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IN THE SUPREME COURT OF THE STATE OF HAWAIʻI

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TAX FOUNDATION OF HAWAIʻI, a Hawaiʻi non-profit corporation,
on behalf of itself and those similarly situated,
Plaintiff-Appellant,

vs.

STATE OF HAWAIʻI,
Defendant-Appellee.

SCAP-16-0000462

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CAAP-16-0000462; CIV. NO. 15-1-2020-10)

MARCH 21, 2019

DISSENTING OPINION BY RECKTENWALD, C.J.

I respectfully dissent from the Majority's holding in Part Two. While I conclude that Tax Foundation has standing to pursue declaratory and injunctive relief in this case, I disagree that HRS § 632-1 establishes standing criteria.

1. General Principles of Standing Apply in this Case

Giving due consideration to our courts' "proper and properly limited role" in our governmental system, "judicial intervention in a dispute is normally contingent upon the presence of a 'justiciable' controversy." Life of the Land v. Land Use Comm'n (Life of the Land II), 63 Haw. 166, 172, 623 P.2d 431, 438 (1981) (citation omitted). To be justiciable, a controversy must involve "questions capable of judicial resolution and presented in an adversary context." Id. The party seeking a judicial forum must also have standing. See id. ("Standing is that aspect of justiciability focusing on the party seeking a forum rather than on the issues he wants adjudicated."); Sierra Club v. Morton, 405 U.S. 727, 731-32 (1972) ("[T]he question of standing to sue" refers to "[w]hether a party has a sufficient stake in an otherwise justiciable controversy to obtain judicial resolution of that controversy").

The "crucial inquiry" in determining standing "is 'whether the plaintiff has "alleged such a personal stake in the outcome of the controversy" as to warrant his invocation of . . . [the court's] jurisdiction and to justify exercise of the court's remedial powers on his behalf.'" Life of the Land II, 63 Haw. at 172, 623 P.2d at 438 (quoting Warth v. Seldin, 422 U.S. 490, 498-99 (1975)).

> We determine whether a plaintiff has alleged a "personal stake in the outcome of the controversy" sufficient to confer standing by asking: "(1) has the plaintiff suffered an actual or threatened injury . . .; (2) is the injury fairly traceable to the defendant's actions; and (3) would a favorable decision likely provide relief for plaintiff's injury."

Corboy v. Louie, 128 Hawaiʻi 89, 104, 283 P.3d 695, 710 (2011) (quoting Sierra Club v. Dep't of Trans. (Superferry I), 115 Hawaiʻi 299, 319, 167 P.3d 292, 312 (2007)).

When "assessing whether a plaintiff has standing to sue" under the three-prong test, it is "[o]f critical importance" to identify "the nature of the injury alleged" or "the theory of injury presented by the plaintiff." Superferry I, 115 Hawaiʻi at 321, 167 P.3d at 314 (citing Cmty. Treatment Ctrs. v. City of Westland, 970 F. Supp. 1197, 1208 (E.D. Mich. 1997) ("[T]he resolution of a standing question often depends on how the court characterizes the alleged injury.")). We have noted that "although a plaintiff may be injured in any number of ways, the injury prong of the standing inquiry requires an assertion of a judicially-cognizable injury, that is, a harm to some legally-protected interest." Id.

Thus, to establish a personal stake in the controversy and its outcome, a plaintiff must assert an injury, or threatened injury, to a judicially cognizable interest. See Hawaii's Thousand Friends v. Anderson, 70 Haw. 276, 283, 768 P.2d 1293,

1299 (1989); Akau v. Olohana Corp., 65 Haw. 383, 390, 652 P.2d 1130, 1135 (1982).[1] The plaintiff's injury, or threat of injury, cannot be "abstract, conjectural or merely hypothetical," but concrete, such that a court may fairly trace its cause and provide the parties an adequate resolution. Life of the Land II, 63 Haw. at 173 n.6, 623 P.2d at 446 n.6.

Courtrooms are not the place "to vindicate individual value preferences," Hawaii's Thousand Friends, 70 Haw. at 284, 768 P.2d at 1299, or to resolve "a difference of opinion between a concerned citizen and his elected representatives in government," Bremner v. City & Cty. of Honolulu, 96 Hawaiʻi 134, 142, 28 P.3d 350, 358 (App. 2001). A plaintiff must therefore count "himself among the injured," and "not merely air[] a political or intellectual grievance." Akau, 65 Haw. at 390, 652 P.2d at 1135.

When we apply these principles, "[o]ur touchstone remains the needs of justice." Life of the Land II, 63 Haw. at 176, 623 P.2d at 441 (citation and internal quotation marks omitted). Accordingly, "[t]his court has adopted a broad view of

[1] "Injury in fact has always included harm to economic interests." Akau, 65 Haw. at 389, 652 P.2d at 1135 (citation omitted). However, we "recognize a variety of interests that, if injured, can form the basis for standing." Superferry I, 115 Hawaiʻi at 321, 167 P.3d at 314. For example, it is well-established that "injuries to recreational and aesthetic interests" may form the basis for a plaintiff's standing in environmental cases. Id.

what constitutes a 'personal stake' in cases in which the rights of the public might otherwise be denied [a] hearing in a judicial forum." Pele Defense Fund v. Paty, 73 Haw. 578, 593, 837 P.2d 1247, 1257-58 (1992) (citations omitted).

Traditionally, injuries shared by the general public were not judicially cognizable, and a plaintiff asserting such an injury had standing only "if he suffered a special injury that was different in kind, and not merely in degree, from the general public." Akau, 65 Haw. at 386, 652 P.2d at 1133. Similar to other state and federal courts, however, Hawaiʻi courts have followed "the trend away from the special injury rule towards the view that a plaintiff, if injured, has standing." Id. at 388, 652 P.2d at 1134. In adopting this position, we explained:

> We concur in this trend because we believe it is unjust to deny members of the public the ability to enforce the public's rights when they are injured. "The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury." Marbury v. Madison, 5 U.S. 137, 163, 2 L.Ed. 60 (1803).

Id.

2. Tax Foundation Has Established Standing As a Taxpayer

This trend away from the "special injury rule" began in the context of taxpayer challenges to illegal government action regarding the management and expenditure of public funds. See, e.g., Mottl v. Miyahira, 95 Hawaiʻi 381, 390-91, 23 P.3d 724,

725-26 (2001); Hawaii's Thousand Friends, 70 Haw. at 283, 768 P.2d at 1299; Akau, 65 Haw. at 386-87, 652 P.2d at 1133.

Hawaiʻi has a long history of recognizing individual taxpayers' standing to seek relief in such cases. See, e.g., Castle v. Atkinson, 16 Haw. 769, 774 (Haw. Terr. 1905) (recognizing "the right of resident taxpayers to . . . prevent an illegal disposition of the moneys of the county, or the illegal creation of a debt which they, in common with other property holders of the county, may otherwise be compelled to pay"); Wilder v. Pinkham, 23 Haw. 571, 573 (Haw. Terr. 1917) ("The theory upon which a suit by a taxpayer to restrain the illegal expenditure of public money may be maintained is that of protection to the property rights of the complainant."); Wilson v. Stainback, 39 Haw. 67, 72 (Haw. Terr. 1951) (providing that a taxpayer's "right to sue and prevent the violation of law" requires "that some interests or property of the taxpayer would be injuriously affected by illegal acts of public officials, about to be committed in expending public money or creating a public debt").

