**Bennett v. Spear: Lions, Tigers and Bears Beware; The Decline of Environmental Protection**

**INTRODUCTION**

What would the world be, once bereft
Of wet and of wildness? Let them be left,
O let them be left, wildness and wet;
Long live the weeds and the wilderness yet.¹

When Gerard Hopkins wrote these lines over a century ago, it is unlikely he could have known how desperate his plea for environmental preservation would become as the planet nears the twenty-first century.² While modern industrial advances provide Americans with efficient, convenient, and even luxurious lifestyles, it is the Earth that pays the all too often high price.³ The common denominator of every human life is the health of our planet. The vulnerability of the environment is a stark, frightening, and supreme reality.

In response to the increasing need for environmental protection, Congress enacted several statutes in the 1960s and 1970s designed to serve wide-ranging conservational purposes.⁴ Among these newly enacted statutes was

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1. **GERARD MANLEY HOPKINS, INVERNAID in IMORTAL POEMS OF THE ENGLISH LANGUAGE** 460 (Oscar Williams ed., Washington Square Press 1952) (1882). In the poem, Hopkins reflects upon the beauty of plants and animals. The nineteenth century poet expresses both his fascination of nature and his desire that nature be preserved.

2. See Fen Osler Hampson & Judith Reppy, *Environmental and Social Change*, ENV'T, Apr. 1997, at 12, 13. Because of the build-up of greenhouse gases in the atmosphere, the future of the Earth's atmosphere is bleak. *Id.* In the upcoming century, the planet's climate will warm on a global scale. *Id.* Moreover, currently leading to the extinction of plant and animal species, are human activities like deforestation. *Id.* See also James Gustave Speth, *An Environmental Revolution in Technology*, 24 ENVTL. SCI. & TECH., 412, 413 (1990) (explaining that the need to save humans from their assault on the Earth is urgent).

3. Speth, *supra* note 2, at 413. Environmental wreckage spanning from groundwater to the atmosphere is accumulating at an overwhelming rate. *Id.* Among the many dangers accosting the Earth are air pollution, global warming, and the depletion of the ozone layer. *Id.* See Philip H. Abelson, *Technology and Environment*, 246 SCI. 429 (1989) (remarking that urban air pollution, destruction of rain forests, and loss of habitat are difficult issues facing the planet's future); see generally Jesse H. Ausubel, *The Liberation of the Environment*, DAEDALUS, Summer 1996, at 1 (maintaining that at present, extreme environmental degradation exists); Hampson, *supra* note 2, at 13 (expressing that considerable uncertainty exists regarding the specific effects of global warming on ecological systems).

the Endangered Species Act. The Act contained a relatively new legal provision, called a citizen suit provision, that granted "persons" standing to sue for enforcement of the Act. While this citizen suit provision was


6. 16 U.S.C.A. § 1540(g) (West 1985). See also Phillip M. Bender, Slowing the Net Loss of Wetlands; Citizen Suit Enforcement of Clean Water Act Section 404 Permit Violations, 27 ENVTL. L. 245, 263 (1997) (commenting that citizen suit provisions are fairly new to the American legal system). The Endangered Species Act's citizen suit provision states in relevant part:

(g) Citizen suits
(1) Except as provided in paragraph (2) of this subsection any person may commence a civil suit on his own behalf—
(A) to enjoin any person, including the United States and any other governmental instrumentality or agency (to the extent permitted by the eleventh amendment to the Constitution), who is alleged to be in violation of any provision of this chapter or regulation issued under the authority thereof; or
(B) to compel the Secretary to apply, pursuant to section 1535(g)(2)(B)(ii) of this title, the prohibition set forth in or authorized pursuant to section 1533(d) or 1538(a)(1)(B) of this title with respect to the taking of any resident endangered species or threatened species within any State; or
(C) against the Secretary where there is alleged a failure of the Secretary to perform any act or duty under section 1533 of this title which is not discretionary with the Secretary.

The concept of a citizen suit provision was introduced in 1970 in a book by Joseph L. Sax. Peter H. Lehner, The Efficiency of Citizen Suits, ALB. L. ENVTL. OUTLOOK, Fall 1995, at 4; see also JOSEPH L. SAX, DEFENDING THE ENVIRONMENT: A STRATEGY FOR CITIZEN ACTION (1970). Sax asserted that financial and political forces weakened the enforcement of environmental laws by governmental agencies. Id. Hence, Sax maintained that citizens should be allowed to sue those who harm natural resources and those who act in violation of environmental laws. Sax, supra, at 110-12. Citizen suit provisions equip citizens with the ability to enforce environmental laws instead of the government. Lehner, supra, at 4. As one commentator summarized, citizen suits put "'teeth into public participation.'" Id. at 6. In addition, these provisions provide supplemental enforcement particularly when governmental agencies have failed to conscientiously fulfill their enforcement responsibilities. Bender, supra, at 263. In 1970, the Federal Clean Air Act enacted the first major citizen suit provision. Lehner, supra, at 4.; see also 42 U.S.C.A. § 7604(a) (West 1995). Since the Clean Air Act, citizen suit provisions have been incorporated into most major environmental laws. Lehner, supra, at 5. Such enactments, demonstrate Congressional intent to promote citizen enforcement of environmental laws. See Elizabeth Monohan & Brian Wright, Mountain States Legal Foundation v. Glickman: Disputes Over Timber Removal From National
intended to be a tool with which environmentalists could protect the environment, the Supreme Court in Bennett v. Spear permitted a commercial entity that claimed over-regulation to sue under the Act’s citizen suit provision.

This note examines the Bennett v. Spear decision. Part I offers a brief history of the progression and development of standing, both generally and with respect to federal environmental statutes. Part II addresses the facts and procedural posture of Bennett and discusses the Supreme Court’s opinion. Part II also includes the author’s analysis of the opinion. Part III ponders various means by which to restore environmental protection as a national priority. Finally, this Comment concludes that the Bennett holding runs contrary to the conservationist purposes of the Endangered Species Act and other environmental laws containing analogous citizen suit provisions.

