Maine Law Review

Volume 41 | Number 1 Article 6

January 1989

Taxpayer Standing and the Preventive-Remedial Distinction: A Call for Reform

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TAXPAYER STANDING AND THE PREVENTIVE-REMEDIAL DISTINCTION: A CALL FOR REFORM

I. INTRODUCTION

The Maine Law Court has observed that, "a central function of American courts [is] to protect and relieve the individual from injurious unconstitutional conduct by government officials."[1] Apart from the political process, the judicial process is the only means through which citizens can ensure that government conforms to the law.[2] The courts provide a forum for citizens to challenge the legality of official acts, and serve as a "means of correcting illegal practices of government officials which would otherwise be irreparable."[3]

The question of standing[4] is a critical element of the court's task of balancing the individual's right to challenge municipal actions against the state's interest in protecting government officials from harassment by litigation.[5] In Maine, the courts have adopted a rule designed to "insure the preservation and efficient management of . . . essential elements of community life, and at the same time pro-

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1. Common Cause v. State, 455 A.2d 1, 9-10 (Me. 1983).

2. Comment, *Taxpayers' Suits: Standing Barriers and Pecuniary Restraints*, 59 TEMP. L.Q. 951, 951 (1986).

3. Comment, *Taxpayer Suits: A Survey and Summary*, 69 YALE L.J. 895, 910 (1960).

4. The question of standing "is whether the constitutional or statutory provision on which the [plaintiff's] claim rests properly can be understood as granting persons in the plaintiff's position a right to judicial relief." Warth v. Seldin, 422 U.S. 490, 500 (1975). The law of standing "focuses on the particular plaintiff seeking to bring his claim before the . . . court, not on the issues or merits of the case." O'Hair v. White, 675 F.2d 680, 685 (5th Cir. 1982).

The law of standing has been the subject of wide critical commentary. *See, e.g.*, C. WRIGHT, THE LAW OF FEDERAL COURTS § 13 (4th ed. 1983); Currie, *Misunderstanding Standing*, 1981 SUP. CT. REV. 41; Davis, *The Liberalized Law of Standing*, 37 U. CHI. L. REV. 450 (1970); Davis, *Standing: Taxpayers and Others*, 35 U. CHI. L. REV. 601 (1968); Jaffe, *The Citizen As Litigant In Public Actions: The Non-Hohfeldian or Ideological Plaintiff*, 116 U. PA. L. REV. 1033 (1968) [hereinafter Jaffe, *The Citizen As Litigant*]; Jaffe, *Standing Again*, 84 HARV. L. REV. 633 (1971); Jaffe, *Standing To Secure Judicial Review: Public Actions*, 74 HARV. L. REV. 1265 (1961) [hereinafter Jaffe, *Public Actions*]; Nichol, *Rethinking Standing*, 72 CALIF. L. REV. 68 (1984); Tushnet, *The New Law of Standing: A Plea For Abandonment*, 62 CORNELL L. REV. 663 (1977); Winter, *The Metaphor of Standing and the Problem of Self-Governance*, 40 STAN. L. REV. 1371 (1988); Comment, *supra* note 2; Comment, *supra* note 3; Note, *Analyzing Taxpayer Standing in Terms of General Standing Principles: The Road Not Taken*, 63 B.U.L. REV. 717 (1983); Note, *"More Than an Intuition, Less Than a Theory": Toward a Coherent Doctrine of Standing*, 86 COLUM. L. REV. 564 (1986).

For a discussion of the law of standing under Maine law, see A. HORTON & P. MCGEHEE, MAINE CIVIL REMEDIES, § 1.5 (1988); Comment, *Standing to Challenge Governmental Action*, 30 MAINE L. REV. 31 (1978).

5. *See* Comment, *supra* note 2, at 951.

tect public spirited citizens, who may be disposed to serve [the community], from vexatious litigation."[6] Maine courts have relied on the preventive-remedial doctrine to determine taxpayer standing in suits against municipalities, and to limit frivolous or multiple suits against municipal officers.[7]

The distinction between preventive and remedial relief "is the heart of a long-established doctrine which governs the standing of [Maine] taxpayers to sue the municipalities in which they reside."[8] The preventive-remedial distinction recognizes the right of taxpayers to apply to the court for preventive relief in the case of threatened unlawful action by municipal officers, while denying standing to plaintiffs seeking remedial relief for a wrong that has already occurred.[9] The doctrine serves as a threshold bar that restricts access to the court system by denying standing to plaintiffs seeking non-preventive relief.[10]

Currently, Maine taxpayers have no right to apply for remedial relief after the commission of an illegal municipal act, where the act is one which affects the entire community and not specifically those bringing suit.[11] Taxpayers who allege and prove injury shared by the public at large have standing to seek only preventive relief from actions by municipal officers.[12] Traditionally, "an individual citizen who suffers no particularized injury from a public wrong can not seek relief from the courts; relief vindicating public rights must be sought by . . . the Attorney General of the State of Maine."[13]

The Maine Attorney General is thus considered the only proper plaintiff when remedial relief is sought by a taxpayer without particular injury.[14] When "the injury claimed is one shared equally by all

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6. Eaton v. Thayer, 124 Me. 311, 316, 128 A. 475, 477 (1925).

7. Bayley v. Town of Wells, 133 Me. 141, 145, 174 A. 459, 461 (1934). For discussions of the development of the preventive-remedial doctrine, see Buck v. Town of Yarmouth, 402 A.2d 860, 861-62 (Me. 1979); Blodgett v. School Admin. Dist. No. 73, 289 A.2d 407, 409-11 (Me. 1972). Note, however, that the preventive-remedial doctrine does not apply to taxpayer suits against the state. *See* Common Cause v. State, 455 A.2d 1, 12 (Me. 1983); A. HORTON & P. MCGEHEE, *supra* note 4, at §§ 1.5-3.4 (1988). This Comment, therefore, does not address standing in suits brought against the state, but rather examines Maine law governing the issue of standing in taxpayer suits against municipalities. In this Comment, the term "taxpayer" encompasses citizens, voters and taxpayers who bring actions against municipalities and municipal officers.

8. Lehigh v. Pittston Co., 456 A.2d 355, 358 (Me. 1983).

9. Eaton v. Thayer, 124 Me. at 318, 128 A. at 478. *See also* Buck v. Town of Yarmouth, 402 A.2d at 862; Tuscan v. Smith, 130 Me. 36, 44, 153 A. 289, 293 (1931).

10. Common Cause v. State, 455 A.2d at 12.

11. Tuscan v. Smith, 130 Me. at 44, 153 A. at 293. *See also* von Tiling v. City of Portland, 268 A.2d 888, 890 (Me. 1970); 2 C. ANTIEAU, MUNICIPAL CORPORATION LAW § 16.47, at 16-95 (1988).

12. Common Cause v. State, 455 A.2d at 10-11.

13. Buck v. Town of Yarmouth, 402 A.2d at 861.

14. *Id. See also* Blodgett v. School Admin. Dist. No. 73, 289 A.2d 407, 411 (Me.

the members of the community the action must be brought by the Attorney General . . . as representative of not only the particular Plaintiffs who seek remedial relief but the entire community."[15] The Attorney General's role in municipal actions has been justified as a means of preventing multiple suits against municipalities, and protecting municipal officers from litigation by dissatisfied taxpayers.[16]

Despite the important policy considerations that support application of the preventive-remedial rule, the doctrine is not without its critics. Commentators have noted the elusive quality of the preventive-remedial distinction,[17] and the Law Court itself has admitted that the "distinction is no bright line test."[18] Additional criticisms have focused on the doctrine's restrictive effect on taxpayer standing,[19] causing one detractor to "strongly recommend[] that [the state] more generously allow taxpayers and citizens to attack illegal action by their public servants."[20]

Recently, Maine's Attorney General, appearing as *amicus curiae* in *McCorkle v. Town of Falmouth*,[21] advocated a less restrictive approach to taxpayer standing,[22] and argued that the Law Court

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1972); Eaton v. Thayer, 124 Me. 311, 315, 128 A. 475, 477 (1925). The *Eaton* court quoted from Judge Dillon's treatise on municipal corporations, which states:

> [In this country,] the weight of authority seems to be that the Attorney General of a State, or its other public law officer, has by virtue of his office the right in his name, or in the name of the State, upon the relation of persons interested, to bring in cases which are properly of equitable cognizance and which affect the public, a bill in equity to prevent municipal corporations from exceeding the line of their lawful authority, or to have their illegal acts set aside or corrected.

4 DILLON, MUNICIPAL CORPORATIONS § 1577, at 2760 (5th ed. 1911).

15. von Tiling v. City of Portland, 268 A.2d 888, 890 (Me. 1970).

16. Buck v. Town of Yarmouth, 402 A.2d at 863; Tuscan v. Smith, 130 Me. 36, 43, 153 A. 289, 293 (1931). *But see* Buck v. Town of Yarmouth, 402 A.2d at 866 (Nichols, J., dissenting) (discussing the difficulties involved in obtaining timely relief from the Attorney General's office).

17. A. HORTON & P. MCGEHEE, *supra* note 4, at § 1.5-3.4.

18. Lehigh v. Pittston Co., 456 A.2d 355, 358 n.11 (Me. 1983).

19. Common Cause v. State, 455 A.2d 1, 12 (Me. 1983).

20. C. ANTIEAU, *supra* note 11, § 16.47, at 16-95.

21. 529 A.2d 337 (Me. 1987). Following the dismissal of her lawsuit in the superior court, the plaintiff petitioned the Attorney General's office to bring an action against the Town of Falmouth on behalf of the state. Although the Attorney General declined to intervene, he did offer to appear as *amicus curiae* in support of her right to maintain her action directly. *See* Brief of Attorney General, *Amicus Curiae*, at 4-5, McCorkle v. Town of Falmouth, 529 A.2d 337 (Me. 1987) (No. CUM-87-55) [hereinafter Brief of Attorney General].

