PENN STATE
LAW REVIEW

Standing Alone?: The Michigan Supreme Court, the *Lansing* Decision, and the Liberalization of the Standing Doctrine

Kenneth Charette*

I. INTRODUCTION

Standing refers to a litigant's ability to bring a specific cause of action before a court.[1] A litigant's failure to demonstrate the necessary requirements of standing to sue will result in a dismissal of his or her claim.[2] Standing is a judicially created doctrine designed to limit the jurisdictional reach of courts.[3] The basic premise behind the standing doctrine is that courts should only have the power to adjudicate certain types of claims.[4] Article III of the United States Constitution limits the power of Federal Courts to deciding only "case" or "controversy."[5] This doctrine generally is justified on the basis of maintaining the separation of powers between the various branches of government.[6] While state governments are not necessarily bound by the requirements of Article III, all state courts have recognized the need for some form of a standing doctrine.[7]

---

* J.D. Candidate, The Dickinson School of Law of the Pennsylvania State University, 2012.

1. Detroit Fire Fighters Ass'n v. City of Detroit, 537 N.W.2d 436, 438 (Mich. 1995).

2. *See id*. *See also* Arizonans for Official English v. Arizona, 520 U.S. 43 (1997).

3. *See* Nat'l Wildlife Fed'n v. Cleveland Cliffs Iron Co., *684 N.W.2d 800* (Mich. 2004).

4. *See* Lujan v. Defenders of Wildlife, 504 U.S. 555, 559 (1992) (stating that federal courts only have the power to decide a "case" and "controversy").

5. U.S. CONST. art. III, § 2.

6. *See* Lewis v. Casey, 518 U.S. 343, 349 (1996) (stating that standing is a "[p]rinciple that prevents courts of law from undertaking tasks assigned to the political branches. It is the role of courts to provide relief to claimants, in individual or class actions, who have suffered, or will imminently suffer, actual harm; it is not the role of courts, but that of the political branches, to shape the institutions of government in such fashion as to comply with the laws and the Constitution"). *See also* Raines v. Byrd, 521 U.S. 811, 818, 820 (1997) (stating that standing is "built on a single basic idea—the idea of separation of powers").

7. *See, e.g.*, Lee v. Macomb Co. Bd. of Comm'rs, 629 N.W.2d 900, 905 (Mich. 2001) (stating that, in Michigan, "standing is of great consequence so that neglect of it would imperil the constitutional architecture whereby governmental powers are divided

This Comment will address the ways in which a recent Michigan Supreme Court case dramatically altered the requirements for standing to sue in Michigan. The Michigan Supreme Court recently handed down its opinion in *Lansing Schools Educational Association v. Lansing Board of Education*.[8] In *Lansing*, students allegedly assaulted four high school teachers.[9] An applicable state statute required the expulsion of any student who assaults a teacher.[10] However, the school board, in its discretion, chose only to suspend the students, as opposed to rigidly adhering to the statutory requirements.[11] The teachers union, on behalf of the four teachers, filed suit seeking a writ of mandamus to compel the local school board to expel the students.[12] The trial court and the appellate division dismissed the suit on the ground that the teacher union lacked standing to sue for the enforcement of the statute under the applicable test.[13] The Michigan Supreme Court reversed and chose to abandon the federal test for standing on the grounds that it departed too dramatically from Michigan's historical precedents and because the Michigan Constitution lacks an explicit "case" or "controversy" requirement.[14] The court held that a plaintiff in Michigan now has standing to sue if either 1) he has a specific legal cause of action; or 2) a trial court, in its discretion, believes a litigant should have standing.[15]

This Comment will focus on the ways in which the *Lansing* decision alters the standing doctrine in Michigan. Section II of this Comment will engage in a brief discussion of the historical development of the standing doctrine in Michigan. This section provides the reader with the necessary background to understand both the ways in which the *Lansing* decision changes the requirements for standing and the court's reasons for doing so.

Section III of this Comment will begin by discussing the *Lansing* case in detail and examining the rationale behind abandoning the previously established test for standing. This section will explore why the Michigan Supreme Court concluded that the jurisdictional reach of Michigan courts is not limited to adjudicating only "case" or

between the three branches of government").

8. Lansing Sch. Educ. Ass'n v. Lansing Bd. of Educ., 792 N.W.2d 686 (Mich. 2010).

9. *Id*. at 689.

10. *Id*.

11. *Id*.

12. *Id*.

13. *Id*. The established test for standing in Michigan had been the same as the Federal standard outlined by the US Supreme Court in *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992) (holding that the test for standing was: 1) injury in fact; 2) causation; and 3) redressability).

14. *Id*. at 699.

15. *Id*.

"controversy." This section also will analyze the reasons why the court settled on a more liberal, prudential approach to standing.

Section III of this Comment then will engage in a multi-jurisdictional analysis comparing the new Michigan test for standing to the doctrinal requirements recognized by other states. This section will analyze how other states, whose constitutions also lack an explicit "case" or "controversy" requirement, have addressed the issue of standing to sue. This section will demonstrate that the *Lansing* decision represents a minority trend among states, rejecting the rigid requirements of the federal test for standing in favor of a more relaxed prudential approach to applying the doctrine.[16]

This Comment concludes by suggesting that the new standing doctrine articulated by the *Lansing* court will have a variety of negative consequences. First, this section will argue that the new doctrine will create judicial confusion over the necessary requirements for standing to sue because it lacks a straightforward and easily applicable test. Second, because the new test for standing is less restrictive, a variety of new claims, such as challenges to environmental policy, now will be able to survive a standing inquiry. Finally, the *Lansing* decision will also likely impair the separation of powers because Michigan courts will be asked to review the actions of the other branches of government. Consequently, the principal conclusion of this Comment is that by adopting a new test for standing, the *Lansing* court inadvertently opened Michigan courts up to an array of problematic litigation. The Michigan Supreme Court created a vague test which places too much discretionary power in the hands of individual trial judges. Accordingly, this new prudential approach to standing will result in judicial confusion, a rise in litigation, and a breakdown of the separation of powers.

II. BACKGROUND

In order to understand the significance of the *Lansing* decision, it is important to first discuss the evolution of the standing doctrine in Michigan. The Michigan Constitution, unlike the Federal Constitution, does not contain an explicit "case" or "controversy" clause from which to derive the limits of state judicial power.[17] As a result, Michigan courts

16. *See* House Speaker v. Governor, 495 N.W.2d 539, 543 (Mich. 1993) (providing an example of a "prudential" approach to the standing doctrine when the court held that a plaintiff must plead sufficient facts in order to establish that he or she has a "substantial interest" in the outcome of the litigation).

17. *See* Lansing Sch. Educ. Ass'n v. Lansing Bd. of Educ., 792 N.W.2d 686, 693-94 (Mich. 2010) (stating that "unlike the Michigan Constitution, however, the federal constitution enumerates the cases and controversies to which the judicial power extends, and the federal standing doctrine is largely derived from this art III case-or-controversy

have struggled to define the structure of state judicial power for over a century.[18]

The earliest discussions on the limits of state judicial power in Michigan date back to the mid to late 1800s.[19] During this period, Michigan courts, while not directly speaking to the standing issue, seemed to approach the concept of justiciability in a manner similar to that taken more recently by federal courts.[20] These cases, like some more recent federal cases, discussed jurisdictional limits in terms of the ability to decide only a "case" or "controversy."[21] Moreover, courts considered it necessary to limit judicial power in this way in order to protect the separation of powers.[22] For example, Michigan Supreme Court Justice Thomas Cooley reasoned that "it is the province of judicial power to decide private disputes between or concerning persons; but of the legislative power to regulate public concerns, and to make law for the benefit of society."[23]

Thus, Justice Cooley argued that limiting the jurisdiction of courts to deciding only a "case" or "controversy" was essential to ensuring that the judiciary did not encroach upon the powers delineated to the other branches of government.[24] Without this requirement, courts could be asked to adjudicate political questions which were better left to the legislature.[25] Furthermore, during this early era of Michigan standing jurisprudence, courts were also reluctant to decide a case unless a judicial

requirement").

