

REDEFINING STANDING FOR A SUSTAINABLE FUTURE

ARTÍCULO

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But this is not ordinary, run-of-the-mill litigation. The case poses, if only we choose to acknowledge and reach them, significant aspects of a wide, growing, and disturbing problem, that is, the Nation’s and the world’s deteriorating environment with its resulting ecological disturbances. Must our law be so rigid and our procedural concepts so inflexible that we render ourselves helpless when the existing methods and the traditional concepts do not quite fit and do not prove to be entirely adequate for new issues?¹

INTRODUCTION

Scorching hot days are the new normal, the air feels thick and heavy like a furnace of heat. People seek refuge wherever shade can be found and the gentlest breeze becomes a precious gift. These are merely some of the more apparent signs that the effects of climate change on a worldwide scale have continued to worsen, highlighting the pressing need for prompt action.² Unmistakable indicators of the crisis include rising temperatures, harsh weather conditions and changing climatic patterns. Communities all around the world are dealing with the bleak reality of climatically generated calamities, which range from severe wildfires and floods to protracted droughts.³ These occurrences are causing chaos in people’s lives, jeopardizing food security and straining resources.

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¹ *Sierra Club v. Morton*, 405 U.S. 727, 755–56 (1972) (Blackmun, J., dissenting).

² U.N. Environment Programme, *Emissions Gap Report 2023: Broken Record – Temperatures hit new highs, yet world fails to cut emissions (again)*, UNEP (2023), <https://wedocs.unep.org/bitstream/handle/20.500.11822/43922/EGR2023.pdf?sequence=3&isAllowed=y>.

³ *Id.*

The challenges of preventing the plight of climate change and adjusting to its effects have persisted, and governments and international organizations are realizing that cooperation is necessary to slow the planet's warming trend. This year, there has been a rise in public activism and awareness around climate change. People's demand for more aggressive climate policy has given rise to youth-led movements, climate strikes and grassroots initiatives.⁴ The use of renewable energy has increased at a never-before-seen rate, propelled by both financial incentives and environmental concerns.⁵ Despite the significant obstacles, there has been a shift in the global commitment to sustainable practices and carbon neutrality, as countries set more ambitious goals and take proactive measures to move toward a greener future.⁶ The necessity for quick, concerted action at the national and international levels to protect the world for future generations has been shaped by the brutal reality of climate change.

Currently, environmental degradation is negatively impacting the quality of life for those directly affected by it and will gradually alter the quality of life for everyone else over time.⁷ Although disadvantaged groups in society typically suffer first and worse, no one is exempt from the negative effects of environmental deterioration.⁸ Human society depends on the environment to survive. It might be difficult to pinpoint the exact boundaries of how people and nature interact; however, those in charge of policy and others who present the situation as an unresolvable conflict between environmental and developmental rights—for instance, employment versus trees—create an unneeded rift. Despite its biological hubris, a human-centered approach exposes the absurdity of this division and reveals the futility of seeing people and the environment as opposing forces. The truth is that degrading the environment does not make the globe more favorable for the development of human civilization. The small group of people who benefit economically from environmental disruption may feel more at ease as a result, but even for them, the short-term gains from environmental degradation are negligible in comparison to the long-term effects of robbing the environment of its production capacity. In the end, everyone will suffer when there is nothing left.

In Puerto Rico, climate change has had significant impacts on the island, which is particularly vulnerable to extreme weather events due to its location in the Caribbean. According to the U.S. Environmental Protection Agency (EPA), Puerto Rico has warmed by more than one degree Fahrenheit since the mid-20th century and the surrounding waters have warmed by nearly two degrees since 1901.⁹ The sea is rising about an inch every

4 Saher Rashid, *Rising Up: How Youth Are Leading the Charge for Climate Justice*, U.N. DEVELOPMENT PROGRAMME (Dec. 7, 2023), <https://www.undp.org/blog/rising-how-youth-are-leading-charge-climate-justice>.

5 Intergovernmental Panel on Climate Change, *Climate Change 2023: Synthesis Report*, IPCC 35-115 (2023), <https://www.ipcc.ch/report/sixth-assessment-report-cycle/>.

6 *Id.*

7 *Id.*

8 U.S. ENVIRONMENTAL PROTECTION AGENCY, PUB. NO. EPA 4030-R-21-003, CLIMATE CHANGE AND SOCIAL VULNERABILITY IN THE UNITED STATES: A FOCUS ON SIX IMPACTS 4 (2021), https://www.epa.gov/system/files/documents/2021-09/climate-vulnerability_september-2021_508.pdf (footnote omitted).

9 U.S. ENVIRONMENTAL PROTECTION AGENCY, PUB. NO. EPA 430-F-16-063, WHAT CLIMATE CHANGE MEANS FOR PUERTO RICO (2016), <https://19january2017snapshot.epa.gov/sites/production/files/2016-09/documents/climate-change-pr.pdf>.

fifteen years and heavy rainstorms are becoming more severe.¹⁰ In the coming decades, rising temperatures are likely to increase storm damage, significantly harm coral reefs and increase the frequency of unpleasantly hot days.¹¹ Basically, the worse it gets, the more susceptible Puerto Rico becomes to extreme weather events like hurricanes, which have devastating and long-lasting consequences.

In light of the aforementioned, there has been a development of new regulations, legal interpretations and litigation trends. In 2019, the Puerto Rican legislature created the Puerto Rico Climate Change Mitigation, Adaptation, and Resilience Act, a comprehensive legislation that aims to address climate change in Puerto Rico by establishing: (1) the means to reduce greenhouse gas emissions; (2) the approval of a Climate Change Mitigation, Adaptation, and Resilience Plan per sector, and (3) the creation of an Expert Advisory Committee on Climate Change.¹² In addition, there are several other initiatives, such as the Puerto Rico Energy Public Policy Act, which set a goal of 100% renewable energy by 2050.¹³

Globally, there is a new concept known as climate change litigation, which has been on the rise with an increasing number of cases being brought before courts worldwide.¹⁴ According to the Global Climate Litigation Report: 2023 Status Review, published by the U.N. Environment Program and the Sabin Center for Climate Change Law at Columbia University, the total number of climate change court cases has more than doubled since 2017, with 2,180 climate-related cases filed in 65 jurisdictions as of December 2022.¹⁵ This represents a steady increase from 884 cases in 2017 and 1,550 cases in 2020.¹⁶ The report highlights that “people are increasingly turning to the courts to combat the climate crisis,” with “[c]hildren and youth, women’s groups, local communities and Indigenous Peoples, among others, are also taking a more prominent role in bringing these cases and driving climate change governance reform in more and more countries around the world.”¹⁷

The report also notes that most ongoing climate litigation falls into one or more of six categories: (1) cases relying on human rights enshrined in international law and national constitutions; (2) challenges to domestic non-enforcement of climate-related laws and policies; (3) litigants seeking to keep fossil fuels in the ground; (4) advocates for climate

10 *Id.*

11 See Henry Fountain, *Climate Change Is Making Hurricanes Stronger, Researchers Find*, THE NEW YORK TIMES (May. 18, 2020), <https://www.nytimes.com/2020/05/18/climate/climate-changes-hurricane-intensity.html>. See Catrin Einhorn, *Climate Change Is Devastating Coral Reefs Worldwide, Major Report Says*, THE NEW YORK TIMES (October. 07, 2021), <https://www.nytimes.com/2021/10/04/climate/coral-reefs-climate-change.html>. See Nicole Acevedo, *Puerto Rico schools cancel classes as they grapple with unceasing, excessive heat*, NBC NEWS DIGITAL (Sep. 8, 2023), <https://www.nbcnews.com/news/latino/puerto-rico-schools-cancel-excessive-heat-no-air-conditioning-rcna103923>.

12 2019 P.R. Laws 469-70.

13 P.R. LAWS ANN. tit. 22, § 1141e(7) (2009 & Supp. 2023).

14 See *Yale Experts Explain Climate Lawsuits*, YALE SUSTAINABILITY (Aug. 16, 2023), [https://sustainability.yale.edu/explainers/yale-experts-explain-climate-lawsuits-?text=Climate change lawsuits could refer,actions or receive adaptation funding](https://sustainability.yale.edu/explainers/yale-experts-explain-climate-lawsuits-?text=Climate%20change%20lawsuits%20could%20refer%20to%20actions%20or%20receive%20adaptation%20funding).

15 U.N. Environment Programme, *Global Climate Litigation Report: 2023 Status Review*, UNEP 13 (2023), https://wedocs.unep.org/bitstream/handle/20.500.11822/43008/global_climate_litigation_report_2023.pdf?sequence=3.

16 *Id.*

17 *Id.* at IX.

adaptation and resilience; (5) cases seeking to hold corporations accountable for their contributions to climate change, and (6) cases challenging government subsidies for fossil fuels and other activities that contribute to climate change.¹⁸ The increasing volume of climate litigation is seen as an integral part of securing climate action and justice, and the body of legal precedent is growing, forming an increasingly well-defined field of law.¹⁹ The report emphasizes the importance of an environmental rule of law in combating the triad of planetary crises (climate change, biodiversity loss and pollution) and highlights that access to justice enables the protection of environmental and human rights while promoting accountability in public institutions.²⁰

However, in Puerto Rico, there is currently no space that ensures those claims are heard; there is a deficiency in accessing the enforcement of environmental rights. Particularly, the contrived doctrine of injury in fact has become a barrier to justice. The courts' stringent interpretation closes the door for plaintiffs and many times leads to a lack of standing to sue. However, climate change is the complex legal challenge of our time; therefore, it requires innovative, transformative and interdisciplinary legal responses. The purpose of this article is to do just that: provide a potential legal framework where environmental claims can be heard, given that the climate crisis is the most significant issue of our time. Unparalleled challenges require exceptional solutions.

