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ADVANCE SHEET HEADNOTE

June 5, 2023

2023 CO 31

**No. 22SC119, *State v. Hill* – Standing – Declaratory Judgment.**

The supreme court holds that an individual lacks standing to pursue a declaratory judgment “that a river segment was navigable for title at statehood and belongs to the State.” A declaratory judgment is procedural, not substantive, in nature. Accordingly, to demonstrate a legally protected interest to establish standing for a declaratory judgment, a party must assert a legal basis on which a claim for relief can be grounded. Here, the individual plaintiff has no legally protected right independent of the State's alleged ownership of the riverbed onto which he can hook a declaratory judgment claim. His asserted legally protected interests rest on an antecedent question of whether the State owns the property at issue. Therefore, they cannot provide him with standing to pursue a declaratory judgment action.

**The Supreme Court of the State of Colorado**  
2 East 14<sup>th</sup> Avenue • Denver, Colorado 80203

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**2023 CO 31**

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**Supreme Court Case No. 22SC119**  
*Certiorari to the Colorado Court of Appeals*  
Court of Appeals Case No. 20CA1780

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**Petitioner:**

The State of Colorado,

v.

**Respondent:**

Roger Hill.

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**Judgment Reversed**

*en banc*

June 5, 2023

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**JUSTICE HART** delivered the Opinion of the Court, in which **CHIEF JUSTICE BOATRIGHT, JUSTICE MÁRQUEZ, JUSTICE HOOD, JUSTICE GABRIEL, JUSTICE SAMOUR,** and **JUSTICE BERKENKOTTER** joined.

JUSTICE HART delivered the Opinion of the Court.

¶1 This dispute has produced hundreds of pages of briefing from the parties and amici involving extensive discussions of the public trust doctrine, the equal footing doctrine, and arguments around who is best positioned to determine legal policy on access to rivers. But those subjects are ultimately irrelevant to the issue before us. Rather, this case requires us to answer just one question: whether Roger Hill has a legally protected interest that affords him standing to pursue his claim for a declaratory judgment “that a river segment was navigable for title at statehood and belongs to the State.” He does not. Hill has no legally protected right independent of the State’s alleged ownership of the riverbed onto which he can hook his declaratory judgment claim. His asserted legally protected interests rest entirely on an antecedent question of whether the State owns the property at issue. Therefore, they cannot provide him with standing to pursue a declaratory judgment action.

### **I. Facts and Procedural History**

¶2 As Hill explains in his First Amended Complaint, his favorite fishing hole is on a riverbed along the Arkansas River. The record owners of the land abutting the river are Mark Warsewa and Linda Joseph, who have a home overlooking the

fishing hole.<sup>1</sup> Hill alleges that for several years, he has repeatedly attempted to fish there and Warsewa and Joseph have chased him off the property, sometimes with force. Specifically, Hill alleges that they threatened to have him arrested for trespass, threw baseball-sized rocks at him, and shot a gun at his fishing buddy.

¶3 Hill asserts that the riverbed is not in fact owned by Warsewa and Joseph but instead is public land owned by the State of Colorado and held in trust for the people and he therefore has a legal right to fish there. He brought two claims against Warsewa and Joseph—the first for a declaratory judgment under C.R.C.P. 57 and the second to quiet title. This case was removed to federal court, where the State of Colorado intervened. The case was eventually remanded back to state court. In both the federal and state proceedings, the State argued that it alone may decide whether and when to pursue its property rights and that Hill does not have standing to bring these claims. The district court agreed with the State and dismissed the case for lack of standing.

¶4 Hill appealed this determination, arguing that the riverbed is public land as a matter of federal law. Specifically, he invoked the equal footing doctrine, which provides that each newly admitted state enters the Union on an “equal footing”

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<sup>1</sup> Warsewa and Joseph are not parties to this appeal.

with the original thirteen states. *PPL Mont., LLC v. Montana*, 565 U.S. 576, 591 (2012); see generally *Pollard v. Hagan*, 44 U.S. 212 (1845). One of the rights included in this status is that, upon attaining statehood, a state “gains title within its borders to the beds of waters then navigable.” *PPL Mont.*, 565 U.S. at 591. The federal government, though, retains title to non-navigable riverbeds, and can grant such title to private landowners. *Id.*; see also *Hanlon v. Hobson*, 51 P. 433, 435 (Colo. 1897).

