OF MONKEYS AND MEN — ARTICLE III STANDING REQUIREMENTS IN ANIMAL BIOMEDICAL RESEARCH CASES: INTERNATIONAL PRIMATE PROTECTION LEAGUE V. ADMINISTRATORS OF THE TULANE EDUCATIONAL FUND

INTRODUCTION

In 1990, the United States Court of Appeals for the Fifth Circuit considered whether animal rights organizations had standing to bring suit to enjoin the euthanizing of three monkeys by a federal medical research agency and Tulane University in International Primate Protection League v. Administrators of the Tulane Educational Fund ("Primate Protection"). The Fifth Circuit held that the animal rights organizations lacked standing under Article III of the United States Constitution even though the organizations and their individual members claimed disruption to their personal relationships with the monkeys and even though the missions of the organizations were expressly to protect the monkeys' interests. The court held that for the organizations to establish standing, they must show two things: (1) that either they or their members received an injury-in-fact or were threatened with immediate injury by the actions of the university and the federal research agency, and (2) that there was a causal connection between the conduct sought to be enjoined and the injury sustained which was capable of redress through a decision in favor of

1. 895 F.2d 1056, 1057 (5th Cir. 1990). This Note focuses on the Article III standing issue addressed by the court, and only summarizes the court's position on an issue involving removal of the case from state to federal court. See infra notes 49-50 and accompanying text. On November 26, 1990, the United States Supreme Court granted a writ of certiorari on the removal issue. International Primate Protection League v. Administrators of the Tulane Educational Fund, 895 F.2d 1056 (5th Cir. 1990), cert. granted, 59 U.S.L.W. 3391 (U.S. Nov. 26, 1990).

2. U.S. CONST. art. III, § 2, cl. 1. The clause provides:
   The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority; — to all Cases affecting Ambassadors, other public Ministers and Consuls; — to all Cases of admiralty and maritime Jurisdiction; — to Controversies to which the United States shall be a Party; — to Controversies between two or more States; — between a State and Citizens of another State; — between Citizens of different States; — between Citizens of the same State claiming Lands under the Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

   Id.


4. Id. at 1058.
the animal rights organizations.5

This Note reviews the standing requirements of Article III as announced through federal case law.6 In doing so, this Note analyzes the Fifth Circuit’s continued adherence in Primate Protection to the stringent standing requirements in federal courts.7 Finally, this Note discusses the justification for barring actions brought by animal rights organizations against biomedical research facilities, and concludes that any modification to traditional standing requirements must come through congressional action.8

FACTS AND HOLDING

In 1981, the Institute of Behavioral Research, Inc., (“IBR”), conducted certain neurological experiments on several cynomolgus macaques, commonly referred to as long-tailed monkeys.9 These experiments involved severing the nerves to various limbs then observing the monkeys’ ability to recover use of the desensitized limbs.10 The purpose behind the testing was to improve rehabilitation techniques for humans suffering from neurological injuries.11 Later that year, Maryland police officers seized the monkeys pursuant to a warrant on charges of animal cruelty.12 The chief biologist of IBR, Dr. Edward Taub, was arrested and convicted on several of the charges.13 These convictions were later reversed.14

A court order issued in 1981 directed the National Institutes of

5. Id.
6. See infra notes 59-243 and accompanying text.
7. See infra notes 244-306 and accompanying text.
8. See infra notes 307-36 and accompanying text.
10. Id. at 1057. One particularly disturbing result of the research was the inability of the monkeys to recognize that the desensitized appendage was a part of their own body. Telephone interview with Dr. Peter J. Gerone, Director of the Delta Regional Primate Center, Tulane University (January 7, 1991). Because of the loss of feeling and the ignorance of self-inflicted injury, the animals mutilated and amputated various parts of their limbs. The animal rights groups had argued that bandages should have been applied to deter such behavior, but several researchers said that this would not have stopped the monkeys from self-mutilation, because the monkeys would merely have continued chewing into the flesh after breaking through the bandages. Researchers have seen some improvement in staving off the unwanted behavior by spraying the antibiotic furazone on the desensitized appendage. Some researchers have speculated that the antibiotic is offensive to the monkeys’ sense of taste. Id.
11. Id. See also International Primate Protection League v. Institute for Behavioral Research, Inc., 799 F.2d 934, 936 (4th Cir. 1986), cert. denied, 481 U.S. 1004 (1987) (related case) (holding that the plaintiffs in that case did not have standing to bring suit).
13. Id.
Health ("NIH") to take custody of the monkeys from IBR and to act as keeper for the animals. In 1988, NIH announced its intentions to euthanize three of the monkeys, stating that it planned to perform autopsies on the monkeys in the hope that the autopsies would provide information for medical advancement in the rehabilitation of humans suffering from brain and spinal cord injuries. Shortly thereafter, International Primate Protection League ("IPPL"), People for the Ethical Treatment of Animals, Inc. ("PETA"), and the founder of PETA, Alex Pacheco, brought suit in Louisiana state court to enjoin NIH from euthanizing the monkeys. The plaintiffs, (hereinafter collectively referred to as "IPPL"), named NIH, IBR, and the Administrators of the Tulane Educational Fund as defendants (hereinafter collectively referred to as "NIH"). In December of 1989, the state court issued a temporary restraining order to prevent the euthanizing of the monkeys.

Pursuant to federal law, NIH removed the suit to the United States District Court for the Eastern District of Louisiana. The district court maintained the temporary restraining order beyond the twenty days allowed by law. Because of the extension, the order was deemed the equivalent of a preliminary injunction and was, therefore, subject to appeal.

The United States Court of Appeals for the Fifth Circuit vacated the district court's preliminary injunction order and dismissed the case, finding that IPPL lacked standing under Article III of the

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16. *Id.* at 1058.
17. *Id.*
18. *Id.*
19. *Id.*
20. 28 U.S.C. § 1442(a)(1) (1988) permits removal from state to federal court of actions involving "[a]ny officer of the United States or any agency thereof, or person acting under him, for any act under color of such office."
22. *Id.* at 1058. See *FED. R. CIV. P.* 65(b) (stating in relevant part: "Every temporary restraining order granted . . . shall expire by its terms within such time after entry, not to exceed 10 days, as the court fixes, unless within the time so fixed the order, for good cause shown, is extended for a like period. . . ").
23. *Primate Protection*, 895 F.2d at 1058. *Section 1292(a)(1)* of the United States Code provides:
   (a) Except as provided in subsections (c) and (d) of this section, the courts of appeals shall have jurisdiction of appeals from:
   (1) Interlocutory orders of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, or of the judges thereof, granting, continuing, modifying, refusing or dissolving injunctions, or refusing to dissolve or modify injunctions, except where a direct review may be had in the Supreme Court.
United States Constitution. The court also found that NIH, as a federal agency, had sufficient interest in the monkeys to permit removal of the case to federal court.

On the dispositive issue of standing, the Fifth Circuit held that IPPL had failed to satisfy a two-part test: (1) it had not shown a personal injury or threatened injury from any alleged illegal actions of NIH, and (2) it had not proven a causal connection between the injury and the conduct such that the injury would likely be redressed by a favorable decision from the court.

IPPL had set out three principal claims against NIH, each of which required proof of injury-in-fact and proof of a causal connection: 1) IPPL would suffer disruption to the personal relationships with the monkeys by the organization and its individual members; 2) IPPL had a long standing, sincere commitment for the monkeys' welfare based on the aesthetic, conservational, and environmental interests which motivated the organization; and 3) IPPL was the only advocate for the monkeys' rights, as the monkeys themselves could not argue a case in court.

The court rejected the first of the three claims presented by IPPL. The Fifth Circuit adopted the position that another court had taken in a related case involving the same monkeys. The court held that it was impossible for IPPL to establish personal relationships with the animals because the monkeys were privately owned. Thus, no allegation of injury-in-fact or threatened injury could be supported because no interest of IPPL was affected.

The court also held that IPPL had failed on their subclaim of injury-in-fact because they had not identified in the cause of action any member of their organization who qualified as a public humane officer, an individual given standing through Louisiana animal cruelty...
The Fifth Circuit stated that even if IPPL overcame this problem, a suit could still not be brought under the Louisiana animal cruelty laws because the statutes expressly exempted the killing of animals for purposes of scientific and medical research.

The second claim asserted by IPPL, that it had a right to bring suit because of its "long-standing, sincere commitment" to prevent the mistreatment of animals, was rejected by the court. The court held that this claim was not sufficient to distinguish the animal rights group from other members of the general public.

The court also stated that the alternative claim of injury to the aesthetic, conservational, and environmental interests of IPPL could not proceed for the same reason that the claim for disruption to a personal relationship had failed. IPPL was unable to prove that they had established a relationship with the monkeys which would impact any legally recognized interest held by the group. The Fifth Circuit also found that IPPL could only succeed if it could show that the monkeys were an endangered species and that euthanizing them would be contrary to conservation efforts. The court stated that because this endangered species theory was neither alleged nor likely to succeed if asserted, IPPL did not evidence grounds on which to

35. Id. at 1060. See LA. REV. STAT. ANN. § 3:2431 (West 1987). Section 3:2431 provides in relevant part:
   All officers of incorporated humane societies... when in their judgment cruelty is being practiced towards any animals or the animal is bruised, wounded, crippled, abused, sick, or diseased, may remove the animal whenever found to any stable designated by the humane society.

36. Primate Protection, 895 F.2d at 1060. See also LA. REV. STAT. ANN. § 14:102.1 (West 1986). Section 14:102.1 provides in pertinent part:
   A. Any person who intentionally or with criminal negligence commits any of the following shall be guilty of cruelty to animals:
      * * *
   (2) Tortures, torments, cruelly beats or unjustifiably injures, maims, mutilates, or kills any living animal, whether belonging to himself or another.
      * * *
   (7) Unjustifiably administers any poisonous or noxious drug or substance to any domestic animal or unjustifiably exposes any such drug or substance, with intent that the same shall be taken or swallowed by any domestic animal.
      * * *
   (9) Mistreats any living animal by any act or omission whereby unnecessary or unjustifiable physical pain, suffering, or death is caused to or permitted upon the animal.

