are

25. *Warth*, 422 U.S. at 498 (“This [standing] inquiry involves both constitutional limitations on federal-court jurisdiction and prudential limitations on its exercise.”).

26. *Id.* at 500 (stating that without rules such as “judicial self-governance,” courts would be forced to decide important issues without the benefit of concrete presentation).

27. *See, e.g.*, *Craig v. Boren*, 429 U.S. 190, 193-94 (1976) (declining to invoke third-party limitation where it would cause inefficient use of judicial resources).

28. *Id.* at 193 (explaining that the *jus tertii* limitation keeps courts from intervening when issues are “ill-defined and speculative”).

29. *Warth*, 422 U.S. at 499; *see also* *City of Los Angeles v. Lyons*, 461 U.S. 95, 111 (1983) (finding that a plaintiff who local police had choked into unconsciousness lacked standing to seek an injunction against similar treatment in the future). The Court explained:

Absent a sufficient likelihood that he will again be wronged in a similar way, [the plaintiff] is no more entitled to an injunction than any other citizen of Los Angeles; and a federal court may not entertain a claim by any or all citizens who no more than assert that certain practices of law enforcement officers are unconstitutional.

Id.

30. *See* *Allen v. Wright*, 468 U.S. 737, 751 (1984) (“Standing doctrine embraces several judicially self-imposed limits on the exercise of federal jurisdiction, such as . . . the requirement that a plaintiff’s complaint fall within the zone of interests protected by the law invoked.”); *see also* *Valley Forge Christian Coll. v. Ams. United for Separation of Church & State, Inc.*, 454 U.S. 464, 474-75 (1982).

31. *Warth*, 422 U.S. at 499 (classifying the three-fold standing inquiry of “injury in fact,” causation, and redressability as a “minimum constitutional mandate”).

court created and, therefore, may be overruled by an act of Congress or ignored by the presiding court.³²

To summarize, a party must have standing to obtain federal judicial review by satisfying the constitutional case-or-controversy requirement of Article III. These requirements are met when a party alleges (1) a judicially cognizable injury (2) caused by the alleged conduct and (3) capable of being redressed through the requested relief. Even if a party sufficiently satisfies these constitutionally required standing components, however, a court may nevertheless deny review based on judicially created prudential considerations that prohibit some claims by third parties, as well as the litigation of generalized grievances.

B. Justifications for Standing Requirements in Federal Court

Courts and commentators commonly suggest two rationales for imposing a standing requirement on potential litigants seeking access to the federal judiciary. First, the standing requirement addresses the principle of separation of powers.³³ Second, the standing requirement protects the balance between federal and state governments by reinforcing principles of federalism.³⁴

1. Separation of Powers: Defining Judicial Responsibility Under Article III

The separation of powers principle constitutes one justification for imposing the case-or-controversy requirement on potential claims that come before a federal court.³⁵ Separation of powers addresses the “concern about the proper — and properly limited — role of the courts in a democratic society.”³⁶ By allowing federal courts to adjudicate only valid cases or controversies as required by Article III, federal courts respect the separation of powers by not unnecessarily interfering with other branches of government.³⁷

32. *Id.* at 501 (“Congress may grant an express right of action to persons who otherwise would be barred by prudential standing rules.”).

33. *Allen*, 468 U.S. at 750-51 (asserting that all doctrines surrounding Article III can be understood as serving a single idea — the separation of powers).

34. Brian A. Stern, *An Argument Against Imposing the Federal “Case or Controversy” Requirement on State Courts*, 69 N.Y.U. L. REV. 77, 98 (1994) (explaining the role of federalism in applying the case-or-controversy requirement in federal cases, stating “Supreme Court cases implement federalism principles by respecting the structure of state governments when interpreting the Constitution”).

35. *Allen*, 468 U.S. at 750-51.

36. *Id.* at 750.

37. Article III, Section 1 reads:

The judicial Power of the United States, shall be vested in one supreme Court, and

In 1984, the U.S. Supreme Court decided *Allen v. Wright*,³⁸ wherein the Court clearly articulated the significance of separation of powers within the standing doctrine.³⁹ In *Allen*, the Supreme Court denied standing to parents of African American public school students who alleged that the IRS wrongfully granted tax-exempt status to schools with racially discriminatory practices.⁴⁰ Because the plaintiffs failed to demonstrate a concrete “injury in fact,” the Court declined to review the merits of the case.⁴¹ Perhaps more importantly, the Court contributed further insight into the purpose of the federal standing requirement, noting that the standing requirements served to ensure a separation of powers between the branches of government.⁴² The U.S. Supreme Court explained:

To permit a complainant who has no concrete injury to require a court to rule on important constitutional issues in the abstract would create the potential for abuse of the judicial process, *distort the role of the Judiciary in its relationship to the Executive and the Legislature* and open the Judiciary to an arguable charge of providing “government by injunction.”⁴³

in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

U.S. CONST. art. III, § 1.

The framers of the U.S. Constitution expressly set out distinct powers for each branch of government in defining each branch in Articles I, II, and III of the Federal Constitution. This defining process inherently created a separation of powers without using such express language. For example, Article III, Section 1 creates the Supreme Court of the United States and grants Congress authority to create additional courts as necessary. The salary and tenure provisions for federal judges follow in this section, whereby federal judges are guaranteed life tenure and assurance that Congress may not reduce their salaries during their service on the bench. Because the salary and tenure provisions limit congressional influence and allow federal judges liberal independence, Section 1 not only defines judicial authority, but also imposes constraints on congressional authority over the federal judiciary.

38. 468 U.S. 737 (1984).

39. *Id.* at 759 (“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.”) (quoting *Simon v. E. Ky. Welfare Rights Org.*, 426 U.S. 26, 41 (1976)).

40. *Id.* at 739-40.

41. *See id.* at 753.

42. *Id.* at 752 (“[T]he standing inquiry must be answered by reference to the Art. III notion that federal courts may exercise power only . . . when adjudication is ‘consistent with a system of separated powers’”) (quoting *Flast v. Cohen*, 392 U.S. 83, 97 (1968)).

43. *Schlesinger v. Reservists Comm. to Stop the War*, 418 U.S. 208, 222 (1974) (emphasis

Separation of powers is arguably the strongest rationale behind the case-or-controversy requirement.⁴⁴ The obligation of potential litigants to demonstrate standing through the Article III case-or-controversy requirement operates as a “fundamental limit[] on federal judicial power in our system of government,”⁴⁵ ensuring that federal courts do not intrude into areas committed to the other branches of government.⁴⁶ Consequently, federal courts preserve separation of powers principles by only exercising the judicial power granted in Article III of the U.S. Constitution and by only adjudicating claims brought by litigants able to demonstrate standing under the case-or-controversy requirement.

2. Federalism: The Concern with Federal and State Autonomy

A second justification for imposing the case-or-controversy requirement is to maintain a division of powers between federal and state governments.⁴⁷ By definition, federalism should operate to constrain the scope of judicial power in cases that call into question the appropriate boundary between state and national affairs.⁴⁸ Federalism principles encourage federal courts to provide a “check” on federal-state relations by denying federal judicial review when the issues presented are better resolved by the states.⁴⁹

To sustain principles of federalism, the doctrine of standing limits the reach of federal judicial power as it relates to respect for individual state governments.⁵⁰ By refusing to hear cases that do not meet the case-or-controversy requirement, Article III courts afford states the necessary independence to remedy violations of law through the political process established by the citizens of the state, rather than by judicial decree mandated by the federal government and invoked by the private citizen.⁵¹ The U.S. Supreme Court, in *City of Los Angeles v. Lyons*,⁵² noted that the “federal

added).

