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MAINTAINING A PICTURE-PERFECT ENVIRONMENT: SHIFTS
IN THE STANDING DOCTRINE AFTER *LEAGUE OF
CONSERVATION VOTERS V. TRUMP*

I. FRAMING THE LANDSCAPE: AN INTRODUCTION INTO THE
REGULATION OF OIL DRILLING

Since the 1800s, the oil drilling business has steadily increased in the United States.¹ By the early 1900s, the United States had “turned to oil as its primary natural resource,” and by the mid-1900s, oil was the second largest income generator in the United States.² Today, oil and drilling account for a large component of the United States’ economy.³ Despite the importance of oil to the economy, oil and drilling remain a frequently-debated and controversial activity.⁴ Issues ranging from federalism concerns over who can control lands for oil and drilling purposes to environmental concerns over the effect of oil drilling on animal wildlife have plagued the oil and drilling industry.⁵

In 1953, as a response to the federalism battle for land control between states and the federal government, Congress enacted the Outer Continental Shelf Lands Act (OCSLA) and delineated what lands the federal government owned for oil and drilling purposes.⁶

1. See generally *OCS Lands Act History*, BUREAU OF OCEAN ENERGY MANAGEMENT, <https://www.boem.gov/OCS-Lands-Act-History/> (last visited Aug. 27, 2019) (discussing history of oil activity in United States).

2. *Id.* (describing influence of oil industry on United States economy).

3. See Bob Iaccino, *How Much Does Oil And Gas Drive U.S. GDP?*, OPEN MARKETS (June 4, 2019), <http://openmarkets.cmegroup.com/15157/how-much-does-oil-and-gas-drive-u-s-gdp> (detailing effect of oil and gas industry on U.S. economy).

4. See *7 ways oil and gas drilling is bad for the environment*, THE WILDERNESS SOCIETY (Aug. 9, 2019), <https://www.wilderness.org/articles/blog/7-ways-oil-and-gas-drilling-bad-environment> (listing negative effects of oil drilling on environment). “Drilling projects operate around the clock, disrupting wildlife, water sources, human health, recreation and other aspects of public lands that were set aside and held in trust for the American people.” *Id.* (describing how oil drilling affects every aspect of environment).

5. See Daniel S. Miller, *Offshore Federalism: Evolving Federal-State Relations in Offshore Oil and Gas Development*, 11 *ECOLOGY L.Q.* 401, 402-04, 408 (1984) (detailing history of federalism concerns in offshore oil and gas development); see also Alexandra B. Klass, *Federalism “Collisions” in Energy Policy*, THE REGULATORY VIEW (Nov. 19, 2018), <https://www.theregreview.org/2018/11/19/klass-federalism-collisions-energy-policy/> (delineating areas of energy policy under federal control and areas that remain under state control); see generally *7 ways oil and gas drilling is bad for the environment supra* note 4 (discussing environmental impact of oil and gas drilling).

6. See *OCS Lands Act History*, *supra* note 1 (discussing OCSLA history and purpose).

The OCSLA gave the federal government control over all offshore lands and allowed the Secretary of the Interior the power to lease the lands for oil and gas development.⁷ The OCSLA also granted the President the power to remove Outer Continental Shelf Lands (OCS Lands) from the lands available for oil leasing.⁸ Past presidents have exercised the power granted under Section 12(a) of the OCSLA to protect certain lands from the inherent dangers associated with oil and gas development.⁹ As concerns over the negative effects of oil drilling on the environment increased in recent years, the Obama Administration removed large portions of land from OCSLA jurisdiction to ameliorate some of these concerns.¹⁰

*League of Conservation Voters v. Trump*¹¹ arose in response to President Trump's attempts to revoke President Obama's land withdrawals.¹² The plaintiffs sued President Trump, asserting the President had exceeded his authority both under the Constitution and under the OCSLA powers granted to him.¹³ To decide the case, the District Court of Alaska engaged in highly detailed procedural discussions, as well as substantive legal discussions.¹⁴

Part I of this Note discusses the factual developments that led to this controversy.¹⁵ Part II covers the legal background the court relied on to decide *League of Conservation Voters*.¹⁶ Part III explores the discussion the court undertook at the motion to dismiss stage of

7. *Id.* (describing OCSLA granted powers).

8. 43 U.S.C. § 1341(a) (2018) (outlining President's power under OCSLA). The OCSLA describes OCS lands as all submerged lands lying seaward of state coastal waters (three miles offshore) which are under U.S. jurisdiction. See *OCS Lands Act History*, *supra* note 1 (defining what OCS lands are).

9. See Kevin O. Leske, "Un-Shelving" Lands Under the Outer Continental Shelf Lands Act (OCSLA): Can A Prior Executive Withdrawal Under Section 12(a) Be Trumped by A Subsequent President?, 26 N.Y.U. ENVTL. L.J. 1, 13 (2017) (describing several instances of presidents withdrawing lands based on their OCSLA power).

10. See Exec. Order No. 13754, 81 Fed. Reg. 90669 (Dec. 9, 2016) (describing President Obama's reasons for withdrawing lands from OCS). President Obama discussed the changes in sea ice conditions, changes in fishing, hunting, and whaling, and changes in the region's ecosystem due to oil and drilling activities. *Id.* (detailing harmful effects of oil and drilling activities on OCS lands).

11. *League of Conservation Voters v. Trump*, 303 F. Supp. 3d 985 (D. Alaska 2019) (holding President Trump could not revoke President Obama's withdrawals).

12. See generally *id.* at 990-91 (describing events leading to plaintiff's filing complaint).

13. *Id.* at 991 (outlining plaintiff's main arguments).

14. See generally *id.* 993-1001 (engaging in discussion of both procedural and substantive challenges to lawsuit).

15. For a discussion of the facts of the case, see *infra* notes 20-51 and accompanying text.

16. For a discussion of the background of the standing doctrine, see *infra* notes 52-130 and accompanying text.

the case.¹⁷ Part IV analyzes the court's decision.¹⁸ Lastly, Part V examines the future of the standing doctrine in environmental case law and the role, if any, that *League of Conservation Voters* will play in shaping that future.¹⁹

II. ZOOMING IN ON THE FOCAL POINT: FACTS OF *LEAGUE OF CONSERVATION VOTERS V. TRUMP*

In the 1800s, residents of California began drilling and discovering oil.²⁰ As oil and gas became profitable, controversies between Texas and the federal government ensued.²¹ In an effort to appease both sides, Congress passed several new statutes, including the OCSLA, that explicitly “provided for federal jurisdiction over submerged lands in the OCS.”²² States would remain in control of lands that were within “[three] International Nautical Miles of the coast.”²³ In passing the OCSLA, Congress gave the Secretary of the Interior the power to lease OCS lands for mineral and oil development purposes.²⁴ The OCSLA was predominantly enacted to promote the oil business, but due to concerns over the harmful environmental impact of oil drilling, the OCSLA gave the acting president the power to “from time to time, withdraw from disposition any of the unleased lands of the outer Continental Shelf.”²⁵

17. For a summary of the district court's holding, see *infra* notes 131-169 and accompanying text.

18. For an analysis of the district court's decision, see *infra* notes 170-201 and accompanying text.

19. For a further discussion of the potential impact *League of Conservation Voters* can have on the standing doctrine, see *infra* notes 202-214 and accompanying text.

20. See *OCS Lands Act History*, *supra* note 1 (providing history of oil drilling activity in U.S.).

21. See *id.* (describing conflicts between states and federal government for control of oil drilling lands).

22. See *id.* (explaining main purpose behind passing OCSLA).

23. See *Outer Continental Shelf*, BUREAU OF OCEAN ENERGY MANAGEMENT, <https://www.boem.gov/oil-gas-energy/leasing/outer-continental-shelf> (last visited Aug. 27, 2019) (explaining boundaries of OCS lands). Texas, Louisiana, and the Gulf Coast of Florida have slightly larger boundaries. *Id.* (outlining boundaries of certain states). Additionally, Texas and the Gulf Coast of Florida measure the boundaries by marine leagues, while Louisiana measures the boundary by U.S. nautical miles, which both differ from International Nautical Miles. *Id.* (describing the different measurement systems used).

24. 43 U.S.C. § 1337 (2018) (granting Secretary of the Interior power to lease lands to promote oil business).

25. 43 U.S.C. § 1341(a) (2018) (granting presidents power to remove unleased lands from available lands); see also *League of Conservation Voters v. Trump*, 363 F. Supp. 3d 1013, 1016 (D. Alaska, 2019) (describing presidents' power under OCSLA).