37. Primate Protection, 895 F.2d at 1060.
38. Id.
39. Id.
40. Id. at 1059-60.
41. Id. at 1060.2
bring its suit.\textsuperscript{42}

The third claim alleged by IPPL was also insufficient to confer standing.\textsuperscript{43} IPPL had argued that because its mission was to protect the rights of the monkeys, and because the monkeys could not fight for their own rights, IPPL had a "special interest" in the rights of the monkeys which qualified IPPL to bring suit to enjoin the planned euthanasia.\textsuperscript{44} The Fifth Circuit held that "the mere fact that the monkeys would be left without an advocate in court does not create standing where it otherwise does not exist."\textsuperscript{45}

IPPL argued in the alternative that even if it lacked standing under federal law, it met state standing requirements.\textsuperscript{46} The court rejected this contention because federal, not state, standing criteria were determinative in federal courts.\textsuperscript{47} The court held that this rule applied even though the suit was initially brought in state court and then removed to federal court.\textsuperscript{48}

The Fifth Circuit held that the right of NIH as a federal agency to remove the suit to federal court was an absolute right.\textsuperscript{49} If a case has been transferred pursuant to federal statute, then the court is bound by Article III to dismiss a claim against a federal defendant if the plaintiff cannot satisfy Article III standing, even if the plaintiff previously had standing in state court.\textsuperscript{50}

\begin{itemize}
\item \textsuperscript{42} \textit{Id.} The particular species of macaque in this case is not listed as an endangered or threatened species. 50 C.F.R. § 17.11 (1989).
\item \textsuperscript{43} \textit{Id.} at 1060-61.
\item \textsuperscript{44} \textit{Id.} (citing Sierra Club v. Morton, 405 U.S. 727, 739 (1972)).
\item \textsuperscript{45} \textit{Id.}
\item \textsuperscript{46} \textit{Id.}
\item \textsuperscript{47} \textit{Id.} (citing Phillips Petroleum Co. v. Shotts, 472 U.S. 797, 804 (1985)).
\item \textsuperscript{48} \textit{Primate Protection}, 895 F.2d at 1061.
\item \textsuperscript{49} \textit{Id.}
\item \textsuperscript{50} \textit{Id.} See also 28 U.S.C. § 1442(a)(1) (discussing the removal of cases by a federal defendant from state to federal courts). The court further found unsupportable the claim by IPPL that NIH could not remove pursuant to § 1442(a)(1) because NIH was a federal agency and not a federal officer. \textit{Id.} at 1061-62. The Fifth Circuit noted that it had previously held that a federal agency could remove a case against it from state to federal court. \textit{Id.} (citing Smith v. City of Pecayune, 795 F.2d 482, 485 (5th Cir. 1986)). Finally, the court held that IPPL failed on its claim that NIH did not hold an interest in the monkeys following the expiration of the prior court order giving NIH custody. \textit{Primate Protection}, 895 F.2d at 1062. The court stated that even if NIH did not have an interest in the monkeys, all that was required under Sec. 1442 was that the suit be brought against a federal agency or officer. However, NIH did hold sufficient possession, financial and research interest in the monkeys to remove the case to federal court, making NIH more than a "mere stakeholder." \textit{Id.} at 1062. The court noted: NIH funded IBR's original experimentation on the monkeys and, with the owner's consent, serves as the monkeys' keeper. More important, however, is that the planned euthanasia on the monkeys and accompanying research is in furtherance of NIH's statutory mission to conduct and fund biomedical research. Because the injunctive relief sought by the plaintiffs could interfere with NIH's operations, it is entitled to protect its legitimate interest in a federal forum.
\end{itemize}
Article III of the United States Constitution limits the jurisdiction of federal courts to "cases" and "controversies." It is out of this limitation that the doctrine of standing arose, which requires that a party have a "sufficient stake" in an otherwise justiciable controversy to obtain judicial resolution of that controversy.

In recent years, animal rights organizations have actively tested the position of federal courts on the issue of standing. Traditionally, Article III standing requires injury-in-fact and a showing that the claimed action is the cause of the injury and that the court is capable of redressing the injury upon a favorable decision. There has also been some expansion of the traditional standing criteria, and courts now recognize that the threat of immediate injury will satisfy the injury-in-fact requirement. Courts also recognize non-economic injuries, including those affecting environmental and conservational interests. Aside from the limited expansion of the Article III standing doctrine, a party may also bring suit if a claimed interest lies within the federal court's jurisdiction.

Primate Protection, 895 F.2d at 1062. The court then vacated the district court's preliminary injunction order and dismissed the case. The holding involving removal of the case from state to federal court was appealed, and the United States Supreme Court has granted a writ of certiorari on the issue. International Primate Protection League v. Administrators of the Tulane Educational Fund, 895 F.2d 1056 (5th Cir. 1990), cert. granted, 59 U.S.L.W. 3391, (U.S. Nov. 26, 1990) (No. 90-89).


52. BLACK'S LAW DICTIONARY 1260 (5th ed. 1979) (citing Sierra Club v. Morton, 405 U.S. 727, 731-32 (1972)). One court described the standing doctrine as follows:

The legal requirement that one must have "standing" in order to bring an action is designed to assure that the parties to the suit have such a stake in the outcome of the litigation that the Court will have an actual "case" or "controversy" before it, as required by Article III of the United States Constitution. The standing requirement, then, is an offshoot of the Article III case or controversy rule.


53. International Primate Protection League v. Institute for Behavioral Research, Inc., 799 F.2d 934 (4th Cir. 1986) (see infra notes 141-49 and accompanying text). See also Japan Whaling Ass'n v. American Cetacean Society, 478 U.S. 221, 230-31 (1986) (holding that wildlife conservation groups had standing to prevent the further killing of whales pursuant to a federal statute); Animal Welfare Institute v. Kreps, 561 F.2d 1002, 1006 (D.C. Cir. 1977) (stating that environmental groups had standing to stop the slaughter of baby fur seals under both traditional standing authority and federal statutory authority); American Horse Protection Ass'n, Inc. v. Frizzell, 403 F. Supp. 1206, 1213-15 (D. Nev. 1975) (finding that animal rights organization had standing due to injury-in-fact and statutory authority to seek to enjoin the roundup of wild horses on federal lands).

54. See infra notes 59-216 and accompanying text.

55. See infra notes 153-63 and accompanying text.

56. See infra notes 74-96 and 129-38 and accompanying text.
within the "zone of interest" sought to be protected by law, but this final requirement is grounded in federal statutory authority rather than in Article III authority.

STANDING: THE TRADITIONAL REQUIREMENTS

There are two traditional requirements for standing that have been developed and consistently followed by the federal courts. First, the party must suffer injury-in-fact. Second, there must be a causal connection between the alleged harmful act and the resulting injury which is "likely to be redressed by a favorable decision."

INJURY-IN-FACT

The injury-in-fact prong of Article III standing finds firm footing in federal case law. In 1962, the United States Supreme Court held in Baker v. Carr that a group of Tennessee residents had standing to bring suit challenging a state law which established voter representation in both the state house and senate. The residents, members of a disproportionately represented area, claimed that the Tennessee law debased their voting power. The Supreme Court stated that the residents had "alleged such a personal stake in the outcome of the controversy as to assure [the] concrete adverseness" required pursuant to Article III. The residents had, therefore, asserted a direct and adequate interest in preserving the effectiveness

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57. Animal Welfare Institute, 561 F.2d at 1005; American Horse Protection Ass'n, 403 F. Supp. 1206, 1214-15 (holding that animal rights organizations had standing under the zone on interests sought to protected under federal law). See also Note, International Primate Protection League v. Institute for Behavioral Research: The Standing of Animal Protection Organizations under the Animal Welfare Act, 4 J. OF CONTEMP. HEALTH LAW AND POL'Y 469, 475 (1988) (discussing the distinctions federal courts have drawn between cases involving animal rights groups which attempt to satisfy standing by arguing that standing was conferred by statute).
58. Kreps, 561 F.2d at 1005. See also Whaling Ass'n, 478 U.S. 261 (wildlife conservation groups had standing under the Administrative Procedure Act to bring action to federal court). For a lengthy discussion on providing standing to animal rights organizations under a theory of public nuisance, see Comment, Creating a Private Cause of Action Against Abusive Animal Research, 134 U. PA. L. REV. 399, 421-32 (1986). See also comment, The Use of Animals in Medical Research and Testing: Does the Tail Wag the Dog?, 14 OHIO N.U.L. REV. 87, 97-98 (1987) (also discussing the public nuisance cause of action).
62. Id. at 192-93 (challenging the Public Acts of Tennessee, c. 122 (1901) (current version TENN. CODE ANN. §§ 3-1-101 to -107 (1985))).
64. Id. at 204.
of their voting power.\textsuperscript{65}

Ten years later, in \textit{Association of Data Processing Service Organizations, Inc. v. Camp},\textsuperscript{66} the Court held that a controversy existed because the complaining party proved that the challenged action gave rise to economic injury.\textsuperscript{67} The plaintiffs, several data processing services organizations, brought suit against the Comptroller of the Currency.\textsuperscript{68} The Comptroller had decided to allow national banks to provide data processing services and many of the potential customers for the banks were already clients of the data processing organizations.\textsuperscript{69} The United States District Court for the District of Minnesota, with the United States Court of Appeals for the Eighth Circuit affirming, held that the organizations lacked standing to bring the action and dismissed the case.\textsuperscript{70}

The United States Supreme Court reversed, finding that the organizations did have standing because they suffered economic injury from the Comptroller's decision.\textsuperscript{71} The injury consisted of the loss of future business and profits because of participation by the banks in the data processing industry.\textsuperscript{72} This injury, the Court stated, created the case or controversy needed to enable Article III judicial review.\textsuperscript{73}

One year after the decision in \textit{Data Processing}, a sharply divided Court denied standing to an environmental organization in \textit{Sierra Club v. Morton}.\textsuperscript{74} In a four-to-three decision, the Court held that the Sierra Club did not have standing under the Administrative Procedure Act\textsuperscript{75} or Article III to enjoin the development of a ski resort in the Mineral King Valley of the Sequoia National Forest.\textsuperscript{76} The court based its opinion on the failure of the Sierra Club to show that it or its individual members had suffered injury-in-fact from the proposed development of Mineral King Valley.\textsuperscript{77}

Justice Stewart, writing for the majority in \textit{Sierra Club}, re-stated the requirement that a party not relying on specific statutory stand-

\textsuperscript{65} Id. at 208 (citing Coleman v. Miller, 307 U.S. 433, 438 (1939)). \textit{See also} Hunt v. Washington Apple Advertising Comm'n, 432 U.S. 333, 345 (1977) (noting the rule in \textit{Baker v. Carr}).