22. Brief of Attorney General, *supra* note 21, at 9, 14. The Attorney General argued that no sound policy reason required private citizens to obtain his permission before initiating actions against local governments or their officers to correct legal action, and suggested that the Attorney General's role should be limited in such suits. *Id.*

should entirely abandon its preventive-remedial approach.[23] The Attorney General's criticism of the restrictive preventive-remedial rule is consistent with recent Law Court decisions in which the court questioned the continuing viability of the preventive-remedial doctrine.[24] The Law Court has acknowledged the doctrine's restrictive nature, and implied that limitations on taxpayer standing are no longer appropriate.[25] Although the Law Court has not acted to abolish the doctrine, the court has noted that most of the policy considerations that once supported the preventive-remedial distinction may no longer exist,[26] and has stated that the doctrine may presently "have little more to commend itself than its age."[27]

The acknowledged weaknesses of the preventive-remedial approach to standing suggest that a reevaluation of the preventive-remedial doctrine and its history is appropriate. Accordingly, this Comment reexamines the decisions that have shaped the preventive-remedial doctrine. Using *McCorkle v. Town of Falmouth* as a springboard, this Comment demonstrates that inconsistent application of the doctrine has reduced it to a vague, unworkable standard, and concludes that the preventive-remedial doctrine has become an inadequate, manipulative tool that should be replaced. Finally, this Comment discusses and recommends specific alternatives to the preventive-remedial doctrine that can accomplish the doctrine's original objectives in a manner that is responsive both to the needs of litigating taxpayers and municipalities.

II. History of the Preventive-Remedial Doctrine in Maine

A. *Origin of the Doctrine*

Prior to 1864, a private individual could apply for relief only in those cases where he had some particular or private claim against a municipality separate from any claim common to the public at large.[28] Relief vindicating public rights could only be sought by the proper public official, regardless of the type of relief requested.[29] As

23. *Id.* at 10, 13.

24. *Compare* Lehigh v. Pittston Co., 456 A.2d 355, 358 n.11 (Me. 1983), and Common Cause v. State, 455 A.2d 1, 12-13 (Me. 1983), *with* McCorkle v. Town of Falmouth, 529 A.2d at 338 n.2, in which the court deferred acting upon an invitation to reconsider the viability of the doctrine.

25. Lehigh v. Pittston Co., 456 A.2d at 358 n.11; Common Cause v. State, 455 A.2d at 11. *See also infra* notes 149-50 and accompanying text.

26. Lehigh v. Pittston Co., 456 A.2d at 358 n.11.

27. *Id.* The court noted that "any statutory limitations on the equity powers of the Superior Court which once may have supported the preventative-remedial distinction no longer exist." *Id.*

28. *See* Robbins v. Bangor Ry. & Elec. Co., 100 Me. 496, 503, 62 A. 136, 139 (1905); Weeks v. Smith, 81 Me. 538, 544, 18 A. 325, 326 (1889); Sanger v. County Comm'rs, 25 Me. 291, 296 (1845).

29. Buck v. Town of Yarmouth, 402 A.2d 860, 861 (Me. 1979).

the Law Court later observed, "[b]y statute and case law, . . . exceptions have been carved out of [the] basic principles limiting the private citizen's right to sue on public wrongs."[30]

Passage of the Ten Taxpayers Statute in 1864 enabled ten or more taxable residents to seek relief against a specific type of public wrong involving the unauthorized or illegal use of public funds, provided the relief sought was preventive.[31] The statute gave the Supreme Judicial Court the power to hear and determine the taxpayers' suit in equity,[32] and

> [to] issue injunctions and make such orders and decrees as may be necessary or proper to restrain or prevent any violation or abuse of [a city or town's] legal right or power until the final determination of the cause by said court.[33]

The rights conferred by the statute did not extend to individual taxpayers, however, or to plaintiffs seeking remedial relief.[34]

In 1874, the Supreme Judicial Court was given full equity powers, to be exercised in cases where there was no plain, adequate and complete remedy at law.[35] Passage of the General Equity Jurisdic-

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30. *Id.*

31. P.L. 1864, ch. 239. The Act was entitled "An act to restrain illegal appropriations of public money." The Act provided in pertinent part:

> **Sect. 1.** When any county, city, town or school district votes to pledge its credit, or to raise by taxation, or to pay from its treasury, any money, for any purpose other than those for which it has the legal right and power, or any agent or officer thereof attempts to pay out the money of such county, city, town or school district without authority, the supreme judicial court may, upon the suit or petition of not less than ten taxable inhabitants thereof, briefly setting forth the cause of complaint, hear and determine the same in equity. Any justice of said court may in term time or vacation, issue injunctions and make such orders and decrees as may be necessary or proper *to restrain or prevent* any violation or abuse of such legal right or power *until the final determination of the cause* by said court.

Id. § 1 (emphasis added).

The 1864 Act is the predecessor of title 14, section 6051(12) of the Maine Revised Statutes Annotated. That section provides:

> When counties, cities, towns, school districts, School Administrative Districts, village or other public corporations, for a purpose not authorized by law, vote to pledge their credit or to raise money by taxation or to exempt property therefrom or to pay money from their treasury, or if any of their officers or agents attempt to pay out such money for such purpose, the court shall have jurisdiction on complaint filed by not less than 10 taxable inhabitants thereof, briefly setting forth the cause of complaint[.]

ME. REV. STAT. ANN. tit. 14, § 6051(12) (1980).

32. *See* Common Cause v. State, 455 A.2d 1, 11 (Me. 1983).

33. P.L. 1864, ch. 239. For the complete text of the statute, see *supra* note 31.

34. Buck v. Town of Yarmouth, 402 A.2d 860, 862 (Me. 1979). *See also* Blodgett v. School Admin. Dist. No. 73, 289 A.2d 407, 409 (Me. 1972) (discussing the limitations of the ten taxpayers statute and their effect on current law).

35. P.L. 1874, ch. 175. The Act gave comprehensive equity jurisdiction to the Supreme Judicial Court as the state's court of general trial jurisdiction. The superior

tion Statute enabled private individuals to seek preventive relief against a threatened public wrong regardless of particularized injury, and without the limitations of the ten taxpayers requirement or the public funds provision specified in the 1864 statute.[36] Equitable remedies were made "available to taxable inhabitants against cities and towns, except in so far as considerations of public policy and the discretionary powers of the courts" restricted them.[37] The court continued to limit the right to challenge municipal actions to applications for preventive relief, however, and denied standing if the requested judicial action was deemed remedial.[38]

Standing to sue a Maine municipality continues to depend upon the court's interpretation of the type of relief sought by the plaintiff.[39] Previous cases that have applied the preventive-remedial doctrine provide little guidance, however, in distinguishing between those taxpayers who seek preventive relief and those seeking remedial relief after the commission of an illegal municipal act.[40] Distinctions between the two forms of relief appear to be premised on "the idea that preventive relief is purely prospective in effect," while remedial relief is retrospective, encompassing "awards of a restitutionary nature."[41] Nevertheless, an examination of the leading cases in this area illustrates that there is no clear standard distinguishing preventive and remedial relief.

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court now holds that position. *See* Common Cause v. State, 455 A.2d 1, 12 (Me. 1983); Buck v. Town of Yarmouth, 402 A.2d 860, 862 (Me. 1979). The 1874 Act is the predecessor of title 14, section 6051(13) of the Maine Revised Statutes Annotated. That section provides:

> [The Superior Court shall] have full equity jurisdiction, according to the usage and practice of courts of equity, in all other cases where there is not a plain, adequate and complete remedy at law.

ME. REV. STAT. ANN. tit. 14, § 6051(13) (1980).

36. *See* Buck v. Town of Yarmouth, 402 A.2d at 862.

37. Tuscan v. Smith, 130 Me. 36, 43, 153 A. 289, 293 (Me. 1931). For a discussion of the policy considerations that have traditionally justified the preventive-remedial distinction, see *infra* text accompanying notes 62-67.

38. Blodgett v. School Admin. Dist. No. 73, 289 A.2d at 411. The court explained that whether plaintiffs base their claim to relief on subsection 12 or subsection 13 of title 14, section 6051, Maine's current versions of the ten taxpayers statute and general equity statute, the court will deny standing if the desired relief is deemed remedial rather than preventive. *Id. See also* Buck v. Town of Yarmouth, 402 A.2d at 862 (noting that subsection 13 grants standing only to plaintiffs seeking preventive relief).

39. *See* Lehigh v. Pittston Co., 456 A.2d 355, 358 (Me. 1983) ("Application of this doctrine is largely a definitional undertaking. If the relief sought by municipal taxpayers lacking special injury is deemed 'preventative,' the courthouse door stands open; if the relief is deemed 'remedial,' that door swings shut.").

40. *Id.* n.11.

