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A Survey of Constitutional Standing in State Courts

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A SURVEY OF CONSTITUTIONAL STANDING IN STATE COURTS

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State courts sometimes limit their power to adjudicate cases according to constitutional standing requirements adopted by federal courts under Article III of the United States Constitution. Why? State courts are not governed by Article III, and as courts of general, rather than limited, jurisdiction, play a different role than federal courts. This Article surveys recent decisions of the fifty states and District of Columbia to answer three questions: (1) does the state apply constitutional standing requirements similar to the federal courts; (2) if so, what is the state's rationale for applying constitutional standing requirements; and (3) does the state recognize any exceptions to its constitutional standing requirements? The Article presents its results in terms of majority and minority positions, finding that: (1) a majority of states apply constitutional standing, but only a minority of those states adopt the controlling federal test articulated in *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992); (2) a majority of states that apply constitutional standing requirements attribute those requirements to something other than a written constitution; and (3) a majority of states recognize exceptions to their state constitutional standing requirements. Thus, I conclude that federal constitutional standing doctrine has had an outsized, but not controlling, influence on the development of state constitutional standing doctrines. Lastly, I recommend further study assessing the diversity of state rationales for constitutional standing and generating an alternative theory of constitutional standing distinguishable from Article III doctrine and better suited to the states' flexible approaches.

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I. INTRODUCTION AND METHODOLOGY

The purpose of this Article is to provide, by short summary of each state's relevant cases, a survey of the doctrine of constitutional standing as applied in the fifty states and the District of Columbia. Constitutional standing is distinguished from other types of standing, such as statutory or taxpayer standing, by its general application as a limitation on judicial power in all cases and causes of action. As the name suggests, this limitation is sometimes based on constitutional text—but not always. The doctrine is most often associated with Article III of the United States Constitution, which the United States Supreme Court has interpreted to limit the power of federal courts to adjudication of "cases" and "controversies" only.[1] The case and controversy requirement places a burden on the plaintiff to show that she is injured in a way remediable by the forum court.[2] If she cannot, there is no case or controversy capable of resolution—or, the case is not "justiciable"—and the judiciary's limited power cannot extend to the plaintiff's case.[3] This line of reasoning has had a significant impact on state court approaches to standing.[4] The following two oft-cited federal cases are worth highlighting for ease of reference later.

In *Ass'n of Data Processing Service Organizations, Inc. v. Camp*, the United States Supreme Court restated prior decisions on standing into a two-part test applied to statutory causes of action: To have standing, a plaintiff must show (1) "injury in fact," and (2) that the allegedly harmed interest is within the "zone of interests" protected by the statute providing the cause of action.[5] The *Data Processing* decision was a product of the rise of administrative litigation during the 1970's. As the regulatory state took form, federal courts found it difficult to rationalize statutes that authorized citizens to seek review of agency action in federal court with precedent, holding that Article III required a federal court to ensure that parties had a traditional legal interest at stake in order to hear the case.[6] For example,

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[1] *See* Lujan v. Defenders of Wildlife, 504 U.S. 555, 560 (1992).

[2] *Id.*; *see also* Antonin Scalia, *The Doctrine of Standing as an Essential Element of the Separation of Powers*, 17 SUFFOLK U. L. REV. 881, 885-86 (1983).

[3] *Lujan*, 504 U.S. at 561.

[4] *See, e.g.*, Mich. Citizens for Water Conservation v. Nestle Waters N. Am. Inc., 737 N.W.2d 447, 454 (Mich. 2007) ("Before his appointment to the United States Supreme Court, Chief Justice John Roberts wrote that the doctrine of standing 'implement[s] the Framers' concept of 'the proper—and properly limited—role of the courts in a democratic society' so that '[s]tanding is thus properly regarded as a doctrine of judicial self-restraint.'"), *overruled by* Lansing Sch. Educ. Ass'n v. Lansing Bd. of Educ., 792 N.W.2d 686 (Mich. 2010).

[5] 397 U.S. 150, 152-53 (1970).

[6] *See* Jonathan T. Molot, *An Old Judicial Role for a New Litigation Era*, 113 YALE L.J. 27, 101 (2003).

what is the traditional legal interest at stake in the Administrative Procedure Act's authorization of "affected" or "aggrieved" private individuals to challenge government action in the form of agency decisions?[7]

The *Data Processing* decision, if intended to clarify, was Delphic and disruptive.[8] What was clear was that the Court had discarded the "legal interests test" for standing, whereby a party must assert an invasion to "a legal right—one of property, one arising out of contract, one protected against tortious invasion, or one founded on a statute which confers a privilege"—as "go[ing] to the merits" of the case and inconsistent with both the requirements of Article III and "the trend . . . toward enlargement of the class of people who may protest administrative action."[9] What ultimately took the place of this test was the two-part, injury-in-fact and zone-of-interests test, with the former element reflecting traditional aspects of Article III standing, and the latter element reflecting the modern reliance on statutory causes of action.[10]

In another case, *Lujan v. Defenders of Wildlife*, the United States Supreme Court reformulated the Article III standing doctrine into a three-part test: To invoke federal jurisdiction, every plaintiff must show (1) "injury in fact—an invasion of a legally protected interest which is (a) concrete and particularized, . . . and (b) actual or imminent, not conjectural or hypothetical"; (2) a "causal connection between the injury and the conduct complained of—the injury has to be fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court"; and (3) that "it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision."[11] If the *Data Processing* decision was Delphic and disruptive, *Lujan* was unmistakably clear and disruptive. Federal courts

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[7] *See* 5 U.S.C. §§ 501 *et seq.*; *Standing to Seek Judicial Review of Administrative Action*, 84 HARV. L. REV. 177, 180 (1970) (discussing disagreement over the proper construction of the judicial review provisions in the Administrative Procedure Act) [hereinafter *Judicial Review of Agency Action*]; *see also id.* at 180-81 (discussing two opposing, prevalent views by Professors Davis and Jaffe).

[8] *Judicial Review of Agency Action*, *supra* note 7, at 182-83 ("Unfortunately, the Court's test is vague and its critical terms are left undefined . . . . It is even unclear whether or to what extent the Court's test is intended to be a relaxation of the standing doctrine . . . . The vagueness of the Court's test will make it difficult for the lower courts to apply.").

[9] *Data Processing*, 397 U.S. at 153-54; *Judicial Review of Agency Action*, *supra* note 7, at 179.

[10] *Data Processing*, 397 U.S. at 152-53; *see also, e.g.*, Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians v. Patchak, 132 S. Ct. 2199, 2210 (2012) (quoting *Data Processing*, 397 U.S. at 153) ("This Court has long held that a person suing under the APA must satisfy not only Article III's standing requirements, but an additional test: The interest he asserts must be 'arguably within the zone of interests to be protected or regulated by the statute' that he says was violated.").

[11] 504 U.S. 555, 560-61 (1992) (internal quotation marks omitted).

now had a three-part test to apply in every case, although the test is more easily satisfied in the types of cases that predate the administrative state.[12] The *Lujan* Court, without yet disposing of prudential or subjective elements of federal standing doctrine, made clear that its test was the "irreducible constitutional minimum" required by Article III of the United States Constitution.[13]

State courts have adopted various elements of *Data Processing*, *Lujan*, and other federal standing decisions in molding their own constitutional standing doctrines. This trend begs the question of why state courts of general jurisdiction adopt these federal limits when they are not subject to Article III of the United States Constitution. This article surveys the individual state courts' decisions for their answers to that question.

I approached this survey by researching three questions in the following order: First, I asked whether the state applies principles of constitutional standing, with a specific eye for whether the state court has adopted the *Lujan* test. Second, I used citations from those decisions to trace the source of their constitutional standing doctrine. Finally, I asked whether the state recognizes any exceptions to its constitutional standing doctrine—such as taxpayer or public importance standing—not to determine the substance of those exceptions, but to determine whether a state's minimum constitutional standing requirements were "reducible" unlike the federal test.

II. SUMMARY OF FINDINGS

While intended to be expansive, this survey is not exhaustive. Capturing a state's entire approach to standing is an uncertain endeavor, since the doctrine is cross-cutting, guided by an ongoing debate in constitutional theory, and often reliant on a court's own interpretation of sometimes opposing and out of context decisions across more than a century of its precedent. To allow for flexibility, this survey supports conclusions in terms of majority and minority approaches, distilled from the individual discussion of each state's cases below:

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[12] *Id.* at 561-62; *compare, e.g.*, Cass R. Sunstein, *What's Standing After Lujan? Of Citizen Suits, "Injuries," and Article III*, 91 MICH. L. REV. 163, 164-65 (1992) ("In 1992, Justice Antonin Scalia wrote the dramatic opinion for the Supreme Court in *Lujan v. Defenders of Wildlife*, which significantly shifts the law of standing."), *with* John G. Roberts, *Article III Limits on Statutory Standing*, 42 DUKE L.J. 1219, 1219 (dismissing criticism of *Lujan* as "like criticizing a person for speaking awful French, only to discover that he was in fact speaking fluent Spanish.").

[13] *Lujan*, 504 U.S. at 560. The United States Supreme Court has since criticized and modified prudential standing elements in *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 134 S. Ct. 1377, 1386-88 (2014).

- An overwhelming majority of states apply some type of constitutional standing doctrine.[14]
- An overwhelming majority of states provide some exception to their constitutional standing requirements, meaning that the requirements are not "irreducible" as in *Lujan*. For example, some states make constitutional standing requirements discretionary, or provide explicit exceptions for cases brought by taxpayers or in cases of public importance.[15]
- A substantial majority of states do not attribute their constitutional standing requirements to a provision of their state constitution.[16]

About half of the states, constituting a slight minority, have explicitly adopted *Lujan*—mostly in full, but some only in part—while the other half, a slight majority, have not explicitly adopted *Lujan*.[17] About half of the states, a bare majority, have engaged in some analysis distinguishing federal

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[14] Arkansas and Florida apply familiar principles of standing, but with such reliance on statute or the specific cause of action that it is difficult to label those states' doctrine as constitutional standing. Washington is similar to Arkansas and Florida courts in closely tying standing with the specific cause of action, but explicitly applies the *Lujan* test in cases brought under its state administrative procedure act. While Oregon courts likely still apply some general standing requirements, the Oregon Supreme Court recently issued an opinion substantially reworking its standing doctrine and leaving open whether the Oregon Constitution mandates any cross-cutting, constitutional requirements, or what those requirements are.

[15] It might be safe to say every state provides some exception to their generally applicable standing requirements. The question is uncertain in the District of Columbia and New Hampshire. For example, New Hampshire Supreme Court recently declared a statute authorizing general taxpayer standing as unconstitutional because it was inconsistent with the state's standing requirements. Nevertheless, as discussed *infra*, older exceptions still appear to exist in New Hampshire. Likewise, the District's courts have recently sought to limit some existing exceptions established by prior cases.

[16] Only twelve states attribute their constitutional standing requirements to a provision of their state constitution: Alabama, Colorado, Indiana, Kansas, Missouri, Montana, New Hampshire, Ohio, Pennsylvania, Texas, and Vermont.

[17] Twenty six states do not explicitly apply *Lujan*: Alaska, Arizona, Colorado, Connecticut, Arkansas, Florida, Indiana, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Maine, Mississippi, Missouri, Montana, Nebraska, Nevada, New Jersey, New York, North Carolina, North Dakota, Oregon, Tennessee, Utah, and Wisconsin. Twenty five states do explicitly apply *Lujan*, at least in part: Alabama, California, Delaware, District of Columbia, Georgia, Hawaii, Idaho, Illinois, Iowa, Minnesota, New Hampshire, New Mexico, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Texas, Vermont, Virginia, Washington, West Virginia, and Wyoming. "Explicitly" is an important modifier, because states that have not adopted *Lujan* may still apply aspects of federal doctrine from other federal cases, or may apply requirements similar—but not identical to—*Lujan*, like requiring a showing of "injury in fact" or adopting standing based on a separation of powers rationale.

constitutional standing doctrine from the state's standing doctrine.[18] Among the minority of states that have explicitly adopted at least part of *Lujan*, a substantial minority has distinguished their standing doctrine from federal doctrine.[19]

A. State-by-State Analysis

1. Alabama

The Alabama courts apply the *Lujan* test as an articulation of a long-standing state requirement that litigants show injury, with an exception for public interest standing. Alabama courts self-impose a limitation of judicial power to "cases and controversies." No specific provision of the Alabama Constitution limits the courts' powers to address cases and controversies, but Article III of the Alabama Constitution does include a provision mandating a separation of powers, explicitly prohibiting that "the judicia[ry] shall never exercise the legislative and executive powers, or either of them."[20] In Ex parte Jenkins, the Alabama Supreme Court identified, as an element of separation of powers, the idea that "the core judicial power is the power to declare finally the rights of the parties, in a particular case or controversy."[21] The Jenkins court included explicit citations to cases of the United States Supreme Court interpreting Article III, linking the requirements of the Alabama Constitution with the requirements of Article III of the United States Constitution.[22] In *Town of Cedar Bluff v. Citizens Caring for Children*, the Alabama Supreme Court adopted the *Lujan* test, "effectively restat[ing]" a standard from an old Alabama case, *Jones v. Black*:

> A party who seeks to have an act of the legislature declared unconstitutional, must not only show that he is, or will be

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[18] Twenty six states: Alaska, Arizona, California, Colorado, Connecticut, Delaware, District of Columbia, Hawaii, Illinois, Indiana, Iowa, Maryland, Maine, Mississippi, Montana, Nevada, New Hampshire, New Jersey, New Mexico, North Carolina, Oregon, Pennsylvania, Rhode Island, South Dakota, Utah, and Wisconsin.

[19] Of the twenty six states that have explicitly adopted at least part of *Lujan*, twelve states have distinguished their standing doctrine from federal standing doctrine: California, Connecticut, Delaware, District of Columbia, Hawaii, Illinois, Iowa, New Hampshire, New Mexico, Pennsylvania, Rhode Island, and South Dakota.

[20] ALA. CONST. art. III, § 43.

[21] 723 So. 2d 649, 656 (Ala. 1998); *see also* City of Daphne v. City of Spanish Fort, 853 So. 2d 933, 942-45 (Ala. 2003) (discussing separation of powers doctrine in Alabama).

[22] *Jenkins*, 723 So. 2d at 656-57.

> injured by it, but he must also show how and in what respect he is or will be injured and prejudiced by it. Injury will not be presumed; it must be shown.[23]

The *Lujan* standard has thus trickled down as the requirement of standing in Alabama for all cases.[24] The Alabama Supreme Court has reaffirmed a public interest exception to its constitutional standing doctrine through an "equally entrenched" standing rule that applies in mandamus cases seeking to compel performance of a public duty.[25] This exception allows parties to enter Alabama courts if they can "show that they are seeking to require a public officer to perform a legal duty in which the public has an interest."[26]

2. Alaska

Alaskan courts do not consider standing a constitutional limitation on their jurisdiction.[27] In the case *Wagstaff v. Superior Court*, Family Division, the Alaska Supreme Court adopted an "injury-in-fact" test.[28] Rather than jurisdiction, this test is based on the principle that state courts should not resolve abstract questions or issue advisory opinions, and acts to both ensure adversity and allow judicial of self-restraint.[29]

The Alaska Supreme Court has not adopted the *Lujan* test and, following recent federal standing rulings, has urged that "the interest-injury analysis . . . must have its own unique meaning in Alaska jurisprudence if Alaska standing doctrine is to retain its quality of relative openness."[30] However, an unpublished opinion by the Alaska Supreme Court applied *Lujan* to dismiss a plaintiff's "non-justiciable abstract and theoretical claims."[31] Furthermore, a published decision cited *Lujan's* "condemn[ation]" of a statute's authorization of claims based on "impermissible 'abstract' procedural injury" as a constitutional boundary away from which to interpret an Alaskan law according to the

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[23] 904 So. 2d 1253, 1256-57 (Ala. 2004) (citing Jones v. Black, 48 Ala. 540, 543 (1872)).

[24] *See, e.g.*, *Ex parte* Aull, 149 So. 3d 582, 592 (Ala. 2014).

[25] State *ex rel.* Alabama Policy Inst., No. 1140460, 2015 WL 892752, at *16-*19 (Ala. Mar. 3, 2015) (internal quotation marks omitted), *abrogated on other grounds by* Obergefell v. Hodges, 135 S. Ct. 2584 (2015).

[26] *Id.*

[27] Bowers Office Prods. v. Univ. of Alaska, 755 P.2d 1095, 1096-97 (Alaska 1988).