44. See *Allen*, 468 U.S. at 752.

45. *Id.* at 750.

46. *Flast*, 392 U.S. at 95.

47. See Stern, *supra* note 34, at 98.

48. Edward Rubin, *Rational States?*, 83 VA. L. REV. 1433, 1434 (1997) (defining federalism as “a system where particular distributions of authority between a nation and its sub-units are secured by definitive rights that the sub-units can assert against the central government”).

49. *Id.*

50. Hershkoff, *supra* note 3, at 1898 (observing that the combined effects of standing, mootness, deferential review, and equitable restraints on injunctive relief limit the reach of federal judicial power with respect to state and local governments).

51. *Alden v. Maine*, 527 U.S. 706, 713 (1999).

52. 461 U.S. 95 (1983).

courts must recognize “[t]he special delicacy of adjustment to be preserved between federal equitable power and State administration of its own law.”⁵³

In summary, the standing requirement derives from the case-or-controversy language in Article III, Section 2 of the U.S. Constitution and serves two primary rationales: (1) standing ensures the preservation of separation of powers; and (2) standing guarantees the observation of federalism concerns.

C. Federal Standing Requirements Not Mandatory in State Courts

Although standing is a fundamental requirement that federal courts *must* apply, the U.S. Supreme Court has clearly indicated that individual states are not obligated to apply these federal standing requirements to determine who is entitled to *state* judicial review. In *ASARCO Inc. v. Kadish*,⁵⁴ the U.S. Supreme Court reviewed an Arizona state case that a federal court would have dismissed for the plaintiff’s lack of standing had it arisen in federal court.⁵⁵ The plaintiffs sought injunctive relief, alleging that a state statute regarding mineral leases of state land did not return the value for the lease as required.⁵⁶ The Arizona Supreme Court affirmed the state trial court’s ruling in favor of the plaintiffs.⁵⁷ On review, the U.S. Supreme Court noted that *ASARCO* presented a “difficult question about [its] own jurisdiction, a matter which touches on essential aspects of the proper relation between state and federal courts.”⁵⁸ Ultimately, the U.S. Supreme Court affirmed the Arizona Supreme Court’s decision. But more significantly, the U.S. Supreme Court’s

53. *Id.* at 112 (alteration in original) (quoting *Stefanelli v. Minard*, 342 U.S. 117, 120 (1951)). In *Lyons*, the U.S. Supreme Court declined to review an appeal requesting injunctive relief from actions taken by Los Angeles law enforcement agents based on “the need [to maintain] a proper balance between state and federal authority.” *Id.*

54. 490 U.S. 605 (1989) (acknowledging that because Article III constraints do not bind state judiciaries, they need not follow the case-or-controversy limitation that federal courts must recognize).

55. *Id.* at 616-17 (“Our review [of the cases] discloses no basis on which to find that respondents would satisfy the requirements for federal standing articulated by our precedents. It follows that the suit would have been dismissed at the outset were the federal rule to apply.”).

56. *Id.* at 610.

57. In *ASARCO*, the defendant challenged plaintiffs to bring the claim in federal court; however, the court found jurisdiction to be proper and ruled in favor of the plaintiffs. The defendant ultimately appealed the decision on jurisdictional grounds to the U.S. Supreme Court, which affirmed the district court’s jurisdictional ruling. *Id.* at 605. The two lease holders then sought a writ of certiorari to the U.S. Supreme Court, which also found jurisdiction to be proper. *Id.*

58. *Id.* at 609. The difficult question arose because individual taxpayers and the Arizona Education Association, which represented Arizona public school teachers, brought suit in state courts challenging a state statute governing mineral leases on states’ lands as contrary to the New Mexico-Arizona Enabling Act of 1910, as well as the Arizona Constitution. *Id.* at 610.

pronouncement enhanced federal standing jurisprudence by affirming a state court decision that did not apply the federal standing requirement.

The *ASARCO* decision set the stage for both extensive criticism and raving praise regarding standing requirements in state judicial systems.⁵⁹ The Court, however, was unanimous in concluding that federal standing principles do not bind state courts.⁶⁰ Despite this decision, many state courts base their respective standing requirements on the federal standing doctrine.⁶¹ This note now turns to the past and current state of the standing requirements in Oklahoma and addresses the impact of federal standing law on Oklahoma jurisprudence.

III. Review of Standing Jurisprudence in Oklahoma

A. Development of Oklahoma Standing Law

The concept of standing evolved in the Oklahoma judicial system from several common law phraseologies applied by state courts to assess whether a plaintiff's claim warranted judicial review.⁶² In general, standing in Oklahoma refers to the legal rights of a person to challenge the conduct of another in a jurisdictional forum.⁶³ Either a party to the litigation or the court on its own motion may raise standing inquiries at any stage of the judicial

59. See e.g., Stern, *supra* note 34 (praising the U.S. Supreme Court's decision allowing states to define independently standing requirements).

60. The *ASARCO* Court noted that
the state judiciary here . . . took no account of federal standing rules in letting the case go to final judgment in the Arizona courts. That result properly follows from the allocation of authority in the federal system. We have recognized often that the constraints of Article III do not apply to state courts, and accordingly the state courts are not bound by the limitations of a case or controversy or other federal rules of justiciability

ASARCO, 490 U.S. at 617.

61. See generally Hershkoff, *supra* note 3, at 1838 (discussing the conformance of many state judiciaries to the federal justiciability model).

62. Assessment of a plaintiff's right to judicial review in Oklahoma courts first began as an inquiry into the "proper party plaintiff." See *infra* Part III.A.1. Oklahoma courts have also applied a "real party in interest" test in examining a plaintiff's opportunity to be heard in state court. More recently, however, the inquiry has turned to whether the plaintiff presents himself as an "aggrieved party" before the court. See *infra* Part III.A.2.

63. *In re Adoption of Baby Boy D*, 1985 OK 93, ¶ 7, 742 P.2d 1059, 1062 ("When standing of a party is brought into issue, the focus is on the party . . . and not on the issues he wishes to have adjudicated.") (citing *Democratic Party of Okla. v. Estep*, 1982 OK 106, ¶ 5, 652 P.2d 271, 274; *In re State ex rel. Dep't of Transp.*, 1982 OK 36, ¶ 7, 646 P.2d 605, 609); see also *State ex rel. Cartwright v. Okla. Tax Comm'n*, 1982 OK 146, ¶ 5, 653 P.2d 1230, 1232 ("'Standing' is the right to commence litigation . . . for ultimate adjudication by a court or jury.").

process.⁶⁴ Although today Oklahoma applies the same detailed standing analysis as required in the federal court system,⁶⁵ originally Oklahoma applied more generalized methods to assess who could rightfully seek state judicial review. This section considers several cases that illustrate the development of Oklahoma law in defining a judicial-access requirement that would eventually mirror the federal standing doctrine.