41. Common Cause v. State, 455 A.2d 1, 10 n.10 (Me. 1983).

B. *Application of the Preventive-Remedial Doctrine*

1. *McCorkle v. Town of Falmouth: Reaffirmation of the Doctrine*

McCorkle v. Town of Falmouth[42] is the most recent Maine case to consider the issue of taxpayer standing. *McCorkle* held that a single taxpayer seeking to prevent a municipality from incurring illegal debt has standing to sue.[43] The decision thus reaffirmed the right of a single taxpayer to sue a municipality if the relief sought is preventive rather than remedial.[44] The decision did not fully address the central issue of the standing controversy, however. The Law Court's opinion failed to relate the history and significance of the preventive-remedial distinction to the facts of *McCorkle*, and the court refused to examine the viability of the preventive-remedial doctrine.[45]

McCorkle's suit against the Town of Falmouth arose out of a contested referendum vote. After Falmouth voters approved a bond issue for the construction of a municipal swimming pool, McCorkle and other citizens petitioned the town for a recount of the ballots. The recount took place under the direction of six Town Council members, who determined that 1,951 voters had approved and 1,956 opposed the bond issue. The Council members then examined seven absentee ballots that had been rejected by the Town Clerk or wardens on election day. Of the seven ballots, one was blank and six were in favor of the bond issue. On the basis of the seven absentee ballots, the Town Council members declared the referendum approved by a margin of one vote.[46]

McCorkle filed suit in the superior court, alleging in her complaint that she was a resident taxpayer and voter in the Town of Falmouth. McCorkle claimed that the Town Council's decision to examine and approve seven previously rejected ballots was an unauthorized abuse of authority that resulted in an invalid ballot recount. Her complaint sought to have the initial recount tally against the bond issue declared binding, and to enjoin the town from proceeding with the bond issue.[47] The superior court denied standing, declaring that the essence of McCorkle's complaint was remedial.[48]

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42. 529 A.2d 337 (Me. 1987).

43. *Id.* at 338.

44. *Id. See also* Cohen v. Ketchum, 344 A.2d 387, 392 (Me. 1975) (recognizing the right of an individual taxpayer to seek preventive relief against alleged municipal wrongdoing).

45. McCorkle v. Town of Falmouth, 529 A.2d at 338 n.2 ("[W]e defer to another day acting upon the invitation . . . to reconsider the viability of the 'preventive-remedial doctrine.' "). *See also supra* note 24 and accompanying text.

46. McCorkle v. Town of Falmouth, 529 A.2d at 337.

47. *Id.* at 338.

48. *Id. See also* Brief for Appellant at 7-8, McCorkle v. Town of Falmouth, 529 A.2d 337 (Me. 1987) (No. CUM-87-55) [hereinafter "Brief for Appellant"] (explaining that the superior court concluded that the relief sought was remedial "because the

On appeal, McCorkle argued that she was entitled to standing because she sought to prevent the town from incurring illegal debts.[49] McCorkle claimed that her status as a taxpayer gave her a direct interest in seeking preventive relief from threatened governmental indebtedness and increased taxes.[50] Her lawsuit against the Town of Falmouth was an attempt to ensure that the town funds were not misspent prior to a determination that the actions of the Town Council and the final recount tally were indeed valid.[51]

The Town of Falmouth disputed McCorkle's claim that she was seeking preventive relief,[52] and argued that her primary goal was to reverse the actions of Town Council members and to reinstate the original recount total. The town essentially maintained that the referendum vote was the last in a series of steps necessary to achieve a final goal,[53] construction of the municipal pool, and argued that McCorkle's complaint constituted a request for remedial relief that should have been denied due to the nonspecific nature of her injuries.[54]

The Law Court's opinion did not address the issues raised by the Town of Falmouth,[55] or acknowledge the dual nature of the relief

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election was a thing of the past and nothing remained to be done but issue the bonds").

49. Brief for Appellant, *supra* note 48, at 9. The plaintiff based her argument on the premise that she was seeking to prevent the expenditure of public funds to be obtained from the sale of bonds that had not in fact been approved by a majority vote at a referendum. *Id. See also* McCorkle v. Town of Falmouth, 529 A.2d at 338.

50. Brief for Appellant, *supra* note 48, at 7. *See also* Cohen v. Ketchum, 344 A.2d at 392 ("[T]he asserted illegality relates to a subject matter of direct interest to any taxpayer, the incurring of governmental indebtedness."); Heald v. School Admin. Dist. No. 74, 387 A.2d 1, 4 (Me. 1978) (acknowledging that the bond issue vote being challenged by the plaintiffs was directly related to their financial interests due to the possibility of increased tax burdens on property in the district, but denying standing because the plaintiffs failed to allege any direct financial injury).

51. *See* Brief for Appellant, *supra* note 48, at 6.

52. Brief for Defendant-Appellee at 6, McCorkle v. Town of Falmouth, 529 A.2d 337 (Me. 1987) (No. CUM-87-55) [hereinafter "Brief for Appellee"].

53. *Id.* at 12.

54. *Id.* at 6, 10-12. *But see* Reply Brief for Plaintiff-Appellant at 4, McCorkle v. Town of Falmouth, 529 A.2d 337 (Me. 1987) (No. CUM-87-55) [hereinafter "Reply Brief"] (suggesting that the town's commitment to the pool project was questionable due to the uncertainty of the ballot recount).

55. *See* Brief for Appellee, *supra* note 52, at 15. The town was troubled by the dangerous precedent that could be established by a decision in McCorkle's favor. McCorkle challenged the recount procedures of an election decided by a margin of only one vote. The town argued that future challenges could rely on and apply the same principles established in *McCorkle*, whether the vote margin was one or one thousand. Municipalities could be prevented by disgruntled voters from implementing any issues decided by referendum vote, and future expenditures for municipal "necessities" such as sewers, schools and sidewalks could be delayed indefinitely until such disputes were resolved. Relaxing the standards attached to taxpayer standing would threaten municipal programs and the efficient management of funds, while uncer-

prayed for in McCorkle's complaint.[56] The court merely decided that the relief sought was preventive,[57] and granted standing.[58] The court refused to reexamine the viability of the preventive-remedial doctrine, or to discuss thoroughly its impact on the facts of *McCorkle*,[59] thus compounding the controversy surrounding application of the doctrine.

The *McCorkle* decision illustrates the fine line between preventive and remedial relief,[60] and the confusion generated by inconsistent application of the doctrine in prior decisions. A study of those decisions demonstrates that the criteria established to maintain the preventive-remedial distinction have not been consistently or properly applied to the facts of each case, resulting in a meaningless standard.[61]

2. *Prior Cases Applying the Doctrine*

Eaton v. Thayer[62] first articulated the policy considerations that have supported use of the preventive-remedial distinction. The Law Court in *Eaton* declared that it was "the duty of the court to . . . protect public spirited citizens [serving as municipal officers] . . . from vexatious litigation,"[63] but noted that courts in other jurisdictions had " 'gone to extreme lengths in entertaining suits by taxpayers against local boards and officials.' "[64] Although the court acknowledged its jurisdiction to grant preventive relief under the General Equity Statute of 1874,[65] it held that granting standing to plaintiffs seeking remedial relief would create opportunities for mul-

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tainty regarding potential suits could cripple municipal operations and discourage public-minded citizens from seeking office. *Id.* at 18-19. *See also* Eaton v. Thayer, 124 Me. 311, 316, 128 A. 475, 477 (1925).

56. *See supra* notes 49-54 and accompanying text (discussing the preventive and remedial aspects of McCorkle's complaint).

57. McCorkle v. Town of Falmouth, 529 A.2d at 338.

58. *Id.* at 339. Justice Glassman and Justice Nichols concurred in the majority decision, but based their concurrence on statutory grounds. *Id.* (Glassman, J., concurring). The issues raised by the concurring opinion are beyond the scope of this Comment.

59. *Compare McCorkle with* Common Cause v. State, 455 A.2d 1 (Me. 1983); Buck v. Town of Yarmouth, 402 A.2d 860 (Me. 1979); Cohen v. Ketchum, 344 A.2d 387 (Me. 1975); and Blodgett v. School Admin. Dist. No. 73, 289 A.2d 407 (Me. 1972). In *Common Cause, Buck, Cohen,* and *Blodgett*, the court examined the history and significance of the preventive-remedial doctrine before applying it to the particular circumstances of each case.

60. *See supra* text accompanying notes 40-41.

61. *See infra* text accompanying notes 151-69.

62. 124 Me. 311, 128 A. 475 (1925).

63. *Id.* at 317, 128 A. at 477 (quoting Cathers v. Moores, 78 Neb. 13, 15, 110 N.W. 689, 690 (1907)).

64. *Id.* at 316, 128 A. at 477.

65. *Id.* at 314, 128 A. at 476.

tiple lawsuits contrary to the public interest.[66] The court reasoned that such proceedings by individuals were inappropriate when violation of a public trust for the public welfare was charged and remedial relief alone was requested.[67]

The facts of *Eaton v. Thayer* demonstrate the vagaries of the preventive-remedial distinction. In *Eaton*, fourteen ratepayers sued the Kennebec Water District and several of its trustees, seeking restitution of funds that were allegedly paid to the defendants in violation of the law.[68] The court held that the plaintiffs were not seeking preventive relief against anticipated or threatened unauthorized actions by the trustees, but were requesting remedial relief after the commission of an alleged illegal act which affected the entire community.[69] Accordingly, the court denied standing.[70]

The *Eaton* criteria for distinguishing between preventive and remedial relief have been cited repeatedly in subsequent cases involving taxpayer standing.[71] Few cases, however, have been able to apply the clear-cut distinction described in *Eaton*.[72] In most instances, the relief sought by complaining taxpayers has included both preventive and remedial elements, so that a "principled differentiation" between the two is often difficult.[73] The result is a series of confusing and misleading precedents.

