
An Equitable Extension of the Parens Patriae Doctrine - Puerto Rico v. Snapp

Richard W. Silverthorn

Follow this and additional works at: <https://via.library.depaul.edu/law-review>

Recommended Citation

Richard W. Silverthorn, *An Equitable Extension of the Parens Patriae Doctrine - Puerto Rico v. Snapp*, 30 DePaul L. Rev. 1025 (1981)
Available at: <https://via.library.depaul.edu/law-review/vol30/iss4/11>

This Notes is brought to you for free and open access by the College of Law at Via Sapientiae. It has been accepted for inclusion in DePaul Law Review by an authorized editor of Via Sapientiae. For more information, please contact digitalservices@depaul.edu.

AN EQUITABLE EXTENSION OF THE
PARENS PATRIAE DOCTRINE—
PUERTO RICO V. SNAPP

Standing is the threshold constitutional requirement that a plaintiff must satisfy before a court will entertain a claim.¹ Essentially, standing involves the determination of whether a particular plaintiff is the proper party to present an issue to the court for adjudication.² The Supreme Court has interpreted the standing doctrine as requiring a plaintiff to allege both a personal stake in the outcome of a controversy³ and “an injury to himself that is likely to be redressed by a favorable decision.”⁴

As a result of the standing requirement, a state is generally precluded from litigating the individual claims of its citizens because the state does not have an independent interest in the controversy.⁵ Under certain circumstances,

1. See *Warth v. Seldin*, 422 U.S. 490 (1974). The *Warth* Court articulated that “[i]n 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.* at 498. Under the constitutional component of standing, the plaintiff must establish that a “case or controversy,” within the meaning of Article III of the United States Constitution, exists between himself and the defendant. *Id.* See U.S. CONST. art. III. For a discussion of the constitutional requirements of standing, see generally C. WRIGHT, *HANDBOOK OF THE LAW OF FEDERAL COURTS* (3d ed. 1976).

2. *Flast v. Cohen*, 392 U.S. 83 (1968). The *Flast* Court distinguished standing, which refers to whether a proper party is seeking adjudication, from the question of whether the issue presented is itself justiciable. *Id.* at 99-100. This second constitutional question involves the concepts of ripeness, mootness, political question, and advisory opinion. Scott, *Standing in the Supreme Court—A Functional Analysis*, 86 HARV. L. REV. 645, 670, 683 (1973) [hereinafter cited as Scott]. See Homburger, *Private Suits in the Public Interest in the United States of America*, 23 BUFFALO L. REV. 343, 388 (1974).

3. *Baker v. Carr*, 369 U.S. 186, 204 (1962). One commentator noted that:

The question of standing . . . is the question whether the litigant has a sufficient personal interest in getting the relief he seeks, or is a sufficiently appropriate representative of other interested persons, to warrant giving him the relief, if he establishes the illegality alleged—and, by the same token, to warrant recognizing him as entitled to invoke the court’s decision on the issue of illegality.

P. BATOR, P. MISHKIN, D. SHAPIRO & H. WECHSLER, *HART & WECHSLER’S THE FEDERAL COURTS AND THE FEDERAL SYSTEM* 156 (2d ed. 1973).

4. *Simon v. Eastern Ky. Welfare Rights Org.*, 426 U.S. 26, 38 (1976). See *Gladstone Realtors v. Village of Bellwood*, 441 U.S. 91, 99-100 (1979) (plaintiff must establish personal injury, either actual or threatened, that has resulted from defendant’s allegedly illegal conduct). See generally Sedler, *Standing and the Burger Court: An Analysis and Some Proposals for Legislative Reform*, 30 RUTGERS L. REV. 863, 869 (1977).

5. See, e.g., *Oklahoma ex rel. Johnson v. Cook*, 304 U.S. 387 (1938) (Oklahoma denied standing to enforce the statutory liability of a bank’s stockholder because the state was acting merely for the benefit of the bank’s creditors and depositors); *Oklahoma v. Atchison, Topeka & Santa Fe Ry.*, 220 U.S. 277 (1911) (Oklahoma denied standing to enforce the rights of its railroad shippers because it had no interest in a controversy of that nature). See Wagner, *The Original and Exclusive Jurisdiction of the United States Supreme Court*, 2 ST. LOUIS U.L.J. 111, 151 (1953); Comment, *State Protection of its Economy and Environment: Parens Patriae Suits for Damages*, 6 COLUM. J.L. & SOC. PROBS. 411, 412 (1970) [hereinafter cited as *State Protection*]. See notes 43-49 and accompanying text *infra*.

however, a state may bring an action on behalf of its citizens under the doctrine of *parens patriae*.⁶ In order to assert *parens patriae* standing, a state must act pursuant to a quasi-sovereign interest.⁷ Although an exact definition of a quasi-sovereign interest has never been articulated, the Supreme Court has referred to it as "an interest independent of and behind the titles of its citizens"⁸ and as "an interest apart from that of the individuals affected."⁹

Generally, a state has the requisite *parens patriae* interest in a controversy when there has been a direct and immediate injury to its environment,¹⁰ economy,¹¹ or to the well-being of a substantial portion of its citizenry.¹² A *parens patriae* action is appropriate under such circumstances because the state is suing on behalf of the public at large, rather than for the benefit of a limited class of its citizens. Recently, however, in *Puerto Rico v. Snapp*¹³ the United States Court of Appeals for the Fourth Circuit permitted Puerto Rico to bring a *parens patriae* action even though there was a direct and immediate injury to only a limited class of its citizens. The *Snapp* court afforded *parens patriae* standing because of a potential harm that threatened Puerto Rico's entire economy.¹⁴ Thus, under the *Snapp* rationale, *parens patriae*

6. See, e.g., *Georgia v. Pennsylvania R.R.*, 324 U.S. 439 (1945) (Georgia permitted to sue as *parens patriae* to challenge a West Virginia statute which restricted the flow of natural gas into Pennsylvania); *Georgia v. Tennessee Copper Co.*, 206 U.S. 230 (1907) (Georgia granted *parens patriae* standing to enjoin company from polluting the air); *Missouri v. Illinois*, 180 U.S. 208 (1901) (Missouri granted standing as *parens patriae* to enjoin Illinois from polluting the water). See generally Comment, *The Original Jurisdiction of the United States Supreme Court*, 11 STAN. L. REV. 665, 672 (1959) [hereinafter cited as *Original Jurisdiction*].

The term "*parens patriae*" literally means "parent of the country" and refers to the role of the state as sovereign and guardian of persons under a legal disability. BLACK'S LAW DICTIONARY 1003 (5th ed. 1979). The concept of *parens patriae* also has been defined as:

[T]he father of the country constituted in law by the State (as in the U.S.) or by the sovereign (as in Great Britain) in the capacity of legal guardian of persons not sui juris and without natural guardians, of heir to persons without natural heirs, and of protector of all citizens or subjects unable to protect themselves.

WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY OF THE ENGLISH LANGUAGE 1641 (unabr. ed. 1976).

7. See, e.g., *Hawaii v. Standard Oil Co.*, 405 U.S. 251, 258 (1972) (Supreme Court has traditionally recognized that *parens patriae* standing is appropriate to prevent or redress injury to a state's quasi-sovereign interest); *Georgia v. Pennsylvania R.R.*, 324 U.S. 439 (1945) (interests which may be redressed by the state are not limited to merely proprietary interests, but they extend to interests which are "quasi-sovereign"). See generally *State Protection*, *supra* note 5, at 412.

8. *Georgia v. Tennessee Copper Co.*, 206 U.S. 230, 237 (1907) (state's interest in air pollution sufficiently independent).

9. *Pennsylvania v. West Virginia*, 262 U.S. 553, 592 (1923) (state's interest in an adequate supply of natural gas was an interest apart from the individual citizens).

10. See *Georgia v. Tennessee Copper Co.*, 206 U.S. 230 (1907); *Missouri v. Illinois*, 180 U.S. 208 (1901).

11. See *Georgia v. Pennsylvania R.R.*, 324 U.S. 439 (1945).

12. See *Pennsylvania v. West Virginia*, 262 U.S. 553 (1923).

13. 632 F.2d 365 (4th Cir. 1980), *aff'd*, 50 U.S.L.W. 5035 (U.S. July 1, 1982). For a discussion of the Supreme Court's decision, see note 105 *infra*.

14. 632 F.2d at 370.

standing may be granted on the basis of a potential future harm to a state's economy notwithstanding the fact that an immediate injury was incurred by only a limited number of citizens.

