10-1981

Velde v. National Black Police Association, Inc.

Lewis F. Powell Jr.

Out of this case - Ed Levi

Linda - Write an "Out" letter for me.
Wrote but did not sign 3/25/81

(Ed Levi is a defendant in this reverse law suit. The trial is not for distant when only stupid & judgment proof people will remain in Govt.)

Preliminary Memo

May 1
~~March 27, 1981~~ Conference
List 1, Sheet 1

No. 80-1074

VELDE, et al.[1] v. NATIONAL BLACK POLICE ASSOCIATION, INC., et al.	Cert to D.C. Circuit (Bazelon [SJ] & Parker [DJ]; Tamm, concurring in part and dissenting in part) Federal/Civil	Timely (with extension)

1. SUMMARY: The primary question presented is whether LEAA officials are absolutely immune from personal damages liability for failing to initiate administrative proceedings to terminate LEAA funding to state and local law enforcement agencies that allegedly were engaging in discriminatory personnel practices. Petrs contend (1) that the CA erred in rejecting their absolute

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[1] The SG has filed a petition on behalf of Richard W. Velde, LEAA Administrator, Edward H. Levi, former Attorney General, Charles R. Work, LEAA Deputy Administrator, and Herbert C. Rice, Director of LEAA Office of Civil Rights Compliance.

The immunity ruling seems wrong; the Federal Gov't must have some discretion in deciding whether there has been discrimination. (over)

immunity claim and (2) that if they are not absolutely immune, the CA should have held that resps failed to state a cause of action for damages under the Fifth Amendment or that petrs are entitled to qualified immunity as a matter of law.

2. FACTS & DECISION BELOW: In 1975, resps -- six blacks, six women and an organization that represents black police officers -- filed a suit against petrs in USDC (D.D.C). Resps alleged that state and local law enforcement agencies that had received and were receiving LEAA grants had discriminated against them,[2] and that the LEAA, the Dep't of Justice, and petrs[3] had unlawfully failed to terminate LEAA funding to these agencies, despite evidence that the funds had been used to discriminate on grounds of race and sex. Resps sought declaratory and injunctive relief and also sought compensatory and punitive damages against petrs in their individual capacities.

Section 518(c)(1) of the Omnibus Crime Control and Safe Streets Act of 1968 ("the Act") prohibits any recipient of LEAA funds from discriminating on the basis of "race, color, national origin or sex." 42 U.S.C. §3766(c)(1). The Act provides for the termination of LEAA funding to recipients that violate this prohibition. [I shall describe these provisions as they existed at the time this suit was filed, although the provisions were

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[2]Resps alleged that they were denied employment, passed over for promotion, or discharged solely on the basis of their race or sex by recipients of LEAA funds.

[3]Petrs are listed in note 1, supra.

amended in 1976.] Section 518(c)(2), 42 U.S.C. §3766(c)(2), provides that whenever the LEAA determines that a recipient of LEAA funds is discriminating or otherwise failing to comply with LEAA's regulations,

> "[LEAA] shall notify the chief executive of the State of the noncompliance and shall request the chief executive to secure compliance. If within a reasonable time after such notification the chief executive fails or refuses to secure compliance, the [LEAA] shall exercise the powers and functions provided in section 3757 ... ."

42 U.S.C. §3757 (section 509 of the Act) provides that if after reasonable notice and an opportunity for a hearing, the LEAA finds that "there is a substantial failure to comply," it "shall notify such applicant or grantee that further payment shall not be made (or in its discretion that further payment shall not be made for activities in which there is such failure), until there is no longer such failure." In 1976, noting that the LEAA had not terminated its funding of any recipient pursuant to these sections, Congress added more detailed procedures to be followed by the LEAA in securing compliance with the antidiscrimination provision and/in terminating funds to noncomplying recipients.

In 1976 the DC dismissed resps' suit, holding: (1) the 1976 amendments had rendered moot resps' claims for declaratory and injunctive relief, and (2) resps' claims for monetary damages against petrs in their individual capacities were barred by the doctrine of absolute immunity. A divided CA reversed.

The CADC [Bazelon, Parker (DJ)] held that the 1976 amendments had not rendered moot resps' request for injunctive and declaratory relief. It also held that the DC had erred in

dismissing resps' claims for damages on the ground of absolute immunity. Relying on Butz v. Economou, 438 U.S. 478 (1978), the CA stated that as a general rule federal officials may only rely on the doctrine of qualified immunity in suits raising constitutional violations. Absolute immunity is provided only where "essential for the conduct of the public business." 438 U.S. 507. Absolute immunity is necessary to protect discretionary prosecutorial decisions from the potentially distorting effect of civil liability. However, petrs had virtually no discretion under the relevant statute in deciding whether to terminate LEAA funding of discriminatory recipients:

> "The mandatory language of 42 U.S.C. § 3766(c)(2) . . . when read in light of [petrs'] constitutional and independent statutory duty not to allow federal funding to be used in a discriminatory manner by recipients, takes [petrs'] civil rights enforcement duties outside the realm of discretion.
> . . .
>
> "The minimal matters left to LEAA's judgment--such as the assessment of 'reasonable time after notification'--do not rise to the level of prosecutorial discretion that is protected by absolute immunity." (Petn, at 6a & n.15).

The CA concluded that resps "should be allowed to go to trial on their claims for damages" and that petrs could seek to establish a defense of qualified immunity.[4]

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[4]The majority also held that resps had standing to maintain their suit. It stated that the police officers' association had alleged harm to itself and its members as a result of petrs' alleged failure to terminate funding to discriminatory recipients and that the individual appellants had alleged violations of their right to be free from federal funding of state and local agencies that have discriminated against them. Furthermore,

Judge Tamm agreed with Judge Bazelon's analysis of the mootness issue, but disagreed with the majority's holding on absolute immunity. First, he asserted that decisions not to prosecute must be given the same protection as decisions to prosecute. Second, he stated that the type of decision-making entrusted to petrs is exactly what the Supreme Court had in mind when it spoke of functions "analogous to those of the

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> "[t]he 1976 amendments to the Omnibus Crime Control Act, which added a judicial review provision for parties such as appellants, remove any doubt as to appellants' standing. ... and we are satisfied that--absent a failure of proof after discovery is completed--appellants have standing to maintain this action."
> (Petn, at 7a, n.16)

Judge Tamm agreed that resps had standing, although he considered it a more difficult issue than did the majority. As to the effect of the 1976 amendments, he noted that Congress cannot grant Art. III standing, and he concluded that Congress had not attempted to vary the application of prudential standing principles to this type of suit, since the 1976 amendments merely authorized private suits against LEAA recipients that practiced discrimination. Reviewing the legislative history, Judge Tamm concluded that Congress had considered and rejected permitting a statutory action against federal officials for failure to terminate funding. He acknowledged that this "[might] well bear on the merits of plaintiffs' claims in this case." However, "[l]ike the majority," he considered it inadvisable to express any view on the merits at this stage in the litigation.

Judge Tamm stated that plaintiffs did not have standing merely because they objected to the use of federal funds to support unlawful discrimination. Rather, plaintiffs had alleged a distinct personal injury by claiming that recipients of LEAA funds had discriminated against them. Judge Tamm was still troubled by whether the plaintiffs had shown an injury that would be likely to be redressed by a favorable decision. See Simon v. Eastern Kentucky Welfare Rights Organization, 426 U.S. 26, 38 (1975). However, he concluded that plaintiffs should have an opportunity to conduct discovery before this issue was finally resolved. (Petn, at 14a.)

prosecutor." Butz v. Economou, supra, at 515. Judge Tamm disagreed with the majority's conclusion that §3766(c)(2) granted petrs virtually no discretion. LEAA officials must determine that a governmental unit has violated the nondiscrimination provision; seek voluntary compliance by the governmental unit with the assistance of the chief executive of the state involved; decide when a reasonable time has passed after such assistance has been unsuccessfully requested; and then terminate funding only if there has been a substantial failure to comply with the nondiscrimination provisions. LEAA officials also have discretion in determining whether a partial or complete termination of funds should be ordered. Judge Tamm reserved the issue of whether the 1976 amendments would affect the ability of LEAA officials to claim absolute immunity for conduct arising after the effective date of those amendments. He acknowledged that the 1976 amendments were designed to limit the discretion of LEAA officials in the termination of funds to recipients who practiced discrimination.

