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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

JOSEPH KIRCHNER,
Plaintiff,

vs.

ALEXANDER ACOSTA, et al.,
Defendants.

Case No. ____________

MEMORANDUM A: THE RECOVERY OF EQUITABLE STANDING FOR ENUMERATED CONSTITUTIONAL VIOLATIONS

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I. Introduction

1. Modern standing doctrine, crystallized in *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992), requires plaintiffs to demonstrate "injury in fact" that is "concrete and particularized" and "actual or imminent, not conjectural or hypothetical." This doctrine is treated as constitutional bedrock—an immutable requirement derived from Article III's "Cases" and "Controversies" language.

2. This treatment rests on two historical errors. The first is **substantive**: the 1922-1923 cases (*Fairchild v. Hughes* and *Frothingham v. Mellon*) that established the "generalized grievance" bar were correctly decided—but not for the reasons given. Both were *process challenges*, not *violation claims*. Extending their rationale to genuine violation claims inverted a century of equity practice. The second is **procedural**: the 1938 Federal Rules of Civil Procedure merger eliminated the procedural distinction between "cases at law" and "suits in equity" without constitutional analysis—and standing doctrine collapsed in its wake.

3. The Rules Enabling Act of 1934, which authorized the procedural merger, explicitly prohibited rules from "abridg[ing], enlarg[ing] or modify[ing] any substantive right." 28 U.S.C. § 2072(b). Standing doctrine—which determines who may access Article III courts—is a substantive constitutional right rooted in Article III's text. Yet the procedural merger had the unexamined effect of collapsing two distinct standing doctrines (legal and equitable) into one, while *Frothingham*'s broad rationale was extended indiscriminately to all "generalized grievances" without distinguishing process challenges from violation claims.

4. This Memorandum establishes that the recovery of Article III's Law/Equity jurisdictional distinction does not create new doctrine. It recovers constitutional architecture that substantive confusion and procedural reform obscured but could not constitutionally eliminate.

PART ONE: THE SUBSTANTIVE COLLAPSE

II. THE PRE-1923 DOCTRINE: SHARED INJURIES WERE SUFFICIENT

A. Article III's Text Contains No Particularization Requirement

5. Article III, Section 2 provides that judicial power extends to "Cases" and "Controversies." U.S. Const. art. III, § 2. The text says nothing about injury being "particularized" or "different from the general public." These requirements were added by judicial construction over a century after ratification.

6. The Framers understood "Cases" and "Controversies" through the lens of English practice, which distinguished between courts of law (requiring specific individual harm for damages) and courts of equity (permitting suits to remedy structural wrongs affecting classes of people). Both were encompassed in Article III's grant.

7. Before 1922, courts applied a "legal right" test: Does the plaintiff have a right that was invaded? This is fundamentally different from the modern "injury in fact" test: Does the plaintiff have a particularized harm different from everyone else?

B. Crampton v. Zabriskie: the Doctrine of Shared Injury

8. *Crampton v. Zabriskie*, 101 U.S. 601 (1879), established that taxpayers could invoke equity jurisdiction to challenge illegal government action based on injuries shared with all other taxpayers. The case involved Hudson County, New Jersey taxpayers challenging illegal bond issuances.

9. Justice Field, writing for a unanimous Court, declared:

> "Of the right of resident tax-payers to invoke the interposition of a court of equity to prevent an illegal disposition of the moneys of the county, or the illegal creation of a debt **which he in common with other property holders** may otherwise be compelled to pay, there is at this day no serious question."

Crampton, 101 U.S. at 609 (emphasis added).

10. The phrase "in common with other property holders" is decisive. The taxpayer's injury was not particularized—it was explicitly shared with all other property holders. Yet this shared injury was *sufficient* for equity jurisdiction. The Court did not require injury different from the general public; it required only that the plaintiff would bear the burden of illegal government action.

11. The Court explained the policy rationale:

> "From the nature of the powers exercised by municipal corporations, **the great danger of their abuse and the necessity of prompt action to prevent irremediable injuries**, it would seem **eminently proper for courts of equity to interfere** upon the application of the taxpayers of a county to prevent the consummation of a wrong, when the officers of those corporations assume, in excess of their powers, to create burdens upon propertyholders."

Id. at 609 (emphasis added).

12. Note the Court's reasoning: equity courts should interfere because (a) government power is dangerous when abused, (b) prompt action is necessary to prevent irremediable harm, and (c) individual taxpayers are proper parties to bring such suits. None of this reasoning depends on particularized injury.

13. The Court further held that no gatekeeping was required:

> "Certainly, in the absence of legislation restricting the right to interfere in such cases to public officers of the state or county, **there would seem to be no substantial reason why a bill by or on behalf of individual taxpayers should not be entertained** to prevent the misuse of corporate powers."

Id. (emphasis added).

14. *Crampton* was decided 9-0. It has never been overruled. It remains good law for municipal taxpayers. The question is why its logic was abandoned for federal constitutional violations.

C. The Pre-1922 Framework

15. *Crampton* was not an outlier. The pre-*Frothingham* framework consistently permitted suits based on shared constitutional injuries:

16. **The Legal Right Test**: Courts asked whether the plaintiff had a legal right that was invaded—not whether the plaintiff's injury was different from everyone else's.

Article III's "Cases" and "Controversies" requirement was satisfied by demonstrating a genuine dispute over legal rights, not by proving unique harm.

17. Equity's Structural Function: Courts of equity existed precisely to remedy structural wrongs that could not be addressed through damages to individuals. When government exceeded its constitutional authority, equity courts could intervene to correct the structural violation—even when the harm was shared by all citizens.

18. The Marbury Framework: Chief Justice Marshall's framework in *Marbury v. Madison*, 5 U.S. 137, 163 (1803), asked: (1) Does the plaintiff have a right? (2) Does the law provide a remedy? (3) Is this court the proper forum? The framework focused on the existence of a right, not on whether the plaintiff's injury was unique.

D. Other Pre-1922 Cases Confirming the Doctrine

19. Poindexter v. Greenhow, 114 U.S. 270 (1885): The constitutional violation itself—not particularized harm—provided the basis for suit. When state officers enforced unconstitutional acts, the Constitution "strips the defendant of his official character" and permits suit.

20. Cummings v. Missouri, 71 U.S. 277 (1867), and **Ex parte Garland**, 71 U.S. 333 (1867): Individuals subject to unconstitutional loyalty oaths could challenge them as bills of attainder. Being *subject to* an unconstitutional law was sufficient—no additional particularized injury was required.

21. Ex parte Young, 209 U.S. 123 (1908): Established that individuals may obtain equitable relief against state officers enforcing unconstitutional laws. Standing derived from being "affected" by unconstitutional enforcement, without requiring injury different from others similarly affected.

III. THE 1922-1923 TRANSITION: PROCESS CHALLENGES VS. VIOLATION CLAIMS

A. Definitional Framework: Process Challenges Vs. Violation Claims

22. This Section requires precise definitions. The distinction between *process challenges* and *violation claims* is not merely taxonomic—it determines whether Article III courts have constitutional jurisdiction to provide remedy.

23. PROCESS CHALLENGE (Defined): A claim that challenges *how* a Position of Assigned Enumerated Power (PAEP) exercises its validly-held powers. Process challenges ask courts to: (a) superintend constitutional amendment procedures (*Fairchild*); (b) second-guess legislative policy judgments within enumerated discretion (*Frothingham*); or (c) determine if statutory grants of standing comply with Article III (*Lujan*). These challenges do not identify any constitutional provision that government *violated*—they dispute the *result* of completed constitutional processes or the *scope* of enumerated discretion.