1. Laying the Foundation: The Requirement of the "Proper Party Plaintiff"

Oklahoma courts initially required that a "proper party plaintiff" present his claim to the court. For example, in *Baugh v. Little*,⁶⁶ the plaintiff sought to recover money from trustees and officers of a consolidated school district, alleging that the monies had been illegally paid out of the school district funds.⁶⁷ The plaintiff based his right to relief on his status as a resident taxpayer in the school district during the time the school district allegedly mishandled the funds.⁶⁸ When the claim reached the court for resolution, however, the plaintiff had moved out of the school district.⁶⁹ The trial court dismissed the claim "for want of a proper party plaintiff," and the Oklahoma Supreme Court affirmed.⁷⁰

The court noted, "The rule must be regarded as fundamental, that no person can maintain an action respecting a subject-matter, in respect to which he has no interest, right or duty, either personal or fiduciary."⁷¹ This rule of law laid the foundational requirement for parties to demonstrate particular, individualized injuries to obtain access to Oklahoma courts.⁷²

64. *In re Estate of Doan*, 1986 OK 15, ¶ 5, 727 P.2d 574, 576.

65. *See Toxic Waste Impact Group v. Leavitt*, 1994 OK 148, ¶ 9, 890 P.2d 906, 910 n.7 ("[I]n that our standing standards are analogous to those pronounced by the United States Supreme Court its jurisprudence on the subject is instructive.") (citing *Hendrick v. Walters*, 1993 OK 162, ¶ 8, 865 P.2d 1232, 1237 n.14).

66. 1929 OK 383, 282 P. 459.

67. *Id.* ¶¶ 1-2, 282 P. at 459.

68. *Id.* ¶ 7, 282 P. at 459-60.

69. *Id.* ¶ 7, 282 P. at 460.

70. *Id.* ¶ 24, 282 P. at 462.

71. *Id.* ¶ 23, 282 P. at 462 (quoting *Baxter v. Baxter*, 10 A. 814, 816 (N.J. Ch. 1887)).

72. *See, e.g., Aetna Casualty & Surety Co., v. Assocs. Transps., Inc.*, 1973 OK 62, 512 P.2d 137 (requiring the real party in interest to determine who is entitled to proceeds of litigation); *Schmidt v. Nash*, 1950 OK 42, 217 P.2d 830 (same); *Nelson v. Garrett*, 1948 OK 259, 200 P.2d 420 (stating that a "proper party plaintiff" is one who has an interest in the subject matter of an action and has demanded relief); *Helmerich & Payne, Inc., v. Keeney*, 1936 OK 638, 61 P.2d 709 (same).

2. Closer to Federal Standing: State Courts Require "Aggrieved Party" Status

The Oklahoma judiciary ultimately changed the "proper party plaintiff" analysis to require that the plaintiff demonstrate "aggrieved party" status. In the 1980 case of *Cleary Petroleum Corp. v. Harrison*,⁷³ Cleary Petroleum Corporation sought to quiet title to an oil and gas property interest obtained through its business dealings.⁷⁴ The trial court declared the interest a leasehold, and Cleary Petroleum appealed.⁷⁵ Before reviewing the merits of the trial court's ruling, the Oklahoma Supreme Court first considered whether it could properly consider Cleary Petroleum an "aggrieved party," thereby entitled to judicial review.⁷⁶

The court began with the general assertion that a party appealing must be one who is personally aggrieved.⁷⁷ The court then defined an aggrieved party as "one whose pecuniary interest in the subject-matter is directly and injuriously affected."⁷⁸ Further, the court found that to qualify as an aggrieved party, the effect of a judgment by the court must be "direct, substantial and immediate, rather than contingent on some future event."⁷⁹ In applying these rules, the Oklahoma Supreme Court found that Cleary Petroleum qualified as an aggrieved party.

The requirement that plaintiffs must establish "aggrieved party" status is well settled in Oklahoma case law.⁸⁰ The decision in *Cleary Petroleum* is notable, however, in that the Oklahoma Supreme Court applied two

73. 1980 OK 188, 621 P.2d 528.

74. *See id.* ¶¶ 1-3, 621 P.2d at 530.

75. *Id.*

76. *Id.* ¶¶ 4-7, 621 P.2d at 530-31.

77. *Id.* ¶ 4, 621 P.2d at 530 ("One who is not aggrieved by a court's decision — however erroneous — may not bring an appeal from it."); *see also* *Whitman v. Whitman*, 1964 OK 259, 397 P.2d 664; *Grand Lodge of Okla. v. Webb*, 1956 OK 342, 306 P.2d 340; *Love v. Wilson*, 1938 OK 57, 75 P.2d 876; *Swan v. Home Sav. & State Bank*, 1931 OK 97, 297 P. 250; *Tinch v. State ex rel. Shull*, 1931 OK 98, 297 P. 251; *Corley v. French*, 1930 OK 492, 293 P. 177.

78. *Cleary Petroleum*, ¶ 4, 621 P.2d at 530 (citing *Sarkeys v. Ind. Sch. Dist. No. 40*, 1979 OK 42, ¶ 19, 592 P.2d 529, 536; *Steincamp v. Steincamp*, 1979 OK 51, ¶ 3, 593 P.2d 495, 497).

The Oklahoma Supreme Court first defined an aggrieved party in *Love v. Wilson*, ¶ 4, 75 P.2d at 878, as "one whose pecuniary interest is directly affected or whose right of property is established or divested by the decree."

79. *Cleary Petroleum*, ¶ 3, 621 P.2d at 530.

80. *See, e.g.,* *Davis v. Fieker*, 1997 OK 156, 952 P.2d 505 (assessing standing of plaintiffs seeking to enforce state abortion statute); *Mo.-Kan.-Tex. R.R. Co. v. Okla.*, 1985 OK 108, 712 P.2d 40 (noting that standing to appeal a Corporation Commission order is granted only to persons deeming themselves aggrieved); *Nat'l Motor Club of Okla., Inc., v. State Ins. Bd.*, 1964 OK 138, 393 P.2d 511 (addressing whether National Motor Club qualified as an aggrieved party before reaching the merits of the appeal).

components of the federal standing requirement, although without reference to federal law.⁸¹ First, requiring a plaintiff to demonstrate “aggrieved party” status parallels the federal standing requirement that litigants exhibit a concrete, particularized “injury in fact.”⁸² Additionally, *Clearly Petroleum* set forth the requirement that the court’s judgment must render an “immediate effect.”⁸³ This terminology corresponds to the redressability component under federal standing requirements.

B. Oklahoma’s Adherence to Federal Standing Jurisprudence

By 1982, the Oklahoma Supreme Court clearly applied federal standing requirements to evaluate a potential litigant’s ability to seek state court review. In three relatively recent cases, the court comprehensively evaluated Oklahoma standing requirements through the guidance and application of the federal standing doctrine.⁸⁴

1. Oklahoma Implements Federal Standing Principles

The Oklahoma Supreme Court began to implement federal standing principles with *Independent School District No. 9 v. Glass*.⁸⁵ In *Glass*, the Tulsa School District (the District) sought to enjoin a tax refund from Ford Motor Company authorized by the State Board of Tax-Roll Corrections.⁸⁶ The District claimed that the refund was illegal because Ford failed to follow proper procedures in paying the tax.⁸⁷ Ford countered with the contention that the District lacked standing to prosecute the appeal.⁸⁸ The Oklahoma Supreme Court first examined the standing question, stating, “Because the issue of standing is critical to the prosecution of the appeal by the District, it must be resolved before the merits can be reached.”⁸⁹

81. *Clearly Petroleum*, ¶ 4, 621 P.2d at 530 (assessing whether litigant’s interests were “injuriously affected” to determine standing).

