



# LIBERTY TREE

Vol. 10, No. 11 — November 2008

## FREEDOM TAKES A STEP FORWARD

**HOUSTON** — On October 11, leaders and members of organizations across the freedom movement assembled together to consider Truth Attack's plan to "put the government back in its box 'one tentacle at a time.'" According to organizer Attorney Tommy Cryer, leaders and members at the Council represented over 100,000 members of various organizations. The plan was presented by former CID Special Agent Joe Banister, Jim Cabaniss of American Veterans in Domestic Defense (AVIDD), Larry Becraft and Tom Cryer while Dave vonKleist emceed.

Attendees gave Truth Attack's plan an enthusiastic and positive reception, said Cryer, unanimously pledging their individual and collective support. An unexpected announcement followed the unveiling of the

plan: Senator Don Rogers from California, representing

American Liberty Network (ALN), announced that a group of ALN and AVIDD members had pledged to match all contributions Truth Attack could muster at the Council — or within 45 days thereafter — up to \$25,000.

In order to respond to this generous offer and raise some seed money to promote Truth Attack and Liberty Works Radio Network, Truth Attack has organ-

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**News from**



### STEERING CLEAR OF THE CONSTITUTION, PART I

#### Do you have "standing to sue"?



*"The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, ..." Article III, Section 2. Some may imagine federal courts are eager to rule in constitutional controversies. But in this series, we will explore several ways in which federal courts, to the detriment of liberty and justice, often avoid making any decisions at all.*

*By Dick Greb*

Last month's Liberty Tree talked about some of the legal issues involved in whether or not Senator John McCain is a natural born citizen of the United States. Those issues were raised in a federal suit brought by Markham Robinson in an attempt to have presidential candidate McCain stricken from the California ballot.<sup>1</sup> The case was ultimately dismissed by U.S. District Court Judge William Alsup on the grounds that Robinson lacked *standing* to bring the suit, but not before stating, "This order finds it highly probable, for the purposes of this motion for provisional relief, that Senator McCain is a natural born citizen."

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<sup>1</sup> *Robinson v. Bowen*, 567 F.Supp.2d 1144 (N.D. Cal., 2008)



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## Standing to Sue

Black's Law Dictionary, 6<sup>th</sup> Edition, has this to say about the *standing to sue doctrine*: "Standing is a jurisdictional issue which concerns power of federal courts to hear and decide cases and does not concern ultimate merits of substantive claims involved in the action." Since lack of standing means a lack of judicial power to consider the merits of the case, Alsup's statement about McCain's citizenship status is nothing but his *personal opinion* masquerading as a judicial decision. The inclusion of his opinion distinguishes it from the dismissal of a similar suit brought in New Hampshire a few months earlier.<sup>2</sup> There, the judge recognized that the lack of jurisdiction prevented consideration of the merits: "Hollander lacks standing to bring this action. The court does not reach the rest of the parties' arguments, including, most notably, the question of McCain's constitutional eligibility to be President." Likewise, in *Berg v. Obama*,<sup>3</sup> a federal suit in Pennsylvania raising the issue of the eligibility of presidential candidate Senator Barack Obama, the judge dismissed the case thusly: "Plaintiff does not, and we believe cannot, establish an injury in fact. Therefore, he does not have standing to pursue this matter and we do not have jurisdiction to hear it." Unlike the judges in the latter two cases, Judge Alsup just couldn't keep his dicta<sup>4</sup> to himself.