In 2016, President Obama issued Executive Order 13754 “Northern Bering Sea Climate Resilience” (Obama’s Order).²⁶ Obama’s Order withdrew from leasing disposition around 128 million acres of lands in the Northern Bering Sea off the coast of Alaska.²⁷ Per Obama’s Order, the lands removed could not be leased for “oil and gas leasing purposes,” and the lands would remain unavailable for an unspecified period of time.²⁸ To support his withdrawal of the lands, President Obama reiterated the importance of protecting the region’s ecosystem and preserving the area’s habitat and marine wildlife.²⁹ President Obama highlighted the dangers of climate change and its harmful effects on ecosystems, wildlife, and biodiversity.³⁰

In response to Obama’s Order, in 2017, President Trump issued Executive Order 13795 “Implementing an America-First Offshore Energy Strategy” (Trump’s Order).³¹ Trump’s Order revoked the withdrawals of land that were secured by Obama’s Order.³² In an effort to promote the United States’ economy, Trump’s Order made the lands available for oil and gas development.³³ Additionally, Trump’s Order established a new streamlined process for companies looking to acquire permits for seismic research on OCS lands.³⁴ The Trump administration further proclaimed its commitment to ensuring the United States maintained its status as a world leader in the energy sector.³⁵ In April 2017, the Secretary of the Interior attempted to comply with Trump’s Order

26. See Exec. Order No. 13754, *supra* note 10 (describing Obama’s Order).

27. See *id.* (using President’s OCSLA power to remove millions of acres of OCS lands).

28. *Id.* (designating multiple acres of lands as unavailable for oil and drilling due to serious environmental concerns).

29. *Id.* (explaining importance of protecting natural habitat of millions of species).

30. *Id.* (discussing how climate change as well as sea ice melting pose threat to animals in OCS region).

31. See Exec. Order No. 13795, 82 Fed. Reg. 20815 (April 2017) (considering oil and drilling important drivers of U.S. economy which necessitate easier access). “It shall be the policy of the United States to encourage energy exploration and production, including on the Outer Continental Shelf, in order to maintain the Nation’s position as a global energy leader . . .” *Id.* (committing resources to task of remaining global leader in energy activities).

32. *Id.* (revoking Obama’s order and streamlining permit process to facilitate oil and drilling activities).

33. *Id.* (designating previously withdrawn lands as newly available for leasing to promote oil activities that drive U.S. economy).

34. *Id.* (urging Secretary of the Interior to designate streamlined process for granting seismic surveying permits quicker).

35. *Id.* (emphasizing importance of maintaining global position as leader of energy developments). “America must put the energy needs of American families

by issuing an order to expedite seismic activity permits.³⁶ Several environmental organizations, concerned about the environmental ramifications of Trump's Order, filed suit against the President and the Secretary of the Interior.³⁷

On May 3, 2017, the plaintiffs filed a complaint against President Trump in the District of Alaska.³⁸ The complaint alleged the President had violated the Property Clause of the Constitution and had exceeded the statutory authority granted to him under the OCSLA.³⁹ In July of 2017 and September of 2017, the American Petroleum Institute and the State of Alaska were added as defendants in the case.⁴⁰ Subsequently, the defendants moved to dismiss the complaint under the Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6) for lack of subject matter jurisdiction and failure to state a claim for which relief can be granted.⁴¹

During the motion to dismiss stage, the defendants raised several arguments in support of their motion.⁴² One of the defendant's arguments relied upon the theory that the plaintiffs lacked

and businesses first" *Id.* (announcing energy business was primary focus of Trump's administration).

36. *League of Conservation Voters v. Trump*, 303 F. Supp. 3d 985, 991 (D. Alaska 2018) (outlining Secretary of the Interior's attempts at complying and implementing Trump's Order).

37. *Id.* at 991 (discussing harmful effects of seismic surveying and their impact on environment). The environmental organizations involved in the case are: (1) League of Conservation Voters, (2) Natural Resources Defense Council, (3) Sierra Club, (4) Alaska Wilderness League, (5) Defenders of Wildlife, (6) Northern Alaska Environmental Center, (7) Resisting Environmental Destruction on Indigenous Lands, (8) Center for Biological Diversity, Greenpeace, Inc., and (9) The Wilderness Society. *Id.* (listing all organizations that brought lawsuit against President Trump).

38. *Id.* (reciting background facts leading to plaintiff's complaint).

39. *Id.* (citing plaintiffs' main arguments raised in complaint against President Trump's actions).

40. *Id.* (describing reasons for defendants' intervening in pending action against President Trump).

41. *League of Conservation Voters*, 303 F. Supp. 3d at 992 (outlining defendants' attempts to dismiss case).

42. *Id.* at 993 (listing four separate theories defendants raised to support their motion to dismiss). Defendants asserted dismissal for: (1) sovereign immunity, (2) lack of private right of action, (3) court's inability to grant declaratory judgments against president, and (4) lack of standing. *Id.* at 993-1001 (discussing every theory raised by defendants and finding for plaintiffs in each one). American Petroleum Institute filed a separate motion to dismiss based on a claim that only the United States Court of Appeals for the District of Columbia could hear the case. *Id.* at 1001-04 (discussing API's separate motion to dismiss claim). The only claim discussed in this Note is standing. For a discussion of standing in the Note, see *infra* notes 131-169 and accompanying text.

standing to challenge President Trump's actions.⁴³ The defendants argued the case should be dismissed because the plaintiffs lacked (a) imminent harm, (b) geographic specificity, and (c) particularized harm.⁴⁴ In support of their motion, the defendants highlighted the process the Department of the Interior would have to follow before any seismic activity or oil and drilling could happen on the lands.⁴⁵ Because of this, the defendants claimed there was not a threat of imminent harm to the plaintiffs, and the case should be dismissed for lack of standing.⁴⁶ The court discussed the standing test, focusing specifically on the first prong of the standing test, finding the plaintiffs had alleged enough facts to survive the motion to dismiss stage.⁴⁷

In June 2018, the parties cross-filed for summary judgment.⁴⁸ At that stage, the court refused to revisit the issue of standing previously discussed at the motion to dismiss phase of the case.⁴⁹ Instead, the court engaged in a discussion of the substantive legal merits of the case, concluding the President did not have the power

43. *Id.* at 995 (describing defendants' position that plaintiffs failed to provide facts showing they had standing to sue).

44. *Id.* at 995-96 (listing defendants' various concerns with plaintiffs' lack of factual allegations to support standing).

45. *See* Federal Defendants' Reply in Support of Their Motion to Dismiss Pursuant to Federal Rule of Civil Procedure 12(b), *League of Conservation Voters v. Trump*, 363 F. Supp. 3d 1013 (D. Alaska 2019) (No. 3:17-cv-00101-SLG), 2017 WL 6998954 (discussing steps that required completion before OCS lands could be leased). Among the steps necessary to proceed before leasing lands are: (1) "The Department of the Interior [(Interior)] prepares a Five-Year Leasing Program containing a five-year schedule of proposed lease sales," (2) "Interior then solicits bids and issues leases for particular offshore leasing areas identified in the Five-Year Leasing Program," (3) "Interior reviews and determines whether to approve the lessees' more specific exploration plans," and (4) "Interior and those affected state and local governments review an additional and more detailed development and production plan from the lessee if the lessee decides to move forward with production."

46. *Id.* (discussing factors favoring lack of standing).

47. *See* *League of Conservation Voters v. Trump*, 303 F. Supp. 3d 985, 995-1001 (D. Alaska 2019) (undertaking long discussion of standing test and finding plaintiffs had sufficiently pled enough information to meet test). The court focused on the "imminent harm" element of a standing claim and the three elements necessary to prove that prong of the test. *Id.* (focusing on (a) imminent harm, (b) geographic specificity, (c) particularized harm).

48. *See* *League of Conservation Voters v. Trump*, 363 F. Supp. 3d 1013, 1017 (D. Alaska 2019) (reciting facts that led to plaintiffs and defendants filing cross motions for Summary Judgment).

49. *Id.* at 1019-20 (refusing to revisit lack of standing argument first addressed at motion to dismiss stage). The court noted that the standard for summary judgment is higher than the standard for motion to dismiss, yet the court stated that the plaintiffs met the burden. *See id.* (finding plaintiffs met burden of proof for summary judgment but never discussing specific facts plaintiffs pled to survive motion).

under the OCSLA to undo actions taken by previous presidents.⁵⁰ In reaching its conclusion, the court stated Congress had explicitly granted the President the power to withdraw lands from the Outer Continental Shelf, but Congress had not given the President the power to revoke the withdrawals made by prior presidents.⁵¹

III. FLIPPING THROUGH PAST ALBUMS: BACKGROUND ON HOW THE STANDING DOCTRINE CAME TO FRUITION

Whether the Framers of the Constitution intended standing to be a bar to certain suits has been an ongoing battle in the legal system.⁵² Despite the Framers never including a standing requirement in the text of the Constitution, the Supreme Court of the United States has previously reasoned the standing requirement is implicitly stated in the language of the Constitution.⁵³ Specifically, the Court held that a suit can only be brought if the person bringing the suit has “personally suffered” by the action they are complaining about.⁵⁴ In environmental law, the doctrine of standing is even more nuanced.⁵⁵ Standing plays an important role in the context of environmental lawsuits because they typically involve some level of concern for the welfare of the general public, as opposed to the focus on the welfare of the individual as seen in most non-environmental lawsuits.⁵⁶

50. See generally *id.* at 1020-30 (analyzing text and purpose of OCSLA to conclude that President Trump did not have power to revoke withdrawals made by President Obama).

