

MALINDA TRAUDT, by and through her guardian ad litem, Shelly White, Petitioner vs.
ORANGE COUNTY SUPERIOR COURT, Respondent; CITY OF DANA POINT, Real
Party in Interest

S197700

SUPREME COURT OF CALIFORNIA

2011 CA S. Ct. Briefs 97700; 2011 CA S. Ct. Briefs LEXIS 1678

November 3, 2011

Petition for Review of a Decision by the Court of Appeal, Fourth District, Division Three,
Case No. G044130, Dismissing Appeal of a Judgment of Dismissal after Order Sustaining
Demurrer, Orange County Superior Court, Case No. 30-2010-00373287 (Dept. C-10).
Hon. Tarn Nomoto Schumann, Tel. (657) 622-52100.

Petition for Appeal

COUNSEL: [*1] Jeffrey M. Schwartz, Esq. (SBN 254916), SCHWARTZ LAW, P.C., San Clemente, CA, Attorney
for Petitioner Malinda Traudt, by and through her guardian ad litem, Shelly White.

TITLE: Petition for Review

TEXT: I. ISSUES PRESENTED FOR REVIEW

This petition raises issues of widespread importance for all Californians who may seek to challenge a governmental action.

1. Is standing strictly limited to the direct target of the government action?
2. Are individual and group standing mutually exclusive (i.e. does an individual, who has been harmed by a governmental action, lack standing because she belongs to a group that has also been harmed by that action)?
3. May an individual, who has suffered harm from a governmental action and where said harm is above that of the public at large, be denied standing simply because there are too many people like her?
4. Does standing in California require that the federal *Warth* n1 redressability requirement be met?

5. Do the relaxed standing requirements, in cases involving the public interest, apply only where the plaintiff is an association?

n1 *Warth v. Seldon* (1975) 422 U.S. 490.

[*2]

II. PETITION FOR REHEARING WAS DENIED

The Opinion was filed on September 30, 2011. Malinda filed a Petition for Rehearing on October 6, 2011. The appellate court denied the petition on October 20, 2011.

III. WHY REVIEW SHOULD BE GRANTED

Petitioner, Malinda Traudt, is a blind, disabled, and terminally-ill woman. After nearly dying from severe adverse reactions to traditional, pharmaceutical pain medications, she now relies exclusively upon medical marijuana to manage her chronic, excruciating pain. It is undisputed that she will die without access to that medicine. Malinda is a medical marijuana patient who obtained her medicine from a local collective in the City of Dana Point.

However, Dana Point banned all medical marijuana collectives. As a result, the collective to which Malinda belonged, along with all other legal sources of medical marijuana in Dana Point, have been shut down. It is undisputed that Malinda (or, more accurately, her mother and primary caregiver, Shelly) must now travel completely outside of Orange County to obtain Malinda's life-sustaining medicine. Malinda's medicine is now more difficult and time-consuming to obtain and far more expensive because [*3] of the travel required to obtain it.

Malinda brought the underlying action seeking a declaratory judgment that Dana Point's ban is unconstitutional as applied to her. She claims standing because she has suffered significant harm as a result of the ban and that harm is above that suffered by the general public.

The appellate court did not deny that Malinda was harmed by the subject ban or that her harm was above that of the general public. Yet, it denied her standing, anyway, based upon five new standing requirements created by the Opinion:

1. Malinda lacks "standing to challenge the zoning provisions affecting dispensaries generally. The reason is simple: she is not a dispensary. n2" However, this conflicts with settled California law, under which standing is not limited to the target of a governmental action n3. Anyone who has suffered harm, above that of the general public, has standing.

2. An individual, even one who has suffered individual harm, lacks standing to challenge a governmental action regulating a group. "[T]he group basis of the right to associate and collectively or cooperatively produce medical marijuana restricts to the group the right of standing [*4] in zoning challenges. n4" No California court has ever held that individual and group standing are mutually exclusive.