3. CONTENTIONS: The SG contends: (1) Petrs are entitled to absolute immunity. In Butz v. Economou, the Court stated that "agency officials must make the decision to move forward with an administrative proceeding free from intimidation or harassment." 438 U.S. at 515-516. The Court made it clear that the same protection must apply to administrative decisions not to bring charges. Petrs' exercise of prosecutorial discretion was precisely the type of decision-making the Court sought to insulate from the intimidation and distortion that accompanies

the possibility of personal damages liability. Judge Tamm correctly pointed out that the relevant statutory provisions, like numerous other statutes governing the termination of federal funding, require the exercise of substantial discretion.

Furthermore, even if the evidence indicated that a recipient of funds was engaged in substantial discrimination, petrs had discretion to decline to commence a fund termination proceeding. Although 42 U.S.C. §3766(c)(2) states that "if within a reasonable time after such notification the chief executive fails or refuses to secure compliance, the [LEAA] shall exercise the powers and functions provided in § 3757," similar mandatory language in other statutes has been interpreted as preserving broad prosecutorial discretion. See, e.g., 28 U.S.C. § 547 (providing that U.S. Attorneys "shall prosecute for all offenses against the United States").

In appropriate circumstances an administrative prosecutor's decision may be subject to limited judicial review, but the prosecutor may not be subjected to a personal damages suit.

(2) Resps apparently claim that petrs violated the Fifth Amendment. Resps do not appear to assert a statutory right to damages, and the legislative history of the Act does not suggest that Congress intended to permit damages claims against LEAA officials. Petrs argued before the DC and the CA that even if petrs were not entitled to absolute immunity, the damages claim should be dismissed for failure to state a constitutional cause of action. The CA declined to address this point. Although some local police departments may have violated resps' constitutional

rights, it is apparent that petrs did not. Cf. Francis-Sobel v. University of Maine, 597 F.2d 15 (CA1), cert. denied, 444 U.S. 949 (1979) (dismissing suit for damages against an EEOC official for failing to give proper handling to the plaintiff's discrimination complaint against a state university). Since petrs did not purposely cause or affirmatively encourage the alleged discriminatory conduct, the discrimination cannot be considered "federal action."

(3) The CA also erred in declining to address petrs' contention that they are entitled to qualified immunity as a matter of law. No Supreme Court or CA decision has suggested that the mere failure to terminate federal funding gives rise to a Fifth Amendment claim for damages. Thus, petrs had no reason to believe that their actions were violating resps' constitutional rights. Furthermore, nothing in resps' complaint or the record suggests that petrs acted in bad faith.

Resps contend: (1) The only issue properly before this Court is whether petrs are entitled to absolute immunity. The other issues were not addressed by the courts below. (2) Resps did not just allege a constitutional cause of action. They alleged that "petitioners' uniform, knowing funding of discriminatory law enforcement agencies violated the Fifth Amendment, §518(c) of the Crime Control Act, and other federal statutes [including 42 U.S.C. §1985(3)]." Resps' Brief, at 3. Resps' Fifth Amendment claim was based on the established principle that "the Federal Government could not under the Constitution give direct financial aid to [recipients] practicing

... discrimination." Green v. Connally, 330 F. Supp. 1150, 1164 (D.D.C. 1971) (three-judge court), aff'd sub nom. Coit v. Green, 404 U.S. 997 (1971). See also Norwood v. Harrison, 413 U.S. 455 (1973). (3) Resps alleged that petrs' behavior was intentional, willful and malicious. Resps have not yet been permitted to pursue discovery. Thus, it is inappropriate for petrs to contend that this Court should hold as a matter of law that petrs acted in good faith. (4) The CA properly determined that petrs were not entitled to absolute immunity. LEAA officials have no discretion with regard to initiating fund termination proceedings once there has been a determination of discrimination. Furthermore, the record establishes that petrs did not exercise discretion in individual cases. Instead, they adopted and followed an administrative policy of never initiating fund termination proceedings. This policy -- set out in 28 C.F.R. §42.206(a) -- stated an agency preference for referring all matters of noncompliance to the Justice Department for possible litigation, rather than initiating administrative fund termination proceedings.[5] The policy was changed three months after this suit was filed. Thus, LEAA officials did not function in a manner analogous to prosecuting attorneys.

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[5]28 C.F.R. §42.206(a) (1975) provided in part:

> "[W]here the responsible Department official determines that judicial proceedings ... are as likely or more likely to result in compliance than administrative proceedings ... he shall invoke the judicial rather than the administrative remedy."

4. DISCUSSION: Although petrs do not raise this issue, the first issue that would confront the Court in this case if cert were granted is whether resps have standing. (The standing issue is discussed at note 2, supra.) I find this issue more difficult than the majority did, and I agree with Judge Tamm that Simon v. Kentucky Welfare Rights Organization makes the standing issue particularly troublesome.[6]

The absolute immunity claim is an important issue, since many federal statutes include fund termination provisions. Yes However, I am not convinced that the CA erred in rejecting petrs' absolute immunity claim. Although the conditions precedent to the LEAA's obligation to initiate fund termination proceedings involve certain subjective judgments on the part of LEAA officials (e.g., whether there has been a "substantial failure to comply"), I do not read the Act as granting the LEAA discretion to decline to commence fund termination proceedings even if the LEAA has determined that all the conditions precedent have been

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[6]Simon v. Eastern Kentucky Welfare Rights Organization, 426 U.S. 26 (1976), incorporates an injury-in-fact element into the threshold issue of standing. Resps may find it difficult to establish that the agencies would not have discriminated against them if fund termination proceedings had been brought. Petrs contend that the Philadelphia Police Dep't probably would have discriminated even if a fund termination proceeding had been initiated. Petn, at 18, n.18. Yet resps may be able to establish that the grant of LEAA funds had a "significant tendency to facilitate, reinforce, and support ... discrimination." Norwood v. Harrison, 413 U.S., at 466. See also Green v. Connally, 330 F. Supp. 1150 (D.D.C. 1971), aff'd sub nom. Coit v. Green, 440 U.S. 997 (1971) (black school children have standing to challenge any amount of state support to help fund or maintain segregated schools).

met. Thus, I do not think petrs are in a position that is wholly analogous to that of criminal prosecutors.

Petrs would surely contend that they are entitled to absolute immunity as to each of resps' claims, although they have only discussed resps' Fifth Amendment claim. Resps contend that they also alleged violations of the Act and of §1985(3). Neither the CA nor the DC discussed the various causes of action alleged in the complaint. The complaint is not included in the petn or the response, and the record has not been filed with the Court. I recommend calling for the record. This should shed some light on the standing issue, on the scope of the absolute immunity issue presented in this case, and on the second and third questions raised in the cert petn. If the Court is inclined to grant cert to consider the absolute immunity issue, it should consider limiting the grant to that question, since the lower courts have not expressly considered whether the complaint states a claim under the Fifth Amendment violation[7] or whether petrs are entitled to qualified immunity as a matter of law. If the complaint is well drafted, I imagine petrs will not be able to prevail on those grounds at this stage of the litigation.

There <u>is</u> a response.

3/17/81 Peterson Opinion in petn.