\textsuperscript{66} 397 U.S. 150 (1970).

\textsuperscript{67} Id. at 152.

\textsuperscript{68} Id. at 151.

\textsuperscript{69} Id. at 151.

\textsuperscript{70} Id.

\textsuperscript{71} Id. at 158, 152.

\textsuperscript{72} Id. at 152.

\textsuperscript{73} Id. at 151-52.

\textsuperscript{74} 405 U.S. 727 (1971).

\textsuperscript{75} 5 U.S.C. §§ 701-06 (1988).

\textsuperscript{76} \textit{Sierra Club}, 405 U.S. at 740-41. Justices Powell and Rehnquist did not take part in this case. \textit{Id.} at 727.

\textsuperscript{77} Id. at 735.
ing must allege a "personal stake" in the outcome of the case. This would ensure that "the dispute sought to be adjudicated will be presented in an adversary context and in a form historically viewed as capable of judicial resolution." 

While the Court announced that some injury-in-fact must be asserted to create standing, non-economic interests such as "aesthetic and environmental well-being" can be a cause for action and can be redressed as readily as economic interests. This expansion of "interest" is important because it broadens the type of interest a party can claim as being injured. However, the Sierra Club did not satisfy the broadened injury-in-fact test. The Court indicated that the Club could cure its standing defect by amending its complaint in district court to allege injury to individual members.

The majority held that the attempt of the Sierra Club to establish standing under the theory of a public or special interest was misguided. The Club had asserted that standing could be supported by the organization's longstanding commitment to environmental and conservational matters, as well as the club's purpose of being "representative of the public." The Court restated that a specific injury, either economic or non-economic, must be alleged and evidenced before a case will be given judicial review. Once this requirement is satisfied, the complainant may then also argue the public interest to further his or her claim.

[If a 'special interest' in this subject were enough to entitle the Sierra Club to commence this litigation, there would appear to be no objective basis upon which to disallow a suit by any other bona fide 'special interest' organization, however small or short-lived. And if any group with a bona fide 'spe-
REPRESENTATIONAL STANDING

Cial interest' could initiate such litigation, it is difficult to perceive why any individual citizen with the same bona fide special interest would not also be entitled to do so.88

The "special interest" theory has been the basis of many arguments in which the party bringing suit has little else in his or her favor to satisfy the injury-in-fact requirement.89 While the Court in Sierra Club stated that a special interest by itself could not establish standing, the use of such an argument with proof of injury-in-fact to that special interest would buttress a complainant's standing.90 For example, a Sierra Club member living in Mineral King Valley would suffer injury-in-fact to his aesthetic, conservational, and recreational interests in the Valley from the decision of the Forest Service to permit development of a ski resort.91

Justice Douglas submitted a lengthy dissent in Sierra Club, arguing that inanimate or non-human objects should be protected through legal guardianship and representation by interested organizations such as environmental groups.92 Justice Douglas argued:

The critical question of 'standing' would be simplified and also put neatly in focus if we fashioned a federal rule that allowed environmental issues to be litigated before federal agencies or federal courts in the name of the inanimate object about to be despoiled, defaced, or invaded by roads and bulldozers and where injury is the subject of public outrage. Contemporary public concern for protecting the nature's ecological equilibrium should lead to the conferral of standing upon environmental objects to sue for their own preservation.93

Justice Douglas also pointed out the instances in which inanimate objects have been conferred standing by courts for purposes of litigation, such as marine vessels94 and corporations.95 Justice Douglas took this notion one step further to include the environment,

88. Id. at 739-40.
89. See infra notes 97-128 and accompanying text.
90. Sierra Club, 405 U.S. at 738-40.
91. Id. at 734-40.
92. Id. at 741 (Douglas, J., dissenting).
93. Id. at 741-42 (Douglas, J., dissenting). See also Brotman, Building a Resistance, Chicago Tribune, Nov. 2, 1990, at 1 (noting the claims by animal rights groups that "[a]nimals are not here for our use or exploitation"); Burke, Triple Toe Loop, ATLANTIC MONTHLY, Mar. 1989, at 73 (citing the dissenting opinion by Justice Douglas).
94. Sierra Club, 405 U.S. at 742 (Douglas, J., dissenting). Tucker v. Alexandroff, 183 U.S. 424, 438 (1902) (finding that once a ship is removed from dry-dock and has set sail upon the seas, "she acquires a personality of her own"); The Gylfe v. The Trujillo, 209 F.2d 386, 387 (2nd Cir. 1954) (permitting a vessel to counterclaim in its own name).
95. Sierra Club, 405 U.S. at 742 (Douglas, J., dissenting). See Reid v. Barry, 93 Fla. 849, 112 So. 846 (1927) (discussing the notion that standing has been conferred upon corporations).
which in turn impacts the entire ecosystem, including wildlife and humans.96

The "special interest" theory spoken of in Sierra Club failed to win standing for a suit brought by a group of indigents and a welfare rights organization ("welfare groups") in Simon v. Eastern Kentucky Welfare Rights Organization.97 The welfare groups had brought an action against the Commissioner of the Internal Revenue Service and the Secretary of the Treasury on the grounds that an Internal Revenue Service Ruling violated the Internal Revenue Code of 1954 and the Administrative Procedure Act.98 The Ruling gave favorable tax incentives to nonprofit hospitals which offered indigents emergency-room services only.99 However, the welfare groups and several indigents claimed that various forms of treatment were not supplied to indigent patients, and that providing tax benefits to the hospitals in spite of these refusals resulted in "encouraging" the hospitals to continue to refuse medical assistance to the indigent and poor.100 The United States District Court for the District of Columbia and the Court of Appeals for the District of Columbia both found that the welfare groups had standing to bring suit.101 The Supreme Court reversed, directing the district court to dismiss the case.102

The Supreme Court in Simon first held that a case or controversy must be presented which shows that an injury will be sustained by a claiming party, and "[a]bsent such a showing, exercise of its power by a federal court would be gratuitous and thus inconsistent with the Art. III limitation."103 The Court then stated that only those individuals who actually sustained an injury could bring suit and that the welfare groups as representatives of injured individuals could not maintain the action based only upon the special interest of the welfare groups in the health care problems of the poor.104 Also critical to the Court's ruling against the welfare groups was the fact that the injury alleged in Simon could not fairly be traced back to the actions of the federal agencies.105 The Court indicated that the real action would lie against a third party, namely the hospital which

96. Sierra Club, 405 U.S. at 743 (Douglas, J., dissenting). Justice Blackman, with whom Justice Brennan joined, wrote a separate dissenting opinion in Sierra Club. Id. at 755 (Blackmun, J., dissenting).
98. Id. at 28.
99. Id.
100. Id. at 33.
101. Id. at 34-35.
102. Id. at 46.
103. Id. at 38.
104. Id. at 40.
105. Id. at 41-42.
had denied the services to the indigents.\textsuperscript{106}

The United States Court of Appeals for the Ninth Circuit addressed the "special interest" issue in \textit{Animal Lovers Volunteer Association, Inc.,} (\textit{ALVA}), v. \textit{Weinberger.}\textsuperscript{107} In \textit{ALVA}, an animal rights group sought to enjoin the United States Navy from exterminating goats located on a federally owned and managed island.\textsuperscript{108} The Navy was planning to shoot the wild goats because the animals were a threat to other endangered wildlife and plants on approximately one third of the island.\textsuperscript{109}

Prior to this action, two other suits had been brought by the Fund for Animals ("Fund") to enjoin the eradication plans of the government.\textsuperscript{110} The Fund and the Navy had negotiated a deal which would permit the Fund to catch the goats alive and to transport them elsewhere.\textsuperscript{111} Subsequent efforts of the Fund were not completely successful, and the Navy re-issued its plans to shoot the goats.\textsuperscript{112} The Animal Lovers Volunteer Association, Inc., ("Animal Lovers") then commenced its action to enjoin the Navy from killing the goats.\textsuperscript{113} The United States District Court for the Central District of California granted summary judgment for the Navy.\textsuperscript{114}

The decision was affirmed by the Ninth Circuit on the basis that Animal Lovers lacked standing.\textsuperscript{115} Neither the organization nor its members would suffer any personal, aesthetic, or ecological injury from the action by the Navy.\textsuperscript{116} The court also held that the organization should not be allowed to bring suit merely because the organization had an interest in the situation.\textsuperscript{117} The Ninth Circuit further held that a claim of psychological injury would not bring the organization or its members within the zone of interest to support standing.\textsuperscript{118} None of the members had contact with the wildlife or the

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\textsuperscript{106} \textit{Id.} The hospital was not named in the suit which was then before the Court.

\textsuperscript{107} \textit{Id.} 765 F.2d 937 (9th Cir. 1985).

\textsuperscript{108} \textit{Id.} at 937.

\textsuperscript{109} \textit{Id.} at 938. \textit{See also} Society for Animal Rights, Inc. v. Schlesinger, 512 F.2d 915, 917 (D.C. Cir. 1975) (involving the extermination by the Department of Defense of blackbirds on two military bases and three neighboring counties due to threat to public welfare and grain and feedlot supplies of farmers).

\textsuperscript{110} \textit{ALVA}, 765 F.2d at 938.

\textsuperscript{111} \textit{Id.}

\textsuperscript{112} \textit{Id.}

\textsuperscript{113} \textit{Id.} at 937-38.

\textsuperscript{114} \textit{Id.}

\textsuperscript{115} \textit{Id.} at 939.

\textsuperscript{116} \textit{Id.} at 938.

\textsuperscript{117} \textit{Id.} (citing \textit{California v. Watt}, 683 F.2d 1253, 1270 (9th Cir. 1982), rev'd on other grounds \textit{sub nom} \textit{Secretary of the Interior v. California}, 464 U.S. 312 (1984)).

