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

RECKTENWALD, C.J., NAKAYAMA, McKENNA, POLLACK, AND WILSON, JJ.[1]

[1] Chief Justice Recktenwald, joined by Justices Nakayama, McKenna, Pollack, and Wilson, writes for the majority of the court in Part One. Justice McKenna, joined by Justices Pollack and Wilson, writes for the majority of the court with respect to Part Two. Chief Justice Recktenwald, joined by Justices McKenna, Pollack, and Wilson, writes for the majority of the court in Part Three.

OPINIONS OF THE COURT

PART ONE
(By: Recktenwald, C.J., with whom Nakayama, McKenna, Pollack, and Wilson, JJ., join)

I. Introduction

Appellant Tax Foundation of Hawaiʻi challenges the State of Hawaiʻi's implementation of Hawaiʻi Revised Statutes (HRS) § 248-2.6 (Supp. 2015), which authorizes the State to be reimbursed for its costs in administering a rail surcharge on state general excise and use taxes on behalf of the City and County of Honolulu. More specifically, the issues on appeal are: (1) whether we lack jurisdiction because this is a "controversy with respect to taxes" under HRS § 632-1; (2) whether Tax Foundation has standing to bring its challenge; (3) whether the State violated HRS § 248-2.6 by retaining 10% of the gross proceeds of the surcharge without calculating the actual cost of administering the surcharge; and (4) whether the State's application of HRS § 248-2.6 is unconstitutional.

We conclude that: (1) the circuit court had jurisdiction to hear Tax Foundation's claims because its complaint was not a "controversy with respect to taxes" within the meaning of HRS § 632-1; (2) Tax Foundation has standing[2]; (3)

[2] Four members of this court have determined that Tax Foundation has standing, but on different grounds. Justices McKenna, Pollack, and Wilson (continued . . .)

the State did not violate HRS § 248-2.6 by retaining 10% of the gross proceeds of the surcharge; and (4) the State's application of HRS § 248-2.6 does not violate the Hawaiʻi or United States Constitutions. Accordingly, we vacate the circuit court's order and judgment granting the State's motion to dismiss for lack of jurisdiction, and remand this case to the circuit court with instructions to grant the State's motion for summary judgment on the merits.

II. Background

A. Act 247

In 2005, the legislature enacted Act 247, authorizing counties to impose a surcharge of up to 0.5% on state general excise and use taxes. 2005 Haw. Sess. Laws Act 247, §§ 3-4 at 770-72. The purpose of Act 247 was to allow counties to levy surcharges "to fund public transportation systems." Id., § 1 at 770. The county surcharges are levied, assessed, collected, and otherwise administered by the Department of Taxation (DOTAX). Id., § 3 at 771. After collecting the surcharge, DOTAX

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conclude that Tax Foundation established standing under HRS § 632-1, and as such, do not believe it is necessary to address taxpayer standing. I conclude that Tax Foundation has satisfied the requirements of taxpayer standing. Justice Nakayama concludes that Tax Foundation does not have standing to challenge the State's implementation of HRS § 248-2.6. See Part II, the Dissenting Opinion by Recktenwald, C.J., and the Dissenting Opinion by Nakayama, J., for detailed discussions regarding Tax Foundation's standing.

transmits the funds to the State Department of Budget and Finance (Budget and Finance), which deposits them into special accounts. Id., § 5 at 773. After deducting and withholding costs as specified in HRS § 248-2.6,[3] Budget and Finance

[3] HRS § 248-2.6 (Supp. 2015) provides:

> (a) If adopted by county ordinance, all county surcharges on state tax collected by the director of taxation shall be paid into the state treasury quarterly, within ten working days after collection, and shall be placed by the director of finance in special accounts. Out of the revenues generated by county surcharges on state tax paid into each respective state treasury special account, the director of finance shall deduct ten per cent of the gross proceeds of a respective county's surcharge on state tax to reimburse the State for the costs of assessment, collection, and disposition of the county surcharge on state tax incurred by the State. Amounts retained shall be general fund realizations of the State.
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> (b) The amounts deducted for costs of assessment, collection, and disposition of county surcharges on state tax shall be withheld from payment to the counties by the State out of the county surcharges on state tax collected for the current calendar year.
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> (c) For the purpose of this section, the costs of assessment, collection, and disposition of the county surcharges on state tax shall include any and all costs, direct or indirect, that are deemed necessary and proper to effectively administer this section and sections 237-8.6 and 238-2.6.
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> (d) After the deduction and withholding of the costs under subsections (a) and (b), the director of finance shall pay the remaining balance on [a] quarterly basis to the director of finance of each county that has adopted a county surcharge on state tax under section 46-16.8. The quarterly payments shall be made after the county surcharges on state tax have been paid into the state treasury special accounts or after the disposition of any tax appeal, as the case may be. All county surcharges on state tax collected shall be distributed by the director of finance to the county in which the county surcharge on state tax is generated and shall be a general fund realization of the county, to be used for the

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disburses the remaining balance to each applicable county's Director of Finance. Id., § 5 at 773.

B. Proceedings in the Circuit Court[4]

1. Tax Foundation's Complaint

On October 21, 2015, Tax Foundation of Hawai'i (Tax Foundation) filed a class action[5] on behalf of all taxpayers in the City and County of Honolulu. The complaint alleged[6] that after Act 247 was enacted, the City and County of Honolulu enacted Ordinance 05-027, imposing a surcharge on state general excise and use taxes (Honolulu County surcharge). Tax Foundation asserted the following about the surcharge. Honolulu is the only county to have adopted such a surcharge. Budget and Finance has retained 10%[7] of the Honolulu County surcharge

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> purposes specified in section 46-16.8 by each of the counties.

(Emphases added.)

[4] The Honorable Edwin C. Nacino presided.

[5] Nothing in the record shows that the class was certified.

[6] The following factual allegations taken from the complaint appear to be uncontested.

[7] We note that Act 1 (S.B. 4), 29th Leg., 1st Spec. Sess. (2017), was enacted on September 5, 2017, and among other things, amended the State's withholding from 10% to 1% of gross proceeds of the surcharge. This newly enacted legislation postdates the period at issue here, and therefore does not affect our consideration of the State's previous application of HRS § 248-2.6. To avoid confusion, all references to the surcharge withholding under HRS § 248-2.6(a) in this opinion will be to the 10% figure.

amounts collected by DOTAX since it was initially levied, and disbursed the remaining 90% to the City and County of Honolulu. During the fiscal years ending June 30, 2012, 2013, 2014, and 2015, Budget and Finance retained approximately $21.2, $19.3, $24.2, and $24.8 million, respectively, which went to the State general fund. As of December 31, 2015, the cumulative total of the State's surcharge withholdings was $177,865,487.24.

Tax Foundation also alleged that the State violated HRS § 248-2.6(d) by retaining 10% of the City and County of Honolulu's surcharge gross proceeds without calculating the actual costs of administering it.[8] Tax Foundation alleged that the 10% retained by the State "grossly exceed[ed]" the costs incurred to assess, collect, and dispose of the Honolulu County surcharge funds. Tax Foundation further alleged that City and County of Honolulu taxpayers were required to pay a higher state tax than taxpayers of other counties as a result of the State's failure to follow HRS § 248-2.6, that the State had violated the general laws provision in Article VIII, § 1 of the Hawaiʻi

[8] Act 213, SLH 2007, § 121 required DOTAX to provide two years of reporting that detailed the level of staffing and funding necessary to administer county surcharge collections. DOTAX reported that the total amount budgeted for staffing positions was $749,876 for the 2008 fiscal year and $700,508 for the 2009 fiscal year. Apart from the 2008 and 2009 fiscal years, it appears undisputed that DOTAX has not calculated the actual costs incurred in assessing, collecting, and distributing the surcharge, asserting that it is not "necessary or required" to perform such an analysis.

Constitution, and violated the equal protection clauses of the Hawaiʻi and United States Constitutions.

Tax Foundation sought declaratory, injunctive, and mandamus relief. In Count I, Tax Foundation sought an "order enjoining the State from continuing to violate" constitutional provisions and injunctive relief in the form of reimbursements, to the plaintiffs "and/or" the City and County of Honolulu, of amounts "improperly kept by the State." In Count II, Tax Foundation sought "mandamus directing the State to follow HRS § 248-2.6(d), and deduct and withhold only the cost of administering the Oahu surcharge and to pay the remaining balance of the 10% county surcharge initially withheld to Honolulu."

2. The State's Motion to Dismiss

The State filed a motion to dismiss the complaint, asserting: (1) the circuit court lacked jurisdiction because HRS § 632-1 (1993)[9] prohibits declaratory relief in "'any

[9] HRS § 632-1 provides in relevant part:

> 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.