After briefly tracing the development of the *parens patriae* doctrine, this Note examines the *Snapp* court's opinion and concludes that the court's decision to grant Puerto Rico standing as *parens patriae* was warranted in light of the magnitude of the potential future harm to Puerto Rico's economy and the inability of the injured citizens to effectively litigate their own claims. This Note further discusses the impact of the *Snapp* decision and concludes that a *parens patriae* action is appropriate when there is a direct and immediate injury to a limited group of citizens and a potentially serious future injury to a state's economy or to the well-being of its citizenry.

HISTORICAL BACKGROUND

The doctrine of *parens patriae* originated in the English common law¹⁵ where the king had the power to act as guardian for persons who were legally incompetent to act for themselves.¹⁶ Although this basic function of *parens patriae* has been accepted in the United States,¹⁷ the Supreme Court has expanded the scope of the doctrine beyond its original common law purpose.¹⁸ This expansion has allowed states to sue to prevent or redress injuries to their independent quasi-sovereign interests.¹⁹ Generally, courts examine three factors to determine whether a state has quasi-sovereign interest in the controversy, thus, enabling it to bring suit as *parens patriae*. The

15. *Hawaii v. Standard Oil Co.*, 405 U.S. 251, 257 (1972). For a discussion of the historical development of *parens patriae* see Curtis, *The Checkered Career of Parens Patriae: The State as Parent or Tyrant?*, 25 DEPAUL L. REV. 895 (1976) [hereinafter cited as Curtis]; Malina & Blechman, *Parens Patriae Suits for Treble Damages Under the Antitrust Laws*, 65 NW. U. L. REV. 193 (1970) [hereinafter cited as Malina & Blechman].

16. The duty and power of the king, as *parens patriae*, to act as guardian for the legally incompetent was referred to as the "royal prerogative." This power extended to infants, idiots, lunatics and the general superintendence of all charities. 3 W. BLACKSTONE, COMMENTARIES 47-48 (12th ed. E. Christian 1794). See Curtis, *supra* note 15, at 896-98; Malina & Blechman, *supra* note 15, at 197. See also Strausberg, *The Standing of a State as Parens Patriae to Sue the Federal Government*, 35 FED. B. J. 1, 1-3 (1976) [hereinafter cited as Strausberg]; *State Protection*, *supra* note 5, at 412; *Original Jurisdiction*, *supra* note 6, at 671 n.47.

17. *Mormon Church v. United States*, 136 U.S. 1 (1890); *In re Turner*, 94 Kan. 115, 145 P. 871 (1915). See also Strausberg *supra* note 16, at 2.

18. This expansion first became apparent in *Louisiana v. Texas*, 176 U.S. 1 (1900). In this case Louisiana sought injunctive relief against Texas officials for construing Texas quarantine regulations as precluding Louisiana merchants from distributing goods in Texas. The doctrine's development has continued from 1900 to the present. For a discussion of the line of cases developing *parens patriae* see *Hawaii v. Standard Oil Co.*, 405 U.S. 251, 257-60 (1972); Curtis, *supra* note 15, at 907; Strausberg, *supra* note 16, at 2-5.

19. *Hawaii v. Standard Oil Co.*, 405 U.S. 251, 258 (1972). *Parens patriae* standing has been granted for protection of a number of different interests. See *Georgia v. Pennsylvania R.R.*, 324 U.S. 439, 447-51 (1945) (antitrust); *Georgia v. Tennessee Copper Co.*, 206 U.S. 230, 237 (1907) (pollution); *Badgley v. City of New York*, 606 F.2d 358, 365 (2d Cir. 1979) (equitable apportionment), *cert. denied*, 445 U.S. 946 (1980); *Pennsylvania v. Kleppe*, 533 F.2d 668, 674-75 (D.C. Cir. 1976) (disaster area classification), *cert. denied*, 429 U.S. 977(1977); *Pennsylvania v.*

three factors the courts examine include: (1) whether a substantial portion of the state's population is directly affected by the defendant's conduct;²⁰

National Ass'n of Flood Insurers, 520 F.2d 11, 21-22 (3d Cir. 1975) (National Flood Insurance Act).

The majority of cases concerning a state's ability to represent its citizens as *parens patriae* have involved article III, § 2 of the United States Constitution, which confers original jurisdiction upon the Supreme Court over suits between states or between a state and citizens of another state. See note 24 *infra*. As a general rule, however, suits by states as *parens patriae* against the federal government or its agencies are prohibited under the rationale that such actions are inconsistent with the principle of federalism. The United States is the ultimate *parens patriae*, and therefore, states cannot institute actions as *parens patriae* to protect citizens of the United States from the operation of federal statutes. Strausberg, *supra* note 16, at 11; Comment, *Federal Jurisdiction: State Parens Patriae Standing in Suits Against Federal Agencies*, 61 MINN. L. REV. 691, 695 (1977) [hereinafter cited as *Federal Jurisdiction*]. See *Pennsylvania v. Kleppe*, 533 F.2d 668 (D.C. Cir. 1976), *cert. denied*, 429 U.S. 977 (1977). The *Kleppe* court stated:

As a result of this federalism interest, which reduces most basically to the avoidance of state interference with the exercise of federal powers, the cases evidence an extreme reluctance to recognize state *parens patriae* standing against a federal defendant. There is some basis for reading the preponderance of case law as flatly prohibiting such actions on the basis that there can be no quasi-sovereign interest in the state as a matter of constitutional allocation of powers. Whatever one's view of that proposition, however, *it is at least clear that suits against the Federal Government raise an important argument against standing which is not relevant where other types of defendants are involved*. That is because wherever there is a federal defendant, a degree of disruption of asserted federal powers at the hands of a plaintiff state is unavoidable.

533 F.2d at 678 (emphasis in original).

The leading case in this area is *Massachusetts v. Mellon*, 262 U.S. 447 (1923), where the state of Massachusetts was denied standing as *parens patriae* to challenge the constitutionality of the Federal Maternity Act. The Supreme Court explained its decision in the following manner:

[I]t is no part of [the state's] duty or power to enforce [state citizens'] rights in respect of their relations with the Federal Government. In that field it is the United States, and not the State which represents them as *parens patriae*, when such representation becomes appropriate; and to the former, and not to the latter, they must look for such protective measures as flow from that status.

Id. at 485-86. See *Massachusetts v. Laird*, 400 U.S. 886 (1970) (Massachusetts denied leave to file complaint as *parens patriae* to challenge the constitutionality of the Vietnam War); *South Carolina v. Katzenbach*, 383 U.S. 301 (1966) (South Carolina denied standing as *parens patriae* to challenge the constitutionality of the 1965 Voting Rights Act). *But see* *Washington Util. and Transp. Comm'n v. FCC*, 513 F.2d 1142 (9th Cir.) (state utility granted standing as *parens patriae* to challenge FCC order which would increase intrastate telephone rates), *cert. denied*, 423 U.S. 836 (1975). The Ninth Circuit distinguished *Mellon* on the ground that *Washington Utilities* did not involve a challenge to the constitutionality of a federal statute but rather a Federal agency order. *Id.* at 1153. *Accord*, *Guam v. Federal Maritime Comm'n*, 329 F.2d 251 (D.C. Cir. 1964) (government of Guam granted standing to challenge Federal Maritime Commission's approval of increase in rates for ocean transportation between United States and Guam).

20. See, e.g., *Pennsylvania v. West Virginia*, 262 U.S. 553, 591-92 (1923) (substantial portion of Pennsylvania's population would have been directly affected by a reduced supply of natural gas); *Georgia v. Tennessee Copper Co.*, 206 U.S. 230, 237 (1907) (substantial portion of Georgia's population directly affected by polluted air); *Kansas v. Colorado*, 206 U.S. 46, 99 (1907) (substantial portion of Kansas' citizens directly affected by a diversion of water); *Missouri v. Illinois*, 180 U.S. 208, 241 (1901) (substantial portion of Missouri's citizens directly affected by poisonous water supply); *Pennsylvania v. Kleppe*, 533 F.2d 668, 674-75 (D.C. Cir. 1976) (no

(2) whether the magnitude of the injury to the state's citizens or economy is sufficiently severe;²¹ and (3) whether the individuals affected can effectively litigate their own claims.²² The first two factors determine whether the state has the requisite independent interest in the matter. The third factor concerns a public policy function which relates to the original purpose underlying the *parens patriae* doctrine: to allow a state to act as guardian for those citizens who are in no position to protect themselves.²³

The Supreme Court originally employed the concept of a quasi-sovereign interest to allow a state *parens patriae* standing in order to protect the state's environment and natural resources from depletion²⁴ or pollution.²⁵ In *Mis-*

standing when injury to narrowly limited class of individuals and harm to economy insignificant), *cert. denied*, 429 U.S. 977 (1976). See *State Protection*, *supra* note 5, at 414, 418; *Original Jurisdiction*, *supra* note 6, at 674-75. But see *Georgia v. Pennsylvania R.R.*, 324 U.S. 439, 450-51 (1945) (state allowed to protect against wrongs when majority of citizens are *indirectly* affected by excessive freight rates).

