

Brief prepared by:

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Section 4

Parties, court, year:

Lujan v. Defenders of Wildlife, 504 U.S. 555 (1992)

Procedural overview:

Plaintiffs Defenders of Wildlife (DW) brought suit against Secretary of the Interior Lujan over his interpretation of Section 7 of the Endangered Species Act (ESA) in district court. Lujan filed a motion to dismiss for lack of standing, which the district court granted. DW appealed to the 8th Circuit Court which reversed on a divided vote, and Lujan appealed to the Supreme Court, who granted cert. on the issue of standing. Supreme Court reversed, finding no standing.

Summary of the facts:

Lujan re-interpreted section 7 of the ESA to mean that federal agencies need not consult with the Secretary of the Interior in order to prevent harm to endangered species when their operations occur outside of the United States or the high seas. Basically, if any federal operation on foreign soil would result in harm to endangered species, the ESA would be ineffective to stop that harm (although the opposite is true within the United States). Interestingly, the agencies that would be required to consult with the Secretary of the Interior wrote to the courts that they did not believe the Secretary had the authority to tell them what to do regarding endangered species outside of the United States.

DW, wanted Lujan to reverse his opinion back to what it was in 1978, when the Fish and Wildlife Service and the National Marine Fisheries Service jointly promulgated a regulation stating that the obligations imposed by section 7 of the ESA *did* extend to actions taken in foreign nations.

Relevant Constitutional Language:

Article III Sec. 2 Cl. 1: "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; to all *cases* affecting ambassadors, other public ministers, and consuls; to all *cases* of admiralty and maritime jurisdiction; to *controversies* to which the United States shall be a party; to *controversies* between two or more States; between a State and citizens of another State; between citizens of different States; between citizens of the same State claiming land under grants of different States; and between a State, or the citizens thereof, and foreign states, citizens, or subjects." [emphasis added].

The concept of standing is a self-imposed check on the judicial power. In order for the courts to have jurisdiction, they must be overseeing an actual case or controversy (given their plain meaning, as the Constitution has not defined these words explicitly). This means that the parties must have an actual interest in the outcome, described more thoroughly below, for it to be a legitimate "case" or "controversy." Otherwise, the Court will not have jurisdiction.

Statement of the Issue:

Does DW have standing to bring suit against Lujan?

Holding:

DW does not have standing, as they fail to sufficiently demonstrate (1) injury in fact that is both (a) concrete and particularized to the plaintiff and (b) actual or imminent; (2) a causal connection between the injury and the conduct complained of; and (3) the ability of the court to provide redress for the injury.

Justifications/rational:

Justice Scalia, in delivering the opinion, starts by placing the burden of establishing standing on DW. The sufficiency of the evidence varies with the stage of proceeding at which the standing must be established. In this case, since we are at the appellate stage, and DW is arguing that lack of regulation of third parties (other gov't agencies besides the Secretary of the Interior) is the cause of their harm, their burden is "substantially more difficult" to establish than it would be at an earlier stage of the trial or in a trial where they were suing someone who harmed them directly.

Scalia identifies the minimum requirements for Constitutional Standing, as developed throughout the case history which he doesn't fully cite. He goes on to argue that DW fails to establish standing on nearly every ground.

(1) Injury in fact that is both (a) concrete and particularized to the plaintiff and (b) actual or imminent.

Respondent's claimed injury is that the Secretary of the Interior's failure to regulate federal agencies will "increase the rate of extinction of endangered and threatened species." Scalia recognizes that a professional or other interest in observing/preserving endangered species is a legitimate source of injury. However, DW has failed to show that the injury is concrete. There was some evidence that there were agencies that were in fact creating plans that DW believed would "shorten the future" of an endangered species. However, the members of the group used to establish representational standing had insufficient evidence to show that the injury to the animals actually was imminent, and further they had no apparent turns to return to these foreign countries to be personally and particularly injured. The situations they presented to the court were hypothetical and not supported by immediate plans to go see the endangered animals. The injury is not sufficiently concrete or particular to the plaintiffs.

(2) A causal connection between the injury and the conduct complained of.

DW fails on this issue because they fail to show that a failure to regulate these federal agencies caused their harm (which Scalia has already decided does not exist sufficient to create standing). As stated above, the federal agencies in question did not believe that the Secretary of the Interior had the ability to require consultation before operations were carried out in foreign states. Further, there is no evidence that the Secretary of the Interior would be able to enforce the outcome of the consultation. If the law does not give the Secretary the power to do something, his failure to do something cannot be the cause of the injury (particularly when the injury is hypothetical).

(3) The ability of the court to provide redress for the injury.

DW sued the secretary rather than the individual agencies they believed were a threat to endangered species. This means that (unless a new suit is brought elsewhere) the court can only provide relief

against the Secretary. If the Secretary cannot enforce these consultations or any other endangered species protection measures, there really can be no redress. The Court really cannot order an end to funding for these products unless it is within the Secretary's powers to end the funding—it is not. Further, even if they could end the funding, Scalia estimates that only 10% of the funds for the complained-of operations is under federal control. Ending funding would not redress DW's injury, because the projects would continue on.

Evaluation:

Although I agree with the outcome based on the redressability argument, I don't believe the injury was too far out to give DW standing. The fact that their members don't have imminent plans to personally see the wildlife just seems a little too convenient for these federally funded projects. There is probably a more political background than that which is discussed in the text of Scalia's opinion, especially with the back and forth of the Secretary's opinions on the issue.

Scalia also raises the issue of no civil cause of action created by the ESA. The ESA does create a civil cause of action whereby a citizen harmed by failure of some gov't agency to follow the ESA can sue to require enforcement. But this point may be moot, because if the law doesn't apply on foreign grounds than the civil right of action argument wouldn't matter to the outcome of this case. For what reason did Scalia bring this up?

Kennedy, Souter, and Stevens concurred in part or in judgment. Kennedy and Souter are worried about gatekeeping. They don't want to trivialize the concerns of DW, and they think that similar theories (not described in full) of "animal nexus" or "vocational nexus" may be sufficient to establish standing in other cases, although not this particular case. Stevens concurs only because he does not believe section 7 of the ESA requires federal agencies to consult before they work on projects abroad. He dissents on the issue of standing, however: he finds their interest in professionally preventing the extinction of these animals for their own enjoyment and that of others, along with the evidence that the projects complained about will likely harm these animals to be sufficient to claim an injury. He further argues that just because the agencies don't believe that the Secretary has the ability to enforce consultation under the ESA doesn't mean that they won't comply if this court states that the Secretary in fact does have that power. He advocates stronger relief for this issue than does the majority (although he doesn't believe relief is warranted on the merits of the trial). He seems to believe the Court's ability to provide relief is broader than the majority states it is.