[28] 535 P.2d 1220, 1225 (Alaska 1975).

[29] *Bowers Office Prods.*, 755 P.2d at 1097; *see also* Fannon v. Matanuska-Susitna Borough, 192 P.3d 982, 987 n.27 (Alaska 2008) (explicitly distinguishing *Lujan*).

[30] *See Bowers Office Prods.*, 755 P.2d at 1097 n.5.

[31] Lamb v. Obama, No. S-15155, 2014 WL 1016308, at *1 (Alaska Mar. 12, 2014).

constitutional avoidance canon.[32]

Nevertheless, Alaskan courts explicitly recognize two forms of standing distinct from *Lujan*: interest-injury and citizen-taxpayer.[33] Citizen-taxpayer standing is determined case-by-case, and requires showing that a case is of "public significance" and that the plaintiffs are "appropriate."[34] To establish interest-injury standing, plaintiffs must show that they have a "sufficient personal stake in the outcome of the controversy and an interest which is adversely affected by the complained-of conduct."[35] The degree of the injury need not be great, as an "identifiable trifle" is enough to establish standing "to fight out a question of principle."[36]

3. Arizona

In Arizona, standing is considered a prudential concern rather than a jurisdictional one.[37] To have standing, a plaintiff must allege a "distinct and palpable injury."[38] This viewpoint was adopted "as a matter of judicial restraint" to "sharpen the legal issues presented by ensuring that true adversaries are before the court."[39] This assures that courts do not issue mere "advisory opinions," even though the Arizona Constitution does not contain a "case or controversy" provision similar to that of the federal constitution.[40] The Arizona Supreme Court has explicitly distinguished *Lujan* from its standing jurisprudence, although the Arizona Court of Appeals has applied *Lujan* and other federal cases in both published and unpublished decisions as "instructive" or outright controlling.[41] Since standing is a prudential concern, Arizona courts may waive standing in cases involving "issues of great public importance that are likely to recur."[42]

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[32] Chenega Corp. v. Exxon Corp., 991 P.2d 769, 785 (Alaska 1999).

[33] Ruckle v. Anchorage Sch. Dist., 85 P.3d 1030, 1034 (Alaska 2004).

[34] Keller v. French, 205 P.3d 299, 302 (Alaska 2009); *Ruckle*, 85 P.3d at 1037.

[35] *Keller*, 205 P.3d at 304-05 (internal quotation marks omitted).

[36] Larson v. State, Dep't of Corr., 284 P.3d 1, 12 (Alaska 2012).

[37] Biggs v. Cooper *ex rel.* Cnty. of Maricopa, 341 P.3d 457, 460 (Ariz. 2014).

[38] Sears v. Hull, 961 P.2d 1013, 1017 (Ariz. 1998).

[39] *Id.* at 1019.

[40] *Id.*; *see also* Dobson v. State *ex rel.*, Comm'n on Appellate Court Appointments, 309 P.3d 1289, 1292 (Ariz. 2013).

[41] *Sears*, 961 P.2d at 1018 n.7; *see also* Freedom From Religion Found. v. Brewer, No. 1 CA-CV 12-0684, 2013 WL 2644702, at *3 (Ariz. Ct. App. June 11, 2013); Home Builders Ass'n of Cent. Ariz. v. City of Prescott, No. 1 CA-CV 09-0349, 2010 WL 5019136, at *4 (Ariz. Ct. App. Sept. 28, 2010); Home Builders Ass'n of Cent. Ariz. v. Kard, 199 P.3d 629, 632 (Ariz. Ct. App. 2008); Karbal v. Ariz. Dep't of Revenue, 158 P.3d 243, 247 (Ariz. Ct. App. 2007); McComb v. Super. Court, 943 P.2d 878, 882 (Ariz. Ct. App. 1997).

[42] *Sears*, 961 P.2d at 1019.

4. Arkansas

Arkansas courts do not appear to have a generally applicable constitutional standing doctrine.[43] Rather, the courts generally determine standing based on the availability of a cause of action under statutes or common law.[44] While Arkansas courts have not addressed *Lujan*,[45] the state does recognize a generalized doctrine for taxpayer standing, whereby citizens may bring public-funds cases because they have a "vested interest in ensuring that the tax money they have contributed to the state treasury is lawfully spent."[46] The only standing requirements in public-funds cases then, are that the plaintiff is a citizen and that he or she has contributed tax money to the general treasury.[47]

5. California

California courts distinguish that there is no "case and controversy" requirement in the California Constitution, unlike Article III of the United States Constitution.[48] Instead, standing is often determined case-by-case with reference to substantive law controlling whether a plaintiff has a cause of action.[49] This approach, however, conflicts with recent California decisions requiring that a plaintiff show a "beneficial interest" in the controversy "over and above the interest held in common with the public at large."[50] That injury must be "concrete and actual, and not conjectural or hypothetical," and of "sufficient magnitude" to ensure adequate presentation of the issues before the court.[51] These requirements were developed in reliance on federal jurisdictional decisions, separation of

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[43] Grand Valley Ridge v. Metro. Nat'l Bank, 388 S.W.3d 24, 31 (Ark. 2012); Farm Bureau Mut. Ins. of Ark. v. Running M Farms, Inc., 237 S.W.3d 32, 36 (Ark. 2006).

[44] *See Farm Bureau*, 237 S.W.3d at 36-40; *see also, e.g.*, May v. Akers-Lang, 386 S.W.3d 378, 382 (Ark. 2012); *see generally* ARK. CONST. art. XVI, § 13 ("Any citizen of any county, city or town may institute suit, in behalf of himself and all others interested, to protect the inhabitants thereof against the enforcement of any illegal exactions whatever.").

[45] *But see* Brewer v. Carter, 231 S.W.3d 707, 710 (Ark. 2006) (rejecting without analysis a party's argument that standing requires, at minimum, an "'injury in fact,' fairly traceable to defendant's conduct, which is likely to be redressed by a favorable decision.").

[46] Chapman v. Bevilacqua, 42 S.W.3d 378, 383 (Ark. 2001).

[47] *Id.*

[48] Grosset v. Wenaas, 175 P.3d 1184, 1196 n.13 (Cal. 2008) (citing Gollust v. Mendell, 501 US 115, 125–26 (1991)); *see also* Jasmine Networks, Inc. v. Super. Court, 103 Cal. Rptr. 3d 426, 432 (Cal. Ct. App. 2009).

[49] *Grosset*, 175 P.3d at 1196 n.13; *see also Jasmine Networks, Inc.*, 103 Cal. Rptr. 3d at 432.

[50] Teal v. Super. Court, 336 P.3d 686, 689 (Cal. 2014) (quoting Holmes v. Cal. Nat'l Guard, 109 Cal. Rptr. 2d 154, 170 (Cal. Ct. App. 2001)).

[51] *Id.*

powers concerns, and the "tenet of common law jurisprudence" that "courts will not entertain an action which is not founded on an actual controversy."[52] However, "demonstrat[ing] that the subject of a particular challenge has the effect of infringing some constitutional or statutory right may qualify as a legitimate claim of beneficial interest sufficient to confer standing on that party."[53] This *caveat* potentially folds the external standing inquiry back into the cause of action.[54]

California has applied part of the *Lujan* test, nevertheless, where California law has specifically limited the cause of action to those who "ha[ve] been injured in fact under the standing requirements of the United States Constitution."[55] Additionally, California allows public interest standing to request a writ of mandamus or similar action. Where it is a question of public right and the object of the mandamus is to "procure the enforcement of a public duty," the party requesting the writ "need not show that he has any legal or special interest in the result, since it is sufficient that he is interested as a citizen in having the laws executed and the duty in question enforced."[56] Furthermore, the California Code of Civil Procedure authorizes taxpayer standing.[57]

6. *Colorado*

Colorado imposes dated principles of federal constitutional standing via specific provisions of the Colorado constitution. In *Wimberly v. Ettenberg*, the Colorado Supreme Court adopted principles of federal standing as articulated by the United States Supreme Court decision in *Data Processing*.[58] Later decisions described the *Wimberly* decision as a two-part test, while also connecting those elements to specific provisions of the Colorado Constitution.[59] The first element, whether the plaintiff was

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[52] Pac. Legal Found. v. Cal. Coastal Comm'n, 655 P.2d 306, 314 (Cal. 1982) (en banc) (quoting Cal. Water & Tel. Co. v. Cnty. of L.A., 61 Cal. Rptr. 618, 623 (Cal. Ct. App. 1967)); *see also* Mun. Court v. Super. Court, 249 Cal. Rptr. 182, 185 (Cal. Ct. App. 1988).

[53] *Holmes*, 109 Cal. Rptr. 2d at 170 (citing Assoc'd Builders & Contractors, Inc. v. S.F. Airports Co., 981 P.2d 499, 503–05 (Cal. 1999)).

[54] *Id.*

[55] Kwikset Corp. v. Super. Court, 246 P.3d 877, 885 (Cal. 2011). *But see id.* at 885 n.5 (citing Jasmine Networks, Inc. v. Super. Court, 103 Cal. Rptr. 3d 426, 432-35 (Cal. Ct. App. 2009)).

[56] Save the Plastic Bag Coal. v. City of Manhattan Beach, 254 P.3d 1005, 1011 (Cal. 2011) (internal edits omitted) (quoting Bd. of Soc. Welfare v. Cnty. of L.A., 162 P.2d 627, 628–29 (Cal. 1945)).

[57] *See* CAL. CIV. PROC. CODE § 526a (West 2015).

[58] Wimberly v. Ettenberg, 570 P.2d 535, 538 (Colo. 1977) (citing Ass'n of Data Processing Serv. Org., Inc. v. Camp, 397 U.S. 150, 151 (1970)).

[59] HealthONE v. Rodriguez *ex rel.* Rodriguez, 50 P.3d 879, 892 (Colo. 2002) (en banc) (quoting

injured in fact, is considered a constitutional requirement "rooted in Article VI, section 1 of the Colorado Constitution," under which the courts are limited to resolving "actual controversies."[60] Moreover, the Colorado Supreme Court held that the injury may be either tangible or intangible, but can neither be "indirect and incidental to the defendant's action," nor based on a "remote possibility of a future injury."[61] The second element, that the injury be "to a legally protected right," demonstrates a concern for judicial restraint that is similar to separation of powers concerns cited by the *Wimberly* court and grounded in Article III of the Colorado constitution.[62]

The Colorado Supreme Court has explicitly declined to apply *Lujan*.[63] To satisfy the "legally-protected-interest requirement," a plaintiff may assert "[c]laims for relief under the constitution, the common law, a statute, or a rule or regulation."[64] Standing is considered a "jurisdictional prerequisite that can be raised any time during the proceedings."[65] Unless there is a constitutional challenge, failure to show either element defeats standing.[66] Lastly, the Colorado Supreme Court has granted "broad taxpayer standing . . . when a plaintiff argues that a governmental action that harms him is unconstitutional."[67]

7. *Connecticut*

In Connecticut, standing is synonymous with "aggrievement," and proof of aggrievement is a prerequisite to jurisdiction in state courts.[68] While the courts recognize that they are "not required to apply federal precedent in determining the issue of aggrievement,"[69] important aspects of

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Wimberly, 570 P.2d at 539).

[60] *Id.* (citing Maurer v. Young Life, 779 P.2d 1317, 1323 (Colo. 1989) (en banc)).

[61] Hickenlooper v. Freedom from Religion Found., Inc., 338 P.3d 1002, 1007 (Colo. 2014) (internal quotation marks omitted).

[62] *Compare HealthONE*, 50 P.3d at 892, *with Wimberly*, 570 P.2d at 538; *see also Hickenlooper*, 338 P.3d at 1006–07 (comparing both Article VI, § 1 and Article III concerns to the first injury element, but not to the second element).

[63] City of Greenwood Vill. v. Petitioners for Proposed City of Centennial, 3 P.3d 427, 437 n.8 (Colo. 2000) (en banc) (citing Lujan v. Defenders of Wildlife, 504 U.S. 555, 560 (1992)).

[64] *Hickenlooper*, 338 P.3d at 1007 (citing Ainscough v. Owens, 90 P.3d 851, 856 (Colo. 2004) (en banc)).

[65] *Id.* at 1006.

[66] *See* Taxpayers for Pub. Educ. v. Douglas Cnty. Sch. Dist., 351 P.3d 461, 466 (Colo. 2015).

[67] *Ainscough*, 90 P.3d at 856.

[68] Mystic Marinelife Aquarium, Inc. v. Gill, 400 A.2d 726, 731 (Conn. 1978) (citing Hughes v. Town Planning & Zoning Comm'n, 242 A.2d 705, 707–08 (Conn. 1968)).

[69] *Mystic Marinelife*, 400 A.2d at 731; *see also* Andross v. Town of W. Hartford, 939 A.2d 1146, 1158 (Conn. 2008); City of New Haven v. Pub. Utilities Comm'n, 345 A.2d 563, 573 (Conn. 1974).

aggrievement were derived from federal decisions—particularly the leading United States Supreme Court decisions of the 1970's, *Data Processing*,[70] and *Sierra Club v. Morton*.[71] Aggrievement is not constitutionally grounded, but appears to be based on fundamental concepts of judicial administration that "no person is entitled to set the machinery of the courts into operation unless for the purpose of obtaining redress for an injury he has suffered or to prevent an injury he may suffer, either in an individual or representative capacity."[72]

Aggrievement is split into two types: "classical aggrievement" and "statutory aggrievement."[73] Classical aggrievement requires a two-part showing: a "specific, personal and legal interest in the subject matter of the decision, as opposed to a general interest that all members of the community share," and that the aforementioned interest was "specially and injuriously affected."[74] Classical aggrievement "does not demand certainty, only the possibility of an adverse effect on a legally protected interest."[75] Statutory aggrievement is defined and conferred by statute, but "the interest that the plaintiff seeks to vindicate [must be] arguably within the zone of interests protected by the applicable statute."[76]

Although Connecticut appellate courts have cited the *Lujan* test, they have never fully endorsed this method, maintaining that "[t]here is little material difference between what we have required and what the United States Supreme Court in *Lujan* demanded of the plaintiff to establish standing."[77] Connecticut courts do recognize taxpayer standing where the plaintiff can "demonstrate that the allegedly improper municipal conduct cause[d it] to suffer some pecuniary or other great injury," which may or may not include a municipality's misappropriation of funds.[78]

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[70] 397 U.S. 150 (1970).

[71] 405 U.S. 727 (1972).

[72] Waterbury Trust Co. v. Porter, 35 A.2d 837, 839 (Conn. 1944); *see also* Conn. Indep. Util. Workers, Local 12924 v. Dep't of Pub. Util. Control, 92 A.3d 247, 253 (Conn. 2014) (quoting *Waterbury*, 35 A.2d at 839).

[73] Fort Trumbull Conservancy, L.L.C. v. Alves, 815 A.2d 1188, 1194 (Conn. 2003).

[74] *Id.*

[75] *Id.*

[76] *Id.* at 1194, 1208; *see also* Carraway v. Comm'r of Correction, 119 A.3d 1153, 1157 (Conn. 2015) (applying the "well established two-pronged test").

[77] Gay & Lesbian Law Students Ass'n. v. Bd. of Trs., 673 A.2d 484, 491 n.10 (Conn. 1996); *see also* Andross v. Town of W. Hartford, 939 A.2d 1146, 1159-60 (Conn. 2008); Johnson v. Rell, 990 A.2d 354, 360 n.7 (Conn. Ct. App. 2010).

[78] W. Farms Mall, L.L.C. v. Town of W. Hartford, 901 A.2d 649, 657, 662 (Conn. 2006) (internal edits omitted).

8. Delaware

Delaware has adopted the three-part test from *Lujan* "as a matter of self-restraint."[79] Delaware does not ground its constitutional standing doctrine in the Delaware Constitution, but rather agrees with a trend of decisions from the Supreme Courts of other northeastern states that, "[u]nlike the federal courts, where standing may be subject to state constitutional limits, state courts apply the concept of standing as a matter of self-restraint to avoid the rendering of advisory opinions at the behest of parties who are 'mere intermeddlers.'"[80]

Delaware courts adopted the *Lujan* test through a circular path. The Delaware Supreme Court first applied the two-part standing test from *Data Processing* in *Gannett Co. v. State*, to provide standing to "media contests of restrictive orders where the media has alleged injury."[81] Then, the Court applied the two-part test of *Data Processing* again in *Oceanport Indus., Inc. v. Wilmington Stevedores, Inc.*, to interpret a statute that provided standing to "affected persons," analogous to the statue addressed in *Data Processing*.[82] The Court in *Oceanport Industries* added that *Lujan* "refined" *Data Processing* such that the three-part *Lujan* test applied to its case.[83]

Thereafter, the Delaware Supreme Court cited *Oceanport Industries* as "recogniz[ing] that the *Lujan* requirements for establishing standing under Article III to bring an action in federal court are generally the same as the standards for determining standing to bring a case or controversy within the courts of Delaware."[84] However, the *Lujan* test, as adopted in Dover, is not uniformly applied. For example, the Delaware Supreme Court has held that access to a statutory or common law cause of action is sufficient to establish standing under Dover, despite the individual elements of *Lujan*.[85] Similarly, Delaware does recognize taxpayer standing for plaintiffs "seeking to enjoin the misuse of public money or lands."[86]

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[79] Dover Historical Soc. v. City of Dover Planning Comm'n, 838 A.2d 1103, 1111 (Del. 2003).

