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Casenotes: Constitutional Law — Standing — Parents of Black Children Attending Public Schools Undergoing Desegregation Lack Standing to Challenge Allegedly Ineffective IRS Procedures Designed to Limit Tax-Exempt Status to Racially Nondiscriminatory Private Schools. Allen v. Wright, 104 S. Ct. 3315 (1984)

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CONSTITUTIONAL LAW — STANDING — PARENTS OF BLACK CHILDREN ATTENDING PUBLIC SCHOOLS UNDERGOING DESEGREGATION LACK STANDING TO CHALLENGE ALLEGEDLY INEFFECTIVE IRS PROCEDURES DESIGNED TO LIMIT TAX-EXEMPT STATUS TO RACIALLY NONDISCRIMINATORY PRIVATE SCHOOLS. *Allen v. Wright*, 104 S. Ct. 3315 (1984).

Parents of black Tennessee schoolchildren brought a class action suit[1] alleging that Internal Revenue Service (IRS) procedures[2] failed to fulfill that agency's obligation to deny tax-exempt status to racially discriminatory schools.[3] The parents claimed that the IRS procedures

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1. Wright v. Miller, 480 F. Supp. 790 (D.D.C. 1979), *rev'd sub nom.* Wright v. Regan, 656 F.2d 820 (D.C. Cir. 1981), *rev'd sub nom.* Allen v. Wright, 104 S. Ct. 3315 (1984).

   In 1976, Inez Wright, the mother of four black children attending public school in Memphis, Tennessee, and a number of similarly situated parents in other states initiated the class action against the Secretary of the Treasury, G. William Miller, later replaced by Donald T. Regan. Mr. Wayne Allen, chairman of a private school, was later granted leave to intervene. The parents claimed that some racially discriminatory private schools were improperly receiving federal tax-exempt status because IRS procedures were inadequate to detect false certifications by the schools of nondiscriminatory policies. The parents sought a court order requiring nationwide implementation by the IRS of new procedures designed to identify these schools and to prevent all racially discriminatory schools from receiving tax-exempt status. Allen v. Wright, 104 S. Ct. 3315, 3321 (1984). The parents alleged that the existing IRS procedures violated several laws: I.R.C. § 501(c)(3) (1982) (governing the tax-exempt status of charitable organizations); Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d (1982); 42 U.S.C. § 1981 (1982); and, the fifth and fourteenth amendments to the Constitution. *Id.* at 3322 n.12. The parents did not claim injury as dissatisfied taxpayers protesting a tax expenditure. Rather, they based their claim on constitutional and statutory injuries and unconstitutional subsidization of private discrimination as a result of government tax policies. *Id.* at 3323-24.

2. The IRS requires that all schools applying for tax-exempt status adopt a "racially nondiscriminatory policy as to students." The IRS defines such a policy as meaning that a school:

   > admits the students of any race to all the rights, privileges, programs, and activities generally accorded or made available to the students at that school and that the school does not discriminate on the basis of race in administration of its educational policies, admission policies, scholarship and loan programs, and athletic and other school-administered programs.

   Rev. Rul. 71-447, 1972-2 C.B. 230.

   In response to the lawsuit, the IRS reviewed its procedures and proposed more stringent guidelines. 43 Fed. Reg. 37,296 (1978) (proposed August 22, 1978). The IRS proposals raised considerable opposition and debate. In response, the IRS held public hearings, *Proposed IRS Revenue Procedure Affecting Tax-Exemption of Private Schools: Hearing Before the Subcomm. on Oversight of the House Comm. on Ways and Means*, 96th Cong., 1st Sess. 479 (1979), and proposed a revised set of guidelines, 44 Fed. Reg. 9,451 (1979) (proposed February 12, 1979). IRS action was subsequently stayed by congressional amendment to the 1980 Treasury Appropriations Act. Treasury, Postal Service, and General Government Appropriations Act of 1980, Pub. L. No. 96-74, §§ 103, 615, 93 Stat. 559, 562, 577 (1979) (known as the Ashbrook and Dornam amendments). There was no restrictive legislation in effect when the Supreme Court decided *Allen*.