I. HISTORICAL BACKGROUND

A. THE PROGRESSION OF STANDING: GENERALLY

Article III of the United States Constitution sets out several principles which in part restrict the Supreme Court’s ability to hear a case by limiting the jurisdiction of federal courts. Article III of the Constitution confines federal courts to the adjudication of actual “cases” and “controversies.” Included in this case-or-controversy doctrine is the Article III requirement that a litigant have “standing” to invoke the power of a federal court. Essentially, the issue

7. See Lehner, supra note 6, at 4.
9. Id. at 1162. For detailed discussion of Bennett, see infra pp. 560-65 and accompanying notes.
10. Id. at 1154.
11. U.S. CONST. art. III, § 2, cl. 1. Article III states that “[t]he 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 Citizens of another State;—between Citizens of different States;—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.” Id.
12. Valley Forge Christian College v. Americans United for Separation of Church and State, Inc., 454 U.S. 464, 471-486 (1982). The Supreme Court also noted that Article III limits the judiciary to a role that is consistent with separation of powers. Id. at 472.
13. Allen v. Wright, 468 U.S. 737, 750 (1984). The Allen Court opined that the standing requirement was likely the most important part of the Article III requirements. Id. Furthermore, standing involves many judicially self-imposed restrictions of the exercise of federal jurisdiction. Id. at 751. Included among these restrictions are the prohibition of a
of standing focuses mostly on the litigant asserting the claim by questioning whether the litigant is entitled to have the court decide the merits of the dispute or of particular issues.\textsuperscript{14} Determining whether a litigant has standing involves an inquiry not only of constitutional limitations on federal court jurisdiction, but also of prudential limitations on the exercise of such jurisdiction.\textsuperscript{15} Constitutionally, standing involves justiciability because it addresses the question whether the plaintiff has "alleged such a personal stake in the outcome of the controversy" as to warrant the invocation of federal court jurisdiction.\textsuperscript{16} The Court, however, recognizes limits on the class of persons who may invoke the federal courts' powers. For instance, the Court has held that when the harm asserted is a "generalized grievance" shared equally by a large class of citizens, federal court jurisdiction is not warranted.\textsuperscript{17}

Over time, the Supreme Court's decisions developed three elements necessary to establish the constitutional minimum of standing.\textsuperscript{18} The first requirement is that the plaintiff must have suffered an "injury in fact."\textsuperscript{19} "Injury in fact" is an invasion of a legally protected interest that is composed of two parts.\textsuperscript{20} First, the invasion must be both concrete and particularized.\textsuperscript{21}

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\item plaintiff asserting another person's rights and the barring of generalized grievances. \textit{Id.} (citing \textit{Valley Forge,} 454 U.S. at 474-75). For brief discussion of generalized grievances, see \textit{infra} notes 17 and 27.
\item Warth v. Seldin, 422 U.S. 490, 498 (1975). The \textit{Warth} Court declared that the standing inquiry was the "threshold question in every federal case." \textit{Id.}
\item \textit{Id.} Both constitutional and prudential limitations on federal court jurisdiction are rooted not only in concerns about the appropriate role of courts in a democratic society, but also in the appropriate limitations on that role. \textit{Id.} (citing \textit{Schlesinger} v. Reservists to Stop the War, 418 U.S. 208, 221-27 (1974)).
\item Baker v. Carr, 369 U.S. 186, 204 (1962). The Supreme Court succinctly commented that the inquiry regarding whether the plaintiff alleged a personal stake in the case was essentially "the gist of the question of standing." \textit{Id.} It is this personal stake in the outcome that enhances the presentation of issues necessary to properly resolve constitutional questions. \textit{Id.}
\item \textit{Schlesinger,} 418 U.S. at 221. \textit{See} United States v. Richardson, 418 U.S. 166, 188-97 (1974) (Powell, J., concurring). In \textit{Schlesinger,} plaintiffs brought suit on behalf of all United States citizens and taxpayers. \textit{Id.} at 208. The Court held that plaintiffs failed to establish a nexus between their injury and their claim. \textit{Id.} The Court explained that concrete injury is a necessary foundation upon which the Court may base its decision. \textit{Id.} at 221. It is this concrete injury that enables a litigant to authoritatively present to a court the facts that sparked his/her grievance. \textit{Id.} Such a perspective is thereby not a generalized grievance that is barred by the Court. \textit{See id.}
\item \textit{Id.}
\item \textit{id.}
\item \textit{Warth,} 422 U.S. at 508 (citing \textit{Schlesinger,} 418 U.S. at 221-222). \textit{See Allen,} 468
\end{itemize}
Second, the invasion of a legally protected interest must be actual or imminent and not conjectural or hypothetical. The second requirement to establish standing is that there must be a causal connection between the injury and the contested conduct. In other words, the injury must be fairly traceable to the defendant's challenged action and not the result of an independent action by an outside party not before the court. Finally, the third requirement is that it must be likely and not simply speculative that the injury will be redressed by a favorable decision of the court.

The Supreme Court's rules on standing are a blend of Article III case-or-controversy requirements and prudential considerations. Such prudential considerations are self-imposed limits on the judiciary regarding the exercise of federal jurisdiction. The primary distinction between Article III requirements and prudential considerations with respect to standing is that Article III requirements may not be overridden by either the Supreme Court or Congress because they are prescribed by the Constitution. However, prudential considerations may be overridden by the Supreme Court or Congress.

U.S. at 756. In Warth, the Court expressed that without the necessary particularized injury, there is no reason to exercise judicial review of the case. Id.

23. Lujan, 504 U.S. at 560.
26. Warth, 422 U.S. at 498. See Allen, 468 U.S. at 751.
27. Allen, 468 U.S. at 751. Among the prudential considerations to which the Court adheres is that a plaintiff must assert his/her own legal rights and interests and cannot base his/her claim on third party rights or interests. Warth, 422 U.S. at 499. In addition, the Court will not hear generalized grievances which consist of "abstract questions of wide public significance." Id. at 499-500. The Court has further required that the plaintiff's complaint fall within the "zone of interests" which the statute or constitutional guarantee is designed to protect or regulate. Association of Data Processing Serv. Orgs. v. Camp, 397 U.S. 150, 153 (1970). For brief discussion of the Camp ruling and the zone of interests test, see infra p. 558 and nn.30-34.
28. Allen, 468 U.S. at 751. The Allen Court noted that the standing requirement derives its core components directly from the Constitution. Id. The Court further noted that like prudential considerations, constitutional standing components are difficult to precisely define. Id. However, legal notions of standing have gained more definition from developing case law in this area. Id.
B. THE DEVELOPMENT OF STANDING AFFECTING FEDERAL ENVIRONMENTAL STATUTES

The most relevant of the three basic prudential considerations, came in 1970 when the Supreme Court first introduced the “zone of interests” test.31 In Association of Data Processing Service Organizations v. Camp,32 the Court reviewed a challenge brought under the Administrative Procedure Act33 and maintained that such prudential requirements may be waived by Congress.34

Two years later, the Supreme Court addressed whether a change in the aesthetics and ecology of an area constituted injury-in-fact in the original environmental standing case, Sierra Club v. Morton.35 The Court held that such harm may amount to an injury-in-fact,36 but the plaintiff bringing suit must be among the injured.37

Two decades after Sierra Club,38 the Supreme Court addressed a standing question in a suit brought under a citizen suit provision of the Endangered...
Species Act.\(^{39}\) In *Lujan v. Defenders of Wildlife*,\(^{40}\) the Court reaffirmed the role of irreducible constitutional minimum standing requirements.\(^{41}\) Moreover, the *Lujan* Court held that a citizen suit provision could not create in people an abstract, blanket power with which to command the Executive branch’s adherence to certain procedures.\(^{42}\)

Two years later in *Babbitt v. Sweet Home Chapter of Communities for a Great Oregon*,\(^{43}\) the Supreme Court was presented with an opportunity to apply the zone of interests prudential consideration\(^{44}\) by determining whether plaintiffs who were contesting the wording of an Endangered Species Act provision represented interests that the Act was designed to protect.\(^{45}\) However, in *Babbitt*\(^{46}\) the court failed to even address a standing issue.