3. Mere numerosity is grounds to deny standing. "To recognize standing in every member of every dispensary to assert claims concerning the cooperative or collective right to produce marijuana would have the practical effect of swamping the courts with a multitude of separate, serial, overlapping cases, needlessly impeding the administration of justice and increasing the risk of inconsistent results. n5" No court, California or federal, has ever held that standing depended upon the number of people harmed. Under such logic, if a governmental action harms enough people, it's effectively immune to challenge.

4. Standing requirements in California now include the federal *Warth* n6 redressability standard. "[E]ven if Traudt were to prevail, a favorable decision may not benefit her because she has no voice in the decision of any dispensary to open or remain open. n7" However, until this Opinion, California courts have rejected the *Warth* standard for public policy reasons n8.

5. Despite the fact that this case involves matters in the public interest, [*5] Malinda is not entitled to relaxed standing requirements, per *Stocks* n9, because she is not an association n10. No California court has ever limited public interest standing to a single, arbitrary category of plaintiff. On the contrary, this same appellate court granted public interest standing to a non-association in another case n11.

n2 *Traudt v. City of Dana Point (2011) 2011 WL 4508995, 3* (Exhibit A).

n3 *Jensen v. County of Sonoma (2010) 2010 WL 2330384, 5*.

n4 *Traudt, supra*, at 3.

n5 *Traudt, supra*, at 6.

n6 *Warth, supra*.

n7 *Traudt, supra*, at 7.

n8 *Stocks v. City of Irvine (1981)114 Cal.App.3d 520, 532-533*.

n9 *Stocks, supra*, at 533.

n10 *Traudt, supra*, at 8.

n11 *City of Garden Grove v. Superior Court (2007) 157 Cal.App.4th 355*

These new, onerous limitations on standing conflict with all other California [*6] courts and bar the courthouse door to millions of Californians who have suffered legitimate harm as a result of a governmental action. Review should be granted to resolve these conflicts and restore uniform standing requirements in California.

IV. BACKGROUND

It is undisputed that petitioner, Malinda Traudt, suffers from ailments which cause her constant, excruciating pain; she nearly died from OxyContin and other traditional painkillers; she uses medical marijuana pursuant to her physician's recommendation; she depends upon medical marijuana for her very survival; and the challenged governmental action has made it more difficult, time-consuming, and expensive for her to obtain her life-sustaining medicine.

Malinda brought suit to challenge the constitutionality of respondent, Dana Point's, total ban on medical marijuana collectives, as applied to her. She claims standing on several bases:

A. Malinda has standing because the ban interferes with her right to obtain her medicine

The express purpose of the Compassionate Use Act (CUA) is "To ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes . . ." *Health & [*7] Safety Code § 11362.5(b)(1)*. The right to *obtain* medical marijuana belongs to seriously ill Californians, like Malinda. The Opinion does not deny this; it simply ignores this basis for standing.

B. Malinda has standing because the ban interferes with her right to join a collective

The express intent of the Legislature in enacting the Medical Marijuana Program Act (MMPA) was to "enhance the access of patients and caregivers to medical marijuana through collective, cooperative cultivation projects." *Qualified Patients Ass'n v. City of Anaheim (2010) 187 Cal.App.4th 734, 744*. The

MMPA was enacted to enhance access to medical marijuana by permitting patients, like Malinda, to join a collective where she can obtain her medicine when her mother's growing efforts are insufficient, as they have been.

Prior to the ban, Malinda could join any of six nearby collectives (she joined one). Now, as a direct result of the ban, all of the nearby collectives have been closed. The ban interferes with Malinda's right to join (or remain a member of) a collective. It continues to impair Malinda's right to join a collective by prohibiting the very existence [*8] of collectives which Malinda may join. The Opinion does not deny this basis for standing, it simply disregards it.

C. Malinda has standing because she is a member of the class discriminated against

Malinda alleges that the ban discriminates against the class of *seriously-ill Californians who obtain and use marijuana for medical purposes upon their physician's recommendation*, including Malinda. "Such allegations . . . show membership in the class discriminated against and the 'real' and 'personal' interest that entitles plaintiffs to bring the action. To require more would deny access to the courts to plaintiffs with legitimate justiciable causes." *Stocks, supra, at 532*. The Opinion does not deny that Malinda is a member of the class discriminated against, it concludes that this is no longer sufficient to confer standing under its new rules.