3. The parents claimed that, despite IRS policy of denying tax-exempt status to ra-

harmed them in two ways: first, the mere existence of government financial aid to discriminatory private schools caused the parents to suffer denigration; second, federal tax-exempt status, when conferred on racially discriminatory private schools in their communities, interfered with their children's ability to receive an education in desegregated public schools.[4] The district court dismissed the suit, reasoning that the parents lacked standing because they failed to assert a concrete injury.[5] The United States Court of Appeals for the District of Columbia Circuit reversed, holding that denigration suffered as a result of governmental assistance to racially discriminatory schools is an allegation of injury sufficient to confer standing on parents of black schoolchildren.[6] The Supreme Court reversed and denied the parents standing.[7] The Court reasoned that whether it regarded the parents' claim of denigration as either a claim to have the government stop violating the law or as a claim of stigmatic injury suffered by racial minorities, the injury alleged was not judicially cognizable.[8] The Court also denied standing premised on governmental interference with the children's education and held that although this injury was judicially cognizable, it could not support standing because the injury was not "fairly traceable" to the challenged gov-

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cially discriminatory private schools, existing IRS procedures were inadequate to detect false certifications of nondiscriminatory policies. The parents sought a declaratory judgment that the challenged procedures were unlawful, an injunction requiring that the IRS deny tax-exempt status to a broader class of private schools than existing procedures provided for, and an order directing the IRS to adopt new procedures consistent with the requested injunction. Allen v. Wright, 104 S. Ct. 3315, 3319-23 (1984).

4. Allen v. Wright, 104 S. Ct. 3315, 3319 (1984).
5. Wright v. Miller, 480 F. Supp. 790, 794 (D.D.C. 1979), *rev'd sub nom.* Wright v. Regan, 656 F.2d 820 (D.C. Cir. 1981), *rev'd sub nom.* Allen v. Wright, 104 S. Ct. 3315 (1984).

   In Green v. Connally, 330 F. Supp. 1150 (D.D.C.), *aff'd mem. sub nom.* Coit v. Green, 404 U.S. 997 (1971), black parents and their school-age children, all residents of Mississippi, secured an order enjoining the IRS from granting tax-exempt status to racially discriminatory private schools in Mississippi. Simultaneously with the filing of the *Wright* action, the plaintiffs in *Green* filed an action in the same district court alleging that the IRS was in violation of the court order applicable to Mississippi. Green v. Simon, No. 1355-69 (D.D.C. July 23, 1976). Six months after denying the *Wright* plaintiffs standing, the same judge issued an injunction in favor of the *Green* plaintiffs, ordering that the IRS implement guidelines for Mississippi substantially similar to those requested by the *Wright* plaintiffs for nationwide implementation. Green v. Miller, No. 13355-69 (D.D.C. May 5, 1980) (clarified and amended June 2, 1982). The anomalous result of the district court's ruling is that the IRS now applies two sets of guidelines, one specifically for Mississippi and another for all other states. *See* Rev. Proc. 75-50, § 8, 1975-2 C.B. 587, 590 (to the extent the court's order varies from the guidelines, the order is controlling for Mississippi schools). For a complete discussion of the procedural history of the *Green* and *Wright* actions, see Wright v. Regan, 656 F.2d 820, 822-26 (D.C. Cir. 1981), *rev'd sub nom.* Allen v. Wright, 104 S. Ct. 3315 (1984).

6. Wright v. Regan, 656 F.2d 820, 827, 830 (D.C. Cir. 1981), *rev'd sub nom.* Allen v. Wright, 104 S. Ct. 3315 (1984).
7. Allen v. Wright, 104 S. Ct. 3315, 3324 (1984).
8. *Id.* at 3326.

ernmental conduct.[9]

A plaintiff without article III standing cannot invoke the power of the federal courts.[10] To have standing, the plaintiff must be the proper party to request an adjudication of a particular issue.[11] At minimum, a plaintiff must have a personal stake in the outcome of the suit sufficient to assure concrete adverseness.[12] Before 1970, the test for standing was whether the plaintiff had suffered injury to a "legally protected interest."[13] In 1970 the Court rejected this test, reasoning that the test improperly required consideration of the merits of the plaintiff's claim.[14] In *Association of Data Processing Service Organizations v. Camp*,[15] the Court adopted an "injury-in-fact" test for standing.[16] Under this test a wide variety of grievances have been recognized as allegations of injury-in-fact constitutionally sufficient to support standing; allegations of economic loss,[17] interference with social rights,[18] or generalized grievances[19] have been recognized by the Court as adequate bases for standing.