18. *See id*. at 734 (Corrigan, J. dissenting) (noting that prior to the adoption of the federal test, Michigan's standing jurisprudence was marked by confusion and inconsistency).

19. *See, e.g.*, Sutherland v. Governor, 29 Mich. 320, 324 (1874) (discussing the limits of judicial power in the context of a writ of mandamus claim and stating that "[o]ur government is one whose powers have been carefully apportioned between three distinct departments . . . and the very apportionment of power to one department is understood to be a prohibition of its exercise by either of the others").

20. *See, e.g.*, Daniels v. People, 6 Mich. 381 (1859).

21. *See, e.g., id*. at 388(defining judicial power as the power "to hear and determine controversies between adverse parties"); Risser v. Hoyt, 53 Mich. 185, 193 (Mich. 1884) (stating that Michigan Courts have the authority to "hear and decide controversies"). *Cf.* Lujan v. Defenders of Wildlife, 504 U.S. 555, 559 (U.S. 1992) (stating that federal courts only have the power to decide "cases" and "controversies").

22. *See* THOMAS COOLEY, A TREATY ON CONSTITUTIONAL LIMITATIONS 92 (Little, Brown, & Co.) (1886).

23. *Id*.

24. *See id*.

25. *See* Nat'l Wildlife Fed'n v. Cleveland Cliffs Iron Co., 684 N.W.2d 800,805-07 (Mich. 2004) (arguing that it has been historically understood that the framers of the Michigan Constitution, by providing for the separation of powers, inherently limited the jurisdiction of Michigan courts to deciding only "cases" or "controversies" in order to ensure that the judicial branch would not encroach on the provinces of the other branches of government).

decision could provide a party with some form of adequate redress.[26] Therefore, while this era did not specifically advocate for any type of concrete standing doctrine, it was concerned more generally with limiting the jurisdictional reach of courts. In other words, it was generally understood that it was the province of the courts to decide only a legitimate "case" or "controversy" to which a decision rendered by a court would provide the appropriate redress.[27]

A plaintiff's standing to bring a cause of action originally became an issue in Michigan in response to claims in which a party was seeking a writ of mandamus to compel a public official to perform a statutory duty[28] or to enforce a public right.[29] In response to writ of mandamus cases, Michigan courts began to develop some prudential limitations on a claimant's access to the court system.[30] These loosely defined prudential considerations essentially left open the question of whether a standing analysis is required by the Michigan Constitution or is rather a self-imposed discretionary tool employed by courts to limit justiciability. Thus, standing to sue for a writ of mandamus was initially seen as a self-imposed form of judicial restraint designed to guard against generalized grievances.[31]

26. *See* Street R. Co. v. Wildman, 58 Mich. 286 (Mich. 1885) (refusing to decide a case because injunctive relief was not available to "prevent [the defendant] from doing what has already been done").

27. *See* Anway v. Grand Rapids R. Co., 179 N.W. 350, 357, 360 (Mich. 1920) stating that:

> courts of judicature are organized only to decide real controversies between actual litigants. When, therefore, it appears, no matter how nor at what stage, that a pretended action is not a genuine litigation over a contested right between opposing parties . . . the court, from a sense of its own dignity, as well as from regard to the public interests, will decline a determination of the fabricated case so fraudulently imposed upon it.

The court went on to note that the court has historically "declined to consider abstract questions of law and . . . to decide [cases] where our conclusions could not be made effective by final judgment, decree, and process"). *Id*.

28. *See, e.g.,* People *ex rel.* Drake v. Univ. of Mich. Regents, 4 Mich. 98 (Mich. 1856) (refusing to grant a writ of mandamus because the moving party could not show that any individual or class of persons suffered an injury).

29. *See* Home Tel. Co. v. Michigan R Comm., *140 N.W. 496*, 497-99 (Mich. 1913) (holding that a private citizen did not have standing to enforce a public right because the statute only conferred standing on the Attorney General).

30. *See* People *ex rel*. Ayres v. Bd. of State Auditors, 42 Mich. 422, 429 (Mich. 1880) (stating that a standing analysis was a discretionary tool used by the courts); People *ex rel*. Drake v. Regents of Univ. of Mich., 4 Mich. 98, 102-04 (Mich. 1856) (noting that in order to have standing to bring a writ of mandamus claim, a plaintiff must be able to assert a special injury or interest different from that of the general public).

31. *See* Lansing Sch. Educ. Ass'n v. Lansing Bd. of Educ., 792 N.W.2d 686, 690 (Mich. 2010) (noting that, in Michigan, "[h]istorically, the standing doctrine grew out of cases where parties were seeking writs of mandamus to compel a public officer to perform a statutory duty").

Discussions of the standing doctrine become much more frequent in Michigan's modern jurisprudence.[32] The court focused the standing inquiry on the question of whether a claimant possessed a substantial "interest" in the outcome of a case.[33] In one of the most recent cases prior to the adoption of the federal test for standing, the Michigan Supreme Court defined standing as a type of judicial self-governance "used to denote the existence of a party's interest in the outcome of the litigation that will ensure sincere and vigorous advocacy."[34] The court further noted that "standing requires a demonstration that the plaintiff's substantial interest will be detrimentally affected in a manner different from the citizenry at large."[35] In other words, during this era, courts did not discuss standing in terms of it being a constitutionally mandated doctrine. Instead, the courts developed prudential concerns designed to weed out meritless cases by asking that a claimant be able to plead sufficient facts to establish some type of unique injury, interest, or cause of action.[36]

However, this prudential standing approach proved difficult to administer because the court demonstrated an inability to agree on a clear test for standing.[37] Consequently, in the years immediately preceding the *Lansing* decision, the Michigan Supreme Court decided to adopt the Federal test for standing in *Lee v. Macomb County Board of Commissioners*.[38] The Michigan Supreme Court reasoned that standing to sue was constitutionally mandated by the Michigan Constitution and that the federal test correctly articulated the minimum requirements to bring a cause of action.[39] The Michigan Supreme Court further elaborated on the importance of this test when it held that the legislature lacked the authority to statutorily confer standing on anyone who would otherwise not satisfy the requirements of the *Lee*/*Lujan* test.[40] Therefore, the *Lee* decision shifted the issue of standing in Michigan from a general set of principles that gave the courts a great amount of discretion to a stringent three-part test.[41] The Michigan Supreme Court reasoned that

32. *See, e.g.*, House Speaker v. Governor, 495 N.W.2d 539.

33. *Id*. at 543 (Mich. 1993) (holding that a litigant must possess a "substantial interest" in the outcome of the case in order to have standing to bring a suit).

34. *Id.*

35. *Id*.

36. *See id*.

37. *See* Detroit Fire Fighters Ass'n v. Detroit, *537 N.W.2d 436* (Mich. 1995).

38. Lee v. Macomb Co. Bd. of Comm'rs, 629 N.W.2d 900, 907-08 (Mich. 2001)

39. *Id*.