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controversy' with respect to taxes," (2) mandamus and injunctive relief was not warranted because HRS §§ 40-35 (Supp. 2006)[10] and 232-14.5 (Supp. 2006)[11] provided adequate and exclusive remedies for tax disputes in tax appeal court, and (3) Tax Foundation lacked standing. Regarding the relief sought by Tax Foundation, the State argued that "any taxpayer can pay a tax under protest and file suit for a refund under section 40-35, HRS, or timely file a tax refund claim and appeal from a denial of the refund claim to the Tax Appeal Court under section 232-14.5, HRS."

3. Tax Foundation's Opposition to the State's Motion to Dismiss

Tax Foundation opposed the State's motion to dismiss, arguing that the circuit court had subject matter jurisdiction because its complaint did not challenge the assessment or collection of taxes, but rather sought to correct mishandling

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> 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.

(Emphasis added.)

[10] HRS § 40-35(b) provides that "[a]ny action to recover payment of taxes under protest shall be commenced in the tax appeal court."

[11] HRS § 232-14.5(a) provides that "[t]he denial in whole or in part by the department of taxation of a tax refund claim may be appealed by the filing of a written notice of appeal to a board of review or the tax appeal court within thirty days after notice of the denial of the claim."

after assessment and collection of the Honolulu County surcharge. Tax Foundation argued that the matter was not a "tax controversy" or an attack on the State's ability to collect taxes, and was instead an attempt to force the State to comply with HRS § 248-2.6.

Tax Foundation analogized to the ICA opinion in Hawaii Insurers Council v. Lingle, where the ICA held that HRS § 632-1's prohibition on actions regarding taxes did not apply because the plaintiff was not attempting to keep the State from assessing and collecting taxes. 117 Hawaiʻi 454, 184 P.2d 769 (App. 2008), aff'd in part and rev'd in part on other grounds, 120 Hawaiʻi 51, 201 P.3d 564 (2008).

Tax Foundation also changed its position regarding the relief it was requesting. Although Tax Foundation initially sought reimbursement to itself "and/or" the City and County of Honolulu in its complaint, in its opposition, it stated that it "does not seek any refund for itself or any other taxpayer." Tax Foundation argued that since it did not seek a declaratory ruling as to its own liability for taxes, and only sought to have the State pay its excess surcharge withholdings to the City and County of Honolulu, its claim did not belong in tax appeal court.

Tax Foundation asserted that it had standing because it paid general excise tax on income derived from fundraising

that it conducted to support its activities. As to the injury suffered, Tax Foundation argued that if the State returned the excess funds it had diverted to the City and County of Honolulu, the Honolulu surcharge "could end sooner." Tax Foundation argued that this injury was traceable to the State's actions, and was redressable, asserting that "the State could, if it chose, determine the costs" of administering the Honolulu County surcharge.

4. Motions for Summary Judgment

Tax Foundation filed a motion for summary judgment, and argued, inter alia, that the "plain and unambiguous language of HRS § 248-2.6" supported its interpretation, and that the State's reading of HRS § 248-2.6 is unconstitutional and forces the City and County of Honolulu taxpayers to subsidize the rest of the State.

In its cross-motion for summary judgment, the State argued: (1) the circuit court lacked jurisdiction over Tax Foundation's claims, (2) HRS § 248-2.6 expressly requires that the State retain 10% of the Honolulu County surcharge, (3) retention of 10% does not violate the equal protection clause, (4) retention of 10% is consistent with the general laws provision of the state constitution, and (5) Tax Foundation was challenging a "policy decision" and should seek a statutory amendment from the legislature.

5. Hearing on the Motions

At a hearing on the various motions, the circuit court found that Tax Foundation's complaint presented a controversy arising out of a tax, and that it lacked jurisdiction over the dispute based on HRS § 632-1, stating that HRS § 632-1 "broadly implies many controversies that can arise out of a tax." Tax Foundation orally requested leave to amend its complaint to clarify that the declaratory relief it sought was not subject to HRS § 632-1's prohibition against tax controversies. The circuit court denied the request. The circuit court also determined that it lacked authority to impose mandamus relief on another branch of government. Thus, the circuit court granted the State's motion to dismiss, and did not reach the issue of whether Tax Foundation had standing. The court further ruled that the cross-motions for summary judgment were moot.

The circuit court subsequently filed its written order granting the State's motion to dismiss. The order stated:

> The court, having read the memoranda in support and in opposition to the motion and the declarations filed therewith, and having heard the arguments of counsel, and based on the records and files herein and for good cause shown, GRANTS Defendant STATE OF HAWAII'S Motion to Dismiss Complaint Filed on October 21,2015 (Filed on November 10, 2015) for the reason that Plaintiff's claims for relief are barred by section 632-1, Hawaiʻi Revised Statutes, because Plaintiff's complaint constitutes or involves "a controversy with respect to taxes," and thus this court lacks subject matter jurisdiction.
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> Plaintiff's request for leave to amend their complaint filed on October 21, 2015 is denied for the

> reason that the Court has dismissed the Plaintiff's complaint.
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> The parties' cross motions for summary judgment filed on January 21, 2016, and March 3, 2016, respectively are, therefore moot, given the Court's decision to grant Defendant's motion to dismiss the complaint.

Final judgment was entered on June 1, 2016.

C. Appeal

Tax Foundation timely appealed, seeking review of the circuit court's judgment and order granting the State's motion to dismiss. We granted Tax Foundation's subsequent request to transfer the appeal to this court.

1. Tax Foundation's Opening Brief

Tax Foundation raises three points of error. Tax Foundation argues that the circuit court erred in: (1) granting the State's motion to dismiss on the basis that it had no jurisdiction because the complaint sought declaratory relief involving a controversy with respect to taxes, (2) not granting Tax Foundation's motion for summary judgment, and (3) not allowing Tax Foundation the opportunity to amend its complaint.

As to the first point of error, Tax Foundation argues "[t]his is NOT a dispute over taxes." (Capitalization in original). Tax Foundation asserts that its claim "arises from, and involves, only what the State does after the Surcharge has been assessed, collected, and deposited into the State's coffers." (Emphasis in original). Tax Foundation emphasizes the portion of HRS § 632-1 providing that controversies

involving the interpretation of statutes are not prohibited.[12] Tax Foundation argues that HRS § 632-1 allows a declaratory ruling on the proper interpretation of HRS § 248-2.6 because such declaratory relief would not affect the State's ability to assess or collect the general excise tax or the Honolulu County surcharge.

Tax Foundation also argues that the tax appeal court's limited jurisdiction would not include the claims in its complaint. HRS § 232-13 limits the jurisdiction of the tax appeal court to determining "'the amount of valuation or taxes, as the case may be, in dispute[.]'" The liability for paying the general excise tax or Honolulu County surcharge is undisputed; therefore, Tax Foundation argues, the tax appeal court does not have jurisdiction over this case.

As to the second point of error, Tax Foundation asserts that HRS § 248-2.6 is "clear and unambiguous[,]" and mandates that the State should retain only the costs it incurs in administering the Honolulu County surcharge.

As to the third point of error, Tax Foundation argues that the circuit court abused its discretion in not allowing it

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[12] HRS § 632-1(a) provides, in relevant part:

> [D]eclaratory relief may not be obtained in any district court, or in any controversy with respect to taxes . . . . Controversies involving the interpretation of . . . statutes . . . may be so determined[.]

"at least one opportunity to amend" its complaint. Tax Foundation cites Hawaiʻi Rules of Civil Procedure (HRCP) Rule 15(a)(2)[13] and case law stating that in the absence of an apparent or declared reason, such as undue delay, bad faith, or dilatory motive, leave to amend should be freely given.[14]

2. The State's Answering Brief

In its Answering Brief, the State argues: (1) the circuit court correctly dismissed the case for lack of subject matter jurisdiction because it is a tax controversy under HRS § 632-1, (2) the circuit court correctly denied Tax Foundation's request for mandamus relief, (3) Tax Foundation does not have standing, (4) Tax Foundation improperly argues the merits of the case, (5) the State should prevail on the merits, and (6) the circuit court did not abuse its discretion in denying Tax Foundation's oral motion to amend its complaint. The State also

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[13] HRCP Rule 15(a) (2012) provides in pertinent part:

> **Amendments before trial.**
> (1) AMENDING AS A MATTER OF COURSE. A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served . . .
>
> (2) OTHER AMENDMENTS. In all other cases, a party may amend the party's pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires. . . .