D. Malinda has standing because the ban interferes with her fundamental rights, under the California Constitution, to enjoy and defend her life

Shelly, Malinda's mother, keeps a Portable Suction Machine handy to open Malinda's airway when it becomes blocked. Shelly needs to stay close [*9] by, at all times, in case such treatment is needed. The ban puts Malinda's very life at risk by requiring Shelly to leave Malinda for extended periods to drive to Los Angeles County to obtain Malinda's medicine. Malinda has standing to challenge the ban because it puts her very life at increased risk and, therefore, interferes with her fundamental right, under the California Constitution, to enjoy and defend it. The Opinion does not deny that Malinda has suffered such interference with her rights; however, it holds that such harm no longer permits an injured party to seek redress in California courts.

E. Malinda has standing because the ban interferes with her fundamental right, under *Probate Code § 4650*, to control her health care

Probate Code § 4650 provides that patients, like Malinda, enjoy a fundamental right to control the decisions relating to their own health care. The ban interferes with that right by making it more difficult, expensive, and dangerous for Malinda to follow her physician's recommended treatment regimen. This harm is sufficiently *real* and *personal* (per *Stocks, supra*) to confer standing. The Opinion does not deny [*10] that the ban has directly affected Malinda in this manner. It denied Malinda standing on the basis that she failed to meet the new requirements announced in the Opinion.

F. Malinda has standing because her case involves issues in the public interest and, therefore, standing requirements should be relaxed, and any doubts resolved in favor of the litigation

Standing requirements are relaxed in cases involving issues in the public interest. *Stocks, supra*, cited the "marked accommodation of formerly strict procedural requirements of standing to sue where matters relating to the 'social and economic realities of the present-day organization of society' are concerned." *Id. at 533*. *Stocks* continued, "were there any doubt about the justiciability of the controversy, that doubt would be resolved in favor of present adjudication, because the public is interested in the settlement of the dispute." *Id.*

The legality of medical marijuana collectives has been, and continues to be, heavily litigated and a matter of public interest for patients, doctors, cities, police departments, courts, landlords, and residents of surrounding areas. [*11] Therefore, the standing requirements should be relaxed and any doubts resolved in Malinda's favor. The Opinion does not deny that this is a matter of public interest. Rather, it denies public interest standing based upon its new restriction that only *associations* may invoke public interest standing. However, this is in conflict with that same court's ruling in *City of Garden Grove v. Superior Court (2007) 157 Cal.App.4th 355*, where it granted public interest standing to a non-association.

G. Malinda has standing because she has suffered concrete harm, above that of the general public

1. Malinda is a member of the class of *seriously-ill Californians who obtain and use marijuana for medical purposes upon their physician's recommendation* for whom the CUA and MMPA were enacted to protect; the general public are not members.
2. Malinda needs reliable access to medical marijuana for her very survival while the general public does not.
3. Traditional pharmaceutical pain killers (e.g. OxyContin and Fentanyl) have been proven deadly for Malinda while the general public pops them like candy without such severe adverse consequences. [*12]
4. Prior to the challenged action, Malinda had her choice of six nearby dispensaries to join and obtain her medicine from; now she has none. However, Dana Point has made no effort to shut down the nearby sources of medicine used by the general public.
5. Dana Point's ban prevents any supplier of Malinda's pain medicine (medical marijuana) from operating in Dana Point while suppliers of the general public's pain medicines (e.g. OxyContin and Fentanyl) are still welcome in Dana Point.
6. Malinda (or Shelly) is now forced to travel to another county to obtain Malinda's physician-recommended pain medication while the general public can still obtain their physician-recommended pain medications from any of several businesses in Dana Point.
7. As a direct result of Dana Point's ban, Malinda is forced to either endure long trips (which are beyond her physical capability) or risk not having Shelly there (while Shelly drives two hours to Los Angeles to obtain Malinda's medicine) when Malinda needs her to use their Portable Suction Machine or other devices and techniques to manage the frequent problems that suddenly develop in Malinda's precarious condition. The general public [*13] is not forced to make such a difficult and dangerous choice.
8. The ban has increased the cost of Malinda's medicine but not that of the general public.
9. The ban infringes upon Malinda's fundamental right, pursuant to *Probate Code § 4650*, to control her medical treatment while having no effect whatsoever on that right with respect to the general public.
10. Malinda and her physician have only three options regarding her chronic and intolerable pain: a) She can suffer without medication and spend her final days in unbearable agony; b) She can continue using medical marijuana to mitigate the pain, enjoy some degree of quality of life during her remaining days, and ensure that her family's final memories of her are pleasant; or c) She can return to pharmaceutical pain medications and suffer a horrible and almost-immediate death. The general public is, fortunately, not faced with such dire choices.