\textsuperscript{118} \textit{ALVA}, 765 F.2d at 938.
island habitat where the goats were located.\textsuperscript{119} Finally, the court held that the interest claimed by Animal Lovers was not “distinct from the interest held by the public at large.”\textsuperscript{1120} The opinion of the court, in dicta, gave greater weight to one factor than had the Supreme Court in \textit{Sierra Club}.\textsuperscript{121} That factor as stated by the Ninth Circuit was that Animal Lovers lacked the “longevity and indicia of commitment” in its cause that other organizations possessed to establish standing.\textsuperscript{122} However, the court in \textit{ALVA} did state that an organizational stake or a member’s personal interest is additionally required to support standing.\textsuperscript{123}

Also addressing the “public at large” aspect was \textit{Valley Forge Christian College v. Americans United for Separation of Church and State, Inc.}\textsuperscript{124} The organization, Americans United, was dedicated to preserving separation of church and state, and challenged a decision by the Secretary of Health, Education, and Welfare (“HEW”) which permitted the transfer of surplus federal property to a religious college.\textsuperscript{125} The organization claimed that as taxpayers, the transfer would involve an unfair and unconstitutional use of their tax dollars because the Secretary would be conferring a benefit on a religious entity, an action which Americans United alleged violated the establishment clause of the first amendment.\textsuperscript{126} The United States Supreme Court reversed a finding of standing by the United States Court of Appeals for the Third Circuit and held in part that asserting an injury as a taxpayer does not sufficiently remove the organization or its members from the public at large.\textsuperscript{127} The Court stated it is still necessary for a plaintiff to claim a legal, concrete interest.\textsuperscript{128}

The Supreme Court in \textit{Valley Forge} relied upon \textit{United States v. Students Challenging Regulatory Agency Procedures (SCRAP)},\textsuperscript{129} in its opinion.\textsuperscript{130} The issue in \textit{SCRAP} involved a suit brought by various environmental groups under the authority of section 10 of the Ad-

\begin{itemize}
\item \textsuperscript{119} \textit{Id.}
\item \textsuperscript{120} \textit{Id.} at 939 (citing \textit{Sierra Club}, 405 U.S. at 736-41).
\item \textsuperscript{121} \textit{ALVA}, 765 F.2d at 939.
\item \textsuperscript{122} \textit{Id.}
\item \textsuperscript{123} \textit{Id.}
\item \textsuperscript{124} 454 U.S. 464 (1982).
\item \textsuperscript{125} \textit{Id.} at 469.
\item \textsuperscript{126} \textit{Id.} at 469 \& n.8.
\item \textsuperscript{127} \textit{Id.} at 476-82.
\item \textsuperscript{128} \textit{Id.} at 474-75. The opinion states that “the Court has refrained from adjudicating ‘abstract questions of wide public significance’ which amount to ‘generalized grievances,’ pervasively shared and most appropriately addressed in the representative branches.” \textit{Id.} at 475.
\item \textsuperscript{129} 412 U.S. 699 (1973).
\item \textsuperscript{130} \textit{Valley Forge}, 454 U.S. at 473.
\end{itemize}
The environmental groups alleged that the permission granted by the Interstate Commerce Commission to several railroad companies to implement a railroad surcharge on freight rates would cause the groups economic, aesthetic and recreational injury. The environmental groups claimed that the surcharge would "discourage the use of 'recyclable' materials, and promote the use of raw materials that compete with scrap," which would result in the continued and unwarranted harvesting of timber and minerals. The injuries alleged were that the environmental groups would have to pay higher prices for finished goods and that the continued activities involving timber and minerals would disturb the natural habitat in which the environmental groups recreated.

The Supreme Court in *SCARP* noted that the *Sierra Club* ruling recognized that an injury other than an economic one may be successful to support standing if the injury is proven in fact. The environmental groups claimed they would suffer non-economic as well as economic injury from greater uses of raw materials and destruction of natural habitats. The Court stated that the injury alleged created standing as applied to the circumstances of the case. However, the Court, while finding that the environmental groups had standing to sue, held that the United States District Court for the District of Columbia had erred in ordering a preliminary injunction because the district court lacked jurisdiction.

The United States Court of Appeals for the Fourth Circuit analyzed Article III standing for animal rights groups in *International Primate Protection League v. Institute for Behavioral Research, Inc.* ("*International Primate*"). The case of *International Primate* was an earlier decision involving the monkeys at issue in *Primate Protection*. The Fourth Circuit in *International Primate* held that Inter-

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131. *SCARP*, 412 U.S. at 684-85. See also 5 U.S.C. § 702 (1988). This section provides:
A person suffering legal wrong because of agency action or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof.

*Id.*

132. *Id.* at 678, 675-76.
133. *Id.* at 676.
134. *Id.*
135. *Id.* at 686. See also *Sierra Club*, 405 U.S. at 734.
137. *Id.*
138. *Id.* at 690.
139. 799 F.2d 934 (4th Cir. 1986).
140. See supra notes 9-50 and accompanying text. By the time *International Primate* was instituted, many of the animals had deteriorated in other areas of physical health unrelated to the experimentation conducted by Dr. Taub. Telephone interview with Dr. Peter J. Gerone, Director of the Delta Regional Primate Center, Tulane Uni-
national Primate Protection League and other plaintiffs ("IPPL") lacked standing because no actual or threatened injury was proven.\textsuperscript{141} In this case, part of the IPPL claim was that, as federal taxpayers, their tax dollars were funding the research of the Institute of Behavioral Research, Inc. ("IBR").\textsuperscript{142} IPPL stated this taxpayer position substantiated the claim that IPPL suffered actual injury because the claim alleged IBR was in violation of animal cruelty laws.\textsuperscript{143} However, the court stated that the "payment of taxes does not purchase authority to enforce regulatory restrictions."\textsuperscript{144}

The Fourth Circuit also rejected the second IPPL claim that an injury to their personal relationship with the monkeys would be effected if the court ordered the National Institutes of Health, ("NIH"), then in custody of the monkeys, to return the monkeys to IBR.\textsuperscript{145} The court referred to \textit{ALVA} in holding that standing could not be supported because IPPL was unable to carry on a relationship due to lack of access to the monkeys.\textsuperscript{146} The key phrasing that the Fourth Circuit relied on from \textit{ALVA} was that the alleged injury was "abstract at best... and insufficient to remove [the complainant] from the category of concerned bystander."\textsuperscript{147}

The federal courts have established through prior case law the

\textsuperscript{141} \textit{International Primate}, 799 F.2d at 937.
\textsuperscript{142} Id.
\textsuperscript{143} Id. For a discussion of two controversial animal cruelty laws see Note, Constitutional Limits on the Regulation of Laboratory Animal Research, 98 YALE L.J. 369, 369 (1988).
\textsuperscript{145} \textit{International Primate}, 799 F.2d at 938.
\textsuperscript{146} Id. But see Masonis, \textit{The Improved Standards for Laboratory Animals Act and the Proposed Regulations: A Glimmer of Hope in the Battle Against Abusive Animal Research}, 16 BOSTON C. ENVTl. AFF. L. REV. 149, 170-71 (1988) (arguing a personal relationship had been established by Alex Pacheco sufficient to give rise to standing).
\textsuperscript{147} \textit{International Primate}, 799 F.2d at 938 (citing \textit{ALVA}, 765 F.2d at 939). \textit{Cf.} Jones v. Beame, 45 N.Y.2d 402, 469, 380 N.E.2d 277, 280, 408 N.Y.S.2d 449, 452 (1978) (stating that the plaintiffs "probably" did have standing, although the court held that the legislature was the proper forum for the issue then before the court). Perhaps representative of the futility felt by animal rights groups in gaining access to the courts to "free" animals used in biomedical research are those instances in which the groups have taken it upon themselves to liberate laboratory animals. The Daily Sentinel, Jan. 2, 1991, at 3A. The Animal Liberation Front, a militant animals rights group, rung in the New Year for 1991 by breaking into a research facility in Chicago and setting loose rabbits, rats and guinea pigs. A statement issued by the groups claimed that "[t]hese so-called scientists are lucky they only lost their animal captives and are not behind
requirement that the plaintiff must allege an injury-in-fact in order to succeed in having the court review the claim.\textsuperscript{148} This test has been broadened to include not only alleged economic injuries, but also non-economic injuries, such as to aesthetic, conservational, and environmental interests.\textsuperscript{149} While there has been limited expansion of the injury-in-fact test, a complaining party must still satisfy the causal relationship prong of the Article III standing doctrine.\textsuperscript{150}

\textbf{CAUSAL CONNECTION}

The second criterion to be satisfied in an Article III standing case is the "causal connection" requirement. This test requires that the complaining party show that the actions of the defendant will directly result in injury to the complaining party, and that the court's decision to void or enjoin the defendant's action will remove the injury upon which the suit was brought.\textsuperscript{151} However, the court must determine that the connection between the act and injury is more than mere speculation.\textsuperscript{152}

One example of a causal connection case is \textit{Duke Power Co. v. Carolina Environmental Study Group, Inc.}\textsuperscript{153} Environmental groups, a labor union, and certain residents (hereinafter collectively referred to as "study group") brought suit against the Nuclear Regulatory Commission and a privately owned enterprise, Duke Power Company.\textsuperscript{154} The study group alleged that the Price-Anderson Act,\textsuperscript{155} which imposed liability limitations in the event of a nuclear power disaster, violated the due process clause of the fifth amendment.\textsuperscript{156} The Supreme Court upheld a finding by the United States District Court for the District of Columbia that the study group had

bars . . . Theirs are not deeds of science or medicine, but of shocking sadistic insanity.”
\textit{Id.}

\textsuperscript{148} See supra notes 61-147 and accompanying text.
\textsuperscript{149} See supra notes 78-96 and 130-38 and accompanying text.
\textsuperscript{150} See infra notes 151-214 and accompanying text.
\textsuperscript{151} \textit{Simon}, 426 U.S. at 38. See also \textit{Warth v. Seldin}, 422 U.S. 490, 504 (1970) (holding that there was no proof that the claimed action, a town zoning ordinance which allegedly excluded low to moderate income citizens from residing in the town, was the cause of the injury, or that the party claiming injury would benefit by a favorable decision of the court to enjoin the ordinance).
\textsuperscript{152} \textit{Simon}, 426 U.S. at 42. For further discussion on the causal connection test, as well as the injury-in-fact and zone of interests test, see Comment, \textit{Cetacean Rights Under Human Laws}, 21 SAN DIEGO L. REV. 911, 911-40 (1984).
\textsuperscript{153} 438 U.S. 59 (1978).
\textsuperscript{154} Id. at 67.
\textsuperscript{156} \textit{Duke Power}, 438 U.S. at 67-68. Section 2012(i) of the United States Code provides that the purposes of the Atomic Energy Act, which was amended by the Rice-Anderson Act, are both to "protect the public and . . . encourage the development of the atomic energy industry." 42 U.S.C. § 2012(i) (1988).
standing based on the "immediate" adverse affects that might potentially be received from nuclear thermal and non-natural radiation pollution generated by Duke Power Company power plants. The Court not only found that a causal connection existed, but also held that the threat of "immediate" injury satisfied the Article III standing doctrine.