[14] Since we conclude that the circuit court had jurisdiction, see infra, we do not address this argument further.

argues that Tax Foundation is "[a]sking the court to interfere with a statute . . . [which] violates the separation of powers at the heart of our system of government."

As to subject matter jurisdiction, the State argues that the plain language of HRS § 632-1 supports dismissal, because HRS § 632-1 applies to "'any controversy with respect to taxes'" instead of being limited to the assessment or collection of taxes. The State asserts that interpretations of the federal Declaratory Judgment Act and Tax Anti-Injunction Act protect not just assessment and collection, but "any activities that are intended to or may culminate in the assessment or collection of taxes[.]" The State argues that Tax Foundation's lawsuit "may ultimately culminate in the 'collection' of the State's portion of the taxes being obstructed."

The State also argues that this type of case belongs in tax appeal court rather than in circuit court. The State argues that the tax appeal court has jurisdiction to hear: (1) "'taxpayer appeals from assessments'" pursuant to HRS Chapter 232, (2) "'challenges to taxes paid under protest'" pursuant to HRS § 40-35, (3) "'adverse rulings by the Director,'" and (4) appeals from the denial of refund claims by DOTAX pursuant to HRS § 232-14.5. The State also argues that, even if the court finds that this case is not a "controversy with respect to taxes," the circuit court lacks jurisdiction because the tax

appeal statutes in HRS Chapter 232 provide a "'special form of remedy' specific to tax cases" that must be followed according to HRS § 632-1.

The State argues that it is appropriate for an appellate court to rule on the standing issue presented in the State's motion to dismiss, asserting that standing is a jurisdictional matter that the court must address as a threshold matter. The State further asserts that Tax Foundation does not satisfy the first and third prongs of the Sierra Club v. Hawaiʻi Tourism Authority, 100 Hawaiʻi 242, 59 P.3d 877 (2002) (plurality opinion) test for standing.[15]

As to the merits, the State argues that although "it would be improper for this Court to decide this case on the merits when the circuit court did not have an opportunity to address the merits first[,]" if this court decides to address the merits, the State should prevail as a matter of law based on the rules of statutory construction, legislative intent, and principles of statutory interpretation.

3. Tax Foundation's Reply Brief

[15] The three-part test used to determine whether a plaintiff has standing is whether: (1) the plaintiff has suffered "an actual or threatened injury" as a result of the defendant's wrongful conduct, (2) the injury is fairly traceable to the defendant's actions, and (3) a favorable decision would likely provide relief for the plaintiff's injury. Sierra Club, 100 Hawaiʻi at 250, 59 P.3d at 885 (citation omitted).

In its Reply Brief, Tax Foundation argues: (1) the circuit court had jurisdiction pursuant to the ICA's decision in Hawaii Insurers Council, (2) Tax Foundation has standing, (3) the State misreads HRS § 248-2.6, (4) the State's interpretation of HRS § 248-2.6 is not consistent with the intent of the legislature, and (5) the circuit court erred in not allowing Tax Foundation to amend its complaint and amendment would not be futile.

III. Standards of Review

A. Existence of Jurisdiction and Dismissal for Lack of Jurisdiction

"The existence of jurisdiction is a question of law that we review de novo under the right/wrong standard." Lingle v. Hawaiʻi Gov't Employees Ass'n, AFSCME, Local 152, 107 Hawaiʻi 178, 182, 111 P.3d 587, 591 (2005).

"A trial court's dismissal for lack of subject matter jurisdiction is a question of law, reviewable de novo." Casumpang v. ILWU, Local 142, 94 Hawaiʻi 330, 337, 13 P.3d 1235, 1242 (2000) (emphasis removed) (citing McCarthy v. United States, 850 F.2d 558, 560 (9th Cir. 1988)).

> Our review [of a motion to dismiss for lack of subject matter jurisdiction] is based on the contents of the complaint, the allegations of which we accept as true and construe in the light most favorable to the plaintiff. Dismissal is improper unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.

Casumpang, 94 Hawaiʻi at 337, 13 P.2d at 1242 (citations and quotation marks omitted).

B. Standing

"[T]he issue of standing is reviewed de novo on appeal." Mottl v. Miyahira, 95 Hawaiʻi 381, 388, 23 P.3d 716, 723 (2001) (citation omitted).

C. Statutory Interpretation

"The interpretation of a statute is a question of law reviewable de novo." Peer News LLC v. City & Cty. of Honolulu, 138 Hawaiʻi 53, 60, 376 P.3d 1, 8 (2016).

D. Constitutional Questions

"We review questions of constitutional law de novo, under the right/wrong standard." State v. Kalaola, 124 Hawaiʻi 43, 49, 237 P.3d 1109, 1115 (2010) (citation omitted).

E. Summary Judgment

"On appeal, the grant or denial of summary judgment is reviewed de novo." First Ins. Co. of Hawaiʻi v. A&B Properties, 126 Hawaiʻi 406, 413-14, 271 P.3d 1165, 1172-73 (2012) (citation omitted). Furthermore,

> [S]ummary judgment is appropriate if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. A fact is material if proof of that fact would have the effect of establishing or refuting one of the essential elements of a cause of action or defense asserted by the parties. The evidence must be viewed in the

> light most favorable to the non-moving party. In other words, we must view all of the evidence and inferences drawn therefrom in the light most favorable to the party opposing the motion.

Id. (citation omitted) (brackets in original).

IV. Discussion

A. The Relief Requested by Tax Foundation Does Not Constitute a Tax Refund Claim

We must first address whether the circuit court had subject matter jurisdiction to adjudicate Tax Foundation's complaint. The tax appeal court has exclusive jurisdiction over tax refund claims. HRS §§ 232-13 and 232-14.5(a),(c). HRS § 232-13 states that the jurisdiction of the tax appeal court is limited to disputes about the "amount of valuation or taxes." HRS § 232-14.5(a) provides that a denial of a tax refund claim by DOTAX "may be appealed by the filing of a written notice of appeal to a board of review or the tax appeal court[,]" and subsection (c) provides that "this section shall apply to tax refund claims for all taxes administered by the department of taxation." The circuit court therefore does not have jurisdiction over tax refund claims, and only the tax appeal court may consider tax refund claims.

The State argues that Tax Foundation seeks a tax reimbursement to itself and class members, and as such, presents a tax refund controversy over which the tax appeal court has exclusive jurisdiction. Tax Foundation, however, now only seeks

reimbursement to the City and County of Honolulu. Initially, Tax Foundation's complaint effectively sought a partial tax refund by requesting reimbursement to itself, its class members, "and/or" the City and County of Honolulu of the allegedly improperly kept surcharge funds. However, Tax Foundation later disclaimed any refund remedy for itself and its class members in its opposition to the State's motion to dismiss, leaving only the City and County of Honolulu to recover. Therefore, taxpayer liability is not in dispute.

Because the tax appeal court's jurisdiction is limited to determining "the amount of valuation or taxes, as the case may be, in dispute[,]" HRS § 232-13, and here there is no dispute about any taxpayer's tax liability, Tax Foundation cannot bring its claim before the tax appeal court. Tax Foundation's dispute concerns only the post-collection disposition of the surcharge funds. Accordingly, the circuit court is not barred from hearing Tax Foundation's claim based on HRS § 232-14.5.

B. HRS § 632-1 Does Not Bar Subject Matter Jurisdiction in this Suit

The parties dispute whether the circuit court correctly dismissed this case for lack of subject matter jurisdiction under HRS § 632-1, which prohibits declaratory

judgment actions in any "controversy with respect to taxes[.]"[16] Tax Foundation and the State make arguments related to the portions of HRS § 632-1 emphasized below:

> 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.

HRS § 632-1 (emphasis added).

The ICA has held that HRS § 632-1's tax exclusion provision prohibits declaratory relief in tax matters, in order to "permit the government to assess and collect taxes alleged to be due it without judicial interference." Hawaii Insurers

[16] In previous cases involving the issue of subject matter jurisdiction under the tax exclusion provision of HRS § 632-1, this court has applied various tests to determine whether the funds at issue were a tax and therefore subject to HRS § 632-1's exclusionary provision, or a fee and therefore not subject to the exclusion. See, e.g., Hawaii Insurers Council v. Lingle, 120 Hawai'i 51, 64-66, 201 P.3d 564, 577-79 (2008). As discussed infra, we conclude that this is not a "controversy with respect to taxes" within the meaning of HRS § 632-1 because the prohibition against tax controversies does not apply if the declaratory relief sought does not interfere with the government's ability to assess and collect taxes. We therefore do not make a determination on whether the funds retained by the State are appropriately characterized as a tax or a fee, because even as a tax, this is still not a prohibited tax controversy. Accordingly, the circuit court had subject matter jurisdiction to hear Tax Foundation's claim.