24. VIOLATION CLAIM (Defined): A claim that a Power Separation Vulnerability (PSV) has occurred—that is, government has acted outside the constitutional assignment of powers. Because the Constitution assigns *all* governmental powers to specific positions, every constitutional violation is fundamentally a separation of powers violation. A PSV occurs through:

PSV Type	Definition	Example
USURPATION	A PAEP exercises an Enumerated Assigned Power (EAP) assigned to a *different* PAEP	Executive imposes tariffs (Art. I, § 8 assigns to Congress)
ABDICATION	A PAEP fails to exercise a mandatory EAP assigned to it	Congress delegates legislative power without intelligible principle

25. This framework captures *all* constitutional violations because the Constitution operates as an integrated assignment document. Even Bill of Rights violations are PSVs: when government infringes speech, it exercises power that Article I, Section 8 does not grant and that the First Amendment explicitly withholds—power that remains with the People as the ultimate PAEP under the Ninth and Tenth Amendments. The government has *usurped* power it was never assigned.

26. The critical distinction is therefore:

Process Challenge	**Violation Claim**
What is challenged	Discretionary choices *within* validly-held powers
Constitutional process	Completed as designed
Judicial role	Inappropriate—would superintend coordinate branches
Standing under pre-1938 equity	None—no remediable wrong

B. Fairchild v. Hughes (1922): a Correct but Narrow Decision

27. *Fairchild v. Hughes*, 258 U.S. 126 (1922), is frequently cited as the origin of the "generalized grievance" bar. But properly understood, *Fairchild* was a narrow decision that does not support the broad doctrine later built upon it.

28. Charles Fairchild challenged the validity of the Nineteenth Amendment (women's suffrage). He sought to have the amendment declared unconstitutional and requested an injunction preventing the Secretary of State from proclaiming its ratification. Critically, Fairchild was not claiming that the government *violated* the Constitution—he was claiming that the Constitution *should not have been amended*. He attacked the Article V amendment *process itself*.

29. Justice Brandeis, writing for a unanimous Court, dismissed the case:

> "Plaintiff has only the right, possessed by every citizen, to require that the government be administered according to law and that the public moneys be not wasted. Obviously this general right does not entitle a private citizen to institute in the federal courts a suit to secure by indirection a determination whether a statute, if passed, **or a constitutional amendment, about to be adopted**, will be valid."

Fairchild, 258 U.S. at 129-30 (emphasis added).

30. This holding was correct—and for the same reason *Lujan* was correct. In *Lujan*, the Court held that Congress cannot override Article III by statutorily creating standing where no constitutional injury exists. Citizens cannot use statutes to superintend the *legislative process*. In *Fairchild*, Brandeis held that citizens cannot use litigation to superintend the *amendment process*. Both involve attempts to use courts to control how law is *made*, not to remedy *violations* of existing constitutional provisions.

31. The parallel is precise: In *Lujan*, the plaintiff claimed the ESA granted standing to enforce environmental law, but Congress cannot override Article III through legislation. In *Fairchild*, the plaintiff claimed he could challenge whether Article V was properly followed, but citizens cannot override Article V through litigation. Both cases involve attempts to use courts to control how law is *made*—not to remedy *violations* of existing constitutional provisions.

32. *Fairchild* did not hold that citizens lack standing to challenge government *violations* of the Constitution. It held that citizens lack standing to challenge the constitutional *amendment process* itself. The Nineteenth Amendment, once ratified, *was* the Constitution. Fairchild was not claiming a constitutional violation—he was claiming the Constitution itself was invalid.

33. This distinction is fundamental. When government violates an enumerated constitutional provision, the citizen seeks to *enforce* the Constitution as written. When a citizen challenges the amendment process, the citizen seeks to *override* the Constitution as amended. The former is the proper function of Article III courts; the latter is not.

C. Frothingham v. Mellon (1923): the Improper Expansion

34. *Frothingham v. Mellon*, 262 U.S. 447 (1923), took *Fairchild*'s narrow, defensible holding and expanded it into a general doctrine that contradicted a century of equity practice.

35. Harriet Frothingham, a Boston taxpayer, challenged the Sheppard-Towner Maternity Act of 1921, which distributed federal funds to states for programs reducing maternal and infant mortality. She argued: (a) Congress exceeded its authority under the Tenth Amendment by invading powers reserved to states; and (b) the statute would increase her tax burden, violating due process. But this framing obscured what Frothingham was actually asking the Court to do.

36. The Tenth Amendment provides: "The powers **not delegated** to the United States by the Constitution... are reserved to the States." U.S. Const. amend. X (emphasis added). Article I, Section 8 explicitly delegates to Congress the power to "lay and collect Taxes... to pay the Debts and provide for the **general Welfare** of the United States." U.S. Const. art. I, § 8, cl. 1 (emphasis added).

37. Frothingham's Tenth Amendment claim therefore reduced to this question: *Is funding maternal and infant health programs within Congress's enumerated "general Welfare" spending power?* If yes, the Tenth Amendment does not apply—it reserves only powers "not delegated." If no, Congress exceeded its enumerated authority. Either way, Frothingham was asking the Court to *define the boundaries* of Congress's enumerated spending discretion—not to remedy a *violation* of an enumerated constitutional provision.

38. Justice Sutherland, writing for a unanimous Court, dismissed for lack of standing. He cited *Fairchild* as establishing a general principle—but *Fairchild* established no such thing. *Fairchild* held that citizens cannot challenge the *amendment process*; it said nothing about citizens challenging *statutory violations* of enumerated constitutional provisions.

39. Sutherland introduced the "minute and indeterminable" standard:

> "The relation of a taxpayer of the United States to the federal government is very different [from a municipal taxpayer]. His interest in the moneys of the treasury—partly realized from taxation and partly from other sources—**is shared with millions of others, is comparatively minute and indeterminable**, and the effect upon future taxation, of any payment out of the funds, **so remote, fluctuating and uncertain, that no basis is afforded for an appeal to the preventive powers of a court of equity**."

Frothingham, 262 U.S. at 487 (emphasis added).

40. Sutherland then articulated what became the modern standing requirement:

> "The party who invokes the power must be able to show not only that the statute is invalid but that he has sustained or is immediately in danger of

> sustaining **some direct injury as the result of its enforcement, and not merely that he suffers in some indefinite way in common with people generally**."

Id. at 488 (emphasis added).

41. This passage—"not merely that he suffers in some indefinite way in common with people generally"—became the foundation for the particularized injury requirement. But notice what Sutherland did: he took *Crampton*'s language about injury "in common with other property holders" and *inverted* it. What *Crampton* held was *sufficient* for standing, Sutherland declared was *insufficient*.

D. Frothingham as Process Challenge

42. Applying the framework established in ¶¶22-26 above, *Frothingham* was a *process challenge*, not a *violation claim*. Frothingham could not point to any constitutional provision that Congress *violated*. She could only argue that Congress's policy judgment about what falls within "general Welfare" was wrong—asking courts to superintend completed constitutional processes, not to remedy constitutional violations.

43. *Frothingham* may therefore have been *correctly decided*—but for the *wrong reason*. Sutherland's "minute and indeterminable" rationale was not the proper ground. The proper ground was that Frothingham posed a process challenge. Compare a genuine violation claim: when the Executive imposes tariffs, Article I, § 8 *explicitly* assigns that power to Congress. That is textual violation, not policy dispute.

44. The problem is what *Frothingham* became. Sutherland wrote his holding broadly—"not merely that he suffers in some indefinite way in common with people generally"—without distinguishing process challenges from violation claims. Subsequent courts applied this language indiscriminately to all "generalized grievances," including genuine violation claims that pre-*Frothingham* equity courts would have entertained under *Crampton*. *See* ¶¶8-14, *supra*.

E. The Crampton Distinction: Municipal Vs. Federal

45. Sutherland acknowledged *Crampton* (*see* ¶¶8-14, *supra*) but distinguished it on grounds that "the interest of a taxpayer of a municipality in the application of its moneys is direct and immediate." *Frothingham*, 262 U.S. at 486. This distinction makes no constitutional sense—both injuries are "shared with others," and Article III draws no such distinction.

