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GLADSTONE REALTORS V. VILLAGE OF BELLWOOD: EXPANDING STANDING UNDER THE FAIR HOUSING ACT

Gary M. Haber*

I. INTRODUCTION

On April 17, 1979 the United States Supreme Court rendered its decision in Gladstone Realtors v. Village of Bellwood (Gladstone).1 In a decision written by Justice Lewis Powell,2 the Court interpreted section 812 of the Fair Housing Act of 19683 as providing standing for a municipality and four individuals residing within a section of that municipality targeted for racial steering to sue local realtors who allegedly practiced racial steering.

At first glance, the Gladstone decision4 appears to be merely a narrow, technical interpretation of certain provisions of the Fair Housing Act.5 Upon closer inspection, however, the decision may

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1 441 U.S. 91 (1979).

2 Justice William Rehnquist entered a dissenting opinion in the case, id. at 116. See text at notes 179-94 infra.


4 It should be emphasized that the Supreme Court's decision in Gladstone resolved only the question of the standing of the plaintiffs. The Court did not decide the merits of their claim. As the Court stated, "We conclude that the facts alleged in the complaints and revealed by initial discovery are sufficient to provide standing under Art. III [of the Constitution]. It remains open to petitioners, of course, to contest these facts at trial." 441 U.S. 91, 115 (1979).

The Supreme Court overruled the district court, which had granted defendants' motion for summary judgment in dismissing the plaintiffs' claim for lack of standing. Village of Bellwood v. Gladstone Realtors, No. 75 C 3587 (N.D. Ill. Sept. 23, 1976); Village of Bellwood v. Robert A. Hintze Realtors, No. 75 C 3589 (N.D. Ill. Sept. 29, 1976).

have a far greater impact. It removes a major impediment to court challenges by municipalities and their residents against real estate brokerage firms that engage in the practice of racial steering. Municipalities and their individual residents are better able to protect the demographic integrity of their communities than prior to the *Gladstone* decision. The decision affords them an effective and expeditious means of protecting the racial balance in presently integrated communities. These parties argue that the effect of the decision is to allow residents of an integrated community and indeed the municipality itself to thwart the efforts of realtors who would seek to alter arbitrarily the racial balance and cause the resegregation of the community.\(^6\)

Beyond its holding, the *Gladstone* case can be viewed as resolving a clash between competing interests. One interest consists of those persons already residing in a neighborhood, both blacks and whites, who enjoy its integrated character and seek to preserve it. In addition, the municipality itself may, as in *Gladstone*, wish to maintain its present racial heterogeneity. The second interest is comprised of persons not already residing in the neighborhood but who wish to move there.\(^7\) In implicitly choosing between these two competing interests, it appears that the Court in *Gladstone* has come down in favor of those persons already residing in an integrated community who seek to maintain the current racial balance. The effect that the decision will have on newcomers wishing to move into a community and alter that balance remains to be seen.

This article focuses on the *Gladstone* case and its significance in the development of case law in the area of standing to sue under

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\(^{6}\) The proponents of this view proceed on the assumption that an integrated neighborhood can absorb only a certain percentage of minority residents. Once the optimal number is exceeded, white residents begin to leave the neighborhood. A substantial exodus of white homeowners in turn provides openings for additional black residents. Eventually, it is argued, so many whites move out and so many blacks replace them that the neighborhood is segregated anew. The plaintiffs in *Gladstone* claimed that the two local realtors provided the catalyst for the exodus of white residents by funneling black homebuyers into the neighborhood to the point where they exceeded the optimal number.

\(^{7}\) In *Gladstone*, the neighborhood under discussion was a desirable place to live not only because of its integrated character but because of its suburban location. Those wishing to gain access to such a neighborhood claim that they have a right to reside wherever they wish, regardless of the effect their entry might have on the neighborhood's present racial mixture. They view the actions of those already residing in the community as a thinly veiled attempt to exclude blacks and other minorities from these suburban communities. Not surprisingly, those seeking entry have been joined in their protestations by real estate brokers who stand to make a profit by placing these people in the community.
the Fair Housing Act. As will be explored further, *Gladstone* resolved a difference of opinion among the lower federal courts. The courts had previously disagreed as to the class of plaintiff who may pursue an immediate judicial remedy under section 812 of the Fair Housing Act. The alternative would require that the plaintiff first pursue administrative and available state and local remedies under section 810 of the Act. In *Gladstone*, the Court held that the municipality and individual residents of a neighborhood targeted by local realtors for racial steering met the requirements for standing under section 812. Although the plaintiffs could not claim that they themselves had been steered, the Court found that they had alleged sufficient injury traceable to the actions of the realtors to surmount the standing requirements of injury in fact and causation contained in Article III of the Constitution.8

Secondly, the Court held that its prudential limitations posed no impediment to granting the municipality and its residents standing. In the majority opinion, Justice Powell interpreted standing under section 812 as being as broad as permissible under the constitutional grant of power to the judiciary in Article III, and furthermore concluded that the Court's prudential limitations were not applicable.

In analyzing the *Gladstone* decision, this article will first examine the practice of racial steering that lies at the root of the dispute in the case. It will define steering, describe the ways in which it is practiced, identify the motivational factors that prompt it and examine its effect on communities and individuals.

Second, the article will discuss the Fair Housing Act, under which the plaintiff-respondents brought suit. It will examine the purpose behind the statute and compare the two enforcement provisions, sections 810 and 812. Previous interpretations given by courts to these two sections will be discussed in detail.

Third, this article will analyze the decision in *Gladstone* in terms of the three major issues addressed by the Court: (1) whether sections 810 and 812 provide alternative forms of relief to a similar class of plaintiffs, (2) whether plaintiffs met Article III

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8 "The Judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made under their Authority. . . ." U.S. Const. art. III, § 2, cl. 1 (emphasis added.)

9 For purposes of clarity, the Village of Bellwood and its individual residents, respondents before the Supreme Court, will be referred to throughout this article as the plaintiffs. Gladstone Realtors, petitioners before the Supreme Court, will be referred to as the defendants.
standing requirements and (3) whether the Court's own prudential limitations\textsuperscript{10} prohibit standing.

Finally, this article will explore the impact of \textit{Gladstone} on the Fair Housing Act and on the law in general. Attention will be given to the possible effect of the decision on the practice of racial steering in the future.

\textbf{II. THE PRACTICE OF RACIAL STEERING}

One commentator has summarized steering as follows:

Basically, steering can be described as a process by which realtors attempt to guide a particular buyer away from or towards housing in a specified area. Usually, this practice is premised on the notion that the buyer will be either incompatible or unacceptable to the residents of a housing area due to his race, religion or national origin, or that the residents of an area will be unacceptable to that buyer due to racial, religious or ethnic differences.\textsuperscript{11}

Although realtors engage in steering along lines of religion and ethnic group membership, the most prevalent practice is steering of prospective home buyers based upon their race.

Racial steering is usually practiced in one of two ways: "(1) advising customers to purchase homes in particular neighborhoods on the basis of race and (2) failing, on the basis of race, to show or to

\textsuperscript{10} The term "prudential limitations" is used in this article to refer to restrictions, not mandated by the Constitution, which the Supreme Court imposes on itself to restrict the exercise of its jurisdiction. "Apart from the jurisdictional requirement, this Court has developed a complementary rule of self-restraint, for its own governance (not always clearly distinguishable from the constitutional limitation) which ordinarily precludes a person from challenging the constitutionality of state action by invoking the rights of others (citations omitted)." \textit{Barrows v. Jackson}, 346 U.S. 249, 255 (1953).

An early reference to these self-imposed limitations is found in Justice Brandeis' concurring opinion in \textit{Ashwander v. TVA}, 297 U.S. 288, 341 (1936). Justice Brandeis stressed that the prudential limitations have the effect of preventing some cases from coming before the Court even though they are within its jurisdiction under the Constitution. "The Court developed, for its own governance in the cases confessedly within its jurisdiction, a series of rules under which it has avoided passing upon a large part of all constitutional questions pressed upon it for decision." \textit{Id.} at 346.

In \textit{Flast v. Cohen}, 392 U.S. 83 (1967), the Court turned its attention to its own prudential limitations. In his concurring opinion, Justice Harlan noted that the Court must exercise its jurisdiction in a prudent fashion. "The powers of the federal judiciary will be adequate for the great burdens placed upon them," he wrote, "only if they are employed prudently. . . ." \textit{Id.} at 131. A full discussion of the elements of these prudential limitations is presented in the text at notes 166-78.

\textsuperscript{11} Note, \textit{Real Estate Steering and the Fair Housing Act of 1968}, 12 \textit{TULSA L.J.} 758, 760 (1976) [hereinafter cited as \textit{Real Estate Steering}].
inform buyers of homes that meet their specifications." Realtors typically engage in the first method of steering by discouraging white customers from purchasing homes in integrated neighborhoods. Such neighborhoods are described negatively by realtors as "changing" or "busted." Neighborhoods with smaller or no concentrations of blacks are described in more favorable terms.

Realtors practice the second method of steering in a variety of ways. They may misrepresent to prospective black purchasers the availability of housing in white neighborhoods, maintain different sets of listings for black customers than for white customers, or selectively advertise properties in black areas in publications read primarily by blacks.

Real estate agents engage in steering for a variety of reasons, some of which have more to do with maximizing profits than with any particular approval of racial segregation in housing. It has been suggested that most brokers share an ideology that promotes steering. Prior to 1950, this ideology was reflected in the Code of Ethics of the industry's major trade association.

