CASENOTES

HAVENS REALTY CORP. v. COLEMAN: STANDING TO SUE UNDER THE FAIR HOUSING ACT

In 1968 Congress passed the Fair Housing Act.[1] This act attempted to provide a method for the elimination of discrimination in the sale and leasing of housing based on race, color, religion, national origin and sex.[2] Congress expanded the traditional Article III[3] standing requirements[4] to include a broad class of plaintiffs.[5] In *Havens Realty Corp. v. Coleman*,[6] the United States Supreme Court attempted to define those persons who have standing under the Act. Specifically, the Court was asked to decide whether a "tester"[7] has standing or, in the alternative, can that person sue as a member of the community, or both. The Court was also asked to decide whether an organization[8] has standing to sue either as a representative for its members or on its own behalf.

In January 1979 four plaintiffs filed a class action suit[9] in the United States District Court of Virginia seeking declaratory, injunctive, and monetary relief. The plaintiffs were: Paul Coles, a black renter; Sylvia Coleman, a black "tester;" R. Kent Willis, a white "tester;" and HOME, a non-profit fair housing organization. The plaintiffs alleged that Havens Realty had engaged in "racial steering"[10] and racial discrimination practices which vio-

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1. 42 U.S.C. §§ 3601-19, 3631 (1976).

2. For an early analysis of the Fair Housing Act, *see* Comment, *The Federal Fair Housing Requirements: Title VIII of the 1968 Civil Rights Act*, 1969 DUKE L. J. 733.

3. U.S. CONST. art. III, § 2.

4. Standing is one component in the federal court concept of justiciability. The Court in Warth v. Seldin, 422 U.S. 490, 498-99 (1975) said, "In its constitutional dimension, standing imports justiciability: whether the plaintiff has made out a 'case or controversy' between himself and the defendant within the meaning of Art. III. This is the threshold question in every federal case, determining the power of the court to entertain the suit. As an aspect of justiciability, the standing question is whether the defendant has 'alleged such a personal stake in the outcome of the controversy' as to warrant *his* invocation of federal-court jurisdiction and to justify exercise of the court's remedial powers on his behalf. (emphasis in original) (footnote omitted) (quoting Baker v. Carr, 369 U.S. 186, 204 (1962).

5. 42 U.S.C. §§ 3610(a), 3612(a) (1976). The United States Supreme Court has noted that the Article III requirement of actual or threatened injury may be created solely by statute. Linda R.S. v. Richard D., 410 U.S. 614, 617 n.3; *Warth*, 422 U.S. at 501.

6. 455 U.S. 363 (1982).

7. "Testers" are individuals who, without an intent to rent or purchase a home or apartment, pose as renters or purchasers for the purpose of collecting evidence of unlawful discriminatory practices. *Id.* at 373.

8. The organization involved in this case is Housing Opportunities Made Equal (HOME). It is an interracial Virginia non-profit corporation with 600 members, created for the purpose of making "equal opportunity in housing a reality in the Richmond metropolitan area." Its activities include the operation of a housing counseling service, and the investigation of complaints concerning housing discrimination. *Id.* at 368.

9. Plaintiffs claim to be members of a class composed of all persons who rented or sought to rent residential property in Henrico County, Virginia, and who have been, or continue to be, adversely affected by the acts, policies, and practices of Havens Realty. *Id.* at 367 n.3.

10. "Racial steering" is a practice by which real estate brokers and agents preserve and encourage patterns of racial segregation in available housing by steering members of racial and eth-

lated section 804[11] of the Fair Housing Act. The three individual plaintiffs also alleged that the Realty's practice had deprived them of the "important social, professional, business and economic, political and aesthetic benefits of interracial associations that arise from living in integrated communities free from discriminating housing practices."[12] HOME asserted that the steering practices of Havens Realty frustrated the organization's counseling and referral services, and that its members had been denied the benefits of interracial association that arise from living in integrated communities free from discriminatory housing practices.[13]

The complaint stated that Coles, the "renter" plaintiff, had inquired about the availability of an apartment in a predominantly white apartment complex and was told no apartments were available but was steered by Havens Realty to available apartments in an integrated neighborhood. An unnamed white "tester" was told the same day that apartments were available in the predominantly white apartment complex. Coleman and Willis, the two "tester" plaintiffs, were also told conflicting stories about apartment availability on three earlier occasions; each time the white "tester" was told apartments were available and the black "tester" was steered into the integrated neighborhood.[14]

The district court, on motion by Havens Realty, dismissed the claims of Coleman, Willis, and HOME. The court held these parties lacked the requisite standing under the Act; only the person who actually intended to rent, Coles, had met the Act's requirements. The court of appeals reversed and remanded for further proceedings in the district court.[15] It held that Coleman and Willis had standing to sue as "testers" and as individuals and HOME had standing to sue as an organization. The United States Supreme Court granted *certiorari* and affirmed the court of appeals holding concern-

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nic groups to buildings occupied primarily by members of such racial or ethnic groups and away from buildings and neighborhoods inhabitated by members of other races or groups. *Id.* at 366 n.1.

