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Trafficante v. Metropolitan Life Ins. Co. - White Ghetto Tenants - Standing to Protest Landlord's Rental Discrimination

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Trafficante v. Metropolitan Life Ins. Co.

White Ghetto Tenants — Standing to Protest Landlord's Rental Discrimination

THE SUPREME COURT in *Trafficante v. Metropolitan life Insurance Co.*[1] has held that tenants having standing under Tile VIII of the 1968 Civil Rights Act, 42 U.S.C. §3610(a),[2] §3610(d)[3] and 42 U.S.C. §1982[4] to sue their landlord for its alleged discriminatory rental practices.[5] Plaintiffs, one black and one white, were tenants of an apartment complex in San Francisco whose tenant population of approximately 8,200 people was less than one percent black.[6] The complaint alleged a variety of discriminatory rental practices directed toward non-white rental applicants[7] and stated that plaintiffs had been injured in three respects. They claimed that they had lost the social benefits of living in an integrated community; that they had missed business and professional advantages which would have accrued if they had lived with members of minority groups; and that they had suffered embarrassment and economic damage by being classed as residents of a white ghetto.[8]

The district court[9] in its opinion granted defendants' motion to dismiss on the ground that plaintiffs were not "persons aggrieved" under 42 U.S.C. 3610(a) and had no standing to sue under 42 U.S.C. §3612 or 42 U.S.C. §1982.[10]

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[1] 409 U.S. 205 (1972).

[2] 42 U.S.C. §3610(a) (1970). This section reads in part as follows:
Any person who claims to have been injured by a discriminatory housing practice or who believes that he will be irrevocably injured by a discriminatory housing practice that is about to occur (hereafter "person aggrieved") may file a complaint with the Secretary.

[3] 42 U.S.C. §3610(d) (1970). This section reads in part as follows:
If within thirty days after a complaint is filed with the secretary . . . the secretary has been unable to obtain voluntary compliance with this subchapter, the person aggrieved may, within thirty days thereafter, commence a civil action in any appropriate United States district court against the respondent named in the complaint to enforce the rights granted or protected by this subchapter insofar as such rights relate to the subject of the complaint. . . .

[4] 42 U.S.C. §1982(1970). This section reads as follows:
All citizens of the United States shall have the same right, in every state and territory, as is enjoyed by white citizens thereof, to inherit, purchase, lease, sell, hold, and convey real and personal property. . . .

[5] 409 U.S. 205, 206 (1972).

[6] *Id.* at 208.

[7] *Id.*

[8] *Id.*

[9] Trafficante v. Metropolitan Life Inc. Co., 322 F.Supp. 352 (N.D. Cal. 1971).

[10] *Id.* at 353. 42 U.S.C. §3610 defines "person(s) aggrieved" as "any person who claims to have been injured by a discriminatory housing practice."

> The enforcement of the public interest in fair housing enunciated in Title VIII of the Act and the creation of integrated communities to the extent envisioned by Congress are entrusted to the Attorney General by sec. 810, 42 U.S.C. 3613, and not to private litigants such as those before the court.[11]

The court went on to say that the "private attorneys general"[12] cases cited by the plaintiffs applied to situations involving the Administrative Procedure Act or government agencies and not to activities of private individuals such as these plaintiffs.[13]

In affirming the district court, the 9th Circuit Court of Appeals[14] in an extensive examination of statutory construction, legislative intent, and congressional policy concluded that plaintiffs had no standing under 42 U.S.C. §3610(a), 42 U.S.C. §3610, or 42 U.S.C. §1982.[15] The court of appeals examined the complaint in light of the test for standing as enunciated in *Data Processing Service Organization v. Camp*[16] and directed its attention to the requirement that the interest to be protected come within the zone of interests to be protected by the statute. The other requirement, that there be injury in fact,[17] was not discussed.