The "basic theory" behind taxpayer standing is:

> that the illegal action is in some way injurious to municipal and public interests, and that if permitted to continue, it will in some manner result in increased burdens upon, and dangers and disadvantages to, the municipality and to the interests represented by it and so to those who are taxpayers.

Munoz v. Ashford, 40 Haw. 675, 683 (Haw. Terr. 1955) (citation and quotation marks omitted).

This "basic theory," id., aligns with the "theory of injury presented by" Tax Foundation, Superferry I, 115 Hawaiʻi at 321, 167 P.3d at 314. Tax Foundation argues that "the Foundation, as a taxpayer," is "continuously injured by the State diverting money away from [HART], which causes over-collection of the amounts needed to sustain HART." Tax Foundation argues that "[t]he Foundation has paid the Surcharge and is vitally invested in its proper use considering it will be continually taxed for the same until the rail project is finished." Tax Foundation has also argued that while "[i]t and all other Honolulu taxpayers have dutifully paid the County Surcharge, . . . they are not receiving the full benefit as prescribed under HRS § 248-2.6 (1993 & Supp. 2005). The fact that the State has kept over $177 million, means that the Plaintiff and others have that much more to pay." Tax Foundation alleges, "If the money diverted by the State were given to the County as required, the surcharge could end sooner."

Tax Foundation's standing argument directly invokes the principles of taxpayer standing based on threatened harm to its economic interests as a taxpayer. To determine whether this

alleged injury is judicially cognizable under the circumstances, it is appropriate to determine whether Tax Foundation has satisfied the elements of taxpayer standing.[2]

In Hawaii's Thousand Friends, this court articulated two requirements for taxpayer standing: "(1) plaintiff must be a taxpayer who contributes to the particular fund from which the illegal expenditures are allegedly made; and (2) plaintiff must suffer a pecuniary loss[3] [by the increase of the burden of taxation], which, in cases of fraud, are presumed." 70 Haw. at 282, 768 P.2d at 1298. Tax Foundation satisfies both elements in this case.

First, Tax Foundation has established that, through the

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[2] The Dissenting Opinion by Nakayama, J., contends that I address taxpayer standing sua sponte because Tax Foundation "did not raise taxpayer standing." I respectfully disagree. Tax Foundation's argument that it, "as a taxpayer, [is] continuously injured by the State[,]" directly concerns whether Tax Foundation, "as a taxpayer," has a right to seek relief against the State for this alleged injury. To assist in this determination, we may consider whether Tax Foundation has met the test for taxpayer standing.

Moreover, because Tax Foundation seeks declaratory relief, we should consider its standing argument in light of the legislature's intent to "mak[e] the courts more serviceable to the people." See HRS § 632-6; Citizens for Prot. of N. Kohala Coastline v. Cty. of Hawai'i, 91 Hawai'i 94, 100, 979 P.2d 1120, 1126 (1999); Cty. of Hawai'i v. Ala Loop Homeowners, 123 Hawai'i 391, 433-34, 235 P.3d 1103, 1145-46 (2010). Foreclosing our analysis of Tax Foundation's alleged injury under these circumstances would contradict this principle. See Life of the Land II, 63 Haw. at 173-74, 623 P.2d at 439 ("[W]hile every challenge to governmental action has not been sanctioned, our basic position has been that standing requirements should not be barriers to justice.").

[3] The term "pecuniary loss" as it is used here includes current or future pecuniary loss. See Hawaii's Thousand Friends, 70 Haw. at 282, 768 P.2d at 1298 ("The taxpayer must show that he has sustained or will sustain pecuniary loss by the increase of the burden of taxation." (citing Munoz, 40 Haw. at 682 (emphasis added)).

tax it pays on its annual fundraising activities, it contributes to the particular fund from which illegal expenditures are allegedly made. In addition to paying general excise and use taxes at a 4% rate to the State, Tax Foundation pays the county surcharge at a rate of 0.5%. The State collects this surcharge, deposits it into a special fund, and, after deducting 10% of the gross proceeds, disburses the balance to the City and County of Honolulu. HRS § 248-2.6(a) (1993 & Supp. 2005). Tax Foundation alleges that "the bulk of the 10% retained by the State" exceeds the State's costs of administrating the county surcharge. Thus, according to Tax Foundation, the excess portion of the 10% is retained and diverted illegally.

Second, Tax Foundation has alleged future pecuniary loss. Tax Foundation contends that, if permitted, the State's continued retention of the 10% of gross proceeds from the surcharge will result in an increased tax burden for Honolulu taxpayers, including Tax Foundation.

This case is unlike Iuli v. Fasi, 62 Haw. 180, 185, 613 P.2d 653, 657 (1980), in which we declined to recognize taxpayer standing because the plaintiffs failed to allege future pecuniary loss. While the plaintiffs in Iuli challenged a government contract as illegal and stated that their taxes had increased, they nonetheless admitted that they were unsure whether the

challenged contract caused the increase in taxes, and that they suffered no cognizable loss. See id.

Here, in contrast, a direct link may be drawn between the rail surcharge and an impact on Honolulu taxpayers. Tax Foundation argues that "the State has created a vicious cycle: the more it diverts, the less the City receives, the longer the GET surcharge is needed; the more the taxpayers must pay." In other words, a portion of the surcharge is withheld by the State. If not withheld, these funds would be returned to the City and used to fund the rail project. It is thus reasonably likely that withholding this portion of the surcharge would cause a reduction in the proceeds available to the City and County of Honolulu, which would accordingly increase the overall tax burden for Honolulu taxpayers, including Tax Foundation.

Given this set of facts, Tax Foundation has sufficiently alleged an injury to its interests as a taxpayer and satisfied the elements of taxpayer standing. Tax Foundation established a "personal stake" in the controversy based on its interest as a taxpayer that pays the county surcharge and contributes to the general fund, and whose pecuniary interests are threatened by the State's continued retention of a portion of the surcharge.

Such injury may be fairly traced to the State's actions

in withholding a 10% portion of the rail surcharge from the City and County of Honolulu, and may be redressed by a favorable decision declaring the State's actions to be illegal, and ordering the State to return unlawfully withheld portions of the surcharge to the Honolulu government. Tax Foundation correctly observes that such a decision "would provide more support to HART for the benefit of the City – to the relief of the affected taxpayers."