Tuscan v. Smith[74] is the earliest example of a complaint containing both preventive and remedial elements. In that case, the court cancelled an illegal lease entered into by the selectmen of the Town of Skowhegan and enjoined the use of the property in question.[75] The court noted that "there would seem to be no substantial reason why a bill by or on behalf of individual tax-payers should not be entertained to prevent the misuse of corporate powers. The courts may be safely trusted to prevent the abuse of their process in such

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66. *Id.* at 318, 128 A. at 478.

67. *Id.* at 317, 128 A. at 477-78.

68. *Id.* at 314, 128 A. at 476.

69. *Id.* at 318, 128 A. at 478.

70. *Id.* at 319, 128 A. at 479.

71. *See* Buck v. Town of Yarmouth, 402 A.2d 860, 863 (Me. 1979); Heald v. School Admin. Dist. No. 74, 387 A.2d 1, 3 (Me. 1978); Cohen v. Ketchum, 344 A.2d 387, 391 (Me. 1975); Blodgett v. School Admin. Dist. No. 73, 289 A.2d 407, 410 (Me. 1972); Bayley v. Town of Wells, 133 Me. 141, 145, 174 A. 459, 461 (1934); Tuscan v. Smith, 130 Me. 36, 44, 153 A. 289, 293 (1931).

72. Eaton v. Thayer, 124 Me. at 314, 128 A. at 476.

73. Lehigh v. Pittston Co., 456 A.2d 355, 358 n.11 (Me. 1983). *See also supra* text accompanying notes 17-18.

74. 130 Me. 36, 153 A. 289 (1931).

75. *Id.* at 46, 153 A. at 294. The court held, "this court has jurisdiction in equity to enjoin the wrongful use by the lessee of the town property, to declare such contract void, and as incidental to such *preventive* measures to give such affirmative relief as may be appropriate." *Id.* at 44, 153 A. at 293 (emphasis added).

cases."[76]

The *Tuscan* court reinforced its decision to cancel an illegal contract made in violation of the selectmen's duties as public officials by referring to the criteria for a proper case set forth in *Eaton v. Thayer*.[77] The court misapplied the standard, however. *Eaton* specified that only taxpayers seeking preventive relief against threatened illegal conduct were proper plaintiffs.[78] The plaintiffs in *Tuscan* had challenged the legality of an executed lease and the misuse of public property.[79] The focus of their complaint was therefore "remedial," despite the court's assertions that its actions were "preventive."[80] The court's decision to cancel the illegal lease to prevent the misuse of public property was thus a remedial measure taken to achieve preventive results.[81]

In contrast to *Tuscan*, *Bayley v. Town of Wells*[82] is an example of the court's reluctance to grant standing if a complaint contains both preventive and remedial elements. *Bayley* resolved the preventive-remedial conflict by holding that the plaintiffs' prayer for preventive relief was secondary to their request for remedial relief. As a result, the court denied standing.[83]

The controversy in *Bayley* evolved out of a long-standing dispute between the Town of Wells and the Village of Ogunquit. The dispute concerned school funding provisions set forth in the 1913 Act

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76. *Id.* at 44, 153 A. at 293 (quoting Crampton v. Zabriskie, 101 U.S. 601, 609 (1879)).

77. *Id.* The *Tuscan* court observed:

> Our court has very clearly defined the limits of [the] right [to sue municipal officers]. It has held that it should be restricted to an application for preventive relief, and that individual taxpayers have not the right to apply for remedial relief after the commission of an illegal act, where the act is one which affects the entire community and not specifically the individual bringing the bill.

Id. (citing Eaton v. Thayer, 124 Me. 311, 317, 128 A. 475, 477-78 (1925)).

78. Eaton v. Thayer, 124 Me. at 318, 128 A. at 478. The court stated:

> While upholding to the full extent the right of citizens and taxpayers to apply to the court for preventive relief in the case of threatened unlawful action by municipal officers, we think that the practice should not be extended to [applications] for remedial relief by way of restitution after the commission of an illegal act which affects the entire community, and is not a special wrong to particular individuals.

Id.

79. Tuscan v. Smith, 130 Me. at 38-40, 153 A. at 290-92. The plaintiffs complained that the lease was given to the brother of the head selectman for less than the amount that might have been received had the lease been put up for bids. *Id.*

80. *See supra* note 75. *But see* Buck v. Town of Yarmouth, 402 A.2d 860, 865 n.6 (Me. 1979) (Nichols, J., dissenting) (suggesting that the relief requested in *Tuscan* was arguably remedial in nature).

81. *See infra* notes 151-69 and accompanying text.

82. 133 Me. 141, 174 A. 459 (1934).

83. *Id.* at 145, 174 A. at 461.

that established the village as a separate entity within the town.[84] In an attempt to avoid costly and acrimonious litigation, a joint committee consisting of town and village officials devised a compromise intended to settle all differences in the best interests of both parties. The compromise was approved by voters of both towns and accepted by the Legislature.[85] Nevertheless, fifteen taxpayers of the Town of Wells filed suit against the town and village seeking judicial interpretation of the Act creating the Ogunquit Village Corporation, an injunction against payment of money claimed to be due the village from the town under the terms of the compromise, and an accounting.[86] The court denied standing based on its determination that the focus of the plaintiffs' complaint was remedial.[87]

The *Bayley* court's decision to deny standing was based on the *Eaton* criteria for distinguishing preventive and remedial relief.[88] The court did not explain, however, why the plaintiffs' complaint was considered remedial. It is arguable that the plaintiffs were not seeking retrospective relief following commission of an illegal municipal act,[89] but were rather attempting to prevent prospective wrongdoing through an accounting of municipal funds and an interpretation of the troublesome school funding clause. The court asserted that the plaintiffs' requests were primarily remedial, yet the plaintiffs' complaint was intended to prevent the disbursement of municipal funds in violation of the original legislative enactment.[90] Their requested "remedial" relief was thus a means to reach their preventive goal.

The *Bayley* decision is significant due to the court's use of the preventive-remedial distinction to protect municipal officers from harassing litigation.[91] Arguably, voter and legislative approval of the proposed compromise convinced the court that the plaintiffs were merely disgruntled taxpayers unwilling to abide by majority rule.[92]

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84. *Id.* at 142-43, 174 A. at 459-60.

85. *Id.* at 144, 174 A. at 460.

86. *Id.* at 142, 174 A. at 459.

87. *Id.* at 145, 174 A. at 461.

88. *Id.* The court also noted that the basis of the *Eaton* criteria was "a sound public policy, which holds that municipal officers should not be subjected to litigation at the suit of every dissatisfied taxpayer." *Id.*

89. *See supra* text accompanying note 41.

90. *See* Bayley v. Town of Wells, 133 Me. at 143, 174 A. at 460. Before the joint committee was formed to resolve the towns' dispute, Bayley had requested that Wells bring an action against Ogunquit to recover an amount he claimed was owed Wells for the cost of maintaining Ogunquit elementary schools. The proposed compromise suggested that Wells set off the unpaid amount against a sum Ogunquit had agreed to pay for a village elementary school. *Id.* at 144, 174 A. at 460.

91. *See supra* note 88.

92. *See* Bayley v. Town of Wells, 133 Me. at 144, 174 A. at 460 (commenting favorably on the efforts of both sides to finally resolve their conflict, and the similar desire evidenced by voter approval of the compromise).

Application of the preventive-remedial doctrine thus enabled the court to dismiss a lawsuit that appeared to interfere with the best interests of Wells and Ogunquit.[93]

The *Bayley* court's opinion evidences a weakness of the preventive-remedial approach to standing: the preventive-remedial doctrine permitted the court to determine what was best for the towns and base its decision on the *Eaton* criteria without justifying the rationale for its conclusion.[94] The court's focus on the plaintiffs' requested relief ignored the possible merits of their complaint, and overlooked any legitimate interest the plaintiffs might have had in postponing the proposed compromise.[95]

The Law Court's decisions in *Tuscan v. Smith*,[96] and *Bayley v. Town of Wells*,[97] illustrate the overlapping elements of preventive and remedial relief. More importantly, however, they demonstrate that use of the preventive-remedial distinction may enable the court to decide a case on its merits, while camouflaging its motives in the guise of the preventive-remedial rule.

In both *Tuscan* and *Bayley*, the plaintiffs questioned the conduct of municipal officers and asked the court to enjoin potentially illegal government acts.[98] In response, *Tuscan* declared that the actions of Skowhegan selectmen were unconscionable, unlawful and against public policy.[99] *Bayley*, however, relied on the "sound public policy" that protects municipal offices against harassing litigation,[100] and implied that the plaintiffs were interfering with the best interests of the towns.[101] The court's willingness to provide relief in *Tuscan*[102] and its refusal to grant standing in *Bayley*[103] suggest that its final decisions were not determined by the preventive-remedial doctrine, but by the circumstances of each case.[104]

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93. *See id.* at 145-46, 174 A. at 461.

94. *See id.* at 145, 174 A. at 461. *Bayley* illustrates the conflict between the need to protect government officials from vexatious litigation, and a taxpayer's right to contest potentially illegal government acts.

95. *Cf.* Common Cause v. State, 455 A.2d 1, 9 (Me. 1983) (discussing the need to examine the merits of a taxpayer's complaint in order to determine the legality of the challenged governmental acts).

96. 130 Me. 36, 153 A. 289 (1931).

97. 133 Me. 141, 174 A. 459 (1934).

98. *See* Tuscan v. Smith, 130 Me. at 38, 153 A. at 291; Bayley v. Town of Wells, 133 Me. at 142, 174 A. at 459.

99. Tuscan v. Smith, 130 Me. at 46, 153 A. at 294.

100. Bayley v. Town of Wells, 133 Me. at 145, 174 A. at 461.

101. *See supra* notes 92-93 and accompanying text.