82. The assessment of the plaintiff’s “aggrieved party” status in *Clearly Petroleum* mirrors the federal requirement of “injury in fact” in that the court required “injuriously affected” interests. *Id.*

83. *Id.* (“The effect of a judgment must be direct, substantial and immediate, rather than contingent on some future event.”).

84. In Part III, this note further explains the Oklahoma Supreme Court decisions of *Independent School District No. 9 v. Glass*, *Hendrick v. Walters* and *Toxic Waste Impact Group, Inc. v. Leavitt*.

85. 1982 OK 2, 639 P.2d 1233.

86. *Id.* ¶¶ 5-6, 639 P.2d at 1236.

87. *Id.* ¶ 7, 639 P.2d at 1236.

88. *Id.*

89. *Id.* ¶ 7, 639 P.2d at 1236-37.

The court turned to the U.S. Supreme Court decisions of *Baker v. Carr*⁹⁰ and *Warth v. Seldin*⁹¹ to assess the District's standing. The court noted that "the question of standing depends upon whether the party has alleged a personal stake in the outcome of the controversy,"⁹² and whether the plaintiff has asserted "his/her own legal rights," and not the "rights or interests of third parties."⁹³ The court continued its standing analysis by applying the three-part test necessary to demonstrate standing in Article III courts.⁹⁴

Because the District sought to prevent an illegal refund of public funds erroneously authorized by the Board of Tax-Roll Corrections, the court agreed that the District had a direct and pecuniary interest in the refund.⁹⁵ The court also found that the District's attempt to protect revenue from illegal and arbitrary action of the Board was legitimate.⁹⁶ Therefore, the court found that the District had standing to seek injunctive relief.⁹⁷

The court's decision in *Glass* provides the first concrete example of the Oklahoma Supreme Court's adoption of the exact language associated with the federal standing requirements. Several Oklahoma cases requiring an inquiry into the plaintiff's standing promptly followed this decision, each also subscribing to the federal standing requirement adopted in *Glass*.⁹⁸ The *Glass*

90. 369 U.S. 186 (1962).

91. 422 U.S. 490 (1975).

92. *Glass*, ¶ 8, 639 P.2d at 1237 (citing *Baker*, 369 U.S. at 204).

93. *Id.* ¶ 9, 639 P.2d at 1237 (citing *Warth*, 422 U.S. at 499).

94. The Oklahoma Supreme Court stated:

Before a litigant possesses standing as a proper party to seek . . . relief, it must be alleged that: the challenged action has caused him/her injury in fact; the relief sought would remedy the injury; and, the interest sought to be protected is within the zone of interest to be protected or regulated by the statute in question. . . . The proper inquiry concerning standing is whether the plaintiff has in fact suffered injury to a legally protected interest. . . . If he has not, standing does not exist, and the case must be dismissed. If standing exists, the case must proceed on the merits.

Id. ¶ 10, 639 P.2d at 1237 (citing *Simon v. E. Ky. Welfare Rights Org.*, 426 U.S. 26 (1976); *Ass'n of Data Processing Service Orgs., Inc. v. Camp*, 397 U.S. 150 (1970); *Jenkins v. McKeithen*, 395 U.S. 411 (1969); *Baker v. Carr*, 369 U.S. 186 (1962)).

95. *Id.* ¶ 11, 639 P.2d at 1238.

96. *Id.*

97. The court stated, "The District has an interest in the subject matter, *the capacity to sue*, and the power to protect and prevent the wrongful disposition of revenues." *Id.* (emphasis added).

98. See *Democratic Party v. Estep*, 1982 OK 106, 652 P.2d 271 (evaluating standing of the Democratic Party via federal standing principles and determining that the presented claim did not qualify as a justiciable controversy); *In re State ex rel. Dep't of Transp.*, 1982 OK 36, 646 P.2d 605 (employing federal standing requirements to conclude that the Department of Transportation had standing to challenge the Railroad Revitalization Act through application

decision illustrates the merger of Oklahoma's standing requirements with the federal standing doctrine.

2. Federal Analysis "Instructive" in Assessing Standing Under Oklahoma Law

The Oklahoma Supreme Court found the federal standing doctrine instrumental in determining the plaintiff's standing in *Hendrick v. Walters*.⁹⁹ In *Hendrick*, the court considered whether the Governor had forfeited his office by failing to take an oath in the form prescribed by the provisions of an Oklahoma statute. The plaintiff brought the claim as a state lawmaker in his representational capacity.¹⁰⁰ The Oklahoma Supreme Court found that the legislator had standing, and thus a justiciable claim, because he was able to show "both a plain, direct and legitimate interest in having [the] court's declaration upon the tendered issue and a personal stake in the outcome."¹⁰¹

In resolving the *Hendrick* dispute, the Oklahoma Supreme Court began its analysis with an obvious application of the federal standing requirements, asserting that Oklahoma's standing requirements were "analogous" to those defined by the U.S. Supreme Court.¹⁰² The court described both the constitutional and prudential aspects of standing as defined by the U.S. Supreme Court and also articulated the three-part case-or-controversy test of (1) "injury in fact," (2) causation, and (3) redressability.¹⁰³

of federal standing requirements).

99. 1993 OK 162, 865 P.2d 1232.

100. *Id.* ¶ 5, 865 P.2d at 1236. The Oklahoma Supreme Court stated, "[A] legislator can claim no elevated status in establishing standing. The lawmaker must meet the same threshold criteria required of any other litigant." *Id.* (footnote omitted) (citing *Harrington v. Bush*, 553 F.2d 190, 204 (D.C. Cir. 1977)).

Justice Opala discussed legislator standing in his dissent in *Campbell v. White*, 1993 OK 89, ¶¶ 15-20, 856 P.2d 255, 263 (Opala, J., dissenting). Justice Opala noted that "in order to satisfy the constitutional aspect [of standing] some type of redressable injury must be alleged. Injuries suffered by legislators fall within three basic categories: (1) diluted vote, (2) usurpation of legislative-power, and (3) diminished effectiveness in carrying out legislative duties absent a judicial declaration." *Id.* ¶ 16, 856 P.2d at 266-67 (Opala, J., dissenting) (footnotes omitted).

For a full discussion on legislator standing, see Ernest A. Benck, Jr., *Standing for State and Federal Legislators*, 23 SANTA CLARA L. REV. 811 (1983).

101. *Hendrick*, ¶ 6, 865 P.2d at 1238 ("The controversy is lively, real and the requirement of justiciability hence clearly met.").

102. *Id.* ¶ 5 n.14, 865 P.2d at 1236 n.14. ("Since our standing standards are analogous to those pronounced by the United States Supreme Court, the latter's jurisprudence is instructive. A litigant must overcome two threshold hurdles: "'constitutional limitations of federal courts' jurisdiction and prudential limitations on its exercise.") (quoting *Warth v. Seldin*, 422 U.S. 490, 498 (1975)).

103. In assessing the plaintiff's standing, the Oklahoma Supreme Court required that (1) an actual or threatened injury (sometimes called injury-in-fact) has

Thus, the *Hendrick* court clearly adhered to federal principles of standing. The following case reemphasized the importance of the *Hendrick* decision and solidified the federal standing requirement derived from Article III's case-or-controversy requirement as part of Oklahoma jurisprudence.