Tax Foundation has thus alleged a threatened injury to its judicially cognizable interest in its capacity as a taxpayer, which is traceable to the State's actions, and likely to be redressed by declaratory and injunctive relief in its favor. Thus, Tax Foundation has standing. See Akau, 65 Haw. at 388, 390, 652 P.2d at 1134, 1135 (holding "that a member of the public has standing to sue to enforce the rights of the public . . . if he can show that he has suffered an injury in fact" by "demonstrat[ing] some injury to a recognized interest such as economic or aesthetic, and is himself among the injured and not merely airing a political or intellectual grievance").

3. HRS § 632-1 Does Not Establish a Statutory Test for Standing or Preclude Application of the "Injury in Fact" Test

I respectfully disagree with the conclusion reached by the Majority in Part Two that HRS § 632-1 sets forth a test for standing, or precludes application of this court's general standing principles. Under HRS Chapter 632, plaintiffs seeking declaratory relief must establish a "personal stake in the outcome of the controversy" by demonstrating an actual or threatened injury to a concrete, judicially cognizable interest, that is fairly traceable to the defendant and redressible by a court ruling. See Life of the Land II, 63 Haw. at 172, 623 P.2d at 438.

This "three-part standing test," or "traditional injury in fact" analysis, is employed "to determine whether a plaintiff has the requisite stake" in a controversy. Superferry I, 115 Hawaiʻi at 318-19, 167 P.3d at 311-12. As a standard "based on this court's prudential rules of judicial self-governance," id. at 319, 167 P.3d at 312 (emphasis added), this rule is not statutory in origin.

However, "in addition to this court's judicially-developed standing rules, this court must take guidance from applicable statutes or constitutional provisions regarding the right to bring suit." Id. General standing requirements may "be

tempered, or even prescribed, by legislative and constitutional declarations of policy." Life of the Land II, 63 Haw. at 172 & n.5, 623 P.2d at 438 & n.5.

In Life of the Land II, this court identified "HRS Chapter 632, Declaratory Judgments" as an example of such an instance. Thus, we should be mindful of the purpose of Chapter 632:

> This chapter is declared to be remedial. Its purpose is to afford relief from the uncertainty and insecurity attendant upon controversies over legal rights, without requiring one of the parties interested so to invade the rights asserted by the other as to entitle the party to maintain an ordinary action therefor. It is to be liberally interpreted and administered, with a view to making the courts more serviceable to the people.

HRS § 632-6.

With the "view to making the courts more serviceable to the people," id., this court has not limited itself to considering "controversies over legal rights," id., but rather has expanded standing to encompass controversies over judicially cognizable interests, see Superferry I, 115 Hawaiʻi at 321, 167 P.3d at 314. This court has also lowered standing barriers in cases implicating environmental concerns and native Hawaiian rights. See, e.g., Akau, 65 Haw. at 390, 652 P.2d at 1135; Citizens for Prot. of N. Kohala Coastline v. Cty. of Hawaiʻi, 91 Hawaiʻi 94, 101, 979 P.2d 1120, 1127 (1999); Pele Defense Fund, 73 Haw. at 589-90, 837 P.2d at 1256.

While we have "tempered" standing requirements in accord with HRS § 632-6's policy declaration, this court has never held that this policy obviates the need to establish a "personal stake" in the controversy, or an "injury in fact." See, e.g., Mottl, 95 Hawaiʻi at 393, 23 P.3d at 728; see also Bremner, 96 Hawaiʻi at 142, 28 P.3d at 358. Nor has this court ever held that Chapter 632 "prescribe[s]" rules for standing. Life of the Land II, 63 Haw. at 172 & n.5, 623 P.2d at 438 & n.5 ("While standing requisites ordinarily comprise one of the 'prudential rules' discussed earlier, they may also be tempered, or even prescribed, by legislative and constitutional declarations of policy.").

To understand why, it is important in the first instance to address the plain language of HRS § 632-1. This statute provides:

> (a) In cases of actual controversy, courts of record, within the scope of their respective jurisdictions, shall have power to make binding adjudications of right, whether or not consequential relief is, or at the time could be, claimed, and no action or proceeding shall be open to objection on the ground that a judgment or order merely declaratory of right is prayed for; provided that declaratory relief may not be obtained in any district court, or in any controversy with respect to taxes, or in any case where a divorce or annulment of marriage is sought. Controversies involving the interpretation of deeds, wills, other instruments of writing, statutes, municipal ordinances, and other governmental regulations may be so determined, and this enumeration does not exclude other instances of actual antagonistic assertion and denial of right.
>
> (b) Relief by declaratory judgment may be granted in

> civil cases where an actual controversy exists between contending parties, or where the court is satisfied that antagonistic claims are present between the parties involved which indicate imminent and inevitable litigation, or where in any such case the court is satisfied that a party asserts a legal relation, status, right, or privilege in which the party has a concrete interest and that there is a challenge or denial of the asserted relation, status, right, or privilege by an adversary party who also has or asserts a concrete interest therein, and the court is satisfied also that a declaratory judgment will serve to terminate the uncertainty or controversy giving rise to the proceeding. Where, however, a statute provides a special form of remedy for a specific type of case, that statutory remedy shall be followed; but the mere fact that an actual or threatened controversy is susceptible of relief through a general common law remedy, a remedy equitable in nature, or an extraordinary legal remedy, whether such remedy is recognized or regulated by statute or not, shall not debar a party from the privilege of obtaining a declaratory judgment in any case where the other essentials to such relief are present.

HRS § 632-1 (emphasis added).

Titled "Jurisdiction; controversies subject to," HRS § 632-1 is a jurisdictional statute that provides civil courts the authority to issue "binding adjudications of [the] right[s]" of parties in "cases of actual controversy," or "instances of actual antagonistic assertion and denial of right." Id.

In subsection (b), the statute sets forth the "essentials to [declaratory] relief [that must be] present" for courts to exercise jurisdiction over a controversy in which declaratory relief is sought. Id. It provides:

> Relief by declaratory judgment may be granted in civil cases[:]
> [(1)] where an actual controversy exists between contending parties,
> or

> [(2)] where the court is satisfied that
> [(a)] antagonistic claims are present between the parties involved[,]
> [(i)] which indicate imminent and inevitable litigation,
> or
> [(ii)] where in any such case the court is satisfied that a party asserts a legal relation, status, right, or privilege in which the party has a concrete interest and that there is a challenge or denial of the asserted relation, status, right, or privilege by an adversary party who also has or asserts a concrete interest therein,
> and
> [(b)] the court is satisfied also that a declaratory judgment will serve to terminate the uncertainty or controversy giving rise to the proceeding.

Id.

Pursuant to this subsection, a "declaratory judgment may be granted" where: 1) "an actual controversy exists between contending parties," or 2) a "threatened controversy" of a sufficiently imminent, inevitable, or concrete nature merits judicial resolution.[4] Id.