Council v. Lingle, 117 Hawaiʻi 454, 463, 184 P.2d 769, 778 (App. 2008) (citation and quotation marks omitted), aff'd in part and rev'd in part on other grounds, 120 Hawaiʻi 51, 201 P.3d 564 (2008). In Hawaii Insurers Council, an insurance trade association challenged the constitutionality of a statute that permitted the Director of Finance to transfer funds from the Compliance Resolution Fund, into which assessments imposed on insurers were deposited, to the State's General Fund. Id. at 457, 184 P.3d at 772. The circuit court determined that it lacked jurisdiction because the lawsuit violated the prohibition against declaratory relief actions in tax controversies under HRS § 632-1. Id. at 458, 184 P.3d at 773. The ICA determined that the transfer of funds operated as a tax, but rejected the argument that the matter was a prohibited "controversy with respect to taxes" under HRS § 632-1. Id. at 463, 184 P.3d at 778. The ICA noted that HRS § 632-1 was amended in 1972 to mirror the tax exclusion in the federal Declaratory Judgment Act, which "prohibits declaratory relief in tax matters to permit the government to assess and collect taxes alleged to be due it without judicial interference." Id.

The ICA determined that the Insurers Council was not attempting to keep the State from assessing and collecting taxes, but rather challenging the transfer of proceeds on the ground that they were unconstitutional taxes. Id. Because the

constitutional challenge did not interfere with the government's assessment or collection of taxes, the ICA concluded that the case was not a "controversy with respect to taxes" within the meaning of HRS § 632-1 or HRCP Rule 57. Id.

As previously indicated, HRS § 632–1 was amended in 1972 to mirror the tax exception in the federal Declaratory Judgment Act, 28 U.S.C. § 2201. 1972 Haw. Sess. Laws Act 89, § 1 at 338. We therefore turn to federal case law interpreting the Declaratory Judgment Act's tax exception.

In Cohen v. United States, 650 F.3d 717, 719 (D.C. Cir. 2011), appellants argued that the refund procedure created by the Internal Revenue Service for taxpayers to recoup money from an illegal tax on phone calls was unlawful. The Court of Appeals for the District of Colombia rejected a broad interpretation of the Declaratory Judgment Act's tax exclusion, which would have precluded all suits "conceivably 'with respect to Federal taxes.'" Id. at 730. The court looked to the legislative history of the Declaratory Judgment Act, which stated that "the orderly and prompt determination and collection of Federal taxes should not be interfered with." Id. (quoting S. Rep. No. 74-1240, at 11 (1935)). The court also considered precedent stating that the interpretation of the Declaratory Judgment and Anti-Injunction Acts was coextensive, and ultimately determined that "'with respect to Federal taxes'

means 'with respect to the assessment or collection of taxes.'" Id. at 727 (citing E. Kentucky Welfare Rights Org. v. Simon, 506 F.2d 1278, 1284 (D.C. Cir. 1974); Ecclesiastical Order of the ISM of AM, Inc. v. I.R.S., 725 F.2d 398, 404-05 (6th Cir. 1984); In re Leckie Smokeless Coal Co., 99 F.3d 573, 583-84 (4th Cir. 1996); Perlowin v. Sassi, 711 F.2d 910, 911 (9th Cir. 1983); McCabe v. Alexander, 526 F.2d 963 (5th Cir. 1976); Tomlinson v. Smith, 128 F.2d 808, 811 (7th Cir. 1942)). Since the suit did not affect the assessment or collection of the tax, the Declaratory Judgment Act did not limit the court's jurisdiction. Id. at 736; see also Direct Marketing Ass'n v. Brohl, 135 S. Ct. 1124 (2015) (constitutional challenge to statutory reporting requirements preceding the assessment and collection of taxes was not barred).

We are persuaded by the D.C. Circuit Court's interpretation of the federal Declaratory Judgment Act, and the reasoning of the ICA. Accordingly, we adopt the ICA's holding in Hawaii Insurers Council that declaratory relief may be obtained in tax matters under HRS § 632-1 where such relief does not interfere with the assessment or collection of taxes.

Declaratory relief may be obtained here because Tax Foundation's claim does not interfere with the government's ability to assess or collect either the general excise and use tax, or the Honolulu County surcharge. A ruling in Tax

Foundation's favor would not impact DOTAX's ability to assess or collect these taxes because Tax Foundation does not dispute its liability to pay general excise and use tax, or the Honolulu County surcharge. Tax Foundation contests only the "administration and allocation" of the Honolulu County surcharge after it is assessed and collected.

Accordingly, this is not a "controversy with respect to taxes" and the exclusionary provision does not apply because only suits that would restrain the assessment and collection of taxes fall within the scope of HRS § 632-1. The circuit court therefore had jurisdiction and erred in dismissing on that basis.

/s/ Mark E. Recktenwald

/s/ Paula A. Nakayama

/s/ Sabrina S. McKenna

/s/ Richard W. Pollack

/s/ Michael D. Wilson

PART TWO: TAX FOUNDATION HAS HRS § 632-1 STANDING
(By: McKenna, J., with whom Pollack and Wilson, JJ., join)

C. Standing

1. Introduction

In general, standing is a prudential concern regarding whether the party seeking a forum has alleged a sufficient personal stake in the outcome of a controversy as to justify the exercise of the court's remedial powers on the party's behalf. See 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). In Hawaiʻi state courts, standing is a prudential consideration regarding the "proper – and properly limited – role of courts in a democratic society" and is not an issue of subject matter jurisdiction, as it is in federal courts. Importantly, this court has repeatedly ruled that standing requirements may be tempered, or even prescribed, by legislative declarations of policy.[17] Therefore, standing requirements can differ based on legislative enactments.

HRS Chapter 632 is an example of a statutory scheme in which standing requirements have been prescribed by legislative declarations. See Life of the Land II, 63 Haw. at 172 & n.5,

[17] See Life of the Land II, 63 Haw. at 172, 623 P.2d at 438; see also, e.g., Asato v. Procurement Policy Bd., 132 Hawaiʻi 333, 364, 322 P.3d 228, 259 (2014); Sierra Club v. Dep't of Transp. ("Superferry I"), 115 Hawaiʻi 299, 321, 167 P.3d 292, 314 (2007); Citizens for Protection of North Kohala Coastline v. Cnty. of Hawaiʻi, 91 Hawaiʻi 94, 100, 979 P.2d 1120, 1126 (1999).

623 P.2d at 438 & n.5. Through language in HRS Chapter 632, the Hawaiʻi State Legislature has stated its views regarding when a party should be able to bring declaratory relief claims under that Chapter. Despite this, some of our recent opinions have required a party requesting declaratory relief under HRS § 632-1 to also satisfy the common law three-part "injury in fact" test for standing, which requires a showing that (1) the plaintiff has suffered an actual or threatened injury as a result of the defendant's conduct, (2) the injury is fairly traceable to the defendant's actions, and (3) a favorable decision would likely provide relief for the plaintiff's injury.[18] Requiring satisfaction of this test, which was originally developed in federal courts due to subject matter jurisdiction concerns, limits declaratory relief otherwise available under the language of Chapter 632, thereby contravening prudential considerations of the "proper – and properly limited – role of courts" as "prescribed" by the Hawaiʻi State Legislature.

[18] See Corboy v. Louie, 128 Hawaiʻi 89, 104, 283 P.3d 695, 710 (2011), which is cited to in the Chief Justice's Dissenting Opinion. Dissenting Opinion by Recktenwald, C.J. ("Dissent"). Corboy involved a request for refund under HRS §§ 40-35(b) and 232-3 of taxes paid under protest; although the plaintiff also sought declaratory relief regarding the bases for requesting a refund, see Corboy, 128 Hawaiʻi at 94, 283 P.3d at 700, HRS § 632-1 was not discussed in the opinion. The Dissent characterizes the "injury in fact" test as the "traditional injury in fact" analysis, also citing Superferry I, 115 Hawaiʻi at 319, 167 P.3d at 312. Superferry I arose out of the Hawaiʻi Environmental Policy Act, HRS Chapter 343, and did not involve HRS § 632-1. See Superferry I, 115 Hawaiʻi at 304, 167 P.3d at 297.

