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First Circuit Widens Door for Clean Air Act Citizen Suits with Bus Pollution Decision

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Most federal environmental statutes include a "citizen suit" provision allowing individuals or private groups to bring statutory claims alleging violations of those statutes and to seek injunctive relief, civil penalties, and attorneys' fees.[1] Because Article III of the Constitution limits federal courts to deciding "cases and controversies," however, a plaintiff seeking to bring such a suit must have a "personal stake" in the case, *i.e.,* standing to sue.[2]

To sue on behalf of its members, a group must demonstrate that its members "would otherwise have standing to sue in their own right," among other things.[3] This means that at least one member must have suffered an "injury in fact" that is (i) "concrete and particularized," and "actual or imminent, not conjectural or hypothetical," (ii) "fairly traceable" to the challenged action of the defendant, and (iii) likely to be redressed by a favorable decision by the court.[4]

Recent Caselaw. Recently, in *Conservation Law Foundation v. Academy Express, LLC*, the U.S. Court of Appeals for the First Circuit adopted a broad approach to the injury-in-fact and traceability requirements of the Supreme Court's standing test.[5] The case involved a plaintiff group suing Boston bus companies under the Clean Air Act for violating state idling rules when the buses were operating but not moving. The court held that breathing and smelling polluted air from the buses constitute injuries in fact "even when unaccompanied by additional associated harms."[6] The court also held that upon a showing of "geographic proximity," a Clean Air Act plaintiff can satisfy traceability "even if other sources may have contributed to the complained-of pollution."[7]

District Court's Decision. The district court held that only two of the ten members whose sworn declarations it considered satisfied the injury-in-fact requirement, and that none of those ten members satisfied the traceability requirement.[8]

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[1] 42 U.S.C. § 7604(a) (Clean Air Act citizen suit provision); 33 U.S.C. § 1365(a) (Clean Water Act citizen suit provision); 42 U.S.C. § 6972(a) (Resource Conservation and Recovery Act citizen suit provision); 42 U.S.C. § 9659(a) (Comprehensive Environmental Response, Compensation, and Liability Act citizen suit provision).

[2] *E.g., Raines v. Byrd*, 521 U.S. 811, 819 (1997).

[3] *Friends of the Earth v. Laidlaw Env'tl Servs. (TOC), LLC*, 528 U.S. 167, 181 (2000).

[4] *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992).

[5] 129 F.4th 78 (1st Cir. 2025).

[6] *Id.* at 87.

[7] *Id.* at 91.

[8] 693 F. Supp. 3d 41, 50–52 (D. Mass. 2023), *vacated and remanded*, 129 F.4th 78 (1st Cir. 2025).

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The district court explained that a concern about adverse health effects, "not linked to specific medical conditions," cannot constitute an injury in fact.[9] The district court also found that "[t]he smell of exhaust alone appears insufficient to establish an injury."[10] In the district court's view, the only members who had suffered an injury in fact were the two who swore that they modified their recreational activities due to alleged air quality issues.[11] However, the alleged illegal idling locations were 1.5 and 2 miles away, respectively, from where those members' alleged injuries occurred. Thus, with respect to traceability, the district court held that the two members had not demonstrated "any basic link between the asserted injuries and the Bus Companies' bus stops."[12] As the district court explained:

In an urban environment, a span of a mile or two contains numerous vehicles and bus stops. In such an environment, the injuries alleged cannot be conclusively linked to the excessive idling by the Defendants. Allowing suit against the Defendants for anyone suffering the most minor of injuries who has occasionally traveled within two miles of any bus stop could mean that every resident of the greater Boston area has standing to sue the Bus companies.[13]

Because no members satisfied the traceability requirement, the district court did not reach the redressability prong of the standing test.[14]

First Circuit Decision. The Court of Appeals vacated and remanded the district court's decision. It held that "breathing and smelling polluted air" are both injuries in fact, even if unaccompanied by additional associated harms.[15]

On traceability, the First Circuit held that "the existence of other potentially culpable vehicles does not eliminate traceability," and that the plaintiffs did not need to show a "conclusive link" between the alleged violations and their injuries.[16] Rather, "[i]n lieu of requiring a conclusive link," the court held that "a showing of geographic proximity can satisfy traceability in this type of case."[17]

So how close is close enough to establish "geographic proximity" under the Clean Air Act for purposes of standing? The First Circuit did not answer this question, but did reject the plaintiffs' argument that being located within "a few miles" of the alleged emissions would be sufficient. As the First Circuit noted: "[W]ithout expert testimony, how are we to know how far and in what concentration [air pollution] travels? And with what effects?"[18] Thus, for members "whose testimony does not place them at or near the commuter stations," it is "likely" that the plaintiff group "can only establish traceability by adducing expert testimony explaining how the pollution travels to, and ultimately affects, those members."[19] The First Circuit left that issue for the district court to determine on remand.[20]

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[9] *Id.* at 50.

[10] *Id.*

[11] *Id.*

[12] *Id.* at 51.

[13] *Id.* at 52.

[14] *Id.*

[15] 129 F.4th at 87.

[16] *Id.* at 91.

[17] *Id.*

[18] *Id.* at 92.

[19] *Id.*

[20] *Id.*

Potential Implications. At first blush, the First Circuit's broad ruling appears to allow plaintiffs in that Circuit to establish the "injury in fact" requirement for standing under the Clean Air Act, even when the emissions in question may be authorized under law and/or not result in any appreciable harm. Such an expansive ruling may be questioned by district courts outside the First Circuit, which may find the district court's analysis more persuasive and more consistent with Supreme Court precedent. As explained by one amicus brief filed in support of the bus companies, the First Circuit's ruling could improperly allow plaintiffs to "sue largely for alleged exposure to emissions from legal and essential operation of buses."[21] "If people with no injury that can be tied to the alleged violative conduct are permitted to sue bus companies simply because buses (like all vehicles) produce emissions, it would open the door for metropolitan areas across America to hold bus companies solely responsible for our nation's urban pollution."[22]

With respect to the "traceability" prong on standing, it remains to be seen how courts will apply the First Circuit's decision. If courts require sufficient and reliable expert testimony to establish traceability for plaintiffs' members who are not at or near the alleged source of air pollution, then the First Circuit's "geographic proximity" holding may not expand associational standing in that Circuit as much as some may fear.

[21] *Am. Bus Assoc., Inc. Amicus Curiae Br. in Support of Defendant-Appellee and Supporting Affirmance*, 2024 WL 323035, at *13 (Jan. 22, 2024).

[22] *Id.* at *21.