In 1997, the Supreme Court once again faced an opportunity to apply the “zone of interests” consideration on a standing issue brought under the Endangered Species Act’s citizen suit provision\(^{47}\) in *Bennett v. Spear*.\(^{48}\) Unfortunately, the *Bennett* decision negated the zone of interests prudential test in an effort to enlarge the class of persons who may bring suit in this environmental law context.

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41. *Id.* at 560. The Court highlighted the three minimum constitutional standing requirements which are: plaintiff must have suffered an injury-in-fact; causal connection must exist between plaintiff’s injury and the challenged conduct; plaintiff’s injury must likely be redressable by a favorable decision. *Id.* at 560-61. See *supra* pp. 556-57 and accompanying notes for detailed discussion of these standing requirements.
42. *Lujan*, 504 U.S. at 573. The *Lujan* Court rejected the lower court’s view by asserting that citizen suit provisions cannot give to all persons an “abstract, self-contained, noninstrumental ‘right’ to have the Executive observe the procedures required by law.” *Id.* The Court explained that such a right would violate separation of powers because it would transfer the President’s most important constitutional duty of executing the laws to the judiciary. *Id.* at 577. As a result, Congress through the enactment of such citizen suit provisions would be permitting the Courts to “assume a position of authority over the governmental acts of another and co-equal department.” *Id.* (quoting Massachusetts v. Mellon, 262 U.S. 477, 489 (1923)).
44. For discussion of zone of interests prudential requirement, see *supra* p. 558 and accompanying notes.
45. The plaintiffs included small landowners, logging companies, families dependent on forest products industries in the Pacific Northwest and in the Southeast, and organizations that represented their interests. *Babbitt*, 115 S. Ct. at 2410.
47. 16 U.S.C.A. § 1540(g) (West 1985).
II. BENNETT V. SPEAR

A. CASE FACTS AND HISTORY

In 1992, the federal Bureau of Reclamation notified the U.S. Fish and Wildlife Service that the ongoing operation of the Klamath Irrigation Project in Oregon might affect two endangered species of fish. The U.S. Fish and Wildlife Service prepared a biological opinion that recommended maintaining a minimum water level. Accepting the biological opinion's recommendations, the Bureau of Reclamation informed the U.S. Fish and Wildlife Service that it would operate in compliance with the recommendations.

50. The Klamath Irrigation Project is one of the oldest federal reclamation schemes that consists of a series of lakes, rivers, dams and irrigation canals in northern California and southern Oregon. Id. at 1159. In accordance with the Reclamation Act of 1902 and the Act of Feb. 9, 1905, the Secretary of the Interior undertook the project. Id. For text of Reclamation Act of 1902, see 43 U.S.C.A. §§ 371-600b (West 1986). The Klamath Irrigation Project is under the Secretary's jurisdiction and thus, the Secretary administers it. Id.
52. Bennett, 117 S. Ct. at 1159. After consulting with the Bureau of Reclamation, the U.S. Fish and Wildlife Service issued the biological opinion in accordance with 50 C.F.R. § 402.14 (1995). Id. This section of the Code of Federal Regulations states that "[e]ach Federal agency shall review its actions at the earliest possible time to determine whether any action may affect listed species or critical habitat. If such a determination is made, formal consultation is required... The Director may request a Federal agency to enter into consultation if he identifies any action of that agency that may affect listed species or critical habitat and for which there has been no consultation. When such a request is made, the Director shall forward to the Federal agency a written explanation of the basis for the request." 50 C.F.R. § 402.14 (1997). The opinion concluded that the Klamath Project could jeopardize the fish's existence and identified "reasonable and prudent alternatives" that the Service recommended to avoid harm to the fish. Id. For brief discussion of one of these alternatives, see infra note 53.
53. Id. The U.S. Fish and Wildlife Service concluded in its biological opinion that the water in Clear Lake and Gerber reservoirs, the two reservoirs in question, should be maintained at a minimum level. Id. The opinion stated that unless such mitigating actions were taken, it was likely that the Lost River and Shortnose Suckers would be adversely affected. Bennett, 63 F.3d at 915.
54. Bennett, 117 S. Ct. at 1159.
Two Oregon irrigation districts\(^{55}\) sued the director and regional director of the U.S. Fish and Wildlife Service\(^{56}\) and the Secretary of the Interior.\(^{57}\) In part, the complaint alleged that the government violated the Endangered Species Act\(^{58}\) because it failed to consider the economic impacts of the minimum water levels.\(^{59}\)

At the District Court trial, the irrigation districts’ complaint was dismissed for lack of jurisdiction.\(^{60}\) The court concluded that the irrigation districts lacked standing.\(^{61}\)

On appeal, the irrigation districts claimed that their action was not precluded by the zone of interests test.\(^{62}\) The Court of Appeals for the Ninth Circuit affirmed the complaint’s dismissal.\(^{63}\) The court concluded that the

\(^{55}\) The two Oregon irrigation districts received Klamath Project water. \textit{Id.} Brad Bennett of the Langell Valley Irrigation District and Mario Giordano of the Horsefly Irrigation District, the two operators of ranches within those districts, filed the cause of action. \textit{Bennett}, 63 F.3d at 915.