[80] Stuart Kingston, Inc. v. Robinson, 596 A.2d 1378, 1382 (Del. 1991) (quoting Crescent Park Tenants Assoc. v. Reality Equities Corp. of N.Y., 275 A.2d 433 (N.J. 1971)).

[81] 565 A.2d 895, 897 (Del. 1989).

[82] 636 A.2d 892, 903 (Del. 1994).

[83] *Id.*

[84] *Dover Historical Soc.*, 838 A.2d at 1111.

[85] *See, e.g., In re* Celera Corp. S'holder Litig., 59 A.3d 418, 430 (Del. 2012); *cf.* O'Neill v. Middletown, No. Civ.A. 1069-N, 2006 WL 205071, at *28 (Del. Ch. Jan. 18, 2006) (stating that *Dover* applies "[i]n the absence of a specific statutory grant of review").

[86] Reeder v. Wagner, 974 A.2d 858 (Del. 2009).

9. District of Columbia

Despite finding that federal decisions that "arise in the context of the case or controversy requirement of Article III of the Constitution, 'are not binding on this court,'"[87] D.C. courts "have said since the creation of the current District of Columbia court system that [they] will follow the federal constitutional standing requirement," and thus "have followed the constitutional minimum of standing as articulated in . . . *Lujan*."[88]

In the District's courts, "[s]tanding is a threshold jurisdictional question which must be addressed prior to and independently of the merits of a party's claims."[89] Nevertheless, the District's courts appear to apply federal precedent flexibly. For example, they make it clear that "when Congress intends to extend standing to the full limit of Article III, the sole requirement for standing is a minima of injury in fact," and "[o]ne manifestation of injury in fact is the violation of legal rights created by statute."[90] Thus, D.C. courts' ability to apply constitutional-style standing restrictions is limited to statutory causes of action.[91] Likewise, the District's courts note that "one area in which [they] have not followed strictly federal justiciability requirements concerns the doctrine of mootness."[92] The courts do recognize some exceptions, including their finding that "[c]onsumers of regulated products and services have standing to protect the public interest in the proper administration of a regulatory system enacted for their benefit," but have recently required an additional showing of injury in these cases.[93]

10. Florida

Florida does not seem to apply an overarching doctrine of

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[87] Atchison v. District of Columbia, 585 A.2d 150, 153 (D.C. 1991) (citing Lynch v. United States, 557 A.2d 580, 582 (D.C. 1989)).

[88] Grayson v. AT&T Corp., 15 A.3d 219, 235 n.38, 235 (D.C. 2011); UMC Dev., L.L.C. v. District of Columbia, 120 A.3d 37, 42 (D.C. 2015) (applying *Grayson* and *Lujan*).

[89] *UMC Dev., L.L.C.*, 120 A.3d at 42 (internal edits omitted).

[90] *Grayson*, 15 A.3d at 234. *Compare id.*, *with* Lujan v. Defenders of Wildlife, 504 U.S. 555, 598 n.4 (1992).

[91] *Compare Grayson*, 15 A.3d at 234, *with Lujan*, 504 U.S. at 598 n.4.

[92] *Grayson*, 15 A.3d at 235 n.38.

[93] D.C. Appleseed Ctr. for Law & Justice, Inc. v. D.C. Dep't of Ins., Sec., & Banking, 54 A.3d 1188, 1200-01 (D.C. 2012) (quoting Envtl. Def. Fund, Inc. v. Hardin, 428 F.2d 1093, 1097 (D.C. Cir. 1970) (finding that a "demonstrated interest in protecting the environment from pesticide pollution" satisfied "the necessary stake in the outcome of a challenge to . . . contest the issues with the adverseness required by Article III of the Constitution.")).

constitutional standing.[94] Instead, Florida equates standing with access to a cause of action, often by statute.[95] Florida courts have imposed principles controlling "taxpayer standing" in challenges to government action. In *School Board of Volusia County v. Clayton*, the Florida Supreme Court explained that there [are] two ways to achieve standing in taxpayer cases: either a taxpayer must "allege a special injury distinct from other taxpayers in the taxing district to bring suit," or make "an attack upon constitutional grounds based directly upon the Legislature's taxing and spending power."[96] This decision reaffirmed a requirement for "special injury" that the court traced back to an old case, *Rickman v. Whitehurst*.[97]

11. Georgia

In Georgia, standing is a "constitutional and procedural concept" that "falls under the broad rubric of 'jurisdiction' in the general sense," and "is a prerequisite for the existence of subject matter jurisdiction."[98] Georgia's standing doctrine appears to have derived mostly from reference to federal decisions.[99] Georgia courts have adopted the *Lujan* test as an articulation of their requirement that a plaintiff must show injury to have standing to challenge the constitutionality of a state law.[100] The Georgia Supreme Court has referred to and applied *Lujan* outside of that context as well, but has not adopted the *Lujan* test in all cases.[101] For example, Georgia courts recognize that "citizens and taxpayers may contest the expenditure of public funds by suit for injunction."[102]

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[94] Florida courts have not adopted the constitutional standing principles of *Lujan*. *See* Save Homosassa River Alliance, Inc. v. Citrus Cnty., Fla., 2 So. 3d 329, 343 (Fla. Dist. Ct. App. 2008) (Pleus, J., dissenting).

[95] *See id.* at 336 (discussing Citizens Growth Mgmt. Coal. of W. Palm Beach, Inc. v. City of W. Palm Beach, Inc., 450 So. 2d 204, 206 (Fla. 1984) (standing to challenge zoning decisions)); NAACP, Inc. v. Fla. Bd. of Regents, 863 So. 2d 294, 297 (Fla. 2003) (discussing Fla. Home Builders Ass'n v. Dep't of Labor & Emp't Sec., 412 So. 2d 351, 352 (Fla. 1982) (standing to challenge agency action)).

[96] 691 So. 2d 1066, 1067 (Fla. 1997).

[97] 73 Fla. 152, 74 So. 205 (Fla. 1917).

[98] Blackmon v. Tenet Healthsystem Spalding, Inc., 667 S.E.2d 348, 350 (Ga. 2008) (quoting Davis v. Fed. Election Comm'n, 554 U.S. 724 (2008)); *see also* Sherman v. City of Atlanta, 744 S.E.2d 689, 692 (Ga. 2013).

[99] *See Sherman*, 744 S.E.2d at 692; *see also* Atlanta Taxicab Co. Owners Ass'n v. City of Atlanta, 638 S.E.2d 307, 318 (Ga. 2006).

[100] *See, e.g.*, *Atlanta Taxicab Co. Owners Ass'n*, 638 S.E.2d at 318.

[101] Oasis Goodtime Emporium I, Inc. v. City of Doraville, 773 S.E.2d 728, 734 n.9 (Ga. 2015) ("This Court has previously cited *Lujan* in assessing standing under Georgia law."); *see also* Granite State Outdoor Adver., Inc. v. City of Roswell, 658 S.E.2d 587, 588 (Ga. 2008).

[102] *See* Brock v. Hall Cnty., 236 S.E.2d 90, 91 (Ga. 1977); *see also* SJN Props., L.L.C. v. Fulton Cnty. Bd. of Assessors, 770 S.E.2d 832, 838 n.7 (Ga. 2015) (although this does not include injunctions against individual officials).

12. Hawaii

Hawaii courts apply the *Lujan* test based on a belief that "judicial power to resolve public disputes in a system of government where there is a separation of powers should be limited to those questions capable of judicial resolution and presented in an adversary context."[103] Standing, though not described as jurisdictional, is "a threshold matter, even if it is not raised by the parties."[104] If a party lacks standing, Hawaii courts "must dismiss the appeal without reaching the merits of the case."[105] Hawaii distinguishes that "the courts of Hawaii are not subject to a 'cases or controversies' limitation like that imposed upon the federal judiciary by Article III, § 2 of the United States Constitution," and apply standing as a "'prudential rule[]' of judicial self-governance 'founded in concern about the proper and properly limited role of courts in a democratic society.'"[106] Similarly, standing is not tied to any provision of the Hawaii constitution, but rather arose by reference to federal and state cases recognizing other self-imposed justiciability doctrines.[107]

Hawaii courts apply standing rules liberally, holding that they "must take guidance from applicable statutes or constitutional provisions regarding the right to bring suit" but that "standing requirements should not be barriers to justice."[108] Hawaii courts recognize taxpayer standing to challenge government action where the plaintiff is "a taxpayer who contributes to the particular fund from which the illegal expenditures are allegedly made" and "suffer[s] a pecuniary loss by the increase of the burden

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[103] Sierra Club v. Dep't of Transp., 167 P.3d 292, 312 (Haw. 2007) (citing Life of the Land v. Land Use Comm'n, 623 P.2d 431 (Haw. 1981)); *see also* Mottl v. Miyahira, 23 P.3d 716, 728 (Haw. 2001) (discussing standing generally); Akau v. Olohana Corp., 652 P.2d 1130, 1134 (Haw. 1982) (adopting what ultimately became the three-part *Lujan* test via Valley Forge Christian Coll. v. Ams. United for Separation of Church & State, Inc., 454 U.S. 464, 472 (1982)).

[104] McDermott v. Ige, 349 P.3d 382, 390 (Haw. 2015).

[105] *Id.*

[106] *Sierra Club*, 167 P.3d at 312 (citing Warth v. Seldin, 422 U.S. 490, 498 (1975)).

[107] *Id.* (citing State v. Maxwell, 617 P.2d 816, 820 (Haw. 1980) (ripeness); Wong v. Bd. of Regents, 616 P.2d 201, 204 (Haw. 1980) (discussing mootness and prohibition of advisory opinions); Schwab v. Ariyoshi, 564 P.2d 135, 142–43 (Haw. 1977) (asking as a "threshold question . . . whether or not the doctrine of separation of powers will prevent a court from investigating possible violations of legislative rules."); Territory v. Tam, 36 Haw. 32, 35 (1942) (discussing the political question doctrine); *see also* Murphy v. McKay, 26 Haw. 171, 173 (Haw. 1921) ("The duty of this court, as of every other judicial tribunal, is to decide actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it.") (quoting Mills v. Green, 159 U.S. 651, 653 (1895)).

[108] *Sierra Club*, 167 P.3d at 312 (internal quotation marks omitted).

of taxation."[109] In fraud cases, this second element is "presumed," and in certain other circumstances, overall taxpayer standing is presumed.[110] Hawaii courts have also "broadened standing in actions challenging administrative decisions."[111] Additionally, Hawaii courts specifically apply a "less rigorous standing requirement . . . in environmental cases," recognizing a provision of the Hawaii Constitution providing environmental rights.[112]

13. Idaho

"Idaho has adopted the constitutionally based federal justiciability standard" and, "[w]hen deciding whether a party has standing," Idaho courts look to United States Supreme Court decisions for guidance.[113] Particularly, Idaho courts have adopted the *Lujan* test.[114] In Idaho, "standing is jurisdictional and may be raised at any time, including on appeal."[115] Standing is not based on any constitutional provision and is imposed to "ensure[] the rational operation of the legal process;" it is the "inherent duty of any court . . . to inquire into the underlying interest at stake in a legal proceeding."[116] Every lawsuit must contain, as a precondition for any party maintaining the lawsuit, "a justiciable interest cognizable in the courts."[117] Idaho courts do allow taxpayer standing "[i]n appropriate circumstances," including instances in which plaintiffs file suit to enforce a specific provision of the Idaho Constitution that prohibits certain state and municipal spending practices.[118] However, even in interpreting this provision of the Idaho Constitution, Idaho courts do not

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[109] Mottl v. Miyahira, 23 P.3d 716, 726 n.13 (Haw. 2001).

[110] *Id.*

[111] *Id.* at 726.

[112] *Sierra Club*, 167 P.3d at 313 (citing HAW. CONST., art. XI, § 9 (1978)).

[113] Koch v. Canyon Cnty., 177 P.3d 372, 375 (2008); *see also* Bear Lake Educ. Ass'n v. Bd. of Trs. of Bear Lake Sch. Dist. No. 33, 776 P.2d 452, 457 (1989) ("Although some elements of standing in the federal system are colored by the constitutional requirements of a 'case' or 'controversy,' the Supreme Court's analyses of associational standing are instructive.").

[114] *See* State v. Morris, 354 P.3d 187, 194 (Idaho 2015).

[115] *Koch*, 177 P.3d at 376 (citing Beach Lateral Water Users Ass'n v. Harrison, 132 P.3d 1138 (Idaho 2006)).

[116] Miller v. Martin, 478 P.2d 874, 876 (Idaho 1970) (citing 67 C.J.S. *Parties* § 6a (1950)).

[117] *Id.*

[118] *Koch*, 177 P.3d at 376 (citing IDA. CONST., art. VIII, § 3 (2015). The court in *Koch* noted that it had "never questioned the standing of a taxpayer to challenge expenditures that allegedly violate Article VIII, § 3," which "prohibit[s] counties and other subdivisions of the State from incurring any indebtedness or liability, other than for ordinary and necessary expenses, in excess of their income and revenue for the year without voter approval." *Id.*

stray far from federal doctrine.[119]

14. Illinois

Illinois courts apply the *Lujan* test.[120] Illinois courts have clearly acknowledged that they "are not . . . required to follow the Federal law on issues of justiciability and standing," but will selectively use the decisions of the Supreme Court as guidance.[121] For example, while the Illinois Supreme Court adopted the "injury-in-fact" requirement under *Data Processing*, it explicitly rejected the "zone of interests" element of the United States Supreme Court's decision because it felt "the zone-of-interests test would unnecessarily confuse and complicate the law."[122]

In general, Illinois courts are pragmatic in their approach to standing and their relationship to federal courts, finding that, "[t]ogether with allied doctrines like mootness, ripeness, and justiciability, the standing doctrine is one of the devices by which courts attempt to cull their dockets."[123] To the extent that the state's standing law differs from federal law, it "tends to vary in the direction of greater liberality" such that "[s]tate courts are generally more willing than Federal courts to recognize standing on the part of any plaintiff who shows that he is in fact aggrieved by an administrative decision."[124]

In Illinois, standing is not jurisdictional—it is an affirmative defense, and the burden is on the defendant to show that the plaintiff does not have standing to bring the alleged cause of action.[125] As such, "a lack of standing will be forfeited if not raised in a timely manner in the trial court."[126] Nevertheless, "[w]here a plaintiff has no standing, the proceedings must be dismissed . . . because lack of standing negates a plaintiff's cause of

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[119] *See id.* at 376-77 ("The United States Supreme Court has held that a taxpayer has standing to challenge a congressional appropriation that violated a specific constitutional limitation upon the congressional taxing and spending power. There is no logical difference between making an appropriation that is specifically prohibited by the Constitution and incurring an indebtedness or liability that is specifically prohibited by the Constitution.").

[120] Greer v. Ill. Hous. Dev. Auth., 524 N.E.2d 561, 575 (Ill. 1988) ("[T]he claimed injury, whether 'actual or threatened' must be: (1) 'distinct and palpable'; (2) 'fairly traceable' to the defendant's actions; and (3) substantially likely to be prevented or redressed by the grant of the requested relief.") (citing numerous Illinois and federal decisions); *see also* Ill. Ass'n of Realtors v. Stermer, 5 N.E.3d 267, 273-74 (Ill. Ct. App. 2014) (applying the three-part test).

[121] *See Greer*, 524 N.E.2d at 574.

[122] *Id.*; *see* also Glisson v. City of Marion, 720 N.E.2d 1034, 1040 (1999) ("In rejecting the zone-of-interests test, we criticized the test for confusing the issue of standing with the merits of the suit.").

[123] *Greer*, 524 N.E.2d at 572.

[124] *Id.* at 574.