The court of appeals in *Trafficante* stated that the plaintiffs made no allegations that they themselves were the direct objects of discrimination but that their injury arose from the "pattern or practice" of discrimination by their landlord.[18] In concluding that this interest or injury did not fall within the protection of Title VIII of the 1968 Civil Rights Act, the opinion continued,

> Construing the provisions of Title VIII as a whole, it seems clear that it was the intent of Congress to provide first, through sec. 3610 and 3612 methods of redress for persons who are the objects of discriminatory housing practices and who seek to vindicate rights granted . . . and second, to grant to the Attorney General the right to sue to correct "patterns and practices" of discrimination. . . . We find nothing

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[11] *Id.*

[12] "Private attorney generals" are private citizens suing to vindicate the public interest. *See* Associated Indus. of N.Y. v. Ickes, 134 F.2d 694 (2d Cir. 1943).

[13] Trafficante v. Metropolitan Life Ins. Co., 322 F.Supp. 352 (N.D. Cal. 1971).

[14] 446 F.2d 1158 (9th Cir. 1971).

[15] *Id.* at 1163-64.

[16] 397 U.S. 150 (1970).

[17] *Id.* at 152. In order for a party seeking judicial review to meet the "injury in fact" requirement, such party must himself have suffered an injury. *See* Sierra Club v. Morton, 405 U.S. 727 (1972).

[18] 446 F.2d 1158, 1162 (9th Cir. 1971).

> in the Congressional discussion or debate to suggest that Congress intended to grant standing to sue to any private persons other than the direct victims of discriminatory housing practices proscribed by the act.[19]

The rights protected under 42 U.S.C. §1982 include the right to purchase or lease property and the freedom from racially motivated interference with such rights.[20] The court of appeals further stated that the injuries alleged by plaintiff were not related to these rights and thus plaintiffs had no standing to sue under this statute.[21] The decision of the district court was therefore affirmed.

The Supreme Court reversed the decisions of the lower courts and held that plaintiffs did have standing to redress the type of injuries they had suffered.[22] The right to sue given to "persons aggrieved" in Title VIII of the 1968 Civil Rights Act was construed to extend to tenants of an apartment complex using discriminatory rental practices and these tenants' alleged injuries were sufficient to afford them standing.[23]

The most recent tests used to determine standing were announced by the Supreme Court in *Data Processing Service Organizations, Inc. v. Camp*.[24] There the petitioner sold data processing services to businesses in general and sought to challenge a ruling by the Comptroller of the Currency allowing national banks to make data processing available to other banks and customers.[25] The case was dismissed in the lower courts because the petitioner was held not to have standing.[26] The Supreme Court, in its reversal,[27] stated that standing had to be considered within the framework of the "case and controversy" requirement of the Constitution[28] and that two tests must be met. The plaintiff first must allege injury in fact and second must demonstrate that the interest he is seeking to protect is arguably within the zone of interests to be protected or regulated by the Constitutional or statutory provision involved.[29] The Court commented on the second test by saying,

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[19] *Id.* at 1162-63.

[20] 42 U.S.C. §1982 (1970).

[21] 446 F.2d 1158, 1164 (9th Cir. 1971).

[22] 409 U.S. 205, 209 (1972).

[23] *Id.*

[24] 397 U.S. 150 (1970).

[25] *Id.* at 151.

[26] Data Processing Service Organizations, Inc. v. Camp, 279 F.Supp. 675 (D. Minn. 1968).

[27] 397 U.S. 150 (1970).

[28] *Id.* at 151.

[29] *Id.* at 158.

> Where statutes are concerned, the trend is toward enlargement of the class of people who may protest administrative action. The whole drive for enlarging the category of 'aggrieved persons' is symtomatic to the trend.[30]

In *Sierra Club v. Morton*,[31] the Court again recognized that the category of injuries sufficient to allow standing is being enlarged,[32] but insisted that the requirement of injury in fact to the individual seeking review was nevertheless mandatory.[33]

> But broadening the categories of injury that may be alleged in support of standing is a different matter from abandoning the requirement that the party seeking review must himself have suffered an injury.[34]

There the Sierra Club, in its position as an environmental protection group, sought relief under the Administrative Procedure Act,[35] to halt the proposed construction of a ski resort in a wilderness area of California.[36] The Sierra Club did not allege that its members would be personally affected or that they made any use of the area. The injury alleged was that caused by the change in the use of the land and the ecological destruction that would necessarily occur;[37] an injury suffered by citizens in general.