\(^{56}\) \textit{Bennett}, 63 F.3d at 915. The director of the U.S. Fish and Wildlife Service was John F. Turner. \textit{Id.} In addition, the regional director for the Service was Marvin L. Plenert. \textit{Id.}

\(^{57}\) \textit{Id.} The Secretary of the U.S. Department of the Interior who was named as a party was Bruce Babbitt. \textit{Id.} The petitioners sued for declaratory and injunctive relief to force the U.S. Fish and Wildlife Service to withdraw portions of the biological opinion. \textit{Id.} at 916. Petitioners’ complaint alleged that evidence to support the opinion’s conclusion that the fish would be jeopardized by the Klamath Irrigation Project was lacking. \textit{Id.} Petitioners went on to explain in their complaint that they were challenging the minimum water levels in order to ensure the availability of water for their own commercial uses. \textit{Id.}


\(^{59}\) \textit{Bennett}, 117 S. Ct. at 1160. The petitioners’ complaint included two other claims for relief on grounds that the U.S. Fish and Wildlife Service’s determination that the fish would be harmed by the Klamath Project and the resulting imposition of minimum water levels violated §7 of the Endangered Species Act. \textit{Id.} at 1160. \textit{See} 16 U.S.C.A. § 1536 (West 1985). In addition, petitioners brought related claims under the Administrative Procedure Act, 5 U.S.C.A. § 706(2)(A) (West 1996), and the National Environmental Policy Act of 1969, 42 U.S.C.A. § 4332(2)(C) (West 1994). \textit{Bennett}, 117 S. Ct. at 1160. \textit{See id.} n.1. The Administrative Procedure Act authorizes a court to set aside agency actions, findings, and conclusions that are found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. \textit{Id.} at 1167; \textit{see also} 5 U.S.C.A. § 706 (West 1996). The Administrative Procedure Act also provides a right to judicial review of all final agency action when a court provides no other proper remedy. \textit{Id.}; \textit{see also} 5 U.S.C.A. § 701(a) (West 1996).

\(^{60}\) \textit{Bennett}, 117 S. Ct. at 1160.

\(^{61}\) \textit{Id.} The district court held that the Oregon irrigation districts’ right in using the Klamath Irrigation Project water for commercial and recreational purposes opposed the Lost River and Shortnose Suckers’ interest in using the water for its habitat. \textit{Bennett}, 63 F.3d at 917. The court further explained that the two Oregon irrigation districts did not have standing because their “‘recreational, aesthetic, and commercial interests . . . do not fall within the zone of interests sought to be protected by ESA.’” \textit{Bennett}, 117 S. Ct. at 1160 (quoting App. to Pet. for Cert. 28).

\(^{62}\) \textit{Bennett}, 63 F.3d at 917.

\(^{63}\) \textit{Id.} at 922.
zone of interests test limits the class of persons who may obtain judicial review under the citizen suit provision of the Endangered Species Act.64 Moreover, the court remarked that to fall within the zone of interests protected by the Act, plaintiffs must allege an interest in the preservation of endangered species.65 Bennett petitioned the Supreme Court for review. Certiorarri was granted.66

B. THE DECISION OF THE SUPREME COURT

On appeal, the Supreme Court reversed the Ninth Circuit holding.67 By a unanimous 9-0 decision, the Court concluded that the irrigation districts' claims under the Engendered Species Act were not precluded by the zone of interests test.68

64. Id. at 919. See 16 U.S.C.A. § 1540(g) (West 1985). For complete text of the Endangered Species Act's citizen suit provision, see supra note 6. The Appellate Court remarked that it has consistently used the zone of interest test in determining the standing of plaintiffs suing under citizen suit provisions. Bennett, 63 F.3d at 919. The court further explained that simply because a statute contains a citizen suit provision does not automatically establish that Congress intended any plaintiff to have standing to assert a violation of that particular statute. Id. As a result, the court concluded that the Endangered Species Act's citizen suit provision does not immediately confer standing on every plaintiff who both satisfies the Article III constitutional requirements and claims a violation of the Act's procedures. Id. The court determined the overall purpose of the Act by considering the Supreme Court's review of the Endangered Species Act in Tennessee Valley Auth. v. Hill, 437 U.S. 153, 184 (1978), and Babbitt v. Sweet Home Chapter of Communities for a Great Oregon, 115 S. Ct. 2407, 2413 (1995). Id. at 920. In those cases, the Supreme Court pointed out that the Act's Congressional intent was to reverse the trend toward species extinction. Id.

65. Bennett, 63 F.3d at 919. The court asserted that only plaintiffs alleging an interest in the preservation of endangered species fall within the zone of interests which the Endangered Species Act protects. Id. According to the court, to permit otherwise by allowing plaintiffs to sue even when their purposes were inconsistent with the Endangered Species Act or only slightly related to the purpose of the Act, would be "plainly inconsistent" with the purpose of the Act. Id.


67. Id. at 1169.

68. The Court explained that the scope of the zone of interests varies according to the provisions of the law at issue. Bennett, 117 S. Ct. at 1161. As a result, what comes within the zone of interests when judicially reviewing administrative action in one instance may not apply in another instance. Id. The Court further declared that that the Endangered Species Act's citizen suit provision, 16 U.S.C.A. § 1540(g) (West 1985), both negated the zone of interests test and expanded the zone of interests. Id. at 1162. For partial text of the Endangered Species Act's citizen suit provision, see supra note 64. The Court noted that the Act's citizen suit provision, constituted "an authorization of remarkable breadth" when compared with the language Congress used in other environmental and non-environmental statutes. Id. With respect to non-environmental citizen suit provisions, suit was both authorized and limited by using language such as "[a]ny person injured in his business or property" or only by "competitors, customers, or subsequent purchasers." Id. See 7 U.S.C.A. § 2305(c) (West 1988); see 7 U.S.C.A. § 298(b) (West 1980); see also 15 U.S.C.A. § 72 (West 1997).
The Court began its analysis by determining whether the zone of interests test applied to the Endangered Species Act's citizen suit provision. By reviewing its prior standing decisions, the Court summarized Article III's "irreducible constitutional minimum" case or controversy standards. In addition to these Article III requirements, the Court outlined prudential principles that affect standing issues, including the zone of interests test. The Court noted that the scope of the zone of interests varies depending on the statute at issue.

The Court then addressed the issue of whether the Endangered Species Act's citizen suit provision negates the zone of interests test. The Court


70. Bennett, 117 S. Ct. at 1161. The Court noted that the question of standing involves "both constitutional limitations of federal-court jurisdiction and prudential limitations on its exercise." Id. (quoting Warth v. Seldin, 422 U.S. 490, 498 (1975), citing Barrows v. Jackson, 346 U.S. 249 (1953)). The Bennett Court highlighted the Article III case or controversy requirements that a plaintiff must demonstrate. Id. These requirements are: injury in fact, injury that is traceable to the actions of the defendant, and injury that will likely be redressed by a favorable decision. Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61 (1992), cited in Bennett, 117 S. Ct. at 1161. For more detailed discussion of these Article III case or controversy requirements, see supra pp. 555-56 and accompanying notes 11-17.

