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NOTE

INTERNATIONAL PRIMATE PROTECTION LEAGUE v. INSTITUTE FOR BEHAVIORAL RESEARCH: THE STANDING OF ANIMAL PROTECTION ORGANIZATIONS UNDER THE ANIMAL WELFARE ACT

The use of animals in medical research has been a subject of controversy for many years. Both the use of animals in research and the pain inflicted on them in the name of science are coming under increasing scrutiny with the development of an active movement seeking the recognition of animal rights.[1] In attempts to ensure adequate protection for animals in the laboratory, several animal rights advocates have argued that giving animals or animal protection organizations standing to sue would allow concerned persons and groups to protect the rights of animals.[2] Some organizations are attempting to enforce the federal Animal Welfare Act[3] ("AWA") to protect laboratory animals by suing on behalf of the animals or as a representative of the animal protection organization.[4]

In various court decisions, environmental and animal protection organizations have been granted standing to sue under federal statutes such as the Marine Mammal Protection Act[5] ("MMPA"), the Administrative Procedure Act,[6] and the National Environmental Policy Act of 1969[7] to protect the environment and animals.[8] The trend of cases arising under these stat-

1. Comment: Creating a private cause of Action Against Abusive Animal Research, 134 U. Pa. L. Rev. (1986).

2. Dichter, *Legal Definitions of Cruelty and Animal Rights*, 7 B.C. ENVTL. AFF. L. REV. 147, 160 (1978).

3. 7 U.S.C. §§ 2131-2151 (1985).

4. International Primate Protection League v. Institute for Behavioral Research, 799 F.2d 934 (4th Cir. 1986), *cert. denied*, 107 S. Ct. 1624 (1987).

5. 16 U.S.C. §§ 1361-1407 (1985).

6. 5 U.S.C. §§ 701-706 (1985).

7. 42 U.S.C. §§ 4321-4331 (1985).

8. *See* United States v. Students Challenging Regulatory Agency Procedures, 412 U.S. 669 (1973); Sierra Club v. Morton, 405 U.S. 727 (1972); Animal Welfare Institute v. Kreps, 561 F.2d 1002 (D.C. Cir.), *cert. denied*, 434 U.S. 109 (1977); Humane Society of Rochester and

utes authorizing judicial review of federal agency action has been toward recognizing injuries other than economic harm as sufficient to bring a person within the meaning of the statutory language, and "toward disregarding the notion that an injury that is widely shared is *ipso facto* not an injury sufficient to provide basis for judicial review."[9] This development was noted in *Association of Data Processing Service Organizations, Inc. v. Camp*[10] in which the Supreme Court stated that an interest alleged to have been injured may "reflect aesthetic, conservational and recreational" as well as economic values.[11] This development, further, illustrates judicial support for broadening the concept of standing.

The courts, however, have not resolved the question of whether animal rights organizations have standing to sue under AWA to protect animals used in medical research or whether a private cause of action could be implied under the AWA. Recently in *International Primate Protection League v. Institute for Behavioral Research*,[12] the United States Court of Appeals for the Fourth Circuit confronted this problem. Although many courts are willing to protect animals by extending standing to include protective organizations, the court refused to allow this judicial expansion of standing to interfere with the use of animals in medical research under the AWA.[13] The court found that the animal protection organization lacked standing to challenge a medical researcher's compliance with the AWA.[14] The court further concluded that the implicated federal statute does not authorize a right to seek relief and that to imply a cause of action in the plaintiffs may entail serious consequences.[15]

This note discusses the three primary approaches of liberalized standing accepted by various federal courts in prior cases. The note then analyzes the decision in *International Primate Protection League*[16] and discusses why the court is unwilling to accept a liberalized approach to traditional standing when it involves animal rights with regard to medical research.

EXPANSION OF THE TRADITIONAL CONCEPTS OF STANDING

In order to bring an action in a federal or state court, a plaintiff must have

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Monroe City v. Lyng, 533 F. Supp. 480 (W.D.N.Y. 1986); American Horse Protection Ass'n v. Frizzell, 403 F. Supp. 1206 (D.Nev. 1975).