21. See *North Dakota v. Minnesota*, 263 U.S. 365, 374 (1923) (threatened injury must be of "serious magnitude"). See, e.g., *Georgia v. Pennsylvania R.R.*, 324 U.S. 439, 451-52 (1945) (conspiracy to fix freight rates, which discriminated against the state, caused severe injury to citizens by putting state in inferior economic position to other states); *Pennsylvania v. West Virginia*, 262 U.S. 553, 592 (1923) (cessation in supply of natural gas would expose citizens to serious discomfort); *Pennsylvania v. Kleppe*, 533 F.2d 668, 674-75 (D.C. Cir. 1976) (impairment of state's ability to protect its citizens as well as reduction in tax revenue insufficient to afford standing to challenge the Small Business Administration's classification of hurricane damage as class B), *cert. denied*, 429 U.S. 977 (1977).

22. See, e.g., *Missouri v. Illinois*, 180 U.S. 208, 241 (1901) (Court noted that remedy sought by individuals to redress sewage disposal was undisputedly inadequate). *Accord*, *Pennsylvania v. Kleppe*, 533 F.2d 668, 675 (D.C. Cir. 1976) (in addition to the degree of the injury, consideration must be given to who is the party best capable of bringing the suit), *cert. denied*, 429 U.S. 977 (1977).

Some commentators have suggested that a *parens patriae* action is appropriate where the citizens of a state have no legally recognizable injury. For example, where the air over a certain area becomes polluted, but individuals living in that area are not granted standing because they cannot prove an injury in fact to themselves. See *State Protection*, *supra* note 5, at 417. Moreover, where the alleged polluter is a state, individuals of one state may not bring suit against another state because the eleventh amendment prohibits "any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another state." U.S. CONST. amend. XI. See *Federal Jurisdiction*, *supra* note 19, at 693 n.12.

23. See *Missouri v. Illinois*, 180 U.S. 208, 241 (1901) (if the health and comfort of the citizens is threatened, the state is the proper party to defend its inhabitants).

24. See *Wyoming v. Colorado*, 286 U.S. 494 (1932) (Wyoming granted standing to enjoin Colorado from diverting water from the Laramie River for irrigation purposes); *New Jersey v. New York*, 283 U.S. 336 (1931) (New Jersey granted standing to enjoin New York from diverting water from the Delaware River and its tributaries); *Connecticut v. Massachusetts*, 282 U.S. 660 (1931) (Connecticut allowed to sue as *parens patriae* to enjoin Massachusetts from diverting water from the Connecticut River); *North Dakota v. Minnesota*, 263 U.S. 365 (1923) (North Dakota entitled to enjoin Minnesota from altering a drainage method that increased the flow of interstate water and created flood conditions); *Kansas v. Colorado*, 206 U.S. 46 (1907) (Kansas entitled to sue as *parens patriae* in attempt to enjoin Colorado from diverting water from the Arkansas River).

25. *New York v. New Jersey*, 256 U.S. 296 (1921) (New York granted standing to enjoin New Jersey from dumping sewage into New York harbor); *Georgia v. Tennessee Copper Co.*, 206 U.S. 230 (1907) (Georgia granted standing to enjoin air pollution resulting from sulphuric gas

souri v. Illinois,²⁶ for example, the Court granted Missouri standing to enjoin Illinois from polluting Missouri's drinking water.²⁷ A significant aspect of the *Missouri* decision was its emphasis on the policy considerations inherent in *parens patriae* actions. The Court reasoned that the state is the proper party to defend its citizens when their health and welfare are in jeopardy.²⁸ The majority emphasized that *parens patriae* standing is particularly appropriate where suits by individual citizens would be wholly inadequate and would provide an inefficient means of remedying the wrongful conduct.²⁹ Similarly, in *Georgia v. Tennessee Copper Co.*,³⁰ the State of Georgia was permitted to sue as *parens patriae* to restrain a factory in Tennessee from discharging noxious gases which polluted Georgia's air and destroyed its forests and crops.³¹ The *Georgia* Court noted that it was fair and reasonable for a sovereign to protect its environment and natural resources from pollution or destruction.³² In these environmental pollution cases, a state's independent quasi-sovereign interest existed as a result of the direct injury to the environment within its territorial boundaries.³³

The scope of the doctrine was later expanded to allow states to sue as *parens patriae* when they suffered a direct and immediate injury to their economies,³⁴ or to the health and welfare of their citizenry.³⁵ Implicit in this view was the belief that individual citizens would encounter difficulties in

emission); *Missouri v. Illinois*, 180 U.S. 208 (1901) (suit by Missouri to enjoin Chicago Sanitary District from discharging sewage into Illinois River).

26. 180 U.S. 208 (1901).

27. *Id.* at 241. In *Missouri*, the bill of complaint charged that Illinois was allowing large quantities of Chicago's undefecated sewage to be discharged into an artificial channel on a daily basis. The complaint further alleged that this sewage would eventually make its way into the Mississippi River and poison Missouri's water supply. *Id.* at 209-11.

28. *Id.* at 241.

29. *Id.*

30. 206 U.S. 230 (1907).

31. *Id.* at 236-37.

32. *Id.* at 238.

33. *See id.* at 237; *Missouri v. Illinois*, 180 U.S. 208, 248 (1901).

34. *See Hawaii v. Standard Oil Co.*, 405 U.S. 251, 267-70 (1972) (Douglas, J., dissenting) (noting the propriety of a *parens patriae* action to protect a state's economy). *See, e.g., Georgia v. Pennsylvania R.R.*, 324 U.S. 439, 450-51 (1945) (Georgia granted standing to protect its economy from the negative effect of excessive freight rates); *Pennsylvania v. West Virginia*, 262 U.S. 553, 591 (1923) (Pennsylvania granted standing to protect against the internal disruption of its economy); *In re Multidistrict Vehicle Air Pollution M.D.L. No. 31*, 481 F.2d 122, 131 (9th Cir. 1973) (states granted *parens patriae* standing to represent class in action challenging alleged conspiracy to eliminate competition in research and development of motor vehicle air pollution equipment), *cert. denied*, 414 U.S. 1045 (1973); *Burch v. Goodyear Tire & Rubber Co.*, 420 F. Supp. 82, 87-90 (D. Md. 1976) (Maryland granted standing to protect against injury to its general economy), *aff'd*, 554 F.2d 633 (4th Cir. 1977). *See also Pennsylvania v. Kleppe*, 533 F.2d 668, 681-83 (D.C. Cir. 1976) (no standing when harm to economy insignificant), *cert. denied*, 429 U.S. 977 (1976); *Pennsylvania v. National Ass'n of Flood Insurers*, 520 F.2d 11, 22 (3d Cir. 1975) (no standing when economic injury claimed by state was to individual citizens and residents).

35. *Pennsylvania v. West Virginia*, 262 U.S. 553, 590-92 (1923) (Pennsylvania granted standing to protect its citizens from withdrawal of natural gas); *Kansas v. Colorado*, 206 U.S.

bringing a suit on the basis of an injury to the economy of a state or to the public at large.³⁶ Thus, in *Pennsylvania v. West Virginia*,³⁷ Pennsylvania was permitted to sue as *parens patriae* to strike down a West Virginia statute that would have directly affected the well-being of all Pennsylvania citizens by restricting the flow of natural gas into the state.³⁸ Commenting on the nature of Pennsylvania's quasi-sovereign interest, the Court stated that "the threatened withdrawal of the gas from the interstate stream . . . [was] a matter of grave public concern in which the State, as the representative of the public, [had] an interest apart from that of the individuals affected."³⁹ Furthermore, in *Georgia v. Pennsylvania Railroad*,⁴⁰ the Supreme Court held that Georgia's quasi-sovereign interest in its economy enabled it to represent its citizens in a suit against twenty railroad companies that had allegedly conspired to charge Georgian shippers excessive freight rates in violation of antitrust laws.⁴¹ Writing for the majority, Justice Douglas em-

46, 99 (1907) (Kansas granted standing to protect its citizens from polluted waters); *Missouri v. Illinois*, 180 U.S. 208 (1901) (Missouri granted standing to protect its citizens from poisonous water supply).