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[7]Although petrs and resps claim that the CA did not consider whether resps' complaint stated a claim under the Fifth Amendment, the CA did state in a footnote that petrs had a constitutional duty not to allow federal funds to be used in a discriminatory manner by recipients. Petn, at 6a, n.15.

would be inclined to grant on that issue. The standing Q seems obscure without factual development.

JPB

March 25, 1981

No. 80-1074 Velde v. Natl. Black Police Assoc.

Dear Al:

The above case has been removed from the List for Friday's Conference because a Justice has requested the record.

As I may be "out" of this case on the public record, I would appreciate your letting me know when it comes back on a Conference List. I do not want to overlook it in the event it ends up on the deadlist.

Sincerely,

Mr. Alexander C. Stevas

LFP/lab

Linda -
Wrote done 4/1/81 Lab
Out
letter

Argued ....., 19... *Assigned* ....., 19... No. 80-1074

Submitted ....., 19... *Announced* ....., 19...

VELDE

vs.

NATL. BLACK POLICE ASSN.

Record requested and received.

Grant

	HOLD FOR	CERT. G	CERT. D	JURISDICTIONAL STATEMENT N	JURISDICTIONAL STATEMENT POST	JURISDICTIONAL STATEMENT DIS	JURISDICTIONAL STATEMENT *AFF	MERITS REV	MERITS AFF	MOTION G	MOTION D	ABSENT	NOT VOTING
Burger, Ch. J.	✓		for		Remand								
Brennan, J.		✓											
Stewart, J.		✓											
White, J.		✓											
Marshall, J.		✓											
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Rehnquist, J.		✓											
Stevens, J.						Dif							
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Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Stevens
Justice O'Connor

p. 4 I am out of this case as Ed Levi is a party. I have requested WHR to show my non-participation

From: Justice Rehnquist

Circulated: JAN 18 1982

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80–1074

RICHARD W. VELDE, ET AL., PETITIONERS *v.* NATIONAL BLACK POLICE ASSOCIATION, INC., ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

[January ——, 1982]

JUSTICE REHNQUIST delivered the opinion of the Court.

This litigation was commenced in the United States District Court for the District of Columbia in 1975, and has wended its way here in the interim without ever having gone to trial on the "merits" of respondents' allegations of discrimination on the part of petitioners. Because we conclude, for the reasons hereafter stated, that respondents lack standing to maintain the claims against petitioners which they seek to litigate in this action, we conclude, with a natural reluctance after the amount of effort invested in the suit by the parties, that the action should have been dismissed by the District Court. The United States Court of Appeals for the District of Columbia Circuit having held otherwise, the judgment of that court is reversed and the cause remanded with appropriate instructions. Because each of the parties to the controversy has always had at least one "fall-back" position, it may well be that the "standing" issue was not as forcefully presented to the Court of Appeals as might have been the case, since that Court treated the question in a footnote. But since standing is an Art. III requirement for the exercise of jurisdiction by the federal courts, we cannot avoid the necessity of making a determination on this point previous to the examination of the "merits" of the other claims tendered by the litigants.

I

The Law Enforcement Assistance Administration (LEAA) was established by Congress in 1968 to provide financial and technical assistance to state and local law enforcement agencies. See Title I of the Omnibus Crime Control and Safe Streets Act of 1968, 82 Stat. 197, 42 U. S. C. §§ 3701–3781 (1976).[1] Congress amended the enabling statute in 1973 by adding § 518(c)(1), which prohibits recipients of LEAA grants from discriminating against any person "on the ground of race, color, religion, national origin, or sex." 87 Stat. 214, as amended, 42 U. S. C. § 3766(c)(1) (1976).[2]

In 1975, respondents brought suit in United States District Court for the District of Columbia, claiming that the LEAA had shirked its constitutional and statutory responsibility not to fund state and local police departments that unlawfully discriminate on the basis of race and gender. Respondents

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[1] Congress substantially restructured the LEAA in 1979. See Justice System Improvement Act of 1979, 93 Stat. 1167, 42 U. S. C. §§ 3701–3797 (1976 ed., Supp. III). Those changes do not affect our resolution of this case.

[2] Congress also provided a mechanism for enforcing § 518(c)(1), once the LEAA determines that a recipient of federal funds has violated its mandate. During the period relevant to this litigation, the LEAA was first required to notify the chief executive of the State and to request that he "secure compliance." 87 Stat. 214, 42 U. S. C. § 3766(c)(2) (1970 ed., Supp. V). If this effort failed, the LEAA was directed to "exercise the powers and functions provided in section 509." *Ibid.* Section 509 provided that once the LEAA had determined "after reasonable notice and opportunity for a hearing" that there had been "a substantial failure to comply," it was to notify the grant recipient that funding would be suspended until compliance was forthcoming. 87 Stat. 211–212, 42 U. S. C. § 3757 (1970 ed., Supp. V).

The LEAA was also authorized to institute civil suits to compel compliance. 87 Stat. 214, 42 U. S. C. § 3266(c)(2)(A) (1970 ed., Supp. V). In addition, Congress granted the Attorney General authority to bring suit against state or local governments to remedy a "pattern or practice" in violation of § 518(c)(1). 87 Stat. 214, 42 U. S. C. § 3266(c)(3) (1970 ed., Supp. V).

named as defendants the LEAA and the Department of Justice, as well as the four federal officials who are petitioners in this Court.[3] The complaint sought a permanent injunction requiring the LEAA (1) to suspend and terminate all LEAA funding to law enforcement agencies that had been "judicially determined to be in violation of federal civil rights laws"; (2) to initiate hearings leading toward a suspension of funds to all law enforcement agencies "which have been or should have been determined by defendant LEAA to be in civil rights non-compliance"; (3) to initiate proceedings to recover LEAA funds unlawfully spent by these agencies; and (4) to award funds only to agencies that are complying with the civil rights laws. Respondents also sought $20,000,000 in damages from petitioners for "willful[ly] and malicious[ly] refus[ing] . . . to insure that LEAA funding is not awarded to governmental law enforcement agencies engaged in racially or sexually discriminatory employment practices."[4]

The government moved to dismiss or, in the alternative, for summary judgment. In support of these motions, the government argued, *inter alia*, that respondents lacked standing to challenge the LEAA's refusal to terminate funding. Both sets of parties submitted affidavits and memoranda, after which the District Court dismissed respondents' complaint.

A divided Court of Appeals reversed, rejecting all of the government's contentions. 631 F. 2d 784 (CADC 1980). Applying the doctrine of official immunity as most recently stated in *Butz* v. *Economou*, 438 U. S. 478 (1978), the court rejected petitioners' claim of official immunity, holding that they possessed "virtually no discretion under the relevant

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[3] The four officials were Attorney General Edward Levi, LEAA Administrator Richard Velde, LEAA Deputy Administrator Charles Work, and the Director of the LEAA's Office of Civil Rights Compliance, Herbert Rice.

[4] 1 App. 43–44.

statute in deciding whether to terminate LEAA funding of discriminatory recipients." *Id.*, at 787. As previously indicated, the Court of Appeals treated the issue of standing in a footnote, observing that respondents had "alleged violations of their right to be free from federal funding of state and local agencies that have discriminated against them." *Id.*, at 788, n. 16. In the court's view, this allegation was sufficient to confer standing since it demonstrated a "personal stake in the outcome of the controversy," *Baker* v. *Carr*, 369 U. S. 186, 204 (1962), and fell within the "zone of interests" protected by the statutory and constitutional provisions on which respondents' cause of action rested. *Ibid.*[5]

We granted certiorari, 451 U. S. —— (1981), and now reverse, having concluded that respondents are without standing to obtain the relief sought in their complaint.

