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An Organization's Resource Allocation Choices Cannot Create Article III Standing to Sue

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Earlier this year, an organization called the Praxis Project made headlines when it filed a lawsuit in California federal court against The Coca-Cola Company and the American Beverage Association, accusing the defendants of misleading consumers about the purported harms of sodas and other sugar-sweetened beverages. A little over a month later, and with considerably less fanfare, Praxis voluntarily dismissed its suit without prejudice. Whether that is the end of the story remains to be seen, but one troubling aspect of Praxis's suit was Praxis's theory of why it had satisfied Article III's requirements for standing to sue in federal court.

The US Supreme Court has repeatedly admonished that "'[n]o principle is more fundamental to the judiciary's proper role in our system of government than the constitutional limitation of federal-court jurisdiction to actual cases or controversies.'"[1] The "'irreducible constitutional minimum' of standing consists of three elements: The plaintiff must have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision."[2]

Praxis did not allege so-called associational standing—that its members or those individuals that it purports to represent had been harmed by the challenged conduct.[3] Instead, Praxis claimed to satisfy the requirements for standing in its own right. Specifically, the organization alleged that it was "forced to expend" its finite resources on advocacy combating the defendants' representations, thereby "divert[ing] resources away" from other nutritional education initiatives.[4]

Praxis's theory flunks both the first and second prongs of the test for Article III standing. An injury in fact must be "concrete"—meaning the harm "must actually exist" and be "real," not "abstract."[5] Yet an organization's allocation of its resources is a budgetary choice, not an economic loss or any other kind of concrete harm. Nor was Praxis's decision to allocate its resources in a particular way caused by the defendants' alleged conduct. Contrary to the conclusory assertion in Praxis's complaint, there is nothing "forced" about an organization's own policy-driven choices about how best to spend its finite resources.

No doubt the directors of Praxis feel strongly about the marketing that Praxis challenged in its lawsuit, but the Supreme Court made it clear well over three decades ago that "standing is not measured by the intensity of the litigant's interest or the fervor of his advocacy," because those are not "permissible substitute[s]" for

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[1] *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016) (quoting *Raines v. Byrd*, 521 U.S. 811, 818 (1997) (quoting in turn *Simon v. E. Ky. Welfare Rights Org.*, 426 U.S. 26, 37 (1976))).
[2] *Spokeo*, 136 S. Ct. at 1547 (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992)).
[3] *See generally Hunt v. Wash. State Apple Adver. Comm'n*, 432 U.S. 333, 343 (1977) (setting forth test for associational standing).
[4] Am. Compl. ¶¶ 109, 110, 114, Dkt. No. 8, *Praxis Project v. Coca-Cola Co.*, No. 3:17-cv-00016 (Jan. 17, 2017).
[5] *Spokeo*, 136 S. Ct. at 1548 (quotation marks omitted).

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the constitutionally-required showing of concrete harm caused by the challenged conduct of the defendant.[6] Under Praxis's theory, it would be trivial for an organization to circumvent this rule and manufacture standing by simply asserting that its intense interest in an issue compels it to spend its resources on that issue instead of on other matters. As one court put it in rejecting a theory similar to the one advanced by Praxis, "the reallocation of resources alone does not constitute an injury-in-fact. Were an association able to gain standing merely by choosing to fight a policy that is contrary to its mission, the courthouse door would be open to all associations."[7]

Perhaps Praxis hoped to find support in the Supreme Court's holding in *Havens Realty Corp. v. Coleman* that a fair-housing organization had standing based on allegations that the defendants' racially discriminatory housing practices "perceptibly impaired" the organization's "ability to provide counseling and referral services for low- and moderate-income homeseekers."[8] But the external impairment of an organization's provision of services—which Praxis did not allege—is wholly distinct from an organization's internal choices about where to spend its funds.

The US Court of Appeals for the DC Circuit, for example, has explicitly recognized this distinction, holding that another fair-housing organization had standing at the pleading stage based on allegations of impairment that paralleled those in *Havens* but rejecting the organization's alternative theory for standing based on the diversion of its resources toward challenging the defendant's conduct. As the court pointed out, purported harm based on an organization's "own budgetary choices" is "not really a harm at all," and is in all events "self-inflicted" and therefore not "fairly traceable" to the defendant's conduct.[9]

Other courts have followed suit. In an opinion affirmed by the Third Circuit, a Pennsylvania district court called "disturbing" the argument by civic organizations opposed to gun violence that they could "sue for the costs of education sessions and other programs which they run to counteract gun violence." [10] While counteracting gun violence is undeniably a worthwhile purpose, the power to invoke the jurisdiction of the federal courts is a different question, and the court correctly recognized that the organizations' argument had no limits: "By this logic, any social action organization may confer standing upon itself by voluntarily spending money on the social problem of its choice."[11] And a federal judge in DC similarly rejected a privacy organization's standing to challenge a Department of Education rule based on the realignment of its advocacy priorities, observing that "the fact that [the Electronic Privacy Information Center] has had to redirect some of its resources from one legislative agenda to another is insufficient to give it standing."[12]

At the end of the day, Praxis's claim of Article III standing may never be tested in court because of its voluntary dismissal. Courts should nonetheless remain vigilant when confronted with similarly expansive claims, which, if accepted, would turn Article III's meaningful constitutional limitations on federal judicial power into empty formalities.

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[6] *Valley Forge Christian Coll. v. Ams. United for Separation of Church and State, Inc.*, 454 U.S. 464, 486 (1982). *See also, e.g.*, *Sierra Club v. Morton*, 405 U.S. 727, 739 (1972) (holding "a mere 'interest in a problem,' no matter how longstanding the interest and no matter how qualified the organization is in evaluating the problem, is not sufficient by itself" to confer standing).

[7] *Long Term Care Pharm. Alliance v. UnitedHealth Grp., Inc.*, 498 F. Supp. 2d 187, 192 (D.D.C. 2007).

[8] 455 U.S. 363, 379 (1982).

[9] *Fair Emp't Council of Greater Wash., Inc. v. BMC Marketing Corp.*, 28 F.3d 1268, 1276-77 (D.C. Cir. 1994). *Accord, e.g.*, *Equal Rights Ctr. v. Post Properties, Inc.*, 657 F. Supp. 2d 197, 200-201 (D.D.C. 2009).

[10] *City of Phila. v. Beretta U.S.A., Corp.*, 126 F. Supp. 2d 882, 897 (E.D. Pa. 2000), *aff'd*, 277 F.3d 415 (3d Cir. 2002).

[11] *Ibid*.

[12] *Elec. Privacy Info. Ctr. v. U.S. Dep't of Educ.*, 48 F. Supp. 3d 1, 24 (D.D.C. 2014). *See also id.* ("The diversion of EPIC's resources to educate the public about and advocate against the Department of Education's Final Rule is not a sufficient injury in fact.").

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