

## Sec. 2—Judicial Power and Jurisdiction

## Cl. 1—Cases and Controversies

standing to challenge IRS policy of extending tax benefits to hospitals that did not serve indigents, because they could not show that alteration of the tax policy would cause the hospitals to alter their policies and treat them.<sup>429</sup> Similarly, the link between fully integrated public schools and allegedly lax administration of tax policy permitting benefits to discriminatory private schools was deemed too tenuous, the harm flowing from private actors not before the courts and the speculative possibility that directing denial of benefits would result in any minority child being admitted to a school.<sup>430</sup>

But the Court did permit plaintiffs to attack the constitutionality of a law limiting the liability of private utilities in the event of nuclear accidents and providing for indemnification, on a showing that “but for” the passage of the law there was a “substantial likelihood,” based upon industry testimony and other material in the legislative history, that the nuclear power plants would not be constructed and that therefore the environmental and aesthetic harm alleged by plaintiffs would not occur; a voiding of the law would likely relieve the plaintiffs of the complained of injuries.<sup>431</sup> Thus, operation of the requirements of causation and redressability makes difficult but not impossible the establishment of standing by per-

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organizational plaintiff were not inhibited by allegedly racially discriminatory zoning laws from constructing housing for low-income persons like himself was held to have shown a “substantial probability” that voiding of the ordinance would benefit him.

<sup>429</sup> *Simon v. Eastern Kentucky Welfare Rights Org.*, 426 U.S. 26 (1976). *See also* *Linda R.S. v. Richard D.*, 410 U.S. 614 (1973) (mother of illegitimate child lacked standing to contest prosecutorial policy of using child support laws to coerce support of legitimate children only, as it was “only speculative” that prosecution of father would result in support rather than jailing). However, in *Summers v. Earth Island Institute*, 129 S. Ct. 1142, 1151 (2009), the Court noted in dicta that, if a plaintiff is denied a procedural right, the fact that the right had been accorded by Congress “can loosen the strictures of the redressability prong of our standing inquiry.” Thus, standing may exist even though a court’s enforcing a procedural right accorded by Congress, such as the right to comment on a proposed federal agency action, will not guarantee the plaintiff success in persuading the agency to adopt the plaintiff’s point of view.

<sup>430</sup> *Allen v. Wright*, 468 U.S. 737 (1984). *But see* *Heckler v. Mathews*, 465 U.S. 728 (1984), where persons denied equal treatment in conferral of benefits were held to have standing to challenge the treatment, although a judicial order could only have terminated benefits to the favored class. In that event, members would have secured relief in the form of equal treatment, even if they did not receive benefits. *See also* *Arkansas Writers’ Project, Inc. v. Ragland*, 481 U.S. 221 (1987); *Orr v. Orr*, 440 U.S. 268, 271–273 (1979).

<sup>431</sup> *Duke Power Co. v. Carolina Environmental Study Group*, 438 U.S. 59, 72–78 (1978). The likelihood of relief in some cases appears to be rather speculative at best. *E.g.*, *Bryant v. Yellen*, 447 U.S. 352, 366–368 (1980); *Watt v. Energy Action Educational Foundation*, 454 U.S. 151, 160–162 (1981).