II

Respondents in this action are a national organization and 12 individuals, six of whom are black and six of whom are women.[6] According to their complaint, the National Black Police Association (NBPA) is composed of more than 50 local and regional organizations whose members are black law enforcement personnel. By its own description, the NBPA

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[5] The dissenting judge agreed that respondents had standing, but for different reasons. He rejected the idea that respondents could satisfy the standing requirement by "claiming an injury merely in the fact that the defendants fund unlawful discrimination, without regard to whether they personally are victims of the discrimination." 631 F. 2d, at 789, n. 7. In his view, however, respondents had alleged personal injury "sufficient to resist a motion to dismiss." *Id.*, at 791.

[6] Respondents also claimed to represent a class "composed of all black and female persons who have been discriminated against in employment on grounds of race or sex by law enforcement agencies which have received or currently receive LEAA funding." ~~*Id.*, at 17.~~ The District Court dismissed the action before ruling on respondents' motion for class certification. 1 App. 17.

"has undertaken vast efforts in pursuit of its objectives of achieving federal enforcement of civil rights laws requiring equal employment opportunity for blacks and women in law enforcement."[7] Many of its member organizations have initiated employment discrimination suits against particular law enforcement agencies, and many of these agencies receive grants from the LEAA.

The individual respondents reside in cities scattered throughout the country, from Philadelphia to Honolulu. None claims affiliation with respondent NBPA or any of its member organizations, though they have been allies in court. Four of the individuals sought, but were denied, employment by local or state law enforcement agencies. At the time suit was initiated, seven others were employed as law enforcement personnel, but had been denied promotion by their employers. One other had been employed as a police officer but was discharged prior to commencement of this suit. Seven of these individuals have either filed or intervened in employment discrimination suits against their actual or prospective employers, and the remainder have filed discrimination charges with state or federal administrative agencies. All have complained to the LEAA of race- or gender-based discrimination at the hands of LEAA grant recipients.[8]

The nature of the injuries respondents seek to redress has been a subject of contention since this litigation began. Many of petitioners' arguments have been premised on the understanding that respondents' claims of injury derive from discriminatory treatment by their actual or prospective employers in the field of law enforcement.[9] Respondents have

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[7] *Id.*, at 22.

[8] See *id.*, at 26–41; 2 App. 346–493.

[9] In particular, petitioners have questioned the causal connection between their administration of the LEAA funding program and any discriminatory treatment by grant recipients at the state or local level. Petitioners also argued in the District Court that because of respondents' allegations of injury at the hands of state and local law enforcement agen-

strenuously objected to this characterization. Because a correct understanding is central to our decision, particularly in view of the varied composition of the respondents as a group, we address the question of the nature of the injuries sought to be redressed, as we interpret it from the materials available, in some detail.

We turn first to the pleadings. In their amended complaint, respondents state their intention "to redress the violation of their constitutional and statutory rights to nondiscrimination in federally funded law enforcement programs." 1 App. 13. They allege that they have been "discriminated against by the defendants through their refusal to terminate LEAA funding to discriminatory law enforcement agencies." *Id.*, at 14. This allegation of harm is repeated individually as to each respondent. *Id.*, at 14–15.[10] Each of the individual respondents also alleges that he or she has been the victim of employment discrimination practiced by a state or local law enforcement agency, *but none attributes this to petitioners.* The only injury attributed to *petitioners* consists of "their refusal to terminate LEAA funding to discriminatory law enforcement agencies." *Id.*, at 14.

This position was clarified in memoranda submitted to the District Court. For example, respondents explained:

> "Contrary to defendants' extensive effort to have this Court believe otherwise, plaintiffs simply do not ask this

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cies, those agencies were indispensable parties whose joinder was required. Petitioners also maintained that equitable relief was unwarranted since respondents had adequate remedies at law through suits against the offending police departments.

[10] In addition, respondent NBPA alleged that petitioners' failure to perform their civil rights obligations has harmed the organization and its members by "wholly frustrat[ing] [their] primary objectives and efforts," by "denying equal employment rights to blacks and women," by limiting the "pool of potential members" on which they could draw, and by requiring them "to file administrative complaints and costly lawsuits." 1 App. 25–26.

> Court to make findings about or enter orders designed to alter the employment practices of local law enforcement agencies. Rather, the 'basic evil' in this case is *defendants'* independent defiance of the law, not the failure of state and local agencies to live up to their separate constitutional and statutory obligations. Regardless of the impact the deprivation of LEAA funds might have on the discriminatory employment practices of local agencies, . . . the instant case is not dependent upon a prediction that local police departments will stop discriminating if their federal financial assistance is terminated." Plaintiffs' Memorandum of Points and Authorities in Opposition to Defendants' Motion to Dismiss or for Summary Judgment, Record 41, at 3 (emphasis in original).

Respondents emphasized that petitioners had forsaken "a duty owed to plaintiffs not to have federal monies distributed to discriminatory activities." *Id.*, at 13.

At the hearing in the District Court on petitioners' motion to dismiss or for summary judgment, counsel for respondents reiterated:

> "We do not seek any relief against police departments. We do not have any claims of injury by police departments. This case is an action against federal officials for what these federal officials have done, which we contend are extreme violations of their constitutional and statutory obligations if they perform those obligations. We don't know whether the local Police Department itself is discriminating or not. That is not our claim." Tr. 22.

The same position was pressed in the Court of Appeals. Respondents explained that petitioners had mistaken their claim of injury as arising from discrimination by state and local law enforcement agencies.

> "This is *not* the legal injury which forms the basis of *this* lawsuit. Rather, the legal injury which plaintiffs suffer

> is defendants' knowing funding of discriminatory law enforcement agencies in contravention of constitutional and statutory obligations owed by *defendants* to plaintiffs." Reply Brief for Appellants 27, *quoted in* 631 F. 2d, at 789, n. 7 (dissenting opinion) (emphasis in original).

Finally, respondents have argued in this Court that they do not seek "to impose restrictions upon petitioners on the basis of petitioners' relationship to discriminating grantees." Brief for Respondents 37, n. 36. "Since [respondents'] allegations concerned the behavior and constitutional obligations of *petitioners*—and not the discriminatory practices of their grantees—any uncertainty about how those grantees might have responded had petitioners undertaken any civil rights enforcement efforts does not affect respondents' cause of action against *petitioners*." *Id.*, at 12 (emphasis in original). Respondents were injured "by petitioners' refusals to carry out their constitutional and statutory civil rights obligations and by petitioners' consequent continuation of federal funding to grantees which were also discriminating against respondents. . . ." *Id.*, at 39.

III

As we stated earlier this Term, "[t]he judicial power of the United States defined by Art. III is not an unconditioned authority to determine the constitutionality of legislative or executive acts." *Valley Forge Christian College* v. *Americans United for Separation of Church and State*, —— U. S. ——, —— (1982). "Art. III obligates a federal court to act only when it is assured of the power to do so, that is, when it is called upon to resolve an actual case or controversy. Then, and only then, may it . . . presume to provide a forum for the adjudication of rights." *Id.*, at ——, n. 13. An integral feature of Art. III's limitation of the judicial power is the requirement of standing. In *Valley Forge*, *supra*, we reviewed the blend of constitutional and prudential ingredients that compose the concept of standing. We concluded:

> "[A]t an irreducible minimum, Art. III requires the party who invokes the court's authority to 'show that he personally has suffered some actual or threatened injury as a result of the putatively illegal conduct of the defendant,' *Gladstone, Realtors* v. *Village of Bellwood*, 441 U. S. 91, 99 (1979), and that the injury 'fairly can be traced to the challenged action' and 'is likely to be redressed by a favorable decision,' *Simon* v. *Eastern Kentucky Welfare Rights Org.*, 426 U. S. 26, 38, 41 (1976)." *Id.*, at ——.