40. Nat'l Wildlife Fed'n v. Cleveland Cliffs Iron Co., 684 N.W.2d 800, 810-11 (Mich. 2004).

41. Susan J. Mahoney, Muddying the Waters: The Effects of the Cleveland Cliffs Decision and the Future of the MEPA Citizen Suit, 83 U. DET. MERCY L. REV. 229, 233 (2006).

the federal test for standing, as articulated by the U.S. Supreme Court in *Lujan*, clearly set out the minimum constitutional requirements for standing.[42] Therefore, in order to have standing to bring a cause of action in Michigan, the *Lee* court held that a claimant must be able to demonstrate the following: 1) injury in fact; 2) causation; and 3) redressability).[43] Thus, prior to the *Lansing* decision, the Michigan Supreme Court employed a strict yet straightforward three pronged test for standing.

III. ANALYSIS

A. The Lansing Decision

As noted above, the *Lansing* Court, in choosing to overrule *Lee* and its progeny, elected to abandon the federal test for standing to sue in Michigan.[44] The Court held that the federal test for standing is not appropriate because Michigan courts are not limited by a specific constitutional "case" or "controversy" requirement.[45] The Court reasoned that because Michigan lacks this requirement, it makes no sense to restrict the jurisdiction of state courts in a manner similar to that of federal courts.[46]

Moreover, the majority opined that the limits of federal judicial power are not relevant whatsoever to determining the jurisdictional reach of Michigan courts under the state's Constitution.[47] The court noted that state courts in Michigan already possess a broader set of powers than the federal judiciary.[48] For example, the Michigan Supreme Court has the power to issue advisory opinions, and the United States Supreme Court does not possess a similar power.[49] Therefore, the *Lansing* court held that the *Lee* court and its progeny erred in determining that the Michigan Constitution implicitly limited the judiciary's power to adjudicating a "case" or "controversy."[50] Moreover, the Court reasoned that the decision to adopt the federal test for standing was not consistent with

42. *Cleveland Cliffs*, 684 N.W.2d at 811.

43. *Lee*, 629 N.W.2d at 907-08 (adopting the *Lujan* test because it clearly articulates the "fundamental" requirements for standing).

44. *See* Lansing Sch. Educ. Ass'n v. Lansing Bd. of Educ., 792 N.W.2d 686, 699 (Mich. 2010).

45. *Id*. at 696 (stating that in *Lee*, the Michigan Supreme Court improperly inferred such a constitutional requirement from other constitutional provisions which mandated the separation of powers).

46. *Id*.

47. *Id*. at 696-97.

48. *Id*. at 694-95.

49. *Id*.

50. *Id*. at 694-96.

Michigan's historical jurisprudence.[51] The Court noted that prior to the adoption of the federal test, Michigan had employed a limited prudential approach.[52] Based on that observation, the Court held that in order to adhere to its historical precedent, it was necessary to abandon the federal test for standing and return to a set of prudential considerations.[53]

Under the prudential test for standing articulated by the *Lansing* court, a plaintiff has standing to bring a suit if either: 1) he or she has a specific legal cause of action; or 2) the trial court, in its discretion, believes the plaintiff to have standing for some other reason.[54] In determining whether a party has standing to sue, a trial court may look to various factors, such as a special injury, right, or substantial interest.[55] The court chose to adopt this test because it believed this new prudential approach was consistent with public policy goals and with Michigan's historical approach to standing.[56] Additionally, the Michigan Supreme Court reasoned that the definition of justiciable "cases" should not be limited to situations in which a party suffered a concrete and particularized injury caused directly by the challenged conduct.[57] The Court argued that to limit judicial power in such a way would unfairly limit access to the court system.[58] In other words, the new prudential approach is designed to allow a greater amount of cases to survive a standing analysis.[59]

51. *Id*.

52. *Id*. at 691-92 (noting that Michigan had historically employed a more limited prudential approach to standing which was aimed at ensuring "sincere and vigorous advocacy"). Moreover, the court noted that unlike the federal *Lujan*/*Lee* test for standing, Michigan's historical approach allowed a court to disregard standing if it was in the interests of justice. *Id.*

53. *Id*. at 699. *Contra* Lansing Sch. Educ. Ass'n v. Lansing Bd. of Educ., 792 N.W.2d 686, 724 (Mich. 2010) (Corrigan, J. dissenting) (stating that the majority's argument ignores the fact the Michigan's earliest jurisprudence characterized the limits of the state's judicial power in terms of the power to hear and decide "cases" or "controversies").

54. *See id*. at 699.

55. *See id*.

56. *See id*.

57. *See id.* (stating that "A litigant may have standing in this context if the litigant has a special injury or right, or substantial interest, that will be detrimentally affected in a manner different from the citizenry at large or if the statutory scheme implies that the Legislature intended to confer standing on the litigant.").

58. *Id*. at 698 (arguing that the *Lee* test for standing was contrary to the public interest because it prevented litigants from pursuing certain types of claims, such as the enforcement of a public right).

59. *Id*. (stating that the purpose of standing should be to ensure "sincere and vigorous advocacy" and that the *Lee/Cleveland Cliff*s standing doctrine is, at the expense of the public interest, "broader than this purpose because it may prevent litigants from enforcing public rights, despite the presence of adverse interests and parties, and regardless of whether the Legislature intended a private right of enforcement to be part of the statute's enforcement scheme").

Also, in *Lansing*, the court not only outlined a set of prudential considerations for standing, but it also stated that the Legislature should have the power to create standing by statute.[60] The court stated that if the legislature elects to implement its statutory schemes in part by granting citizens the ability to enforce public rights enumerated in those statutes, then courts should respect that decision.[61] Therefore, under *Lansing*, the legislature has the power to statutorily expand the jurisdiction of courts by conferring standing on a class of citizens.[62]

Thus, in abandoning the federal test for standing, the Michigan Supreme Court moved away from a clear and straightforward standing analysis in favor of a more permissive, yet vaguely defined, prudential approach.[63] This prudential approach not only provides courts with a wide range of discretion in conducting a standing analysis, but it also permits the legislature to confer standing to sue on individuals.[64] In sum, the court reasoned that the strict three-part analysis promulgated by federal courts is neither mandated by the Michigan Constitution nor is consistent with the state's historically more prudential approach to the doctrine.[65]

B. Multi-Jurisdictional Survey: Is the Lansing Decision an Outlier Nationally?

1. Michigan's New Standing Doctrine is Representative of a Larger National Trend of Liberalizing Standing Requirements

The *Lansing* decision represents an emerging national trend of liberalizing standing requirements and allowing for greater access to the court system. Other state supreme courts have held that the federal test for standing is not appropriate for their respective states.[66] Many of these courts, like the Michigan Supreme Court, have held that the federal test for standing is not applicable because their state's constitutions lack an

60. *Id*. at 699.

61. *Id*. at 698 (concluding that the *Lee* test for standing was too restrictive because it failed to consider "whether the Legislature intended a private right of enforcement to be part of the statute's enforcement scheme").

62. *Id*. at 698-700.

63. *Id*. at 732-33 (Corrigan, J. dissenting) (arguing that the majority opinion abandons a simple straightforward test for standing in favor of a clumsy and confusing test).

64. *Id*. at 699.

65. Lansing Sch. Educ. Ass'n v. Lansing Bd. of Educ., 792 N.W.2d 686, 693 (Mich. 2010) (stating that "[t]here is no support in either the text of the Michigan Constitution or in Michigan jurisprudence, however, for recognizing standing as a constitutional requirement or for adopting the federal standing doctrine").