[125] *See* Lebron v. Gottlieb Mem'l Hosp., 930 N.E.2d 895, 916 (Ill. 2010).

[126] *Id.*

action."[127] Illinois courts do permit taxpayer standing based on the idea that "[t]he illegal expenditure of general public funds may always be said to involve a special injury to the taxpayer not suffered by the public at large."[128] However, a taxpayer plaintiff "must allege an equitable ownership of funds" such that "when the expenditure involved is from a special fund, the petitioner must show a special injury not common to the public generally."[129]

15. Indiana

In Indiana, the doctrine of "[s]tanding is a key component in maintaining [the] state constitutional scheme of separation of powers" in Article III, Section 1 of the Indiana Constitution.[130] Federal justiciability limits do not apply in Indiana because "the Indiana Constitution has no 'case or controversy' requirement at all," but the "explicit separation of powers clause fulfills a similar function."[131] Nevertheless, Indiana courts "do not permit overly formalistic interpretations of our separation of powers clause to impede substantial justice."[132] Thus, the Indiana Supreme Court has defined standing in general rather than in specific terms, as "having sufficient stake in an otherwise justiciable controversy to obtain judicial resolution of that controversy,'" and "'focus[ing] generally upon the question [of] whether the complaining party is the proper person to invoke the Court's power."[133] Standing remains "a restraint upon this Court's exercise of jurisdiction."[134] The Indiana Supreme Court has not adopted the *Lujan* test.[135]

Indiana courts do recognize a public importance exception to the traditional requirements of standing, which encompasses the state's approach to taxpayer standing:

> Indiana cases recognize certain situations in which public rather than private rights are at issue and hold that the usual standards for establishing standing need not be met.

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[127] Wexler v. Wirtz Corp., 809 N.E.2d 1240, 1243 (Ill. 2004).

[128] *See* Ill. Ass'n of Realtors v. Stermer, 5 N.E.3d 267, 274 (Ill. Ct. App. 2014).

[129] *Id.*

[130] Pence v. State, 652 N.E.2d 486, 488 (Ind. 1995) (citing IND. CONST., art. III, § 1 (1999)).

[131] *Id.*

[132] *Id.*

[133] Old Nat'l Bancorp v. Hanover Coll., 15 N.E.3d 574, 575-76 (Ind. 2014).

[134] *Id.*

[135] *But see* Smith v. Brendonwood Common, Inc., 949 N.E.2d 422, 424 (Ind. Ct. App. 2011) (applying *Lujan*).

> [The Indiana Supreme] Court held in those cases that when a case involves enforcement of a public rather than a private right the plaintiff need not have a special interest in the matter nor be a public official.[136]

Regardless, Indiana courts grant public standing sparingly.[137]

16. Iowa

Iowa Supreme Court applies elements of the *Lujan* test selectively, as part of its own, self-imposed standing doctrine.[138] In *Alons v. Iowa District Court for Woodbury County*, the Iowa Supreme Court noted that, "[a]s far as Iowa law is concerned," standing requires "that a complaining party must (1) have a specific personal or legal interest in the litigation and (2) be injuriously affected."[139] However, while recognizing "that the federal test for standing is based in part upon constitutional strictures and prudential considerations," and despite the fact that Iowa's rule on standing is "self-imposed," the courts have noted that "federal authority [is] persuasive on the standing issue."[140] For example, the Iowa Supreme Court has "slightly altered the first requirement of [Iowa's] two-prong test to show a personal or legal interest to better conform to the federal test," specifically "align[ing] [its] test with the approach taken in *Data Processing* that standing does not depend on the legal merits of a claim."[141]

Likewise, the Iowa courts have applied the latter two elements of the *Lujan* test, requiring "'a causal connection between the injury and the conduct complained of' and that the injury is 'likely, as opposed to merely speculative, to be redressed by a favorable decision.'"[142] These elements have been applied as prudential aspects of Iowa standing law, applicable to "public interest litigation . . . when the 'asserted injury arises from

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[136] Higgins v. Hale, 476 N.E.2d 95, 101 (Ind. 1985) (discussing Zoercher v. Agler, 172 N.E. 186 (1930) and Hamilton v. State *ex rel.* Bates, 3 Ind. 452 (1852)).

[137] *Compare Higgins*, 476 N.E.2d at 102 (finding plaintiffs had public standing regarding "the right to ensure that the candidate appearing on the ballot was lawfully placed there so that votes could be cast for a candidate eligible to take office."), *with* Schloss v. City of Indianapolis, 553 N.E.2d 1204, 1206 (Ind. 1990) (refusing public standing because "cable service [i]s a luxury rather than as a necessity."). *See* State *ex rel.* Cittadine v. Ind. Dep't of Transp., 790 N.E.2d 978, 983-984 (Ind. 2003) (discussing "various limitations" on public standing).

[138] Alons v. Iowa Dist. Court for Woodbury Cnty., 698 N.W.2d 858, 867-69 (Iowa 2005).

[139] *Id.* at 863.

[140] *Id.* at 869.

[141] Godfrey v. State, 752 N.W.2d 413, 419-20 (Iowa 2008).

[142] *Id.* at 421 (quoting Lujan v. Defenders of Wildlife, 504 U.S. 555, 561–62 (1992)).

government's allegedly unlawful regulation (or lack of regulation) of someone else,' as opposed to cases in which the 'plaintiff is himself an object of the action (or foregone action) at issue.'"[143]

17. Kansas

Kansas courts apply constitutional standing principles under the moniker "common-law" or "traditional" standing as part of the "case-or-controversy requirement" under the judicial power clause of Article 3, § 1 of the Kansas Constitution."[144] "Traditional" standing in Kansas is jurisdictional, which is similar to the federal constitutional standing doctrine, since its requirements apply even if the plaintiff fulfills the statutory requirements to bring a cause of action.[145] However, Kansas courts have not adopted the three-part *Lujan* test. Rather, Kansas law requires only that a party show a "cognizable injury" to show standing, where a "cognizable injury" is "a personal interest in a court's decision and that he or she personally suffers some actual or threatened injury as a result of the challenged conduct."[146] Nevertheless, Kansas courts will look to federal decisions in determining whether a party's alleged injury is sufficient.[147] Kansas statutes provide for taxpayer standing,[148] but the plaintiff must also show "special injury" in addition to fulfilling the statutory requirements.[149]

18. Kentucky

In Kentucky, standing is not a constitutional doctrine, but appears to

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[143] *Id.*

[144] Sierra Club v. Moser, 310 P.3d 360, 367 (Kan. 2013) (citing KAN. CONST., art. III, § 1 (2015); *see* State *ex rel.* Morrison v. Sebelius, 179 P.3d 366, 382 (2008) (quoting State, *ex rel.* Brewster v. Mohler, 158 P. 408 (1916), *aff'd* 248 U.S. 112 (1918) (interpreting the "judicial power" text in the Kansas Constitution as limiting Kansas courts to resolving "cases and controversies")); *see also* Nat'l Ed. Ass'n--Topeka, Inc. v. U.S.D. 501, Shawnee Cnty., 608 P.2d 920, 923 (Kan. 1980) (issuing an advisory opinion "would go beyond the limits of determining an actual case or controversy and would violate the doctrine of separation of powers.").

[145] *Moser*, 310 P.3d at 367.

[146] *Id.* at 369.

[147] *See id. at* 369-71 (applying federal principles of associational standing and citing *Lujan* for rule that "[t]he injury must be particularized"); *see also* Gannon v. State, 319 P.3d 1196, 1210 (Kan. 2014) (citing *Lujan* for rule that injury "cannot be a 'generalized grievance,'" and that "[e]ach element [of standing] must be proved in the same way as any other matter and with the degree of evidence required at the successive stages of the litigation.").

[148] *See* KAN. STAT. ANN. § 60–907 (2015).

[149] Crow v. Bd. of Cnty. Comm'rs of Shawnee Cnty., 755 P.2d 545, 546 (Kan. 1988) (requiring "peculiar damage" as a result of the county's actions in order to challenge expenditure of county funds).

be a self-imposed restraint based on a prohibition against generalized grievances as a "fundamental" principle of adjudication. Kentucky courts have offered limited explanation of their standing doctrine.[150] The source of the doctrine appears to be a 1957 case challenging an alcohol board's decision to increase the number of licenses available.[151] There, the Kentucky Supreme Court held that "[i]t is fundamental that a person may attack a proceeding of this nature by independent suit only if he can show that his legal rights have been violated."[152] This was based on the principle that "[a] public wrong or neglect or breach of a public duty cannot be redressed in a suit in the name of an individual whose interest in the right asserted does not differ from that of the public generally, or who suffers injury only in common with the general public."[153]

Under the modern Kentucky test, "[t]o have standing to sue, one must have a judicially cognizable interest in the subject matter of the suit" that is not "remote and speculative," but "a present and substantial interest in the subject matter."[154] Kentucky courts have not adopted the *Lujan* test, but have adopted elements of federal decisions on associational standing, which have seen substantially more elaboration than general standing doctrine in the Kentucky courts.[155]

19. Louisiana

As is fitting for Louisiana, standing is an issue of civil procedure rather than constitutional law. The Louisiana Code of Civil Procedure provides that, "[e]xcept as otherwise provided by law, an action can be brought only

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[150] *See* Interactive Gaming Council v. Commonwealth *ex rel.* Brown, 425 S.W.3d 107, 112 (Ky. Ct. App. 2014) ("The purpose of requiring standing is to make sure that the party litigating the case has a 'personal stake in the outcome of the controversy' such that he or she will litigate vigorously and effectively for the personal issues.") (*quoting* Bailey v. Pres. Rural Roads of Madison Cnty., Inc., 394 S.W.3d 350, 362 (Ky. 2011) (Noble, J. dissenting).

[151] Lexington Retail Beverage Dealers Ass'n v. Dep't of Alcoholic Beverage Control Bd., 303 S.W.2d 268, 269-70 (Ky. 1957).

[152] *Id.*

[153] *Id.* (citing Wegener v. Wehrman, 227 S.W.2d 997, 998 (Ky. 1950)).

[154] Bailey v. Pres. Rural Roads of Madison Cnty., Inc., 394 S.W.3d 350, 355 (Ky. 2011).

[155] *See id.* at 356 ("[w]hile Kentucky has never officially adopted th[e] entire [federal associational standing] test, we have held that, at a minimum, to establish associational standing at least one member of the association must individually have standing to sue in his or her own right."); *see also Interactive Gaming*, 425 S.W.3d at 112-15 (discussing federal and Kentucky associational standing doctrine). Kentucky does recognize taxpayer standing in specific circumstances. *See* Price v. Commonwealth, Transp. Cabinet, 945 S.W.2d 429, 432-33 (Ky. Ct. App. 1996) (citing Rosenbalm v. Commercial Bank, 838 S.W.2d 423 (Ky. Ct. App. 1992); *see id.* at 431-33 (collecting cases where "Kentucky has consistently recognized taxpayer standing").

by a person having a real and actual interest which he asserts,"[156] and that a defendant may file exception—or seek dismissal of a case—on the basis of "no right of action," meaning the plaintiff lacks interest to institute the suit.[157] The function of the first exception is to "question whether the law extends a remedy to anyone under the factual allegations of the petition."[158] Nevertheless, Louisiana courts articulate self-imposed justiciability limits based on the prohibition against advisory opinions.[159] The boundary between these justiciability requirements and the procedural requirement to have a "real and actual interest" is fuzzy, and Louisiana courts often overlap the two ideas.[160]

Although Louisiana has not adopted *Lujan*, it has adopted federal principles of associational standing.[161] Louisiana courts recognize taxpayer standing "to seek judicial review of acts of public servants that are alleged to have been contrary to law, unconstitutional, or illegally confected" and "to enjoin unlawful action by a public body," even where "the taxpayer's interest may be small and insusceptible of accurate determination."[162] Where a taxpayer "seeks to restrain action by a public body, he is afforded a right of action upon a mere showing of an interest, however small and indeterminable."[163]

20. Maine

In Maine, "standing is prudential, rather than constitutional,"[164]

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[156] LA. CODE CIV. PROC. ANN. art. 681 (2014).

[157] La. Paddlewheels v. La. Riverboat Gaming Comm'n, 646 So. 2d 885, 888 (La. 1994) (citing LA. CODE CIV. PROC. ANN. art. 927(5)).

[158] *Id.* at 887 n.3 (explaining that a defendants argument "that there is no justiciable controversy . . . is essentially directed to [plaintiff's] real and actual interest in the action," which is addressed by the above procedural provisions).

[159] *In re* Melancon, 935 So. 2d 661, 667 (La. 2006) (quoting Romain v. Bd. of Supervisors of Election, 21 So. 731, 732 (1897)) ("More than a century ago this court noted: 'The judiciary is silent until the presentation of some real right in conflict opens its lips.'"); State v. Bd. of Supervisors, La. State Univ. & Agr. & Mech. Coll., 84 So. 2d 597, 600 (1955) ("[I]t is settled that courts of Louisiana are without power to render judgments over moot and abstract propositions and that a litigant not asserting a substantial existing legal right is without standing in court.").

[160] *See, e.g.*, Animal Legal Def. Fund v. State, Dep't of Wildlife & Fisheries, 140 So. 3d 8, 17 (La. Ct. App. 2013).

[161] *See* Caddo Fed'n of Teachers & Support Pers. v. Caddo Parish Sch. Bd., 41 So. 3d 1259, 1262 (La. Ct. App. 2010) (citing Louisiana Hotel–Motel Ass'n, Inc. v. East Baton Rouge Parish, 385 So.2d 1193 (La. 1980), a previous case where the Louisiana Supreme Court had adopted associational standing factors delineated in the United States Supreme Court decision); Hunt v. Wa. State Apple Adver. Comm'n, 432 U.S. 333 (1977)).

[162] *Animal Legal Def. Fund*, 140 So. 3d at 20.

[163] *Id.*

[164] Roop v. City of Belfast, 915 A.2d 966, 968 (Me. 2007).

although "[s]tanding is a threshold issue and Maine courts are 'only open to those who meet this basic requirement.'"[165] Standing is intended "to limit access to the courts to those best suited to assert a particular claim."[166] There is no "set formula" in Maine for determining standing, which "has been applied in varying contexts" and caused it to have a "plurality of meanings."[167] A party's personal stake in the litigation is typically demonstrated by a "particularized injury to the party's property, pecuniary, or personal rights," which is determined on a case-by-case basis given "the unique context of the claim."[168] Maine distinguishes its standing doctrine from federal constitutional standing, and has not adopted the *Lujan* test.[169] Maine courts recognize taxpayer standing in certain circumstances, which is likewise context dependent.[170]

21. Maryland

In Maryland, standing is a requirement of state common law rather than the state constitution.[171] Nevertheless, "[t]he doctrine of standing is an element of the larger question of justiciability and is designed to ensure that a party seeking relief has a sufficiently cognizable stake in the outcome so as to present a court with a dispute that is capable of judicial resolution."[172] Maryland common law determines standing by asking whether a plaintiff is "aggrieved," meaning the plaintiff "has an interest such that he [or she] is personally and specifically affected in a way different from the public generally," and "that the interest sought to be protected by the complainant is arguably within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question."[173] Interestingly, the Maryland Court of Appeals adopted the "zone of interests" test from *Data Processing*, but has explicitly refused to apply *Lujan* because "[t]hat test sets forth the prudential requirements for standing in federal court, but it is not applicable to state courts."[174]

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[165] Lindemann v. Comm'n on Gov'tal Ethics & Election Practices, 961 A.2d 538, 541 (Me. 2008).

[166] *Roop*, 915 A.2d at 968 (internal quotation marks omitted).

[167] *Id.*

[168] *Lindemann*, 961 A.2d at 542; Mortg. Elec. Registration Sys., Inc. v. Saunders, 2 A.3d 289, 294 (Me. 2010).

[169] *Roop*, 915 A.2d at 968.

[170] *See generally* Common Cause v. State, 455 A.2d 1, 6-13 (Me. 1983) (addressing taxpayer standing as an issue of first impression).

[171] *See* Med. Waste Ass'n, Inc. v. Md. Waste Coal., Inc., 612 A.2d 241, 249 (Md. 1992).

[172] Kendall v. Howard Cnty., 66 A.3d 684, 691 (Md. 2013).

[173] *Id.* at 691-92 (internal citations omitted).

[174] *See id.* at 692; Nefedro v. Montgomery Cnty., 996 A.2d 850, 854 n.3 (Md. 2010).