Based on these considerations as well as the reasons discussed below, we hold that a party seeking declaratory relief under HRS § 632-1 need not satisfy the three-part "injury in fact" test to have standing. Rather, consistent with standing requirements prescribed by the legislature through the language of HRS § 632-1, we hold that a party has standing to seek declaratory relief in a civil case brought pursuant to HRS § 632-1(b) (2016): (1) where antagonistic claims exist between the parties (a) that indicate imminent and inevitable litigation, or (b) 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. Applying this standard, Tax Foundation has standing to seek declaratory relief under HRS § 632-1. We therefore need not address whether Tax Foundation has "taxpayer standing."[19]

[19] The Dissent concludes that Tax Foundation has "taxpayer standing." See infra notes 35 & 39. Justice Nakayama agrees with the Chief Justice that HRS § 632-1 does not set out a test for standing, but she would not address taxpayer standing based on Mottl v. Miyahira, 95 Hawaiʻi 381, 23 P.3d 716 (2001), and Corboy, 128 Hawaiʻi 89, 283 P.3d 695, in which we did not consider general taxpayer standing when that basis for standing had not been expressly argued. See Mottl, 95 Hawaiʻi at 391 n.13, 23 P.3d at 726 n.13; Corboy, 128 Hawaiʻi at 106 n.32, 283 P.3d at 712 n.32.

2. Background

In this case, Tax Foundation, as a putative class representative, requested a declaratory judgment pursuant to HRS § 632-1 (1993), as well as other ancillary relief. The circuit court dismissed Tax Foundation's complaint due to an alleged lack of subject matter jurisdiction based on the language in HRS § 632-1 that declaratory judgments are not available for "any controversy with respect to taxes." The State of Hawaiʻi ("State") had alternatively requested dismissal based on Tax Foundation's alleged lack of standing, but the circuit court did not address standing due to its dismissal based on subject matter jurisdiction grounds.

In its Answering Brief, the State reasserts Tax Foundation's alleged lack of standing as an alternative basis on which this court should affirm the circuit court's dismissal of Tax Foundation's lawsuit. The State argues that because Tax Foundation seeks to have the State pay the City and County of Honolulu ("City") the portion of the ten percent deduction from the City's 0.5% general excise tax surcharge ("Surcharge") that exceeds costs of administration, only the City can meet the three-part "injury in fact" test for standing.[20]

[20] The State cites to Sierra Club v. Hawaiʻi Tourism Authority, 100 Hawaiʻi 242, 59 P.3d 877 (2002) (plurality opinion), to assert that Tax Foundation must meet the three-part "injury in fact" test for standing. Sierra Club was (continued . . .)

In its Reply Brief, Tax Foundation argues it has standing to request declaratory relief. It did not specifically assert "taxpayer standing," but it alleges that "[g]overnments do not pay taxes; taxpayers do[,]" and that as a taxpayer, it is continuously injured by the State's diversion of money away from the Honolulu Authority for Rapid Transportation ("HART") project, "which causes over-collection of the amounts needed to sustain HART." It contends that a favorable decision would provide more support to HART for the benefit of the City to the relief of affected taxpayers, including itself, and that the

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(. . . continued)
not an HRS § 632-1 lawsuit, but instead involved a request for declaratory relief under HRS § 201B-15 (Supp. 2000), which then provided in relevant part:

> [A]ny action or proceeding to which the authority, the State, or the county may be party, in which any question arises as to the validity of this chapter or any portion of this chapter, or any action of the authority may be filed. . . .

This language differs significantly from HRS § 632-1, which is quoted and discussed more extensively below.

The State also cites to Akinaka v. Disciplinary Board of the Hawaiʻi Supreme Court, 91 Hawaiʻi 51, 979 P.2d 1077 (1999) (per curiam), for the additional proposition that "one does not have standing to assert a violation of rights belonging to another, since the person entitled to a right is the only one who can be directly injured by its deprivation." 91 Hawaiʻi at 58, 979 P.2d at 1084 (citation omitted). Akinaka is inapposite, as it dealt with an opposing party seeking to compel attorney disciplinary proceedings. See 91 Hawaiʻi at 53, 979 P.2d at 1079. We held that the complainant lacked standing because he had "no recognizable interest in the outcome of the . . . investigation" and was therefore not injured. 91 Hawaiʻi at 58, 979 P.2d at 1085.

more the State diverts, the less the City receives, and the longer the Surcharge is needed, the more taxpayers must pay.

3. Discussion

a. The Nature of Standing Requirements in Hawaiʻi State Courts

Before discussing standing requirements for purposes of HRS § 632-1, it is important to clarify that, in Hawaiʻi state courts, the issue of standing is a prudential concern and not an issue of subject matter jurisdiction, as suggested by some of our cases. For example, in Kēahole Defense Coalition, Inc. v. Board of Land & Natural Resources ("Kēahole"), 110 Hawaiʻi 419, 134 P.3d 585 (2006), we stated that "standing is a jurisdictional issue that may be addressed at any stage of a case." Kēahole, 110 Hawaiʻi at 427, 134 P.3d at 593 (citation and footnote omitted). In Akinaka, we also stated that this court has a duty to address standing sua sponte, even if it is not raised by the parties. See Akinaka, 91 Hawaiʻi at 55, 979 P.2d at 1081.

In federal courts, standing does implicate subject matter jurisdiction. The three-part "injury in fact" test is based on the "cases and controversies" limitation on federal court jurisdiction under Article III, section 2 of the United States Constitution. See Lujan v. Defenders of Wildlife, 504 U.S. 555, 560 (1992) ("Though some of its elements express

merely prudential considerations that are part of judicial self-government, the core component of standing is an essential and unchanging part of the case-or-controversy requirement of Article III." (citation omitted)). Thus, in federal courts, although standing secondarily implicates prudential concerns, standing is fundamentally an issue of subject matter jurisdiction. In other words, in federal courts, where a plaintiff lacks standing, no "case or controversy" exists to confer subject matter jurisdiction.

Hawaiʻi state courts, on the other hand, are not subject to a "case or controversy" jurisdictional limitation. Rather, pursuant to Article VI, Section 1 of the Constitution of the State of Hawaiʻi, "[t]he several courts . . . have original and appellate jurisdiction as provided by law . . . ." In Hawaiʻi courts, standing is solely an issue of justiciability, arising out of prudential concerns of judicial self-governance. See Life of the Land II, 63 Haw. at 171-72, 623 P.2d at 438. As explained by Justice Nakamura in Trustees of the Office of Hawaiian Affairs v. Yamasaki, 69 Haw. 154, 737 P.2d 446 (1987):

> Unlike the federal judiciary, the courts of Hawaii are not subject to a cases or controversies limitation like that imposed by Article III, § 2 of the United States Constitution. But like the federal government, ours is one in which the sovereign power is divided and allocated among three co-equal branches. Thus, we have taken the teachings of the Supreme Court to heart and adhered to the doctrine that the use of judicial power to resolve public disputes in a system of government where there is a separation of powers should be limited to those questions capable of judicial resolution and presented in an adversary context.

> And, we have admonished our judges that even in the absence of constitutional restrictions, they must still carefully weigh the wisdom, efficacy, and timeliness of an exercise of their power before acting, especially where there may be an intrusion into areas committed to other branches of government.
>
> 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.
>
> We have also followed the teachings of the Supreme Court where political questions" are concerned. . . .

Yamasaki, 69 Haw. at 170-72, 737 P.2d at 455-56 (internal citations, quotation marks, punctuation, and footnotes omitted) (emphases added).

Thus, Yamasaki recognizes that standing is a prudential concern in Hawai'i state courts, which are not subject to the case and controversy subject matter jurisdiction limitation of federal courts. Yamasaki also noted that standing is a prudential concern "founded in concern about the proper – and properly limited – role of courts in a democratic society." 69 Haw. at 171, 737 P.2d at 456 (citation omitted). Furthermore, our previous pronouncements that "standing principles are governed by 'prudential rules' of judicial self-governance," and that "the touchstone of this court's notion of standing is 'the

needs of justice[,]'" see, e.g., Mottl, 95 Hawaiʻi at 389-90, 23 P.3d at 724-25, reflect our awareness that standing is a prudential issue and not an issue of subject matter jurisdiction, as "the needs of justice" cannot eliminate the requirement of subject matter jurisdiction.[21] In addition, as pointed out earlier, in Hawaiʻi state courts, standing requirements may be tempered, or even prescribed, by legislative declarations of policy. See Life of the Land II, 63 Haw. at 172, 623 P.2d at 438.

