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INTRODUCTION

*Sierra Club v. U.S. Defense Energy Support Center* (Sierra Club) reflects the courts’ general reluctance to open the courthouse doors to individuals and citizen groups alleging climate change injuries.1 Furthermore, it demonstrates the courts’ inability to provide remedies for climate plaintiffs, given the current standing framework. In *Sierra Club*, two environmental citizen groups, Sierra Club and the Southern Alliance for Clean Energy, brought an action against the U.S. Department of Defense (DoD). The environmental groups claimed that the DoD’s logistics agency and its energy support center (DLA Energy)2 violated the Energy Independence and Security Act of 2007 (EISA)3 thereby increasing the risk of climate-related harms to the groups’ members.4 In its July 2011 decision, the U.S. District Court for the Eastern District of Virginia dismissed the case on the grounds that the plaintiffs lacked standing to allege a climate-change injury.5

I. BACKGROUND

Sierra Club and the Southern Alliance for Clean Energy brought an action seeking declaratory and injunctive relief for the government’s alleged violations of the EISA,6 among other claims. The dispute centered on EISA section

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5. Plaintiffs Sierra Club and Southern Alliance for Clean Energy are citizens groups, focused on environmental issues, that seek to protect the natural environment and to protect their members’ ability to enjoy the natural environment.
6. The purpose of the EISA is: to move the United States toward greater energy independence and security, to increase the production of clean renewable fuels, to protect consumers, to increase the efficiency of products, buildings, and vehicles, to promote research on and deploy greenhouse gas
section 526, which provides that federal agencies may not enter contracts for alternative or synthetic fuel for any mobility-related use unless the fuel’s lifecycle greenhouse gas emissions are less than or equal to such emissions from an equivalent conventional fuel. In accordance with section 526, DLA Energy developed an “Interim Implementation Plan” to provide guidance to the agency’s workforce, suppliers, and customers as to how it would comply with the EISA. The Plan concluded that section 526 did not cover DLA Energy’s contracts for petroleum products. The environmental groups disagreed and filed suit.

The environmental groups’ primary allegation was that DLA Energy’s mobility-related fuel purchase contracts violated section 526 because the agency purchased fuel derived from Canadian oil sands recovered crude oil (“COSRC”), an allegedly “alternative” source of petroleum, the lifecycle greenhouse gas emissions of which exceed those of conventional sources of petroleum. The plaintiffs argued that the government’s purchases of fuel derived from COSRC resulted in increased greenhouse gas emissions, which posed general environmental impacts (including increased frequency of intense storms, increased risk of damage to coastal properties, and loss of plant species), which in turn increased the risk of harm to their members’ health as well as their recreational, economic, and aesthetic interests. They contended that injunctive relief forcing the government’s compliance with section 526 could redress that risk.

As organizations bringing suit on behalf of their members, plaintiffs had to demonstrate, at a minimum, that their members would have standing to sue as individuals. The doctrine of standing is rooted in Article III’s “case and controversy” requirement: by establishing that she personally suffered or will soon suffer injury, a plaintiff demonstrates sufficient association with the controversy to bring suit. The U.S. Supreme Court, in Lujan v. Defenders of Wildlife, established a three-part test for constitutional standing, which requires a
plaintiff to show: (1) injury-in-fact, (2) causation, and (3) redressability.17 “Injury-in-fact” requires that a plaintiff have suffered an invasion of a “legally protected interest that is (a) concrete and particularized, and (b) ‘actual or imminent,’ not ‘conjectural’ or ‘hypothetical.’”18 The causation element requires that there be a “causal connection between the injury and the conduct complained of.”19 In other words, the alleged harm must be “fairly . . . trace[able] to the challenged action of the defendant, and not . . . th[e] result [of] the independent action of some third party not before the court.”20 Finally, “redressability” requires that, if the court ultimately rules in favor of the plaintiff, the decision is likely to provide the plaintiff with some sort of relief.21 The Supreme Court also imposes prudential limitations on standing.22 The doctrine of prudential standing encompasses the general prohibition on a litigant raising the rights of someone else,23 a bar of adjudication of generalized grievances more appropriately addressed legislatively,24 and the requirement that a plaintiff’s complaint must fall within the “zone of interests” protected by the statute at issue.25

II. HOLDINGS

In Sierra Club, the court held that the plaintiffs failed to meet any of the three prongs of the standing test. First, the court found that the environmental groups’ allegations were insufficient to constitute injury-in-fact.26 Due to the general nature of the alleged environmental impacts, the plaintiffs’ claim did not sufficiently establish that the plaintiffs’ members suffered or would have suffered any “concrete” or “particularized” injuries from COSRC refinement or pipeline transmission.27 Second, the court found that the plaintiffs failed to plead a sufficient causal connection between their alleged injuries and DLA’s fuel contracts.28 The court held that the plaintiffs’ alleged injuries were not “fairly traceable to the challenged actions of defendants”; rather, the environmental groups relied on an “attenuated and speculative causal chain” in attempt to establish the causation element.29 The court indicated that, to prove causation, at a minimum the plaintiffs had to show that the lack of lifecycle emissions certification in DLA Energy contracts encouraged the producers of fuel