102. *See supra* note 75 and accompanying text.

103. *See supra* note 87 and accompanying text.

104. For discussions on the growing tendency of courts to use standing for nonjurisdictional purposes, see Nichol, *supra* note 4, at 73; Note, *Standing: A Key to Flexible Jurisdiction — The Aftermath of Warth v. Seldin*, 9 Sw. U.L. Rev. 1247, 1276 (1977); Davis, *Standing: Taxpayers and Others*, *supra* note 4, at 635. *See also infra* note 126 and accompanying text.

Buck v. Town of Yarmouth[105] is a more recent example of the court's efforts to protect town officials from harassing or unreasonable litigation by using the preventive-remedial rule. The court applied the doctrine to overcome the plaintiffs' claim that they were statutorily entitled to standing.[106] The result, however, raises the question of whether the preventive-remedial doctrine is the appropriate mechanism for resolving issues involving statutory procedures.

In *Buck*, the plaintiffs sought to have Yarmouth voters reconsider their decision to appropriate $1.4 million for construction of a municipal recreation center. Accordingly, the plaintiffs filed a petition with the Yarmouth Town Council less than three weeks after the general election.[107] Based on the provisions of title 30, section 2053 of Maine Revised Statutes Annotated,[108] the petition requested that an article calling for Yarmouth voters to rescind their decision in favor of the recreation center be inserted in the next warrant for a town meeting, or that a special meeting be called within sixty days to consider rescission.[109] By a unanimous vote, the Town Council refused to act on the petition, which it considered "unreasonable." The plaintiffs then filed a complaint in the superior court requesting that the court order the Council to comply with the procedures set forth in section 2053.[110] The court denied standing and dismissed the complaint.[111]

The major issue in *Buck* involved the plaintiffs' claim that section 2053 conferred automatic standing on the petition signers if they met the statute's numerical requirements.[112] The court responded that section 2053 entitled only plaintiffs with particularized injury

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105. 402 A.2d 860 (Me. 1979).

106. *Id.* at 862-63.

107. *Id.* at 860-61.

108. ME. REV. STAT. ANN. tit. 30, § 2053 (1978 & Supp. 1988-1989) (repealed 1989). This section provided as follows:

> **§ 2053. Petition for article in warrant**
>
> On the written petition of a number of voters equal to at least 10% of the number of votes cast in the town at the last gubernatorial election, but in no case less than 10, the municipal officers shall either insert a particular article in the next warrant issued or shall within 60 days call a special town meeting for its consideration.

Id.

109. Buck v. Town of Yarmouth, 402 A.2d at 861.

110. *Id.*

111. *Id.* The superior court denied standing on the grounds "that plaintiffs had failed to allege 'special injury different from that incurred by any other voter.' " *Id.*

112. *Id.* at 862. The plaintiff in *McCorkle* also alleged automatic statutory standing. Brief for Appellant, *supra* note 48, at 10-12 (citing ME. REV. STAT. ANN. tit. 30, § 2065 (Supp. 1988-1989)). In *McCorkle*, the plaintiff's attempt to substitute statutory entitlement for the preventive-remedial approach to standing found support in Justice Glassman's concurring opinion. McCorkle v. Town of Falmouth, 529 A.2d 337, 339 (Me. 1987) (Glassman, J., concurring). *See supra* note 58.

to seek remedial relief[113] and explained that "[t]he section 2053 right to petition . . . municipal officers . . . is a right common to all voters [that] can be enforced by their common representative, the Attorney General."[114] The court noted that the purpose of section 2053 was "merely to provide a procedure for obtaining the town's consideration of an article submitted by the requisite number of voters, not to confer jurisdiction upon the Superior Court."[115] Under the circumstances, the court concluded, there was little justification for departing from the traditional rule of standing.[116]

In dissent, Justice Nichols, joined by Justice Godfrey, argued that the plaintiffs were entitled to standing because the primary goal of their complaint was to prevent implementation of the construction project until voters had an opportunity to rescind their approval at town meetings.[117] Despite its argument in favor of preventive relief, however, the *Buck* dissent vehemently criticized the majority's use of the preventive-remedial distinction to deny the plaintiffs standing,[118] declaring that the court's action nullified the Legislature's purpose in enacting section 2053,[119] and contending that the petitioners were "within the zone of interests to be protected by the statutory framework within which [their] claim [arose]."[120] The dissent's argument against application of the doctrine was premised on its assertion that "[a]ny person . . . injured . . . by governmental action should have standing to challenge its legality."[121] In contrast to the majority's reliance on the doctrine, the dissent suggested that it was time for the court to "take a fresh look at the law of standing."[122] The dissent expressed its frustration with the preventive-remedial approach by concluding that the rule announced by the majority was "antiquated and unduly constraining."[123]

The majority's lengthy analysis of the preventive-remedial doc-

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113. Buck v. Town of Yarmouth, 402 A.2d at 862-63. *But see id.* at 867 (Nichols, J., dissenting) (arguing that the plaintiffs did suffer a particularized injury).

114. *Id.* at 863. *But see id.* at 864-66 (Nichols, J., dissenting) (disagreeing with this argument against standing).

115. *Id.* at 863.

116. *Id.*

117. *Id.* at 865 (Nichols, J., dissenting). The majority ruled that the plaintiffs' requests could not be characterized as "preventive" because there were no indications "that the council contemplate[d] any future action on [the] plaintiffs' petition that the court" was bound to prevent. *Id.* at 862.

118. *Id.* at 864-65 (Nichols, J., dissenting).

119. *Id.* at 866.

120. *Id.* at 867-68. The dissenters argued that the plaintiffs should have been allowed to "seek redress for [the] arbitrary denial of their right to petition for town meeting action." *Id.* at 867.

121. *Id.* at 867. *See also infra* note 193 and accompanying text for the Law Court's criticism of the denial of standing to taxpayers without special injury.

122. *Id.*

123. *Id.* at 868.

trine,[124] and the vehement dissent, demonstrate the controversy that results when the basic policy considerations and criteria of the preventive-remedial doctrine conflict with a legislative enactment. Use of the doctrine protected the Town of Yarmouth from lengthy and costly litigation. The majority's focus on the plaintiffs' requested relief, however, ignored the underlying premise of their complaint.[125] A full hearing on the merits of the case might have clarified legislative intent regarding the limits of section 2053, and its relation to the preventive-remedial rule. Given the circumstances that resulted in the plaintiffs' complaint, a full hearing might also have eliminated the possibility that application of the preventive-remedial doctrine was a "concealed decision[] on the merits"[126] used to rationalize the court's final decision.

The results in *Buck v. Town of Yarmouth*[127] and *Bayley v. Town of Wells*[128] suggest that voter approval of municipal actions may influence the court's final decision to deny standing.[129] In *Cohen v. Ketchum*,[130] the court discussed the significance of voter commitment and its effect on the preventive-remedial distinction.[131] In addition, the court addressed the issue of standing in suits where fewer than ten resident taxpayers, without special damages, seek preventive relief.[132] The court declared:

> [E]ven one person as the named plaintiff has standing to seek to achieve preventive relief against illegal action by a local governmental unit of which plaintiff is a resident taxpayer—especially when, as here, the asserted illegality relates to a subject matter of direct interest to any taxpayer, the incurring of governmental indebtedness.[133]

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124. *See id.* at 861-63.

125. *But see id.* at 865-66 (Nichols, J., dissenting) (criticizing the majority's refusal to remedy the Town Council's actions).

126. Tushnet, *supra* note 4, at 663. *See also* Winter, *supra* note 4, at 1373 ("Commentators . . . have concluded that the doctrine of standing is either a judicial mask for the exercise of prudence to avoid decisionmaking or a sophisticated manipulation for the sub rosa decision of cases on their merits.") (footnote omitted).

127. 402 A.2d 860 (Me. 1979).

128. 133 Me. 141, 174 A. 459 (1934).

129. *See supra* notes 92 & 107-109 and accompanying text.

130. 344 A.2d 387 (Me. 1975).

131. *Id.* at 394. For further discussion of voter commitment and its effect on taxpayer standing under the doctrine, see *infra* notes 152-57 and accompanying text.

132. *Id.* at 391-92. The court noted that in previous cases the plaintiffs happened to be ten or more resident taxpayers, resulting in uncertainty regarding the ability of fewer than ten resident taxpayers, without special damages, to achieve preventive relief under title 14, section 6051(13) of the Maine Revised Statutes Annotated. The court stated: "We now have occasion to remove this uncertainty and clarify the law of Maine." *Id.* at 392.

133. *Id.* See also *infra* notes 178, 180 and accompanying text for a discussion of taxpayers' special interest in preventing the unlawful waste of public funds.

The plaintiffs in *Cohen* challenged the procedures and authority of the District School Board.[134] They complained that the Board acted in violation of the statute governing apportionment issues,[135] and sought an injunction prohibiting the issuance of proposed school construction bonds prior to resolution of the apportionment question.[136] The court denied standing, holding that the plaintiffs were not entitled to preventive relief due to voter approval of the bond issue.[137] In addition, the court held that the plaintiffs' failure to allege special injury precluded them from receiving remedial relief.[138]

The critical element in *Cohen* was voter approval of the proposed bond issue.[139] The court reasoned that the direct vote in favor of the bond issue constituted a fundamental commitment to the construction project that overcame the school board's representational voting.[140] The court ruled that commitment to the project was already in place,[141] and denied the plaintiffs preventive relief because they were not entitled to have that commitment set aside.[142] The court denied remedial relief on the grounds that a decision to overturn voter commitment was available only to plaintiffs claiming special injury.[143]

The *Cohen* decision established that once a fundamental commitment to a project is in place, plaintiffs without special injury are no longer entitled to standing. This standard presents the problem of determining when a fundamental commitment is actually present.[144] In *Lehigh v. Pittston Co.*,[145] lack of final commitment to the proposed sale of the Eastport Municipal Airport supported the court's

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134. Cohen v. Ketchum, 344 A.2d at 389. *Cohen v. Ketchum* involved appeals from judgments entered in three separate actions filed in the superior court by Herman Cohen individually and with others. *See id.* at 389-90 for a history of the litigation.