51. *Id.* at 1030 (concluding President Trump exceeded statutory authority under OCSLA). In May of 2019, the defendants appealed to the U.S. Court of Appeals for the Ninth Circuit. See also *League of Conservation Voters v. Trump*, CLIMATE CASE CHART, <http://climatecasechart.com/case/league-conservation-voters-v-trump/> (last visited Aug. 28, 2019) (listing full procedural history for case action). As of November 2019, this appeal is still pending in the Ninth Circuit. *Id.* (listing procedural posture in case).

52. See *Standing*, GEO. ENVTL. LAW & POL’Y INST. http://www.gelpi.org/gelpi/research_archive/standing/ (last visited Aug. 29, 2019) (discussing history behind doctrine of standing).

53. *Id.* (describing Supreme Court’s position regarding standing doctrine).

54. *Constitutional Standards: Injury in Fact, Causation, and Redressability*, LEGAL INFO. INST., <https://www.law.cornell.edu/constitution-conan/article-3/section-2/clause-1/constitutional-standards-injury-in-fact-causation-and-redressability> (last visited Nov. 24, 2019) (discussing test for proving standing); see also *Baker v. Carr*, 369 U.S. 186, 204 (1962) (discussing need for plaintiff to have personal stake in case to prove standing).

55. See Georgetown University Law Center, *supra* note 52 (explaining standing in context of environmental policy).

56. See Robin Kundis, *Standing and Environmental Law: An Overview* 1-2 (Fla. State Univ. Coll. of Law, Public Law Research Paper No. 425, 2009), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1536583 (explaining public welfare component of environmental laws).

A. Constitutional Requirements

When the Framers drafted the Constitution, they intended to give the courts the power to hear only actual “cases . . . [and] controversies.”⁵⁷ As scores of cases plagued the courts, the Court read the “cases . . . [and] controversies” language to mean the plaintiffs must meet a minimum threshold of personal injury to bring a case to court.⁵⁸ Although the Court grounded the standing doctrine in constitutional requirements, critics argue the doctrine of standing is merely a judicially-imposed requirement that was not the legislative intent of the Framers.⁵⁹

To support this notion, many critics state that before the mid-twentieth century, there was no separate standing doctrine.⁶⁰ Instead, plaintiffs could bring the case to court if “it fit one of the recognized forms of action.”⁶¹ There was no separate requirement that the plaintiffs be personally injured by the action they were complaining about.⁶² Despite this, proponents of the standing doctrine agree with the Supreme Court’s finding that the “cases . . . [and] controversies” language of the Constitution implicitly states the need for a plaintiff to have suffered personal injury to bring an issue to the court.⁶³ Still, by the 1930s, standing was not recognized as an important concept stemming from the language of the Constitution.⁶⁴ In fact, the standing doctrine did not evolve into its present form until “the passage of major environmental statutes in the early 1970s.”⁶⁵

57. U.S. CONST. art. III, § 2 (enumerating powers of judiciary).

58. Georgetown University Law Center, *supra* note 52 (explaining emergence and requirements of standing doctrine).

59. See Ann Woolhandler & Caleb Nelson, *Does History Defeat Standing Doctrine?*, 102 MICH. L. REV. 689, 689 (2004) (acknowledging arguments that doctrine of standing did not exist prior to judges erecting doctrine).

60. See *id.* (discussing critiques against doctrine of standing).

61. See *id.* (explaining how complaints met “cases and controversies” requirement prior to doctrine of standing).

62. See *id.* 689-90 (noting requirement for bringing case to court was whether plaintiff had legal claim instead of whether plaintiff had standing to sue).

63. See *id.* at 692 (comparing differing views on doctrine of standing).

64. Andrew Long, *Standing & Consensus: Globalism in Massachusetts v. EPA*, 23 J. ENVTL. L. & LITIG. 73, 82 (2008) (discussing relatively modern emergence of standing doctrine).

65. *Id.* at 84 (explaining environmental law’s influence on doctrine of standing).

B. Environmental Caselaw's Influence on Standing

Environmental law has played an outsized role in the development and evolution of the standing doctrine.⁶⁶ Since the 1970s, major environmental statutes have included provisions that allow members of the public to bring an action against an agency or industry whose activity is impacting the environment.⁶⁷ These statutes have led to private citizens bringing various challenges in defense of the environment.⁶⁸ Due to these challenges, environmental case law has led to key judicial decisions that shaped the doctrine of standing into its present day form.⁶⁹

In the 1972 case *Sierra Club v. Morton*,⁷⁰ the Supreme Court began trying to apply the doctrine of standing to environmental law cases.⁷¹ The Sierra Club, an organization dedicated to defending and preserving the country's forests and national parks, brought suit against the then Secretary of the Interior, Rogers Morton.⁷² In its complaint, the Sierra Club sought a declaratory judgment and injunction to prevent federal officials from approving the construction of a thirty-five million dollar ski complex in the Sierra Nevada territory known as Mineral King Valley.⁷³ The ski resort would host more than fourteen thousand daily visitors, include ski lifts, lodging accommodations, and restaurants, and require the construction of a highway through the Sequoia National Park.⁷⁴

The Sierra Club sought to stop the project in an effort to protect the environmental landscape, forests, and game refuge of the Mineral King Valley.⁷⁵ Initially, the United States District Court for the Northern District of California found the plaintiffs had standing to bring the case to court, but the Ninth Circuit reversed the decision.⁷⁶ The plaintiffs appealed, and the case eventually

66. *See id.* (acknowledging importance of environmental decisions in shaping standing doctrine).

67. *Id.* (explaining how environmental laws allowed private citizens to sue government).

68. *See id.* (discussing private citizen suit provisions).

69. *See Long, supra* note 64 at 84 (describing importance of environmental policy on doctrine of standing).

70. *Sierra Club v. Morton*, 405 U.S. 727 (1972) (holding plaintiffs lacked standing).

71. *See id.* at 732 (applying doctrine of standing to environmental law).

72. *Id.* at 729-30 (describing plaintiff's purpose in bringing suit).

73. *Id.* (explaining plaintiff's main complaint).

74. *Id.* at 729 (listing amenities of proposed ski resort).

75. *Sierra Club*, 405 U.S. at 729-30 (explaining environmental concerns raised by plaintiff).

76. *See id.* at 731 (explaining procedural history of case).

reached the Supreme Court.⁷⁷ In a landmark decision, the Court stated that “[a]esthetic and environmental well-being” were valid injuries for standing purposes.⁷⁸ The Court, however, concluded the Sierra Club lacked standing to bring the case because it failed to plead facts that showed the organization or any of its members were actually among the people injured by the proposed ski resort.⁷⁹ In what seemed like a one step forward, two steps backward decision, the Court recognized harm to the environment as a valid injury but limited the class of plaintiffs who could bring suits to only people who were personally affected by the harm to the environment.⁸⁰ Environmentalists viewed the case as a win because as long as plaintiffs plead that they visited or used the areas affected by the action, their case would survive a standing challenge.⁸¹

In the 1990s, the Supreme Court decided several cases, tightening the requirements for proving standing in environmental law.⁸² The first case, *Lujan v. National Wildlife Federation*,⁸³ presented a narrow view of the types of environmental claims a plaintiff could bring to court.⁸⁴ The National Wildlife Federation brought a claim against the Director of the Bureau of Land Management for violations of the Federal Land Policy and Management Act of 1976 (FLPMA) and the National Environmental Policy Act of 1969 (NEPA).⁸⁵ The plaintiffs claimed the defendants violated FLPMA and NEPA when they reclassified a stretch of public lands as open to mining activity.⁸⁶ The plaintiffs were concerned that in reclassifying the lands, the “natural beauty” of the area would be affected and the environment as a whole would suffer severe consequences.⁸⁷

77. *Id.* (explaining how case reached Supreme Court).

78. *Id.* at 734 (stating environmental wellbeing is a valid cause of action).

79. *Id.* at 735, 740 (holding Sierra Club lacked personal stake in action and thus had no standing).

80. See generally *Sierra Club*, 405 U.S. at 739, 740 (recognizing harm to environment as valid claim but still requiring personal stake in controversy).

81. See Emily Longfellow, *Friends of the Earth v. Laidlaw Environmental Services: A New Look at Environmental Standing*, 24 ENVIRONS ENVTL. L. & POL’Y J. 3, 18 (2000) (explaining why *Sierra Club* decision was favorable for environmentalists).

82. *Id.* at 18-19 (explaining tightening of standing doctrine within environmental law context).