71. Bennett, 117 S. Ct. at 1161. The Court maintained that federal courts have also "adhered to a set of prudential principles that bear on the question of standing." Id. (quoting Valley Forge, 454 U.S. at 474-75). Such principles are self-imposed by the judiciary and limit the exercise of federal jurisdiction. Allen, 468 U.S. at 751, cited with approval in Bennett, 117 S. Ct. at 1161. Prudential considerations originated from concerns regarding the appropriate and properly limited role of the judiciary in a democracy. Warth, 422 U.S. at 498, cited with approval in Bennett, 117 S. Ct. at 1161. The Bennett Court identified and explained "zone of interests" as such a prudential consideration. Bennett, 117 S. Ct. at 1161. The Court reiterated that under the zone of interests test, a plaintiff's grievance must arguably fall within the zone of interests either protected or regulated by the relevant statutory or constitutional provision that is the subject of the suit. Id. For more detailed discussion of prudential considerations including "zone of interests," see supra p. 557 and text accompanying notes 26-29.

72. Bennett, 117 S. Ct. at 1161. The Court further explained that what comes within the zone of interests under one statute may not necessarily do so under other statutes. Id. The Court also added that unless this zone of interests test is expressly negated, Congress legislates based on this prudential principle. Id. at 1162.

73. Bennett, 117 S. Ct. at 1162. Contrasting the Endangered Species Act's citizen suit provision against more restrictive provisions of other environmental statutes, the Court asserted that the Act's provision was remarkably unlimited, particularly in comparison to the language Congress normally uses. Id. While the Endangered Species Act says that "any person may commence a civil suit," other environmental statutes use more restrictive formulations like "[any person] having an interest which is or may be adversely affected," "[a]ny person suffering legal wrong," or "any person having a valid legal interest which is or may be adversely affected... whenever such action constitutes a case or controversy." Id.; see also 16 U.S.C.A. § 1540(g) (West 1985); Clean Water Act, 33 U.S.C.A. § 1365(g) (West 1986); Surface Mining Control and Reclamation Act, 30 U.S.C.A. § 1270(a) (West 1986); Energy Supply and Environmental Coordination Act, 15 U.S.C.A. § 797(b)(5) (West 1997); Ocean Thermal Energy Conversion
concluded that the zone of interests prudential consideration was negated. Based upon two interrelated considerations, the Court expanded standing through such negation. The first consideration was that the environment is the general subject matter of the Act and such an area is one in which everyone has an interest. The second consideration was that the purpose of the citizen suit provision is to encourage enforcement by citizens. The Court reasoned that its expansion of standing served both these considerations.

When determining whether the petitioners had standing to bring suit under the Administrative Procedure Act, the Bennett Court asserted that such a determination is made by reference to the particular provision of law upon which the plaintiff relies rather than by reference to the overall purpose of the act in question which here is the Endangered Species Act.

In closing, the Court held that none of the petitioners' claims were precluded by the zone of interests test. The Court further concluded that one of the petitioners' claims under the Endangered Species Act was reviewable under the Act's citizen suit provision. Lastly, the Court concluded that the petitioners' remaining claims were reviewable under the Administrative Act.

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42 U.S.C.A. § 9124(a) (West 1995). Moreover, select non-environmental statutes concerning unfair trade practices and similar business matters also use more restrictive formulations. Id.; see also 7 U.S.C.A. § 2305(c) (West 1988); 15 U.S.C.A. § 72 (West 1997); 15 U.S.C.A. § 298(b) (West 1997). For relevant text of these more restrictive formulations, see supra note 68.

74. Bennett, 117 S. Ct. at 1162.
75. Id.
76. Id.
77. Id. The Court stated that the "obvious purpose" of the citizen suit provision was to encourage enforcement by "private attorneys general." Id. As support for its assertion regarding the provision's purpose, the Court cited: the provision's elimination of the amount in controversy and diversity of citizenship requirements, the Act's provision for recovery of litigation costs including expert witness fees, and the Act's reservation to the government of a right of first refusal to initially pursue the action plus a right to intervene later. Id. The Court admitted its awareness that the Act's citizen suit provision favored environmentalists because it includes all private violations of the Act. Id. at 1163. However, the Court added that no textual basis existed for proclaiming that its expansion of standing requirements applied only to environmentalists. Id.
78. Id. at 1162.
80. Bennett, 117 S. Ct. at 1167.
81. Id. at 1169.
82. Id.; see also 16 U.S.C.A. § 1540(g) (West 1985).
Procedure Act\textsuperscript{83} and reversed the Ninth Circuit decision.\textsuperscript{84} The case was remanded for further proceedings consistent with the \textit{Bennett} opinion.\textsuperscript{85}

C. ANALYSIS

For the first time in its history, the Supreme Court ruled on who has rights to use the citizen suit provision of the Endangered Species Act.\textsuperscript{86} By granting standing to a commercial entity, the \textit{Bennett} Court demonstrated its intent to expand standing.\textsuperscript{87} In doing so, the Court provided precedent to lower courts when determining standing under the Endangered Species Act’s citizen suit provision.\textsuperscript{88} The first of three main impacts of \textit{Bennett} is that the broad expansion in standing under the Act will likely result in an increase in litigation brought by commercial entities that claim the Act over-regulates them.\textsuperscript{89}
Second, the *Bennett* holding will likely influence future cases involving other environmental laws containing a similar citizen suit provision.90 The primary effect is that *Bennett*91 may encourage more suits challenging regulations under similar environmental laws.92

Finally, the *Bennett* decision shifts the focus of environmental statutes like the Endangered Species Act away from environmental interests to those of commerce.93 This shift does not enforce the true purpose of the Endangered Species Act94 because it permits commercial interests to sue pursuant to a statute intended to protect the environment.95 The Supreme Court’s negation

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92. Hansen, supra note 89, at 22. See *Greenhouse*, supra note 89, at A10 (commenting that other federal environmental laws like the Clean Water Act, the Clean Air Act, and the Safe Drinking Water Act will now be available to plaintiffs seeking to challenge such regulations).