The threshold question in this case, as in every case, is whether respondents' allegations of injury are sufficient to satisfy these constitutional preconditions to the exercise of the judicial power.[11]

A

Each of the individual respondents in this case has claimed to be a victim of employment discrimination practiced by a recipient of LEAA funds.[12] The recipient agencies, however, are not defendants in this suit, and petitioners, who were named as defendants, have questioned the causal connection between their actions and the discriminatory treat-

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[11] Although petitioners questioned respondents' standing in both the District Court and the Court of Appeals, they have chosen not to do so in this Court. Nevertheless, we must address the issue *sua sponte* since our jurisdiction turns on its resolution. See *Arlington Heights* v. *Metropolitan Housing Dev. Corp.*, 429 U. S. 252, 260 (1977).

[12] Respondents sought to maintain this suit on behalf of a class composed of "all black or female persons who have been discriminated against in employment" by LEAA grant recipients. 1 App. 17. The District Court dismissed their suit prior to ruling on the motion for class certification. Respondents' desire to act in a representative capacity, however, "adds nothing to the question of standing, for even named plaintiffs who represent a class 'must allege and show that they personally have been injured, not that injury has been suffered by other, unidentified members of the class to which they belong and which they purport to represent.'" *Simon* v. *Eastern Kentucky Welfare Rights Org.*, 426 U. S. 26, 40, n. 20 (1976) (quoting *Warth* v. *Seldin*, 422 U. S. 490, 502 (1975)).

ment allegedly suffered by respondents. In reply to this challenge, respondents have steadfastly maintained that discrimination against them by LEAA grantees is not the injury they seek to redress. They argue that their injury consists of "petitioners' refusal to carry out their constitutional and statutory civil rights obligations." Brief for Respondents 39.

This claim is no more an "injury" sufficient to confer standing than was the claim advanced earlier this Term in *Valley Forge, supra.* The plaintiffs in *Valley Forge* were a national organization and several of its members committed to maintaining the constitutional separation of church and state. They challenged the federal government's transfer of surplus real property to a church-affiliated school. The Court of Appeals correctly doubted plaintiffs' standing as taxpayers, but found standing based on their allegation of "'injury in fact' to their shared individuated right to a government that 'shall make no law respecting the establishment of religion.'" —— U. S., at ——. We rejected this conception of standing, noting that "assertion of a right to a particular kind of government conduct, which the government has violated by acting differently, cannot alone satisfy the requirements of Art. III without draining those requirements of meaning." *Id.*, at ——. Plaintiffs lacked standing because they had failed to identify any personal injury suffered "*as a consequence* of the alleged constitutional error, other than the psychological consequence presumably produced by observation of conduct with which one disagrees." *Id.*, at —— (emphasis in original).

Respondents' claim of injury is of a kind with that of the plaintiffs in *Valley Forge.* Respondents have asserted a right to a government that does not provide financial assistance to law enforcement agencies that practice employment discrimination.[13] The "injury" on which they predicate standing is the government's failure to act according to this

[13] Respondents identify several sources of this right, including the Fifth

expectation, or in respondents' terms, the violation of "a duty owed to plaintiffs not to have federal monies distributed to discriminatory activities." Record 41, at 13. Without allegations of some tangible and personal consequence affecting respondents as a result of this breach of duty, it cannot confer standing unless the courts are to be impressed into an "amorphous general supervision of the operations of government." *United States* v. *Richardson*, 418 U. S. 166, 192 (1974) (POWELL, J., concurring). Allegations of legal right are the *lingua franca* of the judicial process, but they remain abstractions, inadequate to command the attention of Art. III courts until linked to some "distinct and palpable injury," *Warth* v. *Seldin*, 422 U. S., at 501, suffered by those who raise them.

Respondents have pointed to *Norwood* v. *Harrison*, 413 U. S. 455 (1973), to buttress their claim of standing. At issue in *Norwood* was the validity of a Mississippi statutory program under which the State loaned textbooks to nonsectarian private schools that admitted only white students. We held that the loan program was unconstitutional because "it significantly aid[ed] the organization and continuation of a separate system of [segregated] private schools," *id.*, at 467, at a time when their marked growth in admissions coincided with desegregation of the public schools, see *id.*, at 457. This program violated the State's "constitutional obligation to steer clear, not only of operating the old dual system of racially segregated schools, but also of giving aid to institutions that practice racial or other invidious discrimination." *Ibid.*

Respondents have alleged that petitioners are under the same constitutional obligation, and that their failure to abide by it, without more, constitutes a cognizable injury to re-

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Amendment of the Federal Constitution, §§ 509 and 518(c) of the Omnibus Crime Control and Safe Streets Act, 42 U. S. C. §§ 3757, 3766(c), Title VI of the Civil Rights Act of 1964, 42 U. S. C. § 2000d *et seq.*, various other civil rights laws, 42 U. S. C. §§ 1981, 1983, 1985(3), and Executive Orders 11246 and 11375. Of course, we express no views on the validity of these claims, or on the existence of private causes of action to enforce them.

spondents. However much this reference to *Norwood*, *supra*, might aid respondents' position on the merits, it adds nothing of substance to the claim of standing we have already discussed and rejected. One who seeks to force another to comply with an asserted constitutional duty still must show that he has been adversely affected in some tangible way as a consequence of the defendant's unlawful conduct. The plaintiffs in *Norwood* acted on behalf of their school-aged children who lived in a community in which all white children had been withdrawn from the public schools and enrolled in a private, racially segregated academy staffed by the former principal and 17 teachers from the public school system. *Id.*, at 467, n. 9. They acted to protect their "personal interest . . . in admission to public schools as soon as practicable on a nondiscriminatory basis." *Brown* v. *Board of Education*, 349 U. S. 294, 300 (1955) (*Brown II*). Respondents' claims are not transmuted into a similarly personal interest simply by citation to *Norwood*.

B

The bases for standing asserted by respondent NBPA are no more convincing. First, the NBPA asserts that petitioners' "refusal to enforce their constitutional and statutory civil rights obligations has wholly frustrated [the NBPA's] primary objectives and efforts."[14] Our prior decisions have clearly established, however, "that an organization's abstract concern with a subject that could be affected by an adjudication does not substitute for the concrete injury required by Art. III." *Simon* v. *Eastern Kentucky Welfare Rights Org.*, 426 U. S. 26, 40 (1976). The NBPA's devotion to eradicating employment discrimination in the field of law enforcement is no more a basis for standing than the interest of the individual respondents in a government that does not fund discriminatory activities.

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[14] 1 App. 25.

The NBPA also claims injury because petitioners' conduct "has required NBPA member organizations and their members to file administrative complaints and costly lawsuits to obtain their civil rights." These activities, in turn, allegedly have exposed the NBPA and its member organizations to "extra-legal sanctions and harassment."[15] This argument is but a variant of the position that organizational standing can exist by virtue of the organization's commitment to goals that might be served by a favorable decision in the matter *sub judice*. That the organization has incurred financial expense and the risk of "extra-legal harassment" is evidence of the depth of its interest, but "a mere 'interest in a problem,' no matter how longstanding the interest and no matter how well qualified the organization is in evaluating the problem, is not sufficient by itself" to establish standing. *Sierra Club* v. *Morton*, 405 U. S. 727, 739 (1972). Were the law otherwise, an organization could demonstrate its standing to litigate any issue simply by filing the complaint.

Since the NBPA has failed to establish injury to itself as an organization, it can allege standing only as a representative of its members.[16] It can do so only if those members "are suffering immediate or threatened injury as a result of the challenged action of the sort that would make out a justiciable case had the members themselves brought suit." *Warth* v. *Seldin*, 422 U. S., at 511. See *Hunt* v. *Washington State*

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[15] *Id.*, at 26.