In addition to the injury-in-fact requirement for standing, the Supreme Court has formulated a separate causation doctrine that must be satisfied prior to recognition of article III standing.[20] To satisfy the

9. *Id.*

10. "Those who do not possess Art. III standing may not litigate as suitors in the courts of the United States." Valley Forge Christian College v. Americans United for Separation of Church & State, Inc., 454 U.S. 464, 475-76 (1982). Article III of the Constitution limits the jurisdiction of the federal courts to the adjudication of "cases" or "controversies." Standing focuses on whether the party initiating the action has sufficient stake in an otherwise justiciable controversy to involve the power of the court on his behalf. *See* L. TRIBE, AMERICAN CONSTITUTIONAL LAW §§ 3-17 to 3-24 (1978).

11. Flast v. Cohen, 392 U.S. 83, 99-100 (1978).

12. Baker v. Carr, 369 U.S. 186, 204 (1962).

13. *See* Tennessee Elec. Power Co. v. Tennessee Valley Auth., 306 U.S. 118, 137-38 (1939) (legal rights protected were those arising out of contract, those protected against tortious invasion, those involving property, or those founded on a statute that confers a privilege).

14. Association of Data Processing Serv. Orgs. v. Camp, 397 U.S. 150, 154 (1970).

15. 397 U.S. 150 (1970).

16. The Court formulated a two part test; to have standing a party must allege injury-in-fact, and the injury must be within the "zone of interests" protected by a particular statute. *Id.* at 152-53. There has been little subsequent reference to the "zone of interests" requirement and its current validity has been questioned. 3 C. WRIGHT, THE LAW OF FEDERAL COURTS § 13, at 71 n.52 (4th ed. 1983).

17. Barlow v. Collins, 397 U.S. 159, 164 (1970) (tenant farmers have standing to challenge amendment of federal regulation that would cause them economic hardship).

18. Trafficante v. Metropolitan Life Ins. Co., 409 U.S. 205, 208 (1972) (loss of "social benefits of living in an integrated community" is sufficient allegation of injury).

19. Sierra Club v. Morton, 405 U.S. 727, 734 (1972) (generalized environmental interests are deserving of legal protection). The Sierra Club was denied standing, however, because it did not allege that it or any of its members had suffered injury. *Id.* at 735.

20. The Court recognized causation as a requirement for standing in Linda R.S. v. Richard D., 410 U.S. 614 (1973). The mother of an illegitimate child was denied standing to challenge the state's policy of prosecuting only married parents for nonpayment of child support. The Court acknowledged that the mother had been in-

causation requirement, the plaintiff must allege direct injury to himself[21] fairly traceable to the defendant's conduct and likely to be redressed by the requested relief.[22] There is, however, no fixed standard governing when these elements of causation are satisfied; hence, application of the doctrine has been uneven.[23]

In *Simon v. Eastern Kentucky Welfare Rights Organization (EKWRO)*,[24] the Supreme Court used causation analysis to deny indigent patients standing to challenge IRS grants of tax-exempt status to private hospitals.[25] The patients claimed that their ability to receive needed medical care was impaired by IRS policy allowing private hospitals offering only minimal free health care to retain tax-exempt status.[26] The Court stated that the patients' claimed injury could not be fairly traced to the challenged IRS action nor was it likely that the injury would be redressed by use of the Court's remedial powers.[27] The Court noted that the hospitals could refuse to provide unlimited free medical care for any number of reasons unrelated to their tax-exempt status.[28] Further, it was speculative that a court order withdrawing tax-exempt status would facilitate the patients' objective of gaining admission to the hospitals because the hospitals could elect to forego favorable tax treatment to avoid the financial drain of providing uncompensated services.[29] The Court dismissed the action because the requisite elements of causation were not satisfied and, therefore, the patients lacked standing to bring suit.[30]

The Supreme Court has often found the causation requirements for standing satisfied in suits alleging violation of the right of school children

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jured by the father's nonpayment, but it held there was insufficient causal connection between the injury and the alleged discriminatory enforcement of Texas law. Further, the Court found it unlikely that prosecution of the father would cause him to pay the support. The statute involved merely provided for incarceration of the father and, therefore, a court order would not have redressed the mother's injury. *Id.* at 618. The requirements of direct injury and redressability advanced in *Linda R.S.* were used by the Court to create a separate requirement of causation as a precondition for article III standing. *See* Leedes, *Mr. Justice Powell's Standing*, 11 U. RICH. L. REV. 269, 287 (1977) ("inability of the Court to give relief . . . can [become] a problem with constitutional dimensions").