66. *See*, *e.g.*, Kellas v. Dep't of Corr., 145 P.3d 139 (Or. 2006).

explicit "case" or "controversy" requirement.[67] For example, in *Kellas v. Department of Corrections*,[68] the Oregon Supreme Court elected not to adopt the federal test for standing for reasons substantially similar to those outlined by the Michigan Supreme Court.[69] The Court stated that because the Oregon Constitution contains no explicit "cases or controversies requirement," the court does not have to "import federal law regarding justiciability into our analysis of the Oregon Constitution and rely on it to fabricate constitutional barriers with no support in either the text or history of Oregon's charter of government."[70] In other words, other state courts agree that federal law should have no bearing on deciding what types of claims are justiciable under their respective state constitutions. These states, like Michigan, have reasoned that, because their respective state constitutions do not contain an explicit "case" or "controversy" clause, there is not a valid reason to limit arbitrarily the jurisdictional reach of their courts in a manner similar to that of the federal government.[71]

Some of the states that have explicitly rejected the federal test for standing have endorsed a prudential approach to standing similar to the test outlined by the Michigan Supreme Court. For example, in *Coalition for Adequacy & Fairness in School Funding, Inc. v. Chiles*,[72] the Florida Supreme Court elected to reject the federal test for standing and to instead employ a prudential approach that was more consistent with Florida's historical jurisprudence on the issue.[73] Additionally, the Oregon Supreme Court not only held that a prudential approach to standing is warranted, but also held that an approach that recognizes the authority of the legislature to confer standing on various classes of

67. *See id*.

68. *Id*.

69. *Id*. at 142-43 (declining to adopt the *Lujan* test for standing because the Oregon Constitution does not contain a "case" or "controversy" clause). *Cf.* Lansing Sch. Educ. Ass'n v. Lansing Bd. of Educ., 792 N.W.2d 686, 696 (Mich. 2010) (stating that because Michigan has no explicit constitutional case or controversy requirement, its courts should not be limited in the same manner as federal courts).

70. *Id*.

71. *Id*. *See also* Coalition for Adequacy & Fairness in Sch. Funding v. Chiles, 680 So.2d 400, 403 (Fla. 1996) (stating that Florida courts do not rigidly follow the federal requirements for standing); Lebron v. Gottlieb Mem. Hosp., 237 Ill. 2d. 217 (Ill. 2010) (explaining that Illinois is not required to follow federal law on standing); Nefedro v. Montgomery Co., 996 A.2d 850 (Md. 2010) (noting that the federal test for standing is not applicable to state courts).

72. Coalition for Adequacy & Fairness in Sch. Funding v. Chiles, 680 So. 2d 400, 403 (Fla. 1996).

73. *Id*. *See also* Kellas, 145 P.3d at 143 (outlining a prudential approach to standing by stating that the judiciary should not embrace rigid tests for justiciability but should rather focus on more flexible methods of statutory interpretations that "can be altered to meet desired ends").

individuals is consistent with the Oregon Constitution.[74] This type of rationale is echoed by the Michigan Supreme Court throughout the *Lansing* opinion.[75]

Some other states, while not specifically rejecting the federal test for standing, have nonetheless adopted a prudential test similar to the one articulated by the Michigan Supreme Court.[76] For example, some states that have elected to employ a prudential approach allow a citizen to challenge the validity of statutes without showing a distinct injury.[77] Similarly, *Lansing* allows a person to bring a cause of action absent a particularized injury, so long as the legislature has conferred standing upon them.[78]

2. The Trend of Rejecting the Federal Test for Standing in Favor of a Prudential Approach Represents a Minority View Nationally

Despite the fact that some state courts have chosen not to adopt the federal test for standing, the Michigan Supreme Court's decision to abandon the federal test based on a lack of an explicit constitutional "case" or "controversy" requirement appears to represent a minority view nationally. First, as the dissent in *Lansing* notes, *no* state appears to have an explicit "case" or "controversy" requirement in its constitution.[79] However, despite this fact, a large number of states have chosen to adopt the federal test for standing or a substantially similar test.[80] These states

74. *Kellas*, 145 P.3d at 143.

75. *See* Lansing Sch. Educ. Ass'n v. Lansing Bd. of Educ., 792 N.W.2d 686, 699 (Mich. 2010) (outlining the prudential considerations a court should consider in determining standing and also stating that the legislature has the power to statutorily create standing).

76. *See*, *e.g.*, Jen Electric, Inc. v. County of Essex, 197 N.J. 627, 645 (2009) (employing a liberal prudential test for standing which allows courts to dispense with rigid standing requirements in order to focus on the merits of a particular case).

77. *See*, *e.g.*, Nefedro v. Montgomery County, 414 Md. 585, 592 (2010) (stating that in "a multitude of cases, this Court has recognize[d] the availability of actions for declaratory judgments or injunctions challenging the validity of statutes or regulations which may, in the future, be applied to or adversely affect the plaintiffs").

78. *Lansing*, 792 N.W.2d at 699.

79. *See id.* at 389-90 (Corrigan, J. dissenting) (noting that "*no* state in the union incorporates explicit 'case or controversy' language into its constitution, yet many states explicitly employ the federal test—which is rooted in the traditional case or controversy requirement—that we adopted in *Lee*").

80. *See*, *e.g.*, Granite State Outdoor Advertising, Inc. v. City of Rosewell, 238 Ga. 417, 418 (2008) (stating that *Lujan* sets out the appropriate test for standing to sue in Georgia). *See also* Dover Historical Society v. City of Dover Planning Comm., 838 A.2d 1103, 1111 (Del. 2003) (stating that the federal requirements for standing were the same requirements necessary to bring a case or controversy in Delaware); Lansing Sch. Educ. Ass'n v. Lansing Bd. of Educ., 792 N.W.2d 686, 735 n.32 (containing a footnote noting that the following states have adopted the federal test for standing or a substantially

often imply a case or controversy requirement from constitutional provisions mandating the separation of powers.[81] This concept that courts can imply a "case" or "controversy" requirement is similar to what Michigan had done prior to the *Lansing* decision.[82] Moreover, these cases tend to agree that the federal test provides the best measure of the minimum constitutional requirements for standing.[83]

In addition, Michigan is the *only* state to have adopted and then subsequently abandoned the Federal test for standing.[84] The cases discussed in the above section all relate to the initial issue of whether to adopt the *Lujan* test. It remains to be seen whether other states, which currently employ the federal test for standing, will follow Michigan's lead and decide to abandon the *Lujan* test in favor of a more relaxed approach to a standing inquiry.

similar test: Alabama; Alaska; Arizona; Connecticut; Georgia; Hawaii; Idaho; Iowa; Mississippi; New Mexico; North Carolina; Ohio; Oklahoma; South Carolina; South Dakota; Tennessee; Vermont; West Virginia; Wyoming; Illinois; Kansas; and Virginia).

81. *See*, *e.g.*, Bennett v. Napolitano, 81 P.3d 311, 316 (Ariz. 2003) stating that:

> Article VI of the Arizona Constitution, the judicial article, does not contain the specific case or controversy requirement of the U.S. Constitution. But, unlike the federal constitution in which the separation of powers principle is implicit, our state constitution contains an express mandate, requiring that the legislative, executive, and judicial powers of government be divided among the three branches and exercised separately. This mandate underlies our own requirement that as a matter of sound jurisprudence a litigant seeking relief in the Arizona courts must first establish standing to sue).

