SUPREME COURT OF THE UNITED STATES

No. 03–407

JOHN F. KOWALSKI, JUDGE, 26TH JUDICIAL CIRCUIT COURT OF MICHIGAN, ET AL., PETITIONERS *v.* JOHN C. TESMER ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

[December 13, 2004]

JUSTICE THOMAS, concurring.

That this case is even remotely close demonstrates that our third-party standing cases have gone far astray. We have granted third-party standing in a number of cases to litigants whose relationships with the directly affected individuals were at best remote. We have held, for instance, that beer vendors have standing to raise the rights of their prospective young male customers, see *Craig* v. *Boren,* 429 U. S. 190, 192–197 (1976); that criminal defendants have standing to raise the rights of jurors excluded from service, see *Powers* v. *Ohio,* 499 U. S. 400, 410–416 (1991); that sellers of mail-order contraceptives have standing to assert the rights of potential customers, see *Carey* v. *Population Services Int'l,* 431 U. S. 678, 682–684 (1977); that distributors of contraceptives to unmarried persons have standing to litigate the rights of the potential recipients, *Eisenstadt* v. *Baird,* 405 U. S. 438, 443–446 (1972); and that white sellers of land have standing to litigate the constitutional rights of potential black purchasers, see *Barrows* v. *Jackson,* 346 U. S. 249, 254–258 (1953). I agree with the Court that "[t]he attorneys before us do not have a 'close relationship' with their alleged 'clients'; indeed, they have no relationship at all." *Ante*, at 5–6. The Court of Appeals understandably could have thought otherwise,

given how generously our precedents have awarded third-party standing.

It is doubtful whether a party who has no personal constitutional right at stake in a case should ever be allowed to litigate the constitutional rights of others. Before *Truax* v. *Raich,* 239 U. S. 33, 38–39 (1915), and *Pierce* v. *Society of Sisters,* 268 U. S. 510, 535–536 (1925), this Court adhered to the rule that "[a] court will not listen to an objection made to the constitutionality of an act by a party whose rights it does not affect and who has therefore no interest in defeating it." *Clark* v. *Kansas City,* 176 U. S. 114, 118 (1900) (internal quotation marks omitted).* This made sense. Litigants who have no personal right at stake may have very different interests from the individuals whose rights they are raising. Moreover, absent a personal right, a litigant has no cause of action (or defense), and thus no right to relief. It may be too late in the day to return to this traditional view. But even assuming it makes sense to grant litigants third-party standing in at least some cases, it is more doubtful still whether third-party standing should sweep as broadly as our cases have held that it does.

Because the Court's opinion is a reasonable application of our precedents, I join it in full.

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*See also *Tyler* v. *Judges of Court of Registration,* 179 U. S. 405, 406–407 (1900); *Davis & Farnum Mfg. Co.* v. *Los Angeles,* 189 U. S. 207, 220 (1903); *Owings* v. *Norwood's Lessee,* 5 Cranch 344, 348 (1809) (Marshall, C. J.); *In re Wellington*, 33 Mass. 87, 96 (1834) (Shaw, C. J.); *Barrows* v. *Jackson,* 346 U. S. 249, 264–266, and n. 6 (1953) (Vinson, C. J., dissenting).