21. Warth v. Seldin, 422 U.S. 490, 499 (1975).
22. Simon v. Eastern Ky. Welfare Rights Org. (*EKWRO*), 426 U.S. 26, 38, 41 (1976).
23. *Compare* Duke Power Co. v. Carolina Envtl. Study Group, 438 U.S. 59, 75 n.20 (1978) (a substantial likelihood that the relief requested will redress the injury is sufficient to confer standing) *with EKWRO*, 426 U.S. 26, 45 (1976) (to satisfy article III standing requirements, a plaintiff must show "that, in fact, the asserted injury was the consequence of the defendants' action, or that prospective relief will remove the harm"); *see also* Nichol, *Causation as a Standing Requirement: The Unprincipled Use of Judicial Restraint*, 69 KY. L.J. 185, 186 (1980-81) ("causation decisions, on the whole, have been characterized by a harsh inconsistency").
24. 426 U.S. 26 (1976).
25. *Id.* at 37.
26. *Id.* at 42.
27. *Id.* at 41-43.
28. *Id.* at 42-43.
29. *Id.* at 43-46.
30. *Id.*

to an integrated education in the public schools.[31] In *Norwood v. Harrison*[32] the Supreme Court recognized a causal connection between a state program that provided textbooks to all students, including those attending racially discriminatory private schools, and injury to the right of black students to an integrated education in the public schools. The Court stated that the government may not provide any aid that tends to facilitate, reinforce, or support private discrimination.[33] Similarly, in *Gilmore v. City of Montgomery*[34] the Court recognized a causal connection between the reservation of public parks for the temporary exclusive use of racially discriminatory private schools and injury to a student's right to an integrated education in the public school system. The Court stated that reservation of public parks for athletic activities significantly enhanced the attractiveness of the private schools to white parents seeking an alternative to the integrated public schools and violated the city's constitutional obligation to integrate the public schools.[35] Further, in *Coit v. Green*,[36] the Supreme Court implicitly recognized the right of black parents to challenge the adequacy of IRS procedures used to deny tax exempt status to racially discriminatory private schools. The Court summarily affirmed the decision of the district court, which ordered the IRS to implement new and more stringent procedures governing determination of tax-exempt status of private schools in Mississippi.[37] Thus, *Norwood*,[38] *Gilmore*,[39] and *Green*[40] support the premise that black public schoolchildren and their parents have standing to challenge governmental action that aids racially discriminatory private schools.

The Internal Revenue Code (Code) provides that organizations operated exclusively for charitable or educational purposes are exempt from federal income taxes and contributions to such organizations are deducti-

31. The Constitution does not compel the states to provide its residents an education. *See* San Antonio Sch. Dist. v. Rodriquez, 411 U.S. 1 (1972) (education is not within the limited category of rights guaranteed by the Constitution). Where, however, a state has undertaken to provide a system of public education, it becomes a property right which must be available to all on equal terms. Brown v. Board of Educ., 347 U.S. 483, 493 (1954). In *Brown* the Supreme Court held that states could not segregate children in the public schools on the basis of race. *Id.* at 495. The Court extended this prohibition to the federal government in Bolling v. Sharpe, 347 U.S. 497 (1954).

The parents in *Allen* alleged the challenged IRS policy significantly impacted on the racial composition of the public schools and thus impaired their children's right to an integrated education in the public schools. 104 S. Ct. 3315, 3321-23 (1984).