93. *Landowners Get Win on Species Act*, supra note 88, at 6. The Supreme Court’s holding will assist landowners, developers, and property rights advocates who have long disliked federal environmental laws. *Id.* These groups’ resentment of environmental laws stems from their contention that regulating agencies often over-step their authority and inflict needless economic harm upon landowners and developers in an effort to protect endangered species. *Id.* Furthermore, the *Bennett* decision focuses on the need to protect commercial interests from governmental over-regulation under the Endangered Species Act. Feldman, supra note 88, at 23. Such a stance constitutes a notable change from the Supreme Court’s position in its first case involving the Endangered Species Act, *Tennessee Valley Auth. v. Hill*, 437 U.S. 153 (1978). *See* Feldman, supra note 88, at 23. In that case, the Court stated that the congressional intent of the Endangered Species Act was to “halt and reverse the trend toward species extinction, whatever the cost.” *TVA*, 437 U.S. at 172-173 (emphasis added). As one observer noted, the “*Bennett* decision is yet another part of continuing judicial . . . [effort] to temper the application of what is generally considered one of the strongest federal environmental laws.” Feldman, supra note 88, at 23.

94. The purposes of the Endangered Species Act are in part, “to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved” and “to provide a program for the conservation of such endangered species and threatened species.” 16 U.S.C.A. § 1531(b) (West 1985). The purpose of the Act was based upon Congressional findings that various species of fish, wildlife, and plants in the United States had become extinct because of economic growth that was “untempered by adequate concern and conservation.” 16 U.S.C.A. § 1531(a)(1) (West 1985). Moreover, these Congressional findings stated that the numbers of other species of fish, wildlife, and plants in the United States were being reduced in such a manner that they were in danger of becoming extinct. 16 U.S.C.A. § 1531(a)(2) (West 1985). Finally, Congress also found that these species harbor “esthetic, ecological, educational, historical, recreational, and scientific value to the Nation and its people.” 16 U.S.C.A. § 1531(a)(3) (West 1985).

of the zone of interests test simplifies standing requirements under the Act, expands standing to commercial groups, and thereby effectively stalls the Act’s stated purpose of environmental protection.

By interpreting the “any person” language of the Endangered Species Act’s citizen suit provision to include everyone, the Supreme Court in *Bennett* operated contrary to general statutory construction principles. The first statutory construction principle that the Court disregarded in its holding is that of interpretation in accordance with legislative intent or purpose. According to this rule, the court should construe a statute based upon its

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*Standing Under the Endangered Species Act, 7 VILL. ENVTL. L.J. 375, 399 (1996).* The purpose of the citizen suit provision was to equip citizens to become “private attorneys general” and assist in the enforcement of the Endangered Species Act. *Id.* at 14. However, industry plaintiffs like those in *Bennett* frustrate the purpose of the statute. *Id.* at 14. For further discussion of environmental protection as the Endangered Species Act’s purpose, see *supra* note 94.

96. The zone of interests test requires that a plaintiff’s grievance fall within the zone of interests either protected or regulated by the relevant statutory or constitutional provision that is the subject of the suit. *Camp*, 397 U.S. at 153. For discussion of the *Camp* holding, see *supra* p. 558 and nn.30-4. By negating this prudential test, the *Bennett* Court expanded standing and enlarged the class of persons able to bring suit under the Endangered Species Act because standing requirements were easier for potential plaintiffs to meet. *Bennett*, 117 S. Ct. at 1162-63. The Court opined that the environment was a matter in which everyone has an interest. *Id.* Therefore, the Court reasoned that everyone falls within the zone of interests which the Endangered Species Act was designed to protect. *Id.* For further, more detailed discussion of the *Bennett* Court’s treatment of the zone of interests test, see *supra* pp. 563-64 and accompanying notes.

97. *Bennett*, 117 S. Ct. at 1169.

98. *Bennett*, 117 S. Ct. at 1162. For detailed discussion of the Court’s finding regarding the Endangered Species Act’s citizen suit provision, see *supra* pp. 563-64 and nn.73-78.


100. Among the general principles of statutory construction that the Court failed to utilize are interpretation based upon legislative purpose and what the author will refer to as the “whole construction rule.” For a more detailed discussion of both rules, see *infra* pp. 567-68 and accompanying notes.

101. EARL T. CRAWFORD, THE CONSTRUCTION OF STATUTES § 160, at 246 (1940). See *id.* § 161, at 247. The legislature’s intent is the core of the law and constitutes the law. *Id.* § 160, at 246. In addition, the reason why the law was passed by the legislature is the legislative purpose. *Id.* § 161, at 247. It is this legislative purpose that serves as “the touchstone of statutory interpretation.” REED DICKERSON, THE INTERPRETATION AND APPLICATION OF STATUTES 87 (1975). It follows that the law’s purpose should be considered when interpreting that law. CRAWFORD, *supra*, § 161, at 249; see DICKERSON, *supra*, at 88. In construing a statute, this legislative purpose context is often the most important factor. DICKERSON, *supra*, at 88; see also M.B.W. Sinclair, Law and Language: The Role of Fragments in Statutory Interpretation, 46 U. PITT. L. R. 373, 391 (1985) (explaining that in the modern era, the court’s function has been to construe statutes in a manner that gives effect to congressional intent); see generally 73 AM. JUR. 2d Statutes § 249 (1974) (presenting that courts should interpret a statute so as to give the whole statute effect).
purposes as intended by the legislature. However, the Bennett Court’s interpretation of the citizen suit provision runs in opposition to the Endangered Species Act’s environmental protection purpose because it permits commercial interests to bring suit.

The next statutory principle that the Supreme Court failed to observe is the “whole construction rule.” Following from the “legislative purpose” rule above, the “whole construction rule” dictates that individual statutory provisions should be construed in a manner that is consistent with the statute as a whole. Nevertheless, the Bennett Court deviated from this rule because it construed the Endangered Species Act’s citizen suit provision individually and not pursuant to the Act as a whole.

In summary, the Bennett Court’s decision has three main effects. First, the Court “opened the floodgates” to litigation brought by commercial interests claiming the Endangered Species Act over-regulates them. Next, the Court’s holding will likely increase the amount of litigation brought under other environmental laws containing analogous citizen suit provisions. Lastly, the Court frustrates the environmental purpose of the Endangered Species Act by granting standing to commercial entities that claim the Act over-regulates them. Based upon such unsettling impacts, concerns regarding the displaced role of environmental protection quickly arise.

