

STANDING TO CHALLENGE OBAMA CENTER IN CHICAGO PARK

James C. Kozlowski, J.D., Ph.D.  
© 2021 James C. Kozlowski

Contrary to popular opinion, the jurisdiction of the courts, particularly federal courts, is actually quite limited. The judiciary does not have the power or authority to address, let alone provide legal redress, for every individual grievance or perceived social ill. Resolution of policy disputes and political questions are typically the responsibility of elected representatives in the legislative and executive branches of government, not the judiciary. As illustrated by the case described herein, the standing requirement oftentimes poses a significant procedural hurdle for citizen activists to have a federal court consider a challenge to a local government project which diverts park resources to other uses.

In the case of *Protect Our Parks, Inc. v. Chicago Park District*, 971 F.3d 722 (10th Cir. 8/21/2020), Plaintiff Protect Our Parks and several individual Chicago residents (POP) sued the Defendants City of Chicago and the Chicago Park District (City) to halt construction of the Obama Presidential Center in Chicago's Jackson Park. Unhappy with the environmental and financial impact of the project, POP brought a number of federal and state claims which essentially contended "the Obama Presidential Center does not serve the public interest, but rather the private interest of its sponsor, the Barack Obama Foundation." (This opinion from the United States Court of Appeals for the Seventh Circuit was written by Judge Amy Coney Barrett prior to her nomination and confirmation as an associate justice on the Supreme Court of the United States.)

OBAMA CENTER USE AGREEMENT

First developed as the site for the Chicago World's Fair in 1893, Jackson Park has a storied place in Chicago history, and as public land, it must remain dedicated to a public purpose. The City of Chicago made the judgment that hosting a center devoted to the achievements of America's first African-American President, who has a longstanding connection to Chicago, fit that bill.

In 2014, the Barack Obama Foundation began a nationwide search for the future location of the presidential library for the 44th President. Eventually, the Foundation selected Jackson Park on Chicago's South Side to house the Obama Presidential Center. The City of Chicago acquired the 19.3 acres necessary from the Chicago Park District and enacted the ordinances required to approve the construction of the Center. The City then entered into a use agreement with the Obama Foundation to govern the terms of the Center's construction, ownership, and operation.

The Jackson Park location, the Foundation believed, would be best situated to "attract visitors on a national and global level" and would "bring significant long term benefits to the South Side." Construction of the Center would require the removal of multiple mature trees, as well as the closure and diversion of roadways. It would also require the City to shoulder a number of big-ticket expenses.

## PRIVATE PURPOSE PARK

In their complaint, POP claimed the City had violated Illinois's public trust doctrine. Under Illinois law, the public trust doctrine limits the government's ability to transfer control or ownership of public lands to private parties. In this particular instance, POP had argued the City had violated the public trust doctrine by transferring control of public parkland to the Obama Foundation for a purely private purpose. In addition, under Illinois law, POP had argued the City had acted "ultra vires," i.e., beyond their legal authority in entering the use agreement with the Foundation. Specifically, POP contended the use agreement between the City and the Foundation violated Illinois law because it: "delegates decision making authority to the Foundation, grants the Foundation an illegal lease in all but name, 70 ILCS 1290/1, exchanges the property for less than equal value, 70 ILCS 1205/10-7(b), and fails to require the City to "use, occupy, or improve" the land transferred to it from the Park District, 50 ILCS 605/2."

Under federal law, POP had also argued the City violated the Takings Clause of the Fifth Amendment by taking POP's property interest in public property for a private purpose by "altering the use of Jackson Park and handing over control to the Foundation." Moreover, POP claimed the City "deprived them of property in a process so lacking in procedural safeguards that it amounted to a rubberstamp of the Foundation's decision and violated their rights under the Due Process Clause of the Fourteenth Amendment."

## FEDERAL STANDING REQUIREMENT

In order to address the merits of the district court's grant of summary judgment on the state law claims, the federal appeals court acknowledged "an obligation to assure ourselves of our jurisdiction." The issue was, therefore, whether POP had "standing to bring their state claims in federal court." As noted by the court: "Federal courts are only permitted to adjudicate claims that have allegedly caused the plaintiff a concrete injury; a plaintiff cannot come to federal court simply to air a generalized policy grievance":

The requirement of standing is an essential and unchanging part of the case-or-controversy requirement of Article III [which established the judicial branch in the federal government in the U.S. Constitution]. Its elements are familiar: the plaintiff must allege an injury in fact that is traceable to the defendant's conduct and redressable by a favorable judicial decision.

