NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

NORTHEASTERN FLORIDA CHAPTER OF THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA *v.* CITY OF JACKSONVILLE, FLORIDA, ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

No. 91–1721. Argued February 22, 1993—Decided June 14, 1993

Respondent city enacted an ordinance requiring that 10% of the amount spent on city contracts be set aside each fiscal year for so-called ``Minority Business Enterprises'' (MBE's). Petitioner construction contractors' association, most of whose members did not qualify as MBE's, filed suit in the District Court against the city and respondent Mayor, alleging that many of its members regularly bid on, and performed, construction work for the city and ``would have . . . bid on . . . designated set aside contracts but for the restrictions imposed'' by the ordinance in violation of the Fourteenth Amendment's Equal Protection Clause. Ultimately the court entered summary judgment for petitioner, but the Court of Appeals vacated the judgment, ruling that petitioner lacked standing to challenge the ordinance because it had ``not demonstrated that, but for the program, any . . . member would have bid successfully for any of [the] contracts.'' After certiorari was granted, the city repealed its MBE ordinance, replacing it with another ordinance which, although different from the repealed ordinance, still set aside certain contracts for certified black- and female-owned businesses. Subsequently, this Court denied respondents' motion to dismiss the case as moot.

Held:

1. The case is not moot. It is well settled that the voluntary cessation of a challenged practice does not deprive a federal court of its power to determine the practice's legality, because a defendant is not precluded from reinstating the practice. Here, there is more than a mere risk that the city will repeat its allegedly wrongful conduct; it has already done so. Insofar as

the city's new ordinance accords preferential treatment in the award of city contracts, it disadvantages petitioner's members in the same way that the repealed ordinance did. Pp. 5–6.

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2. Petitioner has standing to sue the city. Pp. 6–12.

(a) When the government erects a barrier that makes it more difficult for members of one group to obtain a benefit than it is for members of another group, a member of the former group seeking to challenge the barrier need not allege that he would have obtained the benefit but for the barrier in order to establish standing. See, *e.g., Regents of University of California* v. *Bakke,* 438 U. S. 265. The ``injury in fact'' element of standing in such an equal protection case is the denial of equal treatment resulting from the imposition of the barrier—here, the inability to compete on an equal footing in the bidding process—not the ultimate inability to obtain the benefit. To establish standing, therefore, petitioner need only demonstrate that its members are able and ready to bid on contracts and that a discriminatory policy prevents them from doing so on an equal basis. Pp. 6–10.

(b) Respondents' reliance on *Warth* v. *Seldin,* 422 U. S. 490—in which a construction association was denied standing to challenge a town's zoning ordinance—is misplaced. Unlike petitioner, the association in *Warth* claimed that its members could not obtain variances and permits, not that they could not apply for the variances and permits on an equal basis, and did not allege that any members had applied for a permit or variance for a current project. Pp. 10–12.

(c) Petitioner's allegations that its members regularly bid on city contracts and would have bid on the contracts set aside under the ordinance were unchallenged and are assumed to be true. P. 12.

951 F. 2d 1217, reversed and remanded.

THOMAS, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and WHITE, STEVENS, SCALIA, KENNEDY, and SOUTER, JJ., joined. O'CONNOR, J., filed a dissenting opinion, in which BLACKMUN, J., joined.