83. *Lujan v. Nat’l Wildlife Fed’n* 497 U.S. 871 (1990) (holding plaintiffs lacked standing to challenge government’s actions).

84. See Longfellow, *supra* note 81, at 19 (describing restrictions placed on environmental law standing as result of *Nat’l Wildlife Fed’n*).

85. *Nat’l Wildlife Fed’n*, 497 U.S. at 875 (stating plaintiffs’ cause of action).

86. *Id.* at 879 (listing plaintiff’s claims).

87. *Id.* (describing plaintiff’s concerns on how mining activity would ruin land).

After some debate in the lower courts, the Supreme Court finally granted certiorari.⁸⁸ The Court granted summary judgment to the defendants, holding the plaintiffs did not have standing.⁸⁹ Since the case was at the summary judgment stage, the Court explained that the plaintiffs' affidavits had to show "specific facts supporting . . . allegations," as opposed to the general claims that would be acceptable at the motion to dismiss stage.⁹⁰ The plaintiffs presented affidavits from two individuals, Peggy Kay Peterson and Richard Erman, who claimed to use the lands in the vicinity.⁹¹ However the Court held the affidavits only supported a finding that the individuals used "unspecified portions of an immense tract of territory," which was not specific enough to survive a summary judgment motion.⁹²

In *Lujan v. Defenders of Wildlife*,⁹³ the Supreme Court revisited the issue of standing in the context of environmental law.⁹⁴ Several organizations dedicated to wildlife preservation and other environmental causes, brought an action against the Secretary of the Interior for violations of the Endangered Species Act (ESA).⁹⁵ The plaintiffs argued the actions of the Secretary of the Interior threatened to increase the rate of extinction of endangered species abroad.⁹⁶ The plaintiffs previously visited the areas that housed the endangered animals and planned to return in the future to view the endangered animals.⁹⁷ Ultimately, plaintiffs lacked standing because although the Court recognized the alleged injury as valid, the intent to "some day" return to the area did not amount to imminent harm.⁹⁸ In reaching this conclusion, the Court heavily

88. *Id.* at 880-82 (discussing procedural history of case).

89. *Id.* at 889 (holding plaintiffs lacked standing because they did not provide sufficient proof of harm).

90. *See Nat'l Wildlife Fed'n*, 497 U.S. at 884, 888, 890 (comparing pleading standards at motion to dismiss stage and summary judgment stage).

91. *Id.* at 880 (describing contents of plaintiffs' affidavits).

92. *Id.* (holding affidavits saying plaintiffs used general vicinity around lands were not specific enough to support standing).

93. *Lujan v. Defs. of Wildlife*, 504 U.S. 555 (1992) (holding plaintiffs did not have standing to sue Secretary of the Interior).

94. *See generally id.* at 560-61 (discussing framework of standing doctrine in environmental caselaw).

95. *See id.* at 558 (describing claims raised by plaintiffs).

96. *See id.* (explaining how rule promulgated by Secretary of the Interior would only protect endangered animals within United States).

97. *See id.* at 563-64 (mentioning content of plaintiffs' affidavits and their statements of wanting to travel to visit endangered animals abroad).

98. *Def. of Wildlife*, 504 U.S. at 564 (holding absent more specific plan by plaintiffs, hopes of one day returning to endangered animals was not imminent harm for standing purposes); *see also Summers v. Earth Island Inst.*, 555 U.S. 488,

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weighed the plaintiffs' lack of "concrete plans" or indication of a date on which they planned to visit the affected areas again.⁹⁹

In a separate concurrence, Justice Stevens agreed the plaintiffs did not have a claim, but strictly limited his opinion to the substantive legal merits of the claim.¹⁰⁰ Justice Stevens advocated for applying the imminent harm element of a standing claim differently in environmental cases.¹⁰¹ Instead of measuring imminent harm by the time passed between the "present and the time when the individuals would visit the area," Justice Stevens argued the imminence should be judged by the timing of the alleged harm on the environment.¹⁰² In other words, imminent harm would be judged by when the alleged harm would happen to the environment and not by when the plaintiffs alleged they would return to the harmed area.¹⁰³

In the early 2000s, the Supreme Court clarified the standing doctrine in *Friends of the Earth, Inc. v. Laidlaw Environmental (TOC), Inc.*¹⁰⁴ Several environmental groups, including the organization Friends of the Earth, filed suit against Laidlaw Environmental Services (Laidlaw) for violations of the Clean Water Act.¹⁰⁵ In deciding the case, the Court discussed both mootness and standing.¹⁰⁶

496 (2009) (reiterating vague plans to return to area, including "some day" intentions are insufficient to support finding of imminent harm for standing purposes). "Such 'some day' intentions—without any description of concrete plans, or indeed even any specification of *when* the some day will be—do not support a finding of the 'actual or imminent' injury that our cases require." *Defs. of Wildlife*, 504 U.S. at 564.

99. *Defs. of Wildlife*, 504 U.S. at 564 (noting failure of plaintiffs to provide return date to affected area proved fatal to their claim).

100. *Id.* at 582-84 (Stevens, J., concurring) (disagreeing with majority on finding plaintiffs did not have standing to bring claim). Justice Stevens agreed with the majority finding that the plaintiffs could not bring the claim, but Justice Stevens limited his opinion to stating the ESA did not apply internationally, and thus, the plaintiffs did not have a valid claim. *Id.* (approving majority's finding of ESA not applying internationally). However, Justice Stevens, disagreed with the majority on the standing issue, and instead opined that the plaintiffs met the threshold for showing standing. *Id.* (concluding plaintiffs met all elements of standing).

101. *Id.* (advocating for imminent harm element to apply to environment and not plaintiffs themselves).

102. *Id.* (describing proposed standard for finding standing in environmental cases).

103. *See id.* (outlining how courts should judge imminent harm standard in environmental cases).

104. *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167 (2000) (holding plaintiffs had standing due to personal injury caused by defendant's actions).

105. *Id.* at 177 (describing factual developments that led to lawsuit).

106. *Id.* at 180 (explaining Court's need to address both mootness and standing).

Regarding standing, the Court clarified that the relevant inquiry was “not injury to the environment but injury to the plaintiff” stemming from the defendant’s actions.¹⁰⁷ The Court held that the plaintiffs had alleged credible personal harm from the defendant’s unlawful discharge of pollutants into water that the plaintiffs used for recreational purposes.¹⁰⁸

C. Ninth Circuit Precedent on Standing

According to some legal scholars, the Ninth Circuit Court of Appeals is arguably the most influential appellate court with respect to environmental law cases.¹⁰⁹ The court’s record in deciding crucial environmental law cases surpasses the D.C. Circuit Court of Appeals’ decisions, which is regarded as the second most influential federal court.¹¹⁰ Consequently, the court has decided several environmental law cases that have shaped environmental law on a national level.¹¹¹ Additionally, the court is typically seen as a “pro-environmental circuit,” and its liberal stance on standing and environmental issues lies in stark contrast to the Supreme Court’s views.¹¹²

One important environmental case decided by the Ninth Circuit was *Center for Biological Diversity v. Kempthorne*,¹¹³ which dis-

107. *Id.* at 181 (clarifying that plaintiff had to prove personal injury and not general injury to environment).

108. *Id.* at 183-84 (finding plaintiffs had alleged credible and probable harm to plaintiffs’ recreational use of waterways).

109. See, e.g., Richard Frank, *The Ninth Circuit Court of Appeals’ Most Important Environmental Law Decisions of 2017*, LEGALPLANET (Jan. 3, 2018), <https://legal-planet.org/2018/01/03/the-ninth-circuit-court-of-appeals-most-important-environmental-law-decisions-of-2017/> (citing case law illustrating Ninth Circuit’s role in shaping environmental law policy).

110. See generally *id.* (demonstrating Ninth Circuit’s significance in deciding environmental law cases).

111. See generally *id.* (showing Ninth Circuit’s impact on environmental policy).

112. See Eleanor Clift, *The 9th Circuit Keeps Saying ‘No’ to Trump. No Wonder He’s Racing to Reshape It in His Image*, THE DAILY BEAST (May 24, 2018), <https://www.thedailybeast.com/the-9th-circuit-keeps-saying-no-to-trump-no-wonder-hes-racing-to-reshape-it-in-his-image> (discussing Ninth Circuit’s pro-environmental plaintiff approach). See also Gregg Re, *Trump reshapes long-liberal 9th Circuit, as Republican-appointed judges gain seats on court*, FOX NEWS (April 2, 2019), <https://www.foxnews.com/politics/trump-reshapes-9th-circuit-gop-judges-near-majority> (discussing how President Trump’s appointments are shaping Ninth Circuit into conservative circuit).

