

Hypotheticals and Questions for “Standing”

Bennett v. Spears questions

1. Bennett v. Spear may modify the analysis that courts use to determine whether an interest is “arguably within the zone of interests sought to be protected by the statute.” Where does Bennett suggest that a court should look to determine the interests sought to be protected by the statute? Look to the whole statute?
2. Just as Bennett limited standing in some ways, it also made it easier for persons to avoid being thrown out of court on prudential standing grounds in other ways. How did the decision do that?

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 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. EPA promulgates regulations that prohibit the sale of gasoline containing various additives listed in the regulation, and Georgians for a Clean Environment (GCE), an environmental organization, brings a lawsuit challenging the regulations.
 - b. 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. **Question to think about:** Has GCE made sufficient allegations to support standing to challenge the regulations?

Hypothetical 2

1. The statutory provisions and facts are basically the same as in the last standing hypothetical. However, for purposes of this hypothetical, assume that GCE amends its complaint to provide that (a) several of its members have visited Atlanta and plan to return at some point in the future, and (b) those members have suffered respiratory problems on past visits to Atlanta. GCE also alleges that one of its members now lives about 1 hour east of Atlanta, and suffers respiratory problems.
 - a. 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.
2. ***Question to consider:*** 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?

Hypothetical 3

1. Assume that, in its complaint, in addition to everything that was alleged in hypothetical 1, GCE alleged that several of its members live in Atlanta, and that the members have been injured because ozone pollution has increased and air quality has degraded since EPA's regulations went into effect. 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.
2. ***Question to consider:*** On behalf of EPA, how would you argue that GCE lacks standing?