This paper aims to evoke critical reflection. The first part discusses the development of the standing doctrine in environmental matters and its relevant jurisprudence; specifically, dissecting the case of *Surfrider* and its harmful impact. The second section argues the possible methods of overturning the current norm and reverting to our autochthonous, constitutional, more accessible, protection of nature. The third part reflects on the need for careful consideration of legislative reforms that directly tackle the standing issue and the preservation of our natural resources. Ultimately, my goal with this piece is to explore a possible norm (not necessarily a new one, but an imperative one): environmental standing as a right.

I. LEGAL ECHOES OF THE EARTH: UNDERSTANDING STANDING

Environmental matters stand as a fundamental public right enshrined in the Constitution of the Commonwealth of Puerto Rico.²¹ Article VI, section 19 of our Constitution articulates that “[i]t shall be the public policy of the Commonwealth to conserve, develop and use its natural resources in the most effective manner possible for the general welfare of the community.”²² This mandate goes beyond being a mere directive; it represents a solemn obligation imposed on the State to protect our environment and actively promote its well-being.

The constitutional right to a suitable environment has been unequivocally acknowledged since its incorporation. During the Constituent Convention, a proposal to relegate

¹⁸ *Id.* at 26.

¹⁹ *Id.*

²⁰ *Id.* at X.

²¹ P.R. CONST. art. VI, § 19.

²² *Id.*

this right to the realm of legislation was defeated, underscoring the understanding that the conservation of our natural resources is imperative.²³ The delegate, Santiago Polanco Abreu expressed that it was not a “theoretical error. We are aware of what we are doing. We are structuring something, the conservation of natural resource[s]. Puerto Rico is an island. We must be concerned.”²⁴ Furthermore, during the Convention, it was stated that:

It is our purpose to point out with absolute clarity the convenience and need for the natural resources in Puerto Rico to be conserved. Since Puerto Rico is an island [that] has few natural resources, there must be constant concern [by] the State about the use, development, exploitation and conservation of them. The conservation of land, forests, fish, waters, birds, mines and salt mines, among others, must be one of the primary functions of our [g]overnment.²⁵

Hence, environmental protection attains constitutional status, a distinction absent in the federal system where no equivalent environmental constitutional right exists.²⁶ In light of this, the Supreme Court of Puerto Rico has said that:

[T]he people [are] considered as the beneficially interested party and the [plaintiff] need not show that he has a special interest in the result of the case. It is sufficient [to demonstrate] that he is a citizen and as such [is] interested in the [enforcement] and protection of public law.²⁷

Moreover, the Court, recognizing the significance of environmental preservation, had broadly and liberally interpreted the doctrine of standing. In *Salas Soler v. Sec’y. of Agriculture*, regarding the type of damage that confers active standing, the Court had expressed itself very clearly: “[to demonstrate that you are a person affected by a government action] [u]nder our type of statute, there is no need to prove economic injury. . . . The injury may be based on environmental . . . considerations.”²⁸ Moreover, in the landmark case of *Paoli Méndez v. Rodríguez*, the Court established that “[t]he public policy on natural resources set forth in our Constitution is a protection of what we commonly call ‘the nature.’”²⁹ The protection is effective against anyone; “the State, society, the government, and even man, who, in the contemporary world, without realizing that he is undermining his own existence, destroys nature for the sake of rampant materialism and consumerism, creating irreversible systemic imbalances.”³⁰

23 Jessica Rodríguez Martín, *El Derecho Constitucional a un Medio Ambiente Adecuado en Puerto Rico*, 35 REV. JUR. UIPR 7, 8 (2000) (footnote omitted).

24 3 DIARIO DE SESIONES DE LA CONVENCION CONSTITUYENTE DE PUERTO RICO 2116 (1952) (author’s translation).

25 *Id.* at 2622.

26 See Luis José Torres Asencio, *A las puertas del tribunal*, 46 REV. JUR. UIPR 333, 349 (2011) (footnote omitted).

27 *Teachers’ Ass’n of P.R. v. Pérez*, Acting Governor, 67 P.R. Dec. 848, 851 (1947) (citations omitted).

28 *Salas Soler v. Sec’y. of Agriculture*, 102 P.R. Dec. 716, 723 (1974) (citing *Data Processing Service v. Camp*, 397 U.S. 150, 151 (1970) and *Barlow v. Collins*, 397 U.S. 159 (1970)).

29 *Paoli Méndez v. Rodríguez*, 138 P.R. Dec. 449, 462 (1995) (author’s translation).

30 *Id.*

Subsequently, in *Misión Industrial v. Junta de Calidad Ambiental*, the Court emphasized that “[t]his constitutional provision is not a mere expression.”³¹ Instead, it constitutes a “mandate that must be strictly adhered to, prevailing over any statute, regulation or ordinance inconsistent with it.”³² The Court notes that:

According to this clear constitutional record, in Puerto Rico, any decision or determination of the State that affects natural resources must fully respond to the double mandate of Art. VI, Sec. 19 of the Commonwealth Constitution to achieve the most effective conservation of natural resources, while seeking the greatest development and use of these resources for the general welfare of the community. Said section unquestionably establishes the primary legal criterion to judge the validity or interpret the meaning of any rule or decision [pertaining] to the use or protection of natural resources formulated by the Legislative Assembly or by any agency, department, municipality or government instrumentality.³³

In sum, the Supreme Court of Puerto Rico established a constitutional mandate for environmental protection, not a mere exhortation, which led to accessibility to the courts. However, most environmental lawsuits have their genesis in the administrative process, therefore it is during the review or appeal that citizens seek access to the courts to assert their claims but, as a general rule, there are a series of doctrines that serve as the first barriers that every person has to overcome to gain access to our courts. The Supreme Court has developed “a series of requirements that must be satisfied before courts will adjudicate a dispute.”³⁴ The set of these doctrines, whether advisory opinion, standing, mootness, ripeness and political issue, are grouped under the concept of justiciability.³⁵ The United States Supreme Court’s doctrine of justiciability arises from the case or controversy requirement contained in Article III, Section 2 of the United States Constitution.³⁶ Additionally, the case or controversy requirement contained in the Constitution of the United States and the doctrine of justiciability that the federal courts have derived from it does not bind the states or territories.³⁷

However, since *ELA v. Aguayo*, the Supreme Court of Puerto Rico adopted and has since used the case or controversy requirement as a basis for dismissing cases for not being justiciable.³⁸ Nonetheless, “[f]or a long time[,] it has been debated whether the doctrines of justiciability have constitutional status or whether they merely constitute prudential rules of judicial self-limitation.”³⁹ Professor Erwin Chemerinsky has said that:

31 *Misión Industrial v. J.C.A.*, 145 P.R. Dec. 908, 919 (1998).

32 *Id.* at 919 (emphasis omitted) (author’s translation).

33 *Id.* at 919-920 (emphasis omitted).

34 JOSÉ JULIÁN ÁLVAREZ GONZÁLEZ, *DERECHO CONSTITUCIONAL DE PUERTO RICO Y RELACIONES CONSTITUCIONALES CON LOS ESTADOS UNIDOS* 89 (2009).

35 *Id.*

36 U.S. CONST. art. III, § 2.

37 *Torres Asencio*, *supra* note 26, at 352, 361-62.

38 *ELA v. Aguayo*, 80 P.R. Dec. 552, 590 (1958).

39 *PNP v. Carrasquillo*, 166 P.R. Dec. 70, 74-75 (2005) (author’s translation) (citations omitted).

[W]hat makes some requirements constitutional and the others prudential? . . . The only apparent answer sounds terribly cynical: a requirement is constitutional if the Court says it is, and it is prudential if the Court says it is that. Nothing in the content of the doctrines explains their constitutional or prudential status.⁴⁰

In our case, the Supreme Court of Puerto Rico has not answered such conundrum. It has expressed that justiciability imposes a double limitation on the courts: (1) that there is a genuine and antagonistic controversy between the parties capable of being resolved through the judicial process, and (2) that the Court will not intervene in areas subject to the criteria of other branches of government.⁴¹ However, the Court has also established that the doctrine of justiciability is self-imposed, so a court may, at its discretion, dispense with it and rule on the merits.⁴² This requirement appears to be a pragmatic way of conditioning a court to hear a case, since it seeks to prevent fictitious controversies from clogging up the courts. However, as we will see later, to the extent which courts make their interpretations based on discretionary considerations, the reasonableness and purpose of this requirement become distorted. This is true specifically when relative to standing, which is one of the doctrines of justiciability. Such concept has been described by Justice John Marshall Harlan II as “a word game played by secret rules.”⁴³

To have standing, it is necessary that:

[T]he plaintiff raising the cause of action alleges (a) having suffered clear and palpable damage; (b) the damage must be real, immediate, and precise; it cannot be abstract or hypothetical; (c) the cause of action must arise under the constitution or a law, and (d) a connection must be established between the damage and the cause of action exercised.⁴⁴

The justification for requiring that the plaintiff in a legal action has experienced harm is straightforward. This requirement is designed to ensure that the person bringing the case has a legitimate interest in the outcome of the case. The premise is that, if the plaintiff has not truly suffered this damage, they will lack the ability to pursue the case diligently.⁴⁵

The issue of legal standing focuses on access to the court. In other words, if a court determines that someone lacks standing, they—and their claims—are denied entry into the judicial system. The definition of the type of injury that grants legal standing has become a fundamental aspect of our system of justice and democracy. The way our courts delineate real, obvious, tangible, immediate and specific harm, excluding the hypothetical or abstract, has a direct impact on who can turn to the courts to resolve various disputes.