46. The coherent distinction is the one Sutherland missed: *Crampton* involved a *violation claim* (illegal bond issuances exceeding municipal authority) while *Frothingham* involved a *process challenge* (disputing Congress's policy judgment within "general Welfare"). Forty-five years later, *Flast v. Cohen*, 392 U.S. 83 (1968), carved out an exception for Establishment Clause challenges—proving that Sutherland's "minute and indeterminable" rationale was never constitutionally grounded.

F. The Contrast Illustrated: Process Completed Vs. Process Violated

47. The distinction between process challenges and violation claims is illuminated by comparing *Frothingham* to *Kirchner v. Johnson*, No. 1:25-cv-02735-ACR (D.D.C.). Both involve Article I. Both involve claims that affect all citizens. But they differ fundamentally in what is being challenged.

48. In *Frothingham*, the constitutional process **completed**: the bill originated in the House, passed both chambers, was presented to the President, and was signed into law. Every Article I, Section 7 requirement was satisfied. Frothingham then disputed whether the **result** of this completed process exceeded Congress's enumerated powers. But the Constitution provides no textual basis for that claim—the Tenth Amendment reserves only powers "not delegated," and Article I, § 8 delegates spending power. Frothingham attempted to speak for the People **where the constitutional process had already spoken**.

49. In *Kirchner v. Johnson*, the constitutional process was **violated**. Article I, Section 7 commands: "All Bills for raising Revenue **shall originate in the House of**

Representatives." U.S. Const. art. I, § 7, cl. 1 (emphasis added). Evidence demonstrates that H.R. 1 originated not in the House but with the Executive:

- President Trump repeatedly declared H.R. 1 "my one big, beautiful bill"
- Official White House attributions identified it as "President Donald Trump's One, Big, Beautiful Bill"
- The unprecedented pattern of Byrd Rule violations—fifteen major provisions stripped—indicates executive agency drafting unfamiliar with reconciliation constraints
- Trump's possessive declarations constitute party admissions under Fed. R. Evid. 801(d)(2)(A)

50. The constitutional text was **violated**, not merely disputed: The requirement that the bill originate in the House was **VIOLATED**—the Executive originated it despite formal House introduction. The mandatory "shall originate" language was **VIOLATED**—the requirement circumvented through procedural fraud.

51. This is not a policy disagreement about the scope of enumerated powers. It is a textual violation of an explicit constitutional command. The Constitution says revenue bills "shall originate in the House." Evidence proves this one originated with the Executive. That is a **violation claim**—the constitutional process itself was circumvented, not merely its result disputed.

52. The framework clarifies: In *Frothingham*, where the constitutional process **completed** and the plaintiff disputed whether the result exceeded Congress's power, standing was properly denied because she challenged policy judgment within a completed process. In *Kirchner v. Johnson*, where the constitutional process was **violated**—the Origination Clause circumvented through executive drafting masked as House origination—standing is proper because the claim identifies textual violation of an explicit constitutional command, not mere disagreement with policy.

53. Frothingham attempted to speak for the People where the Section 7 process had already spoken—Congress passed the law, the President signed it, and the constitutional determination was made. *Kirchner* identifies that the Section 7 process **did not speak**—it was circumvented through constitutional fraud where formal House introduction masked Executive origination.

54. Had Sutherland recognized this distinction, he could have dismissed *Frothingham* on the correct ground: no textual violation existed because the Section 7 process completed and no constitutional provision was violated. Instead, he created the "minute and indeterminable" doctrine that now bars genuine violation claims where constitutional text **is** violated and all citizens **are** affected.

IV. THE CORRECT FRAMEWORK: FOUR CATEGORIES OF CLAIMS

A. The Categories

55. The analysis above (*see* ¶¶22-26, 42-46) yields a coherent framework:

Category	Example	Proper Treatment	Reason
Statutory process	Using ESA to create standing	No standing (*Lujan*)	Congress cannot override Article III
Amendment process	Challenging 19th Amendment	No standing (*Fairchild*)	Validly amended text *is* the Constitution
Spending discretion	Challenging "general Welfare" scope	No standing (*Frothingham*)	Courts don't superintend policy judgments
Violation claims	Executive acts where Constitution assigns power to Congress	Standing (*Crampton*)	Constitution violated; all citizens affected

The first three are *process challenges* (properly dismissed); the fourth—*violation claims*—warrants standing because textual violation, not policy dispute, occurred. *Crampton* remains good law, proving shared injury does not defeat standing when government exceeds authority.

B. The Inversion of Equity's Purpose

56. Before *Frothingham*, "generalized grievances" for *violation claims* were cognizable in equity precisely because equity existed to remedy structural wrongs. A constitutional violation affecting everyone was *more* appropriate for judicial remedy, not less, because no individual plaintiff could claim sufficient damages to proceed at law.

57. After *Frothingham*, all "generalized grievances" became grounds for *dismissal*—regardless of whether they were process challenges (properly dismissed) or violation claims (improperly dismissed). The more widely shared the constitutional violation, the less likely any court could hear it. This inverted equity's constitutional function.

58. Sutherland's rationale—that widely shared harms should be addressed through the political process—may be appropriate for *process challenges*. But it fails for *violation claims*, where political majorities have already violated the Constitution. The Constitution exists to constrain majorities; making constitutional enforcement dependent on majority will defeats its purpose.

PART TWO: THE PROCEDURAL COLLAPSE

V. The Pre-1938 Constitutional Architecture

A. Article III's Dual Jurisdictional Grant

59. Article III, Section 2 provides: "The judicial Power shall extend to all Cases, in **Law and Equity**, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority..." U.S. Const. art. III, § 2 (emphasis added).

60. The conjunction "and" joins two distinct jurisdictional grants—not synonyms employed for rhetorical emphasis, but separate categories carrying centuries of distinct jurisprudential character that the Framers deliberately preserved. If "Law" and "Equity" denoted the same jurisdictional grant, the Framers would have written one word. They wrote two because each does independent constitutional work.

B. The English Inheritance

61. Courts of Law and Courts of Equity existed as separate institutions in England for centuries before the Constitution was drafted. **Courts of Law**—the King's Bench, Common Pleas, and Exchequer—adjudicated legal claims before juries, awarded damages, and operated in a compensatory, backward-looking mode: what wrong occurred, and how shall the plaintiff be made whole? **Courts of Equity**—principally Chancery—adjudicated equitable claims before the Chancellor alone, issued injunctions and declarations, and operated in a corrective, forward-looking mode: what wrong exists, and how shall it be stopped?

62. The Framers—many of whom were practicing lawyers intimately familiar with both systems—incorporated both into Article III's jurisdictional grant with full knowledge of their distinct characters.

C. The Distinct Functions

63. **Courts of Law** provided legal remedies—primarily monetary damages compensating identified individuals for particularized harm. A plaintiff appeared before a court of law demonstrating: *I* was specifically harmed, *my* damages are quantifiable, compensate *me* specifically.

64. **Courts of Equity** provided equitable relief—injunctions, declaratory judgments, specific performance, mandamus, and other structural remedies. A plaintiff appeared before a court of equity demonstrating: something is wrong that requires correction; money cannot fix it; the court must order it corrected.

65. Legal remedies are inherently particularized because compensation flows to a particular plaintiff for a particular injury. Equitable relief is inherently non-particularized because it operates on the conduct itself, not on the compensation of a specific individual.

66. When a court declares an act unconstitutional or enjoins unlawful conduct, that declaration and that injunction benefit every person subject to that conduct—not one specific plaintiff. The remedy is universal in character because the wrong is structural in nature.

D. The Distinct Standing Requirements

67. Before 1938, the question "do you have standing?" had two different answers depending on which court you appeared in. **At law**, the court asked: "Were you injured?"—and the plaintiff showed particularized harm entitling them to damages. **In equity**, the court asked: "Is there a violation requiring remedy?"—and the plaintiff showed a wrong that equity should correct. The questions were different because the functions were different.