36. Individual citizens would have difficulty proving that they had suffered a sufficient injury in fact where the primary thrust of the harm was to the general economy of the state. In addition, if a state was the defendant, suits by individual citizens of another state would be barred by the eleventh amendment. See note 19 *supra*. Similarly, suits by states as *parens patriae*, against other states, which are solely for the benefit of private individuals, would be barred by the eleventh amendment prohibition. The leading case illustrating this prohibition is *New Hampshire v. Louisiana*, 108 U.S. 76 (1883), where a New Hampshire statute authorized the citizens of New Hampshire to assign any claims they had against another state to the attorney general, who would prosecute the claims on their behalf. The Supreme Court held that the eleventh amendment barred such suits where the state was not the real party in interest but was merely prosecuting the individual claims of its citizens. *Id.* at 91. Likewise, in *North Dakota v. Minnesota*, 263 U.S. 365 (1923), the Supreme Court denied North Dakota standing to bring suit on behalf of its farmers, stating "[i]t is difficult to see how we can grant a decree in favor of North Dakota for the benefit of individuals against the State of Minnesota in view of the Eleventh Amendment." *Id.* at 374-75. See also notes 43 & 46 and accompanying text *infra*.

37. 262 U.S. 553 (1923).

38. *Id.* at 590-92. Although this was the first case to grant *parens patriae* standing solely on the basis of a state's quasi-sovereign interest in the health and welfare of its citizens, this principle had been recognized in two prior pollution cases involving *parens patriae* standing. See *Kansas v. Colorado*, 206 U.S. 46 (1907); *Missouri v. Illinois*, 180 U.S. 208 (1901). In *Kansas*, the Court articulated:

The mere fact that a State had no pecuniary interest in the controversy, would not defeat the original jurisdiction of this court, which might be invoked by the State as *parens patriae*, trustee, guardian or representative of all or a considerable portion of its citizens; and that the threatened pollution of the waters of a river flowing between States, . . . thereby putting the health and comfort of the citizens of the other in jeopardy, presented a cause of action justiciable under the Constitution.

206 U.S. at 99. See also text accompanying note 28 *supra*.

39. 262 U.S. at 592.

40. 324 U.S. 439 (1945).

41. *Id.* at 447. *But see* *Oklahoma v. Atchison, Topeka & Santa Fe Ry.*, 220 U.S. 277 (1911) (Oklahoma denied standing to challenge allegedly excessive freight rates). See notes 43-46 and accompanying text *infra*.

phasized the propriety of maintaining a *parens patriae* action where a state's interest in its economy was immediate rather than remote.⁴²

Throughout the early development of the *parens patriae* doctrine the Supreme Court recognized that a *parens patriae* action was inappropriate where a state was merely attempting to vindicate the grievances of a small number of citizens who were the real parties to the controversy.⁴³ This restriction was endorsed in *Oklahoma v. Atchison, Topeka & Santa Fe Railway*.⁴⁴ In *Atchison*, a case involving facts similar to those in *Pennsylvania Railroad*, the Court held that a state could not sue to enforce the rights of its individual shippers because it did not have an independent interest in the controversy.⁴⁵ Likewise, in *Oklahoma ex rel. Johnson v. Cook*,⁴⁶ a suit to

42. 324 U.S. at 451. Justice Douglas discussed the harm to a state's economy and citizenry resulting from discriminatory freight rates by equating it to the harm a state suffers as a result of air and water pollution or diversion of water from its rivers. Specifically:

If the allegations of the bill are taken as true, the economy of Georgia and the welfare of her citizens have seriously suffered as the result of the alleged conspiracy. Discriminatory rates are but one form of trade barriers. They may cause a blight no less serious than the spread of noxious gas over the land or the deposit of sewage in the streams. They may affect the prosperity and welfare of a State as profoundly as any diversion of waters from the rivers. They may stifle, impede, or cripple old industries and prevent the establishment of new ones. They may arrest the development of a State or put it at a decided disadvantage in competitive markets. Such a charge at least equals in gravity the one which Pennsylvania and Ohio had with West Virginia over the curtailment of the flow of natural gas from the West Virginia fields. There are substitute fuels to which the economy of a State might be adjusted. But discriminatory rates fastened on a region have a more permanent and insidious quality.

Id. at 450.

43. *See, e.g.*, *Oklahoma ex rel. Johnson v. Cook*, 304 U.S. 387, 395 (1938) (*parens patriae* not granted where state sought recovery solely for the bank's creditors); *Oklahoma v. Atchison, Topeka & Santa Fe Ry.*, 220 U.S. 277, 286 (1911) (no *parens patriae* standing where state sought to vindicate rights of a small number of shippers).

The restriction that prohibits states from litigating the personal claims of its citizens relates to the traditional limitation on federal judicial review which requires a plaintiff to allege a personal stake in the controversy and suffer an injury in fact. *See* notes 1-4 and accompanying text *supra*.

44. 220 U.S. 277 (1911).

45. *Id.* at 286. Similarly, Louisiana was denied standing on the basis that the state's interest was only in benefiting the dried milk manufacturers. *See Land O'Lakes Creameries, Inc. v. Louisiana State Bd. of Health*, 160 F. Supp. 387 (E.D. La. 1958).

Although in effect, *Pennsylvania Railroad* may appear to overrule *Atchison*, Justice Douglas, in *Pennsylvania Railroad*, explicitly affirmed the decision in *Atchison*, stating:

The Court held [in *Atchison*] that our original jurisdiction could not be invoked by a State merely because its citizens were injured. We adhere to that decision. It does not control the present one. This is no attempt to utilize our original jurisdiction in substitution for the established methods of enforcing local law. This is not a suit in which a State is a mere nominal plaintiff, individual shippers being the real complainants. This is a suit in which Georgia asserts claims arising out of federal laws and the gravamen of which runs far beyond the claim of damage to individual shippers.

324 U.S. at 451-52.

46. 304 U.S. 387 (1938). The State of Oklahoma attempted to bring suit to enforce the statutory liability of a shareholder of a state bank that was in the course of liquidation. *Id.* at

recover the personal claims of a bank's creditors, the Court explicitly stated that before a state may bring a suit on behalf of its citizens, it "must show a direct interest of its own and not merely seek recovery for the benefit of individuals who are the real parties in interest."⁴⁷ Disregarding this firmly established precedent, the Court of Appeals for the Fourth Circuit granted Puerto Rico standing as *parens patriae* on the basis of a potentially serious future injury to the general economy and citizenry of the Commonwealth, even though there was a direct and immediate injury to only a limited number of temporary migrant workers.⁴⁸

FACTS AND PROCEDURAL HISTORY

In 1978, the apple orchards along the eastern coast of the United States produced a record apple crop.⁴⁹ As a result, there was an intense effort to recruit temporary farm workers to assist in picking the apples, thereby insuring an undamaged harvest.⁵⁰ During this period, Puerto Rico was experiencing a record rate of unemployment, conservatively estimated at 23% in the rural areas and 18.5% throughout the rest of the Commonwealth.⁵¹ In an attempt to alleviate its unemployment problem, Puerto Rico made a concerted effort to place its workers with mainland United States apple growers.⁵² In response to requests made for Puerto Rican workers through the interstate clearance system,⁵³ the Puerto Rican Employment Service recruited 2,318 workers to send to the United States.⁵⁴ Puerto Rico initially dispatched 992 workers to the mainland but was later advised by the United States Department of Labor to retain the remaining 1,326 workers because

388. The Court denied Oklahoma standing because "recovery [was] sought solely for the benefit of the depositors and creditors of the bank." *Id.* at 395. *Accord*, *Pennsylvania v. New Jersey*, 426 U.S. 660 (1976) (standing denied to litigate a collection of claims for taxes withheld from private citizens); *New Hampshire v. Louisiana*, 108 U.S. 76 (1883) (no standing for state to redress claims of citizen bondholders against the defaulting state). *See* note 36 *supra*.