The Court, in an opinion by Justice Stewart, felt that this type of injury could very well be protected by the statute in question thus fulfilling one part of the *Data Processing Service Organization, Inc. v. Camp* test.[38] It continued,

> But the "injury in fact" test requires more than an injury to a cognizable interest. It requires that the party seeking review be himself among the injured.[39]

The Sierra Club did not allege sufficiently individualized injury to allow it to have standing as a "person aggrieved."[40] It did not state that its use of the area as an organization would be significantly interfered with by the construction of the resort.[41] The Supreme

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[30] *Id.*

[31] Sierra Club v. Morton, 405 U.S. 727 (1972).

[32] *Id.* at 730.

[33] *Id.* at 740.

[34] *Id.* at 738.

[35] 5 U.S.C. §701 et seq., as amended 5 U.S.C. §2251 (1964).

[36] 405 U.S. 727, 730 (1972).

[37] Sierra Club v. Hickel, 433 F.2d 24, 33 (9th Cir. 1970).

[38] 405 U.S. 727, 734 (1972).

[39] *Id.* at 734-35.

[40] *Id.* at 735.

[41] *Id.*

Court in reversing the court of appeals affirmed the judgment of the district court. The conclusion that the majority opinion in that case was based on the Sierra Club's insufficiently individualized allegations of injury is reinforced by Justice Blackmun in his dissent. He argued as one alternative that the club should be allowed to amend its pleadings as a condition for reversal of the court of appeals and that the merits should be considered at once after such amendment.[42]

Trafficante is distinguishable from *Sierra Club v. Morton* in that it examines the second requirement in the test for standing, namely that the interest sought to be protected by the complaint is arguably within the zone of interests protected by the statute. In this respect *Trafficante* is similar to *Office of Communication of United Church of Christ v. FCC*,[43] where the court of appeals granted standing to a representative organization to challenge the grant of a television license by the FCC.[44] There the court assumed that there was in fact injury to the listening audience and its main emphasis was on the fact that such injury was recognizable and should be protected in order to effectuate the purposes of the FCC.[45]

> Unless the listeners, the broadcast consumers, can be heard there may be no one to bring programming deficiencies or offensive overcommercialization to the attention of the Commission in an effective manner. By process of elimination those "consumers" willing to shoulder the burdensome and costly process of intervention in a commission proceeding are likely to be the only ones 'having a sufficient interest' to challenge a renewal application.[46]

Justice Douglas in *Trafficante* expressed the same concern with regard to fair housing legislation by holding that the plaintiffs' allegations of injury resulting from living in a segregated community were sufficient to demonstrate injury in fact,

> Injury is alleged with particularity so there is not present the abstract question raising problems under Art. III of the Constitution. The person on the landlord's blacklist is not the only victim of discriminatory housing practices . . .[47]

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[42] *Id.*

[43] Office of Communication of United Church of Christ v. F.C.C., 359 F.2d 994 (D.C. Cir. 1966).

[44] *Id.* at 1003-04.

[45] *Id.* at 1005.

[46] *Id.*

[47] 409 U.S. 205, 209 (1972).