Despite the real estate industry’s present official policy of nondiscrimination, brokers continue to act in accordance with their shared beliefs. Brokers may steer white buyers from and black buyers to integrated neighborhoods in the belief that this satisfies

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13. See eg. Howard v. W.P. Bill Atkinson Enterprises, 412 F. Supp. 610 (W.D. Okla. 1975). This practice is prohibited by section 804(d) of the Fair Housing Act which makes it unlawful "[t]o represent to any person because of race, color, religion, sex or national origin that any dwelling is not available for inspection, sale or rental when such dwelling is in fact so available." 42 U.S.C. § 3604(d) (1976).
14. Real Estate Steering, supra note 6, at 761 n.16.
15. This ideology takes the form of five core beliefs shared by most brokers. These beliefs are: "(1) most whites don't want black neighbors, (2) property values decline as blacks move into white neighborhoods, (3) integrated neighborhoods eventually become resegregated, (4) whites are hurt financially and socially by sales to blacks in white areas, (5) selling to blacks in white areas is an unethical business practice."Racial Steering: The Real Estate Broker, supra note 7, at 811 n.17. See also HELPER, RACIAL POLICIES AND PRACTICES OF REAL ESTATE BROKERS, 143-54 (1969).
16. Until 1950, Article 34 of the Code of Ethics of the National Association of Real Estate Boards (NAREB) read, "[a] realtor should never be instrumental in introducing into a neighborhood a character of property or occupancy, members of any race or nationality or any individual whose presence would clearly be detrimental to property values in that neighborhood." In 1950, NAREB deleted the reference to race. In 1973, NAREB became known as the National Association of Realtors (NAR). Racial Steering: The Real Estate Broker, supra note 7, at 811 n.14.
17. Id. at 811.
the preferences of prospective home buyers and of those presently residing in the area.18 In this case, the broker may not view his practices as discriminatory but as merely accommodating the segregative tendencies of others.19

Most importantly, steering produces income for brokers. In order to guarantee the steady flow of listings required for a successful real estate office, the realtor must avoid upsetting potential sellers of homes. One court has taken note of the fact that, "[o]ne certain way to risk offending large numbers of homeowners in white neighborhoods was and is to introduce black buyers or even prospective black buyers to the neighborhood."20

Realtors may also employ steering in conjunction with a "blockbusting" strategy. The realtor may induce whites to sell their homes in a particular neighborhood by suggesting that an influx of black homebuyers is imminent. The broker then proceeds to steer black buyers into the area to replace the departing whites.21

Regardless of the motivation behind it, steering by brokers has had an injurious effect both on those who are steered and on the communities involved. Steering impedes the attainment of the goals of the Fair Housing Act which are, (1) eliminating the feeling of shame felt by those who are discriminated against in the sale or rental of housing, (2) promoting freedom of choice in housing and (3) fostering integrated neighborhoods.24

When realtors steer, they insult the dignity of their black customers and of the residents of black areas.25 By restricting the range of housing opportunities available to a particular buyer based upon his race, steering forecloses freedom of choice in hous-
Finally, steering thwarts residential integration by maintaining segregation of some neighborhoods as well as promoting the resegregation of racially mixed neighborhoods.\(^27\)

Steering has come under great attack because of the harmful effect it has upon the community in which it is practiced. Steering can cause a neighborhood to become racially transitional. As one court has graphically described, life in a racially transitional neighborhood takes its toll on property values and on the collective psyche of the residents.\(^28\) In recognition of the severity of this problem, Congress enacted the Fair Housing Act of 1968.

III. THE FAIR HOUSING ACT OF 1968

The Fair Housing Act of 1968 known as Title VIII of the Civil Rights Act of 1968,\(^29\) has as its avowed purpose the provision of fair housing throughout the nation within the limits of the Constitution.\(^30\) Earlier cases have interpreted the Act as designed to as-

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\(^{26}\) Id.

\(^{27}\) Id. As suggested in testimony before a Maryland commission which examined the practices of that state's realtors in 1971:

If the real estate industry could be persuaded to abandon the practice of steering their clients into racially segregated neighborhoods, there would be a much better chance of real integration in our metropolitan housing area. Under present practices, however, the evils of segregation are encouraged and perpetuated by some members of the real estate industry.


\(^{28}\) As one court has noted:

First, a sense of panic and urgency immediately grips the neighborhood as rumors circulate and recirculate about the extent of the intrusion (real or fancied), the effect on property values and the quality of education. Second, there are sales and rumors of sales, some true, some false. Third, the frenzied listing and sales of homes attracts real estate agents like flies to a leaking jar of honey. Fourth, even those owners who do not sell are sorely tempted as their neighbors move away, and hence those who remain are peculiarly vulnerable. Fifth, the names of successful agents are exchanged and recommended between homeowners and frequently the agents are called by the owners themselves, if not to make a listing then at least to get an up-to-date appraisal. Constant solicitation of listings goes on by all agents either by house-to-house calls and/or by mail and/or by telephone calls to the point where owners and residents are driven almost to distraction.


\(^{30}\) “It is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States.” 42 U.S.C. § 3601 (1976).
sure fair housing practices, to prevent discrimination in the sale, rental, financing or brokerage of private housing and to provide federal enforcement for remediying such discrimination, to end the unfairness of racial discrimination forever, and to require that local housing authorities and federal agencies take affirmative steps to eliminate discrimination in housing.

Section 803 lays out the coverage of the statute. According to section 803(a)(2), the prohibition against discrimination in the sale or rental of housing applies to all dwellings, including those sold or rented by a realtor. Section 803(b) contains the only exemptions from the coverage of the Act; the exemptions cover single-family homes sold or rented by an individual owner without the use of the services of a realtor and without the use of discriminatory advertising. The Act also exempts the so-called "Mrs. Murphy" landlord

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82 Otero v. New York City Housing Authority, 484 F.2d 1122, 1133 (2d Cir. 1973) (construing 42 U.S.C. §§ 3601 and 3608(d) (1976)).


The prohibition of discrimination in the sale or rental of housing specifically applies to dwellings owned or operated by the federal government, 42 U.S.C. § 3603 (a)(1)(A) (1976); dwellings made available either wholly or partially by loans, advances, grants or contributions from the federal government provided that payment in full has not been made before April 11, 1968, 42 U.S.C. § 3603 (a)(1)(B) (1976); and dwellings made available through federal urban renewal programs, 42 U.S.C. § 3603 (a)(1)(D) (1976).

86 42 U.S.C. § 3603 (b)(1) (1976) states that:

Nothing in section 3604 of this title (other than subsection (c)) shall apply to (1) any single-family house sold or rented by an owner: Provided, That such private individual owner does not own more than three such single-family houses at any one time: Provided further, That in the case of the sale of any such single-family house by a private individual owner not residing in such house at the time of such sale or who was not the most recent resident of such house prior to such sale, the exemption granted by this subsection shall apply only with respect to one such sale within any twenty-four month period: Provided further, That such bona fide private individual owner does not own any interest in, nor is there owned or reserved on his behalf, under any express or voluntary agreement, title to or any right to all or a portion of the proceeds from the sale or rental of, more than three such single-family houses at any one time: Provided further, That after December 31, 1969, the sale or rental of any such single-family house shall be excepted from the application of this subchapter only if such house is sold or rented (A) without the use in any manner of the sales or rental services of any real estate broker, agent, salesman or of such facilities or services of any person in the business of selling or renting dwellings, or of any employee or agent of any such broker, agent, salesman, or person and (B) without the publication, posting or mailing, after notice, of any advertisement or written notice in violation of section 3604(c) of this title; but nothing in this
who rents out rooms in her home, provided that the dwelling is occupied by no more than four families living independently of each other.\footnote{38}

Section 804 is that portion of the statute which prohibits various discriminatory practices in the sale or rental of housing.\footnote{39} In recent years, several courts have declared steering to be illegal as it violates section 804.\footnote{40} Section 804(a) makes it unlawful to "refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex or national origin."\footnote{41} Most courts that have held that steering violates the Fair Housing Act have done so under section 804(a),\footnote{42} on the grounds that racial steering serves to make unavailable or deny a dwelling to a prospective buyer on the basis of race.

One lower court, however, cited section 804(b) in holding steering to be illegal.\footnote{43} That section prohibits discrimination on the basis of race, color, religion, sex or national origin in the provision of brokerage services or in the conditions of rental or sale.\footnote{44} There are three additional subsections of section 804 aimed at prohibiting discriminatory real estate advertising,\footnote{45} misrepresentation of a dwelling's availability\footnote{46} and the blockbusting techniques employed by brokers.\footnote{47}
The Fair Housing Act provides two avenues through which a complainant may challenge a broker's racial steering practices. Section 810 establishes a mechanism that combines administrative enforcement with the right to seek redress in the courts.\(^46\) Basically, this section allows "[a]ny person who claims to have been injured by a discriminatory housing practice or who believes that he will be irrevocably injured by a discriminatory housing practice that is about to occur (hereafter 'person aggrieved'). . ."\(^47\) to file a complaint with the Secretary of Housing and Urban Development. The complaint must be filed within 180 days after the incident occurred.\(^48\) If the Secretary decides after investigation to resolve the complaint, he shall proceed by "informal methods of conference, conciliation and persuasion."\(^49\)

The Secretary must defer to state and local agencies whenever state or local law provides remedies substantially equivalent to those provided by section 810.\(^50\) If the state or local agency is unable or unwilling to act, the Secretary may then proceed informally. If the Secretary is unable to obtain voluntary compliance, the complainant may bring suit in federal district court against the alleged discriminator under section 810(d).\(^51\)

Section 812, on the other hand, does not require the complainant to pursue an administrative remedy before filing suit in federal court.\(^52\) It allows the complainant 180 days after the alleged discriminatory action occurred in which to bring the suit.\(^53\) Unlike section 810 which employs the term "person aggrieved," section 812 does not describe the class of complainants who may bring an action. It merely states that the rights granted by sections 803

\(^47\) Id. § 3610(a).
\(^48\) Id. § 3610(b).
\(^49\) Id. § 3610(a).
\(^50\) Id. § 3610(c).
\(^51\) The statute reads:

   If within thirty days after a complaint is filed with the Secretary or within thirty days after expiration of any period of reference under subsection (c) of this section, the Secretary has been unable to obtain voluntary compliance with the subchapter, the person aggrieved may, within thirty days thereafter, commence a civil action in any appropriate United States district court, against the respondent named in the complaint to enforce the rights granted or protected by this subchapter, insofar as such rights relate to the subject of the complaint . . .