Cases related to environmental issues have experienced a significant change in the interpretation of the standing requirement by the Supreme Court of Puerto Rico in the last

⁴⁰ Erwin Chemerinsky, *A Unified Approach to Justiciability*, 22 CONN. L. REV. 677, 692 (1990).

⁴¹ See *Comm'n. for Women's Affairs v. Giménez Muñoz*, 109 P.R. Dec. 715, 720 (1980) (citation omitted).

⁴² See *Smyth, Puig v. Oriental Bank*, 170 P.R. Dec. 73, 76 (2007).

⁴³ *Flast v. Cohen*, 392 U.S. 83, 129 (1968) (Harlan, J., dissenting) (footnote omitted).

⁴⁴ *Hernández Agosto v. Romero Barceló*, 112 P.R. Dec. 407, 414 (1982) (author's translation) (citations omitted).

⁴⁵ See *Id.*

decade. The unexpected change came through the decision issued in *Surfrider Foundation et al. v A.R.Pe.*⁴⁶ The criteria established in this case for individuals and environmental associations to obtain active standing before the courts do not seem to be met by anybody. This decision marked a new direction in the field of Environmental Law on our island.

Before *Surfrider*, as demonstrated earlier, standing in several environmental cases was granted to individuals “without requiring the plaintiff to demonstrate a particular harm, distinct from that of the rest of the citizenry.”⁴⁷ There was a tendency to interpret harm requirements in environmental cases broadly, partly in recognition of the constitutional mandate, and third-party standing was also recognized in public policy cases more frequently than in the federal jurisdiction. However, *Surfrider*’s decision abandons all the aforementioned and mimics the federal case *Sierra Club v Morton*.⁴⁸ It is essential to emphasize that decisions at the federal level on the doctrines of justiciability are not binding in Puerto Rico. The choice to use *Sierra Club* extensively in the majority opinion of *Surfrider* and to replace our criteria of interpretation, previously demonstrated in Puerto Rican jurisprudence, is based on a discretionary and erroneous interpretation by the court that has serious repercussions. To better understand *Surfrider*, we must examine the case of the almost-built Disney ski resort.

A. *Sierra Club v. Morton*

The case was born through a challenge to the U.S. Forest Service’s decision to grant a permit to the Walt Disney Company to turn Mineral King Valley into a huge commercial ski resort.⁴⁹ The United States Supreme Court grants *certiorari* to a dispute in which Sierra Club —“a large and long-established organization, with a historic commitment to the cause of protecting our Nation’s natural heritage from man’s depredations”—alleged that the construction project would cause environmental and aesthetic damage to the area.⁵⁰ Accordingly, they sought to obtain a declaratory judgment establishing that various aspects of the proposed project that contravened federal laws and regulations, as well as preliminary and permanent injunctions to restrict the ability of the federal officials involved to approve or grant permits related to the Mineral King project.⁵¹ The Court, however, did not issue a ruling on the merits of the case, but instead entered into a discussion about Sierra Club’s standing to be a party in this type of litigation. It begins by underlining that environmental and aesthetic damages are important elements in the quality of life of our society and that they “do not question that this type of harm may amount to an ‘injury in fact’ sufficient to lay the basis for standing.”⁵² However, the U.S. Supreme Court established that “no matter how longstanding the interest and no matter how qualified

⁴⁶ See *Surfrider Foundation v. A.R.Pe.*, 178 P.R. Dec. 563 (2010).

⁴⁷ José Julián Álvarez González, *La protección de los derechos humanos en Puerto Rico*, 57 REV. JUR. UPR 133, 169 (1988) (author’s translation) (footnote omitted).

⁴⁸ See *Sierra Club v. Morton*, 405 U.S. 727 (1972).

⁴⁹ *Id.* at 729.

⁵⁰ *Id.* at 739.

⁵¹ *Id.* at 730 (footnote omitted).

⁵² *Id.* at 734.

the organization is in evaluating the problem, [interest in a problem] is not sufficient by itself to leave the organization ‘adversely affected’ or ‘aggrieved.’⁵³ Therefore, it rejected the theory of broadly interpreting the standing requirements in a public interest lawsuit when the claimant has a special concern for environmental conservation.

To better understand this case’s effect in *Surfrider*, let us first examine the facts.

B. *Surfrider v. A.R.Pe.*

In *Surfrider*, a corporation requested the Administration of Regulations and Permits (A.R.Pe.) approval of a construction project for a residential development, which would be located on land, in a portion designated as a tourist residential area in the Ensenada de Rincón neighborhood.⁵⁴ In addition, variations were requested and, during the public hearings called by A.R.Pe., Mr. Leon J. Richter and the Surfrider Foundation appeared to oppose said requested variations.⁵⁵

Over the course of the hearings, the Surfrider Foundation argued that it was an entity whose goals included ocean conservation and protecting beach access.⁵⁶ Likewise, Mr. Richter claimed that he resided near the disputed project and that he was affected by a water problem that, according to his allegations, would worsen with the development of the project. However, after the conclusion of the hearings, A.R.Pe. granted conditional approval to the preliminary project and granted the requested variations. Dissatisfied with this decision, Mr. Richter and the Surfrider Foundation filed a request for reconsideration, which was denied. Thus, they chose to take the case to the Puerto Rico Court of Appeals.

However, since this Court issued a ruling confirming the appealed ruling, aligning itself with the defendant,⁵⁷ Mr. Richter and the Surfrider Foundation filed a petition for *certiorari* with the Supreme Court of Puerto Rico. Regarding standing, the Court began by citing the requirements already mentioned. In contrast with previous decisions, this was not sufficient to grant standing.⁵⁸ Surprisingly, the Supreme Court pointed out that—when judicial intervention arises in the context of the adjudicative procedure through the judicial review resource—it is the Uniform Administrative Procedure Law (L.P.A.U., in its Spanish acronym) that establishes the criteria that must be demonstrated by whoever seeks to resort to the judicial forum to review the administrative determination.⁵⁹ “Therefore, any natural or juridical person who challenges the actions of the agency through a judicial review resource must demonstrate they have standing based on the provisions of this legal body.”⁶⁰

Following this premise, the Court examined the standing requirements that must be met by someone who arrives at the judicial forum through the review process, as estab-

53 *Id.* at 739.

54 *Surfrider Foundation v. A.R.Pe.*, 178 P.R. Dec. 563, 591 (2010).

55 *Id.* at 570.

56 *Id.* at 570-71 (citation omitted).

57 *Id.* at 571 (citation omitted).

58 *Id.* at 591.

59 *Id.* at 568 (citation omitted).

60 *Id.* at 574 (author’s translation).

lished in section 4.2 of the L.P.A.U.⁶¹ This section establishes that “[a] party adversely affected by a final order or resolution of an agency, and who has exhausted all remedies provided by the agency or by the appropriate administrative appellate body, has standing to file a petition for review.”⁶² Based on this definition, the Supreme Court limited the presentation of the petition for review to two requirements: (1) that the applicant be a party, and (2) that is adversely affected by the administrative decision.⁶³

To define both conditions, the Court turned to section 1.3 of the L.P.A.U. which describes a party that is adversely affected by the administrative decision as:

(1) “[A]ny person or agency authorized by law to whom an agency action is specifically directed or who is a party to such action”; (2) a person “who is permitted to intervene or participate therein”; (3) “who has filed a petition for the review or compliance of an order”, (4) ‘or that is designated as a party to said procedure.’⁶⁴

After clarifying who is considered a party for the purposes of judicial review, the Court proceeded to define the meaning of being *adversely affected*. In the words of the Court:

This phrase is not defined in the legislation. When interpreting it, it is worth noting that the legislator used the adverb “adversely” to qualify the affectation, so it is not enough that the government action [affects] the litigant, but that this effect has to be adverse or unfavorable to his interests. In this regard, we have interpreted the concept of harm to a litigant based on the notion of damage, whether economic, aesthetic or recreational.⁶⁵

Ultimately, the phrase *adversely affected* is not defined by the L.P.A.U., so the court proceeded to use as a basis that our law was inspired by the Administrative Procedure Act and that by virtue of the application of the canon of hermeneutics, they should “[adopt the] provision of law that comes from another jurisdiction [with] the interpretation given to said law in its place of origin.”⁶⁶

However, the Administrative Procedure Act (APA) of 1946, which was an effort to codify the developing body of judge-made standing law, states that, “[a] person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof.”⁶⁷ The APA was actually designed to recognize standing in three straightforward categories of cases:

First, people could obtain standing by showing that they suffered a “legal wrong” because a common law interest was at stake. An invasion of a common law interest would certainly qualify as a legal wrong. Courts presumed that any-

61 *Id.* at 575.