Maryland recognizes generalized "property owner" and "taxpayer" standing, but only in instances in which the plaintiff can show an individualized injury.[175]

22. Massachusetts

The Massachusetts Supreme Court has noted that "[f]rom an early day it has been an established principle in th[e] Commonwealth" of Massachusetts "that only persons who have themselves suffered, or who are in danger of suffering, legal harm can compel the courts to assume the difficult and delicate duty of passing upon the validity of the acts of a coordinate branch of the government."[176] This reasoning "may indeed be regarded as hardly more than an illustration of the general proposition that parties to actions must be persons interested in the subject matter," which in turn gives rise to constitutional standing doctrine in Massachusetts.[177] To have standing "in any capacity," a litigant must demonstrate that the challenged action has caused her injury.[178] But "[w]hen a statute confers standing in relation to particular subject matter, that statute, rather than more general ideas about standing, governs who may initiate legal action in relation to the subject matter."[179] An "[a]lleged injury that is 'speculative, remote, and indirect' will not suffice to confer standing," and "[t]he complained-of injury 'must be a direct consequence of the complained of action.'"[180] Standing is an issue of subject matter jurisdiction for Massachusetts courts.[181] However, they may nevertheless "exercise discretion" under the principles stated in *Wellesley College v. Attorney General*, to reach the merits of a case even if it "is not properly presented for decision."[182] Likewise, Massachusetts courts recognize an exception to standing called the "public right doctrine:"

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[175] State Ctr., LLC v. Lexington Charles Ltd. P'ship, 92 A.3d 400, 440 (Md. 2014) (quoting Kelly v. City of Baltimore, 53 Md. 134, 141 (1880)).

[176] Kaplan v. Bowker, 131 N.E.2d 372, 374 (Mass. 1956).

[177] *Id.* at 375.

[178] Slama v. Attorney Gen., 428 N.E.2d 134, 137 (Mass. 1981).

[179] Centennial Healthcare Inv. Corp. v. Comm'r of Div. of Med. Assistance, 810 N.E.2d 1231, 1236 (Mass. Ct. App. 2004) (quoting Local 1445 United Food & Commercial Workers Union v. Police Chief of Natick, 563 N.E.2d 693 (Mass. Ct. App. 1990)).

[180] Brantley v. Hampden Div. of Probate & Family Court Dep't, 929 N.E.2d 272, 280 (Mass. 2010).

[181] Indeck Me. Energy, L.L.C., v. Comm'r of Energy Res., 911 N.E.2d 149, 154 (Mass. 2009).

[182] 49 N.E. 2d 220, 226 (Mass. 1943); *see generally* Bd. of Health of Sturbridge v. Bd. of Health of Southbridge, 962 N.E.2d 734, 745 (Mass. 2012) (exercising that discretion).

> [A]ny member of the public may seek relief in the nature of mandamus to compel the performance of a duty required by law. In such cases, the plaintiff acts under the public right to have a particular duty performed that the law requires to be performed. Where the public right doctrine applies, the people are considered the real party in interest, and the individual plaintiff need not show that he has any legal interest in the result.[183]

23. Michigan

In 2010, the Michigan Supreme Court overruled its cases holding that the Michigan Constitution required standing, and further, that "Michigan's standing doctrine should be abandoned in favor of the standing doctrine adopted by the United States Supreme Court in the context of the federal constitution."[184] In *Lansing Schools Ass'n v. Lansing Board of Education*, the Michigan Supreme Court returned its standing doctrine to a self-imposed "prudential doctrine that was intended to 'ensure sincere and vigorous advocacy' by litigants."[185] The Michigan Court explained:

> If a party had a cause of action under law, then standing was not an issue. But where a cause of action was not provided at law, the Court, in its discretion, would consider whether a litigant had standing based on a special injury or right or substantial interest that would be detrimentally affected in a manner different from the citizenry at large, or because, in the context of a statutory scheme, the Legislature had intended to confer standing on the litigant.[186]

Under the modern "approach, a litigant has standing whenever there is a legal cause of action" and "[w]here a cause of action is not provided at law, then a court should, in its discretion, determine whether a litigant has standing" based on "a special injury or right, or substantial interest, that will be detrimentally affected in a manner different from the citizenry at

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[183] Perella v. Mass. Tpk. Auth., 772 N.E.2d 70, 73 (Mass. App. Ct. 2002).
[184] Lansing Sch. Ass'n v. Lansing Bd. of Educ., 792 N.W.2d 686, 692 (Mich. 2010).
[185] *Id.*
[186] *Id.*

large or if the statutory scheme implies that the Legislature intended to confer standing on the litigant."[187]

The *Lansing Schools* Court made clear that "[t]here is no support in either the text of the Michigan Constitution or in Michigan jurisprudence . . . for recognizing standing as a constitutional requirement or for adopting the federal standing doctrine" and "adopting standing as a constitutional doctrine potentially may even violate the separation of powers doctrine under the Michigan Constitution."[188]

In Michigan, standing overlaps with a requirement that the litigant be a "real party in interest," which has seen some articulation in the Courts of Appeal but has not yet been addressed by the Michigan Supreme Court since *Lansing Schools*.[189] Likewise, the Supreme Court has not addressed taxpayer standing in Michigan since *Lansing Schools*.[190]

24. Minnesota

The Minnesota Supreme Court has adopted the *Lujan* test.[191] In Minnesota, "[s]tanding is a jurisdictional doctrine, and the lack of standing bars consideration of the claim by the court."[192] Standing is assessed at "various stages of the proceeding," and standing may be raised sua sponte.[193] However, Minnesota's constitutional standing doctrine is not constitutional, and rises out of "the rule that the existence of a justiciable controversy is essential to jurisdiction" and that "a genuine conflict in the tangible interests of opposing litigants" is required for a justiciable

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[187] *Id.* at 692, 699.

[188] *Id.* at 693-94 n.9; *see id.* at 704 (quoting Nat'l Wildlife Fed'n v. Cleveland Cliffs Iron Co., 684 N.W.2d 800, 827-28 (Mich. 2010) (Weaver, J., concurring)) ("While pretending to limit its 'judicial power,' the majority's application of *Lee*'s judicial standing test in this case actually expands the power of the judiciary at the expense of the Legislature by undermining the Legislature's constitutional authority to enact laws.").

[189] *See In re* Beatrice Rottenberg Living Trust, N.W.2d 384, 393 (Mich. Ct. App. 2013) ("[A]lthough the principle of statutory standing overlaps significantly with the real-party-in-interest rule, they are distinct concepts."); Bd. of Tr. v. City of Pontiac, __N.W.2d__, (Mich. Ct. App. 2015) (applying both *Lansing Schools* and *In re Beatrice*).

[190] *But see* Groves v. Dep't of Corr., 811 N.W.2d 563, 567 (Mich. Ct. App. 2011) ("[M]ore recent cases uniformly condition taxpayer standing on the plaintiff taxpayers having suffered some harm distinct from that inflicted on the general public." (citing *Lansing Sch. Ass'n*, 792 N.W.2d at 686; Waterford Sch. Dist. v. State Bd. of Ed., 296 N.W.2d 328 (Mich. Ct. App. 1980))).

[191] *In re* Custody of D.T.R., 796 N.W.2d 509, 512-13 (Minn. 2011) (quoting *Lujan*); *see also* Garcia-Mendoza v. 2003 Chevy Tahoe, 852 N.W.2d 659, 663 (Minn. 2014) (citing Lexmark Int'l, Inc. v. Static Control Components, Inc., 134 S.Ct. 1377, 1386 (2014)) (applying the three-part test).

[192] *In re Custody of D.T.R.*, 796 N.W.2d at 512.

[193] *Garcia-Mendoza*, 852 N.W.2d at 663.

controversy.[194] Minnesota courts recognize taxpayer standing to challenge "unlawful disbursements of public money or illegal action on the part of public officials," like challenges to "expenditure[s] of tax monies under a rule which the plaintiff taxpayer alleges was adopted by a state official without compliance with the statutory rule-making procedures."[195]

25. Mississippi

"It is well settled that 'Mississippi's standing requirements are quite liberal'" when "compared to the standing requirements set out in Article III of the United States Constitution,"[196] which the Mississippi Supreme Court has held do not apply in Mississippi because "the Mississippi Constitution contains no such restrictive language."[197] Otherwise, however, Mississippi courts have not elaborated on the source of their standing doctrine.[198] "To have standing to sue, a party must 'assert a colorable interest in the subject matter of the litigation or experience an adverse effect from the conduct of the defendant, or as otherwise authorized by law'"—specifically, "grounded in some legal right recognized by law, whether by statute or by common law."[199] An interest is deemed colorable if it "appear[s] to be true, valid, or right," and any "adverse effect experienced must be different from the adverse effect experienced by the general public."[200]

26. Missouri

In Missouri, standing is a prudential doctrine.[201] Missouri's standing

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[194] Seiz v. Citizens Pure Ice Co., 290 N.W. 802, 804 (Minn. 1940); Izaak Walton League of Am. Endowment, Inc. v. State, Dep't of Natural Res., 252 N.W.2d 852, 854 (Minn. 1977) ("The existence of a justiciable controversy is prerequisite to adjudication. The judicial function does not comprehend the giving of advisory opinions. No controversy is presented, absent a genuine conflict in the tangible interests of opposing litigants.").

[195] Citizens for Rule of Law v. Senate Comm. On Rules & Admin., 770 N.W.2d 169, 175 (Minn. Ct. App. 2009) (discussing "the leading taxpayer standing case" McKee v. Likins, 261 N.W.2d 566, 571 (Minn. 1977)).

[196] SASS Muni-V, LLC v. DeSoto Cnty., 170 So. 3d 441, 445-46 (Miss. 2015).

[197] State v. Quitman Cnty., 807 So. 2d 401, 405 (Miss. 2001).

[198] *See, e.g.*, Dye v. State *ex rel.* Hale, 507 So. 2d 332, 339 (Miss. 1987) ("There is a public need that the legal issues tendered be authoritatively resolved. Not only do we have the authority to decide today's questions; we have a public responsibility to do so.").

[199] *SASS Muni-V*, 170 So.3d at 446.

[200] *Id.*; *see also* Canton Farm Equip., Inc. v. Richardson, 501 So. 2d 1098, 1105 (Miss. 1987) (addressing taxpayer standing through the rubric of "adverse effect").

[201] Schweich v. Nixon, 408 S.W.3d 769, 774 (Mo. 2013) ("Prudential principles of justiciability, to which this Court has long adhered, require that a party have standing to bring an action."). *But see*

doctrine arises from the joining of a self-imposed prohibition against advisory opinions with the conclusion that "an opinion resolving an issue which the adversaries have no standing to raise is necessarily advisory."[202] The Missouri Supreme Court has, in a standing decision, equated Article III, Section 2 of the United States Constitution with Article V, Section 14(a) of the Missouri Constitution,[203] and has occasionally required federal doctrinal elements—such as requirements that a "complainant be within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question to bring an action thereunder."[204] In general, "[t]o have standing, the party seeking relief must have a legally cognizable interest and a threatened or real injury."[205] Although the Missouri Supreme Court has since noted that, "[w]hen considering standing, there is 'no litmus test for determining whether a legally protectable interest exists.'"[206] Missouri courts recognize taxpayer standing when a plaintiff can "establish that one of three conditions exists: (1) a direct expenditure of funds generated through taxation, (2) an increased levy in taxes, or (3) a pecuniary loss attributable to the challenged transaction of a municipality," adding that "[p]ublic policy demands a system of checks and balances whereby taxpayers can hold public officials accountable for their acts."[207]

27. Montana

Montana courts have interpreted the language of the Montana Constitution—specifically Article VII, Section 4 of the Montana Constitution, which confers original jurisdiction on district courts in "all civil matters and cases at law and in equity"—as requiring the same standing limitations required by Article III of the United States Constitution, but Montana has not outright adopted the *Lujan* test.[208] The

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Farmer v. Kinder, 89 S.W.3d 447, 451 (Mo. 2002) (en banc) (describing standing as a jurisdictional issue that "cannot be waived.").

[202] State Bd. of Mediation v. Pigg, 244 S.W.2d 75, 79 (1951) ("We have no authority to give advisory opinions on constitutional questions . . . Until such persons are in court and the issues are directly presented and necessarily involved such issues will not be decided."); *see also* State *ex rel.* Williams v. Marsh, 626 S.W.2d 223, 227 (Mo. 1982) (en banc).

[203] Harrison v. Monroe Cnty., 716 S.W.2d 263, 266 (Mo. 1986) (en banc).

[204] Weber v. St. Louis Cnty., 342 S.W.3d 318, 323 (Mo. 2011) (citing Ass'n of Data Processing Serv. Orgs., Inc. v. Camp, 397 U.S. 150 (1970)).

[205] Manzara v. State, 343 S.W.3d 656, 659 (Mo. 2011) (internal quotations omitted).

[206] *Schweich*, 408 S.W.3d at 775

[207] *Manzara*, 343 S.W.3d at 659.

[208] Plan Helena, Inc. v. Helena Reg'l Airport Auth. Bd., 226 P.3d 567, 569 (Mont. 2010); Heffernan v. Missoula City Council, 255 P.3d 80, 91-92 (Mont. 2011) (distinguishing between federal

equivalence of the two constitutional provisions is well established in Montana cases, and predates many of the relevant federal cases on the issue.[209] Nevertheless, "federal precedents interpreting the Article III requirements for justiciability are [only] persuasive authority for interpreting the justiciability requirements of Article VII, Section 4(1)," and Montana Courts have articulated their own standing test.[210] "[I]n Montana, to meet the constitutional case-or-controversy requirement, the plaintiff must clearly allege a past, present, or threatened injury to a property or civil right"—or, in other words, "an invasion of a legally protected interest"—that "would be alleviated by successfully maintaining the action."[211] The Montana Court has clarified that "there are in fact two strands to standing: the case-or-controversy requirement imposed by the Constitution" that "must always be met," and "judicially self-imposed prudential limitations" that may be modified by the legislature.[212] In Montana, standing is a jurisdictional issue that "transcends procedural considerations," such that "courts have an independent obligation to determine whether jurisdiction exists and, thus, whether constitutional justiciability requirements (such as standing, ripeness, and mootness) have been met;" "[i]f a court determines that it lacks jurisdiction, then it may take no further action in the case other than to dismiss it."[213] Montana provides taxpayer standing by statute at the least, and maybe otherwise.[214]

28. Nebraska

In Nebraska, standing is a jurisdictional doctrine drawn from the principle that "one having no right or interest to protect cannot invoke the jurisdiction of the court as a party plaintiff in an action."[215] Under modern statements, "[o]nly a party that has standing—a legal or equitable right, title, or interest in the subject matter of the controversy—may invoke the jurisdiction of a court or tribunal," and "either a party or the court can raise

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standing doctrine and Montana standing doctrine).

[209] *See* Chovanak v. Matthews, 188 P.2d 582, 584-85 (Mont. 1948) ("By 'cases' and 'controversies' within the judicial power to determine, is meant real controversies and not abstract differences of opinion or moot questions. Neither federal nor state Constitution has granted such power." (discussing Osborn v. Bank of United States, 22 U.S. 738 (1824)).

[210] *Plan Helena*, 226 P.3d at 569.

[211] *Heffernan*, 255 P.3d at 91-92.

[212] *Id.* at 91.

[213] *Plan Helena*, 226 P.3d at 570.

[214] *See* Druffel v. Bd. of Adjustment, 168 P.3d 640, 642 (Mont. 2007); Stewart v. Bd. of Cnty. Comm'rs of Big Horn Cnty., 573 P.2d 184, 186 (Mont. 1977).

[215] *See* Davies v. De Lair, 27 N.W.2d 628, 629 (Neb. 1947) (quoting 39 Am. Jur., Parties, § 9); Dafoe v. Dafoe, 69 N.W.2d 700, 703 (Neb. 1955).

a question of standing at any time during the proceeding."[216] "The purpose of an inquiry as to standing is to determine whether one has a legally protectable interest or right in the controversy that would benefit by the relief to be granted."[217] Nebraska courts recognize taxpayer standing, noting "[a] resident taxpayer, without showing any interest or injury peculiar to itself, may bring an action to enjoin the illegal expenditure of public funds raised for governmental purposes."[218]

29. Nevada

In Nevada, standing is a self-imposed judicial limitation, distinct from the Nevada Constitution and distinguishable from the federal approach. Nevada courts cite "a long history of requiring an actual justiciable controversy as a predicate to judicial relief," stemming from rulings limiting plaintiffs who can request declaratory judgments—interestingly, amounting to a widely quoted 1986 case from the Nevada Supreme Court that in turn quotes a treatise on Declaratory Judgments by Edwin Borchard first published in 1919.[219] In *Stockmeier v. Nevada Dep't of Correction Psychological Review Panel*, the Nevada Supreme Court specifically reversed a trial court's application of the *Lujan* standing test to a statutory cause of action.[220] In *Stockmeier*, the Court explained that "state courts are not required to comply with the federal 'case or controversy' requirement"; because "[s]tanding is a self-imposed rule of restraint . . . [s]tate courts need not become enmeshed in the federal complexities and technicalities involving standing and are free to reject procedural frustrations in favor of just and expeditious determination on the ultimate merits."[221] "State courts are free," the Court added, to adopt federal standing doctrine or to ignore

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[216] Hauxwell v. Henning, 863 N.W.2d 798, 802 (Neb. 2015).