113. *Ctr. for Biological Diversity v. Kempthorne*, 588 F.3d 701, 707-08 (9th Cir. 2009) (holding environmental organizations had standing to challenge Fish and Wildlife Service regulations).

cluded standing in the context of environmental law.¹¹⁴ In *Kempthorne*, several plaintiffs, including the Center for Biological Diversity, filed suit against the United States Fish and Wildlife Service (the Service).¹¹⁵ The Service had promulgated several regulations that allowed for the “non-lethal take” of polar bears and walrus in the Northern Coast of Alaska.¹¹⁶ In promulgating the regulations, the Service concluded there would be minimal impact on the “populations, recruitment, or survival of polar bears and walrus” in the area.¹¹⁷ The plaintiffs filed suit, alleging they “viewed polar bears and walrus in the region, enjoy[ed] doing so, and ha[d] plans to return.”¹¹⁸ The plaintiffs specifically argued that the regulations violated the Marine Mammal Protection Act (MMPA) and the National Environmental Policy Act (NEPA).¹¹⁹

The Ninth Circuit focused on the plaintiffs’ allegations that they enjoyed viewing the polar bears in the area and planned to return, concluding the plaintiffs had standing.¹²⁰ Although the plaintiffs never provided evidence of concrete plans to return to the area, the court held the plaintiffs’ enjoyment of polar bears, geographic specificity of the affected area, and plans to return to see the polar bears were sufficient to confer standing.¹²¹ However, the Ninth Circuit did not discuss *Defenders of Wildlife* despite the similarities in the cases’ facts and allegations.¹²²

The Ninth Circuit has also heard influential cases on the issue of standing outside the context of environmental law.¹²³ One such

114. *Id.* (considering whether plaintiffs had standing to bring environmental suit).

115. *Id.* at 706 (discussing background of case). The Center for Biological Diversity is an organization focused on protecting habitats for endangered species. *Id.* (explaining mission of Center for Biological Diversity).

116. *Id.* at 705-06 (explaining recent regulations promulgated by Service). “The term ‘take’ means to ‘harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine animals.” *Id.* (quoting 16 U.S.C. § 1362(13) (2003)) (defining “take” under the Marine Mammal Protection Act).

117. *Id.* at 706 (noting Service findings regarding impact on polar bear population).

118. *Ctr. For Biological Diversity*, 588 F.3d at 706 (recounting plaintiffs’ complaint).

119. *Id.* (noting basis of plaintiffs’ complaint).

120. *See id.* at 707-08 (holding plaintiffs had standing to challenge Service action).

121. *See id.* (finding plaintiffs’ plans to someday return to view polar bears were enough to prove standing).

122. *See generally id.* at 707 (failing to provide in-depth discussion of *Defenders of Wildlife* other than quoting Justice Stevens concurrence).

123. *See generally* Jennifer Jackson et al., *The Ninth Circuit Finds Inaccurate Credit Reporting Alone Does Not Confer Article III Standing*, JD SUPRA (Apr. 5, 2019), <https://www.jdsupra.com/legalnews/the-ninth-circuit-finds-inaccurate-67472/> (discuss-

case, *In re Zappos.com, Inc.*,¹²⁴ dealt with the risk of future harm of identity theft alleged by plaintiffs who had their “names, account numbers, passwords, email addresses, billing and shipping addresses, telephone numbers, and credit and debit card information” stolen by hackers.¹²⁵ The district court dismissed the case for lack of standing because the thieves had not yet used the information.¹²⁶ However, the Ninth Circuit reversed on appeal because the plaintiffs sufficiently proved standing by alleging sufficient threat of future identity theft.¹²⁷

The court of appeals reasoned the risk of identity theft was sufficiently conceivable as to support standing.¹²⁸ The court grounded its reasoning in Supreme Court precedent, which stated that a plaintiff who complains of a future injury has standing if “the threatened injury is ‘certainly impending,’ or there is a substantial risk that the harm will occur.’”¹²⁹ In reaching its decision, the court explained the stolen information was sufficient for the hackers to commit identity theft, and thus it was reasonable to conclude that the risk of harm from identity theft was imminent.¹³⁰

IV. LOOKING THROUGH THE LENS: THE DISTRICT COURT’S ANALYSIS

The District Court of Alaska began its discussion of standing by listing the requirements a plaintiff has to meet to successfully bring a case to court.¹³¹ There are three separate prongs of the standing

ing Ninth Circuit impact on standing doctrine in Fair Credit Reporting Act cases); Jeffrey Neuburger, *Finding Article III Standing, Ninth Circuit Declines to Do an About-Face in Illinois Biometric Privacy Class Action against Facebook*, NAT’L LAW REV. (Aug. 9, 2019), <https://www.natlawreview.com/article/finding-article-iii-standing-ninth-circuit-declines-to-do-about-face-illinois> (discussing importance of Ninth Circuit decision on standing for data privacy cases).

124. *In re Zappos.com, Inc.*, 888 F.3d 1020, 1023 (9th Cir. 2018) (citing *Krottner v. Starbucks Corp.*, 628 F.3d 1139 (9th Cir. 2010) (holding that plaintiffs can sufficiently allege standing based on “risk of identity theft”).

125. *Id.* at 1023 (describing plaintiffs’ basis for filing suit).

126. *Id.* (dismissing case for lack of standing).

127. *Id.* (holding district court’s dismissal for lack of standing was reversed).

128. *Id.* at 1028 (finding risk of identity theft was enough to support standing claim).

129. *Id.* at 1024 (quoting *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158 (2014)) (discussing standard for proving standing in cases of future injury).

130. *In re Zappos.com, Inc.*, 888 F.3d at 1028 (explaining why risk of future harm in case was imminent enough to support standing).

131. *League of Conservation Voters v. Trump*, 303 F. Supp. 3d 985, 995-96 (D. Alaska 2018) (listing requirements for standing). To have standing, a plaintiff must “(1) suffer[] an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision.” *Id.* at 996 (discussing three-pronged standing test).

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test, but the court only focused on the first prong: “injury in fact.”¹³² After the court set up the legal framework for standing and the parties’ main arguments, the court analyzed each separate component of the “injury in fact” prong of the standing test.¹³³ The court found the plaintiffs had met their burden of proving injury in fact because they had shown harm that was (a) imminent, (b) geographically specific, and (c) particularized.¹³⁴ In reaching its decision, the District Court of Alaska relied mainly on precedent from the Ninth Circuit and only minimally discussed previous Supreme Court rulings on standing.¹³⁵

A. Imminent Harm

For the first element, imminent harm, the district court stated that at the motion to dismiss stage, the standard set by the Ninth Circuit allows a plaintiff to plead general facts of injury.¹³⁶ The court explained that if a plaintiff makes an allegation of future harm, however, the plaintiff must show the injury was “certainly impending” or there was a “substantial risk that the harm will occur.”¹³⁷ After explaining the standard for allegations of future harm, the court acknowledged the defendants’ argument that there was no risk of “imminent harm” in the present case because to obtain leases and drilling permits, there were several steps that needed to be taken first.¹³⁸ The court, relying on the “certainly impending” rationale from *In re Zappos.com, Inc.*, found the defend-

132. *Id.* (concentrating discussion on injury in fact prong of standing test). In its discussion of standing, the court only focused on the “injury in fact” prong and the requirements necessary to prove that prong of the standing test. *See generally id.* (focusing discussion on imminent harm, geographic specificity, and particularized harm requirements of injury in fact).

133. *Id.* at 996-1001 (analyzing each element of standing claim).

134. *Id.* at 1001 (holding plaintiffs had met every component of injury in fact prong of standing test).

135. *See generally id.* at 996-1001 (focusing on discussion of Ninth Circuit precedent without discussing Supreme Court precedent). The court only mentioned Supreme Court precedent to outline the test for standing but focused their application on Ninth Circuit precedent regarding standing. *See generally id.* (focusing application on precedent from *Kemphorne* and *In re Zappos.com, Inc.*).

136. *League of Conservation Voters*, 303 F. Supp. 3d at 996 (explaining standard for imminent harm). “[O]n a motion to dismiss [the court] presume[s] that general allegations embrace those specific facts that are necessary to support the claim.” *Id.* (describing how plaintiffs plead facts to survive motion to dismiss).

137. *Id.* (applying test from in *In re Zappos.com, Inc.* to show how plaintiffs can prove standing based on future harm claim).