62 *Id.* (author’s translation) (citations omitted).

63 *Id.* at 575-76 (footnote omitted).

64 *Id.* at 576 (author’s translation).

65 *Id.* at 577 (citation omitted).

66 *Id.* at 577-78 (citations omitted).

67 5 U.S.C. § 702.

one who could show such an invasion would be entitled to bring suit. This idea had constitutional foundations, to the extent that a foreclosure of standing to people with common law interests might raise problems under the Due Process Clause or Article III.

Second, plaintiffs could show that they suffered a legal wrong within the meaning of APA by demonstrating that their statutory interests were at stake. For example, if the interest of a litigant in competition on equal terms was a relevant factor under the governing statute—if the agency was required to take that factor into account—the litigant would have standing to bring suit to vindicate its interest. Congress need not have expressly conferred standing on the plaintiff; under the APA, the mere existence of an interest protected by statute was sufficient. The APA's framers paid little attention to the question how far this approach would extend standing to beneficiaries and competitors, though it seems clear that standing was not merely contemplated for objects.

The third category did not involve legal wrong at all. People could bring suit if they could show that “a relevant statute”—a statute other than the APA—granted them standing by providing that people “adversely affected or aggrieved” were entitled to bring suit. In this way, the APA recognized that Congress had allowed people to have causes of action, and hence standing, even if their interests were not entitled to consideration by the relevant agency. Such people could act as “private attorneys general.” This had already occurred under the Federal Communications Act. The APA thus provided for congressional authorization of actions by people lacking legal injuries.

This, then, was the APA framework: standing for people whose common law or statutory interests were at stake, as well as for people expressly authorized to bring suit under statutes other than the APA. Under the APA, there was considerable continuity with previous law, in the sense that the principal question, for purposes of standing, was whether the law had conferred a cause of action. Injury in fact was neither a necessary nor a sufficient element.⁶⁸

Therefore, the Court in its final determination improperly interprets the Act. Additionally, Associate Justice Fiol Matta in her dissent correctly establishes that:

[W]hen the majority opinion recognizes that this rule of hermeneutics is a general rule that is subject to many exceptions and limitations, it does not mention that in *People v. Matos* at p. 341, we refuse to apply it because our function is not to apply a rule of hermeneutics, but rather to adopt the “most fair and reasonable interpretation.” See also, *People v. Pacheco Asencio*, 83 D.P.R. 526, 531 (1961), resolved that same year. Furthermore, in this case it is not appropriate to apply the general rule of interpretation referred to in the majority opinion.

First, our provision on judicial review, that is, Section 4.2 of the L.P.A.U., 3 L.P.R.A. sec. 2172, does not come from the federal APA, but from the MSAPA of 1981. This does not mean that our law is a carbon copy or an exact copy of said

68 Cass R. Sunstein, *What's Standing After Lujan? Of Citizen Suits, "Injuries," and Article III*, 91 MICH. L. REV. 163, 181-82 (1992) (footnotes omitted).

model, rather, our L.P.A.U. was based on and inspired by the MSAPA. One of the indigenous elements that distinguish our law from its models is, precisely, the broad legitimation framework adopted. On the other hand, we must not forget that the MSAPA is nothing more than what its title indicates, a model to be considered in the promulgation of uniform administrative legislation for each state. Therefore, a Uniform Administrative Procedure Law can be even broader than what the model provides, as is our case. Our law only requires, to admit intervention in an administrative process, that an interest “that may be *adversely affected*” be demonstrated, while the MSAPA proposes an interest that may be *substantially affected*. Furthermore, according to the L.P.A.U., the agency is obliged to apply the criteria for granting intervention “liberally.” This Court has developed an entire regulation on legitimation based on the “adversely affected” interest and has crystallized over the years the great importance in our system of guaranteeing access to the courts for citizens who seek judicial review of an administrative determination. Clearly, in the case before our consideration, the L.P.A.U. provides statutory standing to plaintiffs and, therefore, it is not necessary to ignore our disposition in order to impose the most restrictive requirements of federal constitutional standing.

Secondly, although our jurisprudence does not expressly state which are the “many exceptions and limitations” that must serve as a counterweight to the rule of interpretation used by the majority, there is no doubt that when its application contravenes an entire robust body of reasoning and own legal interpretations, we have come across one of these exceptions.⁶⁹

Moreover, it decides to rely on federal jurisprudence, such as *Sierra Club*, who also misconceives its application, because ultimately, in *Sierra Club*, Justice Potter Stewart pointed out that if the Club could prove that its members had suffered a personal “injury in fact,” then those members could have standing to sue.⁷⁰ Such an injury did not have to be physical or economical; it could be the result of harm to the Club members’ “aesthetic and recreational values.”⁷¹ So, if Club members enjoyed hiking or camping in the valley, the threatened destruction of that valley would be injury enough. Therefore, Mr. Richter who proved to be a resident of the area and having declared that the area where the project would be built suffers from a serious problem of deficiency in supply of water and that, at times, residents had not had water service for up to five days. This water deficiency would worsen if the project were approved without infrastructure improvements,⁷² therefore the case should have had standing.

Nonetheless, the Court determined that it did not. It concluded that, after considering the text of the law, the legislative history, federal and state jurisdictions, as well as the previously discussed doctrine on standing, the expression *adversely affected* implies that “the

69 *Surfrider*, 178 P.R. Dec. at 601-04 (Fiol Matta, J., dissenting) (emphasis omitted) (author’s translation) (footnotes omitted).

70 *Id.* at 734.

71 *Id.* at 735.

72 *Surfrider*, 178 P.R. Dec. at 570.

appellant [must have] a substantial interest in the dispute, since he suffers or will suffer a particular injury or damage caused by the administrative action challenged through the judicial review remedy.⁷³ This damage must be clear and specific, and cannot be abstract, hypothetical or speculative.⁷⁴ This ensures the resolution of “genuine disputes arising between opposing parties who have a real interest in obtaining a remedy that will affect their legal relations.”⁷⁵ In order for a litigant to request the court’s intervention through the judicial review process, he must demonstrate (1) that he is a party and (2) that he will be adversely affected by the challenged administrative action.⁷⁶ Applying the new principles established in the case, the Supreme Court concluded that neither Mr. Richter nor the Surfrider Foundation had the standing to initiate the administrative review appeal to challenge A.R.Pe’s determination. This case marked the end of open access to the courts for environmental groups and established a new doctrine with which compliance seems difficult.

The organization’s denial of standing was because, under a new, stricter criteria, having a special interest in ocean and beach conservation was not enough to claim harm to the organization. It is important to highlight that, before this decision, the established norm was clear: in cases of public interest like this one, recognizing the constitutional mandate of an environmental public policy, this type of organization would undoubtedly have had standing. Perhaps even more surprising is that Mr. Richter was denied standing. The Court found his statements to be *speculative and conclusive*.⁷⁷

Therefore, the Supreme Court of Puerto Rico drastically changed who could have access to the courts. The Court, which had a history of being open to these types of cases, suddenly imposed obstacles to standing that had never existed before on the island. Simply, the Court intends to require that people show that the ecological and aesthetic injuries they suffer meet requirements that are almost impossible to prove in the environmental field, ruling against decades of precedent and a well-recognized constitutional mandate.

It cannot be forgotten that environmental damage is inherently different from other types of injuries. These occur at a much larger scale of space and time than that of personal injury. That is, the Court seems to require that, to be a party to this type of lawsuit, one must prove elements of injury that would not be possible to prove until after the injury occurs in an appalling way, by then it would be too late. It is not wise to wait until the land is unlivable and the waters are polluted so you can appear before the court. When harm is done to the environment, entire communities suffer, and the damage may be irreparable. It is precisely because of this general interest in environmental protection and the need to resolve these disputes before irreparable damage occurs that, prior to *Surfrider*, the doctrine was more open and permissive.

The Court stated that “Professor Álvarez González has correctly pointed out that ‘[t]he concept of justiciability . . . is closely linked to the vindication of rights.’”⁷⁸ Therefore, the

73 *Id.* at 579 (author’s translation).

74 *Id.*

75 *Id.* at 579-80 (citing *E.L.A. v. Aguayo*, 89 P.R. Dec. 552, 559 (1958)).

76 *Id.* at 580.

77 *Id.* at 588.

78 *Id.* at 610-11 (Fiol Matta, J., dissenting) (author’s translation) (citing José Julián Álvarez González, *La protección de los derechos humanos en Puerto Rico*, 57 REV. JUR. UPR 133, 169 n.210 (1988)).

doctrine of standing should not function as a form of injustice. As Associate Justice Fiol Matta accurately asserted: “constitutional rights really exist when justice is accessible; not for the mere fact that they have been reflected in the constitution of a country, but because through the courts the citizen is assured of being able to vindicate them.”⁷⁹ In general, the decision to bring over the majority opinion in *Sierra Club* was erroneous considering that the protection of the environment is a public constitutional right and long-standing jurisprudence had established ample access for enforcement. Also, to add insult to injury, the case was wrongly interpreted and applied, creating an impossible hurdle to overcome.