[16] The NBPA also alleged that it has been injured because petitioners' conduct "has served to limit the already limited pool of potential members of plaintiff NBPA and of its member organizations." *Ibid.* By this, the NBPA presumably claims that persons who might otherwise have become law enforcement personnel, and thus might have joined one of the NBPA's member organizations, have been denied employment, or have been discharged, because of petitioners' official actions. This allegation is but another attempt to predicate standing on the NBPA's organizational interest in the subject of this litigation, and it must therefore fail for the reasons stated in the text. See also Part IV, *infra*.

Apple Advertising Comm'n, 432 U. S. 333, 342–343 (1977); *Simon* v. *Eastern Kentucky Welfare Rights Org.*, *supra*, at 39–40. The NBPA's members are themselves organizations, composed of black law enforcement personnel. Insofar as the complaint alleges injury to those personnel, the NBPA's claims are no different from those raised by the individual respondents in this suit. Our disposition of their claims of standing, therefore, are also applicable to the NBPA.

IV

As we have noted, respondents have steadfastly divorced their claims against petitioners from their treatment at the hands of state and local law enforcement agencies who receive LEAA funds. In their brief to this Court, however, respondents have also assumed *arguendo* that "petitioners' mischaracterization of this case" was correct, *i. e.*, that "respondents' only injury was caused not by petitioners' . . . violations but by the discrimination practiced by LEAA grantees." Brief for Respondents 40. Though respondents reached this position reluctantly, and then only hypothetically, it is now the only remaining basis on which they can claim standing. On the understanding that it is a claim which might fairly be read in the complaint, we consider it, but ultimately find it unpersuasive.

A

A litigant's claim that he has been discriminated against by his employer or by one from whom he sought employment is plainly a claim of injury on which Art. III standing might be predicated. At stake is the opportunity to earn a livelihood and to advance within one's field of work, unhampered by irrational and invidious restrictions. Respondents have made such claims, but they have not sued their employers. They have sued federal officials who possessed varying degrees of

responsibility for administering programs that provide technical and financial assistance to those employers in conducting legitimate law enforcement activities.

Essential to respondents' claim of standing, therefore, are allegations sufficient to show that the claimed injury "fairly can be traced to the challenged action of the defendant, and [is] not injury that results from the independent action of some third party not before the court." *Simon* v. *Eastern Kentucky Welfare Rights Org.*, 426 U. S., at 41–42.[17] This causal connection is implicit in the Art. III requirement that a plaintiff bring to court not merely a complaint that the defendant has acted unlawfully, but a claim that in so doing he has tangibly injured the plaintiff. If the source of plaintiff's injury lies elsewhere, then he lacks the necessary personal stake in the adjudication of defendant's conduct which Art. III demands.

Respondents must also show that their injury "is likely to be redressed by a favorable decision." *Id.*, at 38.[18] This independent showing is necessary to assure that the decisions of the federal courts are not merely advisory pronouncements. The judicial power does not extend to the issuance of decrees that are ineffective to remedy the injury on which a

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[17] See *Valley Forge Christian College* v. *Americans United for Separation of Church and State*, —— U. S. ——, —— (1982); *Watt* v. *Energy Action Educational Foundation*, —— U. S. ——, —— (1981); *Duke Power Co.* v. *Carolina Environmental Study Group*, 438 U. S. 59, 72 (1978); *Arlington Heights* v. *Metropolitan Housing Dev. Corp.*, 429 U. S., at 261; *Warth* v. *Seldin*, 422 U. S. 490, 504 (1975); *Linda R.S.* v. *Richard D.*, 410 U. S. 614, 617–618 (1973).

[18] See *Valley Forge Christian College* v. *Americans United for Separation of Church and State*, *supra*, at ——; *Watt* v. *Energy Action Educational Foundation*, *supra*, at ——; *Gladstone, Realtors* v. *Village of Bellwood*, 441 U. S. 91, 100 (1979); *Duke Power Co.* v. *Carolina Environmental Study Group*, *supra*, at 72, 75 n. 20; *Arlington Heights* v. *Metropolitan Housing Dev. Corp.*, *supra*, at 262; *Warth* v. *Seldin*, *supra*, at 504; *Linda R.S.* v. *Richard D.*, *supra*, at 618.

litigant's claim of standing is predicated. These requirements are but natural corollaries of the more fundamental principle that the power of the federal courts to declare the rights of individuals and to measure the authority of governments "is legitimate only in the last resort, and as a necessity in the determination of real, earnest and vital controversy." *Chicago & Grand Trunk R. Co.* v. *Wellman*, 143 U. S. 339, 345 (1892).

The conclusion that respondents have failed to satisfy either requirement is virtually compelled by our rejection of a similar claim of standing in *Simon* v. *Eastern Kentucky Welfare Rights Org.*, *supra*. In *Simon*, the plaintiffs were indigents and several organizations representing indigents who brought suit against the Secretary of the Treasury and the Commissioner of Internal Revenue, challenging a Revenue Ruling that allowed favorable tax treatment to nonprofit hospitals that offered only emergency-room services to indigents. Most of the plaintiffs alleged that they had been denied access to hospital services on account of their poverty, and that each of the hospitals involved had taken advantage of the Revenue Ruling by securing tax-exempt charitable status. Plaintiffs argued that the Internal Revenue Code compelled defendants to deny tax-exempt status to hospitals that refused to provide them full service.

We recognized that denial of access to medical services was an injury on which standing might be predicated. We observed, however, that

> "injury at the hands of a hospital is insufficient by itself to establish a case or controversy in the context of this suit, for no hospital is a defendant. The only defendants are officials of the Department of the Treasury, and the only claims of illegal action respondents desire the courts to adjudicate are charged to those officials. . . . [T]he 'case or controversy' limitation of Art. III still requires that a federal court act only to redress injury that fairly can be traced to the challenged action of the defendant,

and not injury that results from the independent action of some third party not before the court." 426 U. S., at 41–42.

We accepted plaintiffs' allegation that the challenged Revenue Ruling had "encouraged" hospitals to deny services to indigents, but we nevertheless rejected their claim of standing. First, we found it "purely speculative whether the denials of service specified in the complaint fairly can be traced to petitioners' 'encouragement' or instead result[ed] from decisions made by the hospitals without regard to the tax implications." *Id.*, at 42–43. Second, we found it "equally speculative whether the desired exercise of the court's remedial powers in this suit would result in the availability to [plaintiffs] of such services." *Id.*, at 43. It was "just as plausible that the hospitals to which [plaintiffs] may apply for service would elect to forego favorable tax treatment to avoid the undetermined financial drain of an increase in the level of uncompensated services." *Ibid.*

Respondents' position in this case is no more tenable than that of the plaintiffs in *Simon*. Respondents allege that they have been discriminated against by state and local law enforcement agencies. As in *Simon*, however, the defendants are not those alleged to have inflicted the injury, but federal officials whose administration of statutory programs has resulted in a financial benefit to those persons. Whether the discriminatory treatment is fairly traceable to petitioners' refusal to terminate LEAA funding or whether it is instead attributable to the independent decisions of the state and local agencies is at least as speculative as the causal connection examined in *Simon*. Indeed, unlike the plaintiffs in *Simon*, who alleged that the defendants' Revenue Ruling "encouraged" the hospitals to deny them services, respondents have made no similar claims in their amended complaint.

We also lack confidence that the relief sought by respondents would end the employment discrimination under which

they claim to have labored. Respondents have prayed for an order requiring the LEAA to suspend funding to all law enforcement agencies "which have been or should have been determined by defendant LEAA to be in civil rights non-compliance."[19] Whether such an order would provide respondents jobs where employment was denied, or promotion where an opportunity for advancement was restricted, is, as in *Simon*, a matter of "unadorned speculation." *Id.*, at 44. Respondents plainly attribute their frustration in the workplace to racial or gender-based discrimination, but there is no reasonable assurance that the LEAA will, or ought to, concur in that judgment. Even in those instances in which fund termination would be guaranteed by the order requested—as where the LEAA or a court has already found employment discrimination by a respondent's employer and that employer still has not complied with the law—the likelihood that the employer will in turn provide respondent favorable treatment depends on a chain of speculative inferences that is simply too tenuous to establish standing.[20]

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[19] 1 App. 44.

