

Hypotheticals for Standing - Injury in Fact

A. Hypothetical 1:

1. Statutory Provisions:

- a. Section 307 of the Clean Air Act provides that a petition for review of regulations promulgated by the Administrator of the Environmental Protection Agency under the Act may be filed in the U.S. Court of Appeals for the D.C. Circuit.
- b. Assume that, because of the high ozone pollution levels in Atlanta, Baltimore, and Houston, a provision of the Clean Air Act authorizes EPA to promulgate regulations that prohibit the sale, in those cities, of gasoline containing gasoline additives that the Administrator determines contribute to ozone pollution.

2. Facts:

- a. Regulations: EPA promulgates regulations that prohibit the sale of gasoline containing various additives listed in the regulation between May 1 and October 1 of each year, and Georgians for a Clean Environment (GCE), an environmental organization, brings a lawsuit challenging the regulations.
- b. GCE's Complaint: In its complaint, GCE alleges that it is an organization of over 200 members that is dedicated to preserving the quality of Georgia's environment, including the protection of clean air.

It also alleges that EPA acted arbitrarily and capriciously by failing to prohibit the sale of gasoline containing additive "X" (an additive which contributes to ozone pollution).

GCE assumes, but does not allege, that many gasoline retailers will sell gasoline containing additive "X" since they can no longer sell gasoline containing the additives that are being prohibited by the regulations.

GCE alleges that EPA's failure to prohibit the sale of gasoline containing additive "X" in its regulations will harm GCE's interest in preserving the environment, in general, and clean air, in particular.

3. EPA files a motion to dismiss the complaint. Has GCE made sufficient allegations to demonstrate an "injury in fact"?

B. Hypothetical 2:

1. Assume that GCE has learned from its mistakes and amends its complaint to provide that:
 - a. several of its members have visited Atlanta in the past and plan to return at some point in the future;
 - b. those members have suffered respiratory problems on past visits to Atlanta.
 - c. one of its members now lives about 1 hour east of Atlanta, and is suffering respiratory problems.
2. Before any depositions are taken or any discovery is conducted, EPA files a motion for judgment on the pleadings, arguing that GCE has not alleged a "specific injury" to support standing.
3. Without addressing causation or redressability at this time, how would you argue, on behalf of EPA, that GCE has not alleged a "specific injury" to support standing?