68. This was not procedural technicality—it was constitutional architecture ensuring that structural violations affecting everyone could be judicially remedied even when no single individual suffered harm distinguishable from the general public.

E. The Distinction Between "Case" and "Suit"

69. The Framers and their contemporaries used precise terminology that encoded the constitutional distinction. A **"case"** referred to proceedings at law; a **"suit"** referred to proceedings in equity. This was not interchangeable vocabulary—it was jurisdictional classification.

70. **Case** — from Latin *casus* (a falling, occurrence, event) — denotes something that *happened* to the plaintiff. A case is reactive: "I was wronged, compensate me."

71. **Suit** — from Latin *sequi* (to follow) — denotes a *pursuit* of justice, a petition *following* the court seeking relief. A suit is proactive: "There is injustice, remedy it."

VI. THE 1938 MERGER: PROCEDURAL CONVENIENCE, NOT CONSTITUTIONAL REINTERPRETATION

A. The Sequence of Events

72. The merger did not arise from constitutional deliberation. It arose from procedural reform movements focused on efficiency. In 1848, David Dudley Field's New York Code of Procedure merged law and equity at the state level under the rationale that "simpler is better." Over the following decades, states followed New

York's lead through administrative mimicry. In 1934, Congress passed the Rules Enabling Act, granting the Supreme Court authority to prescribe uniform federal procedure. In 1938, the Federal Rules of Civil Procedure merged law and equity in federal courts—justified by the rationale that states had already done it and federal practice should be unified.

73. At no point in this sequence did anyone address whether the *substantive* distinctions between legal and equitable jurisdiction—including distinct standing requirements—should survive the procedural merger. They simply assumed it.

B. Who Led It

74. **Charles E. Clark**, Dean of Yale Law School, served as Reporter for the Advisory Committee on Rules. He was the primary architect and driving intellectual force behind the merger. Clark was deeply influenced by the **Legal Realist movement**, which dominated American legal academia in the 1920s-30s and viewed procedural distinctions as formalistic obstacles to substantive justice.

C. The Stated Rationale

75. The merger was justified on grounds of **administrative efficiency**:

- The dual system required litigants to choose correctly between law and equity at the outset
- Choosing wrong meant dismissal and starting over
- Reformers argued this was wasteful and arbitrary
- Unified procedure would reduce technicalities

76. **Critically absent from this rationale**: Any analysis of whether the *substantive* distinctions between legal and equitable jurisdiction—including distinct standing requirements—should be eliminated.

D. What the Reformers DID Not Argue

77. No reformer, no Advisory Committee member, no court adopting the rules ever argued:

- "Article III's distinction between Law and Equity is constitutionally meaningless"
- "The Framers did not intend functional differences between legal and equitable jurisdiction"
- "Standing requirements should be identical for damages claims and structural constitutional challenges"
- "The particularized injury requirement historically applied to equity"
- "Equity courts required plaintiffs to show harm distinguishable from the general public"

78. These constitutional questions were never addressed. The merger simply happened, and doctrine evolved in its wake without examining the foundation.

VII. WHAT THE 1938 MERGER DID NOT DO

A. The Rules Enabling Act Limitation

79. The Rules Enabling Act of 1934, which authorized the merger, explicitly states:

> "Such rules shall not abridge, enlarge or modify any substantive right." 28 U.S.C. § 2072(b).

80. This limitation is not advisory. It is a statutory command defining the scope of the rulemaking power delegated to the Supreme Court.

B. Standing is a Substantive Constitutional Right

81. Standing doctrine determines who may access Article III courts. It is not a procedural technicality—it is rooted in Article III's grant of "judicial Power" and its limitation to "Cases" and "Controversies."

82. If the 1938 procedural merger had the effect of modifying standing requirements—collapsing two distinct doctrines (legal and equitable standing) into one—it exceeded the authority granted by the Rules Enabling Act.

83. Alternatively, if the merger was within the Rules Enabling Act's authority because it was purely procedural, then it did not and could not modify the substantive constitutional distinction between legal and equitable standing.

84. Either way, the constitutional architecture survives.

C. No Constitutional Amendment

85. Article III's text—"Cases, in Law and Equity"—remains unchanged. The merger did not amend the Constitution. The Framers' deliberate inclusion of both "Law" and "Equity" as distinct jurisdictional grants remains operative constitutional text.

D. No Supreme Court Holding

86. No Supreme Court decision has ever held:

- That Article III's "Law and Equity" distinction is constitutionally meaningless
- That equity historically required particularized injury for standing
- That the 1938 merger eliminated substantive distinctions between legal and equitable jurisdiction
- That structural constitutional challenges require the same standing showing as damages claims

87. The courts simply stopped asking the question after 1938, and *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992), crystallized an assumption that was never constitutionally examined.

VIII. THE STANDING DOCTRINE COLLAPSE

A. The Post-Merger Evolution

88. After 1938, standing doctrine developed without reference to the historical distinction between legal and equitable jurisdiction. From 1938 through the 1970s, requirements gradually tightened—with no constitutional analysis, just procedural unification assumed. Through the 1970s and 1980s, the "injury-in-fact" requirement crystallized—still with no examination of historical equity practice. In 1992, *Lujan v. Defenders of Wildlife* formally established particularized injury as constitutional bedrock—but critically, in a *statutory* context that did not examine enumerated constitutional violations.

B. What Lujan Actually Involved

89. *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992), must be understood in its actual context. The plaintiffs were environmental groups challenging an agency regulation interpreting the Endangered Species Act. The alleged violation was *statutory*—whether the ESA should apply extraterritorially. The relief sought was equitable—declaration and injunction. And critically, the *source of claim* was a congressional statute, not constitutional text.

90. *Lujan* was **not** a challenge to an enumerated constitutional violation. It was a challenge to an agency's interpretation of a **statute**—the Endangered Species Act. The question was whether Congress had conferred standing broadly enough through the ESA's citizen-suit provision.

C. The Critical Distinction Lujan DID Not Address

91. *Lujan* did not analyze whether its standing test applies to **enumerated constitutional violations** seeking equitable relief. The distinction is not between legal remedies (damages) and equitable remedies (injunctions)—both *Lujan*-type cases and Article III equity cases seek equitable relief.

92. The distinction lies in the nature of the violation, the source of the claim, and the standing question presented. In *Lujan*-type cases, the violation alleged is statutory—a challenge to legislative acts or agency interpretations. The source of the claim is a congressional grant, such as the ESA's citizen-suit provision. The standing question is whether Congress conferred standing broadly enough.

93. In Article III equity cases, by contrast, the violation alleged is constitutional—a breach of enumerated limits on government power. The source of the claim is Article III's original jurisdiction over suits in equity, not any congressional statute. The standing question is fundamentally different: Does Article III equity permit citizen standing for structural constitutional violations? *Lujan* asked only the first question. It did not address the second.

D. The Unexamined Question

94. *Lujan* did not examine:

- Whether Article III's "Equity" jurisdiction historically required particularized injury for structural constitutional challenges
- Whether the cases the Framers understood as "Equity" required injury distinguishable from the general public
- Whether enumerated constitutional violations present different standing considerations than statutory claims
- Whether the 1938 procedural merger could constitutionally collapse standing doctrines that Article III's text distinguishes

95. The Court applied a unified standing test—developed in the statutory context—without asking whether that test applies to Article III's original equity jurisdiction over constitutional structure.

PART THREE: THE UNIFIED FRAMEWORK

IX. THE LOGICAL COHERENCE OF BOTH FRAMEWORKS

A. Why Lujan is Correct for Statutory Claims

96. *Lujan*'s particularized injury requirement is logically sound when properly understood within its domain. The Constitution establishes a process for statutory law: the Constitution authorizes Congress to legislate under Article I, and the Constitution authorizes agencies to interpret statutes through Article I delegation.