11. 42 U.S.C. § 3604 reads as follows:

> As made applicable by section 803 and except as exempted by sections 803(b) and 807, it shall be unlawful—
> (a) To refuse to sell or rent after making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, or national origin.
> (b) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, or national origin
> (c) To make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, sex, or national origin, or an intention to make any such preference, limitation, or discrimination.
> (d) To represent to any person because of race, color, religion, sex, or national origin that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available.
> (e) For profit, to induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, sex, or national origin.

Id. at 367 n.2.

12. *Id.* at 369.

13. *Id.* at 369.

14. *Id.* at 368. For a more comprehensive summary of the facts *see* Coles v. Havens Realty Corp., 633 F.2d 384, 385-86 (4th Cir. 1980).

15. *Coles*, 633 F.2d at 393.

ing the standing issue.[16]

The Court, in reaching its decision, was guided by its previous decision in *Gladstone, Realtors v. Village of Bellwood*.[17] In that case the Court considered whether six persons and the Village of Bellwood had standing to sue under the Fair Housing Act. The Court held that four of the plaintiffs and the Village had the requisite standing.[18] In *Gladstone*, the Court said to satisfy Article III requirements the plaintiff must ordinarily show that he or she has suffered an actual or threatened injury as a result of the putatively illegal conduct of the defendant,[19] but even where standing is conferred by statute the Article III minimum must still be met—the plaintiff must still show he or she has suffered a "distinct and palpable injury."[20]

The Court first addressed the question of whether a "tester" has standing. Since standing in the case had been conferred by statute the Court looked to the appropriate sections of the Fair Housing Act. Section 804(d)[21] states it is unlawful, "[t]o represent to *any person* because of race . . . that any dwelling is not available . . . when such dwelling is in fact so available."[22] The Court reasoned that "Congress has thus conferred on all persons a legal right to truthful information about available housing."[23] The "tester" had therefore suffered the exact injury that the statute has made unlawful and thus it does not matter if he or she was anticipating receiving false information or that the "tester" had no intent to either rent or buy the dwelling.[24]

HOME "testers" Coleman and Willis also argued that each should have standing as individuals who, because of Havens' steering practice, were denied the benefits that result from living in an integrated community.[25] The Court analyzed this argument identically to the issue of "tester" standing; the Court's inquiry is directed towards finding a "distinct and palpable injury that is fairly traceable to petitioner's actions."[26]

The Court, in previous cases, had recognized this particular type of injury[27] as sufficient to give a plaintiff standing. In *Gladstone*, the plaintiffs

16. Although "tester" Willis was found to have standing by the court of appeals this finding was overturned by the Supreme Court. On each occasion that Willis had inquired he was told that apartments where available for him to rent. The Court held that Willis had suffered no injury cognizable under the Act. 455 U.S. at 374-75.

17. 442 U.S. 91 (1979).

18. The original group of six plaintiffs consisted of four homeowners and two "testers," the Court did not reach the question of "tester" standing since the plaintiffs declined to bring that claim in the Supreme Court. *Id.* at 111.

19. *Id.* at 99; *see also* Duke Power Co. v. Carolina Environmental Study Group Inc., 439 U.S. 59, 72 (1978); Arlington Heights v. Metropolitan Housing Dev. Corp., 429 U.S. 252, 260-61 (1977); Simon v. Eastern Kentucky Welfare Org., 426 U.S. 26, 38 (1976); Warth v. Seldin, 422 U.S. at 501.

20. 455 U.S. at 372, *see also Warth*, 422 U.S. at 501.

21. *See supra* note 11.

22. 455 U.S. at 373 (emphasis in original).

23. *Id.* at 373.

24. *Compare* Evers v. Dwyer, 358 U.S. 202 (1958) *and* Pierson v. Ray, 386 U.S. 547 (1967) (Both are cases involving racial discrimination where the Court held that "testers" had standing to assert injury).

25. 455 U.S. at 375.

26. *Warth*, 422 U.S. at 501.

27. The Court refers to the concept of "neighborhood" standing as being different from "tester" standing. "Tester" standing is the result of direct injury—the right to receive truthful information. "Neighborhood" standing however is the result of indirect injury, "an adverse impact on the

maintained that the defendant's steering practice had transformed their once integrated neighborhood into one which was now entirely black. They argued the defendant's practice had "deprived them of the social and professional benefits of living in an integrated society and had caused them economic injury."[28] Havens Realty did not dispute that their discriminatory practices could have caused the injury respondent alleged but it contended, and the Court agreed, that respondent also must show how Havens' practice had affected the neighborhood where each plaintiff resided.[29]

In prior cases where the Court had upheld plaintiff's standing, the discriminatory practices experienced had involved "relatively compact neighborhoods."[30] The Court had never held that "discrimination within a single housing complex might give rise to distinct and palpable injury . . . throughout a metropolitan area."[31] The Court however did not say that such an injury could not be proved. It ruled that respondent on remand to the district court could have another opportunity to specify their pleadings in order to show a direct injury from Havens' steering practices.[32]