Currently, environmental standing remains incredibly restrictive, which is concerning considering the upcoming environmental catastrophe that climate change will almost certainly usher into, regardless of legal dogmas and political inclinations. The abstract musings of positivism or critical legal studies will not matter when once-thriving ecosystems echo the lament of a changing kind. When El Yunque, once lush and grand, breathes the sigh of a withering land. When majestic ceibas, proud and tall, stand as witnesses to Nature’s fall. In the end, rising tides recognize no party creed, they swell and surge, an equalizing deed.

Therefore, there is a need for a chassis where environmental claims may just be heard. Ironically, the dissents (by ideologically different-minded justices) in *Sierra Club*, provided a practical and viable structure for environmental matters. Justice Douglas’s dissent suggested that environmental organizations should have standing to sue when a natural object suffers an injury in fact;⁸⁰ Justice Blackmun’s dissent suggested that anyone with a “provable, sincere, dedicated and established status” as interested in the environment should have standing to “litigate environmental issues.”⁸¹ Neither opinion was truly radical. Douglas’ opinion embraced the injury-in-fact requirement that he first introduced in *Data Processing*, while none of the dissenting Justices unequivocally stated that the *Sierra Club* could have had standing in the absence of an injury.⁸²

Nonetheless, Blackmun correctly precises the singularity of litigation regarding the dangers presented by the “world’s deteriorating environment” and the “resulting ecological disturbances,” which should cast aside the “procedural limitations rooted in traditional concepts of standing.”⁸³ Blackmun underscored this belief in the uniqueness of environmental cases, and the necessity of allowing standing in them, by concluding his dissent with a quotation from John Donne:

No man is an Iland, intire of itselfe; every man is a peece of the Continent, a part of the maine; if a Clod bee washed away by the Sea, Europe is the lesse, as well as if a Promontorie were, as well as if a Mannor of thy friends or of thine owne were; any man’s death diminishes me, because I am involved in Mankinde; And therefore never send to know for whom the bell tolls; it tolls for thee.⁸⁴

79 *Id.* at 611.

80 *Sierra Club v. Morton*, 405 U.S. 727, 741 (1972) (Douglas, J., dissenting).

81 *Id.* at 757-58. (Blackmun, J., dissenting).

82 *Id.* at 741; *See Ass’n of Data Processing Serv. Org, Inc. v. Camp*, 397 U.S. 150, 152 (1970).

83 *Sierra Club*, 405 U.S. at 755, 759 (Blackmun, J., dissenting).

84 *Id.* at 760 (citing JOHN DONNE, *DEVOTIONS UPON EMERGENT OCCASIONS* 98 (John Sparrow ed., Cambridge Univ. Press 1923) (1624), <https://ia801302.us.archive.org/o/items/devotionsuponemeoodonnuoft/devotion-suponemeoodonnuoft.pdf>).

In other words, we are all affected by environmental degradation; no island is immune from such destruction. That is why, in the following, I urge the need for change.

II. ROOTED IN JUSTICE: STANDING AS A DEFENDER OF NATURE'S RIGHTS

The Supreme Court of Puerto Rico's environmental standing doctrine is uniquely and punitively restrictive in an ahistorical and illogical way. One could say that it opposes our *history and traditions*. Because of this, the Court should overturn *Surfrider* and return to the precedents of a standing regime that allows plaintiffs more access to the courts.⁸⁵

Said case must be revoked to correct an egregious error of law; however, let's first examine the hurdles and process to repeal this case. Firstly, the concept of *stare decisis*, which "is the doctrine that courts will adhere to precedent in making their decisions," stands as the first hurdle of note.⁸⁶ This phrase "means 'to stand by things decided' in Latin."⁸⁷ In Puerto Rico, the figure operates and has two fundamental aspects. Firstly, the decisions of a court constitute a source of law. Second, judicial precedent must be followed in subsequent cases.⁸⁸ However, a comprehensive doctrine of *stare decisis* has not been adequately developed by our Court; pertinent literature is scarce and the Supreme Court's rulings are notably insufficient and contradictory.

Nonetheless, an original rule was adopted in *García Fernández, Ex parte*, calling for deference to judicial precedent.⁸⁹ That is, precedent should not be discarded unless an extraordinary situation arises where it becomes clear that a previous decision was so erroneous that it violates the basic foundations of justice and reason. Later, a more flexible observation was embraced in *American Railroad Co. of P.R. v. Industrial Commission of P.R.*, where the Supreme Court of Puerto Rico stated that "this doctrine does not go so far as to provide that the opinion of the court should have the scope of a dogma which must be followed blindly, even though the court realizes later that its previous decision was erroneous."⁹⁰ In more recent times, articulations of the figure of *stare decisis* have resulted in an even more flexible nature. The origin of this modern trend dates to the expressions of Chief Justice Hernández Denton in his concurring opinion in *González v. Merck*, which focused on the manifest error criterion, which is identified, "[w]hen it is demonstrated that the decision was the product of 'procedurally flawed [reasoning] due to the poor briefing or inadequate deliberation by the court."⁹¹

Chief Justice Hernández Denton then offers a list of criteria to evaluate whether a judicial precedent should be overturned. These include: (1) if the previous decision is clearly erroneous; (2) if the effects of the previous decision on the rest of the system are adverse,

⁸⁵ See *Surfrider Foundation v. A.R.Pe.*, 178 P.R. Dec. 563 (2010).

⁸⁶ Legal Information Institute, *Stare decisis*, CORNELL LAW SCHOOL, https://www.law.cornell.edu/wex/stare_decisis (last visited Mar. 29, 2024).

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ See *García Fernández, Ex parte*, 44 P.R. Dec. 296 (1932).

⁹⁰ *Am. Railroad Co. v. Industrial Commission*, 61 P.R. Dec. 314, 326 (1943).

⁹¹ *González v. Merck*, 166 P.R. Dec. 659, 688 (2006) (Hernández Denton, C.J., concurring) (citing William N. Eskridge Jr., *Overruling Statutory Precedents*, 76 *GEORGETOWN L.J.* 1361, 1370 (1988)).

and (3) if the number of people who trust the decision is limited.⁹² Note the use of the *and* connector. That is, it is not enough for only one of these criteria to be present, but rather it is an integrated analysis that requires the presence of all three. Regarding the first criterion, the concurring opinion stated that “[t]his is usually demonstrated by evidence that, during the deliberative process that produced the court’s decision, not all the arguments that apply to the case were carefully considered.”⁹³ As for the second criterion, it “requires the court to weigh the legal, moral and social effects of its decision to determine if the rule has undesired consequences.”⁹⁴ And finally, regarding the third criterion, it is necessary to analyze the “impact . . . on the life of the general public.”⁹⁵ The Chief Justice then rounds out by stating that “a previous precedent of this Court cannot become a talisman that is mechanically invoked to avoid a rectification of a decision that we consider should be revoked over time because it is patently erroneous[,]”⁹⁶ and that the Court has an “[i]nescapable obligation to ensure the correctness of our opinions.”⁹⁷ This normative proposal on *stare decisis* would be revisited by the Chief Justice two years later in another concurrence—this time in *Arce Bucetta v. Motorola*—where he again mentioned the three criteria identified in his concurring opinion in *González*.⁹⁸

Subsequently, the Supreme Court of Puerto Rico’s stance on *stare decisis* has evolved. As set forth in *People v. Díaz de León*, through the voice of Associate Justice Martínez Torres, the Court ultimately adopted the three criteria previously identified in the concurring opinions of Hernández Denton.⁹⁹ While the opinion states early on that “we do not ignore that the doctrine of *stare decisis* establishes that, as a general rule, a court must follow its decisions in subsequent cases” and that “[t]his doctrine is based on the need to achieve stability and legal certainty[,]”¹⁰⁰ the Court makes sure to reiterate that *stare decisis* does not turn previous precedent into “a dogma that must be followed blindly even if the court is later convinced . . . that it was erroneous.”¹⁰¹

However, unlike what can be seen in the previously discussed opinions of Hernández Denton, the opinion in the case did not analyze the previous precedent criterion by criterion, which suggested an emerging tendency to merely cite the criteria and conclude that they are met in any given case before the Court’s consideration. This proved to be an indicator of a later modification to the requirements (manifest error, adverse consequences on the rest of the system and the number of people who trusted the previous rule) such that, while previously it was necessary for the three elements to be present to revoke a precedent, later it would be enough with the first exclusively. This trend began in *People v.*

92 *Id.* (citing William N. Eskridge Jr., *Overruling Statutory Precedents*, 76 *GEORGETOWN L.J.* 1361, 1409 (1988)).

93 *Id.* at 688-89 (author’s translation).

94 *Id.* at 689 (author’s translation).

95 *Id.* (author’s translation).

96 *Id.* at 690 (author’s translation).

97 *Id.* (author’s translation).

98 See *Arce Bucetta v. Motorola*, 173 P.R. Dec. 516, 561 (2008) (Hernández Denton, C.J., concurring).

99 *People v. Díaz de León*, 176 P.R. Dec. 913, 922 (2009) (citing *People v. Camacho Delgado*, 175 P.R. Dec. 1, 20 (2008)).

100 *Id.* at 921 (author’s translation).

101 *Id.* (quoting *AM. Railroad Co. v. Comisión Industrial* 61 P.R. Dec. 314, 326 (1943)) (author’s translation).