[217] Adam v. City of Hastings, 676 N.W.2d 710, 714 (Neb. 2004).

[218] Chambers v. Lautenbaugh, 644 N.W.2d 540, 548 (Neb. 2002).

[219] Doe v. Bryan, 728 P.2d 443, 444 (Nev. 1986) (quoting Kress v. Corey, 189 P.2d 352, 364 (Nev. 1948) (quoting State *ex rel.* La Follette v. Dammann, 264 N.W. 627, 628-29 (Nev. 1936) ("The requisite precedent facts or conditions which the courts generally hold must exist in order that declaratory relief may be obtained may be summarized as follows: (1) there must exist a justiciable controversy; that is to say, a controversy in which a claim of right is asserted against one who has an interest in contesting it; (2) the controversy must be between persons whose interests are adverse; (3) the party seeking declaratory relief must have a legal interest in the controversy, that is to say, a legally protectable interest; and (4) the issue involved in the controversy must be ripe for judicial determination.") (citing Declaratory Judgments, Borchard, pp. 26-57).

[220] 135 P.3d 220, 225 (Nev. 2006) *abrogated on other grounds by* Buzz Stew, LLC v. Las Vegas, 181 P.3d 670 (Nev. 2008).

[221] *Stockmeier*, 135 P.3d at 225.

it.[222] The Nevada courts have "required plaintiffs to meet standing requirements" in cases involving constitutional challenges or seeking declaratory judgments, but "where the Legislature has provided the people of Nevada with certain statutory rights, we have not required constitutional standing to assert such rights [and] instead have examined the language of the statute itself to determine whether the plaintiff had standing to sue."[223] Thus, "*Lujan* is not applicable to a person asserting injury under" the statute.[224]

Alternatively, the Nevada Rules of Civil Procedure require "[e]very action [to] be prosecuted in the name of the real party in interest."[225] A real party in interest "is one who possesses the right to enforce the claim and has a significant interest in the litigation."[226] The "real party in interest" requirement "overlaps with the question of standing," and provides another avenue for Nevada courts to require plaintiffs to show some interest in the litigation.[227] Nevada courts "have recognized [taxpayer] standing to obtain relief on behalf of the public only in limited circumstances," generally where the plaintiff can show individualized injury.[228]

30. New Hampshire

While recognizing that "the standing requirements under Article III of the Federal Constitution are not binding upon state courts," the New Hampshire Supreme Court has held that, as "a practical matter, Part II, Article 74" of the New Hampshire Constitution "imposes standing requirements that are similar to those imposed by Article III of the Federal Constitution."[229] Thus, New Hampshire courts apply a functional equivalent of the *Lujan* test because "the New Hampshire Constitution requires parties to have personal legal or equitable rights that are adverse to one another with regard to an actual, not hypothetical, dispute which is capable of judicial redress."[230] Notably, however, the New Hampshire

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[222] *Id.*

[223] *Id.* at 225-26.

[224] *Id.* at 226.

[225] Arguello v. Sunset Station, Inc., 252 P.3d 206, 208 (Nev. 2011).

[226] *Id.*

[227] *Id.*; *see also Stockmeier*, 135 P.3d at 225 (citing 59 Am. Jur. 2d Parties § 36 (2002)) ("Generally, a party must be a real party in interest to the litigation to have standing.").

[228] Laborers' Int'l Union of N. Am., Local Union No. 169 v. Truckee Carson Irr. Dist., No. 60528, 2014 WL 1677653, at *2 (Nev. Apr. 23, 2014).

[229] Duncan v. State, 102 A.3d 913, 923 (N.H. 2014).

[230] *Id.* (citing State v. Harvey, 106 N.H. 446, 448 (N.H. 1965); State v. Kelly, 159 N.H. 390, 394 (N.H. 2009); Faulkner v. City of Keene, 85 N.H. 147, 151 (N.H. 1931); State v. McPhail, 116 N.H. 440, 442 (N.H. 1976); Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61(1992)).

Constitution only authorizes the Governor and legislature to request for advisory opinions "upon solemn occasions." The New Hampshire Supreme Court has held that "the State Constitution, in practical effect, limits the judicial role, consistent with a system of separated powers," based on federal standing decisions and a 1965 decision restating Part II, Article 74 as a negative prohibition "that advisory opinions cannot be given by this court on the petition of private individuals."[231]

Similarly, the New Hampshire Supreme Court has adopted other separation of powers rationales offered by the United States Supreme Court, citing *Lujan's* discussion of the "take care" clause of the United States Constitution and holding that that "[t]he requirement of a concrete personal injury also implicates Part II, Article 41 of the [New Hampshire] Constitution," which commands that "[t]he governor shall be responsible for the faithful execution of the laws."[232] Under these principles, the New Hampshire Supreme Court declared a statute granting generalized taxpayer standing unconstitutional.[233] The unconstitutional statute was intended to supersede an opinion of the New Hampshire Supreme Court holding "that taxpayer status, without an injury or an impairment of rights, is not sufficient to confer standing to bring a declaratory judgment."[234] Presumably, that rule still stands. However, while New Hampshire's Supreme Court is tightening standing requirements, some exceptions appear to remain.[235]

31. New Jersey

The New Jersey Supreme Court provides a suitable introduction:

> New Jersey courts always have employed "liberal rules of standing" . . . animated by a venerated principle: "In the overall we have given due weight to the interests of individual justice, along with the public interest, always

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[231] *Harvey*, 213 A.2d 428, 430 (1965) (citing N.H. CONST. pt. II, art. 74.); *Duncan*, 102 A.3d at 923 (citing Valley Forge College v. Ams. United, 454 U.S. 464, 472 (1982)); *see also* Opinion of the Justices (Appointment of Chief Justice of the Supreme Court), 842 A.2d 816, 818 (2003) (discussing constitutional limitations on the Court's ability to provide advisory opinions pursuant to pt. II, art. 74).

[232] *Duncan*, 102 A.3d at 924.

[233] *Id.*

[234] *Id.* at 920.

[235] *See* Am. Fed'n of Teachers v. State, 111 A.3d 63, 67 (N.H. 2015) ("The court dismissed the nine non-individual plaintiffs for lack of standing, but allowed them to proceed as intervenors. The State does not challenge this ruling on appeal . . . Thus, we assume, without deciding, that the non-individual plaintiffs have standing to be intervenors.").

> bearing in mind that throughout our law we have been sweepingly rejecting procedural frustrations in favor of 'just and expeditious determinations on the ultimate merits.' And that principle is premised on a core concept of New Jersey jurisprudence, that is, that our 'rules of procedure were not designed to create an injustice and added complications but, on the contrary, were devised and promulgated for the purpose of promoting reasonable uniformity in the expeditious and even administration of justice.'"[236]

Specifically, "New Jersey cases have historically taken a much more liberal approach on the issue of standing than have the federal cases," and distinguish that, "[u]nlike the Federal Constitution, there is no express language in New Jersey's Constitution which confines the exercise of our judicial power to actual cases and controversies."[237] Nevertheless, the New Jersey courts "will not render advisory opinions or function in the abstract," and "[w]ithout ever becoming enmeshed in the federal complexities and technicalities, . . . appropriately confine[] litigation to those situations where the litigant's concern with the subject matter evidenced a sufficient stake and real adverseness."[238] Thus, "[u]nder New Jersey's standing rules, 'entitlement to sue requires a sufficient stake and real adverseness with respect to the subject matter of the litigation and a substantial likelihood of some harm visited upon the plaintiff in the event of an unfavorable decision is needed for the purposes of standing," and "a lack of standing by a plaintiff precludes a court from entertaining any of the substantive issues presented for determination."[239]

32. New Mexico

"In New Mexico, standing . . . is not derived from the state constitution, and is not jurisdictional," but New Mexico courts still apply

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[236] Jen Elec. Inc. v. Cnty. of Essex, 964 A.2d 790, 801-02 (N.J. 2009) (quoting N.J. Builders' Ass'n v. Bernards Twp., 530 A.2d 1254 (N.J. Super. 1986)); Crescent Park Tenants Ass'n, 275 A.2d 433 (N.J. 1971); Handleman v. Handleman, 109 A.2d 797 (N.J. 1954).

[237] *Crescent Park*, 275 A.2d at 434, 434-37.

[238] *Id.* at 437-38; *see* Baxter's Ex'rs v. Baxter, 10 A. 814, 816 (N.J. Ch. 1887) ("The rule, I think, 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.").

[239] *Jen Elec.* 964 A.2d at 801 (citing *In re* Adoption of Baby T, 734 A.2d 304 (N.J. 1999) (internal edits omitted).

the federal *Lujan* test.[240] Specifically, "New Mexico state courts are not subject to the jurisdictional limitations imposed on federal courts by Article III, Section 2 of the United States Constitution," but "New Mexico's standing jurisprudence [has] long been guided by the traditional federal standing analysis."[241] Thus, "as a matter of judicial policy if not of jurisdictional necessity," New Mexico "courts have generally required that a litigant demonstrate injury in fact, causation, and redressability to invoke the court's authority to decide the merits of a case."[242] Indeed, the New Mexico Supreme Court has stalwartly defended the *Lujan*-style three-part test against attack.[243] Further, the issue of standing "may not be waived and may be raised at any stage of the proceedings, even sua sponte by the appellate court"—although it is unclear whether that is because "the lack of standing is a potential jurisdictional defect" or "because 'prudential rules' of judicial self-governance, like standing . . . are always relevant concerns."[244] The New Mexico Supreme Court has cited cases requiring "allegations of direct injury to the complaining party for that party to properly seek an injunction or challenge the constitutionality of legislative acts" as the foundation upon which New Mexico's standing law stands.[245] However, a New Mexico court may exercise "its discretion to confer standing and reach the merits in cases where the traditional standing requirements were not met due to the public importance of the issues involved," under the "great public importance doctrine."[246] New Mexico courts will recognize taxpayer standing where a plaintiff can show she "will be affected by the acts sought to be enjoined in any other manner than any other taxpayer of the state."[247]

33. New York

New York courts apply a flexible version of the *Data Processing* test to determine standing.[248] To state the general rule, "[s]tanding is a threshold determination" and the "[p]etitioner has the burden of establishing both an injury-in-fact and that the asserted injury is within the zone of interests

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[240] ACLU of N.M. v. City of Albuquerque, 188 P.3d 1222, 1226-27, 1229 (N.M. 2008).

[241] *Id.* at 1226-27.

[242] *Id.* at 1227.

[243] *Id.* at 1227-28.

[244] Bank of N.Y. v. Romero, 320 P.3d 1, 5 (N.M. 2014) (quoting Gunaji v. Macias, 32 P.3d 1008 (N.M. 2001); New Energy Econ. v. Shoobridge, 243 P.3d 746, 752 (N.M. 2010)).

[245] *ACLU*, 188 P.3d at 1227.

[246] *Id.* at 1226-27.

[247] Eastham v. Pub. Emp. Ret. Ass'n. Bd., 553 P.2d 679, 685 (N.M. 1973).

[248] *See* Soc'y of Plastics Indus., Inc. v. Cnty. Of Suffolk, 573 N.E.2d 1034, 1040 (N.Y. 1991).

sought to be protected by the statute alleged to have been violated."[249] This rule is tempered, however, by a recognition that standing rules "should not be heavy-handed,"[250] such that "[a] showing of special damage or actual injury is not always necessary to establish a party's standing," and "[i]n some instances, the party's particular relationship to the subject of the action may give rise to a presumption of standing."[251] For example, the right of adjacent property owners to challenge a proposed radio tower created a presumption of standing.[252] Thus, New York courts "have been reluctant to apply [standing] principles in an overly restrictive manner where the result would be to completely shield a particular action from judicial review."[253]

New York courts are equivocal as to whether standing is a requirement of the state constitution, the New York common law, or just a good idea.[254] "Whether derived from the Federal Constitution or the common law," the New York Court of Appeals has explained, "the core requirement that a court can act only when the rights of the party requesting relief are affected, has been variously refashioned over the years" to focus on injury in fact, which "serves to define the proper role of the judiciary, and is based on 'sound reasons, grounded not only in theory but in the judicial experience of centuries, here and elsewhere, for believing that the hard, confining, and yet enlarging context of a real controversy leads to sounder and more enduring judgments.'"[255]

Nevertheless, the New York Court of Appeals has long articulated that separation of powers concerns require a showing of personal injury in cases, for example, seeking to declare a state law unconstitutional.[256]

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[249] Ass'n for a Better Long Island, Inc. v. N.Y. State Dep't of Envtl. Conservation, 11 N.E.3d 188, 192 (N.Y. 2014) (quoting *Soc'y of Plastics Indus.*, 573 N.E.2d at 1038).

[250] *Id.* (quoting Matter of Sun-Brite Car Wash v. Bd. of Zoning and Appeals, 508 N.E.2d 130 (N.Y. 1987)).

[251] Har Enter. v. Town of Brookhaven, 548 N.E.2d 1289, 1292 (N.Y. 1989) (discussing *Sun-Brite*).

[252] *See Better Long Island*, 11 N.E.3d at 192; *Soc'y of Plastics Indus.*, 573 N.E.2d at 1041 ("In land use matter especially, we have long imposed the limitation that the plaintiff, for standing purposes, must show that it would suffer direct harm, injury that is in some way different from that of the public at large.").

[253] *Better Long Island*, 11 N.E.3d at 192.

[254] *See Soc'y of Plastics Indus.*, 573 N.E.2d at 1040.

[255] *Id.* at 1040-41 (quoting ALEXANDER M. BICKEL, THE LEAST DANGEROUS BRANCH 115 (1962); *see Sun-Brite*, 508 N.E.2d at 133 ("[s]tanding principles . . . are in the end matter of policy.").

[256] *See, e.g.*, Schieffelin v. Komfort, 106 N.E. 675, 677 (N.Y. 1914) ("The rights to be affected must be personal as distinguished from the rights in common with the great body of people. Jurisdiction has never been directly conferred upon the courts to supervise the acts of other departments of government . . . The assumption of jurisdiction in any other case would be an interference by one department of government with another department of government when each is equally independent within the powers conferred upon it by the Constitution itself.").

34. North Carolina

North Carolina Supreme Court has explicitly disclaimed strict reliance on the *Lujan* standard as the "irreducible constitutional minimum" of standing.[257] The North Carolina Supreme Court explained that its cases do not distinguish between "constitutional standing" and other forms of standing.[258] Rather, "the gist of the question of standing is whether the party seeking relief has alleged such a personal stake in the outcome of the controversy as to assure concrete adverseness[,] which sharpens the presentation of issues upon which the court so largely depends," generally determined by reference to the individual cause of action.[259] The North Carolina Supreme Court derived this principle from early cases granting general standing to taxpayers and cases requiring certain interests to bring actions for declaratory judgment.[260] Interestingly, North Carolina is the second state that derives a substantial portion of its standing jurisprudence from a list in Edwin Borchard's early twentieth century treatise on Declaratory Judgments.[261] North Carolina maintains that "a taxpayer has standing to bring an action against appropriate government officials for the alleged misuse or misappropriation of public funds" where "he belongs to the class which is prejudiced by the statute."[262]

35. North Dakota

North Dakota courts require a showing of standing as a constitutional and jurisdictional requirement, but North Dakota has not adopted the *Lujan* test. North Dakota's "seminal case on standing" is *State v. Carpenter*, which articulated a two-part test: "[f]irst, the litigant must have suffered some threatened or actual injury resulting from the putatively illegal action," and "[s]econd, the asserted harm must not be a generalized grievance shared by all or a large class of citizens, that is, the litigant generally must assert his or her own legal rights and interests and cannot

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[257] *See* Goldston v. State, 637 S.E.2d 876, 882 (N.C. 2006) ("While federal standing doctrine can be instructive as to general principles . . . and for comparative analysis, the nuts and bolts of North Carolina standing doctrine are not coincident with federal standing doctrine.").