To satisfy the "injury in fact" requirement for standing, the court acknowledged a plaintiff must have "suffered an invasion of a legally protected interest that is concrete and particularized and actual or imminent, not conjectural or hypothetical." In this particular instance, POP insisted it had adequately alleged that they will suffer an imminent, concrete injury as a result of the City's alleged violations of Illinois law under the public trust doctrine, the primary basis of POP's state law claim. The federal appeals court rejected this argument. In the opinion of the court, POP's state claims alleged "only policy disagreements with Chicago and the Park District, so neither we nor the district court has jurisdiction to decide them."

## STATE PUBLIC TRUST DOCTRINE

As cited by the court, the public trust doctrine "prohibits a state from alienating its interest in public lands submerged beneath navigable waterways to a private party for private purposes." Accordingly, under the public trust doctrine, the court acknowledged: "a state may only alienate publicly owned submerged land to a private party if the property will be used in promoting the interests of the public" or "can be disposed of without any substantial impairment of the public interest in the lands and waters remaining."

While Jackson Park is not a navigable waterway, the court noted some states, including Illinois, have applied the public trust doctrine to land other than navigable waterways. As described by the federal appeals court, the Illinois state supreme court had provided the following explanation of the public trust doctrine under Illinois law:

Once such land has been dedicated to a public purpose... the government holds the properties in trust for the uses and purposes specified and for the benefit of the public. Dedication to a public purpose isn't an irrevocable commitment, and judicial review of any reallocation is deferential [to governmental decisions], particularly if the land in question has never been submerged.

Nonetheless, the doctrine requires courts to ensure that the legislature has made a sufficient manifestation of legislative intent to permit the diversion and reallocation to a more restrictive, less public use.

In this case, POP had argued the City's use agreement with the Obama Foundation violated the public trust doctrine because it transferred control of public land in Jackson Park to the private Foundation for a purely private purpose. Moreover, POP claimed the agreement was "tainted by self-dealing, favoritism or conflicts of interest" because "the City of Chicago had negotiated with the Obama Foundation under the leadership of Mayor Rahm Emmanuel, President Obama's former chief of staff," who was "eager to give the Foundation a sweetheart deal."

#### PUBLIC TRUST FEDERAL STANDING

To establish the "injury in fact" requirement for standing in federal court, POP had alleged violation of the public trust doctrine in Illinois. As noted by the federal appeals court, Illinois state courts had "long recognized the public's injury from a violation of the public trust doctrine as sufficient to create a justiciable controversy." As a result, POP claimed this fact would also establish sufficient injury in fact to establish standing in federal court. The federal appeals court rejected this argument.

As cited by the federal appeals court, the doctrine of standing, which is a corollary of Article III's limitation of the "judicial power" to the resolution of "cases" and "controversies," is a matter of federal law which cannot be altered or expanded by state law. Similarly, the federal appeals court recognized that "state courts are not bound by the limitations of a case or controversy or other federal rules of justiciability" under Article III. As a result, the court noted "the states can empower their courts to hear cases that federal courts cannot—and many states have done just that," including Illinois.

In Illinois, the federal appeals court found "a plaintiff can bring suit under the public trust doctrine without showing that she will suffer special damage, different in degree and kind from that suffered by the public at large." Specifically, in Illinois, the public trust doctrine would allow "members of the public, at least taxpayers who are the beneficiaries of the public trust" to "have the right and standing to enforce it" in state court.

As characterized by the federal appeals court, Illinois had, therefore, "adopted precisely the opposite of the injury-in-fact requirement of federal standing, which demands that every plaintiff prove that he seeks relief for an injury that affects him in a personal and individual way":

While Illinois is free to conclude that plaintiffs rights as residents in a trust of public lands may be enforced without question, Article III doesn't give us the same leeway. To sue in federal court, a plaintiff must also demonstrate also demonstrate an injury to her separate concrete interest.

In this particular instance, the federal appeals court found POP's public trust and ultra vires claims had failed to demonstrate the required injury in fact requirement for standing in federal court. As characterized by the court, POP had simply alleged that "the government has failed to follow the law" under the Illinois public trust doctrine.