An "actual controversy" can take the form of any justiciable civil case. The justiciability standards for determining whether an "actual controversy" exists arise from prudential concerns of judicial self-governance. See Life of the Land II, 63 Haw. at 178, 624 P.2d at 442 (noting that

[4] Characterizing the second part of the first sentence in subsection (b) as describing a "threatened controversy" is consistent with the reference in subsection (b) to availability of declaratory relief in "an actual or threatened controversy." HRS § 632-1(b).

determination of whether an "actual controversy" exists is governed by "prudential rules"). These prudential rules, as recognized by the Majority, have been discussed as follows:

> Our guideposts for the application of the rules of judicial self-governance founded in concern about the proper — and properly limited — role of courts in a democratic society reflect the precepts enunciated by the Supreme Court. When confronted with an abstract or hypothetical question, we have addressed the problem in terms of a prohibition against rendering advisory opinions; when asked to decide whether a litigant is asserting legally recognized interests, personal and peculiar to him, we have spoken of standing; when a later decision appeared more appropriate, we have resolved the justiciability question in terms of ripeness; and when the continued vitality of the suit was questionable, we have invoked the mootness bar.

Trustees of Office of Hawaiian Affairs v. Yamasaki, 69 Haw. 154, 171-72, 737 P.2d 446, 456 (1987) (internal citations, quotation marks, punctuation, and footnotes omitted).

Because an "actual controversy" must be justiciable, each of these prudential rules, including standing, apply. As the Majority acknowledges, this provision "does not set out any actual standing requirements." Opinion by McKenna, J., at 58. Thus, it is up to courts to determine whether prudential requisites, including standing, have been met, such that the matter constitutes an "actual controversy" in which declaratory relief, among other forms of relief, may be awarded. Determining whether a plaintiff has "a personal stake in the outcome of the controversy" is therefore part of the inquiry as to whether a

case is an "actual controversy." See Reliable Collection Agency, Ltd. v. Cole, 59 Haw. 503, 510-11, 584 P.2d 107, 111 (1978) ("While we are not subject to the 'case or controversy' requirement of Article III of the United States Constitution, the prudential considerations which have been suggested in the federal cases on standing persuade us that a party should not be permitted . . . to enforce public law without a personal interest which will be measurably affected by the outcome of the case.").

In addition to actual controversies, in which all prudential requisites have been met, courts are empowered to hear and resolve "threatened controvers[ies]" in appropriate circumstances. See HRS § 632-1(b).

Traditionally, if a case had not fully ripened[5] into an actual controversy, it was not fit for judicial resolution. See Kaleikau v. Hall, 27 Haw. 420, 425 (Haw. Terr. 1923) ("Under the rules of the common law, except in a few instances, the courts have uniformly refused to entertain jurisdiction in cases unless a cause of action actually existed at the time suit was

[5] This court has observed that "'ripeness is peculiarly a question of timing,' and the relevant prudential rule deals with '[p]roblems of prematurity and abstractness' that may prevent adjudication in all but the exceptional case." State v. Fields, 67 Haw. 268, 274, 686 P.2d 1379, 1385 (1984) (citations and some brackets and internal quotation marks omitted). We have recognized that rulings dismissing a matter for lack of ripeness indicate that "a later decision" is more preferable, or "that the matter is not yet appropriate for adjudication." Id. at 275, 686 P.2d at 1385 (citations and internal quotation marks omitted).

brought.") This had harsh consequences, as it meant that courts "would only award compensation for damages sustained" after a breach or injury had occurred. Id. at 426. Courts "would not ordinarily prevent anticipated damage." Id.

When the bill that enacted HRS §§ 632-1 and 632-6 was first introduced in 1921, the Senate Committee on the Judiciary explained that its purpose was to provide "parties in dispute" a judicial determination of rights "before a cause of action accrues by breach of such rights by either party." S. Stand. Comm. Rep. No. 263, in 1921 Senate Journal, at 616. The committee noted the frequent occurrence of disputes over property rights, and that breaches would be avoided if the parties "could have had a prior adjudication of their rights, instead of being forced to see their remedy after the damage." Id. at 616-17.

The legislature thus sought to expand when in time a controversy may be heard; it did not seek to eliminate the need for plaintiffs to have "a personal stake" in its outcome. Life of the Land II, 63 Haw. at 172, 623 P.2d at 438; see H. Stand. Comm. Rep. No. 594, in 1921 House Journal, at 1296 (stating that the bill was not meant to empower courts "to answer merely hypothetical questions").

This purpose is reflected in the language of the current form of the statute. To exercise jurisdiction over a

threatened controversy, a court must be satisfied that the matter involves "antagonistic claims between the parties" of a sufficiently imminent, inevitable, or concrete nature, and that "a declaratory judgment will serve to terminate the uncertainty or controversy giving rise to the proceeding." HRS § 632-1(b).

The Majority derives its "HRS § 632-1 standing" test from these "essentials to [declaratory] relief" for a threatened controversy. Id. The Majority contends:

> In the second prong of HRS § 632-1(b), . . . the legislature has expressed its policy and has expressed its view regarding the "proper - yet properly limited - role of [our] courts" - by providing that a party has standing to bring an action for declaratory relief in a civil case (1) where antagonistic claims exist between the parties (i) that indicate imminent and inevitable litigation, or (ii) where the party seeking declaratory relief has a concrete interest in a legal relation, status, right, or privilege that is challenged or denied by the other party, who has or asserts a concrete interest in the same legal relation, status, right, or privilege; and (2) a declaratory judgment will serve to terminate the uncertainty or controversy giving rise to the proceeding.

Opinion by McKenna, J., at 60 (emphasis added).

To be clear, the statute does not "provid[e] that a party has standing to bring an action for declaratory relief," or refer to "the party seeking declaratory relief" in such specific terms. Compare id. with HRS § 632-1(b) ("where in any such case the court is satisfied that a party . . ."). [6] Rather, the plain

[6] Respectfully, the Majority's analysis omits statutory language requiring "the court [to be] satisfied" that each element has been

(continued...)

terms of HRS § 632-1 do not prescribe a test for standing.

Statutes that prescribe a test for standing, and thus supplant our judicially-developed standing rules, include provisions that concern "who may bring suit" in a certain case, Superferry I, 115 Hawaiʻi at 325 n.35, 167 P.3d at 318 n.35 (emphasis added), whether, for example, it is "an aggrieved party," HRS § 343-7(a) (2010), "[a]ny interested person," id. § 91-7 (2012), or "[a]ny person," id. § 92-12 (2012). These provisions grant such persons the right to "bring suit" or seek judicial review under specific circumstances. Superferry I, 115 Hawaiʻi at 325 n.35, 167 P.3d at 318 n.35; see, e.g., HRS § 92-12 ("Any person may commence a suit . . . for the purpose of requiring compliance with or preventing violations" of the Sunshine Law); id. § 91-7 ("Any interested person may obtain a judicial declaration as to the validity of an agency rule."); id. § 91-14(a) (2012) ("Any person aggrieved by a final decision and

[6](...continued)
established. HRS § 632-1(b). This omitted language helps to highlight a fundamental inconsistency between the Majority's concept of "HRS § 632-1 standing" (as comprised of elements of HRS § 632-1(b)) and the Majority's position that Hawaiʻi state courts "are not required to [consider standing], as they would be required to do with issues of subject matter jurisdiction."