\(^53\) Id. The plaintiffs in Gladstone sought relief under section 812.
through 806 may be enforced, "by civil actions in appropriate United States district courts without regard to the amount in controversy and in appropriate state or local courts of general jurisdiction." 1

In terms of remedies under section 812, the court may grant any permanent or temporary injunction or restraining order it deems appropriate. It may also award the plaintiff actual damages and up to $1,000 in punitive damages. In addition, the court may award reasonable attorney's fees where it determines that the plaintiff is unable to assume this expense.

IV. INTERPRETATIONS OF THE FAIR HOUSING ACT PRIOR TO GLADSTONE

Prior to the Supreme Court's decision in Gladstone, lower federal courts differed as to the proper relationship between sections 810 and 812. A majority of courts held that the sections were alternative measures open to all victims of Title VIII violations. One lower court, on the other hand, held that each section is available to a separate class of plaintiffs. As will be examined more closely, the Supreme Court in Gladstone validated this first construction of sections 810 and 812.

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1 For a discussion of section 803 see text at notes 35-38, supra. For a discussion of section 804 see text at notes 39-47, supra. Section 805 is aimed at eliminating discrimination in the financing of housing. It makes it unlawful for banks, building and loan associations, insurance companies, or other makers of commercial real estate loans to deny a loan or other financial assistance for purposes of constructing, renovating or purchasing a dwelling or to discriminate in the interest rate or other conditions because of the race, color, religion, sex or national origin of the applicant. 42 U.S.C. § 3605 (1976). Section 806 prohibits denial of membership and participation in or access to multiple listing services or other brokerage services on account of race, color, religion, sex or national origin. 42 U.S.C. § 3606 (1976).


3 Id. § 3612(c).

4 Id.

5 Id.

6 42 U.S.C. § 3612(c).


9 TOPIC v. Circle Realty Co., 532 F.2d 1273, 1275-76 (9th Cir. 1976), cert. denied 429 U.S. 859 (1976).

10 "The most plausible inference to be drawn from Title VIII is that Congress intended to provide all victims of Title VIII violations two alternative mechanisms by which to seek redress: immediate suits in federal district court, or a simple, inexpensive, informal concilia-
In 1972, the Supreme Court decided the case of Trafficante v. Metropolitan Life Ins. Co. Two tenants, one black and one white, of a large San Francisco apartment complex filed a complaint with the Secretary of Housing and Urban Development alleging that the landlord's rental policies discriminated against non-whites, as a result of which the tenants alleged injury. Since less than 1 percent of the tenants in the complex were non-white, the plaintiffs charged that they were stigmatized by living in a "white ghetto" and were deprived of the social and professional benefits that would have accrued from living with non-whites.

The plaintiffs brought suit under both section 810(a) of Title VIII and 42 U.S.C. § 1982, the Civil Rights Act of 1866. The plaintiffs in intervention (four additional residents of the complex and an unincorporated association of its residents), however, based their action on section 812 and section 1982.

The Court in Trafficante held that the two tenants were "persons aggrieved" within the meaning of section 810(a) and thus had standing to sue under that section. The Court held that the definition of that term demonstrated a congressional intent to define standing under section 810 "as broadly as would be permitted by Article III of the Constitution." In other words, the Court would not employ its own prudential limitations to further restrict standing so long as the Article III standing requirements were met.

Although the Trafficante Court ostensibly based its grant of standing on section 810, some lower courts have concluded that the decision would support standing under section 812 in an identical situation. One court cited the decision's failure to expressly state

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Id. at 206-07.

Id. at 208.


Id. at 209. See note 8 supra.

Although the Supreme Court focused on § 3610 in Trafficante, it mentioned § 3612 without distinguishing it. The Court's failure to do so, particularly since it declined to reach the question of standing under § 1982 [42 U.S.C. § 1982 (1976)] at [Trafficante v. Metropoli-
that the case was decided only on grounds of section 810 and not section 812 as evidence that standing under both sections 810 and 812 was as broad as permissible by the case or controversy requirement of Article III. Although hesitant to read Trafficante as controlling on the question of standing to sue under section 812, one court thought it significant that the decision expressly declined to address the issue of standing under 42 U.S.C. § 1982 but did not expressly decline to consider standing under section 812.

While several lower court decisions suggested that sections 810 and 812 provided alternative forms of relief to an identical class of persons (i.e. anyone having been injured by a discriminatory housing practice whether or not the discrimination was aimed at them directly), one lower court suggested that the sections were aimed at different classes of plaintiffs. According to the Ninth Circuit’s decision in TOPIC v. Circle Realty Co., the immediate access to federal courts provided by section 812 is available only to those who are the direct victims of discrimination. Those who claim the less direct injury of having been denied the benefits of living in an integrated community must proceed under section 810.

TOPIC involved a fact situation similar to Gladstone. Individual residents of the affected community and an unincorporated civil rights organization brought suit to end the alleged practice of racial steering there by a local realtor. The plaintiffs, none of whom had actually been subjected to racial steering, complained of injuries nearly identical to those complained of by the plaintiffs in Trafficante. Unlike Trafficante however, the plaintiffs brought this case under section 812.

The court ruled that because they were not the direct victims of discrimination in that they had not been steered, the plaintiffs

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Id. See note 10 supra.


See note 61 supra.

532 F.2d 1273 (9th Cir. 1976), cert. denied, 429 U.S. 859 (1976).

Id. at 1276.

Id. at 1275.

Id. at 1274.

Id. at 1275.

Id.
lacked standing under section 812. The court also distinguished the injury suffered by the plaintiffs in Trafficante. The court suggested that racial steering by realtors in suburban communities may be less responsible for discriminatory housing patterns than are discriminatory rental policies in a single apartment complex.

V. THE Gladstone CASE

The issue in Gladstone centered on whether the plaintiffs had brought suit under the appropriate section of the Fair Housing Act to challenge the steering practices of local realtors Gladstone and Hintze. The original plaintiffs were the Village of Bellwood, a municipality and suburb of Chicago in western Cook County, the Leadership Council for Metropolitan Open Communities, a nonprofit corporation active in fighting segregation in housing, and six individuals. Four of the individual plaintiffs were white homeowners residing in a twelve by thirteen block area of Bellwood targeted for racial steering by the brokers. The fifth individual was a black homeowner residing in Bellwood but outside the target area. The sixth individual was a black resident of the neighboring community of Maywood.

As area residents became concerned that local realtors were directing blacks desirous of obtaining housing in the western suburbs

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81 Id.
82 Id. at 1276.
83 As the court noted:

The plaintiffs here are not residents of a single apartment complex but rather of a section of metropolitan Los Angeles with a population exceeding 100,000. Therefore, the role played by defendants' alleged racial steering in denying the plaintiffs the benefits of living in an integrated community may be so attenuated as to negate the existence of any injury in fact. It is quite possible, that even absent the defendants' discriminatory practices, Carson and Torrance would still be segregated communities.

(citation omitted) TOPIC v. Circle Realty Co., 532 F.2d 1273, 1275 (9th Cir. 1976).

85 Id. at 95.
86 Id. at 95 n.3.
87 Id. at 93. The Supreme Court granted standing only to the four individuals residing within the target neighborhood but did not consider the standing of the two individuals residing elsewhere. “Although we intimate no view as to whether persons residing outside of the target neighborhood have standing to sue under § 812 of Title VIII, we do not foreclose consideration of this question if, on remand, the District Court permits respondents Perry and Sharp to amend their complaint to include allegations of actual harm.” Id. at 113, n.25.
to Bellwood and concurrently steering white homebuyers to other communities,88 the Village of Bellwood conducted an investigation of the practices of local realtors. This investigation, conducted with the assistance of five of the individual respondents who served as testers,89 concluded that Gladstone Realtors and Robert A. Hintze Realtors were engaging in steering.

As a result of the investigation, the Village, the six individuals and the Leadership Council for Metropolitan Open Communities80 brought separate suits against Gladstone and Hintze under section 812 of the Fair Housing Act and section 1982 of the Civil Rights Act.81

"A tester is instrumental in providing proof of a violation by posing as a purchaser with similar, if not the same criteria for housing and approximately the same personal characteristics as the aggrieved party (price range, family size and neighborhood selection) except for the fact that the tester is of a different race. Any significantly different treatment of a tester by a realtor provides a good basis for a claim of racial discrimination. . . ." Real Estate Steering, supra note 6, at 770-71.

The investigation conducted by the Village concluded that although they requested similar housing in terms of price, size and general location, white testers were given listings in western Bellwood or in neighboring all-white communities while blacks were shown homes in eastern Bellwood or in other integrated neighborhoods. Brief for Respondents at 5.

The District Court for the Northern District of Illinois in Village of Bellwood v. Gladstone Realtors, No. 75 C 3587 (N.D. Ill. Sept. 23, 1976) granted defendant's motion for summary judgment on the grounds that the plaintiffs lacked standing under section 812 because the TOPIC decision limited that section to the primary victims of discrimination. This analysis of TOPIC was expressly adopted by the district court in Village of Bellwood v.
The Supreme Court's decision in *Gladstone* will be analyzed in terms of three questions. First, do sections 810 and 812 of the Fair Housing Act provide alternative forms of relief to a similar class of plaintiffs? The Court determined that they do. Second, have the plaintiffs met the Article III standing requirements? The Court determined that they have. Finally, do the Court's own prudential limitations prohibit standing? The Court ruled that they don't.92

A. Are Sections 810 and 812 Equally Available Alternatives?

The majority opinion by Justice Powell interpreted sections 810 and 812 as providing alternative forms of relief to both direct and indirect victims of discrimination.93 Justice Powell considered the resolution of this issue to be of critical importance, because if section 812 is not available to the plaintiffs, then the Court need not consider whether they have met Article III standing requirements.94

The Supreme Court's construction of sections 810 and 812 validated the interpretation given by the Court of Appeals, which had held that the Village of Bellwood and the individual plaintiffs could sue under section 812. The Court of Appeals stressed the fact that as the Fair Housing Act is designed, the primary means of obtaining compliance is through complaints by private persons.95 The same reasoning would be applicable, the Court of Appeals stated, unless there were some reason to think that Congress intended sections 810 and 812 to apply to different sets of private litigants.96 In its examination of the legislative history, the lower

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Robert A. Hintze Realtors, No. 75 C 3589 (N.D. Ill. Sept. 29, 1976) in which defendant's motion for summary judgment was also granted.