97. Where does the will of the People lie on statutory matters? In the constitutional process itself—the legislative enactment and authorized agency interpretation. This is how the People have chosen to express their will on policy questions: through their elected representatives and the agencies those representatives empower.

98. When a petitioner claims to "speak for all Americans" on a statutory question—asserting that an agency misinterprets a statute—they are asking the judiciary to override the constitutionally authorized process. The petitioner substitutes their interpretation for Congress's delegation and the agency's expertise.

99. A judge cannot logically adjudicate this claim. The "will of the People" on statutory matters has already been expressed through the constitutional process. The judiciary's role is limited: review whether the agency acted within statutory bounds, not whether the petitioner's policy preference should prevail.

100. Therefore, *Lujan* correctly requires particularized injury for statutory claims. The court asks: "How did this statutory interpretation affect YOU specifically?" This ensures courts adjudicate concrete disputes about statutory application—not abstract policy disagreements where petitioners claim to speak for the People on matters the People have delegated to Congress.

B. Why Equitable Standing is Correct for Enumerated Constitutional Violations

101. Enumerated constitutional violations present a fundamentally different situation. The Constitution is not the product of legislative process—it is the direct expression of the People's will through Article V ratification.

102. Where does the will of the People lie on constitutional matters? In the Constitution itself. The People have spoken directly. No subsequent legislative or executive action can override what the People enacted through ratification.

103. When a petitioner claims that the government violated enumerated constitutional limits, they ARE speaking for all Americans—because all Americans share in the constitutional harm. The violation is against the document the People ratified. Every citizen has standing to enforce the People's direct expression against governmental overreach.

104. A judge not only CAN adjudicate this claim—it is the judiciary's core duty. As Chief Justice Marshall declared in *Marbury v. Madison*:

> "It is emphatically the province and duty of the judicial department **to say what the law is**." 5 U.S. 137, 177 (1803).

105. The Constitution IS "the law" that the judiciary must "say." When government exceeds enumerated constitutional limits, the judiciary interprets the People's direct will and enforces it against the offending branch. This is not judicial overreach—it is the constitutional design.

106. Therefore, Article III equity jurisdiction correctly permits citizen standing for enumerated constitutional violations. The petitioner speaks for the People because the Constitution speaks for the People. Particularized injury is not required because the harm is to the constitutional structure that protects everyone equally.

107. The Supreme Court has already recognized this principle. In *Bond v. United States*, 564 U.S. 211 (2011), a unanimous Court held that individuals have standing to challenge federal action that exceeds constitutional limits:

> "Federalism's limitations are not therefore a matter of rights belonging only to the States. **In a proper case, a litigant may challenge a law as enacted in contravention of federalism, just as injured individuals may challenge actions that transgress, e.g., separation-of-powers limitations.**"

Bond, 564 U.S. at 220-22 (emphasis added).

108. The Court defined precisely when such challenges arise—when government exceeds its enumerated authority:

> "By denying any one government complete jurisdiction over all the concerns of public life, federalism protects the liberty of the individual from arbitrary power. **When government acts in excess of its lawful powers, that liberty is at stake.**"

Id. at 222.

> "[Federalism] protects the liberty of all persons within a State by ensuring that **law enacted in excess of delegated governmental power cannot direct or control their actions**."

Id. at 221.

This is precisely the equitable standing framework: government action that exceeds enumerated powers is a constitutional violation that individuals may challenge—not because they suffer injury different from others, but because the constitutional structure itself has been breached.

109. Justice Kennedy's opinion explicitly cited *INS v. Chadha*, 462 U.S. 919 (1983), where an *individual*—not Congress, not the Executive—successfully challenged the legislative veto as a separation of powers violation. The Court explained:

> "An individual has a **direct interest** in objecting to laws that upset the constitutional balance between the National Government and the States when the enforcement of those laws causes injury that is concrete, particular, and redressable."

Id. at 222.

110. *Bond* establishes that individuals are "protected by the operations of separation of powers and checks and balances" and "are not disabled from relying on those principles in otherwise justiciable cases and controversies." *Id.* at 222. The 9-0 decision confirms that structural constitutional claims—including separation of powers violations—are cognizable by individuals, not merely by coordinate branches.

111. The Court's conclusion is unambiguous: "There is no basis in precedent or principle to deny petitioner's standing to raise her claims." *Id.* at 226. This language requires careful parsing. The "precedent" refers to *Tennessee Electric Power Co. v. TVA*, 306 U.S. 118 (1939)—the sole authority the Third Circuit had relied upon—which the Court explicitly repudiated as "neither controlling nor instructive on the issue of standing as that term is now defined and applied." *Id.* at 220.

112. The "principle" refers to prudential standing doctrines—specifically, the judge-made rule that "a party generally must assert his own legal rights and interests, and cannot rest his claim to relief on the legal rights or interests of third parties." *Id.* at 220 (quoting *Warth v. Seldin*, 422 U.S. 490, 499 (1975)). These are *court-created* prudential rules, not constitutional requirements.

113. This bifurcation reveals the constitutional logic: either the "principles" denying standing are constitutional (derived from Article III), or they are non-constitutional (derived from judicial prudence). If constitutional, *Bond* merely restores what Article III always guaranteed—individuals may challenge governmental excess of enumerated powers. If non-constitutional, then the Court held that prudential rules *cannot* override Article III standing for structural constitutional violations. Either reading confirms equitable standing for enumerated constitutional violations.

114. Justice Ginsburg's concurrence removes any ambiguity:

> "For this reason, **a court has no 'prudential' license to decline to consider** whether the statute under which the defendant has been charged lacks constitutional application to her conduct."

Id. at 226-27 (Ginsburg, J., concurring) (emphasis added).

> "In short, **a law 'beyond the power of Congress,' for any reason, is 'no law at all'**."

Id. at 227.

115. The implications for equitable standing are dispositive. After *Bond*, a court that dismisses a citizen's challenge to enumerated constitutional violations on "prudential" standing grounds would be:

Action	**Violation**
Applying *Tennessee Electric*	Violating *Bond*'s explicit repudiation
Invoking prudential limits	Violating *Bond*'s holding that courts have "no prudential license" to decline such claims
Requiring particularized injury for structural violations	Ignoring *Bond*'s recognition that "individuals... may challenge actions that transgress separation-of-powers limitations"

116. The 9-0 *Bond* decision is not merely persuasive—it is binding precedent. A unanimous Court held that individuals have standing to challenge governmental actions exceeding enumerated constitutional limits. Courts that dismiss equitable petitions challenging enumerated constitutional violations for lack of standing must now explain how their dismissals comport with *Bond*—or acknowledge they are violating binding Supreme Court precedent.

C. The Two Sources of Law — the Unified Framework

117. The apparent tension between *Lujan* and equitable standing for constitutional violations dissolves when the **source of law** is properly identified. Statutory law derives from Congress and agency interpretation; the will of the People is expressed through the legislative process; a petitioner cannot claim to speak for all citizens because doing so would override constitutional processes; the judicial role is to review statutory application to the plaintiff; and standing requires particularized injury under *Lujan*.

118. Constitutional law operates differently at every level. Its source is the People themselves, acting through Article V ratification. The will of the People is expressed directly through the Constitution, not through legislative intermediaries. A petitioner *can* claim to speak for all citizens because he enforces the People's direct will. The judicial role is to "say what the law is" (*Marbury*). And standing requires only citizenship—the traditional basis for Article III equity jurisdiction.

119. *Lujan* is correct where it applies. For statutory claims, the will of the People lies in Congress. A petitioner cannot claim universal standing because that would substitute judicial policy-making for the constitutional legislative process. **Equitable standing is equally correct where it applies.** For enumerated constitutional violations, the will of the People lies in the Constitution itself. A citizen CAN claim equitable standing because the Constitution is the People's direct expression, and every citizen shares in its violation.