18. Id. at 560.
19. Id. at 560–61.
20. Id. (revisions in original).
22. See, e.g., Elk Grove Unified Sch. Dist. v. Newdow, 542 U.S. 1 (2004) (relying on principles of prudential standing to deny standing to a student’s father, who sought to challenge the requirement that his daughter recite the Pledge of Allegiance, when the father’s right to act on his daughter’s behalf was founded on disputed issues of state family law).
27. Id.
28. Id.
29. Id.
from COSRC to engage in mining or production activities that they would not have otherwise undertaken. However, the plaintiffs failed to establish this causal link. Furthermore, the court noted that the cause of the alleged injuries were, in fact, attributable to the actions of third parties not before the court, including the fuel producers, persons who would have purchased the fuel had DLA Energy not done so, and greenhouse gas emitters whose emissions would continue regardless of the suit’s outcome. Third, as to redressability, the court concluded that enjoining the government from entering into contracts for the purchase of fuels derived from COSRC would not reduce the climate-change related risks that plaintiffs alleged would occur, given that others around the world would likely have purchased the fuel that the government would have foregone under injunction. The court noted that the environmental groups relied on “unsupported assumptions regarding the behavior of third parties,” and therefore “failed to establish that the relief requested was capable of redressing those harms and interests.”

Plaintiffs’ claims further failed to satisfy prudential standing requirements. The court stated, “when the asserted harm is a ‘generalized grievance’ shared in substantially equal measure by all or a large class of citizens, that harm alone normally does not warrant the exercise of jurisdiction.” Thus, the court held that the plaintiffs’ claim that the government’s fuel purchasing would affect them via the generalized risk associated with global warming was, in effect, “exactly the type of claim prudential standing requirements caution against.”

III. ANALYSIS

_Sierra Club_ illustrates the myriad obstacles facing plaintiffs who seek to establish standing in climate-related claims. First, plaintiffs are likely to fall short of the injury-in-fact requirement for failure to conclusively demonstrate that the global warming produced by the defendant’s carbon dioxide emissions creates an actual injury, or that a future injury from such emissions is imminent. The generalized risks associated with climate change, including potential health problems and decreased aesthetic or recreational enjoyment of the environment, are often too intangible and abstract to meet the standards of “concrete and particularized” or “imminent.” Second, plaintiffs are unlikely to prove causation because of the great difficulty in tracing the alleged injury to a particular defendant’s emissions with the requisite level of certainty. With millions of sources contributing to greenhouse gas emissions worldwide, it is

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30. See id. at *5.
31. Id.
32. See id. at *6.
33. Id.
34. Id. at *7 (citing Warth v. Seldin, 422 U.S. 490, 499 (1975)).
35. Id.
38. See id.
nearly impossible to target one defendant or a group of defendants as responsible for the particular injuries suffered by any given plaintiff. Third, it is difficult to imagine adequate measures of redressability for this extensive issue when each individual source’s contribution to global greenhouse emissions is relatively insignificant. Indeed, the reduction or elimination of greenhouse gas emissions from one individual source will not “redress” the problem.

In addition, climate-related claims present a certain “everyone or no one” problem: because every citizen is purportedly affected by climate change, either everyone or no one will have standing in climate litigation. Climate-related claims seemingly will always collide with prudential standing limitations because increases in carbon dioxide concentrations invariably pose a “generalized grievance” in which everyone is potentially harmed. Finally, courts have been reluctant to confer standing in climate-related claims, fearing a flood of litigation. As one court put it, “With climate change, the Court must enforce some limits on what constitutes an injury-in-fact; otherwise, it would be overwhelmed by a flood of lawsuits asserting generalized grievances against polluters large and small.”

The complexity of the standing doctrine is not limited to climate change litigation, however. The basis of standing law in the federal courts has long been criticized as incoherent, having been described as “permeated with sophistry,” and as “a word game played by secret rules.” Judge Fletcher’s influential analysis of standing in The Structure of Standing suggests that these obstacles lie not in the courts’ applications of standing, but rather, in the flawed intellectual structure of the doctrine itself. Judge Fletcher proposed that we “abandon the attempt to capture the question of who should be able to enforce legal rights in a single formula, abandon the idea that standing is a preliminary jurisdictional issue, and abandon the idea that Article III requires a showing of ‘injury in fact.’” He persuasively argued that, where Congress has conferred a cause of action to be constitutionally sound and logically defensible, standing analysis necessarily turns on an analysis of the particular cause of action conferred by Congress. For example, section 10(a) of the Administrative Proce-