Both cases were consolidated for decision by the Court of Appeals for the Seventh Circuit. The circuit court reversed the district court and held that both the individual plaintiffs and the Village had standing to sue under section 812.

92 The respondents' 1982 claim was not considered by the District Court in *Gladstone*. "The Court of Appeals found it unnecessary to consider respondents' standing under § 1982. For this reason, and because of our decision with respect to respondents' standing under Title VIII, we do not reach the § 1982 issue." 441 U.S. 91, 116 n.33 (1979).

93 See note 63 *supra*.

94 "The issue is a critical one for if the district court correctly understood and applied section 812, we do not reach the question whether the minimum requirements of Article III have been satisfied. If the court of appeals is correct, however, then the constitutional question is squarely presented." 441 U.S. 91, 101 (1979).

95 "This reasoning would surely apply here, unless there were some reason to think that Congress intended §§ 3610 and 3612 to serve different types of private litigants." Village of Bellwood v. Gladstone Realtors, 569 F.2d 1013, 1019 (7th Cir. 1978).

96 *Id.*
court found no such intention. It dismissed the contention that section 810 was intended to be a ""slower", less preferred route to relief for those less needy of immediate relief.""*

The District Court in Gladstone, on the other hand, had adopted the reasoning of the TOPIC v. Circle Realty Co. decision and had construed sections 810 and 812 as applying to different classes of plaintiffs. Section 812 was, the court held, limited to the direct victims of discrimination.** The conciliation processes of section 810, the District Court had held, were more appropriate to situations where no direct injury is involved and delaying access to the courts would not exacerbate the plaintiff's injuries.*** The Supreme Court decision had the effect of nullifying the District Court's contrary interpretation of sections 810 and 812.

The Supreme Court in Gladstone refused to accept the defendants' contention that the sections were not alternatives but that direct victims of discrimination in need of quick relief, may proceed under either section while indirect victims may proceed only under section 810.**** Such an interpretation, the Court determined, was inconsistent with both the terms of the statute and its legislative history.*****

First, nowhere does the language of section 812 suggest that it is open to a more limited class of plaintiffs than section 810. The absence of the words "person aggrieved" from section 812 does not indicate that it is more limited than section 810 which grants relief to any "person aggrieved". The Court noted that the phrasing of section 812 in the passive voice obviates the need to refer to the

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* Id. The Court of Appeals recognized that its interpretation of sections 810 and 812 as available to the same class of plaintiffs "may to some degree seem to offend a judicial penchant for consistency to say that Congress has, in the same act, established an administrative remedy and authorized plaintiffs at their discretion to bypass it." Id. at 1020. The lower court resolved this inconsistency by suggesting that Congress, in recognition of HUD's lack of coercive powers, intended to allow the complainant to choose between pursuing an administrative remedy and proceeding directly to the courts. Id.


*** Id. Plaintiffs argued that indirect victims of discrimination may also be in need of immediate relief when they challenge the steering practices of brokers. Not only must these practices be halted quickly in order to minimize the adverse effects on the community but the residents must be shown that "the law can protect them from being panicked out of their homes." Brief for Respondents, at 37.


***** Id.
class of plaintiffs to which the section applies.\textsuperscript{102}

In making this determination, the Court rejected the primary rationale offered by the defendants in support of their argument that section 812 applies to a narrower range of plaintiffs than section 810. The defendants argued that the inclusion of the phrase in section 810 broadened the class of plaintiffs who might sue under its provisions.\textsuperscript{103} In a variety of other situations, they claimed, the phrase has been, "used to create an expansive right of access to the courts."\textsuperscript{104} Since the inclusion of the phrase expands the class of plaintiffs who may utilize section 810 procedures, the defendants argued that the absence of such language from section 812 restricts its availability to those who have been directly discriminated

\begin{footnotesize}
\textsuperscript{102} Id.
\textsuperscript{103} Id. at 101. Plaintiffs on the other hand, claimed that the inclusion of the phrase "person aggrieved" narrowed rather than broadened the class of plaintiffs who might make use of section 810. There was some question as to who had standing under H.R. 14765, a predecessor of the fair housing legislation passed in 1968. Representative Cramer (R-Fla.) criticized the bill because it did not limit standing to "persons aggrieved." He observed that under the public accommodations law, the right to sue was so limited. In the end, the phrase was not inserted in H.R. 14765. In Representative Cramer's opinion, this made standing broader than if this language had been included. \textit{Hearings on Civil Rights, 1966 (H.R. 14765) before Subcommittee No. 5 of the House Committee on the Judiciary, 89th Cong. 2d Sess. 1203} (1966).

\textsuperscript{104} Brief for Petitioners at 23 n.6. Gladstone Realtors v. Village of Bellwood, 441 U.S. 91 (1979) \[hereinafter cited as Brief for Petitioners\]. See American Power and Light Co. v. SEC, 325 U.S. 385, 390-91 (1945); FCC v. Saunders Bros. Radio Station, 309 U.S. 470 (1940); Scanwell Laboratories, Inc. v. Shaffer, 424 F.2d 859, 862-65 (D.C. Cir. 1970). The petitioners cited authority to the effect that when included in a statute, words of long established meaning "are presumed to have been used in that sense unless the context compels to the contrary." Lorillard v. Pons, 434 U.S. 875, 883 (1978), \textit{quoting Standard Oil CO. v. United States, 221 U.S. 1, 59} (1911).

In a slightly different context, Judge Jerome Frank of the Court of Appeals for the Second Circuit discussed the meaning of the phrase "person aggrieved." He noted that the Supreme Court, has "construed the 'person aggrieved' review provision as a constitutionally valid statute authorizing a class of 'persons aggrieved' to bring suit in a Court of Appeals to prevent alleged unlawful official action or to vindicate the public interest, although no personal interest of such persons had been or would be invade." \textit{Associated Industries v. Ikkes}, 134 F.2d 694, 705 (2d Cir. 1943), \textit{vacated as moot}, 320 U.S. 707 (1943).

In further support of their construction of the term "person aggrieved," the defendants pointed to two cases in the employment area. In both E.E.O.C. v. Bailey Co., 563 F.2d 439 (6th Cir. 1977) \textit{cert. denied}, 435 U.S. 915 (1978) and \textit{Waters v. Heublein, Inc.}, 547 F.2d 466 (9th Cir. 1976) \textit{cert. denied}, 435 U.S. 915 (1977), white employees sued under Title VII claiming that they had been injured by the racially discriminatory policies of their employers directed against others. The courts held that the employees, who alleged that they "suffered from the loss of benefits from the lack of association with racial minorities at work," were "persons aggrieved" within the meaning of the statute. \textit{Waters v. Heublein, Inc.}, 547 F.2d 466, 469 (1976).
\end{footnotesize}
The Court reasoned further that it makes no difference that section 812 speaks in terms of enforcing the rights granted by section 804 yet that section does not grant a right to have one's community protected from the harms of racial segregation. If Congress determined that standing under section 812 should be granted to the full extent of Article III and that prudential limitations should be disregarded, as long as the plaintiff suffers actual injury as a result of the defendant's conduct, he is entitled to prove that the rights of another granted by section 804 were violated and seek redress under section 812. "That respondents themselves are not granted substantive rights by § 804, hardly determines whether they may sue to enforce the § 804 rights of others," the Court stated.

The Court also rejected the defendants' contention that Congress imposed administrative remedies in section 810 for indirect victims of discrimination so as not to flood the courts with litigation. Section 810, the Court reasoned, does not serve to screen cases out of the federal courts. Section 810(d) seems to give the complainant a right to commence an action in federal court whether or not the Secretary of Housing and Urban Development pursues or completes informal conciliation.

In addition, the Court was unpersuaded that the restriction of access to the federal courts in section 810 means that that section is directed at a larger class of plaintiffs than section 812. Under section 810(c) the Secretary of Housing and Urban Development must suspend his efforts if local remedies providing protection equivalent to Title VIII are being carried forward and thus may delay the availability of judicial review under section 810(d). Sec-

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105 Petition for Certiorari, at 21.
106 441 U.S. 91, 103 n.9 (1979).
107 Id.
108 Id.
109 According to the defendants' brief, restricting immediate access to the judicial process to potential homebuyers who have themselves been steered, serves to preserve scarce judicial resources for those most in need of them. Brief for Petitioners at 26, n.8. Plaintiffs argued that the potential homebuyer who has been denied the housing of his choice because of his race needs prompt judicial relief before that housing is sold or rented to another person. Petitioner's Reply Brief, at 7, Gladstone Realtors v. Village of Bellwood, 441 U.S. 91 (1979) [hereinafter cited as Petitioners' Reply Brief].
110 "[I]t is clear that § 810 does not serve as a screening mechanism to deflect certain classes of Title VIII grievances from the federal courts." 441 U.S. 91, 104 n.10 (1979).
111 Id. at 104 n.11.
tion 810(d) further conditions civil action on the absence of equivalent state or local remedies.\footnote{112}

The Court spent considerable time examining the legislative history of the Fair Housing Act.\footnote{113} It concluded that the legislative history supports the view that sections 810 and 812 are alternative remedies available to the same class of plaintiffs.\footnote{114} The Court noted that the early bills on fair housing provided for a judicial remedy only.\footnote{115} Administrative relief was added later in the belief that, "it would provide a more expeditious and less burdensome method of resolving housing complaints."\footnote{116}

Plaintiffs argued that Congress had not intended that complainants exhaust all state and local remedies prior to filing suit under section 812. Brief for Respondents at 39. Indeed, Congress recognized that local governments have played a role in creating and perpetuating segregated housing. See 114 Cong. Rec. 2279-80, 2699-2703, 3422, 2281, 2287-28 (1968) (remarks of Sens. Mondale and Brooke); Mayers v. Ridley, 465 F.2d 630, 632 (D.C. Cir. 1972) (en banc) (Wright, J. concurring). Senator Mondale noted that "...[A]n important factor contributing to the exclusion of Negroes from such areas, moreover, has been the policies and practices of agencies of government at all levels," 114 Cong. Rec. 2277 (1968) (remarks of Sen. Mondale).