[20] Some law enforcement agencies may indeed subscribe to racial or gender-based criteria in their hiring or promotion decisions, and they may reluctantly suppress their prejudices in order to preserve federal funding. This in turn may benefit respondents. In other instances, however, the agencies may value particular methods of selecting or promoting personnel that have nothing to do with racial or gender-based animus. They may conclude that these methods are more valuable to law enforcement than LEAA funding, and they may decide to forego federal assistance rather than sacrifice them. All of these possibilities, of course, depend on the extent to which the agencies are dependent on federal assistance, the values they assign to the practices respondents have challenged, and the connection between those practices and respondents' misfortunes. As in *Simon*, "the complaint suggests no substantial likelihood that victory in this suit would result in respondents' receiving the . . . treatment they desire." 426 U. S., at 45–46.

B

Anticipating our concern about the redressability aspect of standing, respondents again seek to derive support from *Norwood* v. *Harrison*, *supra*. The District Court in that case upheld the State's textbook loan program, in part because the plaintiffs failed to prove that elimination of textbook loans to discriminatory private schools would cause children to leave them and enroll in public schools. See 413 U. S., at 465. We accepted this factual uncertainty, but held that

> "the Constitution does not permit the State to aid discrimination even when there is no precise causal relationship between state financial aid to a private school and the continued well-being of that school. A State may not grant the type of tangible financial aid here involved if that aid has a significant tendency to facilitate, reinforce, and support private discrimination." *Id.*, at 465–466.

Respondents' reliance on this language is again misplaced. The question in *Norwood* was whether the State had violated the Constitution by loaning textbooks to private academies whose admissions policies were racially discriminatory. The question was not, as it is here, whether the plaintiffs had standing to raise that constitutional question. As we have already noted, the plaintiffs in *Norwood* represented black schoolchildren who lived in a community in which all white children had withdrawn from the public schools in reaction to the process of desegregation and had enrolled in segregated academies which the State aided through its loan program. As we observed in a later decision, "[t]he plaintiffs in *Norwood* were parties to a school desegregation order and the relief they sought was directly related to the concrete injury they suffered." *Gilmore* v. *City of Montgomery*, 417 U. S.

556, 570–571, n. 10 (1974). Indeed, in *Gilmore* we expressed doubt about the plaintiffs' standing to challenge conduct not reasonably related to the preservation of the existing decree. *Ibid.*

The plaintiffs in *Norwood* suffered from discriminatory treatment within a dual school system established and maintained by the State. They had secured a remedial decree directed against the State, and they were acting to prevent the State from circumventing or undermining that decree by "significantly aid[ing] the organization and continuation of a separate system of private schools." *Norwood* v. *Harrison*, *supra*, at 467. The respondents in this case have alleged employment discrimination, not by petitioners, but by state and local agencies who have not been named as defendants. *A fortiori*, they are not seeking in this action to *preserve* the efficacy of remedial decrees already entered against those agencies. They are suing federal officials charged with administering programs that have aided the agencies in performing legitimate activities. Whether they would succeed in proving a constitutional violation on the merits is not relevant in establishing a substantial likelihood that the relief they seek will alleviate the injury they claim.

C

At oral argument before this Court, counsel for respondents maintained that one of the individual respondents, Joel Michelle Schumacher, had established standing because a threat by the LEAA to terminate funding to the New Orleans Police Department, who had denied her employment, caused the Department to eliminate the hiring criteria that Schumacher had alleged to be discriminatory. According to counsel, this satisfied the redressability aspect of standing with respect to respondent Schumacher. Citing our decision earlier this Term in *Watt* v. *Energy Action Educational Foundation*, —— U. S. —— (1981), counsel argued that her

standing was sufficent to allow the action to proceed, regardless of whether the other respondents could also establish standing.

The record does disclose allegations that respondent Schumacher sought employment with the New Orleans Police Department, but was denied a job because she did not meet the Department's minimum height requirement.[21] In early 1975 she filed a complaint with the LEAA's Office of Civil Rights Compliance, alleging that the height requirement discriminated on the basis of sex. She also sought to intervene in a suit against the Department pending in federal court which also challenged the height requirement. The LEAA eventually threatened to terminate its funding and to "notify the Office of Revenue Sharing and other interested federal agencies" if the Department did not abolish the height restriction.[22] In response, the Superintendent of Police recommended to the City's Civil Service Commission that the requirement be eliminated.[23]

In *Arlington Heights* v. *Metropolitan Housing Dev. Corp.*, 429 U. S. 252 (1977), a developer and three individuals challenged a municipality's denial of a rezoning request that would have permitted the developer to construct low-cost housing in which the individual respondents wished to live. We found that one of the individuals had demonstrated standing, and it was therefore unnecessary to consider whether the other plaintiffs and intervenors had standing to maintain the suit. *Id.*, at 263–264 and n. 9. In *Watt* v. *Energy Action Educational Foundation*, *supra*, we considered a challenge to the Secretary of the Interior's decision not to use

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[21] 1 App. 34.

[22] App. to Defendants' "Statement of Reasons," Record 36, at 6.

[23] This action was taken "in light of the imminent threat of the loss of LEAA funding to the New Orleans Police Department as well as the threat to our City's general revenue sharing funds." Letter from Superintendent of Police Clarence Giarrusso to Andrew Strojny, LEAA Office of Civil Rights Compliance 3 (Oct. 29, 1975), Record 36, Exh. 10.

particular bidding systems in leasing tracts for oil and gas exploration on the Outer Continental Shelf. We found that the State of California had established standing to challenge the Secretary's decision and consequently we did not consider the claims of the other plaintiffs. *Id.*, at ——.

In both cases, all of the plaintiffs were aggrieved by the same decision. Given the nature of the decisions challenged, once the standing of one plaintiff was established, the standing of the remaining plaintiffs became superfluous. The first plaintiff fully demonstrated an injury redressable by the court which fairly could be traced to a decision of which the remaining plaintiffs also complained. This case, however, arises in a different context. The individual respondents have each alleged different injuries, consisting of various forms of discriminatory treatment by different LEAA grant recipients. The conduct of which they complain consists of a variety of individual decisions regarding termination of funds to different recipients. Obviously, the nature of those decisions, as well as their effect on the individual respondents, will vary from case to case.

In addition, the respondents seek not merely injunctive relief, but damages, which are not shared by all of them in equal degree. "[W]hatever injury may have been suffered is peculiar to the individual . . ., and both the fact and extent of injury would require individualized proof." *Warth* v. *Seldin*, 422 U. S., at 515–516. Thus, even if respondent Schumacher has established standing as to her own claim, she is without standing either to question petitioners' decisions to continue funding other law enforcement agencies throughout the country, or to seek damages on behalf of other individuals who might have been injured as a consequence.

We have also determined, however, that respondent Schumacher has not established standing to press her own claim, much less the claims of others. The injury that she alleges, the denial of employment with the New Orleans Police Department, is no more "fairly traceable" to petitioners'

funding decisions than the claimed injuries of the other respondents. The decision to adopt a height requirement was certainly not unique to LEAA grant recipients, and "unadorned speculation" is required to link that decision to petitioners' administration of the LEAA assistance program.

