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SECOND CIRCUIT REVIEW

Standing in Establishment Clause Challenges

By Martin Flumenbaum and Brad S. Karp
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In *Citizens United to Protect Our Neighborhoods, et al., v. Village of Chestnut Ridge*, the U.S. Court of Appeals for the Second Circuit considered whether the district court properly dismissed plaintiffs' complaint for lack of subject matter jurisdiction on the basis that plaintiffs lacked constitutional standing. – F.4th –, 2024 WL 1471268 (2d Cir. April 5, 2024).

Plaintiffs, three individuals (the individual plaintiffs) who are residents of the defendant Village of Chestnut Ridge (the Village), and a civic organization of which the individual plaintiffs are members, called Citizens United to Protect Our Neighborhoods (CUPON), argued that the Village's new zoning law relating to places of worship violated the Establishment Clause. Specifically, plaintiffs asserted that the amended zoning laws—aimed at making it easier to build places of worship in Village neighborhoods—impermissibly promoted and endorsed religious uses over secular uses within the Village.

In a unanimous decision authored by Circuit Judge Richard Sullivan, with Circuit Judges Amalya Kearse and Dennis Jacobs concurring, the Second Circuit affirmed the district court's dismissal, finding that none of the plaintiffs had any form of constitutional

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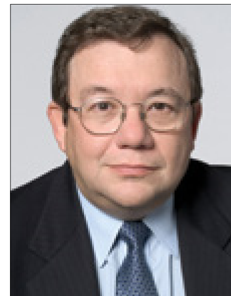
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standing to bring the claims in the complaint.

Specifically, the Second Circuit held that (1) the individual plaintiffs lacked municipal-taxpayer, direct-harm, or denial-of-benefits standing and (2) CUPON lacked associational or organizational standing. Thus, the Second Circuit solidified the limits of constitutional standing in line with prior Establishment Clause cases and reiterated that federal courts are indeed courts of limited jurisdiction.

Distinct Theories of Standing in Establishment Clause Cases

The singular issue in this case—standing—"is an essential and unchanging part of the case-or-controversy requirement of Article III." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). To satisfy Article III's case or controversy requirement, a plaintiff generally can establish standing by showing (1) an injury in fact; (2) a causal connection between the injury and the

conduct complained of; and (3) it is likely that the injury will be redressed by a favorable decision. *CUPON et al.*, 2024 WL 1471268 at *2; *Lujan*, 504 U.S. at 560–61.

While that three-step formula constitutes a court's entire standing analysis in most cases, this circuit has acknowledged that "harm associated with the unconstitutional promotion of religion is 'often inherently generalized'" and has accordingly developed three distinct standing theories to be applied in Establishment Clause cases. *CUPON et al.*, 2024 WL 1471268 at *2; *Montesa v. Schwartz,* 836 F.3d 176, 195–96 (2d Cir. 2016).

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The first theory, municipal-taxpayer standing, is rooted in the idea that a taxpayer has a direct interest in their municipality's use of taxpayer dollars, and has been applied for at least 100 years. *Massachusetts v. Mellon*, 262 U.S. 447, 486 (1923). While the notion underlying this theory is fairly expansive, courts have limited its scope by requiring a plaintiff to show "a measurable appropriation or loss of revenue attributable to the challenged activit[y]" and that the defendant made the appropriation "solely for the activities that [the] plaintiff[ ]" challenges. *Altman v. Bedford Central School District*, 245 F.3d 49, 74 (2d Cir. 2001).

The second theory, direct-harm standing, hews the closest to the general concept and analysis of standing, as plaintiffs must show they are "directly affected by the laws and practices against which their complaints are directed." *See Montesa*, 836 F.3d at 196.

The third and final theory, denial-of-benefits standing, similarly requires a plaintiff to show "they have incurred a cost or been denied a benefit on account of their religion." *Arizona Christian School Tuition Organization v. Winn*, 563 U.S. 125, 130 (2011).

Separately, an association or organization may establish standing to sue on behalf of its members (known as associational or representational standing) if it can show: (1) "its members would otherwise have standing to sue in their own right," (2) "the interests it seeks to protect are germane to the organization's purpose," and (3) "neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." *Hunt v. Washington State Apple Advertising Commission*, 432 U.S. 333, 343 (1977).