As a jurisdictional statute, HRS § 632-1(b) expressly sets forth the "essentials to [declaratory] relief" for the court to exercise its jurisdiction, requiring "the court [to be] satisfied" that certain statutory elements in subsection (b) have been met. HRS § 632-1(b).

The Majority construes these same elements as a test for "HRS § 632-1 standing." Nevertheless, the Majority opines that "Hawaiʻi courts are not required to [consider standing]." By this token, the Majority appears to adopt the position, contrary to the statute's plain language, that the "essentials to [declaratory] relief" in subsection (b) need only be considered when the issue of "HRS § 632-1 standing" is expressly raised.

order in a contested case . . . is entitled to judicial review thereof under this chapter[.]"); id. § 343-7(a) (referring to "an aggrieved party for purposes of bringing a judicial action" pursuant to the Hawaiʻi Environmental Policy Act (HEPA)).

In contrast, HRS § 632-1 does not concern who may bring an action for declaratory relief. Rather, its provisions address what "controversies [may be] subject to" a declaratory order. HRS § 632-1. Respectfully, the Majority's test for "HRS § 632-1 standing" conflates these two concepts, and thus is contrary to our case law that recognizes that standing "focus[es] on the party seeking [declaratory relief,] rather than on the issues he [or she] wants adjudicated." Life of the Land II, 63 Haw. at 172, 623 P.2d at 438.

In this regard, the Majority's analysis sharply contrasts with other cases, including Superferry I and Asato v. Procurement Policy Board, 132 Hawaiʻi 333, 322 P.3d 228 (2014), in which we have identified standing rules within specific statutes. In Superferry I, for example, this court held that HRS § 343-7, regarding proceedings to enforce violations of HEPA, "concern[ed] 'standing requisites.'" 115 Hawaiʻi at 325 n.35, 167 P.3d at 318 n.35. In particular, we addressed how the terms in section 343-7(a) referring to "an aggrieved party for purposes of bringing [a] judicial action" or "[o]thers . . . [who] may be

adjudged aggrieved" related to standing. Id. at 325, 167 P.3d at 318.

We explained:

> Both the text and the legislative history of HRS § 343-7 indicate that it concerns "standing requisites." In its original version, as passed by the legislature in 1974, the reference to standing was explicit. The original "Limitation on Actions" section, which corresponds to HRS § 343–7 today, did not include any statements that could be construed to relate to standing for subsections (a) and (b), that is, judicial proceedings to challenge the lack of an EA or determinations regarding whether or not an EIS will be required. However, in the third subsection, concerning review of the "acceptability" of an EIS, the original law included the proviso that "only affected agencies, or persons who will be aggrieved by a proposed action and who provided written comments to such a statement during the designated review period shall have standing to file suit." HRS § 343–6(c) (1976) (emphasis added) (current version at HRS § 343–7(c) (1993)). The report of the Senate Committee on Ecology, Environment and Recreation that considered the bill also demonstrates that the committee clearly viewed the "Judicial Review" section as dealing with standing concerns. Thus, the committee report described the effect of the amendment as "provid[ing] a citizen standing to sue only when he has previously been involved in the public review process of the environmental impact statement and when his comments at that time dealt with the issues described in the suit," and also stated that "[h]owever, his standing would be recognized after exhausting the existing remedies open to him as specified in Chapter 91." Sen. Comm. Rep. 956–74, in 1974 Senate Journal, at 1126–27.
>
> Analogous sections regarding who may bring suit were added to subsections (a) and (b) in 1979, which allow pre-EIS challenges. Incidentally, at this time the legislature also eliminated the term "standing to sue" from Section 343–7(c), instead referring to those who "shall be adjudged aggrieved parties for the purpose of bringing judicial action under this subsection." 1979 Haw. Sess. L. Act 197, § 8, at 412–13 (emphasis added). However, there is no relevant legislative history on these changes, as major changes of the 1979 law focused on other areas—the remainder being characterized by the Senate Committee Report as "primarily housekeeping changes." Sen. Comm. Rep. 628, in 1979 Senate Journal, at 1264.

> Therefore, although the legislative history of HRS § 343-7 is not particularly enlightening with respect to what standing requirements must be fulfilled in order for a party to bring judicial action under HEPA, the legislative history does clearly indicate that the subsection is directed at the question of standing to sue.

Id. at 325 n.35, 167 P.3d at 318 n.35 (first emphasis added).

Unlike the court in Superferry I, the Majority points to no actual language or legislative history of HRS § 632-1 indicating that it "is directed at the question of standing to sue." Id.

This case also differs from Asato, which considered standing requirements in actions for declaratory relief pursuant to HRS § 91-7. See 132 Hawaiʻi at 341-45, 322 P.3d at 236-40. HRS § 91-7 "allows '[a]ny interested person' to obtain 'a judicial declaration as to the validity of an agency rule.'" Id. at 341, 322 P.3d at 236. With regard to the issue of standing, Asato "considered what is required to become '[a]ny interested person' under HRS § 91-7." Id. at 341, 322 P.3d at 236. The majority in Asato held that a plaintiff has standing as "any interested person" if they "may be affected" by a regulation, and they need not demonstrate an "injury in fact" to have standing. Id. at 341, 345, 322 P.3d at 236, 238. In considering who may constitute "any interested person" within the meaning of HRS § 91-7, the majority analyzed statutory plain language and

legislative history, and compared the terms "any interested person" with "aggrieved person" in HRS Chapter 91.[7] See id. at 341-45, 322 P.3d at 236-40.

As part of its analysis, the Asato majority examined why the legislature included the terms "any interested person" when adopting HRS § 91-7, as it "deviated from the [Model State Administrative Procedure Act (MSAPA)]." Id. at 343, 322 P.3d at 238. The court noted:

> The MSAPA section setting out a procedure for declaratory judgments as to the validity or applicability of rules provides, as its first sentence, that: "The validity or applicability of a rule may be determined in an action for declaratory judgment in the [court], if it is alleged that the rule, or its threatened application, interferes with or impairs, or threatens to interfere with or impair, the legal rights or privileges of the plaintiff." Id. (emphasis added). In contrast, the first sentence of HRS § 91–7(a) provides, to reiterate, that "[a]ny interested person may obtain a judicial declaration as to the validity of an agency rule...."
>
> In explaining this departure from the MSAPA, the House Judiciary Committee stated that "[y]our Committee is of the opinion that this section will allow an interested person to seek judicial review on the validity of a rule for the reasons enumerated therein regardless of whether there is an actual case or controversy." H. Stand. Comm. Rep. No. 8, in 1961 House Journal, at 658 (emphasis added). The three-part injury test serves as Hawaiʻi's counterpart to the Article III "cases and controversies" requirement. See Bush [v. Watson], 81 Hawaiʻi [474,] 479, 918 P.2d [1130,] 1135 [(1996)]; Life of the Land [II], 63 Haw. at 172, 623 P.2d at 438. See also Mottl, 95 Hawaiʻi at 396, 23 P.3d at 731 (Acoba, J.,

[7] In making this comparison, the court observed that "an 'aggrieved person' is one who has suffered an injury in fact." 132 Hawaiʻi at 341, 322 P.3d at 236 (citation omitted). The Asato majority opinion thus recognized that the "injury in fact" test may be applied to assess standing, even if the terms "injury in fact" are not found in the statutory language. See id.