Courts of other states also recognize that standing is a prudential concern and not an issue of subject matter jurisdiction. See, e.g., Weatherford v. City of San Rafael, 395 P.3d 274, 278 (Cal. 2017) ("Unlike the federal Constitution, our

[21] Furthermore, if lack of standing was an issue of subject matter jurisdiction, it could not be waived, and a case in which a plaintiff lacks standing would have to be dismissed. Hawaiʻi Rules of Civil Procedure ("HRCP") Rule 12(h)(3) (2000) provides that "[w]henever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action." See also Chun v. Emps.' Ret. Sys., 73 Haw. 9, 14, 828 P.2d 260, 263 (1992), reconsideration denied, 73 Haw. 625, 829 P.2d 859 (1992) ("[L]ack of subject matter jurisdiction can never be waived by any party at any time." (citation omitted)). We have noted, however, that a claim of lack of standing can be waived. See Ito v. Inv'rs Equity Life Holding Co., 135 Hawaiʻi 49, 59 n.24, 346 P.3d 118, 128 n.24 (2015) ("In its Reply Brief . . . IELHC again claims that HLDIGA does not have standing . . . . However, this argument was waived on appeal because IELHC did not raise it in its opening brief." (citation omitted)); see also In re Tax Appeal of Univ. of Hawaiʻi v. City & Cty. of Honolulu ("In re Univ. of Hawaiʻi"), 102 Hawaiʻi 440, 445 n.13, 77 P.3d 478, 483 n.13 (2003) ("We do not address the issue of whether the University has standing to appeal pursuant to a specific statute, inasmuch as the University did not raise this issue on appeal." (citation omitted)). Both Ito and In re Univ. of Hawaiʻi cited to Hawaiʻi Rules of Appellate Procedure ("HRAP") Rule 28(b)(7) in support of this point, which provides that "[p]oints not argued may be deemed waived."

state Constitution has no case or controversy requirement imposing an independent jurisdictional limitation on our standing doctrine. . . . Our standing jurisprudence nonetheless reflects a sensitivity to broader prudential and separation of powers considerations elucidating how and when parties should be entitled to seek relief under particular statutes." (citation omitted)); Deutsche Bank Nat'l Trust Co. v. Johnston, 369 P.3d 1046, 1052 (N.M. 2016) ("[W]hile a plaintiff's . . . lack of prudential standing [is] not strictly jurisdictional, [it] implicate[s] the 'properly limited . . . role of courts in a democratic society' and [is a] relevant concern[] throughout a litigation." (citation omitted)); Biggs v. Cooper ex rel. Cty. of Maricopa, 341 P.3d 457, 460 (Ariz. 2014) ("In Arizona, standing is a prudential consideration rather than a jurisdictional one." (citation omitted)); Nicely v. State, 733 S.E.2d 715, 719 n.6 (Ga. 2012) ("[W]e note that prudential standing generally is not jurisdictional." (citation omitted)); Fumo v. City of Philadelphia, 972 A.2d 487, 500 n.5 (Pa. 2009) ("[I]n Pennsylvania, the issue of standing implicates prudential concerns." (citation omitted)).

Therefore, we preliminarily clarify that, in Hawaiʻi state courts, standing is not an issue of subject matter

jurisdiction,[22] but arises solely out of justiciability concerns based on prudential concerns of judicial self-governance, and is based on "concern about the proper – and properly limited – role of courts in a democratic society." Accordingly, although Hawaiʻi state courts may consider standing even when not raised by the parties, they are not required to do so sua sponte, as they would be required to do if they perceive issues of subject matter jurisdiction.

In this case, however, the State expressly alleged lack of standing as an alternative basis for its dismissal motion. We therefore address standing in our de novo review of the parties' cross motions for summary judgment.

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[22] It appears the line of cases erroneously suggesting that standing is a matter of subject matter jurisdiction started with State v. Kam, 69 Haw. 483, 488, 748 P.2d 372, 375-76 (1988) ("Although the question of standing 'was not raised by the parties, appellate courts are under an obligation to insure that they have jurisdiction to hear and determine each case.'" (citation omitted)). Subsequent cases include Akinaka, 91 Hawaiʻi at 55, 979 P.2d at 1081; Kēahole, 110 Hawaiʻi at 427-28, 134 P.3d at 593-94; Hui Kakoʻo Aina Hoʻopulapula v. Board of Land & Natural Resources, 112 Hawaiʻi 28, 59, 143 P.3d 1230, 1261 (2006); and McDermott v. Ige, 135 Hawaiʻi 275, 283, 349 P.3d 382, 390 (2015).

The conflation of the subject matter jurisdiction and justiciability implications of standing may have arisen due to language in our precedent stating that it would not be proper to "invoke a court's jurisdiction" where a plaintiff lacks standing. See, e.g., Mottl, 95 Hawaiʻi at 389, 23 P.3d at 724 ("It is well settled that the crucial inquiry with regard to standing is whether the plaintiff has alleged such a personal stake in the outcome of the controversy as to warrant his or her invocation of the court's jurisdiction and to justify exercise of the court's remedial powers on his or her behalf." (quoting Akinaka, 91 Hawaiʻi at 55, 979 P.2d at 1081)).

b. Declaratory Judgments under HRS Chapter 632

Tax Foundation premises its request for declaratory relief on HRS § 632-1, which is part of HRS Chapter 632 governing "Declaratory Judgments." The Chapter has four sections, HRS § 632-1 relating to "[j]urisdiction; controversies subject to," HRS § 632-2 (2016) relating to "[a]ppeals," HRS § 632-3 (2016) relating to "[f]urther relief upon judgment," and HRS § 632-6 (2016) relating to "[p]rovisions, remedial." HRS § 632-1 provides as follows:

> **Jurisdiction; controversies subject to.** (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.

When construing a statute, our foremost obligation is to ascertain and give effect to the intention of the legislature, which is to be obtained primarily from the language contained in the statute itself, and we must read statutory language in the context of the entire statute and construe it in a manner consistent with its purpose. See In re Doe, 95 Hawai'i 183, 191, 20 P.3d 616, 624 (2001) (citation omitted).

HRS § 632-1 is somewhat verbose, but can be broken down as follows. The title of HRS § 632-1 is "Jurisdiction; controversies subject to."[23] In general, subsection (a) discusses subject matter jurisdiction. It starts by providing that, in cases of actual controversy, courts of record have power to make binding adjudications of right whether or not consequential relief is, or at the time could be, claimed. It also provides that a declaratory relief action cannot be objected to on the grounds that declaratory relief is the only relief sought; in

[23] The Dissent opines that HRS § 632-1, which is entitled "Jurisdiction; controversies subject to" does not set out standing requirements but is merely a jurisdictional statute. Yet, the Dissent acknowledges we have stated that HRS Chapter 632 is an instance in which standing requirements have been "tempered, or even prescribed, by legislative declarations of policy[,]" citing Life of the Land II, 63 Haw. at 172 & n.5, 623 P.2d at 438 & n.5. It is difficult to understand how the legislature "tempered, or even prescribed" standing requirements in Chapter 632, if Chapter 632 does not actually contain standing criteria or requirements.

other words, other remedies, such as damages or injunctive relief, need not also be sought.[24] Subsection (a) further provides that the district courts do not have subject matter jurisdiction over declaratory relief claims[25] and that other courts of record cannot grant declaratory relief in any controversy with respect to taxes or in a case seeking divorce or annulment. The subsection clarifies, however, that declaratory relief can be sought in controversies involving the interpretation of deeds, wills, other instruments of writing,

[24] As noted in Justice Acoba's dissenting opinion in County of Hawaiʻi v. Ala Loop Homeowners, 123 Hawaiʻi 391, 235 P.3d 1103 (2010):

> [S]ince its enactment in 1921, HRS § 632–1 has undergone several amendments. In 1945, a pertinent amendment was made to HRS § 632–1 with the intent "to expand the proceedings for declaratory judgments to a scope that will render such proceedings of real value[.]" S. Stand. Comm. Rep. No. 235, in 1945 Senate Journal, at 656. Furthermore, the House Committee on the Judiciary noted that the amendment would "afford greater relief by declaratory judgment than the present law." H. Stand. Comm. Rep. No. 76, in 1945 House Journal, at 566. This court has recently determined that, by this amendment, the legislature "intended to 'afford [citizens] greater relief,'" and, therefore, a petitioner was not precluded "from bringing a declaratory judgment action under the current HRS § 632–1, even though [relief through another right of action was] available provided that 'the other essentials to such relief [were] present.'" Dejetley v. Kahoʻohalahala, 122 Hawaiʻi 251, 268, 226 P.3d 421, 438 (2010) (quoting HRS § 632–1).

123 Hawaiʻi at 434, 235 P.3d at 1146 (Acoba, J., dissenting).

[25] In 1921, when Hawaiʻi's declaratory judgment act was enacted, district courts were not courts of record. Effective January 1, 1972, Act 188, 1970 Hawaii Sess. Laws 443, established district courts as courts of record and redesignated district magistrates as district judges. See State v. Okuda, 71 Haw. 434, 438 n.6, 795 P.2d 1, 4 n.6 (1990) (per curiam).

statutes, municipal ordinances, or other governmental regulations. It further states that this list is not exhaustive, and that declaratory relief can also be sought in other situations involving other antagonistic assertions or denials of rights.