As recognized by the Court in Trafficante v. Metropolitan Life Ins. Co., 409 U.S. 204 (1972), history of the Fair Housing Act is rather incomplete. Title VIII was introduced on the floor of the Senate as an amendment to H.R. 2516, 90th Cong., 2d Sess. (1968). Thus, there are no committee reports examining the statute and "reliance must therefore be placed on hearings and debate." Racial Steering: The Real Estate Broker, supra note 12, at 821 n.49.


Although these bills were all introduced in the 89th Congress, the successful fair housing effort actually began during the first session of the 90th Congress. On August 11, 1967, the House passed H.R. 2516 which provided protection to civil rights workers. The original bill contained no fair housing provisions. Senators Mondale and Brooke sponsored S. 1358 as an amendment to the bill. S. 1358 provided for the achievement of fair housing in three steps: first, in all federally-assisted housing; second, in all multi-dwelling housing; and finally, in all single-family residences, excluding "Mrs. Murphy" rentals.

The Mondale/Brooke amendment was vehemently opposed by Southern Senators who interposed numerous procedural delays to keep it from coming to the floor for a vote. To break the deadlock, Senator Dirksen proposed a substitute amendment to H.R. 2516. It emphasized more of a change in enforcement than in coverage, although it did remove from coverage single-family homes sold by an owner-occupant without the use of a broker. The Dirksen amendment reduced the enforcement powers of HUD, while increasing those of the Attorney General. It also contained the basis for what later became sections 810 and 812. The Dirksen amendment was passed by the Senate on March 11, 1968 by a vote of 71-20.

H.R. 2516 was returned to the House with the fair housing amendment. It was passed unamended by the House on April 10 and signed by President Johnson on April 11, 1968. For a more detailed discussion of the legislative history of the Act, see Dubofsky, Fair Housing: A Legislative History and A Perspective, 8 WASHBURN L.J. 149, 149-66 (1969).
The Court found no evidence that Congress intended to condition access to the courts on prior resort to the Secretary of Housing and Urban Development.\textsuperscript{117} To the contrary, Title VIII did not provide the Secretary with the powers necessary to resolve a large number of cases, since Title VIII provides only informal conciliatory powers. This is unlike earlier fair housing proposals that would have provided him with substantive enforcement power,\textsuperscript{118} including the power to issue "cease and desist" orders.

The Court noted that it was the understanding of Representative Emmanuel Celler, who as chairman of the Judiciary Committee summarized the statute on the floor of the House, that sections 810 and 812 provided alternative remedies to all complainants under Title VIII.\textsuperscript{119} In explaining the bill, Celler did not suggest that section 812 was reserved for certain kinds of plaintiffs and the section 810 procedure for others. Nor did he classify any rights as exclusively enforceable by section 810.\textsuperscript{120} The Court noted that the

Experience with comparable State and local agencies repeatedly has shown that the administrative process is quicker and fairer. It more quickly implements the rights of the person discriminated against and also quickly resolves frivolous and otherwise invalid complaints. Conciliation is easier in an informal administrative procedure than in the formal judicial process. 112 Cong. Rec. 18402 (1966) (remarks of Rep. Conyers).

\textsuperscript{117} 441 U.S. 91, 106 (1979). Plaintiffs contended that private suits were not to be restricted since it was intended that they and not administrative action by HUD would constitute the primary means of enforcing Title VIII. In Trafficante, the Court stressed that private complaints under section 812 are the major means of obtaining compliance with the Act. Such persons "act not only on their own behalf but as private attorneys general in vindicating a policy that Congress considered to be of the highest priority." Trafficante v. Metropolitan Life Ins. Co., 409 U.S. 205, 211 (1972). The important role of private attorneys general is enhanced by the fact that, "Congress contemplated a very limited role for HUD." Green v. Ten Eyck, 572 F.2d 1233, 1242 (8th Cir. 1978).

Complainants are authorized to act as private attorneys general in a variety of contexts where complete reliance on governmental prosecution would lead to piecemeal enforcement of the statute. Racial Discrimination, supra note 21, at 302. See e.g., the Civil Rights Act of 1964, 42 U.S.C. § 2000a-3(a) (1964), the Clean Air Amendments of 1970, 42 U.S.C. § 7604 (1976) (amending 42 U.S.C. §§ 7401-7642 (1976)).

\textsuperscript{118} 441 U.S. 91, 106 n.15 (1979).

\textsuperscript{119} Id. Representative Emmanuel Celler (D.-N.Y.) stated that, "[i]n addition to administrative remedies, the bill authorizes immediate civil suits by private persons within 180 days after the alleged discriminatory housing practice occurred. . . ." 114 Cong. Rec. 9560 (1968)(remarks of Rep. Celler).

\textsuperscript{120} The plaintiffs also pointed to an exchange between Senator Sam Ervin, chairman of the Senate Judiciary Committee and a representative of the National Association of Real Estate Boards regarding section 406 of S. 3296, the precursor of section 812. In reference to the standing requirement under section 406, the NAREB representative confirmed Senator Ervin's understanding, "that it doesn't even have a requirement that the plaintiff shall have been refused the rental or purchase of real estate. . . ." Hearings on S. 3296, Subcommittee
Justice Department had a similar understanding of the relationship between sections 810 and 812.121

A report of the House Judiciary Committee further recognized that no distinction was intended to exist between sections 810 and 812 as to eligible plaintiffs and remedies.122 Indeed, the report's use of the term "person aggrieved" to refer to potential plaintiffs under section 812 as well as the reference to the sections as alternatives indicates that the authors of the report believed that the two sections were intended to reach a single class of plaintiffs.123

The Court found that the Department of Housing and Urban Development, the federal agency primarily responsible for the implementation of Title VIII, has consistently treated sections 810 and 812 as alternative remedial provisions.124 The Court has previously stated that great weight should be given to the agency's interpretation of the statute.125

That the Department of Housing and Urban Development has treated sections 810 and 812 as alternatives is borne out by the enforcement regulations promulgated by the Secretary.126 Furthermore, HUD's internal handbook describes section 812 as an "additional rem[ed]y for discriminatory housing practices [that] may be pursued concurrently with the complaint procedure of [section 810]."127

181 In explaining an amendment by Senator Dirksen containing the genesis of sections 810 and 812, a Justice Department report stated that, "[i]n addition to the administrative remedy provided through the Department of Housing and Urban Development, the bill provides for an immediate right to proceed by civil action in an appropriate Federal or State court." Memorandum of the Department of Justice, 114 CONG. REC. 4908 (1968), quoted in Brown v. LoDuca, 307 F. Supp. 102, 104 (E.D. Wis. 1969).

122 "Section 812 states what is apparently an alternative to the conciliation-then-litigation approach above stated: an aggrieved person within 180 days after the alleged discriminatory practice occurred, may, without complaining to HUD file an action in the appropriate U.S. district court." Memorandum of the House Judiciary Committee staff, 114 CONG. REC. 9608 (1968), quoted in Brown v. LoDuca, 307 F. Supp. 102, 104 (E.D. Wis. 1969).


124 Id. at 107.


126 The regulations state that, "[t]he person aggrieved (who files a complaint with HUD) shall be notified of the date of filing and of his right to bring court action under sections 810 and 812." 24 CFR § 105.16 (1979).

127 DEPT. OF HOUSING AND URBAN DEV., TITLE VIII FIELD OPERATIONS HANDBOOK 59 (1971). In communicating with fair housing groups, municipalities and individuals opposed
The Court found unconvincing defendants' argument that because Title VIII is not to be used as an instrument of harassment, section 812 is to be limited to a narrower class of plaintiffs than section 810.128 "Nowhere does the history of the Act suggest that Congress attempted to deter possible harassment by limiting standing under § 812. Indeed, such an attempt would have been pointless given the relatively easy access to the courts provided by § 810."119

Nor did the Court think that its interpretation of standing under section 812 would cause so many complainants to choose it over section 810 that the latter provision would become meaningless.130 As section 810 provides a simple, inexpensive means of informal conciliation, many people will continue to find it an attractive alternative to pursuing judicial relief under section 812.131

Finally, the Court noted that most federal courts have concluded that sections 810 and 812 are alternatives open to the same class of plaintiffs.132 The decision of the Ninth Circuit in TOPIC is the only case holding that the sections apply to different classes of plaintiffs.

to racial steering, HUD has stressed the interchangeability of sections 810 and 812. Amicus Brief at 19-20, Gladstone Realtors v. Village of Bellwood, 441 U.S. 91, (1979) [hereinafter cited as Amicus Brief]. See also Dep't of Housing and Urban Development Fair Housing U.S.A. (1976).