[258] *Id.* at 879.

[259] *Id.* (internal citations omitted).

[260] *See id.* at 879-81.

[261] *Id.* at 881 (quoting Augur v. Augur, 573 S.E.2d 125, 130 (N.C. 2002)).

[262] Hart v. State, No. 372A14, 2015 WL 4488553, at *12 (N.C. July 23, 2015) (quoting *Goldston*, 637 S.E.2d at 881).

rest a claim to relief on the legal rights and interests of third parties."[263] The North Dakota Supreme Court in *Carpenter* cited federal cases extensively in explaining the rationale for requiring standing limits, noting that "[a]s an aspect of justiciability, the standing requirement focuses upon whether the plaintiff has alleged such a personal stake in the outcome of the controversy as to justify exercise of the court's remedial powers on his behalf."[264] This made some special sense in *Carpenter*, which questioned whether a criminal had standing to assert that a criminal statute violated his right to equal protection under the Fourteenth Amendment to the United States Constitution.[265] He did, the Court held, in accord with a number of decisions from the United States Supreme Court.[266] The North Dakota Supreme Court has nevertheless maintained this common root in federal doctrine when discussing the justification for North Dakota's own constitutional standing doctrine.[267] Although the rule is old, North Dakota courts appear to still recognize that a "plaintiff, as a taxpayer, has a right to bring the action in his own behalf and on behalf of all other taxpayers," where he "need not show any interest other than that which he has as a taxpayer, or any damage or injury to him other than that which he will suffer as a taxpayer in common with all other taxpayers."[268]

36. Ohio

In Ohio, standing is a jurisdictional limitation based on Article IV, Section 4(B) of the Ohio Constitution, which provides Ohio courts with jurisdiction "over all justiciable matters."[269] The Ohio Supreme Court has adopted the *Lujan* test, finding it "the irreducible constitutional minimum of standing."[270] Alternatively, Ohio courts maintain that "[i]t is an elementary concept of law that a party lacks standing to invoke the jurisdiction of the court unless he has, in an individual or representative

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[263] N.D. Fair Hous. Council, Inc. v. Peterson, 625 N.W.2d 551, 568 (N.D. 2001) (discussing State v. Carpenter, 301 N.W.2d 106, 107 (N.D. 1980)).

[264] *Carpenter*, 301 N.W.2d at 107 (citing Baker v. Carr, 369 U.S. 186 (1962)).

[265] *Id.*

[266] *Id.*

[267] See Ackre v. Chapman & Chapman, P.C., 788 N.W.2d 344, 349 (N.D. 2010) (quoting Kjolsrud v. MKB Mgmt. Corp., 669 N.W.2d 82, 86 (N.D. 2003)) (reaffirming that "the Legislature may not expand the scope of a judge's duties beyond the judiciary's institutional role," and that "courts perform judicial functions and do not render advisory opinions on abstract disagreements under our constitutional framework for the separation of powers.").

[268] Lang v. City of Cavalier, 228 N.W. 819, 822 (N.D. 1930); *see also* Danzl v. City of Bismark, 451 N.W.2d 127, 129 (N.D. 1990).

[269] Fed. Home Loan Mortg. Corp. v. Schwartzwalk, 979 N.E.2d 1214, 1218 (Ohio 2012).

[270] Moore v. City of Middletown, 975 N.E.2d 977, 982 (Ohio 2012).

capacity, some real interest in the subject matter of the action."[271]

More so than other states, Ohio courts have articulated a distinction between subject matter jurisdiction over a cause of action and jurisdiction over a particular plaintiff—the former is unaffected by standing, whereas the latter is determined by standing.[272] If a court does not have subject matter jurisdiction, any judgment rendered by that court is void; if a court does not have jurisdiction over a particular case because of a lack of standing, the judgment is voidable.[273] Thus, for example, a defendant whose home is foreclosed on by a bank that does not have standing to bring a foreclosure claim cannot argue that the foreclosure decree should be set aside for a lack of subject matter jurisdiction.[274]

Ohio recognizes taxpayer standing pursuant to statute, but adds an unexpected judicial requirement that the plaintiff be seeking to vindicate an interest that is not unique to the plaintiff—the opposite, of the special injury requirement common in other states that allow taxpayer standing.[275]

37. Oklahoma

Oklahoma courts have adopted the *Lujan* test as a perquisite to jurisdiction.[276] Oklahoma's standing doctrine is "analogous" to federal doctrine, and mostly indistinguishable in rationale; notably the Oklahoma courts have not identified a constitutional source of its doctrine outside of Article III of the United States Constitution.[277] Oklahoma courts have adopted major federal standing decisions wholesale, blending those opinions with requirements placed by Oklahoma courts on plaintiffs seeking declaratory judgments—like, for example, that such a request "be predicated on interest that is direct, immediate and substantial."[278] Oklahoma courts recognize, as the Oklahoma Supreme Court did "[f]our years before Statehood" when it "examined opinions in different

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[271] Wells Fargo Bank, N.A. v. Horn, 31 N.E.3d 637,640 (Ohio 2015) (quoting State *ex rel.* Dallman v. Ct. Com. Pl., 298 N.E.2d 515, 517 (Ohio 1973)).

[272] Bank of Am., N.A. v. Kuchta, 21 N.E.3d 1040, 1046-47 (Ohio 2014).

[273] *Id.* at 1045.

[274] *Id.* at 1046.

[275] State *ex rel.* Teamsters Local Union Bd. of Cnty. Comm'rs, 969 N.E.2d 224, 228 (Ohio 2012).

[276] Bank of Am., N A v. Kabba, 276 P.3d 1006, 1008 (Okla. 2012).

[277] *See* Hendrick v. Walters, 865 P.2d 1232, 1236 n.14 (Okla. 1993).

[278] Democratic Party of Okla. v. Estep, 652 P.2d 271, 274 (Okla. 1982); Fent v. Contingency Review Bd., 163 P.3d 512, 519 n. 20 (Okla. 2007) ("[s]tanding refers to a person's legal right to seek relief in a judicial forum.") (citing Lujan v. Defenders of Wildlife, 504 U.S. 555, 560 (1992))); Indep. Sch. Dist. No. 9 of Tulsa Cty. v. Glass 639 P.2d 1233, 1237 n.9 (Okla. 1982).

jurisdictions" on the issue, that a "taxpayer possesses standing to seek equitable relief when alleging that a violation of a statute will result in an illegal expenditure of public funds or the imposition of an illegal tax.[279]

38. Oregon

The Oregon Supreme Court recently issued a magisterial opinion settling contradictory elements across the state's justiciability doctrines, including standing.[280] The Court's ultimate holding is that Oregon's Constitution does not place any limits on the Oregon courts' power "to hear public actions or cases that involve matters of public interest that might otherwise have been considered nonjusticiable under prior case law," including cases on standing.[281] "Whether," the Court adds, "that analysis means that the state constitution imposes no such justiciability limitations on the exercise of judicial power in other cases, we leave for another day."[282] To the extent Oregon's prior decisions on standing survive the Couey decision, the decision endorsed the analysis in *Kellas v. Dep't of Corrections*, which stated that, "[i]n sum, rejecting premature or advisory litigation is good policy [and] it is prudent to keep judicial intervention within statutory or established equitable and common law remedies."[283] The *Kellas* court's holding that "[t]he source of law that determines that question is the statute that confers standing in the particular proceeding that the party has initiated" is likely the best remaining guidance for Oregon litigants.[284]

39. Pennsylvania

Pennsylvania courts apply federal standing doctrine and the *Lujan* test unless a statute provides for standing.[285] The Pennsylvania Supreme Court, while recognizing the Courts' otherwise reliance on federal standing doctrine, distinguished the Pennsylvania Constitution from the United States Constitution based on the provision that Pennsylvania's courts have jurisdiction "as shall be provided by law."[286] Thus, "if a statute properly enacted by the Pennsylvania legislature furnishes the authority for a party

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[279] Okla. Pub. Emp. Ass'n v. Okla. Dep't of Cent. Serv., 55 P.3d 1072, 1078 (Okla. 2002).
[280] Couey v. Atkins, 355 P.3d 866 (Or. 2015).
[281] *Id.* at 520.
[282] *Id.*
[283] Kellas v. Dep't. of Corr., 145 P.3d 139, 143 (Or. 2006).
[284] *Id.* at 142.
[285] Hous. Auth. v. Pa. State Civil Serv. Comm'n, 730 A.2d 935, 940 (Pa. 1999).
[286] *Id.*

to proceed in Pennsylvania's courts, the fact that the party lacks standing under traditional notions of our jurisprudence will not be deemed a bar to an exercise of this Court's jurisdiction."[287] Otherwise, Pennsylvania's reliance on federal standing doctrine is longstanding, if poorly explained.[288] Pennsylvania courts do recognize taxpayer standing as an exception to traditional standing rules where a plaintiff can show:

> (1) the governmental action would otherwise go unchallenged; (2) those directly and immediately affected by the complained of matter are beneficially affected and not inclined to challenge the action; (3) judicial relief is appropriate; (4) redress through other channels is unavailable; and (5) no other persons are better situated to assert the claim.[289]

40. Rhode Island

In Rhode Island, "standing is a threshold inquiry" but not necessarily jurisdictional.[290] "On rare occasions," Rhode Island courts "will overlook the standing requirement by invoking the so-called 'substantial public interest' exception in order to decide the merits of a case of substantial public importance."[291] In the typical case, Rhode Island courts require a plaintiff to show injury-in-fact to demonstrate standing.[292] This standard was the result of the Rhode Island Supreme Court's "adoption of the first of the *Data Processing* criteria" only, based on a recognition that "[i]t is quite apparent . . . that there has developed a much broader concept of standing than that which prevailed in the days when standing was measured in terms of 'legal interests' or 'property rights,'" but also that "[t]he *Data Processing* bi-partite formula is not binding on us and has been severely criticized by those favoring the single 'injury in fact' test."[293] When adopted, the injury requirement was not grounded in any specific provisions of the Rhode Island Constitution or any explicit prudential

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[287] *Id.* at 941.

[288] *See, e.g.*, Wm. Penn Parking Garage v. City of Pittsburgh, 346 A.2d 269, 281 (Pa. 1975) (collecting federal decisions); Dwyer v. Dilworth, 139 A.2d 653, 655 n.7 (Pa. 1958) (citing a federal case finding no "case and controversy").

[289] Pittsburgh Palisades Park v. Com., 888 A.2d 655, 662 (Pa. 2005).

[290] Narragansett Indian Tribe v. State, 81 A.3d 1106, 1110 (R.I. 2014).

[291] *Id.*

[292] *Id.*

[293] R.I. Ophthalmological Soc'y v. Cannon, 317 A.2d 124, 128 (R.I. 1974).

concern.[294] Rather, it was a combined reaction to "a paucity of [Rhode Island] cases dealing with the issue of standing,"[295] and the influence of a federal system "in a state of flux"[296] as a result of the Administrative Procedures Act—exemplified by *Data Processing*.[297] After *Lujan*, the Rhode Island Supreme Court later restated the "'injury in fact' requirement," in more general terms as "'an invasion of a legally protected interest which is (a) concrete and particularized and (b) actual or imminent, not 'conjectural' or 'hypothetical.'"[298] Thus, Rhode Island adopted the first part of the two-part *Data Processing* test, and the first two parts of the three-part *Lujan* test. The Rhode Island Supreme Court has refused to recognize taxpayer standing, partly because the state's "long-standing jurisprudence—perhaps to a greater degree than that of some other jurisdictions—has had a discernable focus on the requirement of concrete and particularized harm."[299]

41. South Carolina

South Carolina courts have adopted the *Lujan* test, although constitutional standing is not a jurisdictional prerequisite in all cases. South Carolina courts recognize three types of standing: statutory, constitutional and public importance standing.[300] "When no statute confers standing," and the issue is not of sufficient public importance, "the elements of constitutional standing must be met."[301] South Carolina's constitutional standing doctrine is not a matter of state constitutional law, but stems from the influence of federal cases and an early recognition that it is "fundamental that one without interest in the subject matter of a law suit has no legal standing to prosecute it."[302] The South Carolina Supreme Court has conflated the requirement of standing—that the plaintiff have a "personal stake" in the suit—with the requirement that the real party in

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[294] *Id.* at 128.

[295] *Id.*

[296] *Id.*

[297] *Id.* at 127; *see* Watson v. Fox, 44 A.3d 130, 136 (R.I. 2012) (discussing constitutional limitations on issuing advisory opinions).

[298] Pontbriand v. Sundlun, 699 A.2d 856, 862 (R.I. 1997) (quoting Lujan v. Defenders of Wildlife, 504 U.S. 555 (1992)).

[299] *Watson*, 44 A.3d at 138.

[300] Youngblood v. S.C. Dep't of Soc. Serv., 741 S.E.2d 515, 518 (S.C. 2013).

[301] *Id.*

[302] Furman Univ. v. Livingston, 136 S.E.2d 254, 256 (S.C. 1964); Sea Pines Ass'n for Prot. of Wildlife, Inc. v. S.C. Dep't of Natural Res, 550 S.E.2d 287, 291 (S.C. 2001); *see* Carnival Corp. v. Historic Ansonborough Neighborhood Ass'n, 753 S.E.2d 846, 850 (S.C. 2014) (citing Sea Pines Ass'n for Prot. of Wildlife, Inc. v. S.C. Dep't of Natural Res, 550 S.E.2d 287, 291 (S.C. 2001)).

interest, although the real party in interest requirement is no longer invoked as a justification for the standing doctrine as it is in some other states.[303] When a plaintiff must show constitutional standing, the *Lujan* test applies.[304] Public importance standing is available where there is a need for "future guidance," meaning that the case addresses "an issue which transcends a purely private matter and rises to the level of public importance."[305]

42. South Dakota

South Dakota courts have adopted the *Lujan* test in full. The South Dakota Supreme Court has explained:

> The term 'standing' or 'standing to sue' has been variously applied in diverse situations and appears to have different limitations and exceptions peculiar to the situation where it is applied. For instance, in federal courts under the requirements of Article III of the United States Constitution, plaintiff must show 'standing.[306]

In contrast,"[s]tanding is established through being a 'real party in interest'" and it is statutorily controlled by SDCL 15-6-17(a)—which begins: "Every action shall be prosecuted in the name of the real party in interest."

When combined with a broad statement that, "[g]enerally, for a litigant to have standing to bring an action before the court, the litigant must 'show that he personally has suffered some actual or threatened injury as a result of the putatively illegal conduct of the defendant,'"the restatement became: "The real party in interest requirement for standing is satisfied if the litigant can show 'that he personally has suffered some actual or threatened injury as a result of the putatively illegal conduct of the Defendant.'"[307] This restatement was in turn equated with the three-part

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[303] *Compare* Townsend v. Townsend, 474 S.E.2d 424, 427 (S.C. 1996) ("To have standing, one must have a personal stake in the subject matter of the lawsuit; i.e., one must be the "real party in interest."), *with* Bailey v. Bailey, 441 S.E.2d 325, 327 (S.C. 1994) ("To have standing, a party must have a personal stake in the subject matter of a lawsuit. In South Carolina, a party must also be the 'real party in interest.'").

[304] *Carnival Corp.*, 753 S.E.2d at 850.

[305] ATC S., Inc. v. Charleston Cnty., 669 S.E.2d 337, 341 (S.C. 2008).

[306] Wang v. Wang, 393 N.W.2d 771, 775 (S.D. 1986).

[307] Bd. of Educ. of Agar v. McGee, 527 N.W.2d 282, 284 (S.D. 1995) (citing Wang v. Wang., 393 N.W.3d 771, 775 (S.D. 1986)).

Lujan test.[308]

43. Tennessee

Tennessee courts recognize "two categories of standing:" "non-constitutional standing and constitutional standing."[309] "To establish constitutional standing, a plaintiff must satisfy 'three indispensable elements' of the *Lujan* test."[310] In Tennessee, constitutional standing is not required by the Tennessee Constitution. Rather, constitutional standing is "a judge-made doctrine which has no per se recognition in the rules," (meaning the Tennessee Rules of Civil Procedure) and is largely founded on early reference to federal cases.[311] In contrast, "[n]on-constitutional standing focuses on considerations of judicial restraint, such as whether a complaint raises generalized questions more properly addressed by another branch of the government, and questions of statutory interpretation, such as whether a statute designates who may bring a cause of action or creates a limited zone of interests."[312] Tennessee courts will "typically confer standing when a taxpayer (1) alleges a 'specific illegality in the expenditure of public funds' and (2) has made a prior demand on the governmental entity asking it to correct the alleged illegality."[313]

44. Texas

Texas courts hold that "standing is a constitutional prerequisite to maintaining a suit" mandated by two provisions of the Texas Constitution, and apply the *Lujan* test to establish standing.[314] The first constitutional source is Article II, Section 1, which codifies the separation of powers between the three branches of Texas government. This constitutional provision has been interpreted as prohibiting advisory opinions, as well as abstract questions of law that are not binding on the parties, and thus require "remedying an actual or imminent harm."[315] "Texas courts, like

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[308] Benson v. S.D., 710 N.W.2d 131, 141 (S.D. 2006).