Critically, for an association or organization to have standing in an Establishment Clause case, it must show that one of its members has either traditional, municipal-taxpayer, direct-harm, or denial-of-benefits standing.

The District Court Decision

Judge Nelson Román of the U.S. District Court for the Southern District of New York granted defendant's motion to dismiss plaintiffs' complaint pursuant to Federal Rule of Civil Procedure 12(b)(1).

Román first found that none of the individual plaintiffs alleged an injury in fact under the traditional constitutional standing framework, and had merely levied generalized grievances. *CUPON et al. v. Village of Chestnut Ridge*, 2022 WL 4647821 at *6 (S.D.N.Y. Sept. 30, 2022).

The district court further found that the individual plaintiffs failed to establish taxpayer standing because they "merely allege that the Village was billed by" its private planning firm to review the proposed zoning law, which does not reach the level of a "measurable appropriation" under taxpayer standing case law. Nor did the individual plaintiffs have direct exposure standing because rather than alleging they suffered economic injuries under the new zoning law or were exposed to "government-promoted expression of religion," they asserted only that an "untold" number of houses of worship *could* be constructed under the new laws.

Finally, the individual plaintiffs did not allege that the new zoning laws denied them any benefits

to which they otherwise would have been entitled. Because none of the Individual Plaintiffs were able to establish standing, CUPON also failed to establish associational standing.

The Second Circuit's Decision

On appeal, the Second Circuit reviewed de novo the same question as the district court, and affirmed each of the district court's conclusions. Notably, the Second Circuit expressed concern that acceptance of plaintiffs' arguments would stretch the notion of standing too broadly and thereby permit virtually anyone to bring cases. As to taxpayer standing, the court explained

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that "if plaintiffs' theory were enough to trigger taxpayer standing, it 'would allow any municipal taxpayer to challenge virtually any governmental action' whenever a municipality paid a private entity to assist in the work for even a minute of billed time." *CUPON et al.*, 2024 WL 1471268 at *3; *Altman*, 245 F.3d at 74.

The Second Circuit pointed out that it was not breaking new ground on this issue, but rather maintaining its position in *Altman*, where the court rejected plaintiffs' attempts to assert taxpayer standing on the basis that a municipal school district's employee spent time working on challenged activities and the school district paid for school supplies used to complete such activities. *CUPON et al.*, 2024 WL 1471268 at *3.

Addressing plaintiffs' attempts to establish direct-harm standing, the Second Circuit noted that "all plaintiffs can assert is that someone may one day build a structure that Plaintiffs might eventually see. That is far too 'conjectural or hypothetical' to support standing here." *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158 (2014).

As to denial-of-benefits standing, the court again emphasized the lack of connection between the zoning laws and the plaintiffs' interests here, finding that they "have no personal interest in the purported benefit: there is no indication that any individual plaintiff has held a large gathering, applied for a permit, or engaged in any other conduct that would implicate or invoke the operation of the challenged zoning laws" (internal quotations omitted).

Finally, the court rejected CUPON's claims of associational standing, finding that "CUPON cannot establish standing simply because the New Zoning Law 'touch[es] an[ ] issue within the scope of its mission (which the organization itself ... define[d])' and CUPON 'expend[ed] resources to oppose that law.'" *Connecticut Parents Union* v. *Russell-Tucker*, 8 F.4th 167, 173 (2d Cir. 2021).

With this, the Second Circuit held that plaintiffs failed to allege that they had standing to pursue their claims.

Conclusion

In recent years, the Second Circuit has published numerous decisions limiting the scope of constitutional standing in Establishment Clause cases. *See, e.g., Altman*, 245 F.3d at 74; *see also Connecticut Parents Union*, 8 F.4th at 172; *Montesa*, 836 F.3d at 201. The court's decision in *CUPON et al*. marks yet another, unequivocally reaffirming the court's commitment to keeping "standing" within clear boundaries, and ensuring that a plaintiff can "establish a real stake in their challenge before bringing it into federal court" as Article III demands. *CUPON et al.*, 2024 WL 1471268 at *6.

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