The Burger Court Opinion Writing Database

Association of Data Processing Service Organizations, Inc. v. Camp

397 U.S. 150 (1970)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University
Forrest Maltzman, George Washington University

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
CHIEF JUSTICE

February 28, 1970

Re: No. 85 - Assn. of Data Processing Serv. Org. v. Camp

Dear Bill:

I am sorry to have been delayed in getting to the above.

I join, but I wonder if Office of Communication of the United Church of Christ v. F.C.C., 359 F.2d 994 (CA D.C. 1966) should not be cited along with Scenic Hudson Preservation Conf. v. F.C.C., 354 F.2d 608, 616 on page 4.

My delay has been in part a result of some concern with the penultimate paragraph of the opinion. Doubtless it states a reality, but I wonder whether the prospective "avalanche" will not be enough without the "flagging" of the point. The "drive" and "trend" is one which stems from judges and to which I contributed in United Church and other cases; yet I shrink from encouraging more resort to Federal Courts in this area.

I would be happier if that paragraph would remain an unarticulated belief.

W.E.B.

Mr. Justice Douglas

~~cc: The Conference~~ No copies to Conference.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HUGO L. BLACK

Feb. 5, 1970

Dear Bill,

Re: No. 85 - Association of Data Processing v. Camp,

I agree.

Re: No. 249- Barlow v. Collins.

I agree.

Sincerely,

H. L. B.

Mr. Justice Douglas

cc: Members of the Conference.

Do not circ except to Brennan, J.

Desk Copy
not circ
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SUPREME COURT OF THE UNITED STATES

No. 85.—October Term, 1969

Association of Data Processing Service Organizations, Inc., et al., Petitioners, *v.* William B. Camp, Comptroller of the Currency of the United States, et al.	On Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit.

[December —, 1969]

Mr. Justice Douglas delivered the opinion of the Court.

Petitioners sell data processing services to businesses generally. In this suit they seek standing to challenge a ruling by respondent, Comptroller of the Currency, that as an incident to their banking services, national banks, including respondent American National Bank & Trust Company, may make data processing services available to other banks and to bank customers. The District Court dismissed the complaint for lack of standing of petitioners to bring the suit. 279 F. Supp. 675. The Court of Appeals affirmed. 406 F. 2d 837. The case is here on a petition for writ of certiorari which we granted. 395 U. S. —.

Generalizations about standing to sue are largely worthless as such. One generalization is, however, necessary and that is that the question of standing in the federal courts is to be considered in the framework of Article III which restricts judicial power to "cases" and "controversies." As we recently stated in *Flast* v. *Cohen*, 392 U. S. 83, 101, ". . . in terms of Article III limitations on federal court jurisdiction, the question of standing

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To: The Chief Justice
Mr. Justice Black
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Fortas
Mr. Justice Marshall

From: Douglas, J.

Circulated: 1/13/70

Recirculated:

SUPREME COURT OF THE UNITED STATES

No. 85.—October Term, 1969

Association of Data Processing Service Organizations, Inc., et al., Petitioners, *v.* William B. Camp, Comptroller of the Currency of the United States, et al.	On Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit.

[January —, 1970]

Mr. Justice Douglas delivered the opinion of the Court.

Petitioners sell data processing services to businesses generally. In this suit they seek to challenge a ruling by respondent, Comptroller of the Currency, that, as an incident to their banking services, national banks, including respondent American National Bank & Trust Company, may make data processing services available to other banks and to bank customers. The District Court dismissed the complaint for lack of standing of petitioners to bring the suit. 279 F. Supp. 675. The Court of Appeals affirmed. 406 F. 2d 837. The case is here on a petition for writ of certiorari which we granted. 395 U. S. 976.

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Supreme Court of the United States
Washington 25, D. C.

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

January 21, 1970

MEMORANDUM TO THE CONFERENCE:

Re: No. 85 -- Association of Data Processing v. Camp
No. 249 -- Barlow v. Collins

Justice Brennan's memo of the 20th deals with some of the differences between the approach which he has taken in the Barlow case and that which I have taken in the Data Processing case.

I do not want to burden the Conference with a long memo, but will add just a word.