9. *Sierra Club*, 405 U.S. at 738.
10. 397 U.S. 150, 154 (1970).
11. *Id.*
12. *International Primate Protection League*, 799 F.2d 934.
13. *Id.* at 938.
14. *Id.* at 935.
15. *Id.* at 938-40.
16. *Id.* at 934.

standing to sue. Standing has been defined by the United States Supreme Court as a two prong test that requires a showing of actual injury and a showing that the interest which is being protected is an interest protected by state or federal law.[17] The requirements of traditional standing have been relaxed in recent cases involving animal and environmental protection issues. Prior courts have been willing to accept a liberal interpretation of the standing requirements by accepting a slight private injury as fulfilling the actual injury requirement.[18] The United States District Court for the District of Nevada in *American Horse Protection Association, Inc. v. Frizzell*,[19] has specifically advocated this liberal approach to standing. The case involved a non-profit organization seeking an injunction against the state and federal government to stop an improper round-up and destruction of wild horses.[20] The court determined that the plaintiff had met the requirement of injury in fact where the member of the association alleged that he at one time viewed the wild horses that were to be destroyed and that he desired to continue to view them.[21] The court stated that the injury in fact requirement can be met by alleging that members of some group suffer an actual injury, and the injury can be to aesthetic or environmental values.[22] The court further reasoned that it will find that standing exists where such an injury is alleged, despite an attenuated line of causation from the agency action to the injury and whether or not the plaintiff will ultimately be able to prove that he has in fact suffered the alleged injury.[23] The strong dissent in *Sierra Club v. Morton*[24] indicates growing judicial support of this approach. This suit unsuccessfully sought an injunction to restrain federal officials from approving an extensive skiing development in the Mineral King Valley in the Sequoia National Forest.[25] In his dissent, Justice Blackmun advocated an

17. *Data Processing*, 397 U.S. at 152-53; *See* Barlow v. Collins, 397 U.S. 159 (1970).

18. *See Students Challenging Regulatory Agency Procedures*, 412 U.S. 669; *Animal Welfare Inst.*, 561 F.2d 1002; *American Horse Protection Ass'n*, 403 F. Supp. 1206.

19. *American Horse Protection Ass'n*, 403 F. Supp. at 1214-15.

20. *Id.*

21. *Id.* at 1214.

22. *Id.*

23. *Id.* This same approach was accepted by the United States Court of Appeals for the District of Columbia which gave standing to an animal protection organization. This organization sued the Secretary of Agriculture to enforce the Marine Mammal Protection Act to protect baby seals that were killed for their fur skins. The court accepted the impairment of the plaintiff members to see, photograph and enjoy South African Cape fur seals alive in their natural habitat as an actual injury in fact. The court stated that the plaintiffs were not required to prove that no contingency might prevent them from viewing the seals in the future and, therefore, that their allegation was sufficient. *Animal Welfare Inst.*, 561 F.2d at 1008.

24. 405 U.S. 727, 755 (1972) (Blackmun, J., dissenting). The vote dismissing the case due to lack of standing was four to three.

25. *Id.* at 727.

"expansion of our traditional concepts of standing in order to enable an organization such as the Sierra Club, possessed, as it is, of pertinent, bona fide, and well-recognized attributes and purposes" in this area of law to litigate the issues.[26]

Some courts have specifically recognized standing for animal protective societies.[27] The United States Court of Appeals for the District of Columbia in *Animal Welfare Institute v. Kreps*[28] held that an organization had standing to bring suit under the MMPA because there is a firm statutory foundation.[29] This case involved an environmental and animal protection organization challenging a decision by the government to waive a moratorium imposed by the MMPA so as to prevent importation of baby fur seal skins into the United States from South Africa.[30] The court noted that the MMPA is an unusual statute because its primary purpose is to promote the protection of animals.[31] The MMPA was enacted in response to a public outcry against the commercial exploitation of very young and still nursing marine mammals, particularly seals.[32] The court stated that "where an act is expressly motivated by considerations of humaneness toward animals who are uniquely incapable of defending their own interests in court, it strikes us as eminently logical to allow groups specifically concerned with animal welfare to invoke the aid of the courts in enforcing the statute."[33]

Several animal rights advocates have argued that giving animals standing to sue would allow concerned persons and organizations to protect the rights of animals in court.[34] In his dissent in *Sierra Club*,[35] Justice Douglas stated that the question of standing would be simplified and put into focus if there were a federal rule that allowed environmental issues to be litigated before federal courts "in the name of the inanimate object about to be despoiled, defaced, or invaded. . .and where injury is the subject of public outrage."[36]

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26. *Id.* at 757.