The study had argued that the liability limitation of the Price-Anderson Act was the reason for the continued involvement of Duke Power Company in the nuclear energy industry. The Court held the district court had not made a clear error in finding there existed a causal connection between the limited liability incentives of the Price-Anderson Act to private industry and the injury sustained by the study group. The Court also held that a decision granting the study group the relief requested, a preliminary injunction, would eliminate the claimed injury. While the court in Duke Power recognized standing in the study group based on injury-in-fact and the presence of a causal connection, it reversed the district court. The Supreme Court held that the Price-Anderson Act did not violate the equal protection provision within the due process clause of the fifth amendment because the limitation on liability was intentionally developed by Congress to create participation by private industry in the area of nuclear energy.

A causal connection between government action and an alleged injury was also proven in Animal Welfare Institute v. Kreps. In Kreps, an environmental group sought to enjoin a federal agency moratorium waiver which permitted the importation of South African baby fur seal skins. The district court dismissed the suit, finding that Animal Welfare Institute ("AWI") lacked standing. The United States Court of Appeals for the District of Columbia reversed, finding that AWI did have standing because it alleged injury-in-fact, and that the action of the federal agency in waiving the ban on baby fur seal skin importation violated the Marine Mammal Protection Act.

158. Id. at 73-74.
159. Id. at 74-75.
160. Id. at 77.
161. Id. at 80-81. The court determined that "where a party champions his own rights, and where the injury alleged is a concrete and particularized one which will be prevented or redressed by the relief requested, the basic practical and prudential concerns underlying the standing doctrine are generally satisfied when the constitutional requisites are met." Id.
162. Id. at 94.
163. Id. at 93-94.
164. 561 F.2d 1002 (D.C. Cir. 1977).
165. Id. at 1004.
166. Id. at 1005.
of 1972 ("MMPA").\textsuperscript{167} AWI stated that some of its members would suffer injury to their aesthetic, recreational, educational, and scientific interests if the agency waived the moratorium on importation of baby fur seal skins.\textsuperscript{168} AWI alleged that the waiver would, in turn, lead to the possibility of issuing permits for importation of baby fur seal skins to the United States on the basis of the waiver if certain regulatory terms were met.\textsuperscript{169} Consequently, the killing of baby fur seals due to the issuance of a permit would impair the ability of AWI or its members to observe the seals in their natural setting off the Cape of South Africa.\textsuperscript{170}

The court held that since the MMPA was created expressly to preserve the interests of such groups as AWI, standing was statutorily established.\textsuperscript{171} The court also held that AWI satisfied the three traditional standing requirements: 1) AWI suffered injury-in-fact, including injury to "recreational, aesthetic, scientific and educational interests of their members;"\textsuperscript{172} 2) there existed a casual connection between the charged violation and the claimed injury;\textsuperscript{173} and finally, 3) the interest of AWI fell within the zone of interests intended to be protected under the MMPA.\textsuperscript{174}

A situation similar to that in Kreps arose in Japan Whaling Association v. American Cetacean Society.\textsuperscript{175} In that case the Supreme Court found that a causal connection existed between the failure of the Secretary of Commerce to certify to the President that Japan had exceeded the quota of whales permitted to be harvested under international laws, and the resulting injury to a wildlife organization's visual, recreational, and aesthetic enjoyment of the whales in their natural environment.\textsuperscript{176}

The case of Japan Whaling involved a decision by the International Whaling Commission to waive a five-year moratorium on the killing of sperm whales after extensive negotiations with Japan.\textsuperscript{177} This waiver permitted Japan to continue the whale harvesting.\textsuperscript{178} The Secretary of Commerce, pursuant to the Pelly Amendment to the Fisherman's Protective Act of 1967,\textsuperscript{179} was required to certify to

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\textsuperscript{167} Id. at 1006, 1014.
\textsuperscript{168} Id. at 1007.
\textsuperscript{169} Id. at 1004.
\textsuperscript{170} Id. at 1007.
\textsuperscript{171} Id. at 1006.
\textsuperscript{172} Id. at 1007-08.
\textsuperscript{173} Id. at 1009.
\textsuperscript{174} Id. at 1010.
\textsuperscript{175} 478 U.S. 221 (1986).
\textsuperscript{176} Id. at 227-28, 230-31 n.4.
\textsuperscript{177} Id. at 227-28.
\textsuperscript{178} Id.
\textsuperscript{179} Id. at 225 (citing 22 U.S.C. § 1978(a)(1) (1988)).
the President of the United States the noncompliance by member nations with the conservation program set forth in the International Convention for the Regulation of Whaling.\textsuperscript{180} If such certification was made, the President was then permitted under the Pelly Amendment to place discretionary economic sanctions on the offending nation.\textsuperscript{181} A subsequent law, the Packwood Amendment to the Magnuson Fishery Conservation and Management Act,\textsuperscript{182} mandates the imposition by the executive branch of economic sanctions when the Secretary certifies that a member nation has failed to comply with or “diminishes the effectiveness” of international fishery conservation programs.\textsuperscript{183}

The Secretary had failed to certify that Japan had exceeded the sperm whale quotas as established through the International Convention for the Regulation of Whaling and International Whaling Commission Schedules.\textsuperscript{184} The American Cetacean Society (“Society”) sought a court order to compel the Secretary to certify the violation to the President.\textsuperscript{185} The Society claimed to have standing to bring the action because it and its members suffered direct injury to their observation of whales in a natural habitat.\textsuperscript{186}

The Court found that the Administrative Procedure Act did provide standing for the Society, and that the Society had claimed sufficient injury to a non-economic interest.\textsuperscript{187} Specifically, the Society alleged an injury to its members’ whale watching and studying activities which would be adversely impacted by the continued whale harvesting.\textsuperscript{188} The court held that the decision by the Secretary constituted final agency action, and that the Society was sufficiently aggrieved by that action, as required under the Administrative Procedure Act.\textsuperscript{189} However, the Court concluded that neither the Pelly nor the Packwood Amendments required the Secretary to certify Japan’s noncompliance to the President under the circumstances of this case.\textsuperscript{190}

In \textit{Alaska Fish and Wildlife Federation Outdoor Council, Inc. v. Dunkle},\textsuperscript{191} the Alaska Fish and Wildlife Conservation Fund (“Con-
servation Fund") was found to have proven a causal connection between government action and an alleged injury.\textsuperscript{192} The Conservation Fund brought a suit against the United States Fish and Wildlife Service, challenging an agency agreement with Alaskan Natives.\textsuperscript{193} The agreement permitted the Natives to subsistence hunt migratory birds during the closed season.\textsuperscript{194} The United States District Court for the District of Alaska, without addressing the issue of standing, dismissed the case because the Service did not have the authority to restrict the subsistence taking of migratory birds by the Natives.\textsuperscript{195}

The United States Court of Appeals for the Ninth Circuit reversed on the grounds that the Conservation Fund had standing to bring suit because organizational members would suffer personal injury arising directly from the action of the Service in permitting the Natives to hunt the birds.\textsuperscript{196} The number of migratory birds in the habitat would be reduced through the hunting, thereby reducing the opportunity for photographing, watching, and scientifically studying the birds.\textsuperscript{197} This was significant evidence of a causal connection between the action of the Service and the injury suffered by the fund and its members.\textsuperscript{198} The court also found that the declaratory relief sought by the Conservation Fund would likely preclude any further injury.\textsuperscript{199}

The United States Court of Appeals for the Eighth Circuit held in \textit{Defenders of Wildlife, Friends of Animals, and Their Environment v. Hodel},\textsuperscript{200} that an environmental organization had statutory standing to enjoin a regulation issued by the Department of the Interior.\textsuperscript{201} The Interior Department had allocated funding for foreign projects and allowed for such projects to be commenced by certain agencies without consultation with the Secretary of the Interior concerning the impact the project would have on endangered or threatened wildlife or plants.\textsuperscript{202} Defenders of Wildlife and other groups brought suit to have the regulation reversed and to compel the agencies to consult with the Secretary pursuant to the Endangered Species Act.\textsuperscript{203}

\begin{itemize}
\item \textsuperscript{192} Id. at 937-38.
\item \textsuperscript{193} Id. at 936.
\item \textsuperscript{194} Id. at 935-36.
\item \textsuperscript{195} Id. at 935-37.
\item \textsuperscript{196} Id. at 935-38.
\item \textsuperscript{197} Id. at 937.
\item \textsuperscript{198} Id.
\item \textsuperscript{199} \textit{Id.} See also \textit{Animal Protection Institute of America v. Hodel}, 860 F.2d 920, 923 (9th Cir. 1988) (citing \textit{Dunkle}).
\item \textsuperscript{200} 851 F.2d 1035 (8th Cir. 1988).
\item \textsuperscript{201} Id. at 1038-44.
\item \textsuperscript{202} Id. at 1037.
\item \textsuperscript{203} Id. at 1037-38. See 16 U.S.C. § 1536(a)(2) (1988) (providing that any agency
Defenders of Wildlife alleged that they suffered injury-in-fact from the development projects that certain federal agencies had initiated abroad.\textsuperscript{204} One such project, Mahaweli in Sri Lanka, was being administered by the Agency for International Development.\textsuperscript{205} The area of the Mahaweli project contained eight endangered species which had previously been observed by a member of the environmental organization: “the Indian elephant, leopard, purple-faced langur, toque macaque, red-face malkoha, Bengal monitor, mugger crocodile, and python.”\textsuperscript{206} The United States District Court for the District of Minnesota had dismissed the case, but the Eighth Circuit reversed, holding that non-economic, aesthetic, and conservation interests asserted by Defenders of Wildlife were sufficient to support a showing of injury-in-fact.\textsuperscript{207} The court also held that the regulation permitting commencement of this and similar projects was invalid under the Endangered Species Act\textsuperscript{208} and that the court’s reversal of the regulation would redress the claimed injury of Defenders of Wildlife.\textsuperscript{209}

Judge Bowman dissented in \textit{Friends of Animals} to the finding by the majority that Defenders of Wildlife had standing to bring suit.\textsuperscript{210} He did not directly contest that injury-in-fact might exist to the conservation and aesthetic interests of the organization.\textsuperscript{211} Rather, his contention was that Defenders of Wildlife failed to show a causal connection between the governmental action and any alleged injury.\textsuperscript{212}

\textsuperscript{204} \textit{Id.} at 1040-41.