The Opinion does not dispute that Malinda has suffered all these harms or that such harms are above those suffered by the general public. Instead, the Opinion completely ignores all of the standing arguments Malinda has actually made and denies standing based upon arguments [*14] that Malinda has steadfastly argued she does *not* rely upon (e.g. that she has standing to assert a collective's rights).

V. THE OPINION CONFLICTS WITH SETTLED LAW IN CALIFORNIA

A. Only the *direct* target of a government action now has standing to challenge it. Those *indirectly* harmed are barred from seeking redress in the court

The Opinion states that Malinda lacks "standing to challenge the zoning provisions affecting dispensaries generally. The reason is simple: she is not a dispensary. n12" Prior to this Opinion, however, "the fact that the harm to petitioners may have resulted indirectly does not in itself preclude standing. When a governmental prohibition or restriction imposed on one party causes specific harm to a third party, harm that a constitutional provision or statute was intended to prevent, the indirectness of the injury does not necessarily deprive the person harmed of standing to vindicate his rights." *Jensen*, supra, at 5.

n12 *Traudt*, supra, at 3.

The [*15] right to challenge a governmental action that harms us is part of the very fabric of our legal system. It goes back at least to *Plessy v. Ferguson* (1896) 163 U.S. 537, where a black individual challenged the constitutionality of laws mandating racial segregation in railroads. Homer Plessy had standing because he was harmed. However, under the Opinion's onerous standing analysis (only a *dispensary* has standing to challenge laws regulating *dispensaries*; others, even if harmed, lack standing) Plessy would lack standing because only a *railroad* has standing to challenge a law regulating *railroads*.

In *Mendez v. Westminster School Dist.* (1946) 64 F.Supp. 544, individual parents challenged a law requiring schools to discriminate against Mexican students. The parents had standing, despite the fact that the law regulated the operation of a school, because their children were harmed. Once again, under the Opinion's narrow view, the case should have been dismissed for lack of standing because the law regulates *schools* so only a *school* can challenge it.

In *Roe v Wade* (1973) 410 U.S. 113, Roe had standing to challenge [*16] an anti-abortion law that prevented her from obtaining a legal abortion. That was deemed sufficient and concrete harm, above that suffered by the general public (this logic is indistinguishable from the case at bar in which Malinda challenges an ordinance which prevents her from obtaining legal medical treatment). Under the new standing requirements announced in the Opinion, however, only abortion doctors, the direct targets of the law, would have had standing. And, if no abortion doctor elects to spend the time and money on such a challenge, Roe's individual rights could not be vindicated. This effectively voids the civil rights of millions of Californians who have suffered real, concrete, and individualized harm.

This Court is no doubt aware of recent attempts by municipalities to ban doctors from performing circumcisions. Under California's prior standing decisions, an individual who wished to be circumcised would have had standing to challenge such an ordinance because it interferes with his freedom of religion, under Art. 1, § 4 of the California Constitution, the right to pursue and obtain safety, happiness, and privacy, under Art. 1, § 1 of the California Constitution, and [*17] the fundamental right to control one's medical treatment, under *Probate Code* § 4650. Now, however, individuals will lack standing because only doctors-the targets of the prohibition-have standing.

Of what value are fundamental rights if they cannot be asserted in a court of law? They are effectively void.