Sánchez Valle, case in which the majority opinion stated that it was appropriate to revoke the applicable precedent because “[t]he first of these principles [in reference to the first of the three applicable criteria] addresses the question raised.”¹⁰²

That is to say, the connector *and* was apparently dispensed with, which, until now, required that the three criteria be analyzed comprehensively. This practice was repeated in *Com. PNP v. C.E.E.*, in which the Supreme Court revoked the applicable precedent because the “first of these principles disposes of the question raised.”¹⁰³ It would be enough for the previous decision to be manifestly erroneous, without further ado. As discussed in the first part, *Surfrider* was egregiously wrong and deeply damaging from the start. For reasons already explained, its analysis was far outside the bounds of any reasonable interpretation of the various constitutional provisions to which it vaguely pointed. *Surfrider* was on a collision course with the Constitution from the day it was decided.

Surfrider wrongly imported the federal administrative doctrines. Likewise, it is questionable that the Court incorporated the jurisprudence on standing to challenge determinations under the APA, when in Puerto Rico it has been alluded to the fact that environmental public policy has constitutional status, which outranks legislation in terms of the hierarchy of sources of law. Furthermore, while the Court’s opinion borrows from its federal counterpart, the analysis is limited to the case of *Sierra Club*, when there has been an evolution in the application of standing requirements in environmental cases in jurisprudence which is not examined in detail.¹⁰⁴ Nor is attention paid to the fact that the doctrine has been particularly critical of the application of the requirements of this doctrine in environmental cases. Finally, regardless of the grounds outlined by the majority opinion for restricting compliance with these requirements, the determination to dismiss the case, rather than remand it so that Mr. Richter and the Surfrider Foundation would be allowed to present evidence supporting their interest in the dispute, is particularly unfair. *Surfrider*’s reasoning is not grounded in constitutional text, history or precedent. It imposed a detailed set of rules that perpetuates injustices on the entire island. Hence, it is a manifestly erroneous decision, and it should be abandoned.

However, given the current makeup of the Court, it would be folly to bring a case to this effect.¹⁰⁵ Until a more favorable collection of Judges is seated, it would be best to turn to legislative reforms.¹⁰⁶

To that effect, House Bill 474 that was recently presented intended to create environmental standing through statutory powers to any person in Puerto Rico who, motivated by the purpose of enforcing environmental public policy, was “interested in presenting, intervening, requesting reconsideration or appealing as a party in any civil or administrative ac-

¹⁰² *Pueblo v. Sánchez Valle*, 192 P.R. Dec. 594, 646 (2015).

¹⁰³ *Com. PNP v. CEE*, 197 P.R. Dec. 914, 923 (2017) (citing *Sánchez Valle*, 192 P.R. Dec. at 646 (2015)).

¹⁰⁴ See *Friends of the Earth, Inc. v. Laidlaw Environmental Services, Inc.*, 528 U.S. 167 (2000). See also *Massachusetts v. EPA*, 549 U.S. 497 (2007).

¹⁰⁵ The Court has reiterated the rule established in *Surfrider Foundation v. A.R.Pe.*, 178 P.R. Dec. 563 (2010) in subsequent cases.

¹⁰⁶ However, there will be two vacancies in the next quadrennium (seats of Hon. Rafael L. Martínez Torres and Hon. Mildred G. Pabón Charneco); add to that, there is still one currently (retirement of Hon. Annabelle Rodríguez Rodríguez). The article V, section 10 of the Constitution of P.R. requires Supreme Court justices to retire at age 70.

tion or cause under any law, regulation or other legal source that deals with environmental or ecological matters, or that is related to the protection, conservation or development of natural resources.”¹⁰⁷ Additionally, it would have amended, la *Ley de Procedimiento Administrativo Uniforme*, *La Ley para la Reforma del Proceso de Permisos* and *la Ley Sobre Política Pública Ambiental*.¹⁰⁸ Nevertheless, the governor of Puerto Rico, Pedro Pierluisi vetoed the measure.¹⁰⁹ He stated that:

Giving way to this measure would result in an excessive proliferation of unnecessary legal disputes that would delay the ongoing reconstruction, as well as the economic recovery and job creation that we have achieved in the past two years. Furthermore, the measure ignores current legislation and jurisprudence that allows for administrative and judicial review of the processes and decisions of government agencies. Consequently, there is no reason to disrupt the current rule of law that promotes both the conservation and use of our natural resources as [it has been] well established by our Constitution.¹¹⁰

However, as previously stated, in Puerto Rico, before *Surfrider*, the doctrine of standing was broadly interpreted, and environmental matters were regarded as a fundamental public right enshrined in the Constitution of the Commonwealth of Puerto Rico. The claim regarding proliferation of environmental cases is not substantiated, more so considering that litigation is expensive in this area of law, where there is a procedural structure to be met.¹¹¹ Therefore, reverting to the original situation would not create such problems. On the contrary, in the current situation, the requirements to have standing are almost impossible to prove. The doors are closed; our current legal criterium creates injustices. In *Lozada Sánchez v. JCA*, a group of community-based organizations and residents along the projected route of the *Gasoducto del Norte* questioned the approval of the Environmental Impact Statement for said project.¹¹² The residents gave several reasons to justify their standing, including that they resided adjacent to or near the project route and that “the A.E.E. sent them letters to inform them that they could be expropriated.”¹¹³ However, the Court nevertheless ruled that none of these people had standing.¹¹⁴ It seems that the requirement could never be met.

Therefore, the approval of that measure was a lost opportunity by the Governor to give voice to the people in a moment where it was extremely important, because of the reality we live in due to the direct impact of climate change on our archipelago. At a time when al-

¹⁰⁷ H.R. 474, 19TH Gen. Assemb., 2nd Ord. Sess. (P.R. 2021).

¹⁰⁸ *Id.*

¹⁰⁹ *Veto al proyecto de legitimación activa ambiental*, MICROJURIS, (Dec. 18, 2022), <https://aldia.microjuris.com/2022/12/18/vetan-expresamente-el-proyecto-de-legitimacion-activa-ambiental/> (author’s translation).

¹¹⁰ *Id.* (author’s translation).

¹¹¹ See Fernando L. Ferrer López, *Abriendo camino: Los servicios legales para personas mayores en Puerto Rico*, 79 REV. JUR. UPR 45 (2010); See also Luis E. Rodríguez Lebrón, *La pobreza y los tribunales: En busca de un igual acceso a la justicia*, 33 REV. JUR. UPR 245 (1999).

¹¹² See *Lozada Sánchez v. JCA*, 184 P.R. Dec. 898 (2012).

¹¹³ *Id.* at 942-43 (footnote omitted).

¹¹⁴ *Id.* at 924.

lied organizations are raising their voices in favor of the protection of our ecosystem, such a viable and real alternative for the protection of nature should not have been ignored. While the ideal scenario would involve addressing environmental issues without being overly political, the reality is that environmental concerns have sadly become intertwined with political ideologies, policy decisions and lucrative situations. However, the environment is a shared resource and, therefore, the goal should be to prioritize the health of the planet and its inhabitants, transcending ideological divides to work towards a common and sustainable future. Environmental policies should be considered a bipartisan effort, as they affect everyone and transcend political boundaries. Thus, given our current state, electing leaders who are pro-environment, not in words, but in actions, is essential.

However, even though the protection of our environmental laws is a duty of the government and our elected officials, it seems that the collective action of citizens will be essential for making environmental rights actionable, particularly in the face of climate change. By raising awareness, advocating for policy changes, and actively participating in the demand for change, individuals will contribute to a more environmentally conscious and resilient global community. It's regrettable that the people must do the work, since our justice system and government should represent our best interests. But if they do not, then we must fix it. The moment to act is now.

III. SUSTAINABLE STATUTES: A LEGAL FRAMEWORK FOR ENVIRONMENTAL PROGRESS

Proposals like House Bill 474 should just be the first step. Advocating for policy changes in environmental law is a critical aspect of addressing the challenges posed by climate change. We should be unified and organized to develop legal strategies that establish an impermeable new judicial consensus. In the paragraphs that follow, I discuss some considerations that should be taken into account.

First, there must be an understanding of the current standing requirements followed accordingly by the development of comprehensive information campaigns on environmental issues. The collection of data, research studies and expert opinions to support advocacy efforts is key. Having a strong factual and scientific basis strengthens our argument. Second, engage with the people; raise awareness among the public about the importance of environmental standing and the need for policy changes. Public support can create pressure on policymakers to address standing issues in environmental law. Effective communication is essential, using accessible language and relatable examples to convey the impact of standing rules on environmental protection. Third, the use of lobbying and advocacy campaigns; to engage directly with policymakers. Attend meetings, send letters, and participate in advocacy campaigns to express the importance of broadening standing in environmental cases. Provide evidence, statistics, and real-life examples to illustrate the impact of standing rules on environmental protection. Fourth, the mobilization of grassroots movements to demonstrate public support for changes. Lastly, fomenting the making of nonstop proposals of legislative changes while thinking outside the box.

