

SUPREME COURT OF HAWAII

Sierra Club v. Hawaii Tourism Authority

59 P.3d 877 (Haw. 2002) · No. No. 23080 · Decided December 6, 2002

SUMMARY

The Supreme Court of Hawaii held that the Sierra Club lacked standing to challenge the Hawaii Tourism Authority's award and funding of a tourism marketing contract without first preparing an environmental assessment. The court concluded that the Sierra Club failed to establish injury in fact, traceability, and likely redressability, and rejected its theories of informational, procedural, and merits-based standing. The petition was dismissed.

CASE DETAILS

COURT	Supreme Court of Hawaii
WRITING FOR THE COURT	Acoba, J.; Ramil, J.; Nakayama, J.; Moon, C.J.; Levinson, J.
JURISDICTION	Hawaii
DECIDED	December 6, 2002
DOCKET	No. 23080
DISPOSITION	dismissed
PROCEDURAL POSTURE	Sierra Club filed an original petition for declaratory and injunctive relief challenging the Hawaii Tourism Authority's expenditure of state funds for tourism marketing without first preparing an environmental assessment. The parties filed cross-motions for summary judgment, and the Supreme Court of Hawaii addressed standing.
STANDARD OF REVIEW	Summary judgment is reviewed under the applicable summary-judgment framework; standing is a jurisdictional requirement that the petitioner bears the burden of establishing, and at the summary-judgment stage the court may consider affidavits as well as the petition's allegations.
PRECEDENTIAL VALUE	Published Hawaii Supreme Court opinion; the disposition was supported by the plurality and concurrence, while the reasoning concerning procedural standing was disputed.
PARTIES	Sierra Club v. Hawaii Tourism Authority, Board of Directors of the Hawaii Tourism Authority, Shari W. Chang, in her official capacity as

TOPICS

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether Sierra Club established standing under the three-part injury-in-fact test to challenge the HTA's failure to prepare an environmental assessment.
2. Whether alleged informational injury confers standing.
3. Whether Sierra Club could rely on procedural standing based on the alleged failure to conduct an environmental assessment.
4. Whether standing could be established through success on the merits rather than at the beginning of the case.

HOLDINGS

1. Sierra Club failed to satisfy the three-part injury-in-fact test because it did not establish an actual or threatened injury caused by the HTA's marketing expenditures, a fair traceability connection between the expenditures and the alleged injuries, or likely redressability through the requested relief.
2. An alleged informational injury, consisting of the organization's inability to obtain environmental information that an assessment might contain, was insufficient to establish standing.
3. Sierra Club could not rely on so-called procedural standing because it failed to establish the concrete injury and aggrievement required under HRS § 343-7(a); the statute did not give Sierra Club an automatic right to challenge the absence of an environmental assessment.
4. Standing must be established at the beginning of the case and cannot be established through success on the merits.

KEY QUOTATIONS

"We hold that Petitioner Sierra Club (Petitioner) has not met the three-part "injury-in-fact" test for standing to assert its claim that an environmental assessment (EA) should have been conducted by Respondent Hawai'i Tourism Authority (HTA) prior to its letting of a contract for tourism marketing services." (59 P.3d at 877)

"Because "standing must be established in the beginning" of a case, id., Petitioner's allegations of "informational injury" and "injury resulting from increased likelihood of an erroneous decision" must satisfy the injury in fact test." (59 P.3d at 893)

“Having held that Petitioner lacks standing in this case to bring its suit, we dismiss Petitioner’s January 11, 2000 petition.” (59 P.3d at 900)

FACTUAL BACKGROUND

The Hawaii Tourism Authority prepared a tourism strategic plan and solicited proposals for integrated tourism marketing services. It selected the Hawaii Visitors and Convention Bureau and entered a marketing contract providing up to approximately \$117 million over its term. Sierra Club alleged that increased tourism would harm environmental and recreational interests of its members and that the HTA violated Hawaii’s environmental-review statute by failing to prepare an environmental assessment before approving the expenditures.

PROCEDURAL HISTORY

Sierra Club filed its petition on January 11, 2000 under HRS § 201B-15. The Hawaii Tourism Authority answered and asserted lack of standing, then moved for summary judgment; Sierra Club filed a cross-motion for summary judgment. The Supreme Court dismissed the petition for lack of standing.

DISPOSITION

dismissed

CASES CITED

- Mottl v. Miyahira, 95 Hawai‘i 381, 23 P.3d 716 (2001)
- Lujan v. Defenders of Wildlife, 504 U.S. 555 (1992)
- Pele Defense Fund v. Puna Geothermal Venture, 77 Hawai‘i 64, 881 P.2d 1210 (1994)
- Akinaka v. Disciplinary Board of the Hawaii Supreme Court, 91 Hawai‘i 51, 979 P.2d 1077 (1999)
- United Public Workers, Local 646 v. Brown, 80 Hawai‘i 376, 910 P.2d 147 (App. 1996)
- Life of the Land v. Land Use Commission, 63 Haw. 166, 623 P.2d 431 (1981)
- In re Hawaiian Electric Co., 56 Haw. 260, 535 P.2d 1102 (1975)
- Akau v. Olohana Corp., 65 Haw. 383, 652 P.2d 1130 (1982)
- Ka Pa‘akai O Ka‘Aina v. Land Use Commission, 94 Hawai‘i 31, 7 P.3d 1068 (2000)
- Mahuiki v. Planning Commission, 65 Haw. 506, 654 P.2d 874 (1982)
- Kaapu v. Aloha Tower Development Corp., 74 Haw. 365, 846 P.2d 882 (1993)
- Foundation on Economic Trends v. Lyng, 943 F.2d 79 (D.C. Cir. 1991)
- Florida Audubon Society v. Bentsen, 94 F.3d 658 (D.C. Cir. 1996)
- Churchill County v. Babbitt, 150 F.3d 1072 (9th Cir. 1998)
- Douglas County v. Babbitt, 48 F.3d 1495 (9th Cir. 1995)
- Friends of the Earth v. United States Navy, 841 F.2d 927 (9th Cir. 1988)
- Sierra Club v. Morton, 405 U.S. 727 (1972)
- Sierra Club v. Marsh, 872 F.2d 497 (1st Cir. 1989)
- Committee to Save the Rio Hondo v. Lucero, 102 F.3d 445 (10th Cir. 1996)

- Citizens for the Protection of the North Kohala Coastline v. County of Hawaii, 91 Hawai‘i 94, 979 P.2d 1120 (1999)
- Kahana Sunset Owners Association v. County of Maui, 86 Hawai‘i 66, 947 P.2d 378 (1997)

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