3. *Confirming Oklahoma's Commitment to Federal Standing Requirements*

Most recently, the Oklahoma Supreme Court affirmed its reliance on federal standing requirements in the case of *Toxic Waste Impact Group, Inc. v. Leavitt*.¹⁰⁴ In *Leavitt*, Toxic Waste Impact Group (TWIG) sought to void a construction permit issued by the Oklahoma State Health Department to Environmental Solutions, Inc. (ESI) allowing ESI to build a hazardous waste injection well.¹⁰⁵ Leavitt challenged TWIG's standing to assert the claim, and the Oklahoma Supreme Court remanded the case to the district court, providing guidance for the trial court to resolve the standing issue.¹⁰⁶

The court first began its standing analysis by citing *Lujan v. Defenders of Wildlife*, and observing that "the party invoking a court's jurisdiction has the burden of establishing his or her standing (when contested) to pursue the action in court."¹⁰⁷ The Oklahoma Supreme Court again referred to the U.S. Supreme Court's standing requirements as "instructive" in defining standing under Oklahoma law.¹⁰⁸ The court explained the three-part case-or-controversy requirement of standing as well as the corresponding prudential limitations and asserted that the case could proceed to the merits only after meetings these requirements.¹⁰⁹

Interestingly, Justice Opala's concurrence in *Leavitt* notes the fundamental differences between state and federal standing analysis.¹¹⁰ Justice Opala

occurred, (2) some relief for the harm can be given, and (3) the interest to be guarded is within a statutorily or constitutionally protected zone. Not only is standing confined to those whose interest in the controversy is "direct, immediate and substantial," a litigant must also have a personal stake in the outcome.

Id. ¶ 5, 865 P.2d at 1236 (footnotes omitted) (quoting *Underside v. Lathrop*, 1982 OK 57, ¶ 7, 645 P.2d 514, 517).

104. 1994 OK 148, 890 P.2d 906.

105. *Id.* ¶ 2, 890 P.2d at 908-09.

106. *Id.* ¶ 5, 890 P.2d at 909.

107. *Id.* ¶ 8, 890 P.2d at 910 (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992)).

108. *Id.* ¶ 8 n.7, 980 P.2d at 911 n.7 ("[I]n that our standing standards are analogous to those pronounced by the United States Supreme Court its jurisprudence on the subject is instructive.") (citing *Hendrick*, ¶ 7 n.14, 865 P.2d at 1236 n.14).

109. *Id.* ¶¶ 8-9, 890 P.2d at 910-11.

110. *Id.* ¶ 1, 890 P.2d at 914 (Opala, J., concurring) ("I write separately (a) to reemphasize the distinctions between federal and state standing concepts and (b) to [clarify] the

points to the fact that Oklahoma courts are not bound by the same constitutional provisions as federal courts.¹¹¹ Although Justice Opala's comments do not represent the majority opinion, the articulation of these important differences by a member of Oklahoma's highest court is significant. Justice Opala's assertions provide the foundation for further analysis and suggestions addressed in Part IV of this note.

C. Denial of Judicial Review to Oklahoma Citizens Based on Federal Standing

The previous section assessed Oklahoma's close alignment with standing requirements set forth by federal courts. This section now turns to specific instances in which Oklahoma courts have denied judicial review to plaintiffs by applying federal standing principles.

1. Declining Review Based on Component One: Inability to Show "Injury in Fact"

Oklahoma courts routinely deny judicial review based on a litigant's inability to demonstrate a concrete "injury in fact," the first component of federal and Oklahoma standing requirements.¹¹² For example, *Underside v. Lathrop*¹¹³ involved a plaintiff's challenge to a judgment rendered in a disagreement between a homeowner and insurer. The court declined to review the case, finding that the insurer lacked standing, and thus had no appealable interest, as evidenced by his inability to show a "direct, immediate and substantial" injury.¹¹⁴ Relying on the first component of standing — "injury

misimpression that in the state legal system standing has a 'jurisdictional' dimension.") (footnotes omitted).

111. *Id.* ¶¶ 2, 4, 890 P.2d at 914, 915 (Opala, J., concurring) ("The U.S. Constitution, Article III, has long been held to require that a 'case' or 'controversy' is essential to invoke *federal judicial jurisdiction* Oklahoma's constitution has no case-or-controversy clause.").

112. *See, e.g.,* *Macy v. Okla. City Sch. Dist. No. 89*, 1998 OK 58, ¶ 17, 961 P.2d 804, 808 (denying private individuals standing to challenge the creation of a school district because the individuals "do not seek relief based upon alleged injuries"); *Herring v. State ex rel. Okla. Tax Comm'n*, 1995 OK 28, ¶ 8, 894 P.2d 1074, 1076 (declining standing to challenge the constitutionality of Workers' Compensation amendment because "[t]he plaintiff has not shown he has suffered any injury Thus, the plaintiff lacks standing to bring this action.").

Long before the Supreme Court announced federal standing requirements, however, Oklahoma courts imposed this condition to seek state judicial review. *See Rea v. State ex rel. Bd. of Comm'r of Lincoln County*, 1911 OK 423, ¶ 16, 119 P. 235, 237 ("It is a settled rule that before a party is in position to assail the constitutionality of a statute he must be affected or injured by its enforcement.").

113. 1982 OK 57, 645 P.2d 514.

114. The court noted:

Standing to prosecute an appeal must be predicated on that interest in the trial

in fact” — the Oklahoma Supreme Court declined to consider the merits of the claim presented in *Underside*.¹¹⁵

The Oklahoma Supreme Court has also invoked the first standing component in declining to consider state initiative petitions. For instance, in *In re Initiative Petition No. 363*,¹¹⁶ the court considered a proposal to the electorate for a new constitutional article that would legalize and regulate casino gambling. State citizens challenged the constitutionality of the petition, primarily focusing on the petition’s alleged adverse impact on casino gambling on Indian land.¹¹⁷

The court found that all of the issues pressed by the plaintiff “relate to possible impacts of IP 363 on Indian tribes and on federal gaming law.”¹¹⁸ The court reasoned that because the petition had not yet adversely impacted a tribe, the plaintiff based the alleged injury on premature speculation and not an actual injury.¹¹⁹ Looking to the requirement that a plaintiff present a controversy that is “direct, immediate and substantial,”¹²⁰ the court declined to reach the merits of the challenge because “no one before [the court had] standing to challenge the measure’s validity.”¹²¹

2. Declining Review Based on Component Two: Inability to Show Causation

The Oklahoma Supreme Court has also denied review to plaintiffs unable to demonstrate element two of the standing requirement — causation between the alleged wrong and the challenged action. To illustrate, in *Turley v. Flag-*

court’s decision which is *direct, immediate and substantial*. Conjecture or speculation about possible adverse consequences that may flow from the decision at some point in the future will not suffice to support a person’s “aggrieved” status. One cannot appeal from a decision, however erroneous, which does not affect one’s substantial rights.

Id. ¶ 7, 645 P.2d at 517 (footnote omitted).

115. *Id.*

116. 1996 OK 122, 927 P.2d 558.

117. The plaintiff contended that the measure would (1) “impermissibly restrict casino gaming on Indian lands,” (2) “be enforced on Indian land by state legislation and by gaming personnel,” (3) subject Indian tribes to a 10% tax on gaming proceeds, and (4) require gambling casinos in Indian country to conform to mandated physical construction specifications. *Id.* ¶ 8, 927 P.2d at 563-64.

118. *Id.* ¶ 12, 927 P.2d at 565.

119. *Id.*

120. *See id.* ¶ 13 n.29, 927 P.2d at 565 n.29 (“Not only is standing confined to those whose interest in the controversy is ‘direct, immediate and substantial,’ but a litigant must also have a personal stake in the outcome.”) (citations omitted).