John Does I through III v. Roman Catholic Church of the Archdioceses of Santa Fe, Inc., 924 P.2d 273 (N.M. App. 1996) (holding that although New Mexico does not have an explicit constitutional "case" or "controversy" requirement, the court could find "no reason" to not apply the Federal test).

82. *See* Lee v. Macomb Co. Bd. of Comm'rs, 629 N.W.2d 900, 905-07 (Mich. 2001) (stating that standing was constitutionally required in Michigan considering that the constitution expressly mandates the separation of powers between the three branches of government). *See also* Lansing Sch. Educ. Ass'n v. Lansing Bd. of Educ., 792 N.W.2d 686, 741 (Mich. 2010) (Corrigan, J. dissenting) (stating that the majority's decision to overrule *Lee* and its progeny represents a complete rejection of the principle of *stare decisis* and "should taste like bile in their mouths: like a bulimic after a three day bender, the majority justices now purge a decade's worth" of important jurisprudence).

83. *See*, *e.g.*, Sea Pines Ass'n for the Prot. of Wildlife, Inc. v. S.C. Dep't of Natural Res., 550 S.E.2d 287, 291 (S.C. 2001) (quoting the Lujan test and stating that the United States Supreme Court was correct in holding that the three Lujan factors constitute the "irreducible constitutional minimum of standing").

84. *See Lansing*, 792 N.W.2d at 735 (Corrigan, J. dissenting) (pointing out that "no state's highest court has adopted the federal standing test as its own only to decide, a few short years later, to abandon the doctrine and return to a prior amorphous test that parties and the courts found difficult to apply" and thus concluding that although the majority opinion "repeatedly calls the test established by Lee 'unprecedented,' clearly it is the majority's decision today—not *Lee*—that defies precedent").

C. The Practical Consequences of Michigan's New Standing Doctrine

1. Judicial Confusion

The *Lansing* decision likely will lead to judicial confusion and significant debate regarding the essential requirements needed to possess standing to sue. Because a clear and predictable test no longer exists, it seems probable that the new approach will cause some confusion over the essential elements that a plaintiff must demonstrate in order to establish standing. As noted earlier, under Michigan's historical prudential approach to standing, judicial confusion over the necessary elements of standing was a recurring problem plaguing the court system.[85] For example, in *Detroit Firefighters Association v. Detroit*,[86] the seven justices on the Michigan Supreme Court were unable to reach a clear consensus on the necessary requirements for standing.[87] In this case, the court failed to reach a clear majority, and consequently, the case resulted in a split decision.[88] The justices articulated a wide variety of different approaches to a standing inquiry. For instance, some justices focused on the necessity of an injury distinct from that of the general public, while another engaged in a zone of injury analysis.[89] Others advocated for adopting the federal standard.[90] It was this judicial confusion, along with the inability of Michigan courts to articulate a clear standing doctrine, which prompted the Michigan Supreme Court to adopt the federal test in *Lee*.[91]

2. A Greater Amount of Claims Will Be Able to Survive a Standing Analysis

Michigan's new prudential standing doctrine likely will lead to a greater number of cases where plaintiffs are able to establish standing.

85. *See, e.g.*, Detroit Fire Fighters Ass'n v. Detroit, 537 N.W.2d 436 (Mich. 1995); House Speaker v. Governor, 495 N.W.2d 539, 543 (Mich. 1993).

86. *Id*.

87. *Id*.

88. *Id*.

89. *Id*. *See also Lansing*, 792 N.W.2d at 731 (Corrigan, J. dissenting) (noting that *Detroit Firefighters* resulted in "a split decision in which no majority could be found to explain what elements were essential to standing in Michigan").

90. *Id*.

91. Lee v. Macomb Co. Bd. of Comm'rs, 629 N.W.2d 900, 907-08 (Mich. 2001) (stating that "the Lujan test has the virtues of articulating clear criteria" for a standing analysis); *Lansing*, 792 N.W.2d at 741 (Corrigan, J. dissenting) (noting that the "pre-*Lee* status quo . . . was confusion and bitter division regarding rules that provided no clear guidance regarding Michigan's constitutional standing requirements" and that "*Lee* favored the commonly-accepted federal test which brought consistency to Michigan courts in light of our lack of a clearly articulated, workable test").

The Michigan Supreme Court designed the new prudential test to be less restrictive, so it is only logical that a greater number of claims will survive the pleading stage.[92] Under this new prudential approach, because a plaintiff is not required to show a specific injury or to meet any other set of rigid requirements, it is conceivable that a plaintiff could challenge a wide variety of previously unchallengeable governmental actions. For instance, it is possible that a plaintiff could challenge a legislative action or sue for the enforcement of a public right.[93] A study of other jurisdictions that employ a prudential approach to standing supports the idea that plaintiffs in Michigan may now be able to sue for the enforcement of a public right or to challenge administrative actions.[94] In other jurisdictions that utilize a prudential approach to standing, courts have allowed plaintiffs to both challenge the constitutionality of statutes and to sue for enforcement of other statutes without having to show any type of special right or injury.[95]

Moreover, a greater number of cases will survive a standing inquiry because the *Lansing* court acknowledged that the Michigan Legislature has the authority to statutorily create standing in certain classes of individuals.[96] Under the previous test, the legislature could not confer standing on anyone who otherwise would not satisfy all three elements of the *Lee* test.[97] Courts had previously concluded that to allow the legislature to statutorily create standing would infringe upon the separation of powers because it would usurp the decision making power of the executive branch.[98] The concern about a breakdown in the

92. *Lansing*, 792 N.W.2d at 697-98 (stating the previous test was too restrictive and therefore contrary to public policy). The court also stated that the new test will allow a citizen to sue to enforce a public right. *Id.*

93. *See id*.

94. *See id*. at 708 (Corrigan, J. dissenting).

95. *See, e.g.*, Coalition of for Adequacy & Fairness in School Funding, Inc. v. Chiles, 680 So.2d. 400, 403 (Fla. 1996) (recognizing the ability of Florida residents to file citizen taxpayer suits challenging legislative actions under the state's taxing and spending clause).

96. *Lansing*, 792 N.W.2d at 697-98 (stating that the legislature may statutorily create a private right of enforcement).

97. *See* Lujan v. Defenders of Wildlife, 504 U.S. 555, 577 (1992); Nat'l Wildlife Fed'n v. Cleveland Cliffs Iron Co., 684 N.W.2d 800, 810 (Mich. 2004) (reasoning that "[i]f the Legislature were permitted at its discretion to confer jurisdiction upon this Court unmoored from any genuine case or controversy, this Court would be transformed in character and empowered to decide matters that have historically been within the purview of the Governor and the executive branch"); Lee v. Macomb County Board of Comm., 629 N.W.2d 900, 906-08 (Mich. 2001).