D. The Framework Does Not Contradict Lujan—it Completes It

120. The Law/Equity jurisdictional framework does not overrule *Lujan* or create tension with existing doctrine. It **completes** *Lujan* by identifying its proper domain: statutory claims derive from Congress and agency interpretation, where the will of the People is expressed through the legislative process, requiring *Lujan*'s particularized injury; constitutional claims derive from the People directly through Article V ratification, permitting equitable citizenship standing. The framework above illustrates this distinction comprehensively.

121. The 1938 procedural merger obscured this distinction by collapsing all claims into a single procedural form. *Lujan* then developed a unified standing test without asking whether that test should apply differently to different sources of law. The recovery of Article III's equity jurisdiction recovers the distinction.

E. The Tariff Case Confirms the Framework

122. The Supreme Court's decision in *Learning Resources, Inc. v. Trump*, 607 U.S. ___ (2026), confirms this constitutional architecture. President Trump argued that the International Emergency Economic Powers Act (IEEPA) delegated him authority to impose tariffs. The Court rejected this 6-3, holding: "When Congress grants the power to impose tariffs, it does so clearly and with careful constraints. It did neither here." *Learning Resources*, 607 U.S. ___, slip op. at 17.

123. The parallel to *Lujan* is precise: In *Lujan*, the claim was that the ESA grants citizen standing; the Court held Congress cannot override Article III. In *Learning Resources*, the claim was that IEEPA grants presidential tariff power; the Court held Congress cannot delegate away Article I, Section 8. Both cases answer the same question: Can an Act of Congress circumvent an enumerated constitutional power? The answer is no.

124. Yet the system treats these identical constitutional errors asymmetrically. The citizen is gatekept by the judiciary—standing doctrine stops the suit before the constitutional question is addressed. The Executive acts freely until sued—constitutional harm accumulates in the billions while litigation proceeds. Within hours of *Learning Resources*, President Trump invoked Section 122 of the Trade Act of 1974—demonstrating that narrow statutory rulings permit continued violation through alternative statutory paths. *See* Section X.A, *infra* (detailed analysis of tariff PSV and framework gap).

F. Clarifying the Hierarchy—not Gatekeeping the Executive

125. The recovery of equitable standing does not propose gatekeeping executive action. Prior restraint on the Executive would violate separation of powers. What the recovery of Article III equity jurisdiction proposes is clarification of the constitutional hierarchy: Enumerated Constitutional Rights (The People—Article V) are supreme over Statutory Law (Congress—Article I), which is executed by Executive Action (President—Article II). This hierarchy is *Marbury v. Madison*: the Constitution is supreme law, and acts repugnant to it are void.

126. The Judiciary applies precedent without asking: "Does applying this precedent to these facts violate the constitutional provisions from which the precedent derives?" Qualified immunity demonstrates this failure. Courts apply *Harlow v. Fitzgerald*'s "clearly established law" standard without asking whether immunity doctrine itself violates the Seventh Amendment's preservation of jury trial, the Fifth and Fourteenth Amendments' guarantee of due process, or Article IV's privileges and immunities guarantee. The precedent is applied mechanically; the constitutional question goes unasked.

G. Qualified Immunity as Power Separation Vulnerability

127. Qualified immunity exemplifies a PSV that shields other PSVs from accountability. The doctrine—created by courts in *Harlow v. Fitzgerald*, 457 U.S. 800 (1982)—constitutes judicial **USURPATION** of congressional enforcement power:

Constitutional Assignment	**What Courts Did**
Fourteenth Amendment, § 5: "The Congress shall have power to enforce"	Courts created immunity limitations
42 U.S.C. § 1983: "Every person... shall be liable"	Courts added "unless right not clearly established"
Article I, § 1: "All legislative Powers... vested in a Congress"	Courts legislated immunity through doctrine

128. Congress exercised its Fourteenth Amendment enforcement power by enacting § 1983, providing that "every person" who deprives constitutional rights "shall be liable." The text contains no immunity exception. Courts manufactured one—exercising the legislative power Article I assigns to Congress.

129. The Madisonian Test confirms this analysis. Applied to qualified immunity, the doctrine fails at Steps 4, 5, and 6:

- **Step 4 (Textual Consistency)**: **FAILS**—if courts can read immunity into "shall be liable," the same method would permit "qualified speech immunity" read into "shall make no law."
- **Step 5 (Structural Impossibility)**: **FAILS**—adding unwritten exceptions to statutory text is legislative, not judicial.

- **Step 6 (Position of Assigned Power)**: **FAILS**—"The Congress" is assigned Fourteenth Amendment enforcement power, not courts.

See Appendix, Test B (¶¶26-100) (comprehensive six-step analysis).

130. The doctrine's constitutional defects are not merely structural—they are self-compounding. Qualified immunity shields officials from accountability for constitutional violations, but qualified immunity *is itself* a constitutional violation. A judicial doctrine that (a) usurps congressional enforcement power, (b) nullifies the Seventh Amendment jury trial right, (c) inverts the Ninth Amendment's presumption favoring citizens, and (d) creates geographic inequality in constitutional remedies cannot constitutionally shield officials from other constitutional violations.

131. *Kirchner v. Ellison* illustrates the paradox. In January 2026, federal agents committed documented constitutional violations against Minnesota law enforcement officers—armed stops of off-duty officers without reasonable suspicion, physical suppression of First Amendment recording, and a pattern Chief Bruley confirmed targeted "every" officer "of color." *See* Appendix, Test B.9 (¶¶92-100). The very officers whom qualified immunity purportedly protects became its victims. The doctrine designed to shield "law enforcement" from litigation now shields federal agents who victimize state law enforcement officers.

132. Equitable standing would permit challenge to this structural failure. Citizens could petition for declaratory relief that qualified immunity, as a judicial doctrine exceeding Article III power and usurping Fourteenth Amendment, Section 5 enforcement authority, is unconstitutional. The petition would not seek damages—it would seek structural remedy for a structural violation.

133. *Lujan* was correct but incomplete. It correctly held that statutory claims require particularized injury—citizens cannot claim to speak for all Americans on matters the Constitution delegates to Congress. But *Lujan* did not clarify that enumerated constitutional violations present a different question, where citizens can speak for all Americans because the Constitution speaks for all Americans.

134. The judiciary's role is to clarify—not to gatekeep executive action, but to teach. When the constitutional hierarchy is properly articulated, all branches can self-regulate. The Executive asks: "Does my statutory authority conflict with enumerated constitutional limits?" Congress asks: "Can we delegate this power, or does the Constitution assign it exclusively?" Citizens understand: "For statutory claims, I need particularized harm; for enumerated constitutional violations, I may petition as citizen-advocate."

135. The recovery of equitable standing operationalizes this clarification. By permitting citizen standing for enumerated constitutional violations, it ensures the judiciary can "say what the law is" when branches fail to self-regulate. The Executive is not gatekept—but neither is it immunized. Constitutional supremacy is enforced through coordinate review, not prior restraint.

X. The Framework Gap in Practice

A. Power Separations Vulnerability and Democratic Harm

136. Congressional abdication of enumerated powers creates structural vulnerabilities that extend far beyond any single executive action. When Congress enacted the Trade Act of 1974, transferring Article I, Section 8 tariff authority to the President, it created what may be termed a "Power Separations Vulnerability"—a structural weakness in constitutional architecture that permits one branch to act outside the coordinate check of the others.

137. The consequences are now manifest. President Trump invokes delegating statutes contrary to the will of the People as expressed in the Constitution's enumeration, contrary to the deliberation of their Representatives who exist precisely for such cooperation, and contrary to judicial orders that—being narrowly statutory—fail to reach the constitutional question. The result is executive action outside both judicial constraint and legislative cooperation.

138. This exceeds even ultra vires action and implicates the Take Care Clause. Article II, Section 3 requires the President to "take Care that the Laws be faithfully executed." U.S. Const. art. II, § 3. When the Executive acts on statutes that themselves violate constitutional structure, faithful execution requires recognizing that unconstitutional delegations cannot authorize constitutional action. Instead, the President treats delegating statutes as immunity from enumerated limits.

