

Congress recently enacted a statute imposing severe criminal penalties on anyone engaged in trading in the stock market who, in the course of that trading, takes "unfair advantage" of other investors who are also trading in the stock market. The statute does not define the term "unfair advantage." There have been no prosecutions under this new statute.

The members of an association of law school professors that is dedicated to increasing the clarity of the language used in criminal statutes believe that this statute is unconstitutionally vague. Neither the association nor any of its members is currently engaged in, or intends in the future to engage in, trading in the stock market.

The association and its members bring suit against the Attorney General of the United States in a federal district court, seeking an injunction against the enforcement of this statute on the ground that it is unconstitutional.

May the federal court determine the merits of this suit?

- A. No, because a suit for an injunction against enforcement of a criminal statute may not be brought in federal court at any time prior to a bona fide effort to enforce that statute.
- B. No, because the plaintiffs do not have an interest in invalidating this statute that is adequate to ensure that the suit presents an Article III controversy.
- C. Yes, because the plaintiffs seek real relief of a conclusive nature—an injunction against enforcement of this statute.
- D. Yes, because the suit involves a dispute over the constitutionality of a federal statute.

Explanation:

Article III only allows federal courts to determine the merits of *actual cases or controversies*. The **doctrine of standing** ensures that this requirement is met by requiring the plaintiff to show that he/she has a **personal stake** in the outcome of the case. This exists when the plaintiff has suffered an **injury-in-fact**—ie, **concrete and particularized** harm that is **actual or imminent**—that was caused by the challenged conduct and is redressable by a favorable decision.

Here, the association and its members sued in federal court to challenge the constitutionality of the stock market statute. But the statute has not caused these plaintiffs an injury-in-fact because neither is currently engaged in, or intends to engage in, stock market trading (no actual or imminent harm). This means that the plaintiffs do not have an interest in invalidating the statute that would satisfy Article III's case-or-controversy requirement. As a result, the court cannot determine the merits of their suit.

(Choice A) Even if a criminal statute has not been enforced, a suit for an injunction to prevent such enforcement *may* be brought in federal court if the plaintiff shows that the statute poses an immediate threat of harm (not seen here).

(Choice C) The injunction would provide real and conclusive relief. But the federal court does not have the power to issue an injunction in a suit that does not meet the case-or-controversy requirement (as seen here).

(Choice D) Federal courts have *subject-matter jurisdiction* over suits involving the constitutionality of federal statutes. But the court cannot hear the merits of such a suit when, as here, the plaintiffs lack standing to assert their constitutional challenge.

Educational objective:

Under the doctrine of standing, an injury-in-fact exists when the plaintiff has suffered concrete and particularized harm that is actual or imminent.

References

- Lujan v. Defs. of Wildlife, 504 U.S. 555, 560–61 (1992) (holding that standing requires proof of an injury-in-fact, causation, and redressability).

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Standing doctrine