[309] City of Memphis v. Hargett, 414 S.W.3d 88, 98 (Tenn. 2013).

[310] *Id.*

[311] Fannon v. City of LaFollette, 329 S.W.3d 418, 424 (Tenn. 2010); Knierim v. Leatherwood, 542 S.W.2d 806, 808 (Tenn. 1976).

[312] *Hargett*, 414 S.W.3d at 98.

[313] *Fannon*, 329 S.W.3d at 427.

[314] Texas Ass'n of Bus. v. Texas Air Control Bd., 852 S.W.2d 440, 444 (Tex. 1993); DaimlerChrysler Corp. v. Inman, 252 S.W.3d 299, 304 (Tex. 2008).

[315] *Id.* (citing Allen v. Wright, 468 U.S. 737, 751 (U.S. 1984).

federal courts, have no jurisdiction to render such opinions."[316] The second constitutional source is Article I, Section 13, which opens Texas courts to "every person for an injury done to him," which Texas courts have interpreted to require the same injury showing as under Article III of the United States Constitution.[317] "The existence of standing—or the lack thereof—is a rigid question of law that is not negotiable and cannot be waived."[318] However, "[t]axpayers in Texas have standing to enjoin the illegal expenditure of public funds, and need not demonstrate a particularized injury."[319] "Implicit in this rule are two requirements: (1) that the plaintiff is a taxpayer; and (2) that public funds are expended on the allegedly illegal activity."[320]

45. Utah

In Utah, standing is a jurisdictional requirement required by the Utah Constitution because standing requirements "emanate from the principle of separation of powers."[321] Utah courts note that the requirements of the Utah Constitution are distinguishable from the requirements of Article III of the United States Constitution, explaining that "the requirement that the plaintiff have a personal stake in the outcome of a legal dispute is rooted in the historical and constitutional role of the judiciary in Utah."[322] "Under the traditional test for standing," in Utah, "the interests of the parties must be adverse and the parties seeking relief must have a legally protectable interest in the controversy, and a "legally protectable" interest may arise "under either statute or the common law."[323] Nevertheless, a Utah "[c]ourt may grant standing where matters of great public interest and societal impact are concerned," even if the plaintiff does satisfy the typical standing requirements.[324]

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[316] *Id.*

[317] *Id. But see id.* at 475 (Dogget, J., concurring and dissenting) ("[c]laiming "guidance" from federal precedent . . . the majority overrules all Texas cases treating standing as a procedural [meaning waiveable] issue, then unnecessarily modifies all Texas precedent addressing the merits of standing. Without explanation, today's opinion simply photocopies into our Texas law books the federal law of standing with all of its much-criticized complexities. Once again the majority chooses more Washington wisdom for Texas when what we need is more Texas thinking in Washington.").

[318] State v. Naylor, No. 11-0114, 2015 WL 3852284, at *5 (Tex. June 19, 2015).

[319] Williams v. Lara, 52 S.W.3d 171, 179 (Tex. 2001).

[320] *Id.*

[321] Brown v. Div. of Water Rights of Dep't of Natural Res., 228 P.3d 747, 751 (Utah 2010).

[322] Jenkins v. Swan, 675 P.2d 1145, 1149 (Utah 1983).

[323] Jones v. Barlow, 154 P.3d 808, 811 (Utah 2007) (internal citations omitted).

[324] Gregory v. Shurtleff, 299 P.3d 1098, 1103 (Utah 2013); *see also* Jenkins v. State, 585 P.2d 442, 443 (Utah 1978) ("[a]ppellants cite the usual rule that one must be personally adversely affected before

46. Vermont

Vermont applies the *Lujan* test as a self-imposed jurisdictional limit based on separation of powers concerns.[325] The Vermont Supreme Court adopted federal standing doctrine *in toto* in a 1949 decision, based on the separation of powers provision in Chapter II, Section 5 of the Vermont Constitution.[326] "To have a case or controversy subject to the jurisdiction of the court, the plaintiffs must have standing. In the absence of standing, any judicial decision would be merely advisory, and Vermont courts are without constitutional authority to issue advisory opinions."[327] Thus, Vermont has adopted the *Lujan* test to determine standing.[328] However, "[i]n Vermont, taxpayer's suits have long been recognized as appropriate vehicles for seeking relief from official action."[329]

47. Virginia

In Virginia, standing is a self-imposed prudential limitation:

> The point of standing is to ensure that the person who asserts a position has a substantial legal right to do so and that his rights will be affected by the disposition of the case. In asking whether a person has standing, we ask, in essence, whether he has a sufficient interest in the subject matter of the case so that the parties will be actual adversaries and the issues will be fully and faithfully developed.[330]

The controlling test is that a plaintiff "must demonstrate a personal stake in the outcome of the controversy."[331] The requirement is not

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he has standing to prosecute an action. While such is true, it is also true this Court may grant standing where matters of great public interest and societal impact are concerned.").

[325] Hinesburg Sand & Gravel Co. v. State, 693 A.2d 1045, 1047 (Vt. 1997).

[326] *In re* Constitutionality of House Bill 88, 64 A.2d 169, 172 (Vt. 1949) ("[t]he judicial power, as conferred by the Constitution of this State upon this Court, is the same as that given to the Federal Supreme Court by the United States Constitution.").

[327] Brod v. Agency of Natural Res., 936 A.2d 1286, 1289 (Vt. 2007).

[328] *See* Parker v. Town of Milton, 726 A.2d 477, 480 (Vt. 1998) (citing *Hinesburg*, 693 A.2d at 1048); *see also* U.S. Bank Nat. Ass'n v. Kimball, 27 A.3d 1087, 1091 (2011).

[329] Cent. Vermont Pub. Serv. Corp. v. Town of Springfield, 379 A.2d 677, 679 (Vt. 1977).

[330] Cupp v. Bd. of Supr's of Fairfax Cnty., 318 S.E.2d 407, 411 (Va. 1984) (citing 2 C. Antieau, Modern Constitutional Law § 15:23 (1969)).

[331] Moreau v. Fuller, 661 S.E.2d 841, 845 (Va. 2008).

constitutional, but stems from decisions regarding declaratory judgments and early citations to treatises.[332] Although the Virginia Supreme Court has not adopted the *Lujan* test, some statutes explicitly require plaintiffs to show the three parts of *Lujan* to seek judicial review of government actions. In these cases, the Virginia courts have applied *Lujan* and other federal precedents.[333] Virginia courts do recognize taxpayer standing to challenge "actions taken by a local government," but not "against the Commonwealth unless he can demonstrate a direct interest, pecuniary or otherwise, in the outcome of the controversy that is separate and distinct from the interest of the public at large" or a statutory right to bring that action.[334]

48. Washington

In Washington, standing outside of administrative law cases is generally addressed with reference to a particular cause of action, and thus standing does not appear to be a constitutional or jurisdictional limitation. For example, in the wake of *Data Processing*, the Washington Supreme Court adopted the "zone of interest" element of the federal decision—and not, it seems, the injury in fact requirement—as a restatement of a "more liberalized view of standing now recognized both by the United States Supreme Court and our own."[335] In that case, the Washington Supreme Court thus found a "justiciable controversy" in a school district's "challenge [to] the constitutionality of the school financing system" because the district "stands at the very vortex of the entire financing system."[336] Likewise, Washington courts may overlook any problems of standing "[w]here a controversy is of serious public importance and immediately affects substantial segments of the population and its outcome will have a direct bearing on the commerce, finance, labor, industry or agriculture generally."[337] In such cases, "questions of standing to maintain an action

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[332] *See, e.g.*, Lynchburg Traffic Bureau v. Norfolk & W. Ry. Co., 147 S.E.2d 744, 745 (Va. 1966) ("it is well settled that 'in order to entitle any person to maintain an action in court it must be shown that he has a justiciable interest in the subject matter in litigation; either in his own right or in a representative capacity.'").

[333] Philip Morris USA Inc. v. Chesapeake Bay Found., Inc., 643 S.E.2d 219, 225 (Va. 2007); *see also* Chesapeake Bay Found., Inc. v. Com. *ex rel.* Virginia State Water Control Bd., 695 S.E.2d 549, 552 (Va. Ct. App. 2010).

[334] Goldman v. Landsidle, 552 S.E.2d 67, 72 (Va. 2001).

[335] Seattle Sch. Dist. No. 1 of King Cnty. v. State, 585 P.2d 71, 82 (Wash. 1978).

[336] *Id.*

[337] Wash. Nat. Gas Co. v. Pub. Util. Dist. No. 1 of Snohomish Cnty., 459 P.2d 633, 635 (1969).

should be given less rigid and more liberal" application.[338] However, Washington Courts have applied *Lujan* and other federal principles to interpret their state administrative procedure act's cause of action for "affected persons"—a standard that the Washington Supreme Court has explained "is drawn from and explained by federal case law."[339] This interpretation has been applied to other Washington statutes providing a cause of action to "aggrieved" persons, ultimately yielding a combined requirement that plaintiffs seeking judicial review of agency action show injury in fact per *Lujan* and the zone of interests test per *Data Processing*.[340] This administrative standing test is distinguishable from "the general standing test applicable in other contexts," but whether that general test is outside of a statutorily defined cause of action is unclear in recent cases.[341]

49. West Virginia

In West Virginia, "[s]tanding is a jurisdictional requirement that cannot be waived, and may be brought up at any time in a proceeding."[342] West Virginia courts have adopted the *Lujan* test.[343] The rationale for the state's standing doctrine is not constitutional; the rationale is built in reference to federal cases and West Virginia cases on declaratory judgments.[344] In contrast with some states, the West Virginia Supreme Court of Appeals read *Data Processing* as abandoning, rather than articulating, new standing requirements, and thus articulated a foundation under the West Virginia Constitution for the right of "[t]he natural citizen in our system of government . . . to expect that his elected officials, agents and appointees shall comply with the law."[345] Nevertheless, the Court required such a person to illustrate that "significant interests are directly injured or adversely affected by governmental action,"[346] which has in turn evolved into requiring the *Lujan* test.

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[338] *Id.*

[339] Allan v. Univ. of Wash., 997 P.2d 360, 362 (Wash. 2000).

[340] *See* KS Tacoma Holdings, LLC v. Shorelines Hearings Bd., 272 P.3d 876, 881 (Wash. Ct. App. 2012).

[341] City of Burlington v. Wash. State Liquor Control Bd., 351 P.3d 875, 879 (Wash. Ct. App. 2015).

[342] Men & Women Against Discrimination v. Family Prot. Servs. Bd., 725 S.E.2d 756, 761 (W. Va. 2011).

[343] *See* Findley v. State Farm Mut. Auto. Ins. Co., 576 S.E.2d 807, 821 (W. Va. 2002).

[344] *Id.*; *see* Mainella v. Bd. of Trs. of Policemen's Pension or Relief Fund of City of Fairmont, 27 S.E.2d 486, 487-88 (W. Va. 1943) ("Is there an actual controversy? Courts are not constituted for the purpose of making advisory decrees or resolving academic disputes.").

[345] Shobe v. Latimer, 253 S.E.2d 54, 60-61 (W. Va. 1979).

[346] *Id.*

50. Wisconsin

In Wisconsin, standing is a self-imposed prudential doctrine. The Wisconsin Supreme Court undertook a comprehensive review of its standing doctrine in 2011 and offered three findings:

> - Standing in Wisconsin is not to be construed narrowly or restrictively, but rather should be construed liberally.
> - No single longstanding or uniform test for standing appears in the case law
> - The basic thrust of all the cases . . . is that standing depends on (1) whether the party whose standing is challenged has a personal interest in the controversy (sometimes referred to in the case law as a 'personal stake' in the controversy); (2) whether the interest of the party whose standing is challenged will be injured, that is, adversely affected; and (3) whether judicial policy calls for protecting the interest of the party whose standing is challenged.[347]

Standing in Wisconsin is neither constitutional nor jurisdictional but is rather "a matter of judicial policy" distinguishable from federal constitutional doctrine and determined by a broad reaching analysis "examining the interests involved, applicable statutes, constitutional provisions, rules, and relevant common law principles."[348] Likewise, in Wisconsin "a taxpayer has standing to challenge the constitutionality of a statute when any illegal expenditure of public funds directly affects taxpayers and causes them to sustain a pecuniary loss" and "[t]he fact that the ultimate pecuniary loss to the individual taxpayer may be almost infinitesimal is not controlling."[349]

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[347] Foley-Ciccantelli v. Bishop's Grove Condo. Ass'n, Inc., 797 N.W.2d 789, 798-99 (Wis. 2011).

[348] *Id.* at 798 n.18, 804; Wells Fargo Bank, N.A. v. Alexander, 838 N.W.2d 137 (Wis. Ct. App. 2013).

[349] Coyne v. Walker, 862 N.W.2d 606, 610 (Wis. Ct. App. 2015) (quoting City of Appleton v. Town of Menasha, 419 N.W.2d 249 (1988)).

51. Wyoming

In Wyoming, standing is a prudential doctrine but "of jurisdictional magnitude."[350] Standing requires a plaintiff to have a "personal stake in the outcome of the controversy," where a "personal stake" is a "tangible interest at stake."[351] Wyoming Supreme Court has adopted the *Lujan* test to determine that "personal stake."[352] Wyoming's standing is not constitutional and is "a necessary and useful tool to be used by courts in ferreting out those cases which ask the courts to render advisory opinions or decide an artificial or academic controversy without there being a palpable injury to be remedied."[353] Soon after *Data Processing*, Wisconsin courts held that its standing rules are "conceptually similar to the analysis required by the federal rule" such that federal decisions were appropriate authorities to consider in administrative law cases, ultimately yielding functionally similar doctrines across various cases.[354]

CONCLUSION

In sum, federal constitutional standing doctrine has had a more pervasive influence than one would suspect, but not a controlling influence on the development of constitutional standing doctrine in the states. Most states distinguish between the structure of the state and federal courts, and avoid adopting federal doctrine without regard to their own precedent or circumstances. Nevertheless, development of constitutional standing requirements in federal courts undoubtedly prompted state courts to take up the issue and develop approaches following the path blazed by federal decisions. For purposes of the type of constitutional standing articulated in *Lujan*, the federal courts were the first mover in all but a very small minority of states.[355]

These findings suggest further study into the diversity of the various

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[350] State *ex rel.* Bayou Liquors, Inc. v. City of Casper, 906 P.2d 1046, 1048, 1051 (Wyo. 1995).

[351] *Id.*

[352] Miller v. Wyo. Dep't of Health, 275 P.3d 1257, 1261 (Wyo. 2012).

[353] Washakie Cnty. Sch. Dist. No. One v. Herschler, 606 P.2d 310, 317 (Wyo. 1980).

[354] Wisconsin's Envtl. Decade, Inc. v. Pub. Serv. Comm'n of Wis., 230 N.W.2d 243, 248 (Wyo. 1975); *Bayou Liquors, Inc.*, 906 P.2d at 1049 ("[w]e conclude, however, that the better result is to apply Walker's standing requirements to both APA and non-APA reviews of cases involving the issuance or renewal of retail liquor licenses. Our decision is based upon considerations of uniformity."); *Miller*, 275 P.3d at 1261.

[355] I do not mean that states did not have early cases dealing with standing as an issue of justiciability, or even as an element of separation of powers. Many states did. But as for articulating a generally applicable constitutional standing test as opposed to a more prudential, discretionary approach, federal courts led the states.

states' rationales for constitutional standing requirements. State constitutions are often more similar to each other than any one state constitution is to the United States Constitution, yet most states' constitutional standing doctrines share more similarities with federal doctrine than they share with each other's. This diversity is exemplified in the varied non-text based state rationales for constitutional standing, often relaying statements of fundamental principles in early 19th or 20th century treatises and cases about advisory opinions, declaratory judgments, and requests for writs of mandamus. Searching for the common thread among state court approaches could help develop a theory of standing better fitted to the states—tailored to the "reducibility" of state constitutional standing though commonly shared exceptions, and more in line with the flexibility of other justiciability doctrines.