135. *Id.* ME. REV. STAT. ANN. tit. 20, § 301 (1969) (repealed by P.L. 1981, c. 693, § 1, effective July 1, 1983).

136. *Id.* Cohen v. Ketchum, 344 A.2d at 389.

137. *Id.* at 394-95.

138. *Id.* at 393-94.

139. *Id.* at 395. *See also infra* text accompanying notes 149-54. *McCorkle* is distinguished from *Cohen* by the uncertain results of the referendum vote, and the fact that the vote itself was challenged, rather than the procedures that preceded the referendum. McCorkle v. Town of Falmouth, 529 A.2d 337, 338 (Me. 1987).

140. Cohen v. Ketchum, 344 A.2d at 395. For an additional explanation of the *Cohen* decision and rationale, see Common Cause v. State, 455 A.2d 1, 11 (Me. 1983).

141. Cohen v. Ketchum, 344 A.2d at 394, 396.

142. *Id.* at 394.

143. *Id.* at 393-94. The court found that the plaintiffs failed to show that either the malapportionment issue, or the alleged warrant illegalities, had caused them special damage. *Id.* at 394.

144. *See id.* at 395 (implying that voter approval is the key indication that final commitment to a project has been established).

145. 456 A.2d 355 (Me. 1983).

conclusion that the plaintiffs were seeking preventive relief. The court reasoned that a signed option agreement and amendments pertaining to the sale of the airport were merely preliminary steps leading to a transaction that was never consummated.[146] The plaintiffs were allowed standing because they sought to prevent a future sale.[147] The *Lehigh* court focused on the prospective and preventive nature of the relief sought and granted standing despite the "perceptible remedial flavor" of the plaintiffs' complaint.[148]

The Law Court in *Lehigh* candidly acknowledged the problematic nature of the preventive-remedial doctrine. The court noted that the distinction was "the heart of a long-established doctrine" of taxpayer standing in Maine,[149] and offered the following criticism:

> Although we are not squarely presented with, and thus do not today decide, the continued viability of the preventative-remedial doctrine with regard to taxpayer standing to bring actions against municipalities, we recognize that this doctrine may have little more to commend itself than its age. The preventative-remedial distinction is no bright line test. This Court's past decisions distinguishing between preventative and remedial relief provide little guidance. In cases in which the relief sought has both remedial and preventative coloration, a principled differentiation often is difficult.[150]

Lehigh, decided just four years prior to *McCorkle*, thus stands as a frank admission of the ambiguous nature of Maine's preventive-remedial doctrine of taxpayer standing. But instead of resolving that ambiguity, the *McCorkle* court compounded the confusion characterizing the earlier cases.

3. *The Application of Misleading Precedents in* McCorkle v. Town of Falmouth

Despite circumstances that set *McCorkle v. Town of Falmouth* apart from earlier decisions, the *McCorkle* controversy epitomizes the ambiguity of the preventive-remedial distinction. The preventive and remedial aspects of McCorkle's complaint created a legal dilemma that was heightened by misleading precedents and lack of

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146. *Id.* at 359.

147. *Id.*

148. *Id.* The court emphasized the fact that the plaintiffs were not attempting to undo an already completed transaction, despite the preliminary steps taken long before their action was commenced. *Id.* The court rejected the defendants' attempts to rely upon the City of Eastport's statutory authority to sell the airport, or, in the alternative, upon the potential revenue that the sale would generate for the town. The case was decided purely on the basis of the preventive-remedial rule. *Id.* at 358-59.

149. *Id.* at 358.

150. *Id.* n.11.

a clear and unambiguous standard to determine standing.[151] The amorphous nature of the preventive-remedial doctrine is made evident when the Law Court's decision in *McCorkle* is measured in light of the earlier decisions applying the doctrine.

In *McCorkle*,[152] lack of a firm commitment to the municipal pool project distinguished the case from previous controversies.[153] In *Bayley v. Town of Wells* and *Buck v. Town of Yarmouth*, voters clearly indicated their approval of municipal proposals.[154] The court denied the plaintiffs' standing in both cases.[155] In *Cohen v. Ketchum*, the court relied on voter approval of the school construction bond to establish a commitment to the project that precluded an award of preventive relief.[156] Conversely, in *Lehigh v. Pittson*, the court found that the plaintiffs' attempt to block the sale of the Eastport Municipal Airport were preventive, because steps had not been taken to finalize the transaction. The contested recount procedures in *McCorkle* cast doubt on voter intent and created uncertainty as to the Town's actual commitment to the pool project. The absence of a definite commitment may have been the distinguishing factor that resulted in a decision in McCorkle's favor.[157]

Nonetheless, whether the court was being asked to prevent a future act or to undo an already completed transaction is the heart of the *McCorkle* controversy.[158] On the basis of precedent, the *McCorkle* court could easily have determined that the primary purpose of McCorkle's complaint was a request for remedial relief.[159] McCorkle complained that town officials had exceeded their statutory authority and substituted their will for the will of the majority of voters who had participated in the bond issue referendum.[160] According to McCorkle, the Town Council members illegally affected the outcome of the referendum by their interference in legitimate recount procedures.[161] Under the rule established in *Eaton*[162] and followed in

151. *Compare supra* notes 39-41 and accompanying text.

152. 529 A.2d 337 (Me. 1987).

153. *See supra* note 46 and accompanying text.

154. *See supra* notes 92 & 107 and accompanying text.

155. *See supra* notes 87 & 111 and accompanying text.

156. *See supra* notes 139-42 and accompanying text.

157. *See* Reply Brief for Plaintiff-Appellant, *supra* note 54, at 4. *Cf.* Cohen v. Ketchum, 344 A.2d 387, 395 (Me. 1975) ("Here, the commitment to a school construction capital outlay program was undertaken not only by representatives of the voters of SAD No. 71 but also by the voters themselves.").

158. *See* Lehigh v. Pittston Co., 456 A.2d 355, 359 (Me. 1983) ("the overriding purpose of this action was to prevent a future sale").

159. *See supra* notes 47-48 and accompanying text. *See also* Brief for Appellees, *supra* note 52, at 12. The town argued that McCorkle's claim for preventive relief was a veiled attempt to overcome precedent and the common law rule preventing taxpayers with non-specific injuries from suing municipalities. *Id.* at 11-14.

160. *See* Reply Brief, *supra* note 54, at 2.

161. McCorkle v. Town of Falmouth, 529 A.2d at 338.

162. *See* Eaton v. Thayer, 124 Me. 311, 318, 128 A. 475, 478 (Me. 1925).

Bayley, *Buck* and *Cohen*,[163] McCorkle's request that the Council's actions be overturned was a prayer for remedial relief. McCorkle's complaint asked the court to reverse the Council's actions and reinstate the original recount tally. Although the ultimate consequences of such measures could be preventive, the court's immediate response would effect remedial relief.

The *McCorkle* decision suggests that the court will grant standing if the remedial aspects of a complaint contribute to the requested preventive relief.[164] The court's focus on the preventive nature of McCorkle's complaint produced a decision in her favor.[165] The result is similar to the results in *Tuscan*[166] and *Lehigh*.[167] The cases demonstrate, however, that the distinction between preventive and remedial relief has blurred, and the doctrine itself has become meaningless.[168] The court's efforts to comply with the preventive-remedial formula have produced conflicting results that have reduced the doctrine to an unreasonable, arbitrary standard.[169] The debate generated by *McCorkle* and its predecessors justifies a call for reform: a viable alternative to the preventive-remedial doctrine of standing must be found.

III. ALTERNATIVES TO THE PREVENTIVE-REMEDIAL APPROACH TO STANDING

The preventive-remedial doctrine was originally designed to limit taxpayer suits against municipalities. The doctrine was intended to protect municipal officers from harassing or frivolous litigation,[170] and to discourage multiple suits by dissatisfied taxpayers.[171] In its criticisms of the preventive-remedial doctrine, the Law Court has suggested that the policy considerations that once supported the doctrine are no longer valid justification for restricting taxpayer actions. Moreover, the Law Court has candidly conceded the problematic nature of the preventive-remedial dichotomy.[172] The Law Court's remarks clearly indicate its support for a revised standing rule that balances municipal needs against a taxpayer's right to seek redress for public wrongs.[173] The court's concerns are consistent

163. *See supra* note 71 and accompanying text.
164. *See supra* notes 81 & 148 and accompanying text.
165. *See supra* notes 56-58 and accompanying text.
166. *See supra* notes 79-81 and accompanying text.
167. *See supra* note 148 and accompanying text.
168. *See supra* text accompanying notes 17-18 & 60-61.
169. *See* Brief for Attorney General, *supra* note 21, at 14 (suggesting "that the Law Court discard an unworkable, outdated and unjust distinction").
170. *See supra* text accompanying note 63.
171. *See supra* text accompanying note 66.
172. *See supra* notes 25-27 & 149-50 and accompanying text.
173. *See infra* notes 192-194 and accompanying text.

with commentators who emphasize the importance of taxpayer suits and a citizen's right to challenge governmental actions.[174] Alternatives to the preventive-remedial doctrine must therefore be discussed in terms of their effectiveness, and their ability to balance the competing interests of taxpayers and municipalities.