129 Id.
130 Id. at 108 n.20. Defendants claimed that section 810 demonstrates the intent of Congress to rely heavily on the efforts of state and local officials in the attainment of fair housing goals. Were indirect victims of discrimination allowed to bypass state and local remedies and sue directly in federal court, defendants argued, the administrative machinery of section 810 would atrophy for lack of use. Petition for Certiorari, at 20-21.
131 Even if section 812 is construed as applying to the indirect victims of discrimination, such victims will for a variety of reasons continue to pursue administrative remedies under section 810. The costs of attorney's fees required to bring suit may be prohibitive. If the person's goal is to obtain housing, he may feel that the seller would be less likely to sell if pressed by a section 812 suit. Conversely, developers reliant on federal funds may be more susceptible to a complaint from HUD than to a private suit. Brief for Respondents at 36.
B. Have the Plaintiffs Met Article III Standing Requirements?

Having determined that the judicial remedy was available to the plaintiffs under section 812, the Supreme Court then had to decide whether the plaintiffs met the standing requirements imposed by Article III.\textsuperscript{135} The issue of standing involves the question of whether a particular litigant is entitled to have a court hear a dispute. The determination of standing involves both Article III considerations, which will be examined first and the Court's own prudential limitations on its exercise of jurisdiction,\textsuperscript{134} to be examined subsequently.

The purpose of the Article III standing requirements is to eliminate claims "in which the plaintiff has failed to make out a case or controversy between himself and the defendant."\textsuperscript{136} In order to make out a case or controversy, the plaintiff must allege that he himself has suffered actual or threatened injury as a result of the defendant's illegal conduct.\textsuperscript{137} The Court found that the plaintiffs, both the individuals residing within the target area of Bellwood and the Village itself, suffered injury as a result of the illegal steering practices of the petitioners.\textsuperscript{138} Thus, the plaintiffs made out a case or controversy under Article III and satisfied the constitutional standing requirements.

The Supreme Court's finding that both the Village and the individual residents of the target area had asserted the injury needed to satisfy the standing requirements of Article III upheld the similar conclusions reached by the Court of Appeals. The lower court turned aside arguments to the effect that the injury alleged by the individual plaintiffs was not sufficiently concrete to support standing under Article III.\textsuperscript{138} The Court of Appeals recognized that the plaintiffs were not bona fide homeseekers and thus were not themselves steered.\textsuperscript{139} However, the lower court looked to the Traf-
The Supreme Court in *Trafficante* cited language to the effect that "[w]hile members of minority groups were damaged the most from discrimination in housing practices, the proponents of the legislation emphasized that those who were not the direct objects of the discrimination had an interest in ensuring fair housing, as they too had suffered."141

The Court of Appeals stressed that the Village itself would suffer a substantial injury as a result of racial steering. As an area into which minority homebuyers are steered, the Village might suffer several dislocating effects.142

The District Court never reached the twin questions of whether the plaintiffs met the standing requirements of Article III and the Court's own prudential limitations. The District Court had granted defendants' motion for summary judgment holding that plaintiffs lacked standing to bring suit under section 812.143 Thus, the District Court did not consider whether the plaintiffs satisfied the constitutional and prudential standing requirements.

The Supreme Court discussed first the injury to the Village of Bellwood. The Village complained that the defendants' racial steering manipulated the housing market in a twelve by thirteen block area of the Village.144 Whites who would otherwise have purchased homes there did not because defendant realtors did not show them available homes in the area.145 Some blacks, on the...

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140 "The person on the landlord's blacklist is not the only victim of discriminatory housing practices; it is, as Senator Javits said in supporting the bill, 'the whole community.' 114 Cong. Rec. 2706 (1968)." *Trafficante* v. Metropolitan Life Ins. Co., 409 U.S. 205, 211 (1972).


142 These effects include an "unnaturally rapid population turnover, with destabilized and possibly negative effects on property values and thus on its municipal tax base, and a conceivable increase in certain municipal problems to which a town such as Bellwood would have to commit resources in attacking them." Village of Bellwood v. Gladstone Realtors, 569 F.2d 1013, 1017 (7th Cir. 1978).

143 Petition for Certiorari, at 7.


145 *Id.* at 110. One lower court has previously indicated that the reasons why families choose to live where they do are complex and are influenced by a variety of factors, over some of which, such as the crime rate, quality of schools and city taxes, realtors have little influence. United States v. Real Estate One, Inc., 433 F. Supp. 1140, 1146 (E.D. Mich. 1977). Another lower court, however, noted that real estate agents and multiple listing services are important intermediaries between buyers and sellers of real estate and that their influence extends far beyond any single transaction. If, as the court determined, the brokers operate in a racially discriminatory fashion, their pervasive influence preserves or extends segregated housing patterns. Fair Housing Council of Bergen County, Inc. v. Eastern Bergen...
other hand, purchased homes in the area solely because they were led to believe that homes in the same price range were not available elsewhere in the Village.\textsuperscript{144} This complaint, the Court held, alleged that the area’s racial composition was being affected. In essence, an integrated neighborhood was being replaced by a segregated one.\textsuperscript{147}

The Court noted that racial steering can harm a community.\textsuperscript{148} If steering significantly reduces the number of home buyers in the market, the price will be deflected downward. This downward trend would be exacerbated if the increase in the area’s minority population caused by steering precipitated an exodus of the remaining white residents.\textsuperscript{149} A significant reduction in property values, the Court stated, in turn, “directly injures a municipality by diminishing its tax base, thus threatening its ability to bear the costs of local government and to provide services. Other harms flowing from the realities of a racially segregated community are not unlikely.”\textsuperscript{150} The Court concluded that if steering had robbed Bellwood of its racial balance and stability, the Village had standing.\textsuperscript{151}

The Court next considered whether the individual plaintiffs met the Article III standing requirements.\textsuperscript{152} It determined that the individual residents of the affected neighborhood had suffered an injury in fact due to the defendants’ illegal conduct and thus met the

\textsuperscript{144} 441 U.S. 91, 110 (1979).
\textsuperscript{146} Id.
\textsuperscript{147} “The adverse consequences attendant upon a ‘changing’ neighborhood can be profound. If petitioner’s racial steering practices significantly reduce the total number of buyers in the Bellwood housing market, prices may be deflected downward.” Id.

The Court has previously recognized that, “[t]here can be no question about the importance to a community of promoting stable, racially integrated housing.” Linmark Associates, Inc. v. Willingboro Township, 431 U.S. 85, 94 (1977). The plaintiffs in Gladstone further suggested that as a result of steering, the Village may suffer “an increase in municipal problems to which it will have to commit resources.” Brief for Respondents at 12.
\textsuperscript{152} 441 U.S. 91, 111 (1979).
\textsuperscript{153} Id. at 109.
case or controversy requirement of Article III. The Court noted that the individual plaintiffs did not claim standing in their capacity as testers.\(^{153}\) Thus, the Court did not reach this question. Rather, the individuals claimed standing as homeowners in a target area in which steering had been practiced.\(^{154}\) They asserted injury in that their community’s transformation from an integrated to a predominantly black community deprived them of “the social and professional benefits of living in an integrated society.”\(^{155}\)

This was similar to the allegation of injury made by the plaintiffs in Trafficante.\(^{156}\) The Gladstone court, noting the importance of the “benefits of interracial associations”\(^{157}\) and its recent statement that non-economic injuries are sufficient to provide standing,\(^{158}\) concluded that this injury met the Article III standing requirement of actual or threatened harm.\(^{159}\)

The Court found that for purposes of standing, the factual differences between an apartment complex of 8,200 tenants as in Trafficante and a twelve by thirteen block residential neighborhood as in Gladstone, were not controlling.\(^{160}\) The defendants had urged that this difference was crucial.\(^{161}\) However, in rejecting this argument, the Court suggested that any factual differences might indeed favor the plaintiffs: “Apartment dwellers often are more mobile, with less attachment to a community as such, and thus are able to react more quickly to perceived social or economic changes. The homeowner in a suburban neighborhood such as Bellwood

\(^{153}\) Id. at 111.

\(^{154}\) Id.

\(^{155}\) Id.

\(^{156}\) Id.

\(^{157}\) The Court attached no significance to the fact that plaintiffs in Trafficante alleged harm to the character of their community whereas the plaintiffs in Gladstone refer to harm to their society:

Reading the complaints as a whole, and remembering that we encounter these allegations at the pleading stage, we attach no particular significance to this difference in word choice. Although an injury to one’s “society” arguably would be an exceptionally generalized harm or more important for Art. III purposes, one that could not conceivably be the result of these petitioners’ conduct, we are obliged to construe the complaint favorably to respondents, against whom the motions for summary judgment were made in the District Court. So construed, and read in context, the allegations of injury to the individual respondents’ ‘society’ refer to the harm done to the carefully described neighborhood in Bellwood in which four of the individual respondents reside.


\(^{161}\) Id. at 113.
may well have deeper community attachments and be less mobile."

The Court suggested, however, that in order to determine injury to the residents of a particular neighborhood whose racial composition has been manipulated, a court must look to the facts of the particular case. Some neighborhoods either because of their large size, heavy population or sparse population may be so lacking in shared commercial and social intercourse that there would be no injury to the individual residents.

Although it determined that the social injury alleged by the plaintiffs was sufficient to support standing, the Court read the plaintiffs' complaint as alleging economic injury as well. The likely source of such economic injury would be decreased property values due to steering. The Court stated that decreased property values due to the behavior of another person is sufficient injury under Article III. However, the plaintiffs in Gladstone would have to prove before the District Court that the value of their property had declined and that this was due to the steering practices of the defendants.

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162 Id., at 113-114. One lower court also stated that the factual differences between an all-white residential neighborhood and an all-white apartment complex are such that residents of the former suffer greater injury because they may have to travel a greater distance to enjoy interracial associations than do residents of the latter:

Residents of an all-white complex need only look to the next residential facility for the interracial associations they desire. If the allegations here are true, residents of Bergen County may have to go to an entirely different neighborhood or community. Similarly, a completely white building is less of a 'ghetto' than a completely white neighborhood or community. That the cordon sanitaire has been drawn around an entire community rather than a single apartment complex does not render it lawful.