39. David R. Hodas, Standing and Climate Change: Can Anyone Complain about the Weather?, 9 J. TRANSNAT’L L. & POL’Y 451, 486 (2000) (“Under Justice Scalia’s standing theory [as established in Lujan], because increases in CO2 concentration affect changes in the climate globally, everyone is harmed so no one could complain.”).
43. Id. (quoting Flast v. Cohen, 392 U.S. 83, 129 (1968) (Harlan, J., dissenting)).
44. See generally id. at 221–91.
45. Id. at 223.
Due Act (APA) provides that “a person . . . adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof.” As Judge Fletcher notes:

When the APA was adopted, it was well-established that standing to challenge administrative action was not governed by a single, uniform standard. Standing was denied in some cases despite clear adverse effects on would-be plaintiffs or appellants, and standing was granted in other cases to permit plaintiffs to act as private attorneys general. The APA’s solution was to adopt a formulation that would preserve the flexibility of response to the particular statutory commands and policies that had existed prior to the APA’s enactment.

Thus, the relevant inquiry to establish standing should be, simply: Are the plaintiffs “adversely affected or aggrieved . . . within the meaning of a relevant statute”? Despite the persuasiveness of these arguments, the Supreme Court took a decidedly different approach with its decision in Lujan. Justice Scalia’s majority opinion established that, at a minimum, constitutional standing is only available for litigants who have suffered sufficient injury-in-fact that is traceable to the defendant and redressable by the courts. As Professor William Buzbee notes:

Lujan decisively rejected the idea that the presence of a legislatively conferred cause of action could end standing analysis . . . [Lujan established that] courts must ensure that a litigant has a stake in a litigated dispute that in some sense sets that litigant apart from the general public.

The climate-related standing problem further stresses the issue of what constitutes injury, and how particularized an alleged injury must be. In the context of climate change, this is a particularly difficult inquiry. The task of demonstrating a particularized injury, given the extent and complexity of global warming, precludes the vast majority of potential climate change plaintiffs. If, however, courts were to follow Judge Fletcher’s suggestion and “abandon the idea that Article III requires a showing of injury-in-fact,” in favor of drawing on congressional determinations of who has standing to enforce a statutory duty, courts would decide cases like Sierra Club on the merits, rather than dismissing them based on a famously inconsistent “preliminary jurisdictional analysis.” Indeed, as Judge Fletcher argues, “anyone who claims to be injured is, in fact, injured if she can prove the allegations of her complaint.”

47. Fletcher, supra note 42, at 227.
48. Id. at 255.
49. Id. at 227.
51. Id. at 247–48.
52. Hodas, supra note 39.
53. Fletcher, supra note 42, at 223.
54. Id.
55. Id. at 231.
The Supreme Court’s 2007 decision in *Massachusetts v. EPA* was a rare success for plaintiffs seeking to establish standing in climate litigation.\(^5^6\) In that case, the majority took a broader view and granted standing for the state plaintiffs.\(^5^7\) On the merits, the Court found that rising sea levels along a state’s coast was a much more tangible, particularized harm that EPA potentially caused by failing to regulate greenhouse gases.\(^5^8\) Indeed, the Court observed that “the harms associated with climate change are serious and well recognized,” and rising sea levels were viewed as an actual or imminent injury sufficient to establish standing.\(^5^9\) However, the effect of this case on standing doctrine continues to unfold. On the one hand, this broader view of standing seemed to reinforce the Court’s return in recent years to more liberalized standing determinations, backing away from Scalia’s strict *Lujan* injury-in-fact test. Others have suggested that affording standing to state plaintiffs in *Massachusetts v. EPA* was a reflection of the Court’s dissatisfaction with the politicization of federal agencies and was meant to promote vigorous judicial review of executive action.\(^6^0\)

**CONCLUSION**

The future of the standing doctrine in climate litigation is murky at best. *Massachusetts v. EPA* provides hope that standing is, in fact, a surmountable obstacle. However, *Sierra Club* illustrates that, despite the amorphous nature of climate-related harms, and even as the Supreme Court concedes these harms to be “serious and well-recognized,” courts ultimately remain reluctant to abandon the stringent requirements of standing in climate change litigation. As Professor Randall Abate has noted, “the new challenge for courts in evaluating [actual] injury for local impacts of . . . climate change . . . is determining how to develop a standard to govern the degree to which a challenged action must increase the risk of harm that flows from a defendant’s action for a plaintiff to be deemed to have suffered an injury.”\(^6^1\) Yet, as long as the standing doctrine retains its force, it will remain in the way of effectively using litigation as a tool to tackle climate-related harms.

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\(^{57}\) See *id.* at 526. Plaintiffs included twelve states and several U.S. cities. *Id.* at 505.

\(^{58}\) *Id.* at 521–22.

\(^{59}\) *Id.* at 521.


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