138. *Id.* (discussing defendants’ view on imminent harm element).

ants' arguments unpersuasive in light of the risk of severe environmental harm stemming from Trump's Order.¹³⁹

The court reasoned that even though there were steps third parties had to take before they were granted seismic surveying permits, the facts pointed to the government expediting those permits and causing imminent harm.¹⁴⁰ To reach this decision, the court examined all of the factual developments that occurred since the execution of Trump's Order.¹⁴¹ First, the court highlighted how Trump's Order instructed the Secretary of the Interior to expedite seismic surveying permits, conduct annual lease sales of Artic and Atlantic Oceans, and "direct[] [a] review of offshore safety and pollution-control regulations and guidance documents."¹⁴² The court reasoned these requisites imposed by Trump's Order showed that "oil and gas exploration activities are intended to be imminent," thus leading to the reasonable conclusion that the harm was "certainly impending."¹⁴³

Second, the district court showed great interest in the plaintiffs' factual allegations that the oil industry was already preparing oil explorations in the lands.¹⁴⁴ The court highlighted the plaintiffs' allegations discussing industry interest in conducting seismic surveys in the lands.¹⁴⁵ In discussing these developments, the court paid particular attention to the harmful effects of seismic surveying.¹⁴⁶ Of the harmful effects noted, the court discussed how loud pulses from seismic surveying airguns would result in hearing loss

139. *Id.* at 997 (discussing why situation was comparable to *In re Zappos.com, Inc.*). *See generally* *In re Zappos.com, Inc.*, 888 F.3d 1020, 1024 (9th Cir. 2018) (explaining standard for future harm to be certainly impending).

140. *See League of Conservation Voters*, 303 F. Supp. 3d at 997 (reasoning Trump's Order showed government would promptly grant permits for oil and gas exploration).

141. *Id.* at 997-99 (narrating factual developments and how they amounted to imminent harm).

142. *Id.* at 997-98 (describing requisites established by Trump's Order).

143. *See id.* at 998 (highlighting effects of Trump's Order).

144. *See id.* (granting great weight to plaintiffs' allegations of oil industry activity following Trump's Order).

145. *See League of Conservation Voters*, 303 F. Supp. 3d at 998 (noting plaintiffs' allegations of industry interest in surveying OCS lands). "[I]ndustry trade group called for seismic surveying in the Atlantic and other frontier areas to proceed 'without delay . . .'" One seismic operator had already asked for permission to conduct 3-D seismic surveying, and several companies had "applied for permits to conduct deep penetration seismic surveys. . . ." *Id.* (highlighting industry interest in beginning seismic survey exploration immediately).

146. *Id.* (noting effects of seismic surveying).

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and increase mortality rates to the marine wildlife in the OCS lands.¹⁴⁷

Lastly, the court used evidence of past oil and gas activity to demonstrate the risk from seismic surveying was imminent.¹⁴⁸ In reaching this conclusion, the District Court of Alaska noted past actions taken by industry trade groups regarding seismic surveying activity.¹⁴⁹ The court found the timeline weighed in favor of finding a risk of imminent harm.¹⁵⁰ Specifically, past actions by industry leaders showed companies tend to secure permission to conduct seismic surveying years in advance of the government actually leasing the lands.¹⁵¹ Evidence showed seismic surveying happens at least two to four years prior to the leasing of lands because the purpose of surveying is to discover whether the area has promising oil prospects.¹⁵² The court explained all of the evidence supported plaintiffs rightful fear that seismic surveying would begin imminently and would cause irreparable harm to the marine wildlife in the area.¹⁵³ The court concluded the imminent harm element of the standing doctrine had been met.¹⁵⁴

B. Geographic Specificity

The court relied mainly on the Ninth Circuit decision in *Kemphorne* to find that the plaintiffs had alleged a “geographically specific” injury.¹⁵⁵ As the Ninth Circuit set out in *Kemphorne*, the court found the “degree of geographic specificity required depends

147. *Id.* (describing process of seismic surveying and its effects). The court described the harmful effects of seismic surveying as follows:

Seismic surveying associated with oil and gas activities uses very loud, frequent sound pulses from airgun arrays to map the geology of the sea floor and identify potential oil and gas deposits Noise from seismic operations harms marine mammals. If animals are exposed to high enough levels of sound, such as exist close to some seismic airguns, they can suffer shifts in hearing thresholds and hearing loss that may result in mortality Seismic surveys also harm commercially important fish and shellfish.

Id. (enumerating impact on marine wildlife).

148. *Id.* at 998-99 (stating previous oil and gas drilling activities weighed in favor of finding imminent harm).

149. *See id.* (using history as indicator for present action).

150. *See League of Conservation Voters*, 303 F. Supp. 3d at 998-99 (discussing timeline of seismic surveying in past oil drilling activity).

151. *Id.* (explaining timeline for securing seismic surveying permits).

152. *Id.* at 999 (describing purpose behind seismic surveying of lands).

153. *Id.* (deciding imminent harm was likely).

154. *Id.* (concluding plaintiffs met their burden regarding imminent harm element of standing claim).

155. *See generally League of Conservation Voters*, 303 F. Supp. 3d at 999-1000 (analyzing geographic specificity under framework set by Ninth Circuit decision).

on the size of the area that is impacted by the governments action.”¹⁵⁶ The court found the area was discrete and well defined despite the geographic area being 128 million acres.¹⁵⁷ Since the plaintiffs claimed to use parts of the withdrawn OCS lands, the court concluded geographic specificity was met.¹⁵⁸

C. Particularized Harm

Finally, the District Court of Alaska addressed the defendants’ concerns that the plaintiffs’ interest in “visiting, using, inhabiting, studying, and recreating in” the withdrawn lands was not a particularized harm.¹⁵⁹ However, the court held the harm caused to the plaintiffs by the oil and gas exploration was personal and amounted to particularized harm.¹⁶⁰ Again, the court focused primarily on the Ninth Circuit’s *Kemphorne* holding in deciding this case and only briefly discussed any relevant Supreme Court cases.¹⁶¹ The court quoted *Defenders of Wildlife* and *Friends of the Earth, Inc.* to support the position that for standing plaintiffs must prove personal harm and injury to themselves rather than injury to environment.¹⁶² Environmental plaintiffs must show they use the affected lands and they are “persons ‘for whom the aesthetic and recreational values of the area will be lessened’ by the challenged activity” to show standing.¹⁶³

The court then discussed *Kemphorne* and how the Ninth Circuit found the plaintiffs in that case had standing after alleging facts similar to those of this case.¹⁶⁴ In discussing the facts of this

156. *Id.* at 1000 (restating geographic specificity standard set out by Ninth Circuit).

157. *Id.* (finding plaintiffs defined discrete area of land).

158. *Id.* (holding geographic specificity was met). “Plaintiffs, similar to the plaintiffs in *Kemphorne*, allege that they “visit or otherwise use and enjoy the Atlantic Ocean, including near deepwater canyons, the Chukchi and Beaufort Seas, and coastal regions adjacent to these waters.” *Id.* The court found that the plaintiffs claimed use of the lands or the lands in the vicinity was enough to meet geographic specificity. *Id.* (reasoning Ninth Circuit precedent allowed court to find for plaintiffs).

159. *Id.* at 1000-01 (discussing defendants’ third and final argument on plaintiffs’ lack of standing).

160. *League of Conservation Voters*, 303 F. Supp. 3d at 1001 (holding plaintiffs pled sufficient facts to support finding of particularized harm).

161. *See id.* at 1000 (discussing Supreme Court precedent but relying on Ninth Circuit precedent instead).

162. *Id.* (discussing Supreme Court standard that plaintiffs must show harm to themselves, not general harm to environment).

163. *Id.* (quoting *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 183 (2000)) (explaining standard set by Supreme Court).

164. *See id.* at 1000-01 (analogizing *Kemphorne*’s facts to those of *League of Conservation Voters*).

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case, the court concentrated on the plaintiffs' concerns over the harmful effects of seismic surveying on animal wildlife in the affected lands.¹⁶⁵ The district court reasoned that because the plaintiffs used or visited the withdrawn lands, any harm caused to the animals in the lands would affect the plaintiffs' enjoyment of the lands.¹⁶⁶

After finding that the plaintiffs had met their burden by establishing (a) imminent harm, (b) geographic specificity, and (c) particularized harm, the court held the plaintiffs had sufficiently pled facts to survive a motion to dismiss.¹⁶⁷ Although the defendants raised the issue of standing again at the summary judgment stage, the court, relying on the "law of the case doctrine," found it could not revisit the issue.¹⁶⁸ Thus, the court held its earlier ruling on standing at the motion to dismiss stage remained undisturbed at the summary judgment stage.¹⁶⁹

165. See *League of Conservation Voters*, 303 F. Supp. 3d at 1000-01 (weighing heavily plaintiffs' concerns that seismic surveying would cause hearing loss as well as death to animals in affected lands).

166. *Id.* at 1001 (describing harmful effects plaintiffs could suffer). The court was interested in the plaintiffs' allegations, including that:

[M]embers of the Plaintiff organizations visit or otherwise use and enjoy the Atlantic Ocean, including near deepwater canyons, the Chukchi and Beaufort Seas Any activities, such as oil and gas exploration or development, including seismic surveying, that destroy, degrade, or diminish the wild and natural state of these areas, or that kill, injure, harm, harass, or displace wildlife, also interfere with Plaintiffs' members' use and enjoyment of the areas and associated wildlife. As such, these activities directly and irreparably injure the interests of Plaintiffs' members.

Id. (specifying plaintiff's alleged personal harms).