139. The three parts of government must cooperate for the whole to function. The Constitution provides institutional mechanisms for this cooperation: the Speaker of the House, Minority Leaders, committee structures, and the legislative process itself exist precisely so the President can work with Congress on matters the Constitution assigns to Congress. President Trump's declaration—"I don't have to work with Congress"—constitutes a declaration of executive independence from both legislature and judiciary, the constitutional grounds of which originate in Congress's 1974 abdication. *See* Exhibit D.

140. The harm is measured in billions. Taxpayer money is spent unconstitutionally while litigation proceeds through years of statutory whack-a-mole. President Trump himself acknowledged this timeline: "We'll end up being in court for the next five years." *Id.* Dozens of companies have filed suit. States calculate per-citizen harm in the thousands. All of this is preventable harm—not inevitable cost of constitutional governance, but direct consequence of the framework gap.

141. Section 122 fails facially under its own terms. Subsection (e) explicitly provides: "Neither the authorization of import restricting actions nor the determination of exceptions with respect to product coverage shall be made for the purpose of protecting individual domestic industries from import competition." 19 U.S.C. § 2132(e). President Trump's stated purpose—protecting American manufacturers, steel workers, and domestic industries—is explicitly the purpose Section 122(e) prohibits. The statute authorizes balance-of-payments surcharges, not protectionist tariffs.

142. Section 122(g) further provides that the President may "suspend, modify, or terminate" proclamations "either during the initial 150-day period of effectiveness or as extended by subsequent Act of Congress." 19 U.S.C. § 2132(g). When asked whether the Section 122 tariffs would be "for 150 days or... indefinitely," President Trump responded: "We have a right to do pretty much what we want to do." *See* Exhibit D. This is an explicit declaration of intent to exceed the 150-day statutory limit without congressional authorization—the very cooperation Section 122(g) mandates and the President expressly refuses.

143. Combined with his declaration that he does not have to work with Congress, this constitutes: (1) facial violation of Section 122(e)'s prohibition on protectionist purpose; (2) declared intent to violate Section 122(g)'s 150-day limit; (3) rejection of the congressional cooperation the statute requires; and (4) a comprehensive Take Care Clause violation—the President announcing he will not faithfully execute the very statute he invokes. This is not mere ultra vires action; it is executive declaration of independence from statutory constraint.

144. Yet even if Section 122 were faithfully executed, the Act itself is unconstitutional. Article I, Section 8 assigns the power to lay Duties to Congress. No statute can transfer this enumerated power. The 1974 delegation was ultra vires from inception—Congress cannot give away what the Constitution assigns exclusively to it. Section 122's facial invalidity under its own terms merely compounds the deeper constitutional defect: the Act should never have existed.

145. The root cause of controversy reveals the precise point at which separation of powers is violated. Section 122 authorizes surcharges only "(1) to deal with large and persistent United States balance-of-trade surpluses, as determined on the basis of the cost-insurance-freight value of imports, as reported by the Bureau of the Census, or (2) to prevent significant appreciation of the dollar in foreign exchange markets." 19 U.S.C. § 2132(a). Controversy arises when a President declares jurisdiction under this Act without meeting—or demonstrating how he meets—these statutory conditions.

146. The statute's subjective qualifiers create an insurmountable justiciability problem. In *Harlow v. Fitzgerald*, 457 U.S. 800 (1982), the Supreme Court defined qualified immunity "in objective terms," *id.* at 818, yet described its standard as "essentially objective," *id.* at 819—a phrase that conceals a logical impossibility. Objectivity admits no degrees; a standard is either objective or it is not. To say a thing is "essentially objective" is to say it is "almost objective," which is an impossibility. *See Kirchner v. Ellison*, No. 0:26-cv-00726-PJS-ECW, ¶¶ 110-113 (D. Minn. filed Jan. 27, 2026) (analyzing the "essentially objective" fallacy). Section 122's authorization conditions suffer the same defect: What is "large"? What is "persistent"? What constitutes "significant appreciation"? These are subjective determinations masquerading as statutory standards.

147. The statute provides no objective metrics. "Large and persistent" balance-of-trade surpluses must be determined "on the basis of the cost-insurance-freight value of imports, as reported by the Bureau of the Census"—but this specifies only the *data source*, not the *threshold*. At what dollar amount does a surplus become "large"? After how many quarters does it become "persistent"? The statute is silent. Similarly, "significant appreciation of the dollar" lacks any defined benchmark. These terms are essentially subjective, which is to say—following *Harlow*'s logic—not objective at all.

148. This creates a Power Separations Vulnerability inherent in any legislation structured with subjective authorization conditions. An executive may invoke statutory jurisdiction without even attempting to justify the subjective prong. President Trump did not demonstrate that balance-of-trade surpluses were "large and persistent" by any metric; he simply declared authority under Section 122. In a court of law, such conclusory invocation would be insufficient—a party must demonstrate that statutory conditions are met. But there is no pre-enforcement venue that preserves the status quo while this determination is made.

149. Section 122(a) functions as a jurisdictional prerequisite—equivalent to the jurisdiction section of any statute. It specifies *when* the authority applies: "(1) to deal with large and serious United States balance-of-payments deficits, (2) to prevent an imminent and significant depreciation of the dollar in foreign exchange markets, or (3) to cooperate with other countries in correcting an international balance-of-payments disequilibrium." 19 U.S.C. § 2132(a). The President must articulate which condition applies and why. Complete omission of any jurisdictional justification constitutes a facial Take Care Clause violation—the President announcing he will not faithfully execute the very statute he invokes. Even a cursory justification—"balance-of-payments deficit of $X as reported by the Bureau of the Census"—would provide something courts could evaluate and would partially preempt litigation. President Trump provided nothing.

150. The justiciability failure is complete: (1) the subjective standards are impossible to adjudicate without extensive fact-finding; (2) no jurisdiction preserves the status quo during adjudication; (3) harm accumulates in the billions while litigation proceeds; (4) by the time courts rule, the harm is irreversible; and (5) redressability becomes impossible because the money has been collected and spent. The subjective qualifiers that create controversy are the same qualifiers that make the controversy non-justiciable in any meaningful timeframe.

151. Yet the deeper separation of powers violation precedes any statutory analysis. Article I, Section 8 assigns the power to lay Duties to Congress—not to Congress and the Executive jointly, subject to later dispute. To the People, there should be no controversy. The People assigned this responsibility exclusively to Congress through constitutional ratification. The current framework inverts this constitutional structure: when the Executive claims tariff authority Congress did not constitutionally delegate, private parties must bear the expense of litigation to challenge it—but under *Lujan*, those private parties can only vindicate their own economic injuries, not the People's constitutional assignment of that power to Congress. Congress's enumerated power over the People's purse is effectively neutered while litigants incapable of representing the People's structural interests bear both the unconstitutional tariffs and the costs of challenging them.

152. The current framework provides no pathway for the People to vindicate their constitutional assignment of tariff power. Political remedies depend on a Congress that has demonstrably abdicated—the Speaker of the House coordinated with the Executive to conflate the Federal Rules of Evidence for forty-three days rather than exercise oversight. *See Kirchner v. Johnson*, No. 1:25-cv-02735-ACR (D.D.C.), ECF No. 13-14, ¶¶207, 244-247 (documenting *Interstate Circuit* coordination pattern). Legal remedies require private businesses to absorb both the unconstitutional tariffs and the costs of challenging them—litigation that takes years while harm accumulates in the billions. But even setting aside the delay, the legal remedies themselves are structurally deficient.

153. Even successful litigation at law fails to reach the constitutional question. Private businesses challenging Section 122 litigate statutory interpretation: Did President Trump meet Section 122's conditions? Even if they prevail, the ruling addresses only whether Section 122 was properly invoked—not whether Congress could constitutionally delegate tariff authority. The constitutional question remains unaddressed while the People bear billions in harm as statutory wack-a-mole continues.