> concurring, joined by Ramil, J.) ("Our analogue of 'article III' jurisdictional requirements is the three-part injury test.").

Id. at 343-44, 322 P.3d at 238-39 (emphasis in original).

The Asato majority's review of HRS § 91-7 has particular relevance to HRS § 632-1, as these statutes are in pari materia. See Life of the Land v. Land Use Comm'n (Life of the Land I), 58 Haw. 292, 568 P.2d 1189 (1977); see also Costa v. Sunn, 5 Haw. App. 419, 424, 697 P.2d 43, 47 (1985) (considering Life of the Land I "to be authority to hold that HRS §§ 91-7 and 632-1 are in pari materia, and § 91-7 serves the same purpose regarding the validity of agency regulations as does § 632-1 regarding other disputed matters between parties").

Unlike HRS § 91-7, HRS § 632-1 requires there to be an actual controversy, as its statutory language plainly reflects. See HRS § 632-1(a) (providing that relief by declaratory judgment may be obtained "[i]n cases of actual controversy" (emphasis added)); Credit Assocs. of Maui, Ltd. v. Leong, 56 Haw. 104, 105, 529 P.2d 198, 200 (1974) (recognizing that HRS § 632-1 requires "a concrete interest in an actual controversy" or a "justiciable controversy");[8] see also Costa, 5 Haw. App. at 425, 697 P.2d at

[8] In Credit Associates, a collection agency filed an action against the defendants to recover an amount owed on a promissory note, and the defendants counterclaimed, alleging, among other things, unauthorized practice of law. 56 Haw. at 105, 529 P.2d at 199. Before trial, the parties stipulated to dismiss all claims, except the defendants' counterclaim for unauthorized practice of law. Id. The trial court approved the stipulation (continued...)

48 ("[HRS] § 91-7 merely removes the usual impediment to declaratory actions that there be an 'actual controversy.'")

Critically, unlike HRS § 91-7, HRS § 632-1 does not allow "any interested person" to obtain a judicial declaration on a matter of concern. Rather, HRS § 632-1 lacks the kind of provision addressing who may file suit that is present in HRS § 91-7, as well as sections 91-14 and 92-12, among others.

In the absence of statutory language that actually concerns standing, "the standard rules governing standing to sue apply" to plaintiffs in HRS § 632-1 actions. Kaapu v. Aloha Tower Dev. Corp., 74 Haw. 365, 390-91, 846 P.2d 882, 893 (1993) (applying "the standard rules governing standing to sue," including the "injury in fact" test, in the absence of statutory language establishing the right to sue as a private attorney general). These rules require plaintiffs to demonstrate "a personal stake in the outcome of the controversy," which may be shown through satisfaction of the "injury in fact" test. See id.

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[8](...continued)
and issued a summary judgment concluding that the plaintiff was not engaged in the unauthorized practice of law. Id.

On appeal, this court "consider[ed] the summary judgment to be a declaratory judgment" because the defendants sought a declaratory judgment under HRS § 632-1. Id. We held that "[w]here a stipulated dismissal with prejudice of the complaint in favor of the [defendants] is filed prior to trial on the merits, the [plaintiffs] and [defendants] no longer have a concrete interest in an actual controversy to empower the trial court to render a declaratory judgment." Id. at 105, 529 P.2d at 200 (citing Hanes Dye and Finishing Co. v. Caisson Corp., 309 F. Supp. 237, 240 (M.D.N.C. 1970), and Aetna Life Ins. Co. v. Haworth, 300 U.S. 227, 239-241 (1937)).

at 390-91, 846 P.2d at 893.

The "injury in fact" standard does not conflict with either the language or purpose of HRS § 632-1. While the legislature directs that Chapter 632 "is to be liberally interpreted and administered," HRS § 632-6, this direction does not reflect legislative intent to prescribe a test for standing, or to preclude courts from ensuring that in "instances of actual antagonistic assertion and denial of right," id. § 632-1(a), the parties in the "controvers[y] over legal rights," id. § 632-6, are those with a "personal stake in the outcome," Life of the Land II, 63 Haw. at 172, 623 P.2d at 438.

This court's judicially-developed standing test also does not place an additional burden on plaintiffs seeking declaratory relief. For example, a plaintiff alleging a "challenge or denial" of their "concrete interest" in "a legal relation, status, right, or privilege," HRS § 632-1(b), will satisfy the injury prong of the "injury in fact" test. A plaintiff asserting that this "challenge or denial . . . [was] by an adversary party" to the proceedings, id., will satisfy the causation prong of the test. A plaintiff establishing that "a declaratory judgment will serve to terminate the uncertainty or controversy giving rise to the proceeding," id., will satisfy the redressibility prong.

Thus, I see no need to stray from this court's precedent applying the "injury in fact" test to HRS § 632-1 actions. "Complexities about standing are barriers to justice; in removing the barriers the emphasis should be on the needs of justice." Life of the Land II, 63 Haw. at 174 n.8, 623 P.2d 431, 439 n.8 (quoting E. Diamond Head Ass'n v. Zoning Bd. of Appeals, 52 Haw. 518, 479 P.2d 796 (1971)). The concept of "HRS § 632-1 standing" injects unnecessary complexity into a simple doctrine and a straightforward line of case law.

4. Hawaiʻi Case Law Requires an Injury in Fact in HRS § 632-1 Actions

Because HRS §§ 632-1 and 632-6 do not establish a test for standing, Hawaiʻi courts have consistently applied this general standing test in HRS § 632-1 actions.

In analyzing those cases, the Majority employs a flawed analogy to Asato, which "considered what is required to become '[a]ny interested person' under HRS § 91-7." 132 Hawaiʻi at 341, 322 P.3d at 236. Only two cases before Asato had addressed the same issue: Life of the Land II, 63 Haw. at 175, 623 P.2d at 440, and Richard v. Metcalf, 82 Hawaiʻi 249, 921 P.2d 169 (1996). See id. The court in Asato noted that the standard applied in Richard, a more recent case, was stricter than that in Life of the Land II. See id. at 342, 322 P.3d at 237. The court thus

examined each case to determine why the standard had changed, and it analyzed the plain language and legislative history of HRS § 91-7 to determine whether such changes were appropriate. See id.

The court concluded that Richard lacked "supportive reasoning" for applying the "injury in fact" test to determine whether a plaintiff was an "interested person" under HRS § 91-7. Id. at 343, 322 P.3d at 238. It held that "the plain language of HRS § 91-7 and the legislative history of that statute require[d]" a looser standard than the "injury in fact" test. See id. Accordingly, the court overruled this "ancillary holding of Richard" and re-adopted the broader standing test from Life of the Land II. See id.