27. *See Animal Welfare Inst.*, 561 F.2d 1002; Commission for Humane Legislation v. Richardson, 540 F.2d 1141 (D.C. Cir. 1976). *See also* Comment, *Recent Developments Concerning the Use of Animals in Medical Research*, 4 J. LEGAL MED. 109 (1983).

28. *Animal Welfare Inst.*, 561 F.2d 1002.

29. *Id.*

30. *Id.*

31. *Id.* at 1007.

32. *Id.*

33. *Id.* The court determined that the appellant's claim of standing has a firm statutory foundation. However, even if the statute did not provide the answer, the appellants also satisfy the prerequisites for standing in the absence of the statutory grant. *Id.* at 1006. *See supra* note 23.

34. Comment, *supra* note 27, at 125.

35. 405 U.S. 727, 741 (1972) (Douglas, J., dissenting).

36. *Id.*

Justice Douglas supported this approach by stating that if corporations and ships have standing to sue then "[s]o it should be as respects valleys, alpine meadows, rivers, lakes, estuaries, beaches, ridges, groves of trees, swampland, or even air that feels the destructive pressures of modern technology and modern life."[37] A logical extension of this theory would apply to animals as well as inanimate objects.

Although the trend of cases arising under the various acts authorizing judicial review of federal agency action has been toward expanding the traditional concepts of standing to enable protective societies to litigate the issues, the courts had not before 1986 addressed this issue in regard to the use of animals in medical research under the AWA. This specific issue was addressed in *International Primate Protection League.*[38]

A RETURN TO THE TRADITIONAL APPROACH TO STANDING

The *International Primate Protection League*[39] case originated from *Taub v. State.*[40] The principal complainant, Alex Pacheco, first met the principal defendant, Dr. Taub, in 1981 when he offered to work as a volunteer for Dr. Taub on a neurological study at an Institute of Behavioral Research ("IBR") facility.[41] Dr. Taub was studying the capacity of monkeys to learn to use an arm after the nerves from the arm to the spinal column had been severed. The project amplified Taub's earlier research in this area and attempted to discover benefits for the rehabilitation of human patients suffering from a serious neurological injury, such as a stroke.[42] As Pacheco worked regularly in the laboratory during the summer of 1981, he concluded that the IBR did not provide the monkeys with sufficient food or water, a sanitary environment or adequate veterinary care.[43] Pacheco brought researchers and primatologists to the IBR to confirm his impressions and collected affidavits from these visits.[44] Pacheco then contacted the local authorities who conducted an investigation and executed a search warrant removing the monkeys from the facility in the process.[45]

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37. *Id.* at 743.
38. *International Primate Protection League*, 799 F.2d 934.
39. *Id.*
40. 296 Md. 439, 463 A.2d 819 (1983).
41. *International Primate Protection League*, 799 F.2d at 935-36.
42. *Id.* at 936.
43. *Id.*
44. *Id.*
45. *Id.* Dr. Taub was convicted on six counts of violating the state animal cruelty act. Dr. Taub appealed this conviction to the Circuit Court for Montgomery County where after a new trial, a jury returned a verdict against him on one count of cruelty to animals. The Court of Appeals of Maryland then granted a writ of certiorari and in August of 1983 reversed the

Animal protection organizations, fearful that the animals would be returned to the IBR, filed a bill of complaint in which they purported to speak for "their own and class interests and as next friends of seventeen non-human primates."[46] The complaint alleged violations of the state animal cruelty act that the criminal trial had not established[47] and further alleged that the defendant had violated the AWA.[48]

This case was removed to the United States District Court for the Eastern District of Maryland because the claim arose under the AWA, which supports federal jurisdiction.[49] The district court dismissed the case because the animal rights organizations lacked standing to bring suit against IBR and the National Institutes of Health ("NIH") under AWA.[50] When the case reached the United States Court of Appeals for the Fourth Circuit, the court held that animal protection organizations lacked standing to sue under the AWA because they could not allege cognizable injuries, and failed to prove that the implicated federal statute authorized their right to seek relief.[51]