32. 413 U.S. 455 (1973).
33. *Id.* at 466.
34. 417 U.S. 556 (1974).
35. *Id.* at 563.
36. 404 U.S. 997, *aff'g mem.* Green v. Connally, 330 F. Supp. 1150 (D.D.C. 1971).
37. *Id.*
38. 413 U.S. 455 (1973).
39. 417 U.S. 556 (1974).
40. 404 U.S. 997, *aff'g mem.* Green v. Connally, 330 F. Supp. 1150 (D.D.C. 1971).

ble from taxable income.[41] The IRS, however, denies tax-exempt status to private schools failing to show affirmatively that the school has adopted a "racially nondiscriminatory policy as to students," that such policy is made known to the general public, and that the school has acted in accordance with that policy.[42]

In *Bob Jones University v. United States*[43] the Supreme Court upheld the denial by the IRS of tax-exempt status to racially discriminatory private schools.[44] Bob Jones University had claimed the IRS exceeded its authority by revoking the school's tax-exempt status because of the school's racially discriminatory policies. The Court held that private schools that practice racial discrimination are not entitled to tax-exempt status under the Code, and that the IRS had not exceeded its authority by requiring that private schools adopt a racially nondiscriminatory admissions policy as a precondition to recognition of tax-exempt status under the Code.[45]

In *Allen v. Wright*,[46] the Supreme Court denied black parents standing to challenge IRS procedures because of insufficient allegation of injury and failure to satisfy the elements of causation.[47] The parents' first claim, that they and their children suffered denigration when racially discriminatory private schools received tax-exempt status, failed because it was not a judicially cognizable injury.[48] The Court stated that an asserted right to have the government act within the law is not sufficient basis for standing.[49] Further, stigmatic injury caused by racial discrimination accords standing to only those who are personally injured by the challenged conduct.[50] Because the parents alleged no previous attempt to gain, or future interest in gaining, admission for their children to any of the schools alleged to be racially discriminatory, the parents never

41. The Internal Revenue Code provides that corporations organized for educational purposes are exempt from federal income taxation. I.R.C. § 501(a), (c)(3) (1982). The schools are also exempt from federal social security taxes, *id.* at § 312(b)(8)(B) (1982), and federal unemployment taxes, *id.* at § 3306(c)(8) (1982). Contributions are deductible from gross income, *id.* at § 170 (1982), and from federal estate and gift tax, *id.* at §§ 2055(a)(2), 2522(a)(2) (1982).
42. *See supra* note 2 and accompanying text.
43. 461 U.S. 574 (1983).
44. *Id.* at 596-602.
45. *Id.*
46. 104 S. Ct. 3315 (1984).
47. *Id.* at 3326.
48. *Id.* at 3326-27.
49. *Id.* The Court in part bases its use of causation analysis to decide the issue of standing on the separation of powers doctrine. *See generally* Logan, *Standing to Sue: A Proposed Separation of Powers Analysis*, 1984 WIS. L. REV. 37 (1984). The Court maintains that separation of powers constraints placed on the judiciary by the Constitution preclude the recognition of standing to challenge generally programs implemented by the Executive Branch to fulfill its constitutional mandate to execute the laws. Allen v. Wright, 104 S. Ct. 3315, 3329-30 (1984). Thus, the doctrine allows recognition of standing only where the plaintiff seeks to enforce a specific legal obligation to him, the violation of which works a direct harm. *Id.*
50. *Id.* at 3327.

experienced direct stigmatic injury; therefore, the Court denied standing premised on denigration suffered.[51]

The parents' second claim of injury was that tax-exempt status for racially discriminatory private schools impaired their children's ability to receive a racially integrated education in the public schools. Although the Court noted that this was a judicially cognizable injury, it denied standing because the alleged injury was not fairly traceable to the challenged IRS procedures.[52] The Court stated that the parents had failed to show that existing IRS procedures allowed a sufficient number of racially discriminatory schools to receive improperly tax-exempt status for withdrawal of those exemptions to make an appreciable difference in the integration of the public schools.[53] Further, it was speculative that a court order mandating implementation of new procedures would cause either the private schools or white parents to alter their behavior in a manner that would significantly affect the racial composition of the public schools.[54] The Court reasoned that the black parents lacked standing to bring suit because the parents' allegations of injury to their children's ability to receive an integrated education could not be fairly traced to the challenged IRS action and the injury was not likely to be redressed by the requested relief.[55]

Two Justices dissented from the Court's opinion in *Allen*.[56] Neither recognized the plaintiffs' claim of denigration caused by governmental action as a constitutionally sufficient allegation of injury.[57] Rather, both dissenting Justices found that the parents had satisfied the traceability and redressability components of the causation doctrine.[58] The dissenting Justices maintained that the parents should be granted standing to challenge IRS procedures alleged to interfere with their children's right to an integrated education in the public schools.[59]