As discussed above, this court's analysis of HRS § 91-7 in Asato is inapplicable to the instant case, as HRS § 632-1 lacks the terms "any interested person," or any other terms that actually refer to who has a right to bring suit. Moreover, unlike the circumstances in Asato, the judicially-developed "injury in fact" standard has been consistently applied in actions for declaratory relief under HRS § 632-1. See, e.g., McDermott v. Ige, 135 Hawaiʻi 275, 278, 283-84, 349 P.3d 382, 385, 390-91 (2015); Cty. of Hawaiʻi v. Ala Loop Homeowners, 123 Hawaiʻi 391, 433-34, 235 P.3d 1103, 1145-46 (2010); Superferry I,

115 Hawaiʻi at 328, 167 P.3d at 321; Cty. of Kauaʻi ex rel. Nakazawa v. Baptiste, 115 Hawaiʻi 15, 28, 165 P.3d 916, 929 (2007); Kahoʻohanohano v. State, 114 Hawaiʻi 302, 162 P.3d 696 (2007); Mottl, 95 Hawaiʻi at 389, 23 P.3d at 724.

While this court has broadened what constitutes a "personal stake" in cases concerning environmental and native Hawaiian rights, this court's standing doctrine has maintained that an "injury in fact" is a foundational requirement in each of these cases. See Superferry I, 115 Hawaiʻi at 320, 167 P.3d at 313 ("[E]nvironmental plaintiffs must meet the three-part standing test, . . . although there will be no requirement that their asserted injury be particular to the plaintiffs, and the court will recognize harms to plaintiffs['] environmental interests as injuries that may provide the basis for standing."); Sierra Club v. Hawaiʻi Tourism Auth. ex rel. Bd. of Dirs., 100 Hawaiʻi 242, 251, 59 P.3d 877, 886 (2002) (plurality opinion) (noting that "while the basis for standing has expanded in cases implicating environmental concerns and native Hawaiian rights, plaintiffs must still satisfy the injury-in-fact test."); see also Citizens, 91 Hawaiʻi at 101, 979 P.2d at 1127 (plaintiffs' alleged injury to recreational use of shoreline was sufficient injury in fact to confer standing in declaratory judgment action

challenging proposed shoreline development);[9] Pele Defense Fund, 73 Haw. at 589–90, 837 P.2d at 1256 (injury to native Hawaiian organization's "customarily and traditionally exercised subsistence, cultural and religious practices" sufficient to grant standing to challenge exchange of publicly ceded lands).

The Majority nevertheless contends that our cases requiring plaintiffs to satisfy the "injury in fact" test for declaratory judgment actions under HRS § 632-1 have been confusing and not well-settled. However, since Dalton v. City & County of Honolulu, 51 Haw. 400, 462 P.2d 199 (1969), this court has consistently required plaintiffs seeking declaratory relief to demonstrate a concrete stake in the outcome of the controversy by establishing an injury, or threatened injury, to their judicially cognizable interests.

In Dalton, the plaintiffs brought suit under HRS § 632-1, seeking to invalidate ordinances that rezoned land from

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[9] The Majority contends that in Citizens, "[w]e were clear . . . that the three part 'injury in fact' test did not govern standing for HRS § 632-1 declaratory judgment actions, . . . concluding that 'Citizens asserts personal and special interests sufficient to invoke judicial resolution under HRS § 632-1.'" Opinion by McKenna, J., at 52 (quoting Citizens, 91 Hawaiʻi at 101, 979 P.2d at 1127) However, the Citizens decision clearly applied the "injury in fact" test for plaintiff's standing. In that case, we first noted that "Citizens asserts personal and special interests sufficient to invoke judicial resolution under HRS § 632-1." Citizens, 91 Hawaiʻi at 101, 979 P.2d at 1127. Then, after describing the specific injury asserted by Citizens, we concluded that "although Citizens' members are neither owners nor adjoining owners of the Mahukona project, they nonetheless alleged an injury in fact sufficient to constitute standing to participate in a declaratory judgment action." Id. (emphasis added). Thus, this court applied the "injury in fact" test to the HRS § 632-1 action in that case.

residential and agricultural use to medium density apartment use. 51 Haw. at 400-01, 462 P.2d at 201. This court determined that residing "in very close proximity" to a proposed high-rise apartment was sufficient to confer standing to seek declaratory relief regarding the validity of the ordinances. Id. at 403, 462 P.2d at 202 (citing Lynch v. Borough of Hillsdale, 136 N.J.L. 129, 54 A.2d 723 (N.J. 1947)).

It is notable that Dalton relied on Lynch in concluding that the plaintiffs had standing to pursue relief. In Lynch, a zoning case, the Supreme Court of New Jersey considered the validity of an ordinance and a related contract between a municipal governing body and a landowner regarding the use of private property located in a residential zone. 54 A.2d at 724-76. The ordinance and contract purported to allow the landowner to change the use of his property from chicken farming to the manufacture of candy for the five-year balance of the landowner's term of an existing non-conforming use permit. 54 A.2d at 724-76. After discussing the merits of the challenge at length, the court briefly addressed standing, as follows:

> [T]here is no substance to the contention that prosecutors have not shown the special injury or damage requisite for an attack upon the ordinance and contract by certiorari. Three of the prosecutors are the owners of lands adjoining the premises in question, and the fourth is the owner of lands in the immediate vicinity; and thus they have the special interest essential to a review of the action by certiorari.

Id. at 134, 54 A.2d at 726 (emphasis added) (citation omitted).

Like in Lynch, the court in Dalton noted that the plaintiffs' proximity to a proposed use conferred a special interest in the dispute. See Dalton, 51 Haw. at 403, 462 P.2d at 202 ("[T]wo of the plaintiffs apparently live across the street from said property upon which defendants plan to build high rise apartment buildings[.]" (internal quotation marks omitted)). While Dalton did not use the term "injury," or "injury in fact," the court observed that the ordinance, and the defendants' resulting development, threatened to injure the plaintiffs' concrete interests by "restricting their scenic view, limiting the sense of space[,] and increasing the density of the population." Id. (emphasis added).

This court's subsequent discussions of Dalton support this interpretation. In Waianae Model Neighborhood Area Ass'n v. City & County of Honolulu, 55 Haw. 40, 44, 514 P.2d 861, 864 (1973), we stated that the "[p]laintiff has standing in this case in its own right under Dalton" to bring a declaratory judgment action challenging the validity of a building permit. We concluded that the pleadings "contain[ed] a sufficient showing of individualized harm to plaintiff and its members" to confer standing, which was distinguishable from Sierra Club v. Morton,

405 U.S. 727 (1972), in which the plaintiff "sought 'to do no more than vindicate [its] own value preferences through the judicial process.'" Waianae Model Neighborhood Area Ass'n, 55 Haw. at 44, 514 P.2d at 864 (quoting Sierra Club, 405 U.S. at 740). Accordingly, we interpreted "standing . . . under Dalton" to require a "sufficient showing of individualized harm," or an injury in fact. Id.