98. *See id.* (stating that "[t]o permit Congress to convert the undifferentiated public interest in executive officers' compliance with the law into an 'individual right' vindicable in the courts is to permit Congress to transfer from the President to the courts the Chief Executive's most important constitutional duty, to 'take Care that the Laws be faithfully executed'").

separation of powers arises from the idea that, if the legislature can confer standing on citizens who otherwise could not satisfy the necessary requirements to bring a cause of action, a citizen would be able to challenge certain discretionary decisions made by executive agencies.[99] In other words, the legislature now explicitly can confer a judicial right of action upon an individual, thus expanding the types of claims a court can adjudicate. Moreover, under *Lansing*, anyone who potentially stands to benefit from the enforcement of a statute likely may sue under that statute.[100]

Another type of claim that is likely to experience greater success under Michigan's new approach to standing is a challenge to environmental policy. Environmental claims had traditionally failed the *Lee* test for standing because a claimant could not show a specific injury distinct from that of the general public and because the global scope of environmental problems made redress difficult.[101] However, the new formula for standing does not expressly contain the same restrictions.[102] Under the new doctrine, whether a plaintiff has a specific injury or right of action is no longer an *element* of a strict standing test but is now a mere *factor* to be considered under a prudential approach. In other words, the question of whether a plaintiff can demonstrate a specific injury or right is not necessarily outcome-determinative.[103] Because a party is technically no longer required to show a specific injury distinct from that of the general public, it is possible that a greater amount of environmental claims will survive a standing analysis. This new test allows plaintiffs to assert injuries merely to a specific interest, such as an

99. *Id*.

100. *Lansing*, 792 N.W.2d at 697-98 (stating that teachers had standing to sue for the enforcement of a statute that was designed to protect them). *See also id*. at 716 (Corrigan, J. dissenting) (stating that the majority effectively held that "every person mentioned" in a statute now has standing to challenge discretionary decisions made by the government under that statute and that this holding has the effect of "opening the floodgates for—and overwhelming the courts with—collateral litigation whenever one such person is dissatisfied").

101. *See, e.g.*, Lujan v. Defenders of Wildlife, 504 U.S. 555, 562 (1992) (stating that a plaintiff had failed to assert an injury in fact because a concern over the increased rate of extinction of a species was not an injury to the plaintiff and therefore plaintiff did not have standing to bring his case). *See also* Nat'l Wildlife Fed'n v. Cleveland Cliffs Iron Co., 684 N.W.2d 800 (Mich. 2004).

102. *See Lansing*, 792 N.W.2d at 699 (holding that a plaintiff now has standing to sue either if he 1) has a specific legal cause of action; or 2) if a trial court, in its discretion, believes a litigant should have standing).

103. *Id.* (stating that, in a discretionary context, "[a] litigant may have standing . . . if the litigant has a special injury or right, or substantial interest, that will be detrimentally affected in a manner different from the citizenry at large or if the statutory scheme implies that the Legislature intended to confer standing on the litigant").

interest in conservation or preserving the environment.[104] Accordingly, a plaintiff may now be able to bring suit for the enforcement of statutory environmental policies or for an agency's failure to enforce those policies and these types of claims will experience greater success in part because a plaintiff does not have to demonstrate an injury distinct from that of the general public.[105] Thus, Michigan courts will likely adjudicate a much greater number of cases that involve a challenge to environmental policy decisions.

This outcome seems even more likely considering the fact that the legislature once again has the power to confer standing on certain classes of individuals.[106] Prior to the Michigan Supreme Court's adoption of the Federal test for standing in *Lee*, the Michigan Environmental Protection Act (MEPA) had been recognized as a legislative grant of standing to any citizen who wishes to bring a suit against a party whose actions have or may have adversely affected the environment.[107] Michigan courts had historically permitted citizens to bring environmental challenges under MEPA.[108] However, after the adoption of the federal test for standing in *Lee*, the Michigan Supreme Court held that a citizen could not bring this type of claim.[109] The court reasoned that the Legislature could not statutorily create standing in a class of citizens who otherwise would not satisfy the *Lujan* test.[110] As noted above, under the new approach, the Court now recognizes the ability of the Legislature to create standing statutorily.[111] Therefore, it seems likely that citizens will be able to sue for the enforcement of any statutory provision that provides them with a specific benefit or right of action, including the Michigan Environmental Protection Act.[112]

104. *Id*. at 700 (holding that even though the plaintiffs could not demonstrate a specific injury or a specific cause of action conferred on them by the legislature, the teachers union had standing to sue because it was able to demonstrate that it had a "substantial interest" in the enforcement of the statute).

105. *See* cases cited *supra* notes 92-94.

106. *Lansing*, 792 N.W.2d at 698-99.

107. MICH. CONST. art. IV, § 52.

108. *See, e.g.*, Nemeth v. Abonmarche Dev., Inc., 576 N.W.2d 641 (Mich. 1998); Trout Unlimited Muskegon White River Chapter v. City of White Cloud, 489 N.W.2d 188 (Mich. Ct. App. 1992); Eyde v. State, 225 N.W.2d 1 (Mich. 1975).

109. Nat'l Wildlife Fed'n v. Cleveland Cliffs Iron Co., 684 N.W.2d 800 (Mich. 2004).

110. *Id*.

111. *Lansing*, 792 N.W.2d at 698-99.

112. In other states that employ a prudential approach to standing, courts have allowed a claimant to challenge the validity of administrative decisions under applicable statutes. *See, e.g.*, Kellas v. Dep't of Corr., 145 P.3d 139, 142 (Or. 2006) (stating that, in Oregon, it is clear that the "legislature intends by the statute to authorize any person to invoke the judicial power of the court to test the validity of every administrative rule under existing statutory and constitutional law and, thus, to advance the objective that all agency rulemaking shall remain within applicable procedural and substantive legal

The argument that the *Lansing* decision paves the way for citizens, who could not otherwise display an injury distinct from that of the general public, to challenge governmental actions related to environmental policy, is strengthened by a recent post-*Lansing* decision issued by the Michigan Supreme Court. In *Anglers of the AuSable, Inc. v. Department of Environmental Quality*,[113] the court held that the Michigan Department of Natural Resources and Environment (DNRE) now may be sued under MEPA for the issuing of a permit.[114] The court went so far as to hold that a citizen may challenge the DNRE's decision to issue a permit in court, even if the permit was already challenged under the appropriate administrative procedures.[115] The court stated that the *Lansing* case clearly established the principal that because statutes must be applied as written, the legislature has the power to statutorily create standing for a class of citizens in a variety of actions, including environmental challenges.[116] Accordingly, the court reasoned that because MEPA specifies that "*any person* may maintain an action . . . against any person for the protection of the air, water, and other natural resources and the public trust in these resources from pollution, impairment, or destruction,"[117] it is clear that under the statute "any person has standing to maintain an action protecting Michigan's natural resources."[118] The court went on to conclude that a citizen satisfied the prudential "substantial interest" test for standing articulated in *Lansing* because the Michigan Legislature, by passing MEPA, evidenced a clear intent to protect the environment.[119] The court expressed the view that "the [issuance of a] permit from the [Department of Environmental Quality] serves as the trigger for the environmental harm to occur" because the "permit process is entirely related to the environmental harm that flows from an improvidently granted, or unlawful, permit."[120] Thus, it seems clear that the *Lansing* decision has paved the way for citizen suits challenging environmental policy decisions in Michigan.

In sum, the *Lansing* court, by adopting an imprecise test for standing based on loose prudential considerations, has inadvertently increased the amount of cases that will be able to survive a standing

bounds").

113. Anglers of the AuSable, Inc. v. Dep't of Envtl. Quality, 793 N.W.2d 596 (Mich. 2010).

114. *Id*. at 601-604.

115. *Id*.

116. *Id*. at 602-604.

117. MCL 324.1701(1) (2011).

118. *Anglers*, 793 N.W.2d at 603.

119. *Id.* at 601-02.