I do not think that the matter of standing can rest solely on the Article III inquiry. Concededly, Congress in a regulatory statute could give standing explicitly to some and deny it to all others. Such a statute would not be unconstitutional as I understand it. Therefore when we deal with standing to attack the action of an agency operating under a statute, we have at least to look to the statute to determine whether there is any explicit barrier to the particular type of plaintiff making the claim. I think that the courts must go further and look at the statute to see if the claimant is at least arguably within the zone of interests protected by the statute. That zone will differ from statute to statute. A zoning ordinance or an order of the Forest Service respectin a wilderness area might bring into focus a group of people who would have no possible standing under either of the statutes that we are considering in the present cases. That, I think, is what is meant by the prior decisions I have cited where the Court has looked to see whether Congress desired to give standing, say, to competitors.

I would not want to overrule Chicago v. Atchison T. & S.F. Co., 357 U.S. 77, in its ruling on standing (pp. 83-84); nor Hardin v. Kentucky Utilities Co., 390 U.S. 1, 6, and the long line of cases on which each relied.

I would not subsume standing under the heading of reviewability. Reviewability concerns whether the agency decision is final and conclusive and cannot be judicially challenged by anyone.

Moreover, standing has nothing to do with the merits. A person can have standing to complain that the erection of an apartment house will ruin the view from his private home, and yet not have a leg to stand on when it comes to the merits.

Limiting standing to an Article III "injury-in-fact" test would in some eyes have the advantage of giving many claimants an opportunity to obtain a ruling on the merits of their claims, when otherwise the statutory scheme reasonably interpreted might preclude them and all like them from any standing to be heard at all. Justice Brennan's test, however, seems to relegate the question of statutory protection of the claimant not to the merits, but to the question of reviewability. This would appear to overturn the historic division between standing as concerning the proper party to bring an action, and reviewability as concerning the nature of the authority vested in the administrative agency, without any apparent advantage as regards the plaintiff obtaining a ruling on the merits of his claim.

William O. Douglas

The Chief Justice
Mr. Justice Black
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall

To: The Chief Justice
Mr. Justice Black
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
~~Mr. Justice Fortas~~
Mr. Justice Marshall

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From: Douglas, J.

SUPREME COURT OF THE UNITED STATES

Circulated: _____

No. 85.—October Term, 1969 Recirculated: 1-24

Association of Data Processing Service Organizations, Inc., et al., Petitioners, *v.* William B. Camp, Comptroller of the Currency of the United States, et al.	On Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit.

[February —, 1970]

Mr. Justice Douglas delivered the opinion of the Court.

Petitioners sell data processing services to businesses generally. In this suit they seek to challenge a ruling by respondent, Comptroller of the Currency, that, as an incident to their banking services, national banks, including respondent American National Bank & Trust Company, may make data processing services available to other banks and to bank customers. The District Court dismissed the complaint for lack of standing of petitioners to bring the suit. 279 F. Supp. 675. The Court of Appeals affirmed. 406 F. 2d 837.. The case is here on a petition for writ of certiorari which we granted. 395 U. S. 976.

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[February —, 1970]

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To: The Chief Justice
Mr. Justice Black
Mr. Justice Harlan
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Mr. Justice Stewart
Mr. Justice White
~~Mr. Justice Fortas~~
Mr. Justice Marshall

2, 3, 5, 6, 7

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From: Douglas, J.

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SUPREME COURT OF THE UNITED STATES

No. 85.—October Term, 1969

Association of Data Processing Service Organizations, Inc., et al., Petitioners, *v.* William B. Camp, Comptroller of the Currency of the United States, et al.

On Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit.

[February —, 1970]

Mr. Justice Douglas delivered the opinion of the Court.

Petitioners sell data processing services to businesses generally. In this suit they seek to challenge a ruling by respondent, Comptroller of the Currency, that, as an incident to their banking services, national banks, including respondent American National Bank & Trust Company, may make data processing services available to other banks and to bank customers. The District Court dismissed the complaint for lack of standing of petitioners to bring the suit. 279 F. Supp. 675. The Court of Appeals affirmed. 406 F. 2d 837. The case is here on a petition for writ of certiorari which we granted. 395 U. S. 976.

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To: The Chief Justice
Mr. Justice Black
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Fortas
Mr. Justice Marshall

3.6.7

From: Douglas, J.