47. 304 U.S. at 396. *Accord*, *Philadelphia Housing Auth. v. American Radiator & Standard Sanitary Corp.*, 309 F. Supp. 1057, 1061 (E.D. Pa. 1969) (citing *Oklahoma ex rel. Johnson v. Cook*, 304 U.S. 387 (1938)); *Land O'Lakes Creameries, Inc., v. Louisiana State Bd. of Health*, 160 F. Supp. 387, 388 (E.D. La. 1958) (citing *Oklahoma ex rel. Johnson v. Cook*, 304 U.S. 387 (1938)).

48. *Puerto Rico v. Snapp*, 632 F.2d 365, 370 (4th Cir. 1980), *aff'd*, 50 U.S.L.W. 5035 (U.S. July 1, 1982).

49. 632 F.2d at 367.

50. *Id.*

51. *Id.*

52. *Id.* at 368.

53. The interstate clearance system was established by the Wagner-Peyser Act, 29 U.S.C. §§ 49-49n (1976). The purpose of this Act was to facilitate the recruiting and transferring of labor from one state to another. Additionally, the Act protects employees who must move about the United States to meet the needs of employers using federal resources to recruit workers. *See Petersen v. Talisman Sugar Corp.*, 478 F.2d 73, 80 (5th Cir. 1973). For a more detailed discussion of the purpose of the Wagner-Peyser Act, see note 59 *infra*.

54. 632 F.2d at 368.

the apple growers were refusing to employ the Puerto Ricans who had arrived.⁵⁵ Instead, the growers were employing foreign migrant workers.

As a result of this refusal, the Commonwealth of Puerto Rico brought an action as *parens patriae* against fifty-two apple growers from Virginia. Puerto Rico alleged that the defendant apple growers violated their agreements to hire Puerto Rican workers and discriminated against those who had already been hired by prematurely terminating their employment contracts in order to hire foreign workers.⁵⁶ The complaint further alleged that the growers' conduct violated the Immigration and Nationality Act⁵⁷ which prohibits the employment of temporary foreign workers if qualified domestic laborers are available.⁵⁸ Puerto Rico also sought a declaration of the rights of

55. *Id.* The defendants, 52 Virginia apple growers, allegedly made commitments to employ 787 Puerto Rican workers, although only 420 workers were sent to the Virginia orchards because of the Labor Department's warning. *Puerto Rico v. Snapp*, 469 F. Supp. 928, 930 (W.D. Va. 1979).

During this same period, apple growers in several states filed suit to enjoin the United States Secretary of Labor and the Commissioner of the Immigration and Naturalization Service from prohibiting the growers from recruiting foreign workers. In *Frederick County Growers' Ass'n v. Marshall*, 436 F. Supp. 218 (W.D. Va. 1977), *appeal dismissed mem.*, 594 F.2d 857 (4th Cir. 1979), the district court granted a preliminary injunction against the Secretary of Labor enjoining him from denying temporary foreign migrant workers entrance into the United States to harvest the apple crop. 436 F. Supp. at 225. In view of this order, Puerto Rican migrant workers who appeared at the orchards were denied employment or terminated from their jobs in favor of foreign workers. *Puerto Rico v. Snapp*, 632 F.2d 365, 368 (4th Cir. 1980), *aff'd*, 50 U.S.L.W. 5035 (U.S. July 1, 1982).

56. *Id.* at 367-68. Puerto Rico alleged its citizens were discriminated against in favor of Jamaican migrant workers. Puerto Rico further alleged that its workers were subjected to less favorable conditions than the foreign workers who were hired pursuant to the court order in *Frederick County Growers' Ass'n v. Marshall*, 436 F. Supp. 218 (W.D. Va. 1977), *appeal dismissed mem.*, 594 F.2d 857 (4th Cir. 1979). These discriminatory practices were alleged to have increased the productivity of the foreign workers and decreased the productivity of the Puerto Ricans. 469 F. Supp. at 930.

57. 632 F.2d at 367. The Immigration and Nationality Act (INA), 8 U.S.C. §§ 1101-1106 (1976) regulates the admission of nonimmigrant aliens, such as temporary foreign workers, into the United States. Under the INA, temporary foreign laborers may be employed in the United States if United States workers are not available and if the employment of these foreign workers would not adversely affect the wages and working conditions of similarly employed United States laborers. 8 C.F.R. § 214.2(h)(3)(i) (1981); 20 C.F.R. § 655.0 (1981). *See note 59 infra*. The INA defines a nonimmigrant alien as a person "having a residence in a foreign country which he has no intention of abandoning . . . who is coming temporarily to the United States to perform temporary services or labor, if unemployed persons capable of performing such service or labor cannot be found in this country. 8 U.S.C. § 1101(a)(15)(H)(ii)(1976).

58. The admission of nonimmigrant aliens is governed by conditions prescribed by the Attorney General, 8 U.S.C. § 1184(a)(1976), who must consult with the "appropriate agencies of the government" before approving the employers' petition for the importation of nonimmigrant alien workers. 8 U.S.C. § 1184(c)(1976). Through the Immigration and Naturalization Service, the Attorney General has promulgated regulations to implement his responsibilities regarding the importation of temporary foreign workers. *See* 8 C.F.R. § 214.2(h)(3)(1981). Under these regulations, the Department of Labor is the appropriate governmental agency to consult prior to the admission of temporary foreign workers. Before temporary foreign workers can be admitted into the United States, the Attorney General must receive:

Puerto Rican citizens under the Wagner-Peyser Act⁵⁹ and an injunction restraining the growers from future violations of these two acts.⁶⁰

The district court dismissed the complaint on the ground that Puerto Rico lacked standing under the doctrine of *parens patriae* because it failed to demonstrate justiciable quasi-sovereign interest in the controversy.⁶¹ In dismissing the suit, the court held that “[n]either the segment of the population nor the injury to the Puerto Rican economy [was] of sufficient magnitude to permit this court to grant *parens patriae* standing.”⁶² The sole issue on appeal was whether Puerto Rico had a sufficient quasi-sovereign interest in the controversy to allow it to maintain standing in its capacity as *parens patriae*.⁶³

THE SNAPP DECISION

In a divided opinion, the United States Court of Appeals for the Fourth Circuit reversed the district court and granted Puerto Rico standing to challenge the apple growers’ exclusion of Puerto Rican migrant workers.⁶⁴

[e]ither a certification from the Secretary of Labor . . . stating that qualified persons in the United States are not available and that the employment of the beneficiary will not adversely affect the wages and working conditions of workers in the United States similarly employed, or a notice that such a certification cannot be made.

Id. § 214.2(h)(3)(i).

59. 29 U.S.C. §§ 49-49n(1976). The Wagner-Peyser Act was enacted in 1933 to facilitate the flow of labor from “supply” states, which have an excess number of workers, to “demand” states, which have a shortage of workers, in order to alleviate the high unemployment that existed during the Great Depression. See *Puerto Rico v. Snapp*, 632 F.2d at 367. This Act created a cooperative national system of employment offices to assist unemployed persons in finding jobs. 29 U.S.C. § 49(b) (1976). See *Frederick County Fruit Growers’ Ass’n. v. Marshall*, 436 F. Supp. 218 (W.D. Va. 1977). Employers place job orders in a local employment office nearest to the place of employment and unemployed workers submit applications to the local office closest to the workers’ location. *Id.* at 220. The employment office attempts to find the unemployed worker a job near his local area. Temporary migrant workers, however, must often seek agricultural employment in a variety of areas that are not local. Through this system of interstate employment migrant workers in “supply” states are referred to jobs in “demand” states. *Id.*

60. 632 F.2d at 367.

61. 469 F. Supp. at 934. The district court stated that although Puerto Rico’s Secretary of the Department of Labor and Human Resources has been charged with a statutory duty to protect the rights of Puerto Rican migrant workers, this statutory enactment, in and of itself, did not confer article III standing upon a state to sue in federal court. Other courts have reached the same conclusion. See, e.g., *Philadelphia Housing Auth. v. American Radiator & Standard Sanitary Corp.*, 309 F. Supp. 1057, 1059 (E.D. Pa. 1969) (state statute giving attorney general authority to sue was, alone, insufficient to establish *parens patriae* claim); *Land O’Lakes Creameries, Inc. v. Louisiana State Bd. of Health*, 160 F. Supp. 387, 390 (E.D. La. 1958) (Minnesota statute giving attorney general right to bring suit to protect its dried milk manufacturers not sufficient, by itself, to confer *parens patriae* standing). For a discussion of article III standing see notes 1-4 and accompanying text *supra*.