120. *Id.* at 601.

inquiry in Michigan.[121] The language of the court's decision fails to outline a clear test for standing and instead leaves much of the analysis up to the individual discretion of trial courts.[122] Moreover, because the new test for standing both does not require a claimant to demonstrate an individualized injury and recognizes the ability of the legislature to arbitrarily create standing; seemingly any person can now sue for enforcement of a public right or subject a good faith discretionary decision made by a government agency to judicial review.[123] For example, as noted above, in the wake of the *Lansing* decision, Michigan citizens now have standing to challenge discretionary environmental policy decisions made by government agencies without having to demonstrate any particularized injury or special right.[124] Therefore, the *Lansing* decision is extremely problematic because it opens the courthouse doors to an unprecedented wave of litigation.

3. Separation of Powers

The *Lansing* decision could potentially lead to separation of powers issues because it does not restrain the jurisdictional reach of courts to adjudicating only a "case" or "controversy."[125] The United States Supreme Court has held that, while there may be some prudential aspects to standing, the core component of the doctrine is a "case" or "controversy" requirement.[126] Courts have held that this requirement is essential to maintaining the separation of powers.[127] The basic concern is that if a plaintiff no longer needs to satisfy the essential elements of a case or controversy,[128] courts constantly would be asked to review decisions made by the other branches of government.[129]

121. *See* Lansing Sch. Educ. Ass'n v. Lansing Bd. of Educ., 792 N.W.2d 686, 734 (Mich. 2010) (Corrigan, J. dissenting).

122. *See id*.

123. *See* cases cited *supra* notes 84-86, 95-96, 100-105 and accompanying text.

124. *See* cases cited *supra* notes 100-108 and accompanying text.

125. *See* Lansing Sch. Educ. Ass'n v. Lansing Bd. of Educ., 792 N.W.2d 686, 699 (Mich. 2010).

126. Lujan v. Defenders of Wildlife, 504 U.S. 555, 558 (1992).

127. *See id*. (reasoning that limiting judicial power to cases or controversies is necessary to preserve the separation of powers). *See also* Allen v Wright, 468 U.S. 737; 104 S. Ct. 3315; 82 L. Ed. 2d 556 (1984) (stating that "standing is built on a single basic idea—the idea of separation of powers").

128. Injury, causation, and redressability are the basic elements of a controversy. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992).

129. Lewis v. Casey, 518 U.S., 343, 349 (1996) (stating that the doctrine of standing is "a constitutional principle that prevents courts of law from undertaking tasks assigned to other branches"). *See also* Lee v. Macomb Co. Bd. of Comm'rs, 629 N.W.2d 900, 905 (Mich. 2001) (stating that in Michigan, "standing is of great consequence so that neglect of it would imperil the constitutional architecture whereby governmental powers are divided between the three branches of government").

The new prudential test for standing promulgated by the Michigan Supreme Court could lead to separation of powers issues because it does not specifically require a plaintiff to show any type of particularized injury or special right to enforcement in order bring a suit.[130] Without the requirement that a plaintiff demonstrate a particularized injury, there is no mechanism for establishing a firm limit on the types of claims a court can adjudicate.[131] For example, if a citizen does not support a law passed by the legislature, he or she theoretically could challenge the law in court without having to show that the law negatively affects him or her in a specific way.[132] Allowing this type of lawsuit weakens the constitutionally mandated separation of powers because it permits a citizen to circumvent the legislative process by forcing courts to decide political issues better left to the legislature.[133] Applying the same rationale, if a citizen merely believes a governmental agency is improperly enforcing a statute, the citizen can conceivably sue for injunctive relief.[134] Indeed, in other jurisdictions employing a prudential approach, courts have allowed a citizen to challenge the application of

130. *See* Lansing Sch. Educ. Ass'n v. Lansing Bd. of Educ., 792 N.W.2d 686, 708 (Mich. 2010) (Corrigan, J. dissenting) (arguing that the standing analysis adopted by the majority "violates the constitutional separation of powers mandate and gives courts unbounded discretion to overturn the decisions of other branches of government").

131. *See id*. at 708-09 (arguing that the majority decision "opens the courthouse doors" because it "eliminates our workable, principled standing test" and, by articulating a loosely defined prudential approach to standing, "adopts no meaningful limitations for a binding doctrine that applies in *every* civil lawsuit brought in this state").

132. *See* Nat'l Wildlife Fed'n v. Cleveland Cliffs Iron Co., 684 N.W.2d 800, 806-07 (Mich. 2004) (arguing that, absent the requirement of a particularized injury, "[i]f a taxpayer, for example, opposed the closing of a tax "loophole" by the Legislature, the legislation might be challenged in court. If a taxpayer opposed an expenditure for a public building, that, too, might be challenged in court. If a citizen disagreed with the manner in which agriculture officials were administering farm programs, or transportation officials' highway programs, or social services officials' welfare programs, those might all be challenged in court. If a citizen opposed new prison disciplinary policies, that might be challenged in court . . . in each instance, the result would be to have the judicial branch of government . . . deciding public policy, not in response to a real dispute in which a plaintiff had suffered a distinct and personal harm, but in response to a lawsuit from a citizen who had simply not prevailed in the representative processes of government.").

133. *See* Mich. Citizens for Water Conservation v. Nestle Waters N. Am., Inc., 737 N.W.2d 447, 453 (Mich. 2007) (stating that without a strict standing doctrine "[t]he purposely drawn boundaries within our tripartite government would vanish, removing the impediments that were intended to prevent one branch of government from exercising powers exclusively vested in the other, coequal branches").

134. *See* Lansing Sch. Educ. Ass'n v. Lansing Bd. of Educ., 792 N.W.2d 686, 708 (Mich. 2010) (Corrigan, J. dissenting) (stating that "the majority jettisons years of binding precedent on the basis of four justices' current estimation that the public would be better served by opening the courts to all manner of challenges to acts of the legislative and executive branches").

statutory policy by a governmental agency.[135]

Permitting these types of claims to survive a standing inquiry is extremely problematic from a separation of powers perspective because it effectively forces the court system to oversee and reevaluate everyday decisions made by the legislative and executive branches of government.[136] The United States Supreme court echoed this sentiment when it stated that to allow standing without requiring a particularized injury would ask courts "not to decide judicial controversy, but to assume a position of authority over the governmental acts of another and co-equal department, an authority which [courts] plainly do not possess."[137] The judicial branch, the least politically accountable branch, will be asked to review decisions made by the other branches of government. To put it differently, courts now may be asked to decide political questions which were traditionally decided by the other branches of government.[138] This outcome would misconstrue the constitutional function of the judiciary by allowing parties whose efforts were unsuccessful in either the legislative or executive processes to obtain judicial relief.[139] In addition, allowing this type of cause of action effectively creates an unequal distribution of power between the three branches of government by providing for judicial oversight of the other branches.[140] Therefore, the *Lansing* decision could impede the separation of powers by granting courts the ability to decide suits that would fall outside the traditional definition of a "case" or "controversy."

IV. CONCLUSION

Standing to sue in Michigan first developed out of a belief that courts should only adjudicate a "case" or "controversy."[141] Courts reasoned that it was necessary to limit their jurisdictional reach in this

135. *See, e.g.*, Kellas v. Dep't of Corr., 145 P.3d 139, 145 (Or. 2006) (stating that the Oregon Supreme Court has "implicitly recognized that the Oregon Constitution does not limit the legislature's power to deputize its citizens to challenge government action in the public interest" and that "[i]n fact . . . this court [has] held [a] case to be justiciable even though its decision would have a practical effect only on the respondent . . . and not on the petitioner").