\textsuperscript{205} \textit{Id.} at 1041.

\textsuperscript{206} \textit{Id.}

\textsuperscript{207} \textit{Id.} at 1036-41. The Eighth Circuit also reiterated the rule that “threatened injury may constitute an injury in fact.” \textit{Id.} at 1039. \textit{See supra} notes 153-63 and accompanying text.


\textsuperscript{209} \textit{Friends of Animals}, 851 F.2d at 1041-44. This case was remanded to the district court, which then granted summary judgment for the Defenders of Wildlife. Defenders of Wildlife, Friends of Animals and Their Environment v. Lujan, No. 89-5192, slip op. (8th Cir. Aug. 10, 1990). On appeal, the Eighth Circuit affirmed the district court’s summary judgment and the recognition of standing for the Defenders of Wildlife. \textit{Id.}, slip op. at 10.

\textsuperscript{210} \textit{Friends of Animals}, 851 F.2d at 1044-45.

\textsuperscript{211} \textit{Id.}

\textsuperscript{212} \textit{Id.} at 1044. The dissenting opinion states in part:

\textquote{Plaintiffs therefore must show that their alleged injury (increased likelihood of diminished opportunities to enjoy viewing endangered species in foreign lands) is traceable to the defendant’s allegedly unlawful conduct and that the relief requested will redress the injury . . .
Because Judge Bowman believed that the Defenders of Wildlife had failed to prove a causal connection, he also believed that any re- dress the court might order would not "effectively address" the claimed injury.\textsuperscript{213} Even if the court required that the regulation be reversed and that the agency be compelled to consult with the Secretary, the agency could still proceed under its own discretion pursuant to the Endangered Species Act with its international partners on foreign projects.\textsuperscript{214}

As these cases show, the federal courts not only look to see if injury-in-fact has been proven or threatened, but whether there exists a causal connection between the governmental action and claimed injury. In conjunction with such a finding, the courts assess whether a favorable decision for the complaining party is capable of redressing the injury.\textsuperscript{215} However, satisfying the traditional requirements for standing pursuant to Article III is not the only method by which a party may achieve standing.\textsuperscript{216} Standing can also be conferred on individuals or groups by legislation.

**STANDING CREATED PURSUANT TO STATUTE — THE ZONE OF INTERESTS TEST**

A third test applied in determining whether the doctrine of standing has been satisfied is the zone of interests test.\textsuperscript{217} This test requires that "the interest sought to be protected by the complainant is arguably within the zone of interests to be protected or regulated by the statute. . . .\textsuperscript{218} The zone of interests test refers to the legislative creation of protection, and therefore standing, for certain types of interests through state or federal statutes such as the Administrative Procedure Act or the Marine Mammal Protection Act.\textsuperscript{219}

Federal courts have been willing to find that standing does exist in certain parties pursuant to statute.\textsuperscript{220} The case of *Humane Society* . . . [I] believe that the purported casual link between the challenged regulation and any harm to endangered species in foreign lands is far too speculative, attenuated, and remote to support standing.

*Id.* at 1044.
\textsuperscript{213} *Id.*.
\textsuperscript{214} *Id.*
\textsuperscript{215} *Friends*, 851 F.2d at 1044.
\textsuperscript{216} *Data Processing*, 397 U.S. at 154.
\textsuperscript{217} *Hodel*, 851 F.2d at 1039.
\textsuperscript{218} *Data Processing*, 397 U.S. at 153.
\textsuperscript{219} See infra notes 220-41 and accompanying text.
\textsuperscript{220} See *Japan Whaling*, 478 U.S. at 330 n.4 (stating that a wildlife conservation group, which sought to protect whales, was an interest contemplated by federal legislation); *Kreps*, 561 F.2d at 1010 (finding that federal legislation was enacted to protect those interests held by an environmental group); *American Horse Protection Ass'n*,
of Rochester & Monroe County v. Lyng involved an action brought by a humane society and dairy farmers to enjoin a United States Department of Agriculture ("USDA") regulation requiring the hot-iron facial branding of cattle owned by farmers who participated in a USDA dairy termination program. The district court ordered a preliminary injunction on the basis that the hot-iron branding was arguably in violation of animal cruelty laws. The court also found that the humane society of Rochester and Monroe County and the farmers had standing to bring suit. The humane society was given express standing pursuant to state law to prosecute offenders. The dairy farmers also had standing because the practice of hot-iron facial branding carried out by the farmers pursuant to the USDA regulation would then subject the farmers to potential suits for animal cruelty. Similarly, the United States District Court for the District of Nevada has held that a nonprofit association had standing to bring suit to protect wild horses when the interest sought to be protected fell under the purview of both the Wild Horses and Burros: Protection, Management, and Control Act ("Wild Horses Act") and the National Environmental Policy Act. In American Horse Protection Association, Inc. v. Frizzell, the Association, which is dedicated to protecting wild horses, sought to enjoin the United States Bureau of Land Management from a planned roundup of wild horses located in Stone Cabin Valley of Nevada. Referring to Data Processing, the district court held that injury-in-fact was alleged because the Association claimed that its members, many of whom lived near the Valley and enjoyed watching the wildlife, would be affected by the roundup. The court further held that because the interests sought to be protected were within the zone of interests to be protected under both the Wild Horses Act and National Environmental Policy Act, the Association could challenge the agency action pursuant to the Admin-

Inc. v. Frizzell, 403 F. Supp. 1206, 1214-15 (D. Nev. 1975) (holding that an association, which existed to protect the lives of horses, had standing pursuant to federal statute).
222. Id. at 481-82.
223. Id. at 481.
224. Id. at 485.
225. Id.
226. Id.
228. 403 F. Supp. 1206.
229. Id. at 1208, 1214.
230. Id. at 1214.
As discussed above, the court in Kreps found that the interest of the Animal Welfare Institute in the visual enjoyment and study of baby fur seals along the South African Coast was within the zone of interests sought to be protected pursuant to the Marine Mammal Protection Act. Similarly, in Japan Whaling, the Court found standing in the wildlife conservation organizations because their interests fell within the zone of interests expressly protected under the Pelly and Packwood Fishery Conservation Amendments. In addition, the United States Court of Appeals for the Eighth Circuit in Friends of Animals found that Congress had eliminated the prudential limitations of Article III standing through the enactment of the Endangered Species Act, delineating a zone of interest under which the Defenders of Wildlife could bring suit because of the association's proclaimed interest in preserving endangered species.

Other courts have found statutory standing created for special interest groups. In State of California v. Watt, several environmental groups challenged a decision of the United States Department of the Interior to issue leases for oil drilling and extraction off the coast of California on the outer continental shelf. The groups, claiming injury to their members who lived, worked, and recreated in several areas involving the leases, were found by the United States Court of Appeals for the Ninth Circuit to have standing pursuant to the Administrative Procedure Act.

The court also held that standing for the environmental groups

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231. Id. at 1214-15. See 5 U.S.C. § 702 (1988), which provides that "A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof." Id. Even though the court found statutorily created standing for the Association, the request by the Association for an injunction was denied. American Horse, 403 F. Supp. at 1214-15, 1222. The court ruled the Bureau had not violated the Wild Horses Act, that there would not be a significant impact on the wildlife environment as a result of the roundup that would require the filing of an environmental impact statement, and that no abuse of discretion was made by the Bureau in its assessment that the valley was being overgrazed and that the wild horse herds had to be thinned out to preserve the Valley. Id. at 1218, 1220.

232. Kreps, 561 F.2d at 1010. See supra notes 164-74 and accompanying text.


234. Friends, 851 F.2d at 1039.

235. See Japan Whaling, 478 U.S. at 330 n.4 (stating a wildlife conservation group, sought to protect an interest which was contemplated by federal legislation); Friends, 851 F.2d at 1042-44 (holding that Congress intended for an environmental organization to find protection and redress under federal law); Kreps, 561 F.2d at 1010 (finding that federal legislation was enacted to protect those interests held by an environmental group).

236. 683 F.2d 1253 (1982).

237. Watt, 683 F.2d at 1256.

was created under the Coastal Zone Management Act because the "alleged injuries are within the 'zone of interests' to be protected" under the Act. Much of the court's rationale was based on the congressional scheme and history of the Act, which "recognize[s] a national interest in the effective management and protection of the coastal zone. . . ."

In summary, therefore, while a federal court will consider whether Article III standing requirements have been met, a court will also look beyond Article III to see if standing in a particular group or individual has been created by statute. Standing will be recognized by the federal courts if a group or individual can establish that its interest falls within the zone of interests intended by Congress to be protected under the statute.

ANALYSIS

PRIMATE PROTECTION — CONSISTENCY WITH FEDERAL CASE LAW

The opinion of the Fifth Circuit in International Primate Protection League v. Administrators of the Tulane Educational Fund ("Primate Protection") is consistent with prior federal case law. The court noted that Article III limits a court's review to cases in which there is alleged an actual or threatened injury. There must also exist a causal connection between the challenged action and the injury by which a favorable decision will be sufficient to redress the injury. The Fifth Circuit appropriately refused to recognize standing in the International Primate Protection League ("IPPL") and other animal rights groups because the plaintiffs failed to claim injury-in-fact. The only alternative for IPPL and animal rights groups who wish to be heard by federal courts in cases involving privately owned animals used in biomedical research is to lobby Congress to create legislation which will provide standing under the zone of interests

240. Watt, 683 F.2d at 1271.
241. Id. (quoting 16 U.S.C. § 1451(a) (1988)). While the Ninth Circuit's finding of standing rejected the district court's finding, this decision did not result in remand of the case because it did not affect the outcome of the case as decided by the district court. Watt, 683 F.2d at 1270.
242. See supra notes 217-41 and accompanying text.
243. Id.
244. 895 F.2d 1056 (5th Cir. 1990).
245. See supra notes 51-243 and accompanying text.
246. Primate Protection, 895 F.2d at 1058.
247. Id.
248. Id. at 1062.
It is no longer novel for a non-economic injury to be recognized by a court as an injury-in-fact under Article III. Cases such as Sierra Club v. Morton, United States v. Students Challenging Regulatory Agency Procedures (SCRAP), and Animal Welfare Institute v. Kreps have held that environmental and conservational injuries are worthy of judicial redress.