62. 469 F. Supp. at 934 (emphasis in the original). The court concluded that the private interests of the injured migrant workers were predominate to the broader public interest, which was “relatively narrow in scope.” *Id.* at 934-35.

63. *Puerto Rico v. Snapp*, 632 F.2d at 367.

64. *Id.* at 370.

Writing for the majority, Judge Sprouse recognized the three factors that determine characteristically whether a state's quasi-sovereign interest was sufficient to permit it to sue as *parens patriae*: (1) the size of the population segment adversely affected by the defendant's conduct; (2) the magnitude of the harm inflicted; and (3) the practical ability of the injured parties to obtain complete relief without sovereign intervention.⁶⁵ Satisfaction of the numerical requirement, according to the court, required a substantial proportion of the sovereign's citizenry to be adversely affected before the sovereign could bring an action in its capacity as *parens patriae*.⁶⁶ Significantly, the court added that an indirect injury would be sufficient to satisfy the numerical requirement.⁶⁷ Thus, in view of the indirect impact the growers' conduct would have on the Puerto Rican economy, the court was satisfied that a substantial number of citizens were adversely affected.

In analyzing the magnitude of the prospective economic harm, the court emphasized that the number of migrant workers temporarily employed each year did not accurately measure the potential impact of the damaged recruitment efforts on the future stability of Puerto Rico's economy.⁶⁸ The court reasoned that the combined effect of the growers' conduct and Puerto Rico's unusually high unemployment rate would eventually cause serious "[r]esidual injuries" to the Commonwealth.⁶⁹ Finally, regarding the degree to which adversely affected citizens could obtain adequate relief absent sovereign intervention, the court opined that because migrant farm workers were destitute and could not afford the costs of bringing an action on their own behalf, there was no assurance that their claims could be effectively litigated.⁷⁰ Therefore, the *Snapp* court concluded that these three factors, as applied to Puerto Rico's situation, dictated the granting of *parens patriae* standing.⁷¹

ANALYSIS OF THE *SNAPP* DECISION

In analyzing Puerto Rico's right to assert *parens patriae* standing, the *Snapp* court adopted an expansive approach. The court liberally construed the three factors used in determining whether a suitable quasi-sovereign interest exists and correctly granted Puerto Rico standing as *parens patriae*.⁷² The majority recognized that the number of citizens affected, the magnitude of the harm, and the ability of the individuals to effectively litigate their own claims were interrelated factors which did not warrant a strict interpretation.⁷³ The court also looked to the underlying public policy consideration

65. *Id.* at 369. *Accord*, *Pennsylvania v. Kleppe*, 533 F.2d 668, 674-75 (D.C. Cir. 1976), *cert. denied*, 429 U.S. 977 (1977). See notes 19-23 and accompanying text *supra*.

66. 632 F.2d at 369-70.

67. 632 F.2d at 370.

68. *Id.*

69. *Id.*

70. *Id.*

71. *Id.*

72. *Id.*

73. *Id.* at 369-70.

inherent in the *parens patriae* doctrine—the state is the proper party to represent and defend its citizens when their health and welfare are in serious jeopardy⁷⁴—to reach its conclusion.

Clearly, a rigid approach by the court would have produced the inequitable result of denying Puerto Rico standing merely because a substantial portion of Puerto Rico's citizens were not directly affected by the growers' conduct.⁷⁵ Recognizing the inequity of this result, the *Snapp* court liberalized the numerical requirement by stating that, as a matter of law, an indirect injury was sufficient to satisfy the requirement of an injury to a substantial portion of a state's citizenry.⁷⁶

The expansion of the numerical requirement is significant for two reasons. First, the requirement is no longer a formidable barrier to *parens patriae* standing because, generally, a majority of a state's citizens are indirectly affected by any conduct that alters the economic conditions of a given state. Second, prior to *Snapp*, no court had explicitly stated that an indirect injury was sufficient to satisfy the numerical requirement, although this had been implicitly recognized by the Supreme Court in *Georgia v. Pennsylvania Railroad*.⁷⁷ In that case, Georgia was allowed to bring a *parens patriae* action to challenge allegedly excessive freight rates levied on Georgian shippers. The discriminatory rates, however, only indirectly affected a majority of the citizens of Georgia through an increase in the price of goods which would ultimately be passed on to consumers. The only citizens who were directly injured by the rate increases were the shippers themselves.⁷⁸ Although standing was granted, nowhere in the opinion did Justice Douglas expressly state that an indirect injury was sufficient to satisfy the numerical prerequisite. Instead, he focused on the notion that an injury to a state's economy, if sufficiently severe and generalized, was an adequate ground for a suit by a state as *parens patriae*.⁷⁹

74. *Id.* at 370. See notes 23, 27-29, and accompanying text *supra*.

75. Approximately 787 unemployed migrant workers were directly affected by the growers' conduct. This constitutes less than one-tenth of one percent of Puerto Rico's population, which totals more than 2.5 million people. 469 F. Supp. at 934.

76. 632 F.2d at 370.

77. 324 U.S. 439 (1945). Cf. *Pennsylvania ex rel. Rafferty v. Philadelphia Psychiatric Center*, 356 F. Supp. 500 (E.D. Pa. 1973). In *Rafferty*, a nurse sued a psychiatric center alleging that she had been deprived of her constitutional rights. The nurse instituted this action as a result of being terminated from her employment following publication of her critical remarks concerning the state mental hospital where she had formerly been employed. The court denied Pennsylvania standing as *parens patriae* because the plaintiff's discharge did not "indirectly" affect the constitutional rights of the citizenry at large. *Id.* at 505. This was one of the only cases that made an explicit reference to an indirect injury to a state's citizenry. See notes 40-42 and accompanying text *supra*.

78. 324 U.S. at 450-51.

79. *Id.* See note 42 *supra*. See generally *Original Jurisdiction*, *supra* note 6, at 675, where the author, in discussing the implications of *Pennsylvania R.R.*, concluded that a sufficient quasi-sovereign interest exists to allow a state to sue as *parens patriae* "when it can be shown that the injury to the state's population as a whole significantly exceeds the actionable injuries to its individual citizens." See also *Kelley v. Carr*, 442 F. Supp. 346 (W.D. Mich. 1977) (Michigan

The *Snapp* court also expansively interpreted the factor focusing on the magnitude of the harm to a state's economy or citizenry. This is illustrated by the fact that the immediate harm to Puerto Rico's economy was relatively minimal because only a small percentage of Puerto Rico's total labor force was denied employment as a result of the defendant's conduct.⁸⁰ The majority recognized, however, that the potential future harm to Puerto Rico's economy, and ultimately to its entire citizenry, from continued discrimination against Puerto Rican migrant workers, was sufficiently severe to warrant a *parens patriae* action for injunctive relief.⁸¹ Indeed, the cumulative effect of the growers' conduct would have severely hampered Puerto Rico's efforts to attain relatively full employment⁸² because a significant percentage

attorney general had standing as *parens patriae* to challenge alleged fraudulent actions of commodities brokers and agents). Commenting on the scope of a state's quasi-sovereign interests, the *Kelley* court stated that "[i]nherent in the concept of quasi-sovereign interests is protection of the public interest." *Id.* at 356-57. The court further added that "some of the most basic of a state's quasi-sovereign interests include maintenance of the integrity of markets and exchanges operating within its boundaries, protection of its citizens from fraudulent and deceptive practices, [and] support for the general welfare of its residents." *Id.* at 357.

80. The immediate indirect effect on Puerto Rico's economy resulting from the defendants' refusal to hire approximately 787 migrant workers for one harvest season is likely to be negligible. It is the potential future harm to Puerto Rico's economy and citizenry that must be considered when determining whether *parens patriae* standing was justified in *Snapp*. That is, the harm that would result from allowing the defendants, or other employers in similar situations to practice discriminatory employment practices. See notes 81-84 and accompanying text *infra*.

81. The majority commented on the potential adverse effect of this employment discrimination on Puerto Rico's economy and citizenry by stating:

Puerto Rico's effort to strengthen its economy and to provide its citizens a way of life comparable to mainland standards must be viewed from a clear perspective. *The number of farm workers temporarily employed annually does not accurately measure the potential effect of the damaged recruitment efforts on all of Puerto Rico's citizens.* The island's officials are coping with an almost unmanageable unemployment problem. Its economy is in dire straits. The morale of the average Puerto Rican citizen under the circumstances can be expected to be extremely low. Deliberate efforts to stigmatize the labor force as inferior carry a universal sting.