Subsection (b) of the statute more specifically addresses "controversies subject to" declaratory relief.[26] It states that relief by declaratory judgment may be granted in civil cases[27] where (1) there is an actual controversy between contending parties; or (2) (a) 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

[26] Our discussion does not include the repeated phrase that "the court is satisfied." Interestingly, there are numerous federal cases relating a "court is satisfied" with standing or standing requirements. See, e.g., Spokeo, Inc. v. Robins, 136 S.Ct. 1540, 1550 (2016) ("The [Ninth Circuit Court of Appeals] thus concluded that Robins' 'alleged violations of his statutory rights were sufficient to satisfy the injury-in-fact requirement of Article III.'" (internal brackets and citation omitted)); Walker v. Lamb, Case No. 4:18-cv-04094, 2019 WL 542328, at *7 (W.D. Ark. Feb. 11, 2019) ("[T]he Court is satisfied that Plaintiff has standing to bring the present lawsuit."); Am. Fed'n of State, Cty. & Mun. Emps. (AFSCME) Council 79 v. Scott, 278 F.R.D. 664, 668–69 (S.D. Fla. 2011) ("The Court is satisfied that the Union has demonstrated an injury in fact. . . . [T]he Court is satisfied that the Union satisfies the last two standing prongs."); White v. Engler, 188 F. Supp. 2d 730, 743 (E.D. Mich. 2001) ("The Court is satisfied that Plaintiffs have standing to pursue such action. The Court is also satisfied that the NAACCP has standing to pursue this action on behalf of its members.").

[27] Declaratory relief ordinarily cannot be utilized to enjoin the enforcement of a valid criminal statute, but may be available where a criminal statute affects a continuing course of conduct but is not subject to challenge in a criminal court because the government refuses to bring criminal proceedings. See Pacific Meat Co. v. Otagaki, 47 Haw. 652, 656, 394 P.2d 618, 620-21 (1964).

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 (b) a declaratory judgment will serve to terminate the uncertainty or controversy giving rise to the proceeding.[28]

As indicated in the paragraph above, the plain language of HRS § 632-1(b) seemingly allows for declaratory relief where there is an "actual controversy between contending parties" or "antagonistic claims" are present between contending parties (along with other requirements). We discuss the first "or" in HRS § 632-1(b) in more detail in Section IV.C.3.d below.

In any event, subsection (b) of HRS § 632-1 further provides that where another statute provides a special form of remedy for a specific type of case, that statutory remedy must be followed. The subsection also clarifies, however, that if the other requirements for declaratory relief delineated in the statute are met, a party will not be prohibited from obtaining a declaratory judgment even if the actual or threatened controversy is susceptible of relief through a general common

[28] The Dissent opines that because HRS § 632-1 does not use language such as "an aggrieved party," "any interested person," or "any person" in describing who can bring a declaratory judgment action, it does not set out standing requirements. The language of subsection (b), however, clearly lays out when "parties" can bring a request for declaratory relief.

law remedy, an equitable remedy, or an extraordinary legal remedy, whether or not such a remedy is recognized by statute.

HRS § 632–6 then provides:

> 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.

(Emphasis added.)

Thus, nothing in the language of HRS § 632-1, the statement of legislative intent in HRS § 632-6, nor any other provision in HRS Chapter 632 requires a party to satisfy a three-part "injury in fact" test in order to seek declaratory relief.

c. Our Precedent Regarding Standing under HRS § 632-1

Recently, in Asato v. Procurement Policy Board, 132 Hawai'i 333, 322 P.3d 228 (2014), we clarified the confusion in our case law regarding whether the three-part "injury in fact" test applies to declaratory judgment lawsuits brought pursuant to HRS § 91-7 under which "any interested person" may seek declaratory relief regarding the validity of administrative rules.[29] Analyzing the somewhat confusing pronouncements of our

[29] HRS § 91-7 (2012 & Supp. 2014) provides in pertinent part:

(continued . . .)

prior case law on the issue, we held that a person seeking a judicial declaration under HRS § 91-7 need not satisfy the three-part "injury in fact" test to qualify as an "interested person" with standing under that statute. See Asato, 132 Hawaiʻi at 342-46, 322 P.3d at 237-41. The Asato majority noted that in Life of the Land II, this court held that plaintiffs whose interests "may have been adversely affected" had standing to request declaratory relief under HRS § 91-7. Asato, 132 Hawaiʻi at 342, 322 P.3d at 237 (citing Life of the Land II, 63 Haw. at 177-78, 623 P.2d at 441). We also noted that in Richard v. Metcalf, 82 Hawaiʻi 249, 921 P.2d 169 (1996), however, this court appeared to have adopted a more stringent standing standard, requiring that the plaintiff demonstrate an "injury in fact" to have standing under HRS § 91-7. See Asato, 132 Hawaiʻi at 342, 322 P.3d at 237 (citing Richard, 82 Hawaiʻi at 253-54, 921 P.2d at 173-74). We stated:

(. . . continued)

> **Declaratory judgment on validity of rules.** (a) Any interested person may obtain a judicial declaration as to the validity of an agency rule as provided in subsection (b) by bringing an action against the agency in the circuit court or, if applicable, the environmental court, of the county in which the petitioner resides or has its principal place of business. The action may be maintained whether or not the petitioner has first requested the agency to pass upon the validity of the rule in question.

The original 1961 version of the statute was in effect at the time of Asato; in 2014, the legislature added "or, if applicable, the environmental court." 2014 Haw. Sess. Laws Act 218, § 3 at 739.

> However, it is not clear how Richard reached this conclusion. Richard states that it was relying on Bush [v. Watson, 81 Hawaiʻi 474, 479, 918 P.2d 1130, 1135 (1996), reconsideration denied, 82 Hawaiʻi 156, 920 P.2d 370 (1996)], which, according to Richard, "applied the 'injury in fact' test to determine the standing of a party who had filed a declaratory judgment action under HRS § 91–7." Richard, 82 Hawaiʻi at 253, 921 P.2d at 173. However, Bush does not mention either HRS § 91–7 or "[a]ny interested person", or provide any analysis on why the injury in fact test should apply to "[a]ny interested person[s]." See Bush, 81 Hawaiʻi at 479, 918 P.2d at 1135.

Id. We opined that "in the absence of supportive reasoning, it is difficult to accord governing impact to this aspect of Richard, particularly where the plain language of HRS § 91-7 and the legislative history of that statute require a different result that is in accord with Life of the Land [II]." Asato, 132 Hawaiʻi at 343, 322 P.3d at 238 (footnote omitted).

The Asato majority also addressed the dissent's statement that it had "been well settled that a plaintiff must satisfy the three-part 'injury in fact' test in order to have standing under HRS § 91-7," Asato, 132 Hawaiʻi at 362, 322 P.3d at 257 (Recktenwald, C.J., dissenting, in which Nakayama, J., joined), by noting Richard had not proffered reasoning as to why an "interested person" must meet the "injury in fact" test, despite the fact that it was the first case to adopt that requirement. Asato, 132 Hawaiʻi at 346, 322 P.3d at 241 (citing Richard, 82 Hawaiʻi at 253–54, 921 P.2d at 173–74). The majority noted that "Richard may have erroneously assumed that the issue had already been resolved in Bush." Id. (citing Richard, 82

Hawaiʻi at 253, 921 P.2d at 173). We noted that although the doctrine of stare decisis must not be treated lightly, we were "address[ing] an issue that was not well-supported or well-settled." Asato, 132 Hawaiʻi at 346, 322 P.3d at 241. We also noted that "[s]tanding is a prudential doctrine, and where no prudential reasons have ever been set forth in support of a particular standing requirement, review of that requirement is warranted, as we do so here." Asato, 132 Hawaiʻi at 346, 322 P.3d at 241 (citing Citizens, 91 Hawaiʻi at 100, 979 P.2d at 1126) (emphasis added).

Similar to Asato, which evaluated our precedent regarding standing to bring a declaratory relief action under HRS § 91-7, as discussed below, our precedent regarding requirements for standing under HRS § 632-1 has also been confusing and has not been well settled. As further discussed below, our cases that have required satisfaction of a three-part "injury in fact" test for HRS § 632-1 standing have not adequately set forth prudential reasons for doing so. Rather, our imposition of a three-part "injury in fact" test to HRS § 632-1 standing actually contravenes prudential considerations regarding the appropriate role of the judiciary within the three branches of government, because the three-part test contradicts the language of HRS § 632-1 and the legislative mandate of HRS § 632-6.