167. *Id.* at 1004 (denying defendants' motion to dismiss).

168. See *League of Conservation Voters v. Trump*, 363 F. Supp. 3d 1013, 1019-20 (D. Alaska, 2019) (holding standing had already been decided stage and law of the case doctrine prevented court from revisiting it). The law of the case doctrine stands for the proposition that once an appellate court decides an issue in a particular case and remands the case to the lower court, the lower court cannot revisit the issue because the decision from the appellate court has become "the law of the case."

18B CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE § 4478 (2d ed. 2002 & Supp. 2019) (explaining law of the case doctrine and how lower courts apply it). There are similar applications of the law of the case doctrine that state once a court decides an issue at the beginning stages of a case, the court should not revisit the issue unless a set of specific circumstances are met. *Id.* (detailing criteria that must be met before court can revisit issue).

169. See generally *League of Conservation Voters*, 363 F. Supp. 3d at 1019-20 (declining to reconsider standing issue at summary judgment stage).

V. CAPTURING THE PERFECT ANGLE: LEAGUE OF CONSERVATION
VOTERS APPROPRIATELY SHIFTS STANDING TEST
TO ENVIRONMENTAL INJURY

The District Court of Alaska's discussion of standing in *League of Conservation Voters* is grounded in Ninth Circuit precedent that stands in stark contrast to the Supreme Court's precedent on standing in environmental cases.¹⁷⁰ Despite the district court applying the same test the Supreme Court applied in *Defenders of Wildlife*, the district court came to a conclusion that initially seems to be unsupported by any binding precedent.¹⁷¹ To understand the decision, it is critical to understand first how the courts in *Kempthorne* and *Defenders of Wildlife* came to different conclusions, despite both cases having similar facts.¹⁷²

At first glance, *League of Conservation Voters*, *Kempthorne*, and *Defenders of Wildlife* seem irreconcilable due to the similarity in their facts and their different holdings.¹⁷³ However, upon close examination the holdings are different not because they applied different standards or tests, but because of who the tests were applied to.¹⁷⁴ When addressing an environmental standing claim, the relevant inquiry is "not injury to the environment but injury to the plaintiff."¹⁷⁵

In holding the plaintiffs lacked standing, the Court in *Defenders of Wildlife* focused on the lack of imminent harm to the plaintiffs,

170. See generally *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 564 (1992) (discussing why intention of returning "some day" to affected area did not amount to standing); see also *Ctr. for Biological Diversity v. Kempthorne*, 588 F.3d 701, 707-08 (9th Cir. 2009) (finding plaintiffs had standing despite having facts similar to *Defs. of Wildlife*).

171. See generally *League of Conservation Voters*, 303 F. Supp. 3d at 996-1001 (applying same standing test as *Defs. of Wildlife* but reaching different conclusion).

172. Compare *Defs. of Wildlife*, 504 U.S. at 562-64 (finding plaintiffs' lack of concrete plans to visit affected area meant they had no standing), with *Kempthorne*, 588 F.3d at 707-08 (finding plaintiffs had standing despite having no concrete plans to visit affected area)

173. Compare *Defs. of Wildlife*, 504 U.S. at 562-64 (holding lack of concrete plans was critical to dismissal of claim), with *Kempthorne*, 588 F.3d at 707-08 (failing to address lack of concrete plans to visit affected area), and *League of Conservation Voters*, 303 F. Supp. 3d at 996-1001 (ignoring plaintiffs' lack of plans to visit affected area).

174. Compare *Defs. of Wildlife*, 504 U.S. at 562-64 (discussing lack of imminent harm to plaintiffs), with *Kempthorne*, 588 F.3d at 707-08 (focusing on imminent harm to environment instead of imminent harm to plaintiffs), and *League of Conservation Voters*, 303 F. Supp. 3d at 996-1001 (concentrating analysis on alleged imminent harm to environment).

175. *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 181 (2000) (holding test for environmental standing is showing injury to plaintiff not environment).

regardless of the imminent harm to the environment.¹⁷⁶ Based on this reasoning, the Court found that because the plaintiffs did not have concrete plans to return to the area, any imminent harm to the environment would not result in imminent harm to the plaintiffs.¹⁷⁷ Similarly, in *Friends of the Earth*, the Court focused on whether the plaintiffs suffered harm, separate from the question of whether the violations of the Clean Water Act had caused harm to the environment.¹⁷⁸ Thus, according to the Court, focus should be on whether the plaintiffs are likely to be harmed, irrespective of any alleged harm to the environment.¹⁷⁹

In *Kemphorne*, the Ninth Circuit's discussion of standing conflated the imminent harm and particularized harm elements of a standing claim and left lower courts with a decision that muddled the legal framework of standing in environmental cases.¹⁸⁰ Additionally, the court in *Kemphorne* did not attempt to differentiate the facts of the case from those in *Defenders of Wildlife*, despite the substantial similarities.¹⁸¹ Because of this, lower courts within the Ninth Circuit are left with the difficult task of trying to differentiate between *Kemphorne* and *Defenders of Wildlife* and deciding which to apply in a particular situation.¹⁸²

Due to the confusing nature of the standing doctrine, it is no surprise the District Court of Alaska struggled to apply the doctrine in its *League of Conservation Voters* decision.¹⁸³ Although the decision is a win for the environment, it is apparent the district court's discussion is flawed when it is broken down and analyzed.¹⁸⁴ First, the

176. See *Defs. of Wildlife*, 504 U.S. at 563-64 (finding plaintiffs must present facts showing they are harmed by actions of defendants).

177. *Id.* at 564 (holding intentions to "some day" return to affected area did not support finding of standing).

178. See *Friends of the Earth Inc.*, 528 U.S. at 181 (stating focus was on whether plaintiffs had suffered harm).

179. *Id.* (reiterating correct test to apply is whether plaintiffs will suffer imminent harm from defendants' actions).

180. See generally *Ctr. for Biological Diversity v. Kemphorne*, 588 F.3d 701, 707-08 (9th Cir. 2009) (failing to separate imminent harm discussion from particularized harm discussion).

181. See *id.* (lacking discussion of *Defs. of Wildlife* other than citing concurrence).

182. See generally Amy C. Barrett, *Precedent and Jurisprudential Disagreement*, 91 TEX. L. REV. 1711, 1713-14 (2013) (explaining intricacies of precedent and stare decisis doctrine); see also *League of Conservation Voters v. Trump*, 303 F. Supp. 3d 985, 996-1001 (D. Alaska 2018) (basing discussion on *Kemphorne* even though *Def's of Wildlife* Supreme Court precedent applied to case).

183. For a discussion of the intricacies of the standing doctrine in environmental law, see *supra* notes 66-108 and accompanying text.

184. See generally *League of Conservation Voters*, 303 F. Supp. 3d at 996-1001 (focusing discussion on imminent harm to environment rather than plaintiffs').

court's discussion of imminent harm to the environment stemming from Trump's Order was correct because there was a very high probability of imminent harm to the environment.¹⁸⁵ Second, the court was correct in finding the plaintiffs suffered particularized harm due to their interests in "visiting . . . and recreating in" the area because, like the Supreme Court held in *Sierra Club*, aesthetic enjoyment of the environment is a cognizable interest.¹⁸⁶

However, the court failed to combine the two prongs to decide whether there was imminent and particularized harm to the plaintiffs and not just to the environment.¹⁸⁷ Had the court applied the imminent harm test to the plaintiffs and not to the environment, the outcome of the case would have been different.¹⁸⁸ First, the discussion of imminent harm would not have revolved around whether Trump's Order would have any immediate effects on the wildlife that lived on the OCS lands.¹⁸⁹ Instead, the dialogue would have centered on whether the plaintiffs had any concrete plans to return to the OCS lands, and whether those plans led the court to believe the plaintiffs would suffer a personal harm because of Trump's Order.¹⁹⁰

Second, if the discussion had involved whether the plaintiffs had any concrete plans to return to the OCS lands, the district court would have had to rely heavily on the *Defenders of Wildlife* precedent to determine if there was imminent harm.¹⁹¹ Since the plaintiffs relied on the argument that harm to the environment was impending, there was little discussion of the plaintiffs' plans to return to the OCS lands.¹⁹² Although the plaintiffs' alleged their members visited and used the OCS lands, the complaint failed to

185. *See id.* at 998-1001 (finding seismic surveying from Trump's Order would have negative effects on environment).

186. *See Sierra Club v. Morton*, 405 U.S. 727, 734 (1972) (reasoning aesthetic enjoyment of environment could be protected); *see also League of Conservation Voters*, 303 F. Supp. 3d at 1000-01 (holding plaintiffs had shown particularized harm).

187. *See League of Conservation Voters*, 303 F. Supp. 3d at 996-1001 (applying imminent harm prong to environment and particularized harm prong to plaintiffs).

188. *See generally id.* at 996-99 (applying imminent harm test to environment but not to plaintiffs).

