ing in certain contexts, such as national security, where the extent of harm may be unknown to the party affected.[423] In *Clapper v. Amnesty International USA*, the Court insisted that plaintiffs show that the threatened injury—monitoring their international communications illegally—was "certainly impending"; showing that there was an "objectively reasonable likelihood" of prospective injury was insufficient.[424] Also, plaintiffs were not allowed, absent "certainly impending" harm, to bypass the imminence requirement by arguing that they had incurred costs (*e.g.*, travel expenses to conduct in person conversations abroad in lieu of conducting less costly electronic communications that might be more susceptible to surveillance) to guard against "reasonably possible" future harm.

The standard for precluding future implementation may not be as rigorous when national security is not at issue or when there is a history of prior enforcement. Plaintiffs in *Susan B. Anthony List v. Driehaus*,[425] objected to prospective enforcement of an Ohio law that prohibited making false statements about a candidate or a can-

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but make no additional allegation that any of the information required by the Secretary will tend to incriminate them); Rizzo v. Goode, 423 U.S. 362, 372 (1976) ("individual respondents' claim to 'real and immediate' injury rests not upon what the named petitioners might do to them in the future—such as set bond on the basis of race [as was alleged in *O'Shea*, supra]—but upon what one of a small, unnamed minority of policemen might do to them in the future because of that unknown policeman's perception of departmental disciplinary procedures"); Summers v. Earth Island Institute, 129 S. Ct. 1142, 1151 (2009) ("deprivation of a procedural right [the right to comment on federal agency proposed action] without some concrete interest that is affected by the deprivation—a procedural right *in vacuo*—is insufficient to create Article III standing"). In City of Los Angeles v. Lyons, 461 U.S. 95 (1983), the Court held that victim of a police choke hold seeking injunctive relief was unable to show sufficient likelihood of recurrence as to him. *But see* Davis v. Federal Election Commission, 128 S. Ct. 2759, 2769 (2008), in which the Court held that "the injury required for standing need not be actualized. A party facing prospective injury has standing to sue where the threatened injury is real, immediate, and direct." In this case, a statute provided that, if a political candidate declares that he will "self-finance," then his opponent, if he qualifies, may receive individual contributions beyond the normal limit. A self-financing candidate challenged the statute after he had declared himself to be self-financing, but before his opponent had qualified for the higher contribution limit; the Court found that the self-financing candidate faced "a realistic and impending threat of direct injury" adequate for standing. Id.

[423] *See* Clapper v. Amnesty International USA, 568 U.S. ___, No. 11–1025, slip op. (2013). In *Clapper*, when defense attorneys, human rights organizations, and others challenged prospective, surreptitious surveillance of the communications of certain foreigners abroad under the new FISA Amendments Act, the Court found a lack of standing because the plaintiffs failed to show, *inter alia*, what the government's targeting practices would be, what legal authority the government would use to monitor any of the plaintiffs' overseas clients or contacts, whether any approved surveillance would be successful, and whether the plaintiffs' own communications from within the United States would incidentally be acquired.

[424] 568 U.S. ___, No. 11–1025, slip op. at 10–11 (2013). In adopting a "certainly impending" standard, the five-Justice majority conceded that the cases had not uniformly required literal certainty. Id at 15 n.5.

[425] 573 U.S. ___, No. 13–193, slip op. (2014)