In the final aspect of the standing issue, the Court had to resolve whether HOME had a right to sue as an organization. HOME, as did its "testers" Coleman and Willis, sought to achieve standing on two different grounds. The first was HOME suing as a representative for its members. The second was HOME suing on its own behalf.[33] The Court did not need to decide the first argument due to a settlement between HOME and Havens Realty,[34] but it did rule on the second argument. The Court again used the same analysis as it had previously; HOME had to show a direct or threatened injury caused by the petitioner. In the complaint, HOME averred the following injury: "Plaintiff HOME has been frustrated by defendant's racial steering practices in its effort to assist equal access to housing through counseling and other referral services. Plaintiff HOME has had to devote significant resources to identify and counteract the defendant's [sic] racially discriminatory steering practices."[35]

The Court found that if petitioners' steering practices had affected HOME as it asserted then "there could be no question that the organization had suffered injury in fact."[36] The Court said this injury was far more sub-

neighborhood in which plaintiff resides [which results] from the steering of persons other than the plaintiff." 455 U.S. at 375.

28. 455 U.S. at 376 *see also Gladstone*, 441 U.S. at 95 and Trafficante v. Metropolitan Life Ins. Co., 409 U.S. 205, 208 (1972).

29. Respondent alleged in their pleadings that as residents of the Richmond metropolitan area, which had a population of approximately 220,000 covering 37 square miles, they were injured by Havens' practices in Henrico County which had a population of 170,000 covering 232 square miles. 455 U.S. at 377.

30. In *Gladstone*, 441 U.S. 91 and *Trafficante*, 409 U.S. 205, the respective plaintiffs had resided in the neighborhoods directly affected by the defendant's discriminatory practices.

31. 455 U.S. at 377 (citation omitted).

32. *Id.* at 378.

33. The Court has previously recognized that organizations may sue on their own behalf. *Id.* at 379 n.19.

34. HOME agreed with Havens Realty to drop its request for injunctive relief and HOME indicated to the Court in its brief that the Court need not decide the question of HOME's standing in its representative capacity. *Id.* at 378.

35. *Id.* at 379.

36. *Id.* at 379.

stantial than that asserted in *Sierra Club v. Morton*.[37] The plaintiff in *Sierra Club* alleged that a proposed road development through a national park "would destroy or otherwise adversely affect the scenery, natural and historic objects and wildlife of the park for future generations."[38] The *Havens* Court termed this asserted injury in *Sierra*[39] as simply a setback to the organization's abstract societal interest. In contrast the Court felt the injury alleged by HOME was far more concrete; the Court concluded that the district court improperly dismissed respondent's claims because of a lack of standing.

The Court's decision in *Havens* is important in several respects. First, it again showed the willingness of the Court to defer to congressional intent regarding standing under the Fair Housing Act.[40] As long as the Article III minimum requirements are met, Congress may then define the parameters of standing under the Act. This decision also makes it much easier for lawsuits to be brought against discriminatory housing practices. The problems of finding plaintiffs willing to bring suits are now minimal since "testers" may now bring lawsuits in their own right. "Testers" are no longer confined to only providing documentation for other plaintiff's cases.

Finally, this case has practical significance in that it is a helpful guide to plaintiffs when pleading their cases. In federal court, an improperly pleaded case can be quickly dismissed for lack of standing.[41] The Court on several occasions gives examples of what should and should not be pleaded in order to prove the Article III injury in fact requirement. By making it easier for lawsuits to be brought against discriminatory housing practices and providing guidelines for pleading cases, *Havens Realty Corp. v. Coleman* will help promote, in an unprecedented way, the goals of the Fair Housing Act.

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37. 405 U.S. 727 (1972).

38. *Id.* at 734.

39. 455 U.S. at 379, *contra* United States v. SCRAP, 412 U.S. 669 (1973) (where the Court held an organization had standing because it had specified in its pleadings that its members had been injured by the defendant's conduct), *but see Simon*, 426 U.S. at 425 n.25 (where the Court doubted that the *SCRAP* holding could have survived a motion for summary judgement).

40. The Court has shown on a number of occasions that it will defer to Congress on defining standing requirements under the Fair Housing Act. In *Trafficante*, 409 U.S. at 209, Justice Douglas, for a unanimous Court, said the statute "showed congressional intention to define standing as broadly as is permitted by Article III . . . ." In *Gladstone*, 441 U.S. at 103 n.9 the Court said "Congress intended standing . . . to extend to the full limits of Article III, the normal prudential rules [of standing] do not apply . . . ."

41. Justice Powell, in his concurrence, discusses this point. It is his contention that the district court was correct in dismissing the respondents complaint because it was too vague and ambiguous to make out a "distinct and palpable injury." If the Article III requirement is to have any meaning, federal courts must be able to demand specific pleadings. 455 U.S. at 383-84 (Powell, J., concurring).

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