B. Government actions regulating a *group* may now only be challenged by the *group*: affected individuals, even

those who have suffered concrete harm of their own, lack standing

"[T]he group basis of the right to associate and collectively or cooperatively produce medical marijuana restricts to the group the right of standing in zoning challenges. n13"

n13 *Traudt*, supra, at 3.

However, that conflicts with settled law under *Jensen*, "When a governmental prohibition or restriction imposed on one party causes specific harm to a third party, harm that a constitutional provision or statute was intended to prevent, the indirectness of the injury does not necessarily deprive the [*18] person harmed of standing to vindicate his rights." *Id.* at 5. *Jensen* makes clear that *anyone* (individual or group) who has suffered concrete harm, above that of the general public, as a result of a governmental action, has standing to challenge that action.

Moreover, the Opinion's logic is circular: If only the group has standing but the challenged law prevents groups from forming, then no one will have standing; effectively immunizing harmful ordinances from challenge. The Opinion's newly-invented restriction is contrary to existing California law and is hostile to the rights of millions of Californians harmed by governmental actions, far beyond medical marijuana.

C. Joining an organization now strips an individual of standing to challenge ordinances regulating the organization, even if the individual has suffered concrete harm, independent of the organization's

"[T]he rules governing corporate standing are pertinent here. 'Because a corporation exists as a separate legal entity, the shareholders have no direct cause of action or right of recovery against those who have harmed it.' n14"

n14 *Traudt*, supra, at 5.

[*19]

Malinda does not dispute that the right to challenge some restrictions is limited to the subject of the regulation. For example, Malinda would lack standing to challenge regulations regarding what a collective does with its revenue, who it hires, what taxes it pays, what reports it must file, signage, etc. Those are aspects of the collective's operations that have little, if any, effect on Malinda's individual rights to obtain medical marijuana via membership in a collective. However, a *total ban* on collectives significantly interferes with Malinda's rights.

Under the standing review employed by every other California court, both an organization and its individual members can have standing (if both have been harmed): "Where the interests of two parties interweave, either party has standing to litigate issues that have a impact upon the related interests. This is a matter of first party standing." *In re Patricia E. (1985) 174 Cal.App.3d 1, 6*. The organization has standing to assert its organizational rights and the member has standing to assert her individual rights. Until now, standing has never been a mutually-exclusive proposition.

One of the consequences [*20] of the Opinion's new standing rules is that, while a pregnant woman may have standing to challenge a law limiting the treatment abortion providers may provide to their patients, she loses that standing if she joins Planned Parenthood because only Planned Parenthood, as an abortion provider, has standing. Similarly, the parents who had standing to challenge discriminatory laws in *Mendez*, supra, would lose their standing if they joined MALDEF (Mexican American Legal Defense and Educational Fund).

Never before has a California (or any other) court manufactured such tension between individual and group rights.

Denying an individual her personal rights if she chooses to join an organization violates the right to freedom of association under Art. 1, § 3 of the California Constitution.

D. Mere numerosity is now grounds to deny standing

"To recognize standing in every member of every dispensary to assert claims concerning the cooperative or collective right to produce marijuana would have the practical effect of swamping the courts with a multitude of separate, serial, overlapping cases, needlessly impeding the administration of justice and increasing the [*21] risk of inconsistent results. n15"

n15 *Traudt*, supra, at 6.

No other court has held mere numerosity a basis for denying standing. This logic would deprive a pregnant woman of standing to challenge an anti-abortion law because, all the pregnant women in California might "swamp[] the courts with a multitude of separate, serial, overlapping cases, needlessly impeding the administration of justice and increasing the risk of inconsistent results." Similarly, a black individual would lack standing to challenge a racially-discriminatory law because of the high number of blacks in California.

And, what is the threshold for denying standing? If 10 people would have standing, is that sufficient to deny standing to all? What about 100? Or, 1000? At what arbitrary number is it fair to deny standing to all? Since no other California (or other court) has ever denied standing on such an arbitrary and capricious basis, no one knows.

