

Sec. 2—Judicial Power and Jurisdiction

Cl. 1—Cases and Controversies

or otherwise,” that was arguably within the zone of interest to be protected or regulated by the statute or constitutional provision in question.⁴⁰⁵ Political,⁴⁰⁶ environmental, aesthetic, and social interests, when impaired, now afford a basis for making constitutional attacks upon governmental action.⁴⁰⁷ “But deprivation of a procedural right without some concrete interest that is affected by the deprivation—a procedural right *in vacuo*—is insufficient to create Article III standing.”⁴⁰⁸

The breadth of the “injury-in-fact” concept may be discerned in a series of cases involving the right of private parties to bring actions under the Fair Housing Act to challenge alleged discriminatory practices, even where discriminatory action was not directed against parties to a suit. These cases held that the subjective and intangible interests of enjoying the benefits of living in integrated communities were sufficient to permit them to attack actions that threatened or harmed those interests.⁴⁰⁹ Or, there is the important case of *FEC v. Akins*,⁴¹⁰ which addresses the ability of Congress to confer standing and to remove prudential constraints on judicial review. Congress had afforded persons access to Commission information and had authorized “any person aggrieved” by the actions of the FEC to sue. The Court found “injury-in-fact” present where plaintiff voters alleged that the Federal Election Commission had de-

⁴⁰⁵ *Ass’n of Data Processing Service Org. v. Camp*, 397 U.S. 150 (1970); *Barlow v. Collins*, 397 U.S. 159 (1970). The “zone of interest” test is a prudential rather than constitutional standard. The Court sometimes uses other language to characterize this test. Thus, in *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992), the Court refers to injury in fact as “an invasion of a legally protected interest,” but in context, here and in the cases cited, it is clear the reference is to any interest that the Court finds protectable under the Constitution, statutes, or regulations.

⁴⁰⁶ *Department of Commerce v. United States House of Representatives*, 525 U.S. 316 (1999).

⁴⁰⁷ *E.g.*, *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 563 (1992); *Lujan v. National Wildlife Federation*, 497 U.S. 871, 885 (1991); *Duke Power Co. v. Carolina Environmental Study Group*, 438 U.S. 59, 72–74 (1978); *Village of Arlington Heights v. Metropolitan Housing Dev. Corp.*, 429 U.S. 252, 261–263 (1977); *Singleton v. Wulff*, 428 U.S. 106, 112–113 (1976); *Warth v. Seldin*, 422 U.S. 490, 498–499 (1975); *O’Shea v. Littleton*, 414 U.S. 488, 493–494 (1974); *Linda R.S. v. Richard D.*, 410 U.S. 614, 617–618 (1973).

⁴⁰⁸ *Summers v. Earth Island Institute*, 129 S. Ct. 1142, 1151 (2009) (environmental group that was denied the opportunity to file comments with the United States Forest Service regarding a Forest Service action denied standing for lack of concrete injury). On the other hand, where a party has successfully established a legal right, a threat to the enforcement of that legal right gives rise to a separate legal injury. *Salazar v. Buono*, 559 U.S. ___, No. 08–472, slip op. at 8 (2010) (plurality opinion) (“A party that obtains a judgment in its favor acquires a ‘judicially cognizable’ interest in ensuring compliance with that judgment”).

⁴⁰⁹ *Trafficante v. Metropolitan Life Ins. Co.*, 409 U.S. 205 (1972); *Gladstone Realtors v. Village of Bellwood*, 441 U.S. 91 (1979); *Havens Realty Corp. v. Coleman*, 455 U.S. 363 (1982).

⁴¹⁰ 524 U.S. 11 (1998).