Considering previous case law, the court acknowledged the traditional, two prong requirement of standing as defined in *Data Processing*,[52] and subsequently used in numerous cases to establish standing for animal protection organizations.[53] In *International Primate Protection League*,[54] the court strictly interpreted the two standing requirements. Unlike the previous cases, the court closely examined each allegation of financial and non-financial injury to conclude that these claims do not provide standing under AWA for animal protection organizations.[55] The plaintiffs sought standing by stating that their members have a personal interest in the preservation and encouragement of civilized and humane treatment of animals and that their own aesthetic, conservational and environmental interests are specifically offended by the matters described and these interests, along with the educa-

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conviction by holding that the state animal anticruelty law did not apply to an institution conducting medical research pursuant to a federal program. *Taub*, 296 Md. 439, 463 A.2d 819 (1983).

46. *International Primate Proteciton League*, 799 F.2d at 936.

47. *See supra* note 45.

48. *International Primate Protection League*, 799 F.2d at 936.

49. The issue in controversy arises under the Animal Welfare Act, a law of the United States. "The district courts shall have original jurisdiction of all civil actions arising under the constitution, laws, or treaties of the United States." 28 U.S.C. § 1331(a) (West Supp. 1987).

50. *International Primate Protection League*, 799 F.2d 937.

51. *Id.* at 938.

52. *Data Processing*, 397 U.S. at 154.

53. *Animal Welfare Inst.*, 561 F.2d at 1002; *American Horse Protection Ass'n*, 403 F. Supp. 1206.

54. *International Primate Protection League*, 799 F.2d at 934.

55. *Id.* at 937-38.

tional interests, will be detrimentally impacted upon if the relief sought is not granted.[56] The plaintiffs specifically alleged that the disruption of their personal relationships with the monkeys by their return to IBR was an actual, non-financial injury.[57] This is almost identical to the argument in *American Horse Protection Association*[58] and *Animal Welfare Institute*,[59] in which the courts found an actual injury to exist where a member of the organization claimed to have viewed the animals and wished to continue to view them.[60] However, the court in *International Primate Protection League* held that the above analogy fails because the plaintiffs would have been unable to see the monkeys "if the defendants had satisfied all requirements of care."[61] The court determined that the "injury is abstract at best and insufficient to remove them from the category of concerned bystander."[62] The court further stated that "[t]he commitment of an organization may enhance its legislative access; but it does not, by itself, provide entry to a federal court."[63]

Furthermore, the court stated that "not only do [the] plaintiffs fail to allege [a] cognizable injury, [but also] fail to prove that the implicated federal statute authorizes their right to seek relief."[64] Unlike the prior cases, the court, rather than accepting the stated general purpose of the statute, inquired deeply into its legislative history to determine that to according the plaintiffs standing under the AWA to sue by virtue of a private cause of action would not conform to the aims of Congress.[65]

In *International Primate Protection League*, the court did not grant standing under a liberalized interpretation of the traditional requirements or imply a cause of action under AWA for two primary reasons. First the court acknowledged previous court decisions that have granted animal protective organizations standing.[66] However, the court also recognized the importance of medical research by restating the Congressional finding that:

> [r]esearch with primates helped to lead to the development of the polio vaccine, and other animal research has contributed to the discovery of insulin, the invention of transplant techniques, and the

56. *Id.* at 938.
57. *Id.* at 4.
58. *American Horse Protection Ass'n*, 403 F. Supp. at 1214.
59. *Animal Welfare Inst.*, 561 F.2d at 1008.
60. *See supra* notes 21 & 18.
61. *International Primate Protection League*, 799 F.2d at 938.
62. *Id.*
63. *Id.*
64. *Id.*
65. *Id.* at 940.
66. *Id.*

> improvement of cancer therapies, [and that] the use of animals is instrumental in certain research and education for advancing knowledge of cures and treatments for diseases and injuries which afflict both humans and animals.[67]

An article in the *New England Journal of Medicine* advocating the use of animals in medical research stated that "[e]very disease eliminated, every vaccine developed, every method of pain relief devised, every surgical procedure invented, every prosthetic device implanted - indeed, virtually every modern medical therapy is due, in part or in whole, to experimentation using animals."[68] These new advances in medicine must sooner or later be tried on a living being for the first time.[69] That trial will be an experiment, and the subject of that experiment, if it is not an animal, will be a human being.[70] Therefore, prohibiting the use of live animals in biomedical research or sharply restricting it, will result in either a blockage of much valuable research or it will result in the replacement of animal subjects with human subjects.[71]