IPPL had argued that it would suffer injury to its aesthetic, conservational and environmental interest if National Institutes of Health ("NIH") put the monkeys to sleep. While this type of injury can pass constitutional muster, IPPL failed to prove by the evidence submitted that there was any injury. The requirement that the party seeking relief show evidence of a particularized injury is consistently required in federal courts. None of the named parties could prove that injury would be sustained if the monkeys were euthanized because none of the parties had access to the monkeys to cultivate a "relationship" which would be worthy of a judicial finding of injury. The monkeys were privately owned, and were held back from public contact. The only individual approaching a threshold finding of injury was Alex Pacheco, the founder of People for the Ethical Treatment of Animals ("PETA") and a past volunteer in the laboratory in Maryland where the monkeys had initially resided. But even this individual claim of standing could not succeed because Pacheco had not sustained a relationship with the monkeys after NIH acquired custody of the monkeys in 1981.
The holding in *Animal Lovers Volunteer Association, Inc.* ("ALVA") *v. Weinberger*262 was significantly relied upon by the courts in *International Primate*263 and *Primate Protection*.264 ALVA involved the extermination of goats by the United States Navy on an island owned by the Navy.265 Animal Lovers sought to enjoin the planned extermination.266 The United States Court of Appeals for the Ninth Circuit refused to find standing in Animal Lovers because the group could not show injury to any member's ecological or aesthetic surroundings.267 The goats were located on property owned by the Navy, and were, therefore, considered the private property of the Navy.268 The United States Court of Appeals for the Fourth Circuit in *International Primate* said that the issues in the case before the court and in ALVA were the same.269 An injury will not be found where the complaining party could not be in contact with the animal and, therefore, the party could "not claim the direct personal involvement necessary for standing."270 The United States Court of Appeals for the Fifth Circuit in *Primate Protection* expressly adopted this ruling.271

The Fifth Circuit in *Primate Protection* also correctly pointed out that the cases relied on by IPPL provided "scant support" for a claim of injury.272 The cases in which standing has been found for animal rights groups are those involving wild and untamed animals which are exposed to public contact and enjoyment.273 One case in particular is *Kreps*, wherein the United States Court of Appeals for the District of Columbia Circuit found that the complaining party, an organization whose members observed and studied baby fur seals, had standing to stop the waiver of a moratorium on the slaughter of

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265. *ALVA*, 765 F.2d at 938.
266. *Id.*
267. *Id.* at 938-39.
268. *Id.* at 939.
269. *International Primate*, 799 F.2d at 938.
270. *Id.*
272. *Id.* at 1059.
273. *Id.* at 1059. *See supra* notes 164-209 and accompanying text.
the seals.  

Therefore, courts have found that impairment of the group’s enjoyment of animals is a recognizable injury. However, the monkeys at issue in *Primate Protection* could not be categorized as wild animals accessible to the public for conservational, recreational or visual enjoyment.

As seen in *ALVA*, where wild goats on Navy property were held to be privately owned and inaccessible to the public, the court evidences continued adherence to the idea that private ownership is an impediment to the fulfillment of the standing doctrine by animal rights groups. The opinion of the United States Court of Appeals for the Ninth Circuit in *ALVA* is firmly based on the private ownership theory and protects against claimed injuries which are abstract at best, where no concrete injury may or can be alleged. The private ownership theory thus preserves the requirement that a party evidence a “personal stake” in the outcome, and that the relief requested will vindicate the claimed interest. The Supreme Court, referring to *Sierra Club*, reiterated this rule in *Simon v. Eastern Kentucky Welfare Rights Organization*, wherein the court held that “[o]ur decisions make clear that an organization’s abstract concern with a subject that could be affected by an adjudication does not substitute for the concrete injury required by Article III.”

The court in *Primate Protection* appropriately rejected the reliance by IPPL upon *Humane Society of Rochester & Monroe County v. Lyng*. In *Lyng*, the District Court for the Western District of New York held that New York state law, like the Louisiana law in *Primate Protection*, created standing for public humane officers to bring suits when animal cruelty is alleged. However, in *Primate Protection*, the Fifth Circuit noted that IPPL had failed to state in the complaint that any individual fit the description of an officer of the humane society. The case of *Primate Protection* is easily contrasted with *Lyng*, wherein one of the named parties in the complaint was the Rochester and Monroe County Humane Society.

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274. *Kreps*, 561 F.2d at 1004, 1007.
275. *Id.* at 1007.
276. *Id.* at 1005.
277. *ALVA*, 765 F.2d at 939.
278. *Id.*
281. *Id.* at 40.
283. *Id.* at 1060.
Additionally, in *Lyng*, dairy farmers joined the suit along with the Humane Society because the farmers would be subject to potential suits under the state animal cruelty laws if the farmers carried out regulations set forth by the USDA requiring hot-iron facial branding of their dairy cows.\(^\text{287}\) Finally, IPPL in *Primate Protection* could not bring suit under Louisiana animal cruelty laws because Louisiana specifically exempts from animal cruelty laws those actions taken for the purposes of medical research.\(^\text{288}\)

One point which the Fifth Circuit in *Primate Protection* did not stress, but which would have played a critical part in justifying the court's decision that standing did not exist for IPPL, was that the causal connection prong of the standing doctrine could not be satisfied.\(^\text{289}\) Even if the euthanasing of the monkeys had been permanently enjoined, IPPL would not personally benefit from court intervention.\(^\text{290}\) This conclusion is based on the fact that IPPL had no relationship with the monkeys which would give rise to an injury if NIH carried out its research plans.\(^\text{291}\) Thus, enjoining the government would not have redressed any injury to IPPL.\(^\text{292}\)

The Fifth Circuit in *Primate Protection* reviewed the contention by IPPL that it had a long standing, sincere commitment to the monkeys' interests.\(^\text{293}\) IPPL also claimed that it acted as advocates for the monkeys.\(^\text{294}\) However, the court appropriately noted neither claim could create standing under either Article III or in light of *Sierra Club*.\(^\text{295}\) The court declared that the commitment of IPPL was nothing more than a "special interest," and was "insufficient to dis-

\(^\text{287. Id. at 484.}\)
\(^\text{288. Primate Protection, 895 F.2d at 1060 n.4. See supra notes 35-36 and accompanying text.}\)
\(^\text{289. Primate Protection, 895 F.2d at 1058-61.}\)
\(^\text{290. See infra notes 291-92 and accompanying text. Courts traditionally require that the complaining party receive some personal benefit through relief granted by a court. See supra notes 151-74, 200-09 and accompanying text.}\)
\(^\text{291. Primate Protection, 895 F.2d at 1059-60.}\)
\(^\text{292. See supra notes 289-91 and accompanying text. The Supreme Court in *Valley Forge* had pointed out a similar causal connection defect in the claimant's challenge in that case. Valley Forge Christian College v. Americans United for Separation of Church and State, 454 U.S. 464, 480 n.17 (1982). Even if the Court enjoined the government's conveyance of surplus property to the religious college, in no way would that injunction have resulted in alleviating any recognizable and personal injury of Americans United. Id. The Supreme Court stated: "[R]espondents . . . would have encountered serious difficulty in establishing that they 'personally would benefit in a tangible way from the court's intervention.'" Id. (citing Warth v. Seldin, 422 U.S. 490, 508 (1975)).}\)
\(^\text{293. Primate Protection, 895 F.2d at 1060.}\)
\(^\text{294. Id. at 1060-61.}\)
\(^\text{295. See infra notes 296-97 and accompanying text. See also Primate Protection, 895 F.2d at 1060-61.}\)
In countering the IPPL assertion that the monkeys could not fight their own battles in court and that IPPL should be permitted to do so, the court correctly noted that:

The assumption that if respondents have no standing to sue, "no one would have standing, is not a reason to find standing." This view would convert standing into a requirement that must be observed only when satisfied. Moreover, we are unwilling to assume that injured parties are nonexistent simply because they have not joined respondents in their suit. The law of averages is not a substitute for standing.

The result of this rationale in *Primate Protection* was that the monkeys were left without a champion. Individuals who support a theory that animals have rights which should be legally recognized by the court also support the theory that human representation of animal interests is appropriate. Representation could be similar to traditional forms, like that of a trustee, guardian, or lawyer. Proponents state that just as infants and other incompetents can seek redress of claims through the court via third party representation, so can animals. The theory of human representation for animals is parallel to the human representation of the environment which Justice Douglas advocated in his dissenting opinion in *Sierra Club*. Commentators have also pointed to the language of the United States Court of Appeals for the District of Columbia Circuit in *Kreps*, which stated that the Marine Mammal Protection Act was created for the sole purpose of protecting animals and treating animals in a humane manner. The court found that this purpose lent weight to the notion that where certain animals are incapable of defending themselves in court, it would be "eminently logical" to confer standing upon groups specifically geared to the protection of animals.

However, the Fifth Circuit in *Primate Protection* was correct and prudent in its decision not to create standing where it did not exist. Indeed, if the court in *Primate Protection* had recognized standing for IPPL, it would have been a judicial usurpation of power out of a legitimate area of concern.