121. *Id.* ¶ 13, 927 P.2d at 565.

Redfern Oil Co.,¹²² a land surface owner sought to reopen and stay a Corporation Commission order, hoping to change the spacing units before oil drilling began under his land.¹²³ The Corporation Commission asserted that the surface owner lacked standing to bring the claim.¹²⁴ The plaintiff contended that, as a landowner, he had a personal stake in the actions taken by the Corporation Commission, thereby making him a proper party to seek judicial review.¹²⁵

The Oklahoma Supreme Court disagreed, however, stating that “[i]n order to meet the status required for standing, a party must have a ‘personal stake’ in the litigation because of an *actual or threatened distinct injury* which has a *causal connection* between the alleged wrong and the actions challenged.”¹²⁶ Essentially, the court applied the first two standing concepts, “injury in fact” and causation, ultimately finding that the plaintiff could not establish standing based on these two requirements. Therefore, the plaintiff’s challenge did not present a justiciable controversy, and the Oklahoma Supreme Court declined to review the claim.

3. Declining Review Based on Component Three: Inability to Redress the Injury

The third component of federal standing — redressability — also provides a basis to decline review of claims in Oklahoma courts. For example, in *Cities Service Co. v. Gulf Oil Corp.*,¹²⁷ two attorneys petitioned the Oklahoma Supreme Court to review nonmonetary sanctions imposed on them by a trial judge during the course of their representation of Gulf Oil Corporation. The trial judge’s sanctions restricted the manner in which the attorneys could represent their client during trial.¹²⁸ The attorneys asserted that the judge’s

122. 1989 OK 144, 782 P.2d 130.

123. *Id.* ¶¶ 3-7, 782 P.2d at 133.

124. *Id.* ¶ 10, 782 P.2d at 134.

125. *Id.*

126. *Id.* ¶ 12, 782 P.2d at 134 (emphasis added) (citing *Simon v. Eastern Kentucky Welfare Rights Organization*, 426 U.S. 26, 41 (1976), and *Seal v. Corp. Commission*, 1986 OK 34, ¶¶ 5-6, 725 P.2d 278, 283, in the application of the “injury in fact” and causation requirements of federal and state standing).

The court noted, “As a surface owner, [the plaintiff] is not a competent party to prosecute an appeal from the Corporation Commission’s order His pecuniary interest in the subject matter of the appeal has not been directly and injuriously affected” *Id.* ¶ 22, 782 P.2d at 138.

127. 1999 OK 16, 976 P.2d 545.

128. *Id.* ¶ 7, 976 P.2d at 548.

sanctions, along with her comments to the local media, damaged their professional reputations.¹²⁹

Without reaching the merits of the claim, the Oklahoma Supreme Court denied review to the two attorneys, basing its decision on component three of the standing analysis — redressability.¹³⁰ Citing *Toxic Waste Impact Group, Inc. v. Leavitt* as well as *Lujan v. Defenders of Wildlife*, the court emphasized the requirement that there must be “a likelihood, as opposed to mere speculation, that the injury will be redressed by a favorable decision.”¹³¹ The court determined that even a favorable decision would only provide a “meaningless declaration” that would not provide an adequate remedy to redress the complained of injury; “[h]ence, the third component of standing [was] missing.”¹³²

4. Declining Review Based on Prudential Considerations

The reliance of Oklahoma courts on prudential limitations of the federal standing doctrine also impedes access to the state court system. In *Gianfillippo v. Northland Casualty Co.*,¹³³ the plaintiff was an injured passenger in a car driven by a policyholder of Northland Casualty Company. The Oklahoma Supreme Court refused to hear a bad-faith claim against the insurance company, reasoning that the policy was intended for the protection of the insured.¹³⁴ The court labeled the plaintiff as “merely a third-party claimant who lacked standing.”¹³⁵

Therefore, Oklahoma’s application of federal standing requirements has effectively closed the court house door to numerous plaintiffs. Although Oklahoma courts should not grant standing to every potential litigant seeking access to the courts, they should base denial of access on well-reasoned principles, rather than just mechanically applying the federal standing requirements created for Article III courts. Part IV of this note analyzes Oklahoma’s adherence to federal standing requirements and suggests that

129. *Id.* ¶ 2, 976 P.2d at 547.

130. *Id.* ¶ 13, 976 P.2d at 548-49 (“Without reaching the issue . . . the appeal is dismissed because the lawyers lack standing to pursue the matter. The Court cannot give them the effectual relief which they seek Hence, the third component of the *Toxic Waste* standing test cannot be satisfied.”).

131. *Id.* ¶ 3, 976 P.2d at 547.

132. *Id.* ¶ 8, 976 P.2d at 548; *see also* *Dank v. Benson*, 2000 OK 40, 5 P.3d 1088 (stating that the plaintiff’s claim did not present a question capable of specific relief from the court).

133. 1993 OK 125, 861 P.2d 308.

134. *Id.* ¶ 10, 861 P.2d at 310.

135. *Id.*; *see also* *McFarland v. Atkins*, 1979 OK 3, 594 P.2d 758 (declining to review a claim based on plaintiff’s status as third-party beneficiary).

Oklahoma should more carefully construct a state standing doctrine that responds to particular state issues and local concerns.

IV. Analysis of Oklahoma's Standing Requirements

It seems unclear why very few states have constructed their own standing doctrines;¹³⁶ consequently, this Part of the note examines a state's ability to construct state standing doctrines independent of federal influence. The analysis first evaluates why the justifications for imposing a federal standing requirement in Article III courts — separation of powers and federalism — do not necessarily contribute to the effective functioning of state government. The analysis then asserts that Oklahoma citizens would benefit from the Oklahoma Supreme Court reinstating and tailoring the standing requirements applied by Oklahoma courts prior to the adoption of the federal standing doctrine. Finally, the analysis concludes by addressing criticisms of state-specific standing principles.

A. Disparity Between State and Federal Systems of Governance

The constitutional standing requirements of Article III address issues peculiar to federal courts.¹³⁷ In particular, the justifications for a federal standing requirement address the need to preserve principles of federalism, as well as the need to maintain a separation of powers between each branch of the federal government.¹³⁸ These justifications of Article III judicial restraint, however, do not necessarily apply to state judiciaries.¹³⁹

1. Diminished Force of Federalism and Separation of Powers in State Government

First, at the state level, separation of powers concerns do not operate with the same force as in the federal system. One concept behind separation of powers is that matters best determined by another branch of government should be deferred to that branch for proper resolution.¹⁴⁰ Specifically, the standing doctrine requires federal judges to decline to review cases that may be more appropriately resolved through “political outlets” such as the

136. Hershkoff, *supra* note 3, at 1905 (suggesting that many state courts follow federal standing requirements because of the perceived dominance of Article III).

137. *Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 262 n.8 (1977) (“The constitutional and prudential considerations canvassed at length in *Warth v. Seldin* respond to concerns that are peculiarly federal in nature.”) (citation omitted).

138. *See Stern*, *supra* note 34, at 83-92 (discussing the justifications for a standing requirement in the federal system).

139. *Id.*

140. *Id.*

legislative or executive branches of government.¹⁴¹ In many states, however, state judges are seen as part of the political process: they frequently have legislative experience and they often sit for reelection.¹⁴² Separation of powers in the federal system encompasses the belief that the assignment of important public matters belongs within the elected branches of government because the elected branches are more politically accountable than unelected federal judges.¹⁴³ The following subsection contends that this rationale, though perhaps relevant in the federal judicial context, however, is unconvincing in a state court system where the involvement of state judges in local government differs significantly from their federal counterparts.