The Puerto Rican government as an integral political subdivision relies on federal laws to help solve the problems of labor supply and demand. The apparent inability of the United States government, through the Department of Labor, to grant Puerto Ricans equal treatment with other citizens or even with foreign temporary workers *must certainly have an effect which permeates the entire island of Puerto Rico. Residual injuries to the Commonwealth effort are, to say the least, very serious.*

632 F.2d at 370 (emphasis added).

The Commonwealth alleged that not only would this employment discrimination exacerbate Puerto Rico's unemployment problem, but also that there would be a decrease in the supply of money in circulation, fewer tax revenues and additional public welfare expenditures. 469 F. Supp. 928, 932.

82. The growers' discriminatory hiring practices take on added significance in view of the fact that Puerto Rico's unemployment rate has been increasing steadily. For example, in 1974 the unemployment rate was officially reported at 12%, although the Puerto Rican Secretary of Labor unofficially estimated that it was closer to 30%. T. DUNBAR & L. KRAVITZ, *HARD TRAVELING*, 51 (1976) [hereinafter cited as *DUNBAR & KRAVITZ*]. In 1980, the official unemploy-

of its work force consists of temporary migrant workers who depend upon employment in the United States during the various harvest seasons.⁸³ As a result, Puerto Rico's already devastating unemployment rate would increase, and its citizens would continue to experience the negative ramifications which inevitably accompany high unemployment. The *Snapp* court accurately depicted the gravity of these ramifications by comparing them to the economic devastation that occurred during the depression of the 1930's when the United States unemployment rate was similar to that which currently existed in Puerto Rico.⁸⁴ Given these circumstances, Puerto Rico undisputedly had an independent interest in the controversy that would eventually influence the future prosperity of its economy, and ultimately, affect the health and welfare of the public at large.

An examination of the ability of the injured parties to litigate their own claims further supports the court's conclusion that *parens patriae* standing was appropriately granted in *Snapp*. As the majority noted, migrant farm workers who must work on the mainland for several months every year simply do not possess the monetary resources to litigate their own claims.⁸⁵ The court recognized that individual suits by the migrants would have been an inefficient and questionable remedy to Puerto Rico's severe unemployment problem.⁸⁶ Moreover, the citizens "would, at best, achieve a piecemeal solution [to] Puerto Rico's *parens patriae* grievances and in the process wastefully consume judicial resources."⁸⁷ Both the potential harm to Puerto Rico's economy and the inadequacy of private actions, clearly justify the *Snapp* court's grant of *parens patriae* standing to Puerto Rico.

Further support for the *Snapp* court's decision stems from the high cost of litigation. Although an individual suit or a class action⁸⁸ constituted, in

ment figures rose to as high as 23% in the rural areas and 18.5% throughout the rest of the Commonwealth. 632 F.2d at 367.

One of the reasons that Puerto Rico's unemployment rate is so high is because of the high number of unskilled illegal aliens residing there. These illegal aliens flee from the Dominican Republic, Haiti, and Cuba to escape political oppression or starvation. DUNBAR & KRAVITZ, *supra*, at 51. Because the illegal aliens put many of the Puerto Ricans out of work, the unemployed Puerto Ricans, who are United States citizens, travel to the mainland to find employment. *Id.*

83. Puerto Rico has a long history of sending migrant workers to the United States for employment. From 1948 to 1958 an average of 13,195 Puerto Ricans were employed in temporary agricultural jobs on the mainland. *Hearings on S. 1085, S. 1778, S. 2141 and S. 1498 Before the Senate Subcomm. on Migratory Labor of the Comm. on Labor & Public Welfare*, 86th Cong., 1st Sess. 38 (1959).

Since 1958, however, the number of Puerto Rican migrants coming to the mainland has annually increased. Recent studies estimate that as many as 40,000 to 50,000 Puerto Rican migrant workers are employed in the United States each year. DUNBAR & KRAVITZ, *supra* note 82, at 66.

84. 632 F.2d at 369-70.

85. *Id.* at 370.

86. *Id.*

87. *Id.* See text accompanying notes 89-94 *infra*.

88. Under Rule 23(a) of the Federal Rules of Civil Procedure, four prerequisites must be met before a class action may be maintained. First, the class must be so numerous that joinder is

theory,⁸⁹ a possible alternative to a *parens patriae* action, as a practical matter, neither remedy would have proved adequate. Both remedies require a substantial monetary expenditure which effectively precluded the unemployed migrant workers from bringing suit.⁹⁰ Despite the district court's failure to adequately address this crucial consideration,⁹¹ the Fourth Circuit found the cost factor significant in its decision to grant Puerto Rico *parens patriae* standing.⁹²

In addition, a major deficiency inherent in both individual suits and class actions is that neither remedy would provide Puerto Rico with the broad based injunctive relief necessary to eliminate similar future discrimination against Puerto Rico's migrant workers. A *parens patriae* action is important in this instance because a favorable decision for the Commonwealth would benefit all of Puerto Rico's migrant workers, rather than only those workers directly involved in the litigation.⁹³ Moreover, a victory for Puerto Rico

impracticable. Second, there must be questions of law or fact common to the class. Third, the claims or defenses of the representative parties must be typical of those of the class. Fourth, the named representatives must fairly and adequately protect the interests of the class. FED. R. CIV. P. 23(a). In addition, if the party opposing the class has acted or refused to act on grounds generally applicable to the class, injunctive, or declaratory relief may be appropriate with respect to the class as a whole. *Id.* 23(b)(2).

89. The standing requirements for individual actions are discussed in notes 1-4 and accompanying text *supra*. The displaced migrant workers would have no trouble in satisfying the standing requirements in the instant situation because they have a personal stake in the outcome of a controversy and an injury in fact which would be redressable by a favorable decision.

The only class action requirement that might present a problem is whether the class of migrant workers was so numerous that joinder was impracticable. FED. R. CIV. P. 23(a)(1). Since groups of 25 or more have been held sufficient to comply with the impracticability of the joinder requirement, however, the 787 migrant workers directly affected probably would have little difficulty satisfying this requirement. *See, e.g., Philadelphia Elec. Co., v. Anaconda Am. Brass Co.*, 43 F.R.D. 452, 463 (E.D. Pa. 1968) (25 members sufficient for class action). *See generally* C. WRIGHT, HANDBOOK OF THE LAW OF FEDERAL COURTS 346 (3d ed. 1976) (25 sufficient for class action).

90. 632 F.2d at 370. Despite the seemingly prohibitive cost of individual suits, the district court noted that some migrant workers had filed individual suits and a class action challenging not only the defendants' actions, but also the actions of other growers. 469 F. Supp. 928, 934. The fact that other growers were joined as defendants in these corollary suits lends credence to the idea that there were more employers who discriminated against Puerto Rican workers than the 52 named defendants in the action. This fact bolsters the conclusion that Puerto Rico was correctly granted standing as *parens patriae* to insure that similar discrimination would not exist.

91. Curiously, discussing the individual suits and the class action, the district court stated that "[s]ince those most directly affected stand ready and willing to vindicate their own rights, the imperative for state intervention is absent. The court can detect no valid purpose to be served by allowing this action to proceed when the fundamental issues are already being litigated elsewhere." 469 F. Supp. at 934. Although the district court expressly recognized that the ability of those injured to obtain complete relief was a crucial factor in determining whether *parens patriae* standing was appropriate, *id.* at 932, it analyzed this factor in only a cursory manner.

92. 632 F.2d at 370. *See* text accompanying notes 85-86 *supra*.

93. *See* text accompanying note 86 *supra*.

would be a significant step toward solving its unemployment problem and improving the overall condition of its economy.⁹⁴

IMPACT

The three factors used in determining whether a state may represent its citizens in its capacity as *parens patriae*⁹⁵ have not, in form, been altered by the *Snapp* decision. The *Snapp* court's expansive interpretation of these factors, however, is likely to alleviate much of the difficulty states have encountered in attempting to gain standing under the *parens patriae* doctrine. After *Snapp*, states may sue as *parens patriae* to prevent future harm to their economies and citizenry even though there is only a direct and immediate injury to a relatively small number of citizens. Indeed, if the potential future harm to a state's economy or citizenry would be substantial, the state definitely has a legitimate quasi-sovereign interest in the controversy.⁹⁶

Furthermore, the *Snapp* decision provides the necessary precedent for recognizing future *parens patriae* actions to protect unemployed laborers, irrespective of whether the number of injured workers constitutes a substantial portion of a state's population.⁹⁷ Certainly, when there is blatant discrimination against a state's labor force, the policy considerations underlying the *parens patriae* doctrine warrant an extension of the doctrine.⁹⁸ This is most apparent in situations like *Snapp* where the number of individuals immediately affected does not satisfy the numerical requirement, yet the

94. One migration specialist from the Puerto Rican Department of Labor discussed the value to Puerto Rico's economy of the migrant contract system, whereby Puerto Rican farm workers are recruited to the mainland.