164 Id.

165 "Convincing evidence that the economic value of one's home has declined as a result of the conduct of another certainly is sufficient under Article III to allow standing to contest the legality of that conduct." Id. at 115. As plaintiffs' brief states, "... there is more here than the desire of affluent whites to have some black neighbors." Brief for Respondents at 13 n.6.

The individual plaintiffs in Gladstone further alleged concrete injury due to racial steering in that they may feel pressured to choose between leaving the community and remaining and suffering the reduction in the quality of life associated with rapid racial change in an area. Brief for Respondents at 21 n.11, citing Zuch v. Hussey, 394 F. Supp. 1028, 1032 (E.D. Mich. 1975), aff'd and remanded, 547 F.2d 1168 (6th Cir. 1976).
C. Did the Court's own Prudential Limitations Prohibit Standing?

In addition to Article III considerations, the determination of standing involves passing on the applicability of prudential limitations on the exercise of federal court jurisdiction. These limitations have been imposed by the federal courts themselves as a restraining measure. Prudential limitations serve a number of different purposes. They allow the courts to avoid deciding broad social questions where no individual rights would be vindicated by the decision. Furthermore, they limit access to federal courts to those persons best suited to bring a claim.

The prudential limitations generally take the form of two rules of thumb used by the federal courts. First, a litigant must assert an injury peculiar to himself or to the group of which he is a part rather than one shared by all citizens or a large class of citizens. Second, the litigant must assert his own legal interests, not those of third parties.

Although Congress may never abrogate the Article III standing requirements, it "may by legislation expand standing to the full extent permitted by Article III." In other words, Congress may

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166 See note 10 supra.
167 441 U.S. 100 (1979).
169 "Ordinarily, one may not claim standing in this Court to vindicate the constitutional rights of some third party." Barrows v. Jackson, 346 U.S. 249, 255 (1953). See 441 U.S. 91, 100 (1979); Arlington Heights v. Metropolitan Housing Development Corp., 429 U.S. 253, 263 (1977); United States v. Raines, 362 U.S. 17 (1960); Joint Anti-Fascist Refugee Comm. v. McGrath, 341 U.S. 123, 149-54 (1951) (Jackson, J., concurring); Tileston v. Ullman, 318 U.S. 44 (1943). The Gladstone Court noted that in appropriate situations, a third nonconstitutional limitation may be applicable, i.e., the plaintiff's interest must arguably be within the zone of interests to be regulated or protected by the statute under which the claim is made. 441 U.S. 91, 100, n.6 (1979). See e.g., Simon v. Eastern Ky. Welfare Rights Org., 426 U.S. 26, 39 n.19 (1976). The Court in Gladstone did not discuss whether the zone of interest test was applicable to the case at hand.
170 Gladstone Realtors v. Village of Bellwood, 441 U.S. 91, 100 (1979). As the Court stated in Warth v. Seldin:

In short the claim of these petitioners falls squarely within the prudential standing rule that normally bars litigants from asserting the rights or legal interests of others in order to obtain relief from injury to themselves. As we have observed above, this rule of judicial self-governance is subject to exceptions, the most prominent of which is that Congress may remove it by statute.

422 U.S. 490, 509 (1975).
overide the prudential limitations and allow standing to litigants who would otherwise be barred from court by these rules.171

The Supreme Court in *Gladstone*, found that the prudential limitations posed no barrier to the exercise of its jurisdiction. The Court held that because sections 810 and 812 offer alternative remedies to the same class of plaintiffs, standing under section 812 is as broad as standing under section 810.172 The Supreme Court had earlier decided in *Trafficante* that standing under section 810 is as broad as permitted by Article III and that prudential limitations are not applicable.178 By implication then, standing under section 812 is as broad as permitted by the Constitution.174

The Supreme Court's determination that the prudential limitations of the federal courts on standing were not applicable, validated a similar finding by the Court of Appeals.171 Having found that the plaintiffs in *Gladstone* satisfied both the constitutional and prudential requirements for standing, the Supreme Court affirmed the Court of Appeals, stating that the District Court should not have entered summary judgment except possibly as to the two individual plaintiffs who resided outside the target area.176

It appears that the individual plaintiffs in *Gladstone* satisfied both purposes underlying the prudential limitations. First, they asserted an injury peculiar to themselves.177 Second, as litigants, they

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171 The Court stated that:

Congress may grant an express right of action to persons who would otherwise be barred by prudential standing rules. Of course, Article III's requirement remains: the plaintiff still must allege a distinct and palpable injury to himself, even if it is an injury shared by a large class of other possible litigants. *E.g.*, United States v. SCRAP, 412 U.S. 669 (1973). But so long as this requirement is satisfied, persons to whom Congress has granted a right of action, either expressly or by clear implication, may have standing to seek relief on the basis of the legal rights and interests of others, and indeed, may invoke the general public interest in support of their claim.


In several cases, the Supreme Court has dispensed with its prudential limitation that a litigant not assert the legal interests of third parties. *See, e.g.*, Doe v. Bolton, 410 U.S. 179, 188 (1973); Griswold v. Connecticut, 381 U.S. 479, 481 (1965); Barrows v. Jackson, 346 U.S. 249 (1953).


175 441 U.S. 91, 98 (1979).

176 *Id.* at 115-116.

177 As the plaintiffs advanced in their brief at 16:

In short, this case simply does not turn on the right of testers or absent third parties.
D. The Rehnquist Dissent

Justice William Rehnquist entered a dissenting opinion in Gladstone,179 in which he maintained that the plaintiffs lacked standing under section 812.180 Justice Rehnquist disagreed with the majority

What is involved is the right of homeowners in a specific village whose racial make-up is being fashioned by discriminatory housing practices to protect their substantial economic and social interests in living in a stable, integrated community. Brief for Respondents at 16.

Indeed, it is often the residents of a community and not the person steered who have the greatest stake in the enforcement of fair housing laws. Racial Discrimination, supra note 21, at 311.

178 Individuals who have been subjected to racial discrimination by brokers may not have the resources to pursue a claim in the courts. Moreover, because of their lack of familiarity with local housing patterns, they may not even be aware that they have been steered. However "[c]itizens groups seeking to stabilize racial balance in a changing neighborhood have the interest in and knowledge of the situation over a long period of time that is needed to substantiate charges of blockbusting, illegal solicitation, or other discriminatory real estate practices." Id.

179 He was joined in the dissenting opinion by Justice Potter Stewart.

180 The restrictive view of standing expressed by Justice Rehnquist in his dissenting opinion in Gladstone is consistent with his opinions in previous cases. In Duke Power Co. v. Carolina Environmental Study Group, 438 U.S. 59 (1978), for example, Justice Rehnquist concurred in the majority opinion written by Chief Justice Burger. The majority overturned the decision of the District Court for the Western District of North Carolina, which had held that the Price-Anderson Act’s limitation of $560 million on liability for nuclear accidents at federally licensed nuclear plants violated the due process and equal protection clauses of the Fifth Amendment. Although it overturned the lower court, the majority in Duke Power held that the issues in the case were ripe for adjudication and that persons living near the proposed nuclear plants had standing to seek a declaratory judgment.

While he agreed with the majority that the Act did not violate the Fifth Amendment, Justice Rehnquist further stated that the District Court was without jurisdiction. Justice Rehnquist added a strong note as to his views on the exercise of federal court jurisdiction:

I can understand the Court’s willingness to reach the merits of the case and thereby remove the doubt which has been cast over this important federal statute. In so doing, however, it ignores established limitations on district court jurisdiction as carefully defined in our statutes and cases. Because I believe the preservation of these limitations is in the long run more important to this Court's jurisprudence than the resolution of any particular case or controversy, however important I, too, would reverse the judgment of the District Court, but would do so with instructions to dismiss the complaint for want of jurisdiction. (citations omitted) 438 U.S. 59, 95-96 (1978) (Rehnquist, J., concurring).

It has been suggested by one observer that a limited view of federal court jurisdiction is a key element of Justice Rehnquist's judicial philosophy. "A review of all the cases in which Justice Rehnquist has taken part indicates that his votes are guided by three basic propositions . . . (3) Questions of the exercise of federal jurisdiction, whether on the district court, appellate court or Supreme Court level, should, whenever possible, be resolved against such exercise." Shapiro, Mr. Justice Rehnquist: A Preliminary View, 90 HARV. L. REV. 293, 294 (1976). Shapiro includes under the term “federal jurisdiction” the concepts of standing, jus-
as to the proper construction of sections 810 and 812. Justice Rehnquist stated that although the sections provide alternative forms of relief, they are not necessarily equally available to both direct and indirect victims of housing discrimination.\textsuperscript{181} Justice Rehnquist interpreted section 812 as limited to the direct victims of discrimination, "that is, those actually discriminated against on the basis of race, color, religion, sex or national origin"\textsuperscript{182} while construing section 810 as providing relief to anyone claiming to have been injured by a discriminatory housing practice, even if not directly discriminated against.\textsuperscript{183}

Justice Rehnquist based his construction of sections 810 and 812 on several different factors. First, he noted that standing involves both constitutional and prudential elements.\textsuperscript{184} Congress can expressly disregard the prudential limitations on standing and permit standing as broadly as Article III would permit.\textsuperscript{185} Rehnquist claimed that Congress did this by inserting the words "person aggrieved" to refer to plaintiffs in section 810. The absence of this language in section 812 demonstrates a congressional intent not to abrogate the prudential standing restrictions nor authorize suits by those whom these limitations would otherwise bar.\textsuperscript{186}

Second, Congress contemplated that private suits under section 812 could be instituted only by persons alleging injury to rights expressly "granted by" sections 803 through 806.\textsuperscript{187} Section 810, on the other hand, authorizes commencement of civil suits to enforce the rights "granted or protected by" the entire subchapter.\textsuperscript{188} The rights the respondents sought to protect were not granted by sections 803 through 806. These sections do not grant a right to reap the social or professional benefits of living in an integrated society nor the right of a municipality not to have its housing market illegally manipulated by realtors.\textsuperscript{189}

\begin{footnotes}
\footnotetext{181}{"That § 810 and § 812 are alternative remedial provisions does not, however, compel the conclusion that they are equally available to all potential Title VIII claimants." 441 U.S. 91, 128 (1979) (Rehnquist, J., dissenting).}
\footnotetext{182}{Id. at 126.}
\footnotetext{183}{Id.}
\footnotetext{184}{Id. at 119.}
\footnotetext{185}{Id. at 120.}
\footnotetext{186}{Id. at 123.}
\footnotetext{187}{Id.}
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\footnotetext{189}{Id. at 124.}\
\end{footnotes}
Third, Justice Rehnquist referred to subsections 812(b) and (c) which authorize the appointment of counsel and recovery of compensatory and punitive damages and costs and attorney’s fees. He reasoned that only those directly discriminated against suffered injuries that would entitle them to such relief.