102. See supra note 101 and accompanying text.
103. See Cain, supra note 95, at 3; see also Bennett, 117 S. Ct. at 1162. For a more detailed discussion of the Bennett holding, see supra pp. 562-65 and accompanying notes. For a more detailed discussion of the Endangered Species Act’s purpose, see supra note 94.
104. See infra text accompanying note 105.
105. See Crawford, supra note 101, § 165, at 258-59; see 73 AM. JUR. 2D Statutes § 254 (1974). This tenet of statutory construction may be analogized to reading a sentence because just as it is necessary to read a sentence entirely in order to comprehend its true meaning, it is similarly necessary to interpret the statute as a whole to interpret the meaning of a single provision. See id. § 165, at 259. This principle is based upon both the way in which humans communicate with each other and upon the basic limitations of language. See id. § 165, at 260. The different phrases and clauses in statutory provisions depend on each other and “[c]o-operatively, they convey the ultimate idea.” Id. Hence, the court must interpret statutory provisions collectively. Id. § 165, at 261. Keeping in mind the statute’s purpose, the court must attempt to make “every part effective, harmonious, and sensible.” Id. See also id. § 166, at 262; see generally Sinclair, supra note 101, at 400 (asserting that the maxim of relevance refers to the relationship between the individual provision’s purpose and the statute as a whole).
106. Bennett, 117 S. Ct. at 1167. The Court maintained that determining whether the plaintiff’s suit under the Administrative Procedure Act falls within the meaning of the zone of interests test is done by reference to the particular statutory provision upon which the plaintiff relies rather than by reference to the overall purpose of the Act. See id.
107. See supra note 89 and accompanying text.
108. See supra notes 90, 92.
III. RESTORATION OF ENVIRONMENTAL PROTECTION

In light of the Supreme Court’s interpretation of the Endangered Species Act’s citizen suit provision and the Court’s conclusions that run contrary to environmental protection, restoring environmental protection as a national priority becomes a necessary task. Among the possible alternatives to curb some of the effects of Bennett that favor property and commercial interests is a call for legislative action. Such an alternative involves lobbying Congress to re-draft the Endangered Species Act’s citizen suit provision and re-define the meaning of “person” within that provision. Both options provide equally effective means to effectuate a change that would limit the class of persons who may bring suit under the Act’s citizen suit provision and thereby restore environmental protection as a national priority.

Currently, the Act’s citizen suit provision provides that “any person may commence a civil suit on his own behalf.” However, citizen suit provisions of other environmental statutes use language that limits the class of persons who may bring suit under them, such as: any person who is “alleged to be in violation of this chapter,” or any person “having an interest which is or may be adversely affected.” The language of these latter statutes implicitly implements the zone of interests prudential test within the statute itself because it limits the class of persons who may bring suit under the citizen suit provision to only those who are negatively affected. In this way, the zone of interests test is given effect because these plaintiffs represent interests that the statute was designed to protect.

It follows that a call for legislative action would involve a demand for changes in the wording of the Endangered Species Act’s citizen suit provision modeled after statutes that contain citizen suit provisions that limit the class of plaintiffs. Hence, such a demand would involve a change from the Act’s

110. See supra pp. 565-68 and accompanying notes.
112. See Cain, supra note 95, at 11. See also Rennie, supra note 95, at 398 (recognizing that Congress holds the authority to place limits on potential plaintiffs that can assert standing under the Endangered Species Act’s citizen suit provision).
115. Surface Mining Control and Reclamation Act, 30 U.S.C.A. § 1270(a) (West 1986); Federal Water Pollution Control Act, 33 U.S.C.A. § 1365(g) (West 1986). See, e.g., supra note 68 (listing additional statutes cited by the Bennett Court that similarly contain citizen suit provisions that limit the class of persons who may bring suit under such provisions).
116. See Camp, 397 U.S. at 153. For further discussion of the Camp decision and the zone of interests test, see supra p. 558 and nn.30-34.
117. See Kathleen C. Becker, Bennett v. Plenert: Environmental Citizen Suits and the Zone of Interest Test, 26 Envtl. L. 1071, 1086 (1996).
current language allowing "any person" to bring suit\textsuperscript{118} to language allowing "only persons alleged to be in violation of the Act" or "only persons adversely affected by a violation of this Act" to bring suit. In this way, the zone of interests test that the judiciary negated\textsuperscript{119} in Bennett\textsuperscript{120} is re-instated by the legislature. In order to promote environmental protection consistently, it may be necessary to make these recommended legislative changes to other environmental laws containing similarly worded citizen suit provisions.\textsuperscript{121}

From a legislative approach, another alternative to limit Bennett's\textsuperscript{122} impact is a change in the definition of "person" within the Endangered Species Act's citizen suit provision. At present, the Act provides that "person" includes an individual, business organization, or representative of any state, federal, or foreign government.\textsuperscript{123} As a result, this definition of "person" used in the citizen suit provision permits anyone to bring a cause of action under the Act\textsuperscript{124} as demonstrated by Bennett.\textsuperscript{125} However, the Federal Water Pollution Control Act\textsuperscript{126} serves as a model for change because its definition of "citizen" under its citizen suit provision\textsuperscript{127} limits potential plaintiffs to only those persons "having an interest which is or may be adversely affected."\textsuperscript{128}

Consequently, a call for legislative action regarding the Endangered Species Act's citizen suit provision would similarly involve a demand for a

\begin{itemize}
  \item \textsuperscript{118} 16 U.S.C.A. § 1540(g)(1) (West 1985).
  \item \textsuperscript{119} Bennett, 117 S. Ct. at 1162.
  \item \textsuperscript{120} Bennett, 117 S. Ct. 1154 (1997).
  \item \textsuperscript{121} See Hansen, supra note 89, at 22; Smith, supra note 86, at 3; Greenhouse, supra note 89, at A10; U.S. Supreme Court May Have Difficult Time Ruling in Bennett v. Spear, supra note 90. See e.g., Public Health Service Act, 42 U.S.C.A. § 300j-8(a) (West 1991 & Supp. 1998); Solid Waste Disposal Act, 42 U.S.C.A. § 6972(a) (West 1995); Clean Air Act, 42 U.S.C.A. § 7604(a) (West 1995); Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C.A. § 9659(a) (West 1995); Emergency Planning and Community Right-to-Know Act, 42 U.S.C.A. § 11046(a)(1) (West 1995).
  \item \textsuperscript{122} Bennett, 117 S. Ct. 1154 (1997).
  \item \textsuperscript{123} 16 U.S.C.A. § 1532(13) (West 1985 & Supp. 1998). The Endangered Species Act's definition of "person" in its entirety reads as follows: "The term 'person' means an individual, corporation, partnership, trust, association, or any other private entity; or any officer, employee, agent, department, or instrumentality of the Federal Government, of any State, municipality, or political subdivision of a State, or of any foreign government; any State, municipality, or political subdivision of a State; or any other entity subject to the jurisdiction of the United States." Id.
  \item \textsuperscript{124} Bennett, 117 S. Ct. at 1162.
  \item \textsuperscript{125} 117 S. Ct. 1154 (1997).
  \item \textsuperscript{127} 33 U.S.C.A. § 1365(a) (West 1986 & Supp. 1998).
  \item \textsuperscript{128} 33 U.S.C.A. § 1365(g) (West 1986). The Federal Water Pollution Control Act's entire definition of "citizen" under its citizen suit provision reads as follows: "For the purposes of this section the term 'citizen' means a person or persons having an interest which is or may be adversely affected." Id.
\end{itemize}
change in the Act’s definition of “person.” Such a demand would entail a change from the current, all-inclusive definition to one that is more selective and limits the class of persons who may bring suit. Thus, using the Federal Water Pollution Control Act as a model, a proposed new definition of “person” under the Endangered Species Act might be: “For the purposes of this provision the term ‘person’ means only those having an interest that is or may be adversely affected.” Again, such a draft legislatively institutes the zone of interests test within the environmental statute because it limits potential plaintiffs to only those representing interests the Act was designed to protect. More importantly, this improved definition thereby avoids judicial negation of the zone of interests test that runs contrary to the environmental protection purpose of environmental laws.