Second, justiciability requirements, such as standing, operate at the federal level to preserve principles of federalism by ensuring an appropriate balance between state and national affairs.¹⁴⁴ These federalism concerns do not present themselves, however, at the state level where there is no system of dual sovereignty.¹⁴⁵ In state government, individual cities and state counties are creatures of the state, deriving their power from the state constitution.¹⁴⁶ In contrast, states are individual sovereigns in the federal system, maintaining all rights not explicitly delegated to the federal government.¹⁴⁷ Additionally, federalism principles address the concern that federal decisional law will impact many or all citizens in the United States.¹⁴⁸ While the decision of an Article III judge may potentially bind people of many or all states, the decision of a state judge binds only people of that state. This limited effect gives state judicial decisions an increased sense of “democratic legitimacy and local responsiveness than that of an unelected Article III ‘outsider.’”¹⁴⁹ Therefore, state court judges, free from the federalism constraints that bind their federal counterparts, should not feel obligated to apply federal standing requirements in their state courtrooms.

141. See *Allen v. Wright*, 468 U.S. 737, 761 (1984) (“[T]he idea of separation of powers, counsels against recognizing standing in a case brought . . . to seek a restructuring of the apparatus established by the Executive Branch to fulfill its legal duties.”).

142. Hershkoff, *supra* note 3, at 1886-87.

143. *Id.* at 1883.

144. Rubin, *supra* note 48, at 1434.

145. Daniel B. Rodriguez, *State Constitutional Theory and Its Prospects*, 28 N.M. L. REV. 271, 278 (1998) (“Whereas states occupy an essential role in the American constitutional system, there is no equivalent principle of federalism . . . in state constitutionalism.”).

146. *Id.* at 278-80.

147. *Id.*; see also U.S. CONST. amend. X.

148. Rodriguez, *supra* note 145, at 278-80.

149. Hershkoff, *supra* note 3, at 1902.

2. Differing Role of Judges in State Courts

The heightened accountability of judges within the state court system is evidenced by the differing roles of a state court judge and an Article III decision maker. Specifically, three key differences support the contention that state court judges should adjudicate matters falling outside the scope of federal standing requirements.

First, the accountability of state and federal judges differs as a result of dissimilar selection and retention processes at the state and federal level. For example, Article III provides appointed federal judges the mandatory protections of life tenure and guaranteed salary protection to keep federal courtrooms free of majoritarian pressure.¹⁵⁰ Because of the decisional freedom afforded by these protections,¹⁵¹ Article III also imposes decisional restrictions, like standing, that allow federal judges to hear *only* cases involving valid cases or controversies. The case-or-controversy requirement restricts the claims and claimants permitted in federal courts, thereby ensuring the accountability of federal decision makers.¹⁵² In contrast, most state court judges are without the protections of life tenure and guaranteed salary protection. In fact, thirty-nine of the fifty states, including Oklahoma, “elect” state judges through a process of judicial retention.¹⁵³ Because of this fact, states need to ensure the accountability of state judges with judicial access requirements such as standing. The retention process allows state citizens to review the conduct and practices of state judges.¹⁵⁴ This assessment of a state judge’s accountability directly relates to the will of the people, which may eliminate judgeships¹⁵⁵ or decrease salary provisions through the local legislative body. Therefore, local citizens, and not strict judicial access requirements like standing, ensure the accountability of state courts.¹⁵⁶

150. Steven P. Croley, *The Majoritarian Difficulty: Elective Judiciaries and the Rule of Law*, 62 U. CHI. L. REV. 689, 726-28 (1995) (discussing the protections afforded to Article III judges).

151. *Allen v. Wright*, 468 U.S. 737, 750 (1984) (“The case-or-controversy doctrines state fundamental limits on federal judicial power in our system of government.”).

152. *Warth v. Seldin*, 422 U.S. 490, 498-99 (1975).

153. Paul D. Carrington, *Restoring Vitality to State and Local Politics by Correcting the Excessive Independence of the Supreme Court*, 50 ALA. L. REV. 397, 414 (1999) (observing that “[t]hirty-nine of the fifty states presently provide a measure of political accountability for judges through some form of election”).

154. *Id.* at 405 (discussing the political accountability of state judges).

155. *See, e.g.*, OKLA. CONST. art. VII, § 1.

156. It is interesting to note that in Oklahoma, the salaries of judges cannot be diminished during their term of office. However, this does not prohibit salary modifications in between terms. *See* OKLA. CONST. art. VII, § 11(a).

Second, the constituency affected by a state judge's decision is typically much smaller than the constituency affected by the decision of a federal judge because state judicial districts tend to be smaller than their federal counterparts.¹⁵⁷ This leads some analysts to believe that "'state trial judges are likely to feel closer links to their local communities than federal judges,' thereby enjoying a greater aura of democratic accountability."¹⁵⁸ A state court's decision applies only within a single state and is based on the state's laws and judicial precedent. Therefore, the decision of a state judge is more likely to comport with the views of the people it affects.¹⁵⁹ Because state courts are responsible for a much smaller scope of activity than federal courts, they are arguably better able to render decisions that respond to purely state or local concerns.¹⁶⁰

Third, the relative ease with which a state may amend its constitution affords more room for judicial interpretation by state judges. At the federal level, concerns that decisions made by Article III judges are final and beyond revision leave federal judges little room for judicial interpretive error.¹⁶¹ Amendments to state constitutions, however, take place with much greater ease than amendments to the U.S. Constitution,¹⁶² therefore alleviating much of the concern regarding the decision of a state judge that strikes the populace as amiss.

In conclusion, state judiciaries are well placed to make informed decisions about local residents and their needs. Many state judges answer directly to local citizens through the process of judicial retention elections. Also, smaller judicial districts allow state judges to adapt their law-making policies to correspond to local situations and preferences. Therefore, requiring every plaintiff to demonstrate the strict federal judicial-access requirement of standing may frequently deny state judicial assistance to plaintiffs with valid

157. Hershkoff, *supra* note 3, at 1887.

158. *Id.* (quoting Donald W. Brodie & Hans A. Linde, *State Court Review of Administrative Action: Prescribing the Scope of Review*, 1977 ARIZ. ST. L.J. 537, 542).

159. *Id.* at 1902 n.368 ("Whatever the validity of the concern, federal judges have occasionally been pictured as 'outsiders,' rendering their controversial decisions subject to more resistance than an equally controversial opinion handed down by the 'local' judge.") (quoting Burt Neuborne, *Toward Procedural Parity in Constitutional Litigation*, 22 WM. & MARY L. REV. 725, 732 (1981)).

160. *Id.* at 1887.

161. *Id.* at 1886. Hershkoff cites William M. Landes & Richard A. Posner, *The Economics of Anticipatory Adjudication*, 23 J. LEGAL STUD. 683, 710 (1994), as it associates "the difficulty of federal constitutional amendments with the need to minimize constitutional interpretive error." *Id.* at 1886 n.279.

