

Hypotheticals for Standing - Causation and Redressability

I. Hypothetical 1:

- A. Assume the facts from the first hypothetical in the last class.
- B. Assume, in addition, that in its complaint, GCE alleged that several of its members live in Atlanta, and that those members are suffering respiratory problems because ozone pollution has increased and air quality has degraded since EPA's regulations went into effect.
- C. Assume, also, that GCE has not specifically alleged that the increase in ozone pollution was caused by the regulations, or that a change in the regulations would reduce the ozone pollution problem.
- D. On behalf of EPA, how would you argue that GCE lacks standing?

II. Hypothetical 2:

- A. In addition to the facts alleged in Hypothetical 1, above, assume that GCE alleged that because EPA failed to prohibit the use of additive "X" in gasoline in its regulations, many gasoline companies used it in their gasoline and that the increase in the use of additive "X" contributed to higher ozone levels in the Atlanta area, which contributed to respiratory problems suffered by members of GCE in Atlanta.
- B. Assume that GCE alleges that EPA's failure to prohibit the use of additive "X" in its regulations was arbitrary and capricious.
- C. What GCE does not point out in its complaint, though, is that there is another additive, additive "Y", which also was not regulated, which can cause increases in ozone pollution, but is more expensive than additive "X". In addition, GCE doesn't point out that after the new EPA regulations went into effect, a new coal-fired power plant began operating in the Atlanta area and other electric utilities in the Atlanta area increased power production as consumer demand for electricity increased. Electric utilities are a major source of emissions of pollutants that increase ozone levels.
- D. For GCE, how would you argue that the complaint now adequately alleges that the action they are challenging causes their injury? For EPA, how would you respond? How would the Court decide?

III. Hypothetical 3:

- A. Assume the same facts as in Hypothetical 2.
- B. Assume that, in addition to the allegations in Hypothetical 2, GCE also alleges, in its complaint, that if EPA prohibited the use of additive "X", ozone emissions in the Atlanta area would decrease and the members of GCE would likely no longer suffer respiratory problems.
- C. No longer focusing on causation, how could you argue for EPA that the plaintiff has not adequately alleged facts to support standing?