The final recommendation regarding this legislative action strategy designed to curb the effects of Bennett involves re-addressing the constitutionality of citizen suit provisions. Such discussion may raise Congressional awareness of the counter-productive aspects of poorly worded citizen suit provisions that permit those outside a statute’s zone of interests to file suit. Such an awareness may lead to improved drafting of citizen suit provisions in new legislation. Moreover, such awareness may also support the call for legislative re-drafting of existing citizen suit provisions.

Citizen suit provisions raise serious issues with respect to separation of powers between the three branches of government. Two main challenges
to the constitutionality of citizen suit provisions exist. The first challenge is that permitting citizens to enforce laws via citizen suit provisions undermines the President’s duty to execute the country’s laws because it takes power away from the Executive branch.

The second constitutional challenge to citizen suit provisions is that they violate the Appointments Clause of the United States Constitution that allows the President to appoint officers. By conferring upon citizens the power to act as officers and enforce federal laws, Congress takes for itself this presidential power to appoint officers. In this way, the legislative branch violates the separation of powers doctrine because it aggrandizes its power by seizing an executive duty.

While Bennett may be the first step in a judicial trend to limit the application of environmental laws, alternatives exist to preserve the importance of environmental protection. Among the strategies are legislative calls to both re-draft citizen suit provisions and re-define the meaning of “person” in order to confine potential plaintiffs to only those falling within the statute’s zone of interests. Another alternative is to re-address the constitutionality of citizen suit provisions in an effort to raise Congressional awareness of problems that such poorly worded provisions generate. Whether individually or collectively, the implementation of these strategy

generally Scalia, supra, at 893-94 n.58 (asserting that Congressional expansion of standing does not justify a judicial disregard of boundaries between branches of government).


136. Id. at 1966-68. The Constitution states that the President “shall take Care that the Laws be faithfully executed, and shall Commission all the Officers of the United States.” U.S. CONST. art. II, § 3. According to the Supreme Court, the Executive Branch must retain primary control over its administration of the laws. Abell, supra note 133, at 1968. Granting to private citizens the power to enforce laws effectively impairs “the Executive authority by removing prosecutorial discretion and control from the President.” Id. at 1967.

137. Abell, supra note 133, at 1973. The Appointments Clause of the U.S. Constitution states in relevant part that the President “shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law . . . .” U.S. CONST. art. II, § 2, cl. 2. It follows that because this power was granted to the President, this clause implicitly prohibits the legislative taking of it. Abell, supra note 133, at 1973.

138. Abell, supra note 133, at 1975. The Supreme Court has not exempted private citizens from the boundaries of the Appointments Clause. Id. Hence by enforcing federal laws, these citizens are exercising an executive function without being properly appointed. See id.

139. Abell, supra note 133, at 1974-75. By conferring executive authority to citizens, Congress appropriates to itself a power that is exclusively vested in the President. Id. at 1975.


141. See Feldman, supra note 88, at 23.

142. See supra pp. 569-71 and accompanying notes.

143. See supra pp. 571-72 and accompanying notes.
alternatives is imperative to restore conservation as an irrefutable priority, not only for our Nation, but for our planet as well.

CONCLUSION

In Bennett v. Spear, the Supreme Court reviewed whether the zone of interests test applied to the Endangered Species Act's citizen suit provision. By negating the zone of interests test under the provision, the Supreme Court ruled for the first time in its history that everyone had rights to use the provision.

The Bennett decision fails to uphold the conservationist purpose of not only the Endangered Species Act, but also the purposes of other environmental laws containing analogous provisions. Humanity stands at the intersection between the comforts of industrial advancement and the absolute necessity of a healthy planet. As industrial damage to the environment increases, the need for environmental protection is greater than ever. While nature provides aesthetic and recreational pleasures, its true hidden treasures are those that it holds for scientific and medical advancement. It follows that we must persistently labor to preserve the Earth. Unfortunately, Bennett

144. 117 S. Ct. 1154 (1997).
145. Id. at 1160.
146. Id. at 1162.
147. Smith, supra note 86, at 1; see also Bennett, 117 S. Ct. at 1162.
148. See supra note 2 and accompanying text.
149. Congress noted that among the reasons fish, wildlife, and plants are valued by the Nation is for their aesthetic, recreational, and scientific value. 16 U.S.C.A. § 1531(a)(3) (West 1985). Deforestation and other human activities lead to the extinction of plants and animals that fuel "a corresponding reduction in the planet's genetic stockpile." Hampson, supra note 2, at 13. Moreover, in the United States a large number of medications are plant-based and animal-based. Erin B. Newman, Earth's Vanishing Medicine Cabinet: Rain Forest Destruction and Its Impact on the Pharmaceutical Industry, 20 Am. J. L. & Med. 479 (1994). Hence, the destruction of the planet's plants and animals results in a decrease in the global biological diversity that aids in medical research. Id. at 479-80. In fact, human activities in the last twenty-five years of this century have reduced biological diversity "at a rate that may be unprecedented in the history of life on Earth," a rate as fast as at any time since the dinosaurs became extinct over 65 million years ago." Id. at 487 (quoting Paul Roberts, International Funding for the Conservation of Biological Diversity: Convention on Biological Diversity, 10 B.U. INT’L J. 303, 308 (1992)). As an unknown number of species succumb to extinction, the possibility of finding cures for diseases like cancer, AIDS, and other incurable diseases, similarly lessens. Id. at 480-84.
150. Cf. Hampson, supra note 2, at 13 (declaring that a global response to environmental changes should be set at the beginning of international discussions); Speth, supra note 2, at 413 (asserting that a technological revolution is necessary to prevent humans from destroying the planet).
effectively blurs the conservationist purpose of environmental laws and steers the focus away from environmental protection.

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