Even concepts such as environmental personhood should be considered. Justice Douglas eloquently explained it in *Sierra Club* as such:

The critical question of “standing” would be simplified and also put neatly in focus if [there was] a federal rule that allowed environmental issues to be litigated before federal agencies or federal courts in the name of the inanimate object about to be despoiled, defaced, or invaded by roads and bulldozers and where injury is the subject of public outrage. Contemporary public concern for protecting nature’s ecological equilibrium should lead to the conferral of standing upon environmental objects to sue for their own preservation This suit would therefore be more properly labeled as *Mineral King v. Morton*.¹¹⁵

The legal notion of environmental personhood is a concept that confers the status of a legal person upon certain environmental entities.¹¹⁶ This grants these entities the rights, protections, and privileges, associated with a legal personality. Since environmental entities like rivers and plants lack the ability to represent themselves in a court of law, a designated “guardian” can advocate on behalf of the entity to ensure its protection.¹¹⁷ The concept of environmental personhood has emerged because of the evolving legal emphasis on safeguarding nature. Over time, the legal focus has shifted from human interests in exploiting the environment to protecting nature for the well-being of future human generations, and ultimately embracing perspectives that recognize the intrinsic value of nature and seek its protection. The granting of ‘personhood’ to another subject that is not human is not new.¹¹⁸ In *Sierra Club v. Morton*, The Court stated:

Inanimate objects are sometimes parties in litigation. A ship has a legal personality, a fiction found useful for maritime purposes. The corporation sole—a creature of ecclesiastical law—is an acceptable adversary and large fortunes ride on its cases. The ordinary corporation is a “person” for purposes of the adjudicatory processes, whether it represents proprietary, spiritual, aesthetic, or charitable causes.¹¹⁹

The perfect example is the concept of corporate personhood, which refers to the idea that a legal entity like a corporation, distinct from its human constituents (such as owners, managers, or employees), possesses certain legal rights akin to those of natural persons.¹²⁰ In many jurisdictions, like in Puerto Rico, a corporation is afforded many of the same rights as an individual, including the ability to own property, engage in contracts and initiate legal action.¹²¹ The U.S. Supreme Court has, at least for some purposes, dramatically

115 *Sierra Club v. Morton*, 405 U.S. 727, 741-42 (1972) (Douglas, J., dissenting).

116 See Matthew Miller, *Environmental Personhood and Standing for Nature: Examining the Colorado River case*, 17 U.N.H. L. Rev. 355, 357 (2019) (footnote omitted).

117 See Morgan Lowrie, *Quebec River granted legal rights as part of global ‘personhood’ movement*, CBC, (Feb. 28, 2021), <https://www.cbc.ca/news/canada/montreal/magpie-river-quebec-canada-personhood-1.5931067>.

118 Legal Information Institute, legal person, CORNELL LAW SCHOOL, https://www.law.cornell.edu/wex/legal_person#:~:text=A%20legal%20person%20is%20a,property%2C%20and%20entering%20into%20contracts (last visited Mar. 29, 2024).

119 See *Sierra Club*, 405 U.S. at 742-43 (footnotes omitted).

120 See Ciara Torres-Spelliscy, *The History of Corporate Personhood*, BRENNAN CENTER OF JUSTICE, (Apr. 8, 2014), <https://www.brennancenter.org/our-work/analysis-opinion/history-corporate-personhood>.

121 P.R. LAWS ANN. tit. 14, §§ 3501, 3522 (2011).

expanded corporate rights.¹²² It has ruled that corporations have the right to spend money in candidate elections, and that some for-profit corporations may, on religious grounds, refuse to comply with a federal mandate in employee health insurance.¹²³ This debated recognition is grounded in the idea that these entities play a crucial role in the economic and social fabric of society. However, the environment is the foundation of our existence and lacks similar legal standing. Douglas explains it as such:

The river, for example, is the living symbol of all the life it sustains or nourishes—fish, aquatic insects, water ouzels, otter, fisher, deer, elk, bear, and all other animals, including man, who are dependent on it or who enjoy it for its sight, its sound, or its life. The river as plaintiff speaks for the ecological unit of life that is part of it. Those people who have a meaningful relation to that body of water—whether it be a fisherman, a canoeist, a zoologist, or a logger—must be able to speak for the values which the river represents and which are threatened with destruction.

....

The voice of the inanimate object, therefore, should not be stilled. That does not mean that the judiciary takes over the managerial functions from the federal agency. It merely means that before these priceless bits of Americana (such as a valley, an alpine meadow, a river, or a lake) are forever lost or are so transformed as to be reduced to the eventual rubble of our urban environment, the voice of the existing beneficiaries of these environmental wonders should be heard. Perhaps they will not win. Perhaps the bulldozers of “progress” will plow under all the aesthetic wonders of this beautiful land. That is not the present question. The sole question is, who has standing to be heard?

Those who hike the Appalachian Trail into Sunfish Pond, New Jersey, and camp or sleep there, or run the Allagash in Maine, or climb the Guadalupes in West Texas, or who canoe and portage the Quetico Superior in Minnesota, certainly should have standing to defend those natural wonders before courts or agencies, though they live 3,000 miles away. Those who merely are caught up in environmental news or propaganda and flock to defend these waters or areas may be treated differently. That is why these environmental issues should be tendered by the inanimate object itself. Then there will be assurances that all of the forms of life which it represents will stand before the court—the pileated woodpecker as well as the coyote and bear, the lemmings as well as the trout in the streams. Those inarticulate members of the ecological group cannot speak. But those people who have so frequented the place as to know its values and wonders will be able to speak for the entire ecological community.

....

That, as I see it, is the issue of “standing” in the present case and controversy.¹²⁴

¹²² See *Citizens United v. Federal Election Com'n*, 558 U.S. 310 (2010).

¹²³ See *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014).

¹²⁴ *Sierra Club*, 405 U.S. at 741-52 (footnotes omitted).

In sum, environmental legal personhood represents a significant shift in the way legal systems consider the environment. It acknowledges that nature has intrinsic value beyond its utility to humans and seeks to provide a legal framework for protecting and preserving natural entities. While its implementation varies across jurisdictions and raises complex legal and philosophical questions, it reflects a growing recognition of the need for innovative approaches to address environmental challenges and promote sustainability.¹²⁵

Christopher Stone initially introduced the concept of granting legal personhood to the environment in his work *Should Trees Have Standing? Towards Legal Rights of Natural Objects*.¹²⁶ Stone posited that if an environmental entity is granted legal personhood, it cannot be treated as property and possesses the right to appear in court.¹²⁷ However, when he first proposed the notion that forests and rivers should be able to advocate for themselves in a legal setting, it was met with derision.¹²⁸ Until recently, the idea of environmental personhood was considered a marginal legal doctrine. Nevertheless, this principle has experienced a resurgence of interest.¹²⁹ This principle recognizes Earth as a living system of which humans are a part, rather than as human property to be owned and destroyed, which is a fundamental departure from the treatment of Earth as a commodity.

Around the world, the concept has taken shape; in 2006, the first environmental personhood regime was implemented in Pennsylvania by way of a local government ordinance.¹³⁰ In 2008, the rights of nature were recognized in the Constitution of the Republic of Ecuador.¹³¹ In 2010, Bolivia enacted laws recognizing the rights of Mother Earth and the Universal Declaration of the Rights of Mother Earth was adopted at the World People's Conference on Climate Change and the Rights of Mother Earth.¹³² Consequently:

In 2014, the International Rights of Nature Tribunal (“IRNT”) was first convened in Ecuador by the Global Alliance for the Rights of Nature.” Since then, legislation has been introduced in New Zealand (Aotearoa) granting legal personhood to the Te Urewera protected area and the Whanganui River. New Zealand has also entered into a Record of Understanding with Ngā Iwi o Taranaki that confers legal personhood on Ngā Maunga, which includes Mt Taranaki on the North Island. In September 2017, the Australian State of Victoria enacted legislation creating the Birrarung Council to act as the independent voice for the

¹²⁵ Cassandra Roxburgh, *Environmental Personhood: A Radical Approach to Climate Justice*, NP, (Mar. 7, 2022), <https://nonprofitquarterly.org/environmental-personhood-a-radical-approach-to-climate-justice/>.

¹²⁶ Christopher D. Stone, *Should Trees Have Standing?—Toward Legal Rights for Natural Objects*, 45 S. CAL. L. REV. 450, 456 (1972) (footnote omitted).

¹²⁷ Alex Traub, *Christopher Stone, Who Proposed Legal Rights for Trees, Dies at 83*, NEW YORK TIMES, (May 28, 2021), <https://www.nytimes.com/2021/05/28/us/christopher-stone-dead.html>.

¹²⁸ *Id.*

¹²⁹ Shanthi Van Zeebroeck, *Nature Rights: What Countries Grant Legal Personhood Status to Nature And Why?*, EARTH.ORG, (Oct. 6, 2022), <https://earth.org/nature-rights/>.

¹³⁰ Kate Beale, *Rights for Nature: In PA's Coal Region, A Radical Approach to Conservation Takes Root*, HUFFPOST, (Feb. 2, 2009), https://www.huffpost.com/entry/rights-for-nature-in-pas_b_154842.

¹³¹ Constitution of the Republic of Ecuador, Oct. 20, 2008, tit. II, Chapter 7, arts.71-74 (Ecuador).

¹³² Anna Hernandez, *Defending Mother Earth in Bolivia*, CULTURAL SURVIVAL, (Jun. 1, 2016), <https://www.culturalsurvival.org/news/defending-mother-earth-bolivia>. See Ley de Derechos de la Madre Tierra, Law No. 71 of December 21, 2010 (Costa Rica), <https://www.bivica.org/files/tierra-derechos-ley.pdf>.