This court also discussed Dalton in Life of the Land II, 63 Haw. at 174, 623 P.2d at 439. We noted that our opinions had moved "from 'legal right' to 'injury in fact' as the . . . standard . . . for judging whether a plaintiff's stake in a dispute is sufficient to invoke judicial intervention." Id. As an example of this court's application of the "injury in fact" standard in cases involving environmental concerns, we discussed Dalton as illustrative. See id. at 174, 623 P.2d at 439-40.

Furthermore, while the Majority suggests that "no prudential reasons have ever been set forth in support" of applying the "injury in fact" test to determine standing in HRS § 632-1 actions, Opinion by McKenna, J., at 45 (emphasis omitted), the rationale underlying this requirement was comprehensively and persuasively addressed by the ICA in Bremner v. City & County of Honolulu, 96 Hawaiʻi 134, 28 P.3d 350 (App.

2001).[10]

In Bremner, the plaintiff filed a complaint seeking a declaratory judgment to void several ordinances that revised the guidelines relating to the development of and zoning in Waikīkī, Honolulu, Hawaiʻi. 96 Hawaiʻi at 138, 28 P.3d at 354. The trial court dismissed the plaintiff's complaint, ruling that the plaintiff did not establish that he had standing to seek declaratory relief. Id.

Guided by the well-established considerations in Hawaiʻi law concerning standing,[11] the ICA[12] concluded that the plaintiff did not have standing because he did not establish that

[10] The Majority contends that Bremner is inapposite because it cited Bush v. Watson, 81 Hawaiʻi 474, 479, 918 P.2d 1130, 1135 (1996), as authority for applying the three-part "injury in fact" test to HRS § 632-1 standing, reasoning that "Bush was brought under 42 U.S.C. § 1983, not HRS § 632-1." Opinion by McKenna, J., at 54 n.33 However, this fact is immaterial to, and does not lessen, the persuasive value of the ICA's substantive analysis regarding standing requirements in the context of HRS § 632-1 actions. Bremner's discussion on this point did not depend on 42 U.S.C. § 1983, and therefore cannot be meaningfully distinguished on that basis.

[11] The ICA first acknowledged that, traditionally, "[w]hether a plaintiff has the requisite 'personal stake' in the outcome of the litigation is measured by a three-part, 'injury in fact' test." Bremner, 96 Hawaiʻi at 139, 28 P.3d at 355. The ICA also recounted this court's precedent illustrating that it has adopted "a more expansive interpretation of standing," whereby "a plaintiff's 'personal stake' in the outcome of a controversy may arise from a defendant's infringement of personal or special interests that is separate and distinct from the traditional basis of infringement of legal rights or privileges." Id. at 140, 28 P.3d at 356. Moreover, the ICA recognized that "standing requirements may be 'tempered' or otherwise 'prescribed' by legislative declarations of policy" including HRS Chapter 632, id. (quoting Life of the Land II, 63 Haw. at 172, 623 P.2d at 438), which contains language that "'interposes less stringent requirements for access and participation in the court process' than traditional standing requisites might otherwise dictate." Id. at 141, 28 P.3d at 357 (quoting Citizens, 91 Hawaiʻi at 100, 979 P.2d at 1126).

[12] The late Judge John S.W. Lim authored the decision.

he had suffered an "injury in fact" due to the enactment of the disputed ordinances. See id. at 141-42, 28 P.3d at 357-58. Although the plaintiff alleged that the ordinances would result in overcrowding, require the installment of an upgraded sewer system, which would be expensive and harm the economy, and place a strain on the environment, the ICA determined that these allegations did not establish that the plaintiff had actually suffered any personal, judicially cognizable injury. Id. The ICA explained:

> [The plaintiff], a Kailua resident, did not allege that he lives or works in or anywhere near Waikiki. He claimed no property interest in Waikiki or its environs. He did not identify any specific, personal, aesthetic or recreational interest derogated by the zoning ordinance that may warrant standing . . . . Nor did he assert any cultural or religious ties to the area . . . . Finally, . . . [the plaintiff] did not allege that future high density development in Waikiki might tangentially affect his property interests.

Id. at 142, 28 P.3d at 358.

The ICA also reconciled its application of the traditional standing principles with the policy declarations outlined in HRS §§ 632-1 and 632-6, reasoning:

> [W]e are also confident that our application of the principles of standing in this case in no way runs afoul of the legislative declaration of policy contained in HRS ch. 632. See Life of the Land II, 63 Haw. at 172 n.5, 623 P.2d at 438 n.5. Because [the plaintiff] fails to allege a judicially cognizable injury, we cannot say that an "actual controversy exists between contending parties" that would qualify [the plaintiff] for declaratory relief, any more than we can say that citizens often disagree with actions taken by their elected representatives. HRS § 632-1. The same reason prevents us from being "satisfied that

> antagonistic claims are present between the parties involved which indicate imminent and inevitable litigation[.]" Id. Nor can we be convinced that [the plaintiff] "asserts a legal relation, status, right, or privilege in which [he] has a concrete interest[,]" absent a specific allegation of personal and particularized harm. Id. . . .
>
> We recognize that HRS ch. 632 is to be "liberally interpreted and administered, with a view to making the courts more serviceable to the people[,]" HRS § 632-6, but nowhere does the law suggest that this admonition trumps the standing requirement of a "personal stake" or an "injury in fact." The specific harm which our standing doctrine requires, and which [the plaintiff] failed to allege, by no means interposes an excessive burden upon plaintiffs who seek the services of the courts. Rather, the requirement ensures that judicial intervention will be within the particular capabilities of the courts, and be not constitutional folly.

Id. at 143, 28 P.3d at 359 (all but first brackets in original).

Put succinctly, the ICA explained that the application of traditional standing principles, including the three-part "injury in fact" test, to determine whether plaintiffs have standing to bring a declaratory action, did not contravene HRS §§ 632-1 or 632-6. See id. According to the Bremner court, a plaintiff who fails to establish that he or she has suffered "a judicially cognizable injury" will also not be able to demonstrate that his or her case meets the requirements of HRS § 632-1. Id. The Bremner court also observed that requiring plaintiffs to demonstrate that they have suffered an "injury in fact" did not run afoul of the legislative mandate in HRS § 632-6 because such a requirement did not impose an undue burden on plaintiffs seeking to avail themselves of judicial relief, and

was necessary to ensure that courts resolve cases that are appropriately within their domain. Id.

5. Conclusion

For the reasons set forth above, I respectfully disagree that HRS § 632-1 establishes a distinct test for standing or conflicts with the prudential requirement that a plaintiff demonstrate an injury in fact. Removal of this requirement in actions for declaratory relief marks a departure from a long history of judicial intervention only in justiciable controversies that are presented in an adversary context. Accordingly, although I conclude that Tax Foundation has standing, HRS § 632-1 does not itself create the test to be applied.

/s/ Mark E. Recktenwald