Circulated:

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SUPREME COURT OF THE UNITED STATES

No. 85.—October Term, 1969

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[February —, 1970]

Mr. Justice Douglas delivered the opinion of the Court.

Petitioners sell data processing services to businesses generally. In this suit they seek to challenge a ruling by respondent, Comptroller of the Currency, that, as an incident to their banking services, national banks, including respondent American National Bank & Trust Company, may make data processing services available to other banks and to bank customers. The District Court dismissed the complaint for lack of standing of petitioners to bring the suit. 279 F. Supp. 675. The Court of Appeals affirmed. 406 F. 2d 837. The case is here on a petition for writ of certiorari which we granted. 395 U. S. 976.

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February 28, 1970

Dear Chief:

Many thanks for your Memorandum in No. 85 - Assoc. of Data Processing v. Camp. I have added the United Church of Christ citation on page 4, and I think it was very relevant.

Moreover, I struck the offending penultimate paragraph.

W. O. D.

The Chief Justice

To: The Chief Justice
Mr. Justice Black
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Fortas
Mr. Justice Marshall

From: Douglas, J.

SUPREME COURT OF THE UNITED STATES

Recirculated: 3/2/70

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Association of Data Processing Service Organizations, Inc., et al., Petitioners, *v.* William B. Camp, Comptroller of the Currency of the United States, et al.	On Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit.

[March 3, 1970]

Mr. Justice Douglas delivered the opinion of the Court.

Petitioners sell data processing services to businesses generally. In this suit they seek to challenge a ruling by respondent, Comptroller of the Currency, that, as an incident to their banking services, national banks, including respondent American National Bank & Trust Company, may make data processing services available to other banks and to bank customers. The District Court dismissed the complaint for lack of standing of petitioners to bring the suit. 279 F. Supp. 675. The Court of Appeals affirmed. 406 F. 2d 837. The case is here on a petition for writ of certiorari which we granted. 395 U. S. 976.

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

January 13, 1970

RE: Nos. 85 and 249

Dear Bill:

Now that I've had a chance to compare our two opinions, our differences seem narrowed to this: I deal with whether there is evidence of a statutory concern for the interests of the plaintiff's class as an aspect of reviewability (pages 11 and 12 of my opinion) and you treat it as a second aspect of standing. It seems to me that we duplicate the inquiry if we treat it as an element of standing, since necessarily the inquiry can't be avoided in determining reviewability. It seems to me moreover that it's best to consider the question in the context of reviewability, since we are there already concerned with congressional intent, and since the constitutional requirement of standing involves a wholly different consideration - whether injury in fact is alleged. Also, to restrict standing to its constitutional content should encourage courts to search the relevant statute carefully before deciding there is nothing in it that would permit a plaintiff, who alleges injury as a result of the defendant's action, from having a decision on the merits. Finally, to resolve the question during consideration of reviewability would involve no waste of judicial time. Whatever label is placed on the inquiry into whether Congress intended the plaintiff's interests to be protected by the statute, the inquiry must be made under both of our approaches. A plaintiff who gets into court by alleging injury in fact can be given short shrift for challenging an act that isn't reviewable as to him, or, one step farther down the line, for failure to state a claim upon which relief can be granted.

If you think our views are still irreconcilable perhaps we should both circulate to see what reaction we get from the conference.

Sincerely,

Bill

Mr. Justice Douglas

January 20, 1970

MEMORANDUM TO THE CONFERENCE

RE: No. 85 - Association of Data Processing v. Camp

No. 249 - Barlow v. Collins

Bill Douglas' circulation in No. 85 and mine in No. 249 differ on a very narrow but important question concerning how judges are to determine the standing of plaintiffs who challenge administrative action. Bill's approach has two stages: (1) Since Article III restricts judicial power to cases or controversies, the starting point is to ascertain whether "the plaintiff alleges that the challenged action has caused him injury in fact" (Data Processing at page 2); (2) if injury in fact is alleged, the judge then ascertains "whether the interest sought to be protected by the complainant is arguably within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question" (Id., at page 3). Only if both appear may standing be found. On the other hand, my approach restricts standing to inquiry (1), the constitutional requirement. At page 7 of Barlow, I conclude: "Recognition of his standing is then consistent with the Constitution, and no further inquiry is pertinent to its existence." For me inquiry (2) is not made to determine standing; rather it is made to determine whether, in the absence of an express provision precluding judicial review, it can be inferred from the relevant statutes that Congress meant to allow judicial review at the instance of the plaintiff then requesting it. In other words, although Bill and I agree that allegation of actual injury from the agency action is constitutionally requisite under Article III, Bill would make the

canvass of the statutes [inquiry (2)] an additional element of standing and I would make the canvass an element of the separate question of reviewability.

