

Article III standing still proving to be a formidable defense to environmental citizen suits

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Recent federal court decisions continue to show that Article III standing can be a formidable defense to environmental citizen suits, particularly following the Supreme Court's decision *Spokeo v. Robins*.¹ On Aug. 30, for example, a North Carolina federal court dismissed on standing grounds almost all of the plaintiffs' Clean Air Act citizen suit claims asserted against the University of North Carolina at Chapel Hill (UNC).²

Citing Spokeo, the Court held that the alleged violations "amount to nothing more" than "bare procedural violation[s], divorced from any concrete harm."

In their complaint, the plaintiffs asserted nine claims, including seven for alleged failures to maintain records, inspect equipment, report permit deviations to government authorities, and monitor pollution controls, as required by UNC's Title V permit. On summary judgment, the plaintiff citizen groups offered declarations from two members who alleged "health, aesthetic, and recreational interests in air quality in Chapel Hill and the areas around UNC's campus."

On the claims related to alleged recordkeeping, reporting, monitoring, and inspection violations, the court granted summary judgment to UNC because the plaintiffs had not shown that any of their members suffered a concrete injury-in-fact sufficient for Article III standing.

First, the plaintiffs argued that the alleged procedural violations caused concrete injury to plaintiffs' members by actually exposing them to harmful pollutants. The court found that the plaintiffs "offer[ed] no evidence" to support that contention of harm, and had cited no case to support their argument that the court should "infer harm from excessive emissions" based on UNC's alleged failure to complete the required tasks. Citing *Spokeo*, the Court held that the alleged violations "amount to nothing more" than "bare procedural violation[s], divorced from any concrete harm."

The plaintiffs also tried to satisfy the injury-in-fact requirement by arguing that their members had suffered informational injury. According to the plaintiffs' declarations and briefing, UNC's alleged

failure to comply with the monitoring and reporting requirements prevented their members from knowing whether UNC was complying with emission requirements.

But the court rejected this argument, as well. The plaintiffs did "not identify a statutory source that provides a right to this information, nor ... explain how denial of that information creates a real harm with an adverse effect that Congress sought to prevent by requiring disclosure." Thus, the plaintiffs had not met *Spokeo's* standards for informational injury for these claims.

This case is the most recent in a series of federal court opinions dismissing citizen suit environmental claims on standing grounds. In June 2021, the Seventh Circuit affirmed the dismissal of a complaint filed by a citizen group against a utility asserting Clean Water Act violations. In doing so, the Seventh Circuit found that the plaintiffs' "standing allegations [were] akin to impermissible speculation rather than permissible presumption, thus 'stopping short of the line between possibility and plausibility.'"³

These and other recent standing cases highlight the challenges some groups may have in establishing Article III standing in environmental citizen suits.

And as we have previously discussed,⁴ in 2018, the Middle District of North Carolina dismissed for lack of standing a citizen group's claim that a utility company violated the federal Coal Combustion Residuals Rule by submitting allegedly insufficient plans to close coal ash basins.

In that case, the court explained that the group's claim could not proceed because the complaint was "completely devoid of any allegation that the [plaintiff group] and its members sought, and ha[d] been denied, access to the information required under the CCR Rule, and that such a denial ha[d] caused injury."⁵

These and other recent standing cases highlight the challenges some groups may have in establishing Article III standing in environmental citizen suits, particularly after the Supreme Court's decision in *Spokeo*.

Notes

¹ *Spokeo v. Robins*, 578 U.S. 330 (2016) (vacating decision below and emphasizing that an alleged injury in fact must be “concrete and particularized”).

² *Ctr. for Biological Diversity v. Univ. of North Carolina at Chapel Hill*, No. 1:19-CV-1179, 2021 WL 3861388 (M.D.N.C. Aug. 30, 2021).

³ *Prairie Rivers Network v. Dynegy Midwest*, 2 F.4th 1002, 1010 (7th Cir. 2021).

⁴ <https://bit.ly/3amfFUM>

⁵ *Roanoke River Basin Ass’n v. Duke Energy Progress*, No. 17-cv-561, 2018 WL 1605022, at *6 (M.D.N.C. Mar. 29, 2018) (citing *Spokeo*).

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