In addition, although the LEAA eventually did threaten to terminate funding, and although the Police Department thereafter eliminated the height requirement, this establishes only that at the time the amended complaint was filed, respondent Schumacher's prospects for employment were no longer barred by the allegedly discriminatory practice of which she complained.[24] It does not establish that whatever injury remains is redressable *by a suit against petitioners* challenging their failure to threaten fund termination. That connection is still speculative. It depends on the assumptions that petitioners should have determined earlier than they did that the Police Department was practicing gender discrimination and that the Police Department would then have eliminated the requirement as a result of the LEAA's threat to terminate its funding. Indeed, whether the Department's actual decision to abandon the height requirement was attributable to that threat, rather than the companion threat to place the City's revenue sharing funds in jeopardy or the risk of an adverse judgment in the civil rights suit against the Department then pending in federal court, is itself a matter of speculation.[25]

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[24] Respondents' amended complaint, which included respondent Schumacher's allegations that the LEAA had improperly failed to terminate funding, was filed several months after the LEAA had threatened fund termination and the New Orleans Police Department had abandoned the height requirement.

[25] It is argued that a decision on respondents' standing should be delayed until they have an opportunity to conduct discovery and establish their standing in evidentiary proceedings. The District Court granted judgment for petitioners before respondents had such an opportunity. Nevertheless, respondents obtained extensive information from the LEAA

V

The claim of injury on which respondents have relied throughout this litigation is insufficient to establish their standing to maintain suit. The claim of injury which they have belatedly raised in this Court is sufficiently concrete for purposes of Art. III, but it is not fairly traceable to the wrongdoing they ascribe to petitioners, nor is it substantially probable that the relief they seek would alleviate their injury. Consequently, the courts below were without jurisdiction to hear this suit, and it must be dismissed. The judgment of the Court of Appeals is

Reversed.

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through the Freedom of Information Act, 5 U. S. C. § 552, while suit was pending in the District Court, Tr. of Oral Arg. 44, and they submitted numerous affidavits in response to petitioners' motion to dismiss or for summary judgment. Nor have respondents complained of the lack of discovery in answering objections to their standing, since they have relied on a claim of injury consisting of petitioners' failure to enforce the civil rights laws.

Moreover, we have held that the question of standing normally is to be determined on the pleadings, with leave to support the complaint by affidavits. *Gladstone, Realtors* v. *Village of Bellwood*, 441 U. S., at 115, n. 31 (1979); *Simon* v. *Eastern Kentucky Welfare Rights Org.*, 426 U. S., at 45 and n. 25; *Warth* v. *Seldin*, 422 U. S., at 501–502. In addition, the pleadings "must be something more than an ingenious academic exercise in the conceivable." *United States* v. *SCRAP*, 412 U. S. 669, 688 (1973). It is the responsibility of the complainant to "allege specific, concrete facts demonstrating that the challenged practices harm *him*, and that he personally would benefit in a tangible way from the court's intervention." *Warth* v. *Seldin*, *supra*, at 508. The respondents have failed to allege facts sufficient to establish their standing, and given the nature of the deficiencies, it is improbable that discovery from petitioners would supply the missing links.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

January 18, 1982

Re: 80-1074 - Velde v. National Black Police Association, Inc.

Dear Bill:

Please add a note stating that I did not participate in the consideration or decision of this case.

Respectfully,

Justice Rehnquist

Copies to the Conference

January 18, 1982

80-1074 Velde v. National Black Police Association

Dear Bill:

Please add at the end of the next draft of your opinion that I took no part in the consideration or decision of this case.

Sincerely,

Justice Rehnquist

lfp/ss

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

January 19, 1982

Re: No. 80-1074 - Velde v. National Black Police Ass'n

Dear Bill:

In due course, I shall circulate a dissent in this case.

Sincerely,

HAB

Justice Rehnquist

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

January 19, 1982

Re: No. 80-1074 - Velde v. National Black Police Association, Inc.

Dear Bill:

I await the dissent.

Sincerely,

T.M.

T.M.

Justice Rehnquist

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

January 21, 1982

Re: 80-1074 - Velde v. National Black
Police Ass'n, Inc.

Dear Bill,

I shall await the dissent in this case.

Sincerely yours,

Justice Rehnquist

Copies to the Conference

cpm

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

January 22, 1982

No. 80-1074 Velde v. National Black Police Association, Inc.

Dear Bill,

As you will recall, at Conference I expressed the view that the plaintiffs had standing, but that I believed it was possible to find no "Bivens" cause of action existed. I am still of the same view and cannot join the present draft. I will await other writing, or will circulate something in due course which will attempt to address the "Bivens" question.

Sincerely,

Sandra

Justice Rehnquist

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

January 26, 1982

Re: No. 80-1074 - Velde v. National Black Police Assn., Inc.

Dear Bill:

I am having trouble with the "case or controversy" aspect of this case and will ponder on this a while. As time passes I take an increasingly dim view of these mushrooming "entitlements" and implied causes of action and I need time to sort out the problem.

Regards,

WEB

Justice Rehnquist

Copies to the Conference

March 24, 1982

80-1074 Velde v. National Black Police Force

Dear Bill:

Please show at the end of the next draft of your opinion that I took no part in the consideration or decision of this case.

Sincerely,

Justice Rehnquist

lfp/ss

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

March 25, 1982

Re: 80-1074 - Velde v. National Black Police Assn.

Dear Bill:

Please show that I took no part in the consideration or decision of this case.

Respectfully,

JPS

Justice Rehnquist

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

March 31, 1982

Re: 80-1074 - Velde v. National Black Police Ass'n.

Dear Bill,

Please join me.

Sincerely yours,

Byron

Justice Rehnquist

Copies to the Conference

cpm

Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

April 12, 1982

Re: No. 80-1074 - Velde v. National Black Police Association Inc.

Dear Bill:

I have considered the possibility of setting this case for reargument but I now conclude that would in the long run serve no useful purpose.

I therefore join your March 31 draft.

Regards,

WEB

Justice Rehnquist

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

April 15, 1982

Re: 80-1074 - Velde v. National Black
Police Association

Dear Bill,

I am still content with your circulating draft in this case.

Sincerely yours,

Byron

Justice Rehnquist
Copies to the Conference
cpm

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

June 25, 1982

Re: 80-1074 - Velde v. National Black Police Assn.

Dear Bill:

Will you please indicate in your per curiam that Lewis and I took no part in the consideration or decision of the case.

Respectfully,

JPS

Justice Rehnquist

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Powell

(Slip Opinion)

SUPREME COURT OF THE UNITED STATES

No. 80-1074

RICHARD W. VELDE, ET AL., PETITIONERS, *v.* NATIONAL BLACK POLICE ASSOCIATION, INC., ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

[June 30, 1982]

PER CURIAM.

The judgment is vacated and the case is remanded to the United States Court of Appeals for the District of Columbia Circuit for further consideration in light of *Harlow & Butterfield* v. *Fitzgerald*, 457 U. S. —— (1982).

JUSTICE POWELL and JUSTICE STEVENS took no part in the consideration or decision of this case.

HE C. J.	W. J. B.	B. R. W.	T. M.	H. A. B.	L. F. P.	W. H. R.	J. P. S.	S. D. O'C.
						12/12/81		
in WHR 4/12/82	Join HAB 6/1/82	await dissent 1/21/82	await dissent 1/19/82	will dissent 1/19/82	out letter 1/19/82	1st draft 1/18/82	out letter 1/18/82	await other writing 1/22/82
		Join WHR 3/31/82 still with	Join HAB 6/2/82	will proceed with dissent 4/20/82		3rd draft 3/27/82 4th draft	out 3/25/82	Join WHR 4/20/82
		WHR 4/15/82		Con in part + dissenting in part 6/15/82		3/31/82 PC 6/25/82		
Join PC 6/28/82	agree with PC 6/25/82	agree with PC 6/25/82	agree with PC 6/28/82	agree with PC 6/25/82	out	2nd typed draft 6/28/82	out 6/25/82	agree with PC 6/25/82
				80-1074 Velde v. Natl. Black Police Assn.				