Because I don't think our difference is "much ado about nothing", and because the Conference must decide the issue before either case can come down, I circulate this memorandum to give my reasons why I think the Barlow resolution is the correct one.

Three discrete inquiries have often been merged under the general rubric of standing: (1) whether the plaintiff has alleged he was injured in fact by the defendant's action, (2) whether that action has invaded one of the plaintiff's legally protected interests, and (3), when administrative action is challenged, whether the relevant statute or statutes permit judicial review of the action at the request of the plaintiff. I think the merging of these questions has made for confusion and created real risk of denials of justice. The first inquiry, injury in fact, concerns the only constitutional requirement of standing. For reasons developed in Barlow, the allegation of injury in fact suffices to meet the relevant Article III limitation on justiciability: the plaintiff is then assumed to have a sufficient personal stake in the outcome of the controversy to be properly adverse in his conduct of the litigation. To resolve this inquiry, the court must focus on the harm alleged, on whether and how it allegedly affects the plaintiff and on whether it allegedly stems from the defendant's action.

The second inquiry, on the other hand, whether the action has invaded a legally protected interest, deals with an aspect of the merits: whether the plaintiff has stated a claim upon which relief can be granted. If the legal interest is claimed to arise under a statute, the court must focus on the meaning of the relevant statutory language to determine whether it does or does not protect the plaintiff in precisely the manner he alleges. If it does, he has stated a claim upon which relief can be granted. Relief, in turn, should be granted if the plaintiff proves his allegation that he was harmed as a result of the defendant's invasion of this legal interest.

However, a plaintiff allegedly injured in fact by administrative action will be barred from arguing the merits if Congress provided that as to him the agency's action is nonreviewable. Thus the third inquiry, whether judicial review is permitted at the plaintiff's request, focuses on a search for what has often been termed (I suggest misleadingly) a "statutory aid to standing" - that is, some indication that Congress intended to permit members of the class to which the plaintiff belongs to have review of the administrative action in question. Traditionally such indication has been found either in express statutory language authorizing review at the request of the class (e.g., FCC v. Sanders Bros. Radio Station, 309 U.S. 470), or in indicia that the class was among the beneficiaries of the statute (e.g., Hardin v. Kentucky Utilities Co., 390 U.S. 1). A showing that the plaintiff's class is among the statutory beneficiaries simply establishes that the plaintiff may have the court review the challenged agency action and invalidate it if it is proved illegal. Thus, when a plaintiff establishes that the challenged action is reviewable at his request, he also establishes the threshold element of his cause of action -- that the pertinent statute or statutes are applicable to him. Whether they protect him in the specific manner which he claims, however, remains to be shown, and is wholly a question of the merits. Although Congress may have intended that a particular class be generally benefitted by a particular statute, it does not follow that Congress intended the statute to create the specific legal interest which the plaintiff claims in a particular case.

Each of the three inquiries — into injury in fact, reviewability at the plaintiff's request, and existence of the specific legal interest which he claims — is governed by its own criteria. Each, accordingly, is a separate issue upon which, in my view, the court must separately focus to make an informed, fully conscious decision. To fail to isolate and treat each inquiry independently of the other two is to risk obscuring what actually is at issue in a given case. The books are full of vague and ambiguous opinions which dismiss a plaintiff under the rubric of "standing" when actually dismissal, if proper at all, rested either on the plaintiff's failure to prove that the challenged action was reviewable at his request or on his failure to prove the existence of the specific legal interest which he claimed.

Barlow v. Collins is a typical illustration of the confusion that prevails. The only substantial issue in that case goes to the merits: does the statutory language "making a crop" create a legally protected interest for tenant farmers in the form of a prohibition against the assignment of benefits to secure cash rent? By confusing the merits with the tenant farmers' standing and their entitlement to judicial review, both the District Court and the Court of Appeals denied the farmers the focused and careful decision on the merits to which they are clearly entitled.