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51. *Id.*
52. *Id.* at 3328.
53. *Id.* at 3328-29.
54. *Id.* at 3329.
55. *Id.* at 3329-30.
56. *Id.* at 3333-42 (Brennan, J., dissenting); *id.* at 3342-48 (Stevens, J., dissenting).
57. Justice Brennan concluded that the alleged injury to the children's right to an integrated public education was sufficient to satisfy article III standing requirements and, therefore, it was not necessary to reach the issue of stigmatic injury. Allen v. Wright, 104 S. Ct. 3315, 3335 n.3 (1984) (Brennan, J., dissenting). Justice Stevens stated that the alleged injury to the children's right to an integrated education in the public schools was an adequate allegation of injury-in-fact and he did not discuss the issue of stigmatic injury. *Id.* at 3342 (Stevens, J., dissenting).
58. 104 S. Ct. 3315, 3335-37 (1984) (Brennan, J., dissenting); *id.* at 3342, 3345 (Stevens, J., dissenting).
59. Justice Brennan noted that in the analogous context of housing discrimination, denial of the right to live in an integrated community is sufficient injury to satisfy constitutional standing requirements and there was no rational basis for treating schoolchildren differently from residents. 104 S. Ct. 3315, 3336 (1984) (Brennan, J., dissenting); *see supra* note 18 and accompanying text. Justice Stevens argued that separation of powers should be considered under a distinct justiciability analysis and

Prior to the Court's decision in *Allen v. Wright*,[60] Supreme Court precedent as to whether black citizens have standing to challenge government action alleged to be in denigration of their race was divided. In *Norwood v. Harrison*,[61] *Gilmore v. City of Montgomery*,[62] and *Coit v. Green*,[63] the standing of black citizens was premised on the government's obligation to refrain from giving any aid or support that tends to facilitate or reinforce private discrimination.[64] These cases support recognition of the black parents' right to challenge IRS procedures alleged to denigrate their position as members of their communities.[65] Under *EKWRO*,[66] however, stigmatic injury would be judicially cognizable only if the parents identified some concrete injury which would be redressed by the requested relief in order to independently satisfy the causation requirement of article III standing.[67] Thus, standing would be denied unless the black parents could show a direct causal relationship between their claimed injuries and the challenged IRS grants of tax-exempt status to the private schools.[68]

In *Allen v. Wright*,[69] the Supreme Court denied standing[70] on the basis of *EKWRO*.[71] The Court characterized the parents' allegations of injury in broad terms[72] even though the parents had limited their claim of injury to denigration they and their children had personally suffered as a result of IRS grants of tax-exempt status to racially discriminatory

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that considerations of tax policy, economics, and pure logic required recognition of standing by the Court. *Id.* at 3345 (Stevens, J., dissenting).

60. 104 S. Ct. 3315 (1984).
61. 413 U.S. 455 (1973).
62. 417 U.S. 556 (1974).
63. 404 U.S. 997, *aff'g mem.* Green v. Connally, 330 F. Supp. 1150 (D.D.C. 1971).
64. Allen v. Wright, 104 S. Ct. 3315, 3339 (1984) (Brennan, J., dissenting) ("*Norwood* explicitly stands for the proposition that governmental aid to racially discriminatory schools is a direct impediment to school desegregation"); *see supra* notes 31-40 and accompanying text.
65. *See* Bob Jones University v. United States, 461 U.S. 574 (1983); McCoy & Devins, *Standing and Adverseness in Challenges of Tax Exemptions for Discriminatory Private Schools*, 52 FORDHAM L. REV. 441, 447-48 (1984) (standing based on denigration of race implicitly accepted by the Supreme Court in Norwood v. Harrison). *See generally* Note, *The Judicial Role in Attacking Racial Discrimination in Tax-Exempt Private Schools*, 93 HARV. L. REV. 378, 385-86 (1979) (the Supreme Court implied in Norwood v. Harrison that parents of children attending public schools could challenge any "tangible assistance" given to discriminatory schools by the government).
66. 426 U.S. 26 (1976).
67. Allen v. Wright, 104 S. Ct. 3315, 3328 n.22 (1984); *see supra* notes 24-30 and accompanying text.
68. Allen v. Wright, 104 S. Ct. 3315, 3326 n.19 (1984).
69. 104 S. Ct. 3315 (1984).
70. *Id.* at 3326.
71. 426 U.S. 26 (1976).
72. 104 S. Ct. 3315, 3327 (1984) (recognition of the parents' standing on their claim of injury would mean that a black person in Hawaii could challenge the tax-exempt status of a discriminatory school in Maine).