The preventive-remedial doctrine is a unique variation of the special injury test still in effect in many jurisdictions.[175] The test limits standing to taxpayers alleging injury distinct from that suffered by the public at large.[176] The special injury rule is designed to prevent courts from deciding political questions and to discourage frivolous suits brought by taxpayers who are merely dissatisfied with the spending policies of elected officials.[177] The requirement may limit the number of legitimate taxpayer suits, however, due to the difficulty of proving that an illegal act by a public official has resulted in an individual private harm.[178]

Less restrictive variations on the special injury approach to standing have been adopted in some jurisdictions.[179] Those methods of addressing taxpayer concerns provide workable alternatives to the preventive-remedial distinction and the strict special injury rule. Further, they demonstrate that the policy considerations that moti-

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174. *See, e.g.*, Jaffe, *Public Actions*, *supra* note 4, at 1276; Jaffe, *The Citizen As Litigant*, *supra* note 4, at 1044-45; Comment, *supra* note 3, at 904. *See also* Flast v. Cohen, 392 U.S. 83, 111 (1968) ("With the growing complexities of government [the judiciary] is often the one and only place where effective relief can be obtained. . . . [W]here wrongs to individuals are done by violation of specific guarantees, it is abdication for courts to close their doors.").

175. *See, e.g.*, Jones v. Department of Revenue, 523 So. 2d 1211, 1214 (Fla. Dist. Ct. App. 1988) (exempting complaining taxpayers from the special injury requirement only if the complaint alleges that a governing body has violated provisions of the United States Constitution or the Florida Constitution); Fransham v. McDowell, 202 Kan. 604, 610, 451 P.2d 131, 135 (1969) (ability to challenge official actions is not based on plaintiffs' status as taxpayers, but on the nature of the injury suffered; private citizens cannot sue in their own names where the injury complained of is one common to the whole community); Metropolitan Gov't v. Fulton, 701 S.W.2d 597, 601 (Tenn. 1985) (suits by private citizens against public officials permitted only if prior demand is made upon official to take action, and suit involves illegal taxation or diversion of public funds; otherwise, plaintiff must show a special interest not common to the public as a whole).

176. For a description of the particular injury requirement currently in effect in Maine, see *supra* text accompanying notes 11-16.

177. Comment, *supra* note 2, at 968-69. *But see* Comment, *supra* note 3, at 910 (questioning the court's role as "super legislature," and suggesting that "taxpayer litigation may undermine the independence and prestige of the judiciary, impairing its ability to perform more traditional judicial functions").

178. *See* Comment, *supra* note 2, at 955.

179. *See* Citizens Planning & Hous. Ass'n v. County Executive, 273 Md. 333, 339, 329 A.2d 681, 684 (1974); McKee v. Likins, 261 N.W.2d 566, 570-71 (Minn. 1977); City of Fort Worth v. Groves, 746 S.W.2d 907, 913 (Tex. Ct. App. 1988); State *ex rel.* Boyles v. Whatcom County Superior Court, 103 Wash. 2d 610, 614, 694 P.2d 27, 29-30 (1985).

vated the preventive-remedial doctrine can be achieved through less restrictive rules of standing.[180]

Exceptions to the particularized injury approach to standing allow taxpayers to maintain actions against municipalities in a variety of circumstances. For example, complaining taxpayers have been included in the category of citizens suffering a special injury, due to an increased tax burden that distinguishes them from the general public.[181] In addition, taxpayers who have requested judicial assistance to restrain illegal or ultra vires actions of government officials have been considered proper plaintiffs in some jurisdictions.[182] Taxpayers have also been granted standing when they have charged government officials with illegal tax assessments or the diversion or misuse of public funds, and have alleged and proved that such government actions would result in pecuniary loss or increased taxes.[183]

Adoption of a special injury rule combined with a taxpayer exception would not be a dramatic change for the Maine legal system. Maine's law of standing already recognizes a taxpayer's right to maintain a court action to restrain the unlawful use of public funds.[184] In addition, the courts have held that taxpayers without special injury are not barred from filing suit in their own names in a proper case.[185] A shift in emphasis from relief to injury would simply expand the existing formula by more broadly defining those taxpayers eligible to be classified as proper plaintiffs.[186]

Criticisms of Maine's relief-oriented approach to standing suggest that a modified special injury rule would be a welcome change from the confusing preventive-remedial distinction.[187] A standard that focused on the alleged injurious conduct of municipal officers and the interests of the complaining taxpayer[188] could be a viable alternative to Maine's preventive-remedial doctrine.

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180. *See* McKee v. Likins, 261 N.W.2d at 571; State *ex rel.* Boyles v. Whatcom County Superior Court, 103 Wash. 2d at 614, 694 P.2d at 30.

181. *See* City of Fort Worth v. Groves, 746 S.W.2d at 913.

182. *See, e.g.*, Citizens Planning & Hous. Ass'n v. County Executive, 273 Md. at 339, 329 A.2d at 684 (taxpayers who suffer pecuniary loss or increased taxes have suffered a special injury that entitles them to challenge the ultra vires actions of government officials that have injuriously affected the taxpayers' rights and property).

183. *See, e.g.*, Cablevision of Chicago v. Colby Cable Corp., 417 N.E.2d 348, 352 (Ind. Ct. App. 1981) ("[A] taxpayer may maintain an action when the injury complained of is the unlawful collection or expenditure of public funds."); McKee v. Likins, 261 N.W.2d at 571 ("[T]he right of a taxpayer to maintain an action in the courts to restrain the unlawful use of public funds cannot be denied.").

184. *See supra* note 31 and accompanying text.

185. *See supra* notes 36-37 & 76 and accompanying text.

186. *See* Brief for Attorney General, *supra* note 21, at 13-14.

187. *Id.*

188. *See* Davis, *The Liberalized Law of Standing*, *supra* note 4, at 468 ("The only problems about standing should be what interests deserve protection against injury, and what should be enough to constitute an injury.").

The potential benefits of a modified special injury test would not, however, eliminate all of the problems associated with taxpayer litigation. The special injury test is not a definitive method of determining taxpayer standing, but a substantive test that may result in distinctions as vague and inconclusive as the preventive-remedial rule.[189] Adoption of a modified special injury requirement would replace one substantive formula without another, without establishing a clear-cut method of determining standing. Further, the Law Court would continue to make threshold decisions regarding taxpayer standing without the benefit of a full hearing on the merits of a taxpayer's complaint.

In *Common Cause v. State*,[190] the Law Court suggested an alternative to the preventive-remedial rule that would accommodate the conflicting interests of taxpayers and municipalities in a timely and straightforward manner. The *Common Cause* solution would abolish the preventive-remedial distinction entirely and give taxpayers direct access to the court system. That approach would alleviate the delays and costs associated with preliminary adjudication of taxpayer suits, and resolve questions of standing simultaneously with a hearing on the merits of each particular case. Bypassing the preventive-remedial debate would enable the court to base its decisions on the facts and circumstances of each controversy and on the interests of the complaining taxpayers.[191]

The *Common Cause* approach is a result of the Law Court's appraisal of the preventive-remedial doctrine. The court noted that the sweeping language of the controlling legislation granting full equity jurisdiction "[gave] no hint . . . that the jurisdiction [it] conferred [was] to be narrowed by some threshold restriction on the remedies normally available to an equity court."[192] In response to the restrictive doctrine,[193] the court suggested that "[i]t is more in accord with [the basic principles of equity] to let the equity court hear the cause [of action], determine what, if any, relief is appropriate in the light of all the facts, and then shape its decree

189. *See, e.g.*, Calvary Bible Presbyterian Church v. Board of Regents, 72 Wash. 2d 912, 917, 436 P.2d 189, 192 (1967) ("It would be unrealistic to say that this court has always been consistent in its determination of those who had 'standing'. . . . [A] variety of conclusions have been reached. Some of the distinctions the court has drawn are shadowy and inconclusive.").

190. 455 A.2d 1 (Me. 1983).

191. *See* Cablevision of Chicago v. Colby Cable Corp., 417 N.E.2d 348, 354 (Ind. Ct. App. 1981) ("It [is] . . . the court's responsibility to balance the respective interests of the parties and to take careful note of any interest of the public which might be involved.").

192. Common Cause v. State, 455 A.2d at 12.

193. *See id.* at 11 ("In characterizing relief as 'preventive' or 'remedial' in particular cases, the Court has adopted a restrictive approach.").

accordingly."[194]

The *Common Cause* opinion recognized the policy considerations supporting the preventive-remedial distinction. The court acknowledged that denial of standing protects officials from harassment by plaintiffs who are dissatisfied with official policies, especially plaintiffs who have lost in the political arena.[195] The court noted, however, that denial of standing to taxpayers without special injury "prejudges the very issue sought to be raised: namely, the legality of the governmental acts in question."[196] The court added:

> Protection of . . . officials from harassment by litigation is only a by-product of the denial of standing; whether that by-product is desirable in any particular case cannot be determined without examining the merits of the claim. If the official conduct involved is indeed unconstitutional, protecting the officials in question from harassment cannot be deemed a desirable end in itself.[197]

Common Cause points out that the policies that originally supported the preventive-remedial distinction are not served when political considerations are placed above the rights of individual taxpayers to apply for judicial relief.[198] The court further observed:

> Where taxpayers offer to show that [unconstitutional] conduct has occurred, that it threatens to injure them by increasing their taxes, and that it cannot be stopped except by judicial intervention, a court having all the powers of a court of equity may not turn them away because possible political repercussions from the ultimate decision on the merits may lead to hostile criticism of the judiciary.[199]

The *Common Cause* opinion thus recognizes that the courts cannot arbitrarily deprive taxpayers of the right to question the acts of public officials.[200] The Law Court's reservations concerning the restrictive preventive-remedial doctrine reflect a tendency to view taxpayer actions as necessary restraints on municipal wrongdoing

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194. *Id.* at 12.