The serious risk of injustice inherent in merging the inquiry into standing with the injuries into reviewability and the merits, can be avoided, I submit, if the determination of standing is made to depend solely on whether plaintiff has alleged injury in fact. A finding that the plaintiffs have standing under that test does not, of course, foreclose a holding that the controversy is unfit for judicial resolution for some other reason, e.g., that the court lacks jurisdiction of the parties or the subject matter. See Barlow, n. 6 at page 5.

Consultation of the pertinent statutes is properly reserved until the inquiry into reviewability. Here it is necessary for the court to consult the pertinent statutory language, legislative history, and public policy considerations to determine if all judicial review is precluded, and, if not, whether it is foreclosed to the class of plaintiffs then before the court. Under the APA "statutes [may] preclude judicial review" or "agency action may be committed to agency discretion by law." 5 U.S.C. § 701. In either case the plaintiffs are out of court, not because they had no standing to enter, but because Congress stripped the judiciary of authority to review the agency action. Depending on how Congress wrote the statute, review may be totally foreclosed whoever the plaintiff may be (as in the statute involved in Schilling v. Rogers, 363 U.S. 666) or, if judicial review is permitted, it may nevertheless be denied to plaintiffs of the class seeking review. In Abbott Laboratories v. Gardner, 387 U.S. 136, 140, however, we held that "judicial review of final agency action by an aggrieved person will not be cut off unless there is persuasive reason to believe that such was the purpose of Congress."

APA § 702 provides that "[a] person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof." To satisfy § 702, an investigation (as noted, often confusingly styled a search for a "statutory aid to standing") is made to find either express language affording the plaintiff judicial review, or indicia from which it may be inferred that he has the right to review. As the circulations in both No. 85 and No. 249 illustrate, a determination that review is not wholly precluded, does not necessarily resolve whether the particular plaintiff is entitled to it. In the absence of express statutory language granting the respective plaintiffs a right of review both circulations look for indicia from which that right can be inferred. The search in No. 85 is made under the rubric of standing, while in No. 249 it falls under the general inquiry into reviewability.

In terms of treating closely related questions with one another, the search is more properly made in the reviewability context. The one investigation which must be made to determine standing concerns the harm alleged by the plaintiff to have resulted from the defendant's action. It has little or nothing to do with the statutory investigation required to determine whether Congress intended to preclude all judicial review, and, if not, whether it intended that the class to which the plaintiff belongs have it. More fundamentally, in terms of the desirability of separating distinct questions from one another lest each one not be squarely faced and decided on its own merits, it is important to restrict standing to an inquiry into injury in fact. The search for so-called "statutory aid to standing" is a distinct issue concerning the congressional plan for reviewability of the agency's action.

If it found that a plaintiff who alleged injury in fact is entitled to judicial review, inquiry then proceeds to the merits -- to whether the statute or statutes grant the plaintiff the specific legal interest which he claims, and, if so, whether the agency action invaded that interest. If the specific statutory interest which the plaintiff claims is frivolous, summary judgment can be quickly

granted the defendant. It is important to recognize that the approach to standing which I urge need not change the result in individual cases, nor the rapidity with which courts can decide them. No inquiry previously made by courts has been eliminated, and no new inquiry added. The investigations have simply been separated from one another and organized so as to facilitate focused and error-free decisions. Thus some suits which were previously dismissed for lack of standing may still be dismissed on the ground that the agency's action is nonreviewable as to the plaintiff, or, if reviewability poses no problem, because the plaintiff fails to state a specific legal interest which the challenged action has invaded. Results in individual cases may be different only to the extent that careful separation of the three inquiries leads courts to more careful and reasoned consideration of each. This I submit makes for better judicial administration of a complex problem, for less error and thus for greater justice.