Yarra River, although the river itself was not granted legal personhood. In 2019, Uganda enacted legislation conferring rights on nature.¹³³

Personhood (for example, corporate personhood) in our jurisdiction has been granted through legislation.¹³⁴ Therefore, the legislature could provide legal personhood to the environment; however, the road to realization is obstructed by a significant hurdle: the lack of political will. In an era where political agendas often prioritize economic interests and short-term gains, pushing for environmental personhood faces an uphill battle. One approach to overcoming this challenge is to mobilize public support and the power of the vote. One way or another, environmental challenges must be addressed before it's too late.

On the other hand, another proposal that has emerged is the creation of environmental courts and tribunals (ECTs), which are specialized forums for resolving environmental disputes and enforcing the law.¹³⁵ The ECTs take different forms and models, with no single best model or “one-size-fits-all” design.¹³⁶ “What is best for each country depends on what fits the [jurisdiction’s] unique ecological, historical, legal, judicial, religious, economic, cultural and political conditions.”¹³⁷ In 1990 Vermont founded the nation’s first statewide environmental court.¹³⁸ The Vermont Environment Court is a Division of the Superior Court, with designated specialist judges and limited jurisdiction. It functions as a trial-level judicial branch court that has all the authority of the general civil court within its specialized subject matter jurisdiction. “The court may issue injunctive orders and stays, and may analyze local ordinances and state statutes for constitutionality in the context of cases within the court’s jurisdiction.”¹³⁹

The court’s jurisdiction covers essentially four main types of cases:

- 1) [E]nforcement of Vermont’s state environmental laws; 2) appeals of all the municipal planning and zoning (land-use) decisions state-wide; 3) appeals from

¹³³ Nicola Pain & Rachel Pepper, *Can Personhood Protect the Environment? Affording Legal Rights to Nature*, 45 *FORDHAM INT. LAW J.* 315, 320 (2021), <https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=2834&context=ilj> (footnotes omitted); See Julia Hollingsworth, *This river in New Zealand is legally a person. Here’s how it happened*, CNN, (Dec. 11, 2020), <https://edition.cnn.com/2020/12/11/asia/whanganui-river-new-zealand-intl-hnk-dst/index.html>; *New Zealand Te Awa Tupua Act 2017*, ECO JURISPRUDENCE MONITOR, <https://ecojurisprudence.org/initiatives/te-awa-tupua-act-2017/> (last visit Mar. 18, 2024); *New Zealand Taranaki Maunga Record Of Understanding*, ECO JURISPRUDENCE MONITOR, <https://ecojurisprudence.org/initiatives/taranaki-maunga/> (last visit Mar. 29, 2024); Derek Cheng, *Mt Taranaki will be granted special legal status similar to Te Urewera and the Whanganui River*, NZHERALD, (Dec. 20, 2017), <https://www.nzherald.co.nz/kahu/mt-taranaki-will-be-granted-special-legal-status-similar-to-te-urewera-and-the-whanganui-river/VTRFLCDR6Y7BSUE2C6I5PX-17MM/>; *Australia Yarra River Protection Act 2017*, ECO JURISPRUDENCE MONITOR <https://ecojurisprudence.org/initiatives/yarra-river-protection-act-2017/> (last visit Mar. 29, 2024); *Uganda National Environmental Act*, ECO JURISPRUDENCE MONITOR, <https://ecojurisprudence.org/initiatives/uganda-national-environmental-act/> (last visit Mar. 29, 2024).

¹³⁴ P.R. Laws Ann. tit. 14, §§ 3501, 3522 (2011).

¹³⁵ See U.N. Environment Programme, *Environmental Courts and Tribunals — 2021: A Guide for Policy Makers*, 5-8, UNEP (2022).

¹³⁶ *Id.* at 42.

¹³⁷ *Id.* Executive Summary.

¹³⁸ Merideth Wright, *The Vermont Environmental Court*, 3 *J. CT. INNOVATION* 201, 202 (2010).

¹³⁹ *Id.*

decisions of the state environmental agency (Agency of Natural Resources) issuing a myriad of state environmental water discharge, air emissions, waste disposal, stormwater, heavy logging and other environmental permits; and 4) appeals from decisions of the regional district environmental commissions and district coordinators under Vermont's state land-use law, informally known as Act 250.¹⁴⁰

Recently, in Puerto Rico, there was a proposal, House Bill 1897 which aims to “amend Article 5.0005 of the Judiciary Act and subsection (d) of Article 8 of the Organic Law of the Department of Natural and Environmental Resources in Puerto Rico.”¹⁴¹ The purpose is to “establish Specialized Courts in Environmental Matters within the Puerto Rican courts, [providing] regulatory power” for efficient adjudication of environmental disputes.¹⁴² The motivation behind this amendment is rooted in Puerto Rico's constitutional commitment to the effective conservation of natural resources and the development of policies benefiting the community. The establishment of these specialized tribunals is seen as crucial to addressing delays in resolving environmental controversies, attributed to factors such as a lack of experts. The proposal emphasizes the need for judges with expertise in environmental law, scientific knowledge, and awareness of regulatory changes.¹⁴³ The goal is to enhance the judiciary's capacity to address environmental issues swiftly and fairly, taking into consideration the climate emergency which prompts a reconsideration of more effective procedural alternatives for handling environmental cases and controversies.¹⁴⁴

While the establishment of specialized courts is a commendable step towards expediting the resolution of environmental disputes, it is crucial to acknowledge a persistent challenge that the bill does not currently address. Specifically, the challenge of standing remains unattended. To transform this from an idea to reality, it is imperative to ensure that the bill incorporates provisions or amendments to effectively navigate and resolve challenges related to standing. This would contribute to a more comprehensive and robust legal framework for addressing environmental controversies. This proactive approach will not only enhance the bill's effectiveness, but also strengthen public confidence in the legal mechanisms established for environmental protection. Therefore, careful consideration and potential amendments to include provisions that directly tackle the standing issue are indispensable, thus ensuring that our legislative efforts align seamlessly with the overarching goal.

No matter which proposal is adopted in response to the unique challenges posed by climate change, legal scholars, policymakers, and environmental advocates should explore ways to adapt and evolve standing doctrines. A more inclusive and flexible approach to standing in environmental law could better address the complex and far-reaching impacts on our island and its inhabitants.

¹⁴⁰ *Id.* at 203 (footnotes and citation omitted).

¹⁴¹ H.R. 1897, 19th Leg. Assemb., 6th Ord. Sess. (P.R. 2023).

¹⁴² *Id.*

¹⁴³ *Id.* at 2.

¹⁴⁴ *Id.* at 3.

CONCLUSION

The constitutional right to environmental protection in the Commonwealth of Puerto Rico is a fundamental public right, enshrined in Article VI, Section 19 of the Constitution.¹⁴⁵ This provision imposes a solemn obligation on the State to conserve natural resources effectively and promote their development for the general benefit of the community. The Supreme Court of Puerto Rico had broadly interpreted *standing* regarding environmental matters. However, a significant shift occurred in the *Surfrider* case, where the Court adopted a stricter interpretation of the standing criteria that created obstacles that are impossible to overcome.¹⁴⁶ The current restrictive rule raises concerns, especially considering the impending environmental challenges, such as climate change.

Considering the urgency posed by environmental issues, there is a need for a framework that allows environmental claims to be heard, acknowledging the interconnectedness of environmental concerns and the shared impact on communities. The current norm may hinder the ability to address environmental challenges effectively. The overarching goal should be to adapt the standing doctrine to better serve the interests of Puerto Rico and its inhabitants. While the topic of environmental justice is increasingly present in the news, government pronouncements and plans, the people still lack means to take direct action in the courts to further environmental justice.

Therefore, the call to action is clear: citizens must play a pivotal role in making environmental rights a reality; while the duty to protect nature rests with the government and elected officials, there is an undeniable need for collective action. It resonates with the notion that, in this critical moment of climate impact on our archipelago, the people must be empowered to actively engage in shaping their future. I do not want only to highlight the challenges posed by the restrictive standing doctrines but also offer a compelling vision for change. As a devout optimist, I hope to envision a future where individuals are not only heard but are active participants in the protection of nature. The proposed strategies, from information campaigns and public engagement to lobbying and grassroots movements, weave together to form a tapestry of citizen-driven environmental advocacy, whether through concepts such as environmental personhood that challenge traditional legal perspectives by recognizing the intrinsic value of nature, or the proposal for specialized environmental courts and tribunals that reflects a commitment to creating effective and efficient mechanisms.

In essence, the discourse surrounding the claiming of nature's rights and the redefinition of standing represents a pivotal paradigm shift in our approach to environmental protection. It diverges from perceiving nature as mere property, instead recognizing its inherent rights to exist, thrive and evolve. This departure from conventional viewpoints is imperative for fostering a holistic understanding of environmental issues. This progressive approach not only challenges erroneous legal frameworks, but also propels the development of innovative policies. By doing so, we acknowledge the interconnectedness between human well-being and the planet we call home.

¹⁴⁵ P.R. CONST. art. VI, § 19.

¹⁴⁶ See *Surfrider Foundation v. A.R.Pe.*, 178 P.R. Dec. 563, 585-92 (2010) (citations omitted).