189. *See id.* (focusing on effects of oil drilling on environment).

190. *See generally id.* at 1001 (noting plaintiffs' recognized interest in enjoying OCS lands but failing to address plaintiffs' lack of plans to return to area).

191. *See generally Lujan v. Defs. of Wildlife*, 504 U.S. 555, 562-64 (1992) (providing guidance on relevant inquiry used to determine imminent harm to plaintiffs in environmental cases).

192. *See League of Conservation Voters*, 303 F. Supp. 3d at 997-99 (arguing Trump's Order had immediate effect of allowing oil exploration on OCS lands but failing to address how that would imminently affect plaintiffs).

indicate that the members had concrete plans of returning to the OCS lands in the near future.¹⁹³ Thus, based on the Supreme Court decision in *Defenders of Wildlife*, the court should have found the general allegations that land would one day be harmed by Trump's Order did not meet the threshold to prove imminent harm to the plaintiffs.¹⁹⁴

However, the district court's reasoning aligned with Justice Stevens' concurring opinion in *Defenders of Wildlife*.¹⁹⁵ As proposed by Justice Stevens, imminent harm in environmental cases should be judged by when the harm to the environment occurs, rather than by the timing of the plaintiff's next visit to the affected area.¹⁹⁶ This standard better supports the standing doctrine purpose of affirming that only plaintiffs who have suffered a personal harm can bring a claim to court.¹⁹⁷ Like Justice Stevens argued in his concurrence, the harm to a person interested in visiting an area threatened by adverse environmental activity occurs as soon as the environment is affected.¹⁹⁸

There is no constitutionally derived logic in allowing recovery to a hypothetical plaintiff who has designated a day to visit an environmental area, yet denying recovery to the hypothetical plaintiff who has plans to visit, but has not finalized a date yet.¹⁹⁹ Both plaintiffs have been personally affected by the environmental harm, yet under Supreme Court precedent, only the plaintiff who designated a day for the visit will be allowed recovery.²⁰⁰ Under *League of Conservation Voters*, it would be irrelevant if the hypothetical plaintiff

193. *See id.* at 1001 (discussing plaintiffs' use of OCS lands but failing to note plaintiffs' lack of plans to return to area).

194. *Compare Defs. of Wildlife*, 504 U.S. at 562-64 (holding plaintiffs lacked standing because they did not provide evidence of concrete plans to return to affected area), *with League of Conservation Voters*, 303 F. Supp. 3d at 996-1001 (holding plaintiffs had standing despite not showing concrete plans to return to affected area).

195. *See generally Defs. of Wildlife*, 504 U.S. at 582-84 (Stevens, J., concurring) (stating courts should focus on when harm will happen to environment as opposed to when plaintiffs will travel to affected area).

196. *Id.* (advocating for different application standard in environmental standing claims).

197. *Id.* at 583 (explaining why this approach aligns with standing doctrine's purpose).

198. *See id.* at 582-83 (reasoning that harm to person interested in viewing endangered animals occurs as soon as animals or animals' habitats are affected).

199. *See generally id.* at 579 (Kennedy, J., concurring in part) (acknowledging it might be trivial to base standing decision on whether plaintiffs have bought plane ticket or announced day to visit affected area).

200. *See generally Defs. of Wildlife*, 504 U.S. at 564 (indicating plaintiffs' lack of concrete plans to return to affected area requires court to find no standing for claim).

designated a day for the visit because the imminence of the harm would instead be measured by when the alleged harm to the environment occurs — a standard that better protects the environment, while still complying with the principles of the standing doctrine.²⁰¹

VI. DEVELOPING THE IMAGE: LASTING IMPACT ON THE FUTURE OF THE STANDING DOCTRINE

Although it is a district court decision, *League of Conservation Voters* has the power to effectuate great change in the legal framework for analyzing standing in environmental cases.²⁰² First, the decision is a major victory for environmental activism.²⁰³ By focusing on the imminent harm to the environment, the court has proposed a standard that can allow citizens to better protect the environment.²⁰⁴ Plaintiffs can focus on demonstrating the harmful effects the action will have on the environment, instead of concentrating their efforts on trying to show that they will promptly visit the affected area.²⁰⁵ The burden of proving harm to the environment is an easier threshold to meet, which means plaintiffs will have an easier time bringing claims that will benefit the environment.²⁰⁶

Additionally, because this decision has been appealed to the Ninth Circuit, the court of appeals will have to reevaluate its caselaw to see if *League of Conservation Voters* aligns with its precedent.²⁰⁷ With the support of the *Kemphorne* precedent and the Ninth Cir-

201. See *League of Conservation Voters v. Trump*, 303 F. Supp. 3d 985, 996-1001 (D. Alaska 2018) (applying standing test that focuses on imminent harm to environment rather than emphasizing when plaintiff plans to visit affected area); see also *Defs. of Wildlife*, 504 U.S. at 582-84 (Stevens, J., concurring) (advocating for standing test that focuses on harm to environment because this test protects environment while still complying with standing doctrine principles).

202. For a further discussion of the standing test applied in *League of Conservation Voters* and how it can affect plaintiffs bringing suits that may benefit the environment, see *supra* notes 183-201 and accompanying text.

203. For a discussion of why the correct standard is judging imminent harm by when the harm happens to the environment, see *supra* notes 195-201 and accompanying text.

204. See *id.* (discussing why standard proposed by Justice Stevens plus subsequently adopted by *League of Conservation Voters* is appropriate for environmental law cases).

205. For a discussion of what plaintiffs would have to show if the *League of Conservation Voters* standard is affirmed, see *supra* notes 196-201 and accompanying text.

206. Cf. Stacy Jane Schaefer, *The Standing of Nature: The Delineated Natural Ecosystem Proxy*, 9 GEO. WASH. J. ENERGY & ENVTL. L. 70 (2018) (describing why plaintiffs meeting threshold of showing personal harm in environmental standing cases presents tough burden).

207. See *supra* note 51 discussing procedural stage in case.

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cuit's tendency to take a pro-environmental plaintiff approach, the *League of Conservation Voters* decision is likely to be affirmed in the Ninth Circuit.²⁰⁸ As previously mentioned, the Ninth Circuit is already one of the most active circuits when it comes to environmental caselaw.²⁰⁹ If the court of appeals upholds the *League of Conservation Voters* decision, it will open the door for plaintiffs to bring subsequent pro-environment claims to the Ninth Circuit because the burden of proving standing will be easier, and plaintiffs will have a greater chance of surviving a standing challenge.²¹⁰

Lastly, due to the Trump administration's emphasis on promoting oil drilling in OCS lands, if the Ninth Circuit affirms the decision, the Trump administration is likely to appeal the case to the Supreme Court.²¹¹ The Supreme Court has not decided a case involving standing for individual environmental plaintiffs since its decision in *Defenders of Wildlife*.²¹² Any decision to review the *League of Conservation Voters* case will likely upend precedent that has remained undisturbed for over twenty-seven years.²¹³ While *League of Conservation Voters* is still just a district court decision, due to the fierce debate over oil drilling in the United States and the current administration's focus on remaining at the forefront of oil drilling activity, the decision has the propensity to implicate even the highest court in the nation and usher in a new era for environmental plaintiffs.²¹⁴

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208. For a discussion of the Ninth Circuit's precedent and stance on the standing doctrine, see *supra* notes 109-130 and accompanying text. See also Clift, *supra* note 112 (describing Ninth Circuit's pro-environmental plaintiff approach).

209. See Frank, *supra* note 109 (noting Ninth Circuit's active role in shaping environmental policy).

210. For an analysis of the *League of Conservation Voters* decision and its effects on plaintiffs seeking to establish standing, see *supra* note 201 and accompanying text.

211. For a discussion of Trump administration's emphasis on remaining world leader in energy developments, see *supra* note 35 and accompanying text.

212. For an in depth discussion of environmental standing cases decided by the Supreme Court, see *supra* notes 66-108 and accompanying text.

213. See generally *Lujan v. Defs. of Wildlife*, 504 U.S. 555 (1992) (deciding case in 1992 and holding to survive standing challenge individual environmental plaintiffs need to show concrete plans of return to affected area to survive standing challenge).

214. See generally *OCS Lands Act History*, *supra* note 1 (explaining history of oil drilling); see also Exec. Order No. 13795, 82 Fed. Reg. 20815 (April 2017) (outlining Trump administration's focus on promoting oil drilling activity).

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their love, dedication, and sacrifice are the reasons why I have been able to get to where I am today. I miss them every day I am away from home, but I know that they are with me through every step of this process. I would also like to thank my grandmothers. Even though they did not get to see me achieve my dream of attending law school, both of them helped me become the woman I am today, and I will miss them and carry them in my heart forever. Lastly, I would like to thank the friends that supported me, motivated me, and believed in me throughout this process. This Note belongs to you, my family and friends, because you made it possible. Thank you.