My view brings me to the same result Bill reaches in Data Processing. The plaintiffs clearly have standing. They alleged that the Comptroller's action in permitting national banks to perform data processing services has already resulted in the loss of two of plaintiff Data System's customers to a respondent bank and that competition from the banks may entail future loss of profits. I would leave the question of standing at this point and turn to the relevant statutory provisions, looking to see if they preclude any and all judicial review, and, if not, whether they permit it at the plaintiffs' request. I would not, as Bill's opinion does, canvass the statutes twice, first on standing and again on reviewability, but would canvass them only for reviewability. As to that, I agree that the Comptroller's action is reviewable at the plaintiffs' request. There is no indication that reviewability is wholly precluded, nor is there any express provision granting it at the plaintiffs' request. Section 4 of the Bank Service Corporation Act, however, states that "[n]o bank service corporation may engage in any activity other than the performance of bank services for banks," and there is evidence that the provision was "a response to the fears expressed by a few Senators that without such a prohibition, the bill would have enabled 'banks to engage in a nonbanking activity,' . . . and thus constitute 'a serious exception to the accepted public

policy which strictly limits banks to banking.'" Arnold Tours, Inc. v. Camp, 408 F. 2d 1147, 1152-53. In light of the language quoted from Abbott, this indicia suffices to afford the plaintiffs' reviewability. Absent countervailing indications, it may reasonably be inferred that beneficiaries of § 4 of the Act include nonbanking businesses engaged in endeavors in which banks suddenly begin to become active.

It remains for the plaintiffs to prove the specific merits of their claim, whether national banks are included within the bank service corporations to which § 4 applies, and, if so, whether data processing services constitute something other than "the performance of bank services for banks."

Perhaps we can give some time at the conference on January 23 to resolving this difference in approach.

W.J.B. Jr.

Circulated
2-17-70

SUPREME COURT OF THE UNITED STATES

Nos. 85 & 249.—October Term, 1969

Association of Data Processing Service Organizations, Inc., et al., Petitioners, v. William B. Camp, Comptroller of the Currency of the United States, et al.	On Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit.
85	
Clemon Barlow et al., Petitioners, v. B. L. Collins, etc., et al.	On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.
249	

[February —, 1970]

Mr. Justice Brennan, concurring and dissenting.

I concur in the result in both cases but dissent from the Court's treatment of the question of standing to challenge agency action.

The Court's approach to standing, set out in *Data Processing,* has two steps: (1) since "the framework of Article III . . . restricts judicial power to 'cases' and 'controversies,'" the first step is to determine "whether the plaintiff alleges that the challenged action caused him injury in fact"; (2) if injury in fact is alleged, the relevant statute or constitutional provision is then examined to determine "whether the interest sought to be protected by the complainant is arguably within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question."

My view is that the injury in the Court's first step is the only one which need be made to determine standing. I had thought we discarded the notion of any

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249	

[February —, 1970]

Mr. Justice Brennan, with whom Mr. Justice White joins, concurring and dissenting.

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SUPREME COURT OF THE UNITED STATES

Nos. 85 & 249.—October Term, 1969

Association of Data Processing Service Organizations, Inc., et al., Petitioners, v. William B. Camp, Comptroller of the Currency of the United States, et al.	On Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit.
85	
Clemon Barlow et al., Petitioners, v. B. L. Collins, etc., et al.	On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.
249	

[March 3, 1970]

Mr. Justice Brennan, with whom Mr. Justice White joins, concurring and dissenting.

I concur in the result in both cases but dissent from the Court's treatment of the question of standing to challenge agency action.

The Court's approach to standing, set out in *Data Processing*, has two steps: (1) since "the framework of Article III . . . restricts judicial power to 'cases' and 'controversies,'" the first step is to determine "whether the plaintiff alleges that the challenged action has caused him injury in fact"; (2) if injury in fact is alleged, the relevant statute or constitutional provision is then examined to determine "whether the interest sought to be protected by the complainant is arguably within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question."

My view is that the inquiry in the Court's first step is the only one which need be made to determine standing. I had thought we discarded the notion of any

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

February 9, 1970

No. 85 - Data Processing Serv. v. Camp

Dear Bill,

I have decided to acquiesce in your opinion, unless somebody else writes in dissent.

Sincerely yours,

P.S.

Mr. Justice Douglas

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

February 18, 1970

Re: Nos. 85 & 249 - Association of Data Processing Service Organizations, Inc. v. Camp

Dear Bill:

Please join me in your concurring and dissenting opinion in this case.

Sincerely,

B.R.W.

Mr. Justice Brennan

cc: The Conference

B

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

February 6, 1970

Re: No. 85 - Association of Data Processing v. Camp

Dear Bill.

Please join me.

Sincerely,

T.M.

Mr. Justice Douglas

cc: The Conference