While conceding the fact that "[a]ll residents of Chicago—indeed, advocates for good government everywhere—desire that the government follow the law," the federal appeals court held it would be fundamentally "inconsistent" with the exercise of federal judicial power under Article III for a federal court to recognize standing based on such an "undifferentiated" injury:

A generalized grievance, no matter how sincere, is insufficient to confer standing. For Article III purposes, the plaintiffs are nothing more than "concerned bystanders," and concerned bystanders are not entitled to press their claims in federal court. The fact that Illinois would permit them to do so in state court is irrelevant to the Article III inquiry.

## INJURY TO PARK ENVIRONMENT

In the alternative, POP had also claimed standing to proceed in federal court because Jackson Park would suffer an "injury in fact" as a result of the City's violations of state law. In so doing, POP claimed "the City's plan to turn part of Jackson Park into the Obama Presidential Center will cause irreparable damage to Jackson Park that is fairly traceable to the construction project." The alleged damage included "departing from Frederick Law Olmsted's original plan for the landscape of Jackson Park and jeopardizing the Park's listing on the National Register of Historic Places." The federal appeals court rejected this argument.

Despite any damage to Jackson Park by the Obama Presential Center project, the federal appeals court noted "the relevant showing for purposes of Article III standing is not injury to the environment but injury to the plaintiff." In this case, the federal appeals court noted that POP had not alleged the kind of concrete injury that many plaintiffs bringing environmental challenges do: "that they use the affected area and are persons for whom the aesthetic and recreational values of the area will be lessened by the challenged activity." According to the

court, that kind of injury to aesthetic or recreational values is "cognizable under Article III" for purposes of standing, but POP "made no such claim."

#### MUNICIPAL TAXPAYER STANDING

In addition, the federal appeals court also considered whether POP had satisfied the "elements of municipal taxpayer standing." As described by the court, municipal taxpayer standing has the following "two threshold requirements":

First, and most obviously, the plaintiff must actually be a taxpayer of the municipality that she wishes to sue. Second, the plaintiff must establish that the municipality has spent tax revenues on the allegedly illegal action.

The second requirement... requires a plaintiff to show that the taxpayer's action ... is a good-faith pocketbook action. The plaintiff must be able to show that she has the requisite financial interest that is, or is threatened to be, injured by the municipality's illegal conduct. The burden of establishing standing is on the plaintiffs.

Moreover, the court noted that "a plaintiff who asserts municipal taxpayer standing must show that the municipality has actually expended funds on the allegedly illegal elements of the disputed practice."

As cited by the court, Article III is satisfied if there is at least one individual plaintiff who has demonstrated standing. As a non-profit group, the court assumed POP was not a municipal taxpayer. As such, the court found POP "would only have standing to the extent that its members would otherwise have standing to sue in their own right." In this particular instance, the court found only one individual plaintiff remained in the case who was a resident and taxpayer of the City of Chicago. Accordingly, POP's municipal standing argument would be based on that individual plaintiff.

The federal appeals court, however, found "the record doesn't support the conclusion that the plaintiff had suffered a direct pocketbook injury from the conversion of part of Jackson Park into the campus of the Obama Presidential Center." On the contrary, the court found "the Obama Foundation—not the City—will bear the project's costs" of construction and operation of the Obama Presidential Center:

The City's agreement with the Foundation provides that the cost of initially constructing the Center, of operating the Center once it is built, and of maintaining the Center going forward will all be the Foundation's responsibility. Thus, no tax dollars will be spent to build or operate the Center. And if no tax money is spent on the allegedly illegal activity, then a plaintiff's status as a municipal taxpayer is irrelevant for standing purposes.

That being said, the federal appeals court acknowledged "the City is set to spend millions of dollars to prepare the Jackson Park site for construction of the Center, even though it isn't paying for the Center itself." Specifically, the court found "the City will pay for three projects:

alteration and rerouting of roadways, including removing Cornell Drive and converting the roadway into parkland; environmental remediation and utilities work; and construction of athletic facilities." The court, however, noted POP had not claimed that "those three projects themselves violate the public trust doctrine or are otherwise beyond the City's power to undertake."