## Concrete injury

"Standing to sue" is a kind of gatekeeper for the application of the judicial power, making it a powerful doctrine for judges to use should they wish to avoid deciding a constitutional issue. The Supreme Court says that the use of the term "cases or controversies" in Article III of the Constitution demands that "a litigant first must clearly demonstrate that he has suffered an injury in fact" which must be "concrete," that is, "distinct and palpable, as opposed to merely abstract." *Whitmore v. Arkansas*, 495 U.S. 149, 155 (1990). This concrete injury is deemed to give the injured person "a personal stake in the outcome of the controversy,"<sup>5</sup>

which in turn enables him to "authoritatively present to a court a complete perspective upon the adverse consequences flowing from the specific set of facts undergirding his grievance."<sup>6</sup>

In other words, if you have nothing to lose in the fight, you can't be relied on to present the best case. Likewise, the personal injury also serves to create the adversarial parties to the suit — the person receiving the injury, and the person responsible for causing it (giving him a personal stake in the case as well) — so that both sides of the dispute will be adequately presented.

The claimed injury can be minor, as long as it is identifiable. Quoting from a law journal article in *U.S. v. Students Challenging Regulatory Agency Procedures (SCRAP)*,<sup>7</sup> the court said approvingly: "The basic idea that comes out in numerous cases is that an identifiable trifle is enough for standing to fight out a question of principle; the trifle is the basis for standing and the principle supplies the motivation." That same court refers to cases where standing was upheld on the basis of injuries arising from a \$1.50 poll tax, a \$5 fine, and in *Baker v. Carr*, "a fraction of a vote." The injury of the plaintiffs in the *Baker* case was due to improper apportionment of voting districts, thereby diluting their vote, or perhaps more accurately, their ratio of representation in the legislature.

## No injury from violations of the law?

However, while the injury can be small, it must also be concrete, and this is where some extra hurdles have been thrown in. The Supreme Court continues to hold that citizens "have no standing to complain simply that their Government is violating the law."<sup>8</sup> This idea was used to deny standing in a suit against the validity of Supreme Court Justice Black's appointment in *Ex parte Levitt*, 302 U.S. 633, 636 (1937), because Levitt did not "show that he has sustained, or is immediately in danger of sustaining, a direct injury as the result of that action and it is not sufficient that he has merely a general interest common to all members of the public."

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<sup>2</sup> *Hollander v. McCain*, 566 F.Supp.2d 63, 65 (N.H., 2008).

<sup>3</sup> *Berg v. Obama*, Civil Action No. 2:08-cv-04083-RBS (East.Dist. PA)

<sup>4</sup> Opinions of a judge which do not embody the resolution or determination of the specific case before the court. (Black's Law Dictionary, 6<sup>th</sup> Ed.)

<sup>5</sup> *Baker v. Carr*, 369 U.S. 186, 204 (1962).

<sup>6</sup> *Schlesinger v. Reservists Committee to Stop the War*, 418 U.S. 208, 221 (1974).

<sup>7</sup> 412 U.S. 669, 688 (1973).

<sup>8</sup> *Allen v. Wright*, 468 U.S. 737, 755 (1984).



# TA DONATIONS to be DOUBLED by matching funds.

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ized a “money bomb” (many will remember the recent success of the Ron Paul Revolution “money bombs”) for October 30<sup>th</sup>. “TA is calling for every patriot [and] every member of any freedom loving organization to contribute \$10, \$20, whatever you can send,” said Cryer. “If we all chip in our ten or twenty FRNs they will instantly double because of the matching funds pledged by the ALN/AVIDD group of contributors.” If people cannot donate by October 30<sup>th</sup>, **contributions given up to and including November 25<sup>th</sup> will be matched!** To donate through Paypal, please visit [www.truthattack.org](http://www.truthattack.org); to donate by mail, send a check or money order payable to Truth Attack at 4348 Youree Drive, Shreveport, LA 71105.

The money will be used to help initiate as many projects unveiled at the Liberty Council as possible. Those projects will rely in large part on a successful Liberty Works Radio Network to publicize them, so LWRN is

an integral part of the plan. Plans also include legal offensives, seminars to recruit more participation in the freedom movement by attorneys, additional segments of Operation Stop Thief, the production and distribution of “IRS re-education” materials, creation of TA’s own publishing house, court watchers, America’s Most Unwanted Congressmen Awards, and more. A video of the Liberty Council event and the plans unveiled will soon be forthcoming, Cryer said.