The *Trafficante* opinion directs most of its attention to the question of whether or not this actual injury is an interest to be protected by the statutes involved.[48] It comes to a conclusion opposite that of the court of appeals and states that the definition of "persons aggrieved" contained in 42 U.S.C. §3610(a) et seq., "any person who claims to have been injured by a discriminatory housing practice," is in its terms broad.[49] That such defined individual may bring suit in federal court is read to indicate that complaints by private persons are a necessary enforcement process of the Act.[50] The principal decision cites *Hackett v. McGuire Bros., Inc.*[51] which held that the definition of "persons aggrieved" in the Civil Rights Act of 1964 should be broadly construed to avoid frustration of the policy of the Act by development of an overly technical doctrine of standing.[52] Justice Douglas reaches the same conclusion with respect to the 1968 Civil Rights Act "insofar as tenants of the same housing unit that is charged with discrimination are concerned."[53]

He continues by examining legislative history and discussion surrounding the statutes and admits that such examination is not helpful.[54] The references to the Congressional Record at this point in the opinion do not discuss the scope of the 'persons aggrieved" provision, and at best, can be said neither to encourage nor preclude a broad definition.[55]

The opinion then considers the construction given the Act by officials of HUD and finds that injuries suffered by plaintiffs here are sufficient, in that agency's opinion, to bring the complaints with the jurisdiction of the Act. This finding is given great weight[56] and is consistent with previous cases decided by the Court where the Court's interpretation of the statutes followed the statutory interpretation of the agency entrusted with the enforcement of those specific statutes.[57] Thus the design and function of the Act itself leads to the conclusion that private enforcement is necessary,

> Since HUD had no enforcement powers and since the enormity of the task of assuring fair housing makes the role of the Attorney General in the matter minimal, the main

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[48] *Id.*

[49] *Id.* at 209.

[50] *Id.*

[51] Hackett v. McGuire Bros. Inc., 445 F.2d 442 (3rd Cir. 1971).

[52] *Id.* at 446-47.

[53] 409 U.S. 205, 209 (1972).

[54] *Id.*

[55] *Id.*

[56] *Id.*

[57] *See* Udall v. Tallman, 380 U.S. 1 (1970); Griggs v. Duke Power Co., 401 U.S. 424 (1971).

> generating force must be private suits in which, the Solicitor General says, the complainants act not on their own behalf but also as "private attorney generals" in vindicating a policy that Congress considered to be of the highest priority.[58]

Typical of cases cited by Mr. Justice Douglas to emphasize the increasing importance of private suits in the enforcement of modern legislative programs is *Newman v. Piggie Park Enterprises, Inc.*[59] There the Supreme Court was considering the provision for attorney's fees for private litigation brought under the Civil Rights Act of 1964. It determined that when the Civil Rights Act was passed it was evident that it would be difficult to enforce and that the nation would have to rely on private litigants to assure compliance; that it was the congressional purpose to encourage litigation to stop discrimination.[60] It is clear that the *Trafficante* Court recognized that private enforcement serves the same important role with respect to the Civil Rights Act of 1968,

> ". . . in protecting not only those against whom a discrimination is directed but also those whose complaint is that the manner of managing a housing projects affects "the very quality of their daily lives."[61]

Thus the interest of tenants in protesting the discriminatory practices of their landlord is one which was held to be protected by the 1968 Civil Rights Act. This coupled with the factual and individualized injuries alleged by the plaintiffs was sufficient to grant them standing and the case was reversed and remanded to the district court for discussion of the merits.

In a separate concurrence written by Justice White and joined by Justices Blackmun and Powell, an attempt was made to limit concurrence to the statutory language involved:

> But with that statute purporting to give all those authorized to complain to the agency the right also to sue in court, I would sustain the statute insofar as it extends standing to those in the position of the petitioners in this case.[62]

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[58] 409 U.S. 205, 211 (1972).

[59] Newman v. Piggie Park Enterprises, 390 U.S. 400, 402 (1968).

[60] *Id.* at 401.

[61] 409 U.S. 205, 211 (1972).

[62] 409 U.S. 205, 212 (1972).

Trafficante v. Metropolitan Life Insurance Co. does not affect the basic standing requirement that there must be individual injury to those seeking review and so is consistent with *Sierra Club v. Morton*. *Trafficante* does, however, expand the concept of standing to the extent that it recognizes the rights of tenants, black or white, to live in an integrated community. The Court declares that this right, hitherto unrecognized, is an interest protected under the 1968 Civil Rights Act, and that such tenants, if individually injured, are entitled to access to the courts to redress such injuries.

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