As described by the federal appeals court: "Municipal taxpayers have standing to sue only when they have both identified an action on the city's part that is allegedly illegal and adequately shown that city tax dollars will be spent on that illegal activity." In this particular instance, the court found "the allegedly illegal conduct is the construction and operation of the Center, and taxpayer dollars aren't being spent on that conduct." As noted, however, the court found POP had made "no showing that the City will pay for those projects with municipal taxes":

It is not enough to simply allege that the City is spending money; the existence of municipal taxpayer standing depends on where the money comes from. The parties fail to grapple with the possibility that the relevant funds come from a source other than tax dollars. And that possibility isn't remote—nearly a third of the City's revenue comes from nontax sources... These nontax sources are as varied as licensing fees, parking tickets, concessions contracts, and federal and state grants... It would be far too simplistic to conclude that the City is spending tax money on a project simply because it is spending some money on a project.

As a result, the court held the mere status of individuals "as municipal taxpayers is insufficient to confer Article III standing."

#### PRIVATE PROPERTY RIGHT

In addition to claims under state law, POP had also brought federal claims against the City, alleging violations of the Fifth and Fourteenth Amendments. As cited by the court, the Fifth Amendment provides: "Private property shall not be taken for public use, without just compensation." In pertinent part, the Fourteenth Amendment states: "Nor shall any State deprive any person of property, without due process of law." In the opinion of the court: "Neither of these claims can get off the ground unless the plaintiffs prove that they have a private property interest in Jackson Park."

In addition to curtailing the state's ability to transfer public land to a private party, POP had argued that the public trust doctrine also conferred "a private property right on members of the public." As members of the public, POP claimed to be the intended "beneficiaries" of Jackson Park which the City was required to "hold in trust on the public's behalf." According to POP, this "beneficial interest" in Jackson Park was "private property that is protected by the United States Constitution."

The federal appeals court acknowledged a beneficial interest in a public park could conceivably allege a sufficient property right to establish a "cognizable injury" for standing purposes. The federal appeals court, however, found precedent case law in Illinois that had held "those owning land adjacent to or in the vicinity of a public park possess no private property right in having the parkland committed to a particular use." Since adjacent landowners held no protected property

interest in public land, the federal appeals court similarly found POP had no property rights in Jackson Park.

As characterized by the federal appeals court, POP's Fifth Amendment "takings" claim had also alleged that the City was required to pay POP "just compensations" because "the Center does not qualify as a public use." The court rejected this argument. Assuming "the City's use agreement with the Foundation qualifies as a transfer to a private party," citing the U.S. Supreme Court's opinion in *Kelo v. City of New London*, the federal appeals court held "a transfer to a private owner can still be constitutional if it is done for a public purpose":

[T]he City's judgment that a particular transfer and use has a public purpose is entitled to deference. It's hard to see, then, how we could second-guess the City's determination that building the Center—with its museum, public library branch, auditorium, athletic center, gardens, and more—is a use with public benefits.

In addition to the lack of a protected property interest, the federal appeals court also found POP's procedural due process claim had failed to "establish that the procedures they received fell short of minimum constitutional requirements":

The City enacted four separate ordinances approving various aspects of the Center. The votes on those ordinances came after multiple public hearings at which residents could raise their concerns about the City's intended plans. And the Illinois General Assembly amended the Illinois Park District Aquarium and Museum Act to explicitly authorize cities and park districts to erect, operate, and maintain "presidential libraries, centers, and museums" in public parks. 70 ILCS 1290/1.

As noted by the court, "a legislative determination provides all the process that is due... If one legislative determination is enough, then five determinations are overkill."

Having found POP's Fifth and Fourteenth Amendment claims failed on the merits, the federal appeals court affirmed the district court's grant of summary judgment for the City. In addition, the federal appeals court vacated the district court's summary judgment on the public trust and ultra vires claims. In so doing, the federal appeals court held POP lacked "standing to bring those latter claims in federal court, and therefore the district court should have dismissed them for lack of jurisdiction."

\*\*\*\*\*

James C. Kozlowski, J.D., Ph.D. is an attorney and associate professor in the School of Sport, Recreation, and Tourism Management at George Mason University in Fairfax, Virginia.  
E Mail: [jkozlows@gmu.edu](mailto:jkozlows@gmu.edu) Webpage with link to law review articles archive (1982 to present):  
<http://mason.gmu.edu/~jkozlows>