Attendees also included radio and media personalities with established audiences who understand the plan for Liberty Works Radio Network and are excited about its possibilities, Cryer said.



## TYRANNY UNVEILED AT OKTOBERFEST



ANNAPOLIS — Liberty Works Radio Network was presented to Oktoberfest attendees the first Sunday in October. The theme, in light of the injunction against SAPF and the recent “bank bailouts,” was the tyranny of the courts. John Kotmair, fiduciary of SAPF, noted that festival goers were more receptive to the need to keep government accountable to the constitution than ever before. Because the booth was heavily visited, the photographer waited until a lull to take this photo.



# Promote LWRN!



- ★ **One DVD for 5 FRNs**
- ★ **10 DVDs for 40 FRNs**

Just what you need to recruit members for the Liberty Works Radio Network. Members can join for 99 FRNs a year — just 27¢ a day! Video in an attractive case with a promotional flyer and invitation to join, application for LWRN Fellowship, and instructions for you to use in recruiting new members.

To order, specify number of copies and “LWRN DVD in your order, and send FRNs or totally blank POSTAL money order to:

**SAPF, P.O. Box 91,  
Westminster, MD 21158.**



# Happy Thanksgiving

Save-A-Patriot Fellowship invites you to come to its annual Thanksgiving Dinner to be held  
—**Saturday, November 22, 2008, 7:30 PM**—  
at 12 Carroll Street, Westminster, MD. Please bring a covered dish; the Fellowship will supply the turkey. Call the receptionist for more details at 410-857-4441.



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In *Schlesinger v. Reservists Committee to Stop the War*, the Reservists claimed that membership in the armed forces reserves by members of Congress violated Art. I § 6, clause 2 of the Constitution: “no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office.” In that case, the majority reiterated that “standing to sue may not be predicated upon an interest of the kind alleged here which is held in common by all members of the public, because of the necessarily abstract nature of the injury all citizens share.”

Yet in the *SCRAP* case, only a year earlier, the court had said, “To deny standing to persons who are in fact injured simply because many others are also injured, would mean that the most injurious and widespread Government actions could be questioned by nobody.” Thus, using such subjective standards is simply a way of promoting rule by men, rather than rule by law, which in the end, promotes just such widespread government violations of the Constitution.

## **Immunizing government from citizens**

Justice Douglas, in his dissenting opinion in *Schlesinger*, recognizes some of these implications of standing: “The requirement of ‘standing’ to sue is a *judicially created instrument* serving several ends: (1) It *protects the status quo* by reducing the challenges that may be made to it and to its institutions. It greatly *restricts the classes of persons who may challenge administrative action*. Its application in this case serves to *make the bureaucracy of the Pentagon more and more immune from the protests of citizens.*” (emphasis added).

## **Exceptional Opportunity for Members!**

If interested, please send a self address stamped envelope to SAPF HQ, P.O. Box 91, Westminster, MD 21158, and you will receive the information in the return mail. **Mark your envelope “Attention: Opportunity.”**

When used in the manner Justice Douglas describes, standing becomes an instrument of oppression. It can be used to insulate the government from all sorts of constitutional challenges, as is being done now with the challenges to McCain’s and Obama’s eligibility to be President. As an example, consider the constitutional guarantee of a *republican form of government*. Under the rules established by the courts for standing, what concrete personal injury could be alleged due to a violation of that requirement?

While there are some valid reasons for the judicial threshold of standing to sue, when the doctrine is used to thwart a determination of constitutionality of governmental actions (and laws), it becomes another roadblock to liberty. Of course, this is just *one* of the roadblocks that the courts have erected to limit access to the judicial power of the United States: the principle of finding any way to dispose of a case without deciding constitutional challenges is another; and allowing the Supreme Court to pick and choose the cases it will deign to hear is perhaps the most flagrant. We will address these roadblocks in future issues.

