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**UNLOCKING NEW YORK'S  
COURTHOUSE DOORS**

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# Unlocking New York's Courthouse Doors

Patricia E. Salkin



Access to our courts is something that people care about. The fair operation of our legal system and an opportunity for a hearing of one's grievances are values that people hold dear. Yet, there is a subtle and technical legal issue – the doctrine of “standing to sue” – that works to erode citizens' access to our courts in New York in environmental matters.

“Standing” is a not-so-fancy legal term that refers to a party's suitability, for lack of a better term, to bring a lawsuit. On the federal level, standing is grounded in the “case or controversy” requirement of the United States Constitution. On the state level, it is grounded in the common law.

Plaintiffs in environmental cases have greater access to the federal courts than the state courts. In a federal lawsuit, the federal courts explore three factors to determine whether the party bringing the lawsuit, the plaintiff, is an appropriate party to bring that claim. The first two factors require that the plaintiff be legally injured in some way and that the injury result from the defendant's actions. The injury in environmental matters can include adverse effects on aesthetics, viewsheds, and community character. In addition to injury and causation, the plaintiff must also show that the injury is redressable, that is, that the courts can fashion a remedy for that injury.

Citizens can sue polluters directly in federal court, but not in New York courts. Instead, plaintiffs in New York can only sue state and local government agencies for their decisions in environmental matters. Additionally, plaintiffs must pass a much more rigorous standing test in New York.

Rather than the simple three-part test of injury, causation, and redressability, plaintiffs in New York State who are not the target of government regulation or do not live next door to the project

are required to prove that they have suffered “special harm” – harm that is different than the harm suffered by the general community.

This requirement can be traced for the most part to a 1991 case decided by the New York Court of Appeals, the highest court in this state. There, the court rejected a lawsuit by an industry plaintiff that was challenging a Suffolk County law designed to reduce the amount of fast food packaging making its way into rapidly dwindling landfill space. The court stated that the plaintiff's environmental claims were no different than those suffered by the general community.

In rejecting industry's challenge in that case, the court has made it very difficult, perhaps unintentionally, for all plaintiffs who bring challenges in environmental cases. Additionally, the lower courts have run away with the Court of Appeals's decision, effectively double-padlocking the courthouse doors and further insulating state and local decisions from any judicial review.

The most egregious local example of this court-imposed restrictive standing requirement surrounded the environmental review of an office building that Greene County proposed to build on Main Street in Catskill. The proposed new building would replace some historic buildings, and people in Catskill felt that it would significantly detract from the character of their community.

The merits of the environmental review for that project, however, will never be determined by a New York court. The lower court and then a mid-level appeals court in Albany determined that the plaintiffs did not have standing to maintain the action. This summer, the Court of Appeals declined to review the matter. In the

face of these defeats, the community's efforts to save the buildings continue.

A comparison of statistics before and after the Court of Appeals 1991 decision tell the story of shutting out more and more plaintiffs. According to a recent column by Michael Gerrard, Esq. in the New York Law Journal, since 1975 when the State Environmental Quality Review Act was implemented, there have been 101 court cases addressing the issue of standing. He notes that prior to the 1991 decision in *Society of the Plastics Industry*, the courts in New York found that the plaintiffs had met the legal requirements of standing to pursue their challenge in court in 68% of cases. Since the 1991 decision, however, attorney Gerrard notes that only 48% of the cases were allowed to go forward.

Though a seemingly technical requirement, standing matters. While it does not guarantee success to plaintiffs, standing at least gives plaintiffs their day in court. And, the mere ability to file a lawsuit serves as an important check on inadequate and inappropriate environmental reviews. If relief is not to be found in the courts, the Legislature should address this issue.

This month's Government Law Center column was contributed by Professor Joan Leary Matthews, Associate Lawyering Professor at Albany Law School who also teaches environmental law courses and was instrumental in the planning of a December 2002 conference at Albany Law School on standing in environmental and land use cases.

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