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SHOULD ANIMALS HAVE STANDING?

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*What is standing? How does one acquire standing? Why is advancing standing so difficult? Should animals have automatic standing?*

When a case on the docket comes before the court, the court must first weigh the case's justiciability or "state of being appropriate or suitable for review."<sup>1</sup> The courts power to review a matter is subject to mandatory constitutional requirements as well as discretionary judicial limitations.<sup>2</sup> These justiciability doctrines address three core issues of any case.<sup>3</sup> The first issue is who may go to the court, or who has standing to sue.<sup>4</sup> The second issue is when in the course of the controversy the courts response is allowed, or whether the case is ripe or moot.<sup>5</sup> The third issue is what specific issues are (or not) appropriate for the courts resolution, or whether the issues are political questions, collusive actions, or advisory opinions.<sup>6</sup> The minimum procedural barrier to overcome in cases involving political, moral or ethical agendas before judges is standing.<sup>7</sup> "The phrase 'cases and controversies' in Article III of the United States Constitution requires that, in order to have standing to pursue a lawsuit in federal court, a plaintiff must demonstrate that he has suffered a judicially cognizable and redressable injury."<sup>8</sup>

The elements of standing that satisfy the mandatory constitutional requirements are that (1) he or she has suffered an injury in fact that is concrete and particularized, actual or imminent, and not merely conjectural or hypothetical; (2) that a causal connection exists between the injury and the challenged conduct; and (3) that a decision favorable to the plaintiff will likely redress the injury.<sup>9</sup> "The party invoking federal jurisdiction bears the burden of establishing these elements."<sup>10</sup> Once a plaintiff has demonstrated the requirements for constitutional requirements, they must also satisfy judicially imposed, prudential requirements which are (1) plaintiffs may not usually raise the complaints of third parties without showing some particularized injury; (2) "citizen" or "taxpayer" suits brought on the basis of all citizens and taxpayers are experiencing

the same harm are rarely permitted; and (3) statutory claims must be entitled to relief and make claims within the “zone of interests” protected by the statute.<sup>11</sup>

The procedural evolution of the standing requirements for environmental and animal protection cases begins with Sierra Club v. Morton, which grappled with who has the proper adverse interest to bring a lawsuit.<sup>12</sup> The injury and damages sought were for Mineral King, an area in the Sierra Nevada Mountains, represented by the Sierra Club. The legal claim was that the defendant did not follow proper administrative procedures. The Supreme Court found that there was no standing.<sup>13</sup> The majority stated that the plaintiff must suffer injury themselves, and that special interest in the problem is not sufficient. The plaintiff must show he is adversely affected with a direct stake in the outcome. The court in Animal Lovers Volunteer Ass'n, Inc v. Weinberger also dealt with the injury in fact requirement. In this particular case, the goats were eating endangered plants on the San Clemente Island and the Navy kept violating consent decrees not to shoot them.<sup>14</sup> The court ruled that because the plaintiff did not actually see the goats being killed, that they were not suffering injury in fact and therefore lacked standing.<sup>15</sup> In the development of aesthetic injury as an indirect injury that satisfies the injury in fact requirement, the court in Lujan v. Defenders of Wildlife found that the plaintiffs lacked the imminence requirement of aesthetic injury.<sup>16</sup> The plaintiffs contended that the federal government could send money to countries that do not honor the Endangered Species Act, and therefore they would suffer aesthetic injury as a result of all the dead animals. The court was essentially saying that if the plaintiffs had any intentions of going back to those countries, then the imminence requirement for aesthetic injury would be satisfied.<sup>17</sup> In the development of the aesthetic injury requirement, the court in Humane Society of the United States v. Hodel, found that because the plaintiff’s members would have to witness dead animals and “environmental

degradation” this is sufficient interest for aesthetic injuries to satisfy the injury in fact requirement.<sup>18</sup> The case cementing aesthetic injury as a valid form of injury to satisfy the standing requirement was Animal Legal Defense Fund v. Glickman, where the court found that a plaintiff visiting a roadside zoo had standing to bring claims against the government for not enforcing standards for human treatment due to aesthetic injury.<sup>19</sup> As the textual requirements for standing were being solidified in the courts, the battle for overcoming the prudential standing was just starting. The Court of Appeals in New York in Jones v. Beame, found that the representatives concerned with the cruel treatment of animals had standing, but because the zoo animals were wards of the state, they were at the mercy of the executory and therefore this posed a political question.<sup>20</sup> This is when courts began to look at the prudential standing requirements for cases involving the protection of animals.