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296. *Id.* at 1060-61. See supra notes 74-91, 124-28 and accompanying quote and text.
298. *Id.*
299. *Id.*
300. *Primate Protection*, 895 F.2d at 1061.
302. *See supra* notes 92-96 and accompanying text.
303. *See supra* note 297 and accompanying text.
305. *See supra* note 297 and accompanying text.
properly belonging to the legislature.\textsuperscript{306}

**JUSTIFICATION OF ARTICLE III STANDING LIMITATIONS IN FEDERAL COURTS AND CONGRESSIONAL CREATION OF STANDING FOR ANIMAL RIGHTS GROUPS — A LEGISLATIVE QUESTION**

The United States Supreme Court and the federal courts have ruled that Article III is a limitation on the power of the courts to hear cases.\textsuperscript{307} The courts have emphasized that a particularized injury and a causal connection give substance to a party’s position that a claim can survive as a case or controversy.\textsuperscript{308} As noted earlier, the requirement that there exist a case or controversy assures the “concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions.”\textsuperscript{309} If the standing tests were left unfulfilled, there would be no end in sight to the number and type of claims which could be brought before the courts.\textsuperscript{310} This problem is recognized in a candid statement made by the court in *International Primate*:

To imply a cause of action in these plaintiffs might entail serious consequences. It might open the use of animals in biomedical research to the hazards and vicissitudes of courtroom litigation. It may draw judges into the supervision and regulation of laboratory research. It might unleash a spate of private lawsuits that would impede advances made by medical science in the alleviation of human suffering. To risk consequences of this magnitude in the absence of clear direction from the Congress would be ill-advised.\textsuperscript{311}

One commentator has noted that the primary reason why federal

\textsuperscript{306} See infra notes 307-36 and accompanying text. The Fourth Circuit in *International Primate* noted that judicial review of the claim by IPPL was precluded by an express congressional intent that private actions could not be sustained in the animal research context. *International Primate*, 799 F.2d at 940.

\textsuperscript{307} *Valley Forge*, 454 U.S. at 471. The Supreme Court in *Valley Forge* stated: Article III of the Constitution limits the “judicial power” of the United States to the resolution of “cases” and “controversies.” The constitutional power of federal courts cannot be defined, and indeed has no substance, without reference to the necessity “to adjudge the legal rights of litigants in actual controversies.”


\textsuperscript{309} *International Primate*, 799 F.2d at 935.

\textsuperscript{310} *Id.* Other courts have considered these same possibilities when faced with controversial standing issues. *See Valley Forge*, 454 U.S. at 489 (rejecting the “idea that the judicial power requires nothing more for its invocation than important issues and able litigants”).
courts have been reluctant to expand Article III standing in animal rights cases is that standing is a question for legislative resolution and not for courtroom debate. The Supreme Court has also steadfastly refused to hear cases where the complaint, alleging sufficient injury to support standing, presents "‘abstract questions of wide public significance’ which amount to ‘generalized grievances,’ pervasively shared and most appropriately addressed in the representative branches.”

It can be presumed that most members of the public do not want animals needlessly harmed or killed, because that public sentiment is the justification behind the adoption of animal cruelty acts like the one passed in Louisiana. But it can also be presumed that the public supports medical advancement through research involving animals because public opinion is reflected by biomedical research exemptions in various state laws. Therefore, if an animal rights group wishes to stop biomedical research involving animals, then the appropriate avenue for precluding such activities is through legislation and not through judicial creation of standing where standing does not exist.

The express exemption of biomedical research activities from the Louisiana animal cruelty law at issue in Primate Protection should

312. Note, International Primate Protection League v. Institute of Behavioral Research: The Standing of Animal Protection Organizations Under the Animal Welfare Act 4 J. OF CONTEMP. HEALTH LAW AND POL'Y 469, 477-78 (1988). See also Note, Constitutional Limits on the Regulation of Laboratory Animal Research, 98 YALE L.J. 369 (1988) (cautioning that state enactments may result in violations of the interstate commerce clause or that local ordinances may be subject to state preemption, and that to avoid such situations any legislation that will likely be effective in providing greater animal protection should be made compatible with federal legislation).

313. Valley Forge, 454 U.S. at 475 (citations omitted).

314. See LA. REV. STAT. ANN. § 14:102.1(C) (West 1986). One reporter told the story of a researcher who was publicly persecuted for his use of animals in medical experiments. Brotman, Building a Resistance, Chicago Tribune, Nov. 2, 1990, at 1. The researcher expressed a sincere commitment to treating those animals being used in a humane manner. Id. While he believes that his cause, the quest for understanding the mystery of how humans see, is justified, the experiments are emotionally difficult for him. "It ought to be hard," he stated. Id.

315. E.g., D.C. CODE ANN. § 22-812(b) (1989) (excluding scientific experiments from the animal cruelty law); KAN. STAT. ANN. § 21-4310(2)(b) (1988) (excluding bona fide experiments performed by recognized research facilities from animal cruelty law); WIS. STAT. ANN. § 948.02 (West 1982) (excluding bona fide animal research from state animal cruelty law).

316. Valley Forge, 454 U.S. at 473. The Court stated:

Were the federal courts merely publicly funded forums for the ventilation of public grievances or the refinement of jurisprudential understanding, the concept of "standing" would be quite unnecessary. But the "cases and controversies" language of Art. III forecloses the conversion of courts of the United States into judicial versions of college debating forums.

Id.
be accorded considerable weight.\textsuperscript{317} That exemption precludes biomedical research activities from falling within the zone of interests test which otherwise might have given IPPL standing.\textsuperscript{318} Simply stated, the Louisiana law does not provide protection for animals used in medical research.\textsuperscript{319} Therefore, IPPL did not state a claim within the zone of interests intended to be protected under state law.

IPPL failed to prove standing on similar grounds in \textit{International Primate}.\textsuperscript{320} There, the United States court of Appeals for the Fourth Circuit held that the interest alleged by IPPL was not sheltered by the Animal Welfare Act ("AWA").\textsuperscript{321} Part of the purpose of the AWA is to ensure that animals used in scientific research receive humane treatment.\textsuperscript{322} However, the Fourth Circuit stated that the AWA provided for exclusive enforcement by the United States Department of Agriculture, and that the legislation and its history evidenced a Congressional intention that independent biomedical research involving animals was not to be undermined because of the "hope that responsible primate research holds for the treatment and cure of humankind's most terrible afflictions."\textsuperscript{323} The court noted that animal research led to the polio vaccine, introduction of insulin, transplantation procedures, and cancer therapies.\textsuperscript{324} The Fourth Circuit also referred to an amicus curiae brief from several medical professionals who anticipated that animal research could lead to improved treatment and cures for diseases such as AIDS, multiple sclerosis, and Alzheimer's disease.\textsuperscript{325}

\textsuperscript{317}. See infra notes 318-19 and accompanying text.
\textsuperscript{318}. See supra notes 218-43 and accompanying text.
\textsuperscript{319}. See supra notes 35-36.
\textsuperscript{320}. \textit{International Primate}, 799 F.2d at 938-39.
\textsuperscript{321}. \textit{Id.} at 939. See supra notes 139-47 and accompanying text.
\textsuperscript{324}. \textit{International Primate}, 799 F.2d at 939-40.
\textsuperscript{325}. \textit{Id.} at 940. The research team which euthanized the monkeys involved in both \textit{Primate Protection} cases made a dramatic discovery. Bylinsky, \textit{The Inside Story on the Brain}, \textit{FORTUNE}, Dec. 3, 1990, at 100. They observed the astonishing capability of the brain to reorganize after a disabling technique had been employed, such as the severing of the sensory neurons to the monkeys' arms. \textit{Id.} In particular, the team noticed an increased sensitivity of the monkeys' faces to touch. \textit{Id.} Timothy Pons, an NIH neurobiologist on the team, stated that "[t]he fact that the brain is capable of that kind of reorganization implies that we may someday be able to operate on or send drugs into the brain of a human stroke victim that will open new territory of the cortex and
Even commentators sympathetic to the subject of animal rights have recognized the intended protection by the Animal Welfare Act of animal research and the tendency of the courts to defer to that congressional intent. As one commentator has noted, "Realizing that private enforcement of AWA's provisions is not a viable concept leads one back to legislation as the most practical and expedient means for obtaining increased protection of laboratory animals under AWA." The requirement that animal rights groups have legislative standing where Article III standing is lacking does not leave animals without protection. Groups have been shown to have standing under the Wild Horses and Burros: Protection, Management, and Control Act and the Marine Mammal Protection Act. For example, in Kreps, the court held that animal rights groups had standing pursuant to the Marine Mammal Protection Act to defend against the killing of baby fur seals. Similarly, in American Horse Protection Association, Inc. v. Frizzell, the court held that an animal rights organization had standing to seek protection for wild horses under the Wild Horses Act. In recognition of these cases, legislation is the only option available to animal rights groups similar to those in Primate Protection who lack Article III standing and who wish to restrict the use of animals in biomedical research. The legislative solution also preserves the proper role and balance of power between Congress and the courts.

It is difficult to ignore the important advances made in medicine through animal research. The unique benefits resulting from...
animal research such as the polio vaccine and transplantation procedures have resulted in more advanced medical treatments for human beings. The dark side of animal research involves instances in which animals are used for unreasonable experimentation, for example, by the cosmetic industry. One suggested solution to the dilemma which would result in a feasible compromise between animal rights groups and proponents for medical advancements is for Congress to enact tighter regulations which set defined humane treatment standards for animals used in research.

CONCLUSION

The requirements for Article III standing have been given some flexibility over the years. The most notable extension is that a non-economic injury can be successfully alleged. However, the courts have prudently refrained from stepping outside the boundaries of the standing doctrine. It is for Congress, not the courts, to establish standing for individuals or groups to bring suit if Article III precludes it. The statutory creation of standing by Congress in the past, via the Marine Mammal Protection Act, Endangered Species Act, Wild Horses Act, and other acts, indicate that Congress is the appropriate authority to establish standing where Article III does not. Animal rights groups, such as those in International Primate Protection League v. Administrators of the Tulane Educational Fund, would spend their time more productively by lobbying for changes in the way federal biomedical research is regulated, as well as prodding Congress to confer standing upon the groups through federal legislation, rather than pounding on the doors of justice. Not only is this the only means by which animal rights groups can come within the zone of interests to be protected, but it permits congress to properly

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336. Comment, 14 Ohio N.U.L. Rev. at 100-01. See also Dresser, Research on Animals: Values, Politics and Regulatory Reform, 58 S. Cal. L. Rev. 1147, 1193-1200 (1985) (discussing various animal research alternatives which could be implemented through federal regulations).
337. Friends, 851 F.2d at 1039. The Eighth Circuit stated that “[u]nlike the constitutional requirements, Congress may eliminate the prudential limitations by legislation.” Id.
338. 895 F.2d 1056 (5th Cir. 1990).
represent the wishes of the public as to what role animals will play in future biomedical research.

Ruth R. Hamilton—'91