The value of the contract system to the Puerto Rican economy has been one of excellency, economically as well as socially, since its establishment. . . . The system has provided an income to a significant number of our labor force when the island's seasonal agricultural demand is at its low. The migration of workers to the mainland acts as a valve in the continued increase of our population. The amount of money sent by the workers to his [sic] family and carried with him when he returns, increases the capital flow of the island which at the same time provides for the maintenance of our economic stability.

DUNBAR & KRAVITZ, *supra* note 82, at 52.

95. See text accompanying notes 20-22 & 63 *supra*.

96. See, e.g., *Georgia v. Pennsylvania R.R.*, 324 U.S. 439, 450-51 (1945); *Pennsylvania v. West Virginia*, 262 U.S. 553, 590-92 (1923); *Pennsylvania v. Kleppe*, 533 F.2d 668, 674-75 (D.C. Cir. 1976), *cert. denied*, 429 U.S. 977 (1977). See notes 34-42 and accompanying text *supra*.

97. See also, *State Protection*, *supra* note 5, at 418 (*parens patriae* standing should be determined on the basis of the interest affected, not the number of persons who are injured at any particular point in time).

98. A suit by a state to enjoin employers from using discriminatory hiring practices that aggravate a state's unemployment level is not an abuse of that state's ability to bring a suit as *parens patriae*. It is simply a protective measure that will ultimately improve the state's general economy and benefit the public at large. See *Pennsylvania v. Brown*, 260 F. Supp. 323, 338 (E.D. Pa. 1966) (State of Pennsylvania granted standing as *parens patriae* to protect its students from educational discrimination). The *Brown* court asserted that "a state has a sufficient interest in the elimination of discrimination . . . to enable it to maintain an action in federal court." *Id.* at 338.

individuals involved do not possess the financial means to bring a cause of action on their own behalf. Permitting a state to sue as *parens patriae* under these circumstances actually conforms to the original purpose of the doctrine—protecting those citizens who are incapable of protecting themselves.⁹⁹

The *Snapp* decision also will encourage courts to focus on the ability of injured persons to effectively litigate their own claims.¹⁰⁰ Accentuating this policy consideration is particularly warranted when the alleged wrong is likely to continue until the entire class of injured citizens is adequately represented. The requirement of a direct and immediate injury to a substantial portion of the state's population should not preclude a state from exercising its *parens patriae* authority when there exists a severe and generalized harm to that state's economy.¹⁰¹ Rather, courts should adopt a flexible case-by-case approach which would permit the numerical prerequisite to be circumvented when there is a severe and generalized harm to a state's economy which indirectly harms that state's entire citizenry.

Finally, a contrary decision by the *Snapp* court would have had a considerably negative impact on many United States citizens who must compete with foreign workers for employment. Because of the steady influx of foreign labor into the United States, the competition for jobs among foreign and domestic workers poses a real threat to the employment prospects of many United States citizens. States should be granted standing as *parens patriae* to contest the discriminatory employment practices of American employers who hire foreign workers despite the availability of domestic laborers.¹⁰² If states are not permitted to represent their citizens to eliminate such conduct, discriminatory employment practices of this nature may become more prevalent throughout the country.¹⁰³

99. See text accompanying notes 23 & 28 *supra*.

100. Although the *Snapp* court did not devote much attention to this factor, the decision to grant Puerto Rico standing as *parens patriae* was based, to a significant extent, on the underlying rationale that the migrants would not obtain adequate relief without intervention by the Commonwealth. 632 F.2d at 370.

101. See, e.g., *Georgia v. Pennsylvania R.R.*, 324 U.S. 439 (1945) (although excessive freight rates imposed upon Georgian shippers did not have direct and immediate effect on substantial portion of Georgia's population, court granted Georgia standing as *parens patriae* because overall effect on Georgia's economy would be severe). See text accompanying notes 74-75 *supra*. See also *State Protection*, *supra* note 5, at 418 (in order to maintain *parens patriae* action "[i]t should be sufficient for the state to allege that a significant quasi-sovereign interest has been injured, regardless of the number of inhabitants adversely affected").

102. It has been suggested that as many as 630,000 migrant workers are illegally employed in the United States every year. Most of these illegal aliens come from Mexico, Latin America, and the Caribbean. DUNBAR & KRAVITZ, *supra* note 82, at 2-3. Moreover, because the wages of migrant workers are often lower than the minimum wage, domestic migrant workers who rely upon temporary employment are either unable to find a job or are forced to work for incredibly low wages.

103. Courts should recognize that states have a legitimate quasi-sovereign interest in protecting their workers from this type of discrimination because hiring foreign laborers, when qualified American laborers are available, violates the Immigration and Nationality Act, 8 U.S.C. § 1101

CONCLUSION

The limitations on a state's authority to bring suit as *parens patriae* on the basis of a potential future injury to its economy or citizenry remain to be defined. There is no doubt, however, that if the scope of the *parens patriae* doctrine goes unchecked, it may well result in attempts by states to abuse their *parens patriae* authority. In order to prevent such abuse, courts must continue to closely monitor the scope of the doctrine and allow states to sue as *parens patriae* only when a legitimate quasi-sovereign interest exists. If *parens patriae* standing is granted on a case-by-case basis, a more flexible view toward the number of citizens directly affected, and a greater consideration of the ability of those injured to litigate their own claims effectively, will alleviate the threat of states litigating individual claims of their citizens under the guise of *parens patriae*.¹⁰⁴ This approach will facilitate the expansion of the *parens patriae* doctrine and enable states to protect their economies and citizenry from present and future harm.¹⁰⁵

Richard W. Silverthorn

(1976), and the Temporary Foreign Labor Certification Regulations, 8 C.F.R. § 214.2 (h)(3)(i) (1980); 20 C.F.R. § 655.0 (1980). See notes 57-59 and accompanying text *supra*.

104. There is always the danger that the *parens patriae* doctrine will become so expansive that states will begin to infringe upon the privacy rights of their citizens, see Curtis, *supra* note 15, at 914-15, or will attempt to litigate the individual claims of their citizens. These concerns have previously been articulated by the Supreme Court. See, e.g., *Oklahoma ex rel. Johnson v. Cook*, 304 U.S. 387 (1938); *Oklahoma v. Atchison, Topeka & Santa Fe Ry.*, 220 U.S. 277 (1911); *New Hampshire v. Louisiana*, 108 U.S. 76 (1883). The presence of these, however, should not preclude the expansion of the *parens patriae* doctrine to meet the demands of the contemporary era.

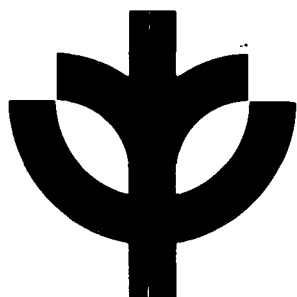
105. Subsequent to the writing of this casenote, the United States Supreme Court affirmed the Fourth Circuit *Snapp* decision. *Alfred L. Snapp & Sons, Inc. v. Puerto Rico*, 50 U.S.L.W. 5035 (U.S. July 1, 1982). In accordance with the appellate court opinion, the Supreme Court held that the indirect effects of an alleged injury may be considered in determining whether a sufficient quasi-sovereign interest exists for a state to bring an action on behalf of its citizens. *Id.* at 5039. Moreover, the Court found that a quasi-sovereign interest exists in ensuring that the state and its residents are not discriminated against with respect to the benefits that coincide with participation in the federal system. *Id.* at 5040. Consequently, Puerto Rico had *parens patriae* standing to redress the harmful effects of the discrimination that threatened the well-being of its population, and alternatively, to ensure the citizens of Puerto Rico equal participation in the employment scheme promulgated by the federal laws here involved. *Id.*

DEPAUL LAW REVIEW

INDEX

VOLUME 30

1981



DEPAUL UNIVERSITY COLLEGE OF LAW
CHICAGO, ILLINOIS

Copyright 1981
By DePaul University

PRINTED IN U.S.A.