136. *Nestle*, 737 N.W.2d at 453. *See also Lansing*, 792 N.W.2d at 710 (Corrigan, J. dissenting) (claiming that the test for standing articulated in majority opinion gives "courts carte blanche to invade" the province of government agencies).

137. Massachusetts v. Mellon, 262 U.S. 447, 487-89 (1923).

138. Nat'l Wildlife Fed'n v. Cleveland Cliffs Iron Co., 684 N.W.2d 800, 806 (Mich. 2004) (stating that "absent a particularized injury, there would be little that would be standing in the way of the judicial branch becoming intertwined in every matter of public debate").

139. *Id*. at 806-07.

140. *Id*. *See also* Massachusetts v. Mellon, 262 U.S. 447, 487-89 (1923).

141. *See* cases cited *supra* note 18.

manner in order to insure the legitimacy of claims and to protect the division of powers among the various branches of government.[142] Historically, Michigan courts had some difficulty defining the necessary requirements for standing to sue and thus, the doctrine was the subject of much debate for the better part of the twentieth century.[143] However, in *Lee*, the Michigan Supreme Court finally settled on a clear test for standing and imported the *Lujan* test to Michigan.[144] The court essentially believed that various state constitutional provisions created an implied "case" or "controversy" requirement, which necessitated limiting the jurisdiction of Michigan courts in a manner akin to that of federal courts.[145]

The Michigan Supreme Court's decision in *Lansing* represents the liberalization of the standing doctrine in Michigan. In *Lansing*, the court dramatically departed from the court's established standing jurisprudence and chose to abandon the strict federal test for standing in favor of applying a loose approach built upon vague prudential considerations.[146]

This Comment, through a multi-jurisdictional analysis of standing jurisprudence, demonstrated that the decision by the *Lansing* court to abandon the federal test for standing in Michigan represents a minority approach nationally. It appears that virtually no state has an explicit "case" or "controversy" requirement, and yet a large number of states have nonetheless chosen to adopt the federal test.[147] These courts imply a state constitutional "case" or "controversy" limitation in a manner similar to that which had been previously articulated in Michigan.[148]

The practical consequences of the *Lansing* decision suggest that it could have a negative impact on the Michigan court system. The Michigan Supreme Court needlessly abandoned a clear standard for determining standing and instead promulgated a vague and seemingly incomprehensible test.[149] The court's new abstract approach to standing

142. *See supra* notes 19-23.

143. *See, e.g.*, Lansing Sch. Educ. Ass'n v. Lansing Bd. of Educ., 792 N.W.2d 686, 735 (Mich. 2010) (Corrigan, J. dissenting) (noting that Michigan's standing jurisprudence was historically marked by judicial confusion and debate).

144. Lee v. Macomb Co. Bd. Of Comm'rs, 629 N.W.2d 900, 907-08 (Mich. 2001).

145. *Id*.

146. *See* Lansing Sch. Educ. Ass'n v. Lansing Bd. of Educ., 792 N.W.2d 686, 699 (Mich. 2010).

147. *See* cases cited *supra* notes 71-76 and accompanying text.

148. *See, e.g.*, Bennett v. Napolitano, 81 P.3d 311, 316 (Ariz. 2003) (stating that a judicial "case" or "controversy" requirement is implicitly required based on state constitutional provisions mandating the separation of powers). *Cf. Lee*, 629 N.W.2d 900 at 905-06 (reasoning that, in Michigan, there is an implicit "case" or "controversy" limitation on the judiciary because the constitution contains provisions which provide for the separation of powers).

149. *See Lansing*, 792 N.W.2d at 735 (Mich. 2010) (Corrigan, J. dissenting) (noting

may also lead to judicial confusion,[150] an unprecedented rise in litigation,[151] and a breakdown of the constitutionally mandated separation of powers.[152]

First, this Comment has demonstrated that the new prudential approach to standing is likely to generate a great amount of judicial debate and confusion over the necessary requirements for standing because the Michigan Supreme Court failed to articulate a coherent approach.[153] Michigan's historical jurisprudence supports this conclusion as previous attempts at a prudential approach to standing were characterized by intense periods of debate and judicial confusion.[154]

Second, because the *Lansing* test is considerably more permissive than the previous test, a much wider variety of suits could be able to survive a standing analysis.[155] The number of successful claims may increase because the standard adopted by the Michigan Supreme Court does not necessarily require a plaintiff to demonstrate a particularized injury and also because it permits a citizen to sue for the enforcement of a public right.[156] Therefore, seemingly any action taken by a government agency, such as a discretionary decision related to an environmental protection statute, is potentially subject to judicial review.[157]

Lastly, the *Lansing* decision could infringe upon a fundamental principle of American government, the separation of powers, by forcing the judiciary to invade the provinces of the other branches government.[158] The judiciary, because its jurisdictional reach is no longer limited by a "case" or "controversy" requirement, may be asked to evaluate a wide range of discretionary policy decisions made by both the executive and the legislature.[159] Thus, by abandoning the

that the new test for standing is very broad and confusing).

150. *See supra* pp. 26-27.

151. *See supra* pp. 27-37.

152. *See supra* pp. 23-42.

153. *See* cases cited *supra* notes 77-82 and accompanying text.

154. *See Lansing*, 792 N.W.2d at 735 (Mich. 2010) (Corrigan, J. dissenting) (stating that "[i]nexplicably, the majority apparently celebrates that, prior to *Lee*, Michigan's standing doctrine suffered from inconsistent application, and in some cases, was not analyzed or applied at all" and concluding that "[u]nfortunately, the majority's test can promise no better in the future; this is particularly true since, by its explicit terms, standing can now be determined at the "discretion" of trial courts.").

155. *See* cases cited *supra* notes 83-85 and accompanying text.

156. *See supra* pp. 27-36.

157. *See, e.g.*, Anglers of the AuSable, Inc. v. Dep't of Envtl. Quality, No. 138863, 2010 Mich. LEXIS 2591 (Mich. Dec. 29, 2010) (allowing a citizen to sue the Michigan Department of Environmental Quality for a discretionary decision).

158. *See supra* pp. 37-42.

159. *See Lansing*, 792 N.W.2d at 735 (Mich. 2010) (Corrigan, J. dissenting) (concluding that "[u]ltimately, the majority's decision today redounds only to the benefit of those who wish to use the courts--the least politically accountable branch of

straightforward requirements of the *Lee* test in favor of a somewhat clumsily articulated prudential approach, the Michigan Supreme Court may have inadvertently opened the courts up to wave of problematic litigation.[160]

As a final note, the long term reach of the *Lansing* decision seems unclear in the wake of a recent political shake-up on the Michigan Supreme Court.[161] In the most recent judicial elections, the political balance on the Michigan Supreme Court shifted as the conservative jurists took back a majority of the court.[162] The dissenting justices of the *Lansing* decision are now among the judicial majority. Only time will tell if this new majority will seek to overturn the litigation friendly test for standing that the Michigan Supreme Court created when it decided *Lansing*.

government—to legislate and regulate increasingly larger spheres of Michigan life and politics").

160. *See id*. at 745 (concluding that "the result [of the *Lansing* decision] boils down to this: in this state, anyone has standing to sue anyone else, any time").

161. *See, e.g.*, *Update: Michigan Supreme Court Picks Robert Young Jr. as Chief Justice*, MLIVE.COM, http://www.mlive.com/politics/index.ssf/2011/01/michigan_supreme_court_to_meet.html (last visited Feb. 3, 2011).

162. *See id.* (noting that conservatives justices have reclaimed a majority on the court).