

dispose of otherwise reusable waste materials. The court found that the allegations of those specific harms were sufficient to deny a motion to dismiss for lack of standing.

In *Lujan*, a more conservative Supreme Court applied a more rigorous standing test. The opinion of the 7-2 majority, written by Justice Antonin Scalia, said the environmental group did not show that it would suffer an "injury-in-fact" or demonstrate "redressability." The high court said that the group needed to demonstrate "not only that the listed species were in fact threatened by funded activities abroad, but also that one or more of [their] members would thereby be 'directly' affected from their 'special interest' in the subject." The court held that the environmental group had failed to demonstrate the latter.

In dissent, Justice Blackmun, joined by Justice O'Connor, wrote that the decision was "a slash and burn expedition through the law of environmental standing." He expressed fear that the decision would impose "fresh limitations" on Congress's authority to allow citizens' suits in federal courts for injuries that were "procedural" in nature.⁸ The losing counsel for the Defendants was quoted as saying, "I've been in environmental litigation business for 18 years, and this is an attempt by the Supreme Court to put us all out of business."⁹

However, standing continues to be a controversial issue in environmental law. In 1997, the Supreme Court ruled in *Bennett v. Spear*¹⁰ that people can sue the government for overzealous regulations. In *Bennett*, a group of ranchers and irrigation districts brought a suit against the Fish and Wildlife Service (FWS), which proposed limiting the release of water from an irrigation project to protect two endangered species of fish. The ranchers argued that the restriction injured them economically. The Supreme Court ultimately upheld the standing of the ranchers, stating that the right to challenge the regulations under the Endangered Species Act did not "apply to environmentalists alone." Justice Scalia stated that the provision in the Endangered Species Act that authorizes "any person" to bring a suit challenging the way the government carries out the law does not apply only to "unenforcement" but also to "overenforcement." Although this decision might seem to deal a blow to environmentalists, environmental groups often argue that the court needs to take an expansive view of who has the right to sue. Consequently, environmental groups did not want to urge the court to limit the view of legal standing.¹¹

Not only can people who protest overenforcement gain standing to sue, but animals can also be named as parties. Specifically, the Endangered Species Act allows endangered or threatened animals to file suit. For example, three turtles—a loggerhead turtle, a green turtle, and a leatherback turtle—along with Shirley Reynolds and Rita Alexander, who stood for the turtles, recently won an appeal in the 11th U.S. Circuit Court of Appeals.¹² When sea turtle hatchlings eventually break out of their shells at night, they instinctively crawl toward the brightest light on the horizon. On an undeveloped beach, the brightest light is the moon's reflection off the surf. However, on a developed beach, the brightest light can be an inland artificial source. The turtles instituted the lawsuit in 1995 when the county council refused to ban beach driving during the nesting season for sea turtles or to ban beachfront artificial light sources that have an adverse impact on sea turtles by disorienting and misorienting hatchling turtles. Although they lost in district court, the court of appeals concluded that the turtles did have standing. In addition, the court ruled that the county could be liable if turtles die on the beach because of the artificial lighting.

In 1998, standing remained a controversial issue with the Supreme Court's ruling in *Steel Co. v. Citizens for a Better Environment*.¹³ Citizens for a Better Environment (CBE) brought suit against Steel Company because the company failed (for eight years) to file reports with federal, state, and local agencies about the hazardous chemicals it was using. The court ruled that CBE had no standing to sue Steel Company because any injury caused by the missed deadlines was not "redressable," a criterion needed to establish standing. Justice Scalia stated that the relief sought by CBE would not "serve to reimburse . . . for losses caused by the late reporting, or to eliminate any effects of that late reporting upon respondent."

After the decision in *Steel Co.*, a surprising 2000 ruling in *Friends of the Earth (FOE) v. Laidlaw Environmental Services*¹⁴ was more favorable to environmentalists. In this case, Friends of the Earth brought a lawsuit against Laidlaw under the CWA, alleging that the company had violated its discharge permit by discharging excess amounts of mercury and other pollutants. The district court assessed a civil penalty of \$405,800, payable to the U.S. Treasury. The case was overturned on appeal on the grounds that it was moot, because the company had already come into compliance with the law by the time of the case.

The U.S. Supreme Court reversed the ruling of the court of appeals. Addressing the standing issue, Justice Ginsburg reiterated the need for proving that

1. the plaintiff had an injury-in-fact that is concrete and actual or imminent;
2. the injury is fairly traceable to the challenged action of the defendant;
3. it is likely that the injury will be redressed by a favorable decision.

Ginsburg found that the members' testimony concerning how they were afraid to fish and swim in the river they used to enjoy satisfied the first two requirements. She found the redressability issue to be satisfied by the fact that civil penalties will serve as a deterrent to prevent the company (and others) from engaging in polluting behaviors in the future. The fact that the benefit to the claimants came only indirectly was not fatal to FOE's case. Thus, after this case, environmentalists once again thought that they would be able to bring actions for which the primary remedy did not flow directly to the citizens' group, but to government coffers.

As the makeup of the court changes, however, so do the high court's rulings on standing. A 5-4 decision handed down by a new court in 2009 was disappointing to environmentalists, as the ruling held that environmental groups do not have standing to sue the Forest Service over land management policies that might contradict congressional action unless they can prove they are themselves directly threatened by the proposed rules.¹⁵

In that case, *Summers v. Earth Justice Institute*,¹⁶ the court denied standing to environmental organizations that sought to enjoin the Forest Service from exempting from statutory notice, comment, and appeal provisions the salvage sale of fire-damaged timber on federal land of less than 250 acres, where the parties had settled their dispute about the particular timber sale that had sparked the lawsuit. Justice Scalia said that these organizations lacked standing to challenge the regulations because there was no longer a live controversy over their application in a specific timber sale to any plaintiffs, and hence no actual or imminent harm. Secondly, standing could not be based on one member's bare assertion that he planned to visit unnamed national forests in the future that might be subject to such exempt salvage