E. The previously-rejected *Warth* redressability requirement is now good [*22] law in California

"[E]ven if Traudt were to prevail, a favorable decision may not benefit her because she has no voice in the decision of any dispensary to open or remain open. n16" This is the federal redressability requirement from *Warth*, supra. In *Warth*, organizations and individuals sued a nearby town alleging that the town's zoning ordinance unconstitutionally excluded persons of low and moderate income from living there. The court denied standing on the basis that plaintiffs failed to demonstrate *redressability*-that a substantial probability existed that the desired housing would be built if ordinance was invalidated-because the plaintiffs lacked control over such building.

n16 *Traudt*, supra, at 7.

However, until now, California courts have rejected the *Warth* standard for public policy reasons, "The difference between our holding and the *Warth* standard is the degree of certainty that granting the requested relief will redress the plaintiffs' injury. We do not [*23] require that the likelihood of successful redress be established as a 'substantial probability' for standing purposes. The mere fact that granting relief in this case will not remove all obstacles from the plaintiffs' path to complete redress (i.e., the courts cannot order the actual construction of housing) is not sufficient reason to deny plaintiffs access to the courts . . . Applying the *Warth* standard in California would have the effect of putting the most restrictive zoning ordinances beyond judicial review." *Stocks*, supra, at 532-533. Since *Stocks* is from the Fourth District, Division 2, and the Opinion is from the Fourth District, Division 3, there is now a lack of uniformity even within the Fourth District itself.

The Opinion actually goes even beyond *Warth* to require not only that a third party, such as a collective, be willing to redress the harm but the third party now must bring the challenge on its own, since it is the only entity with standing

to do so. Even under *Warth*, individuals had standing to challenge government actions. This Opinion eviscerates that right in many cases and conflicts with other California courts.

F. Relaxed [*24] standing in cases involving the public interest now applies only where the plaintiff is an association

According to *Stocks*, "[i]n addition to conforming to California general standing principles, our holding is reinforced by the trend in this state to apply less stringent rules to cases litigating issues in the public interest. One court has noted the 'marked accommodation of formerly strict procedural requirements of standing to sue where matters relating to the 'social and economic realities of the present-day organization of society' are concerned.' Another court stated that 'were there any doubt about the justiciability of the controversy, that doubt would be resolved in favor of present adjudication, because the public is interested in the settlement of the dispute.'" *Id.* at 533, internal citations omitted.

Malinda alleges that her lawsuit is in the public interest because the ongoing uncertainty regarding the legality of collectives affects patients like her, cities like Dana Point, police departments, city councils, courts, landlords, and people living in the vicinity of collectives.

However, the Opinion rejects this basis for standing, stating, [*25] "The *Torres* n17 court observed, "This [the public interest] exception is usually applied in cases where an association sues on behalf of its members. n18" *Torres* is distinguishable because, in that case, the plaintiffs claim of standing was based upon the specific standing requirements of *CCP* § 863, not the generalized standing doctrine that governs the instant case.

n17 *Tones v. City of Yorba Linda (1993) 13 Cal.App.4th 1035.*

n18 *Traudt*, supra, at 8.

More importantly, the fact that the exception is *usually* applied to associations means it is also applied to non-association cases. The fact that something is *usually* applied in one situation is not a valid basis for denying its application in all others. In fact, this same court granted public interest standing to a non-association in *City of Garden Grove*, supra, "We find that while the City may not have standing in the traditional sense of the term, public policy considerations dictate that [*26] we afford the City standing in order to resolve the important and widespread issue presented in this case." *Id.* at 365. Thus, the Opinion is in conflict with the very court that authored it.