162. *Id.* (noting that at the state level, devices such as the initiative petition and referendum help dilute some of the burden of finality typically associated with federal court decisions).

claims. This defeats the ability of a publicly accountable state court system effectively to shape and give content to state law.¹⁶³

B. Rationale and Recommendation for a More State-Specific Standing Doctrine in Oklahoma

1. Rationale: State Constitutional Rights of Oklahoma Citizens

Although Article III of the U.S. Constitution limits the jurisdiction of federal courts to actual cases and controversies, the Oklahoma Constitution contains no similar restraint. In fact, the Oklahoma Constitution is extremely liberal in its judicial access language, suggesting the importance of protecting the interests of each citizen, particularly concerning the right to seek relief in state courts. Article 2, section 6 of the Oklahoma Constitution contains an open-court provision providing that “[t]he courts of justice of the State shall be *open to every person*, and speedy and certain remedy afforded for every wrong and for every injury to person, property, or reputation; and right and justice shall be administered without sale, denial, delay, or prejudice.”¹⁶⁴

Rather than imposing Article III justiciability guidelines, Oklahoma should assess whether state judicial review could contribute to democratic life. Democratic participation in public affairs includes more than just electoral activity or voter turnout. Therefore, by allowing greater access to state courts by adopting state-specific standing requirements, Oklahoma courts may afford private citizens an increased role in public decision making. For example, a more state-specific standing doctrine could provide Oklahoma citizens and the judicial system a role in reducing partisan control over public resources.¹⁶⁵ In reviewing claims made by plaintiffs against special interest or rent-seeking groups, courts could serve as a filtering device against such partisan behavior at the state and local levels. A more state-specific standing requirement would allow courts to adjudicate claims that federal courts would deny under the complex federal standing requirements. As a result, the state court system could cooperate in local policy making by responding to citizens’ concerns in the judicial system.

The differing roles of federal and state judges, along with Oklahoma’s open-court provision, emphasize that Oklahoma courts should not ignore potential plaintiffs who present *legitimate* claims that the state legal system may effectively address. In redefining the state standing requirement, however, gaining access to the state court system should not become

163. *Id.* at 1886-91 (discussing the differences between state and federal adjudicators).

164. OKLA. CONST. art. 1, § 6 (emphasis added).

165. *See, e.g.,* Cleary Petroleum Corp. v. Harrison, 1980 OK 188, ¶ 4, 621 P.2d 528, 530 (assessing litigant’s standing under an “aggrieved party” analysis); *see also supra* Part III.

effortless. The application of federal standing guidelines provides only one formula by which to assess a claimant's right to state court review. In the past Oklahoma courts have instituted other methods to evaluate a plaintiff's standing.¹⁶⁶ The following section recommends that Oklahoma courts return to standing evaluations employed prior to the adoption of the federal standing requirement and that they concurrently develop a more state-specific standing requirement to better respond to legal issues raised by Oklahoma citizens.

2. Recommendation: Reinstate Judicial Access Requirements Prior to the Adoption of Federal Standing

The Oklahoma Supreme Court should abandon the regimented federal standing doctrine and reinstate its previous state standing applications that have the potential to address more effectively local concerns brought before state courts. Prior to adopting the federal standing formula, Oklahoma assessed a litigant's ability to bring a claim in state court by applying a "proper party plaintiff" or "aggrieved party status" inquiry.¹⁶⁷ These inquiries, although similar in some ways to the federal standing requirements,¹⁶⁸ allow more room for judicial interpretation in assessing who should be allowed to seek relief in Oklahoma courts.

For example, the "aggrieved party" requirement involved a more simplistic investigation into the legitimacy of the plaintiff's claim. The investigation focused primarily on whether the claimant was the right person to bring a claim before the court, and courts made the determination without an extensive multipart analysis as required by the federal standing inquiry.¹⁶⁹ By returning to a more simplistic standing assessment, Oklahoma courts would acquire greater freedom to construct the state's judicial access requirements independent of the strict barriers required by the federal standing analysis. In turn, this freedom could substantially benefit state claimants by providing a more accessible state judiciary for the adjudication of legitimate claims that may not pass muster under federal standing requirements.

166. *See supra* Part III.

167. *See supra* Part III.

168. *Cleary Petroleum*, ¶ 4, 621 P.2d at 530. The Oklahoma Supreme Court's standing analysis in *Cleary Petroleum* mirrors the federal standing requirement in two ways. First, the assessment of the plaintiff's "aggrieved party" status in *Cleary Petroleum* resembles the federal "injury in fact" component in that the court required "injuriously affected" interests. Second, the court required that "the effect of a judgment must be direct, substantial and immediate, rather than contingent on some future event," which relates to the federal component of redressability. *Id.*

169. *Id.*

C. Potential Criticisms Addressed

The absence of a case-or-controversy requirement in the Oklahoma Constitution, as well as the unique function of a state court judge, supports the contention that state courts should more specifically tailor state standing requirements to serve local citizens. A shift in state standing requirements, however, will not take place free of difficulties. Commentators pose three criticisms of state divergence from the federal standing requirements.¹⁷⁰

First, by opening the state courthouse doors wider than those of Article III courts, state judicial systems could become overwhelmed.¹⁷¹ The standing requirements allow courts to filter out claims that the judicial process may not best resolve. Indeed, a change in state judicial access requirements under the standing doctrine may potentially wreck havoc on already demanding state court dockets. This argument, a version of the familiar floodgates argument,¹⁷² however, rests on the premise that the current amount of litigation is “socially optimal.”¹⁷³ Perhaps a complicated, federally prescribed assessment of a plaintiff’s standing discourages plaintiffs with legitimate claims from seeking state court review. Also, rather than burden the system, reassessing state standing requirements may instead accelerate state courts’ participation in dispute resolution.

Second, criticisms arise concerning the possible unfairness of an adapted state standing doctrine that allows litigants without adverse interests to bring public issue claims.¹⁷⁴ Even if reconfigured at the state level, however, standing would continue to measure the intensity of a claimant’s interest in resolving a particular dispute. To resolve problems and also maintain adverse litigants, state court judges would still assess the importance of the issue the claimant presents.

Third, critics assert that a modified state standing doctrine would destabilize political relations and distort policy formation.¹⁷⁵ This criticism focuses on the superiority of the legislature in determining issues of public importance, as well as the need to maintain public confidence in the judicial process. Particularly at the state and local levels, however, the differing role

170. Hershkoff, *supra* note 3, at 1930-40 (discussing criticisms of reconfiguring state justiciability doctrines).

171. *Id.* at 1931.

172. *See id.* at 1932 n.515 (“Floodgates, like slippery slopes, invoke the unknown and possibly unknowable consequences of legal change as a way to block reform.”).

173. *Id.*

174. *Id.* at 1935-38. As Hershkoff states, “A second criticism focuses on the unfairness that might arise if a reconfigured state justiciability doctrine were to allow individuals who lack Article III adversity to adjudicate . . . public issues.” *Id.* at 1935.

175. *Id.* at 1938 (noting the criticism that a new approach to state justiciability doctrines will “destabilize political relations by undermining majoritarian norms”).

of state court judges may actually enhance political relations and policy formation.

V. Conclusion

Just as the Article III case-or-controversy requirement addresses important issues in the federal system, state constitutional standing requirements should address issues that are fundamental to state operations. Oklahoma adheres to federal standing jurisprudence despite the U.S. Supreme Court's empowering language recognizing that state judiciaries may establish their own, independent standing analysis. Oklahoma should modify its current reliance on federal standing principles by reinstating its former standing doctrine and by reassessing how best to shape and give content to the state judicial function. This change in Oklahoma's judicial access requirements will afford Oklahomans their rightful opportunity to present legitimate claims in a more accessible state judiciary.

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