Fourth, by making indirect victims of housing discrimination proceed under section 810 and exhaust informal conciliation and state and local remedies, Congress sought to facilitate informal resolution, foster state and local involvement and avoid federal intervention. Permitting indirect victims of discrimination to sue under section 812 would make a mockery of the enforcement scheme of section 810, Rehnquist argued. Finally, Rehnquist cited statements made by Senators Miller and Hart in support of his view that section 812 is available only to the direct victims of discrimination. Rehnquist concluded that because the plaintiffs...

Section 812(b) reads:

Upon application by the plaintiff and in such circumstances as the court may deem just, a court of the United States in which a civil action under this section has been brought may appoint an attorney for the plaintiff and may authorize the commencement of a civil action upon proper showing without the payment of costs, fees or security. A court of a State or subdivision thereof may do likewise to the extent not inconsistent with the law or procedures of the State or subdivision. 42 U.S.C. § 3612(b) (1976).

Section 812(c) reads:

The court may grant as relief, as it deems appropriate, any permanent or temporary injunction, temporary restraining order, or other order and may award to the plaintiff actual damages and not more than $1,000 punitive damages, together with court costs and reasonable attorney's fees in the case of a prevailing plaintiff: Provided That the said plaintiff in the opinion of the court is not financially able to assume said attorney's fees.


441 U.S. 91, 126 (1979) (Rehnquist, J., dissenting).

Ibid.

Senator Miller introduced an amendment to section 810. The amendment, which was adopted, required exhaustion of “substantially equivalent” state and local remedies before a suit could be filed in federal court. Senator Miller noted:

I provide in the second part of my amendment that no civil action be brought in any U.S. district court if the person aggrieved has a judicial remedy under a state or local housing law which provides substantially equivalent rights and remedies to this Act.

I believe it is a matter of letting the State and local courts have jurisdiction. We in the Senate know that our federal district court calendars are crowded enough without adding to that load, if there is a good remedy under state law.


According to Senator Hart, the amendment, “recognizes the desire all of us share that the State remedies, where adequate, be availed of and that unnecessarily burdening litigation not further clog the court calendars.”

were not direct victims they lacked standing to sue under section 812.  

VI. THE AFTERMATH OF Gladstone

As Gladstone is so recently decided, its impact on the future case law is yet undetermined. Only two subsequent decisions have cited Gladstone for what it said about standing to sue in the fair housing context. In Broadmore Improvement Association, Inc. v. Stan Weber & Associates, Inc., the Court of Appeals for the Fifth Circuit granted standing to a nonprofit corporation comprised mainly of residents of a particular New Orleans neighborhood dedicated to preserving its integrated character. Under section 812, the corporation sued a realtor allegedly engaged in blockbusting with the intended effect of steering blacks to and whites from the neighborhood. The court noted that residents of the target area and the affected municipality have, in light of

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184 441 U.S. 91, 129 (1979) (Rehnquist, J., dissenting). Justice Rehnquist also stated that the plaintiffs lacked standing under 42 U.S.C. § 1982. That section secures only, "the right to be free from racially motivated interference with property rights." Plaintiffs have suffered no injury to that right, Rehnquist found. He also noted that the Court had previously held that section 1982, "does not give residents of certain communities an actionable right to be free from the adverse consequences of racially discriminatory practices directed at and immediately harmful to others." Id. at 129. See generally Warth v. Seldin, 422 U.S. 490-530 (1975).

185 Several courts have cited Gladstone regarding the general standing requirements under Article III and prudential limitations on standing. In Davis v. Passman, 442 U.S. 228 (1979) for example, the Supreme Court cited Gladstone for the phrase, "personally has suffered some actual or threatened injury as a result of the punitively illegal conduct of the defendant." Id. at 2274 n.18 (1979). This case involved a suit by a discharged employee of former Rep. Otto Passman who claimed that her dismissal amounted to discrimination on account of sex. Id. at 2269 (1979).

In Boating Industry Associations v. Marshall, 601 F.2d 1376 (9th Cir. 1979) the court stated that the Supreme Court in Gladstone repeated its analysis that the constitutional limitations on standing require that the plaintiff demonstrate that he suffered actual or threatened injury because of the defendant's illegal conduct. Id. at 1381. This case involved the standing of boating associations to challenge a regulation of the Secretary of Labor interpreting certain provisions of the Longshoremen's and Harbor Workers' Compensation Act as applicable to marina owners and recreational boat manufacturers.

In In re Godfrey, 472 F. Supp. 364 (M.D. Ala. 1979), a case involving the standing of a district attorney to challenge the order of a bankruptcy judge as to dischargeability, the court cited Gladstone for the proposition that standing doctrine requires a litigant to assert his own legal interests, not those of third parties. Id. at 369.

In Featherstone v. Liberty Cash Grocers, 82 F.R.D. 484 (W.D. Tenn. 1979) the court cited Gladstone for the proposition that the private right of action under Title VII of the Civil Rights Act of 1964 arises only after a period of 180 days. Id. at 485. This case involved a suit by a black employee who was discharged by his employer on allegedly racial grounds.

186 597 F.2d 568 (6th Cir. 1979).
Gladstone, standing under Title VIII of the Civil Rights Act of 1968. The court also cited Gladstone as authority for the proposition that both sections 812 and 810 provide standing to the fullest extent possible under Article III.

In Angell v. Zinsser, the court cited the Gladstone decision after a discussion of its contention that if courts grant relief only when plaintiffs make out a clear case on the record, this will prevent suits where decisions to zone out low-income housing are founded on unproved yet widely acknowledged racial discrimination. The court also cited Gladstone after discussing the claim of one of the plaintiffs that she and her children would receive social and psychological benefits from official efforts to alleviate racially exclusive zoning patterns in their town.

Although it is hoped that the Gladstone decision will help eliminate the prevalence of racial steering, this remains to be seen. It was recently suggested that even after the decision, housing patterns in the Chicago suburbs including Bellwood remain segregated some eleven years after the fair housing legislation was passed.

The Court in Gladstone added an additional remedy in the form of section 812 to those residents and local governments who would seek to challenge steering by realtors. As indirect victims of housing discrimination, they may now proceed directly to the courts without first having to attempt administrative mediation of their complaints or pursue available state and local remedies. It has been suggested that the administrative procedure provided for in section 810 can be most time-consuming and “clearly is not a suitable enforcement mechanism for anyone facing a situation of some

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197 Id. at 570.
198 Id.
200 Id. at 494.
201 Id. at 501.
urgency." Allowing complainants to by-pass section 810 procedures may help communities act quickly to forestall the attempts of local realtors to manipulate the present racial balance.

For those who believe that "if the real estate industry is allowed to operate unchecked, the pace of racial transition will be manipulated in a way that will irrevocably distort any chance for normal and suitable racial change", the expansion of the class of plaintiffs who may sue under section 812 is a step forward. For those who believe that realtors are the only means by which minorities can pry open the door to suburban communities, the Gladstone decision may have a less salutory effect. In any event, only with the passage of time will the exact impact of Gladstone be determined.

VII. CONCLUSION

The Supreme Court's decision in Gladstone v. Village of Bellwood had the effect of expanding the class of plaintiffs who may pursue direct judicial relief under section 812 of the Fair Housing Act of 1968. Whereas the lower courts had previously gone in contradictory directions, the Gladstone decision confirmed the availability of section 812 relief to both direct and indirect victims of discrimination. The decision also validated the findings of several of the lower courts that standing under section 812, like standing under section 810 is as broad as permissible under Article III. In essence, as long as the plaintiff meets the constitutional requirements of injury in fact and causation, the courts' own prudential limitations pose no barrier to pursuing an action in the courts.

The practice of racial steering formed the basis of the dispute in Gladstone. In deciding the case, the Court examined the Fair Housing Act under which the suit was brought and previous interpretations given to the statute's two enforcement sections. The Court addressed three major issues in Gladstone, which were; (1) the proper construction to be given sections 810 and 812, (2) whether the plaintiffs satisfied Article III standing requirements and (3) whether the Court's own prudential limitations posed any barrier to standing. Few cases subsequent to Gladstone have made use of what the case said about standing in fair housing litigation.

The decision, however, will undoubtedly have the effect of al-

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203 Racial Discrimination, supra note 27 at 301. See the detailing of administrative procedures outlined in this article.
lowing a wider range of plaintiffs, specifically the indirect victims of housing discrimination, to seek judicial relief under the Fair Housing Act. In increasing the ease with which such plaintiffs may bring suit to enforce the provisions of the Act, the decision lends additional credence to the guarantees of freedom of choice in housing contained in the Act. Although it will not by itself eliminate steering, perhaps Gladstone will provide the impetus for the achievement of the long-delayed goal of fair housing for all Americans.