195. *Id.* at 9.

196. *Id.*

197. *Id. See also* State *ex rel.* Haberkorn v. DeKalb Circuit Court, 241 N.E.2d 62, 65, 251 Ind. 283, 288-89 (1968) ("[T]his court cannot arbitrarily bar the filing of lawsuits or the continuation of the same because the party being sued thinks the lawsuit is unfair, a hardship, or without merit. Those are issues that have to be tried in the trial court, including the issue of harassment.").

198. Common Cause v. State, 455 A.2d at 9-10.

199. *Id.* at 10. *Cf.* State *ex rel.* Boyles v. Whatcom County Superior Court, 103 Wash. 2d 610, 614, 694 P.2d 27, 30 (Wash. 1985) ("The recognition of taxpayer standing has been given freely in the interest of providing a judicial forum when this state's citizens contest the legality of official acts of their government. We have acknowledged that the value of taxpayer suits generally outweighs any infringement on governmental processes.").

200. *See supra* text accompanying note 196.

rather than frivolous harassment of government officials.[201] Nevertheless, the Law Court's endorsement of more liberal standing requirements overlooks municipal concerns regarding the obstructive effects of taxpayer suits.

For all practical purposes, a public lawsuit operates as a temporary injunction[202] that effectively shuts down any endeavor until the issue of standing is resolved and the merits of the case are decided.[203] Regardless of whether a town's interests prevail in a taxpayer suit, the town loses if rising costs and interest rates force the cancellation of necessary public projects.[204] The zeal of a politically motivated minority can thus block implementation of legitimate projects and proposals approved by a majority of voters.[205]

The complex issues of taxpayer standing are not easily resolved. The policy considerations that protect municipalities from vexatious litigation may prohibit adjudication of valid taxpayer grievances. Conversely, frivolous taxpayer actions may shut down legitimate municipal proposals. Because the court cannot arbitrarily determine which interests should prevail,[206] the task of balancing the competing interests of taxpayers and municipalities is "a long, delicate and difficult process."[207]

The preventive-remedial doctrine does not strike the proper balance: it unsuccessfully attempts to protect the interests of municipalities, and it unduly limits court access to taxpayers seeking relief. The amorphous nature of the standard has resulted in misleading precedents and conflicting case law.[208] Other substantive approaches to standing are similarly ambiguous and confusing. A more precise alternative must therefore be considered. Accordingly, this Comment recommends rejection of substantive standing barriers in favor of the broad standing rule proposed by the Law Court in *Common*

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201. *Accord* Jaffe, *Public Actions*, *supra* note 4, at 1292; Comment, *supra* note 3, at 909-10. *See also supra* notes 2-3 and accompanying text.

202. State *ex rel.* Haberkorn v. DeKalb Circuit Court, 251 Ind. 283, 289, 241 N.E.2d 62, 66 (1968). *See also* Gram v. Village of Shoreview, 259 Minn. 145, 153-54, 106 N.W.2d 553, 559 (1960).

203. *See* Comment, *supra* note 3, at 909. *See also* Jaffe, *Public Actions*, *supra* note 4, at 1291 ("One further ground of attack on the public action deserves mention: delay and obstruction."); Comment, *supra* note 2, at 973 ("Courts have suggested that otherwise beneficial public projects would be delayed at the insistence of any taxpayer who alleges injury resulting from the government's action.").

204. *See supra* note 55.

205. *But see* McKee v. Likins, 261 N.W.2d 566, 571 (Minn. 1977) (arguing that although public services should not be hindered by taxpayers disagreeing with municipal proposals, the rights of taxpayers to challenge municipal actions should not be denied).

206. *See supra* text accompanying notes 199-200.

207. Badgett v. Rogers, 222 Tenn. 374, 379, 436 S.W.2d 292, 294 (1968).

208. *See supra* notes 151-69 and accompanying text.

Cause.[209] Taxpayers should be granted automatic standing to challenge the legality of governmental action. Direct access to the courts should be allowed, restricted only by procedural limitations designed to alleviate municipal concerns regarding unlimited taxpayer suits.

The policy considerations that have traditionally justified imposition of standing barriers include limitation of multiple, vexatious lawsuits against municipalities,[210] and protection of government officials from harassment by litigation.[211] Other considerations focus on the obstructive delays caused by taxpayer suits.[212] In light of such pressing concerns, it would be unwise to adopt automatic standing on an unrestricted basis. This Comment, therefore, also recommends the adoption of procedural limitations to mitigate the effects of automatic taxpayer standing. Such limitations have been adopted in other jurisdictions and include placing a time limit upon suits challenging municipal actions,[213] requiring a certain number of taxpayers or a percentage of the electorate to bring taxpayer actions,[214] and bond requirements to offset potential costs to municipalities in the event the suit is unsuccessful.[215]

This Comment recommends that the Maine Legislature adopt similar restrictions to prevent vexatious and baseless suits that may

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209. *See supra* notes 190-99 and accompanying text.

210. *See supra* text accompanying note 66.

211. *See supra* text accompanying note 63.

212. *See supra* notes 202-205 and accompanying text.

213. *See, e.g.*, IND. CODE ANN. § 34-4-17.5-1 (Burns 1986) (stating that complaints on appeals of municipal actions must be filed within thirty days of the date of the action or decision complained of). Rule 80B of the *Maine Rules of Civil Procedure*, governing review of governmental action, allows the time limit for review to be provided by statute, and adds that in the absence of specific time limitations, "the complaint shall be filed within 30 days after notice of any action or refusal to act of which review is sought." M.R. Civ. P. 80B(a)-(b). *See also* CAL. CIV. PROC. CODE § 526a (West 1979), (providing that actions "to enjoin a public improvement project shall take special precedence over all civil matters" on the court calendar, with limited exceptions).

214. The ten taxpayers statute enacted in 1864 was an early attempt by the Maine Legislature to limit frivolous suits against municipalities by restricting the number of eligible plaintiffs. See *supra* note 31 for the text of the statute enacted in 1864, and its successor, section 6051(12) of title 14 of the Maine Revised Statutes Annotated. *See also* IND. CODE ANN. § 34-4-17-8 (Burns 1986) (prohibiting successive taxpayer suits relating to the same subject matter); N.J. STAT. ANN. § 40A:5-22 (West 1980) (providing that 25 taxpayers are required to file petitions for the investigation of municipal expenditures). The Indiana provision is part of that state's Public Lawsuit statute contained in sections 34-4-17.1-.8 of the Indiana Statutes Annotated. For a discussion of the policy considerations supporting the statute, see Huber v. Franklin County Community School Corp. Bd. of Trustees, 507 N.E.2d 233, 236 (Ind. 1987).

215. *See, e.g.*, IND. CODE ANN. § 34-4-17-5 (Burns 1986); N.Y. GEN. MUN. LAW § 51 (McKinney 1986). *See also* Comment, *supra* note 2, at 974 (discussing the use of bonds "to protect the public from vexatious litigation that might delay and escalate the cost of public projects").

delay public projects. Such restrictions will address the policy concerns that have traditionally justified the application of substantive barriers to standing. The procedural constraints will also ensure that taxpayers meeting the stated requirements are guaranteed direct access to the courts and a hearing on the merits of their claims.[216]

IV. CONCLUSION

A taxpayer's right to challenge municipal actions should not depend on the murky distinctions that characterize the preventive-remedial doctrine. The controversy and confusion generated by the doctrine demonstrate that a more reliable approach to taxpayer standing must be found. The Law Court has candidly admitted that the preventive-remedial rule has nothing more to commend it than its age.[217] The doctrine's unsatisfactory results compel the adoption of a precise, unambiguous standard to determine taxpayer standing.[218] Adoption of automatic standing coupled with procedural constraints will address the policy concerns traditionally justifying substantive barriers to standing, while providing taxpayers with equal access to judicial review. Such an approach protects municipal projects from unlimited taxpayer challenges, and eliminates the threshold restrictions that have frustrated taxpayer attempts to vindicate the public interest in a judicial forum.

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216. Despite fears that liberal standing laws result in a flood of taxpayer litigation, studies show no marked increase in the number of taxpayer suits due to relaxed standing requirements. *See* Comment, *supra* note 2, at 973. *See also* Davis, *Standing: Taxpayers and Others*, *supra* note 4, at 634. In states that have adopted a liberal approach to taxpayer standing, " 'the dockets . . . have not increased appreciably as a result of new cases in which standing [has formerly] been denied.' . . . Furthermore, experience of the federal courts themselves shows that floods of litigation do not result when the judicial doors are opened to all." Davis, *The Liberalized Law of Standing*, *supra* note 4, at 470-71.

217. Lehigh v. Pittston Co., 456 A.2d 355, 358 n.11 (Me. 1983).

218. *See* Davis, *Standing: Taxpayers and Others*, *supra* note 4, at 628 ("The law of standing need not be . . . a mass of confused logic-chopping about bewildering technicalities. It can be much simpler and much clearer than it is. All that is necessary is to make some firm policy choices and then to apply them consistently."). *See also* Davis, *The Liberalized Law of Standing*, *supra* note 4, at 473 (noting that "[c]omplexities about standing are barriers to justice").