154. With equitable standing for enumerated constitutional violations operational, this harm would be preempted. The Supreme Court, conscious of the constitutional hierarchy, would rule that Article I, Section 8 assigns tariff power to Congress and no statute can transfer enumerated powers between branches. The President would then be required to work with Congress—as constitutionally mandated—to enact tariffs through proper legislative channels. The constitutional pathway exists; the 1974 abdication obscured it; Article III equity jurisdiction recovers it.

B. The Framework Gap in Practice: Kirchner v. Johnson

155. The consequences of this framework gap are not hypothetical. On August 19, 2025, Plaintiff filed a complaint in the District of Columbia challenging coordinated constitutional violations by government officials, including the systematic conflation of Federal Rules of Evidence 901 and 607 to withhold Epstein files from the American public. *See Kirchner v. Johnson*, No. 1:25-cv-02735-ACR (D.D.C.), ECF No. 13, ¶¶310-316 (First Amended Complaint) (documenting credible evidence fraud and four-domain legal fraud). The complaint documented coordinated cross-branch use of fraudulent legal terminology—"credible evidence" determinations that belong exclusively to constitutional fact-finders—across legislative, executive, and prosecutorial defendants. *See* ECF No. 13-14, ¶¶248-264 (Appendix A: Legislative and Executive Branch Ultra Vires Coordination) (establishing cross-branch criminal conspiracy through coordinated linguistic manipulation); Exhibit A-0 (attached hereto).

156. The court dismissed the complaint without prejudice the following day, correctly applying *Lujan*: "a plaintiff raising only a generally available grievance about government—claiming only harm to his and every citizen's interest in proper application of the Constitution and laws—does not state an Article III case or controversy." *Minute Order*, Aug. 20, 2025 (quoting *Lujan*, 504 U.S. at 573-74). Under current doctrine, this was the correct ruling. The court ordered Plaintiff to amend.

157. The post-complaint evidence proved the framework's failure. After August 19, 2025, all five government defendants simultaneously abandoned the fraudulent "credible evidence" framework—100% coordinated cessation within days of judicial scrutiny. This pattern satisfies *Interstate Circuit, Inc. v. United States*, 306 U.S. 208 (1939): actions contrary to independent self-interest prove coordination when simultaneous abandonment cannot be explained by coincidence. The statistical impossibility of five legal professionals independently abandoning identical fraudulent terminology at the precise moment of legal challenge constitutes consciousness of guilt.

158. Yet the court could not reach this evidence. The legal standing requirement—particularized injury—forced Plaintiff to investigate personal harms before obtaining equitable relief. Meanwhile, the constitutional violation continued. The public remains unaware of the FRE conflation months later. The Epstein files release severely delayed under fraudulent legal justification. The coordinated abandonment—proof of the conspiracy—emerged only because Plaintiff persisted through amendment.

159. Had equitable standing been available, the outcome would have differed. A citizen petition challenging the enumerated constitutional violation—government officials systematically misrepresenting federal law to withhold public records—would have permitted declaratory relief stating the correct legal standard: credibility determinations belong to constitutional fact-finders under Federal Rules of Evidence 607 and 901, not executive officials. This declaration would have exposed the coordinated conflation, expedited proper file release, and established accountability. Claims at law for particularized harms could have proceeded in parallel, with the equitable declaration providing *Interstate Circuit* evidence of coordination.

160. Beyond these outcomes, there is demonstrable demand for public constitutional analysis. Approximately 170 members of Congress hold law degrees. Not one identified the conflation of Federal Rules of Evidence 901 and 607—rules governing credibility determinations in every criminal case in American jurisprudence—or if they did, they chose not to exercise their oversight duty. Either conclusion proves the same point: existing institutional mechanisms failed to provide the constitutional analysis the public required. Equitable standing for petitions in equity would fill this gap, permitting citizen-advocates to bring constitutional violations before courts when institutional actors—including lawyer-legislators with explicit oversight responsibilities—fail to act.

161. Article III's "Law and Equity" clause ought to provide this pathway. A citizen should be able to redress enumerated constitutional violations through equitable proceedings while preserving claims at law. The current framework forces an unconstitutional choice: abandon equitable standing arguments to pursue particularized harms, or face dismissal. The Constitution contemplates no such choice. Equity jurisdiction historically permitted structural challenges; the 1938 merger obscured but did not eliminate this pathway.

XI. THE CONSTITUTIONAL RECOVERY OF EQUITABLE STANDING

A. What the Recovery of Law/equity Jurisdiction Does

162. The framework does not create new doctrine. It recovers constitutional architecture that procedural reform obscured. **Article III "Equity"** is equitable jurisdiction: the petition, seeking structural remedy through declaration or injunction, with equitable standing, benefiting all citizens, embodying the demand "this wrong must end." **Article III "Law"** is legal jurisdiction: the complaint, seeking individual remedy through damages, with particularized standing, benefiting the plaintiff specifically, embodying the demand "compensate my injury."

163. The distinction is not novel—it is original. It is what Article III's "Law and Equity" language has always meant.

B. The Recovery of Equitable Standing

164. Equitable standing derives from:

- The structural violation itself (enumerated constitutional limit exceeded)
- Citizenship (all citizens have interest in constitutional governance)
- The equitable nature of relief sought (declaration/injunction, not damages)

165. This is not novel doctrine. It is the standing that equity courts historically recognized before the 1938 merger collapsed the procedural forms.

C. Consistency With Article III Text

166. The Law/Equity framework is congruent with Article III's text:

• **"Equity"** — structural challenges, equitable standing, equitable relief
• **"Law"** — individual claims, particularized standing, legal remedies

167. Far from creating new constitutional requirements, the framework **restores** what Article III's text has always provided.

XII. CONCLUSION

A. Summary of Argument

168. Two historical errors combined to eliminate citizen standing for enumerated constitutional violations. The **substantive error** was *Frothingham*'s broad rationale—"minute and indeterminable" interest, injury "in common with people generally"—which could not distinguish process challenges (properly barred) from violation claims (historically permitted). The **procedural error** was the 1938 merger, which collapsed the distinct standing doctrines for law and equity without constitutional analysis.

169. The Rules Enabling Act prohibited the merger from modifying substantive rights. Standing is a substantive constitutional right. Article III's text—"Cases, in Law and Equity"—remains unchanged.

170. No court has ever held that equity historically required particularized injury for standing. *Lujan* developed its particularized injury requirement in a **statutory context**—not in the context of enumerated constitutional violations. *Crampton v. Zabriskie* remains good law for the proposition that injuries "in common with other property holders" are sufficient for equity standing when government exceeds its lawful authority.

B. The Question Presented

171. The question is not whether this Court should adopt a novel standing doctrine.

172. The question is whether this Court will recognize that:

173. *Lujan*'s standing test was developed for statutory claims and should not be mechanically applied to enumerated constitutional violations where the source of law is fundamentally different;

174. *Fairchild* and *Frothingham* were correctly decided on their facts—they were process challenges—but their rationales were improperly extended to violation claims;

175. The 1938 procedural merger could not possess the constitutional effect required to collapse Article III's distinct jurisdictional grants; and

176. *Crampton v. Zabriskie*'s holding—that shared injury "in common with other property holders" is sufficient for equity standing against illegal government action—has never been overruled and controls for violation claims.

C. The Recovery

177. The petition in equity recovers the form of pleading that encodes equitable standing for enumerated constitutional violations.

178. The citizen-advocate recovers the petitioner who speaks for all.

179. The structural remedy recovers the equitable relief that benefits everyone.

180. And Article III's "Equity" jurisdiction recovers its constitutional function: ensuring that enumerated constitutional violations affecting all citizens can be judicially remedied, even when no single individual suffered harm distinguishable from the general public.

Respectfully submitted,

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