schools in their communities.[73] Further, unlike the plaintiffs in *EKWRO*,[74] the parents did not seek admission of their children to a private institution. Rather, they wanted the IRS to implement effective procedures to identify racially discriminatory schools in their communities and deny them tax-exempt status. Contrary to the majority's contention,[75] the relief sought, unlike that in *EKWRO*,[76] was not dependent on the actions of outside parties. The tax benefits received by the racially discriminatory schools would cease upon withdrawal of tax-exempt status. Thus, any interference with the children's right to an integrated education in the public schools caused by federal tax policy would be eliminated by a court order withdrawing tax-exempt status for the schools.[77] By characterizing the nexus between the government's conduct and desegregation of the public schools as "attenuated,"[78] the Court denied standing on causation grounds without first determining whether the black parents have a substantive right to demand that their government refrain from giving aid to racially discriminatory private schools in their communities.[79]

The Supreme Court has been criticized for using the causation doctrine as a thin disguise for its opinion on the merits of the underlying claim.[80] The Supreme Court's denial of standing in *Allen v. Wright*[81] is evidence that the Court does not want to involve itself in controversies concerning tax-exempt status for segregated private schools beyond its decision in *Bob Jones University v. United States*[82] that those private

73. *Id.* at 3335 n.3 (Brennan, J., dissenting) (the parents limit their claim of stigmatic injury to that caused by illegal grants of tax-exempt status by the IRS to racially discriminatory schools located in their communities where the public schools are currently desegregating).
74. 426 U.S. 26 (1976); *see supra* notes 24-30 and accompanying text.
75. 104 S. Ct. 3315, 3328-29 (1984).
76. 426 U.S. 26 (1976).
77. 104 S. Ct. 3315, 3342-45 (1984) (Stevens, J., dissenting) (the parents' injury will be redressed if the discriminatory schools' operations are inhibited through denial of tax-exempt status); Note, *supra* note 65, at 386 n.40 (implementation of effective procedures will remedy unconstitutional governmental support of private discrimination).
78. Allen v. Wright, 104 S. Ct. 3315, 3328 (1984).
79. *Id.* at 3333 (Brennan, J., dissenting) (the Court denies the parents' standing "without acknowledging the precise nature of the injuries they have alleged"); *see also* Logan, *supra* note 49, at 53 ("[I]t is illogical to evaluate any claim made by a party without reference to the nature of the right asserted, and by so doing, the Court makes a constitutional decision regarding standing in an analytic vacuum.").
80. Allen v. Wright, 104 S. Ct. 3315, 3341 (1984) (Brennan, J., dissenting); *see also* Chayes, *Forward: Public Law Litigation and the Burger Court*, 96 HARV. L. REV. 1, 14-22 (1982) (the Court "stack[s] the deck" by its characterization of the injury-in-fact that the plaintiff asserts); Nichol, *supra* note 23, at 186 ("The tests employed are too easily manipulated to coincide with the desire, or lack thereof, to reach the merits of particular cases."); Tushnet, *The New Law Standing: A Plea for Abandonment*, 62 CORNELL L. REV. 663, 663 (1977) ("Decisions on questions of standing are concealed decisions on the merits of the underlying constitutional claim.").
81. 104 S. Ct. 3315 (1984).
82. 461 U.S. 574 (1983). Justice Powell stated that it was for Congress to make the

schools discriminating on the basis of race are ineligible for tax-exempt status under the Code. In *Bob Jones University*[83] the Court stressed that the IRS had primary responsibility for construing the Code and that Congress had vested the IRS with broad authority to formulate procedures for its implementation.[84] By denying the black parents standing to challenge IRS procedures designed to limit tax-exempt status to nondiscriminatory private schools, the Court leaves to Congress and the Executive the task of articulating policy on tax-exemptions for discriminatory organizations.

Susan D. Cobun

legislative policy choices as to tax-exemptions for discriminatory organizations and that public policy should not be determined by judges. *Id.* at 611-12 (Powell, J., concurring in part and concurring in the judgment). *See also* McCoy & Devins, *supra* note 65, at 443-44.

83. 461 U.S. 574 (1983).

84. *Id.* at 596.