¶5 Title to the Warsewa and Joseph property can be traced back to a federal land grant. On appeal, Hill argued that the segment of the Arkansas River that traverses the subject property was navigable at statehood, and therefore title to the riverbed transferred to the State by operation of law when Colorado achieved statehood in 1876. Because the federal government did not own the riverbed, it could not have transferred its title to Warsewa and Joseph’s predecessors in interest. For these reasons, he argues, the riverbed belongs to the State, not Warsewa and Joseph, and Hill cannot be trespassing on their property.

¶6 A division of the court of appeals upheld the trial court’s dismissal of the quiet title claim, concluding that Hill cannot pursue the property rights of the State because he does not himself have any claim to title. *Hill v. Warsewa*, No. 20CA1780, ¶¶ 14–21 (Jan. 27, 2022). But the division resurrected Hill’s declaratory judgment claim as follows:

Hill argues that, because the river was navigable at statehood, the riverbed is public land owned by the State of Colorado. Thus, he, as

a member of the public, is not trespassing by wading on the riverbed. He therefore requests a declaratory judgment to that effect, as well as injunctive relief preventing [Warsewa and Joseph] from treating him as a trespasser. Here, unlike in the quiet title claim, Hill is alleging an interest that is his own – the right to wade and fish in the river at the location in question.<sup>2</sup>

*Id.* at ¶ 24. The division thus remanded the case for trial on the declaratory judgment claim.

¶7 The State petitioned this court for certiorari, as did Warsewa and Joseph. We granted only the State’s petition.<sup>3</sup>

## II. Analysis

¶8 We review the court of appeals’ standing determination de novo. *Barber v. Ritter*, 196 P.3d 238, 245 (Colo. 2008).

¶9 To bring any claim, a party must demonstrate a sufficient connection to the case by pleading facts supporting standing – that is, that the plaintiff suffered (1) an injury in fact (2) to a legally protected interest. *Wimberly v. Ettenberg*, 570 P.2d 535, 539 (Colo. 1977). Here, the district court concluded that Hill had an

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<sup>2</sup> The division also explained that Hill sought interpretation of section 18-4-504.5, C.R.S. (2022), the criminal trespass statute. *Hill*, ¶ 24. But this argument is not within the scope of the question on which we granted certiorari review, and so we do not consider it.

<sup>3</sup> We granted certiorari to review the following issue:

1. Whether an individual has standing to seek a declaratory judgment that a river segment was navigable for title at statehood and belongs to the State.



injury in fact, and the parties did not appeal this conclusion. Accordingly, we consider only whether Hill's injury was to a legally protected interest.

¶10 An interest is legally protected for standing purposes if the party "has a claim for relief under the constitution, the common law, a statute, or a rule or regulation." *Ainscough v. Owens*, 90 P.3d 851, 856 (Colo. 2004). This requirement applies with full force to claims for declaratory judgment, *Farmers Ins. Exch. v. Dist. Ct.*, 862 P.2d 944, 947 (Colo. 1993), with some additional nuance. To establish standing, a party seeking a declaratory judgment must raise a claim that is based on an existing controversy, not speculation that a problem may arise in the future. *Bd. of Cnty. Comm'rs v. Bowen/Edwards Assocs., Inc.*, 830 P.2d 1045, 1053 (Colo. 1992). And importantly, a declaratory judgment is procedural, not substantive, in nature. So, although the Declaratory Judgment Act and C.R.C.P. 57 provide procedural mechanisms to recognize rights, they do not themselves confer or expand them. *See Farmers Ins.*, 862 P.2d at 947. Accordingly, to demonstrate a legally protected interest for a declaratory judgment, a party must "assert a legal basis on which a claim for relief can be grounded." *Id.*; accord *Wibby v. Boulder Cnty. Bd. of Cnty. Comm'rs*, 2016 COA 104, ¶ 33, 409 P.3d 516, 523 (collecting cases on this point).