The court further emphasized the importance of medical research by suggesting what consequences may flow from an implied cause of action.[72] Specifically, the court feared that such an action would open the use of animals in biomedical research to the hazards and vicissitudes of courtroom litigation, draw judges into the supervision and regulation of laboratory research, and unleash a spate of private lawsuits that would impede advances made by medical science in the alleviation of human suffering.[73]

Secondly, the court refused to imply a cause of action under the AWA because it determined that in the absence of clear direction from Congress risking such severe consequences would be ill-advised.[74] The AWA seeks to ensure that "animals intended for the use in research facilities are provided with humane care and treatment."[75] However, there was no indication that

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67. *Id.*; H.R. REP. No. 447, 99th Cong., 1st Sess., *reprinted in* 1985 U.S. CODE CONG. & ADMIN. NEWS 1676, 2518. Cancer, the second leading cause of death, has been cured in some cases by chemotherapeutic agents, which were tested for toxicity in animals. Coronary bypass operations, which are performed approximately 50,000 times a year, could not have been developed without the use of animals for experimental purposes. HOUSE COMM. ON SCIENCE AND TECHNOLOGY, HUMANE CARE AND DEVELOPMENT OF SUBSTITUTES FOR ANIMALS IN RESEARCH ACT, H.R. DOC. No. 777, 97th Cong., 2d Sess. 18 (1982).

68. Cohen, *Case for the Use of Animals in Biomedical Research*, 315 NEW ENG. J. MED. 865, 868 (1986).

69. *Id.*

70. *Id.*

71. *Id.*

72. *International Primate Protection League*, 799 F.2d at 940.

73. *Id.* at 935.

74. *Id.*

75. 7 U.S.C. § 131(1) (West Supp. 1987).

Congress intended this goal to be achieved at the expense of progress in medical research and science.[76] The statutory design of the AWA is inconsistent with the private right of action that plaintiffs assert. The AWA directed the Secretary of Agriculture to "promulgate standards to govern the humane handling, care, treatment and transportation of animals, but [specifically] cautions that "nothing in this chapter shall be construed as authorizing the Secretary to promulgate rules, regulations, or orders with regard to design, outlines, guidelines or performance of actual research or experimentation by a research facility as determined by such research facility."[77] "The Secretary may also remove an animal found to be suffering through noncompliance of a laboratory, with the regulations, but only if the animal is no longer required by the research facility to carry out the research, test or experiment for which such animal is being utilized."[78]

The court noted that a review of AWA reveals a congressional "commitment to administrative supervision of animal welfare . . . and the subordination of such supervision to the continued independence of the research scientists."[79] The court specifically acknowledged that the "Secretary's rulemaking authority does not extend to the design of experiments; . . . and the enforcement authority does not extend to the confiscation of animals in use."[80] In the words of Congress, "under this bill the research scientist still holds the key to the laboratory door."[81] Because of this extensive history, the court in *International Primate Protection League* was convinced that Congress intended the administrative remedy to be exclusive, and that to accord standing to sue by virtue of a private cause of action would not conform to the aims of Congress in AWA.[82]

CONCLUSION

On April 6, 1987, the Supreme Court denied certiorari without comment. Thus, *International Primate Protection League* will have a major effect on the approaches animal protection organizations use when seeking to protect laboratory animals. It suggests that the role the judiciary will play in the vital area of medical research will be that of not going beyond what the legislature intended. Although this decision prevents animal protection or-

76. *International Primate Protection League*, 799 F.2d at 939.
77. 7 U.S.C. § 2143 (West Supp. 1987).
78. 7 U.S.C. § 2146(a) (West Supp. 1987).
79. *International Primate Protection League*, 799 F.2d at 939.
80. *Id.*; 7 U.S.C. §§ 2143, 2146 (West Supp. 1987).
81. H.R. REP. No. 1651, 91st Cong., 2d Sess., *reprinted in* 1970 U.S. CODE CONG. & ADMIN. NEWS 5103, 5104.
82. *International Primate Protection League*, 799 F.2d at 940.

ganizations from obtaining standing to enforce AWA claims in court, it encourages these organizations to seek a legislative change that will address the problem.

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