Prudential standing requirements in cases involving the protection of animals have developed along with the constitutional requirements. In Citizens to End Animal Suffering and Exploitation, Inc. v. New England Aquarium, the court found that the Marine Mammal Protection Act does not authorize suits brought by animals or citizen suits, and therefore the plaintiffs lacked prudential standing.<sup>21</sup> In a birds, rats and mice case, Animal Legal Defense Fund v. ESPY, the court found that one plaintiff did not have immediacy to the injury in fact requirement, another plaintiff only suffered a generalized grievance, not an actual injury, and that the last plaintiff did not have standing because the statute did not mean to cover informational injuries.<sup>22</sup> With the difficulties of overcoming prudential standing limitations, the courts have found that explicit language in a statute in regards to the zone of interest satisfies this requirement. In Bennett v. Spear, the Supreme Court found that the citizen suit provision of the Endangered Species Act means that you still have to satisfy Art. III but that Congress has waived

the prudential limitation (zone of interest) so that any party can sue.<sup>23</sup> In another substantial standing case dealing with animal protections, the court in Alternatives Research & Development Foundation v. Glickman found that the plaintiff was currently involved in work, and therefore imminent injury was clear.<sup>24</sup> The suffering of the animals in general is enough. The plaintiff had the standing to complain about the government's lack of protection of the animals, even if the animals were an exempted class in the statute.

The case law for standing requirements in animal protection cases has developed over thirty years and society is at a point now in the development of animal protection statutes to amend current statutes to allow for automatic standing for animals. The issues presented to the courts early on were not only first impressions, but also posed a valid question similar to the environment standing cases in that how can one bring claims when the party they represent cannot represent themselves. Early on, the courts were restricted in the sense that they were obligated to follow the rule of law, and could not address issues that were meant for the executive or legislative branches. As these animal protection cases developed, citizens were made more aware of the plight of animals and started to demand action from their elected representatives. We can see this evolution from where the animal protection statutes developed from, starting with the Refuge Recreation Act (1962), Animal Welfare Act (1966), National Environmental Policy Act (1969), Endangered Species Act (1973), Marine Mammal Protection Act (1978), Administrative Procedure Act (1988) and all subsequent amendments to these acts. Earlier cases were not heard on the merits because the statutes were not clear on standing, evidenced by the refinement of the language in subsequent statutes. To see how far the case law has come, we only need to turn to Bennett v. Spear, where any citizen has standing to sue for violations of the Endangered Species Act because Congress has waived the prudential limitation

(zone of interest), and Alternatives Research & Development Foundation v. Glickman, where the court found that the animal suffering in general was sufficient to have injury in fact. Solidifying the aesthetic injury in the courts has also helped third parties establish themselves as valid parties to bring suits on behalf of animals. Due to case precedent, it would be in the legislature's best interest to support amendments for automatic standing for animals. This would clarify the standing requirements for the courts so that progress can continue to be made on animal protection cases in that they will be able to be judged based upon the merits and not just dismissed on procedural grounds.

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<sup>1</sup> Bryan A. Garner, Black's Law Dictionary 391 (Bryan A. Garner ed., West Group 2001) (1996).

<sup>2</sup> Bruce A. Wagman, Animal Law Third Edition 186 (Bruce A. Wagman ed., Carolina Academic Press 2006) (2006).

<sup>3</sup> Id.

<sup>4</sup> Id.

<sup>5</sup> Id.

<sup>6</sup> Id.

<sup>7</sup> Id.

<sup>8</sup> *Wilcox Elec., Inc. v. F.A.A.*, 119 F.3d 724 (8th Cir. 1997).

<sup>9</sup> *Lujan v. Defenders of Wildlife*, 504 U.S. 560 (1992).

<sup>10</sup> Id.

<sup>11</sup> Id. at 576

<sup>12</sup> *Sierra Club v. Morton*, 405 U.S. 727 (1972).

<sup>13</sup> Id at 741

<sup>14</sup> *Animal Lovers Volunteer Ass'n Inc., (A.L.V.A.) v. Weinberger*, 765 F.2d 937 (9<sup>th</sup> Cir. 1985).

<sup>15</sup> Id at 939

<sup>16</sup> *Lujan*, 504 U.S. at 564.

<sup>17</sup> Id.

<sup>18</sup> *Humane Soc. of the U.S. v. Hodel*, 268 U.S.App.D.C. 165 (1988).

<sup>19</sup> *Animal Legal Defense Fund v. Glickman*, 154 F. 3d 426 (D.C. Cir. 1998)

<sup>20</sup> *Jones v. Beame*, 45 N.Y.2d 402 (1978).

<sup>21</sup> *Citizens to End Animal Suffering and Exploitation, Inc. v. New England Aquarium*, 836 F. Supp. 45 (D.Mass., 1993).

<sup>22</sup> *Animal Legal Defense Fund v. ESPY*, 23 F. 3d 496 (D.C. Cir. 1994)

<sup>23</sup> *Bennett v. Spear*, 520 U.S. 154 (1997).

<sup>24</sup> *Alternatives Research & Development Foundation v. Glickman*, 101 F. Supp. 2d 7 (D.C. Cir 2000).