VI. STANDING IS MEANT TO ENSURE THAT ALL RELEVANT FACTS AND ISSUES ARE ADEQUATELY PRESENTED. IT IS NOT INTENDED TO PLACE A SUBSTANTIAL OR INSURMOUNTABLE HURDLE IN THE PATH OF AN INDIVIDUAL WHO HAS SUFFERED CONCRETE HARM ABOVE THAT OF THE PUBLIC AT LARGE

"As a general principle, standing to invoke the judicial process requires an actual justiciable controversy as to which the complainant has a real interest in the ultimate adjudication because he or she has either suffered or is about to suffer an injury of sufficient magnitude reasonably to assure that all of the relevant facts and issues will be adequately presented to the adjudicator. To have standing, a party must be beneficially interested in the controversy; that is, he or she must have 'some special interest to be served or some particular right to be preserved or protected over and above the interest held in common with the public at large.'" *County of San Diego v. San Diego NORML (2008) 165 Cal.App.4th 798, 814.* [*27]

"[F]ederal courts have reiterated that injury in fact is not a substantial or insurmountable hurdle; as then Judge Alito put it: 'Injury-in-fact is not Mount Everest.' Rather, it suffices for federal standing n19 purposes to 'allege some specific,

identifiable trifle of injury.'...The basic idea that comes out in numerous cases is that an identifiable trifle is enough for standing to fight out a question of principle; the trifle is the basis for standing and the principle supplies the motivation.'" *Kwikset Corp. v. Superior Court* (2011) 51 Cal.4th 310, 324-325, internal citations omitted.

n19 California's injury-in-fact test is equivalent to the federal test. *City of Garden Grove, supra, at 366.*

Additionally, in cases like this, that involve the public interest, "were there any doubt about the justiciability of the controversy, that doubt would be resolved in favor of present adjudication, because the public is interested in the settlement of the dispute." *Stocks, supra, at 533.* [*28]

The Opinion does not deny that Malinda has suffered a concrete injury to her ability to obtain the medicine recommended by her physician, and necessary for her very life. The Opinion does not deny that Malinda's injury is above that of the public at large. The Opinion does not deny that Malinda has presented all of the relevant facts and issues regarding her individual claims. The Opinion does not deny that this case involves a matter of public interest. In fact, the Opinion does not deny that Malinda meets all of the standing requirements under pre-Opinion California law.

The Opinion denies Malinda standing solely on the basis of its newly-invented standing requirements: that standing is limited to the direct target of the governmental action; that joining a group deprives an individual of their personal standing; that individual and group standing are mutually exclusive, even when both have suffered injuries to their respective interests; that standing should be denied if too many people would have it; and that the *Warth* redressability requirement, previously expressly rejected in California, is now the law.

The Opinion's highly-restrictive new standing requirements are incompatible [*29] with existing California law and severely and unfairly interfere with the ability of injured Californians to bring their legitimate grievances before a court. Thus, they interfere with the right to petition the government for redress of grievances under Art. 1, 3(a) of the California Constitution.

VII. CONCLUSION

The Opinion establishes new, onerous requirements for standing. It directly contradicts the settled requirements in every other California court and impermissibly slams the courtroom door in the faces of millions of Californians. Therefore, this honorable Court should grant review.

/s/ Jeffrey M. Schwartz
Jeffrey M. Schwartz
Attorney for Petitioner

CERTIFICATE OF WORD COUNT

The foregoing brief contains 4,953 words (including footnotes, but excluding tables and this certificate). In preparing this certificate, I have relied on the word count generated by Microsoft Office Word 2007.

Executed on October 31, 2011, at San Clemente, California.

/s/ Jeffrey M. Schwartz
Jeffrey M. Schwartz

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the aforesaid county, State of California. I am over the age of 18 [*30] years and not a party to the within action. My business address is Schwartz Law, PC, 629 Camino De Los Mares, Suite 203, San Clemente, CA 92673.

On the date below, I served the foregoing **PETITION FOR REVIEW** on the required parties to this action by:

[Y] By placing a true copy of the document(s) list above in a sealed envelope, addressed as set forth below, for collection and mailing on the date below following our ordinary business practices. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at San Clemente, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

[] BY PERSONAL SERVICE

I caused such document to be personally delivered to addressee(s).

[Z] BY PRIORITY MAIL

I caused such document to be delivered by priority mail to the addressee(s).

[X] I declare under penalty of perjury [*31] under the laws of the State of California that the above is true and correct.

Executed on November 1, 2011, at San Clemente, CA

/s/ Jeffrey M. Schwartz
Jeffrey M. Schwartz

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