¶11 Hill cannot satisfy this requirement. To conclude that Hill has a legally protected interest, we would need to assume that he will win on the merits of his underlying assertion that the State owns the disputed property. But standing "is

a threshold issue that must be satisfied in order to decide a case on the merits.”

*Ainscough*, 90 P.3d at 855.

¶12 Moreover, Hill’s trespass claim only exists contingent on an antecedent claim that is not his to pursue—that the State owns the riverbed. Hill’s First Amended Complaint lays this reality bare. In his claim for declaratory judgment, he states:

Plaintiff asserts that *the disputed portion of the bed of the Arkansas River is public land owned by the state of Colorado and held in trust for the people of Colorado* by virtue of it being navigable for title when Colorado became a state. Accordingly, he is not trespassing by wading in that portion of the River.

...

The bed of the Arkansas River at this location *is therefore public land owned by the state of Colorado in trust for the public* and Plaintiff is not trespassing by wading on the bed of the River.

Plaintiff requests a declaration from the Court that Defendants Warsewa and Joseph have no right to exclude Plaintiff Hill from wading in the Arkansas River at the subject location.

First Am. Compl., ¶¶ 61, 63–64 (emphases added). The explicit logic of these statements is that Warsewa and Joseph cannot exclude him from the property *because it is owned by the State and therefore public*. In this regard, Hill’s contention that he has standing because Warsewa and Joseph have thrown rocks at him and threatened him with prosecution is a red herring. Proof of the State’s ownership

of the riverbed is a necessary prerequisite to his claimed right to fish in that portion of the Arkansas River.<sup>4</sup>

¶13 The division correctly rejected Hill's quiet title claim. *Hill*, ¶¶ 14–21. The same reasoning should have impelled it to dismiss the declaratory judgment claim as well. Indeed, the division to some extent acknowledged the tension in its outcome when it explained that “in light of our resolution of the standing issue related to Hill's quiet title claim, we reiterate that Hill cannot, under the guise of declaratory judgment, seek any declaration regarding the State of Colorado's title or ownership of the riverbed—only that [Warsewa and Joseph] do not own it.” *Hill*, ¶ 36 n.7. But this is impossible. There is no way to adjudicate whether Warsewa and Joseph *do not* own the riverbed without considering who *does*.<sup>5</sup>

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<sup>4</sup> Hill's counsel confirmed this at oral argument during the following colloquy:

Court (Hart, J.): There is no legally protected interest unless the State owns the riverbed.

Court (Gabriel, J.): Do you agree with that premise?

Hill's Counsel: Yes, I do.

And Hill's briefing to this court on the “Legally Protected Right to Access the Riverbed” focuses entirely on the State's ownership of the riverbed.

<sup>5</sup> The division implicitly acknowledges this fact, explaining that “[i]f, as Hill alleges, the relevant segment of the river was navigable at statehood, then [Warsewa and Joseph] do not own the riverbed and would have no right to exclude him from it.” *Hill*, ¶ 34. The significance of the navigability of the river at the time of statehood is directly tied to the question of whether the State owns the riverbed.

Thus, allowing Hill to pursue his declaratory judgment claim while precluding his quiet title action would do just what the division rightly determined he could not – quiet title in the name of the State under the guise of a declaratory judgment.

¶14 Ultimately, Hill’s claimed standing to bring the declaratory judgment claim fails for the same reason that he lacked standing for the quiet title action. Both rest on the State’s ownership of the riverbed, not his own legally protected interest.

### **III. Conclusion**

¶15 Because Hill seeks a declaration of the State’s property interest as a necessary precursor to any individual legally protect interest, he does not have standing to pursue the declaratory judgment claim. We reverse the division’s opinion.