Dalton v. City and County of Honolulu, 51 Haw. 400, 462 P.2d 199 (1969), appears to be the first reported case in which we expressly addressed standing in the context of a case requesting a declaratory judgment pursuant to HRS § 632-1. We stated:

> The standing necessary to pursue a declaratory judgment is described in HRS § 632-1:
>
> > Controversies involving the interpretation of . . . 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.
> >
> > Relief by declaratory judgment . . . may be granted in all civil cases where an actual controversy exists between contending parties, . . . or where in any such case the court is satisfied that a party asserts a legal relation, status, right, or privilege in which he has a concrete interest . . . .

Dalton, 51 Haw. at 402-03, 462 P.2d at 202.

In Dalton, we held that plaintiffs residing in very close proximity to a proposed high rise apartment building development, which would restrict their scenic view, limit their sense of space, and increase population density, clearly had standing to bring an HRS § 632-1 declaratory relief action because they had a "concrete interest" in a "legal relation" and because the case was an "actual controversy," not merely a hypothetical problem. Dalton, 51 Haw. at 403, 462 P.2d at 202.

There was no reference in Dalton to a three-part "injury in fact" test for standing.[30]

Twenty-two years after Dalton, Life of the Land II also briefly discussed HRS § 632-1 declaratory relief standing. See Life of the Land II, 63 Haw. at 178, 623 P.2d at 442. We stated:

> Standing is that aspect of justiciability focusing on the party seeking a forum rather than on the issues he wants adjudicated. And the crucial inquiry in its determination 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." 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.[5]
>
> 5 See, e.g., HRS Chapter 632, Declaratory Judgments, and Hawaii State Constitution, Article XI, Section 9, Environmental Rights. . . .

Life of the Land II, 63 Haw. at 172 & n.5, 623 P.2d at 438 & n.5 (quoting Warth v. Seldin, 422 U.S. 490, 498–99 (1975)). In Life of the Land II, we discussed the liberalization of standing requirements in federal court environmental cases, in which the courts had shifted from the "legal right" to the "injury in

[30] The Dissent asserts that since Dalton, this court has consistently required a party seeking declaratory relief under HRS § 632-1 to establish an injury or a threatened injury. As noted by the Dissent, however, Dalton did not use the terms "injury" or "threatened injury." Rather, Dalton refers to "a 'concrete interest' in a 'legal relation,'" which are the terms specifically contained within the legislative prescription of HRS § 632-1. Dalton, 51 Haw. at 403, 462 P.2d at 202 (citation omitted).

fact" standard to evaluate standing. Life of the Land II, 63 Haw. at 174, 623 P.2d at 439.[31] We also stated:

> While the term "injury in fact" may not appear in their text, our decisions have afforded standing on a basis at least coextensive with federal doctrine where harm to such interests has been alleged. This is not to suggest our standing requisites will follow every twist or turn in the development of federal doctrine. Our touchstone remains "the needs of justice."

63 Haw. 176, 623 P.2d at 441 (emphasis added) (citation omitted). We further stated in footnote 6:

> The Supreme Court's standing doctrine includes a requirement that there be a showing of a "logical nexus" between the interest asserted and the claim sought to be adjudicated. See Flast v. Cohen, 392 U.S. 83, 102 (1968). In Duke Power Co. v. Carolina Environmental Study Group, Inc., 438 U.S. 59 (1978), the Court summarized its doctrine as follows:
>
> > The essence of the standing inquiry is whether the parties seeking to invoke the court's jurisdiction have "alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions." Baker v. Carr, 369 U.S. 186, 204 (1962). As refined by subsequent reformulation, this requirement of a "personal stake" has come to be understood to require not only a "distinct and palpable injury," to the plaintiff, Warth v. Seldin, 422 U.S. 490, 501 (1975), but also a "fairly traceable" causal connection between the claimed injury and the challenged conduct. Arlington Heights v. Metropolitan Hous. Dev. Corp., 429 U.S. 252, 261 (1977). See also Simon v. E. Ky. Welfare Rights Org., 426 U.S. 26, 41-42 (1976); Linda R. S. v. Richard D., 410 U.S. 614, 617 (1973).
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> 438 U.S. at 72. However, it went on to state the requirement of the foregoing nexus was only applicable in

[31] The Dissent also cites to this passage. Although Life of the Land II did generally discuss this shift, it did so in the context of discussing United States Supreme Court cases discussing standing requirements in federal courts. See Life of the Land II, 63 Haw. at 172-73, 623 P.2d at 438-39 (comparing Tennessee Electric Power Co. v. Tennessee Valley Authority, 306 U.S. 118, 137-38 (1939), with Association of Data Processing Service Organizations v. Camp, 397 U.S. 150, 153-54 (1970)).

> taxpayers' suits and "outside the context of . . . (such) suits, a litigant must demonstrate . . . (nothing) more than injury in fact and a substantial likelihood that the judicial relief requested will prevent or redress the claimed injury to satisfy the 'case or controversy' requirement of Art. III." Id. at 79.

Life of the Land II, 63 Haw. at 173 n.6, 623 P.2d at 439 n.6.

Thus, in Life of the Land II, we referred to the term "injury in fact" as a concept that loosened, not tightened, standing requirements under HRS § 91-7. We also made clear that our standing requirements would not necessarily follow federal standards, but would instead be based on the "needs of justice." 63 Haw. at 176, 623 P.2d at 441. We noted that even under federal standing requirements existing at that time, components of the three-part "injury in fact" test applied only in taxpayers' suits. 63 Haw. at 173 n.6, 623 P.2d at 439 n.6. In any event, Life of the Land II actually analyzed standing under HRS § 91-7. With respect to HRS § 632-1 standing, we merely stated as follows:

> HRS § 632-1 authorizes courts of record to issue declaratory judgments "in cases of actual controversy." Our brief discourse on the "prudential rules" and their application to this case has obviated a necessity for further debate on whether an "actual controversy" exists.

Life of the Land II, 63 Haw. at 178, 623 P.2d at 442 (footnote omitted). As can be seen, in Life of the Land II, we analyzed HRS § 632-1 standing based on the "actual controversy" language of the statute, and we did not actually apply an "injury in fact" requirement to HRS § 632-1.

Later, in Citizens, we pointed out the difference between standing requirements for HRS § 91-14 agency appeals and HRS § 632-1 declaratory judgment actions, and stated:

> Citizens first contends that the circuit court erred in concluding that it did not establish an injury in fact nor raise a genuine issue of material fact relating to the existence of an injury in fact. Likewise, as noted above, Chalon describes the issue of Citizens' standing in terms of proving an injury in fact sufficient to invoke a contested case hearing. These arguments wholly misapprehend and blur the distinction between standing to participate in a contested case hearing under HRS § 91-14 and standing in an action for declaratory relief under HRS § 632-1 (1993).
>
> As a general rule, standing is the aspect of justiciability focusing on the party seeking a forum rather than on the issues he wants adjudicated. In order for individuals or groups legitimately to invoke contested case hearing procedures on SMA permit applications before the State Land Use Commission (LUC), they must be "directly and immediately affected by the Commission's decision." HPC Rule 4-2(6)(B). In PASH, we stated that this requires a party to demonstrate that its interests were injured. The demonstration is evaluated via a three-part "injury in fact" test requiring: "(1) an actual or threatened injury, which, (2) is traceable to the challenged action, and (3) is likely to be remedied by favorable judicial action."
>
> On the other hand, for the purposes of establishing standing in an action for declaratory relief, HRS § 632-1 interposes less stringent requirements for access and participation in the court process. As this court explained in Richard v. Metcalf, 82 Hawai'i 249, 254 n.12, 921 P.2d 169, 174 n.12 (1996),
>
> > Although HRS § 632-1 provides for standing to sue "in cases of actual controversy," HRS § 632-6 clarifies that the purpose of HRS chapter 632 is to afford relief 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.

91 Hawai'i at 99-100, 979 P.2d at 1125-26 (footnotes and brackets omitted, some internal citations and quotation marks omitted) (emphases added).

In Citizens, we did refer to the plaintiff organization's "injury in fact" in analyzing its standing, stating 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." Citizens, 91 Hawaiʻi at 101, 979 P.2d at 1127. We were clear, however, that the three-part "injury in fact" test did not govern standing for HRS § 632-1 declaratory judgment actions, noting that "injury to its members' quality of life is threatened," and concluding that "Citizens asserts personal and special interests sufficient to invoke judicial resolution under HRS § 632-1." Id.[32] The concept of "personal" and "special" interests sufficient for standing mentioned in Citizens had actually been developed to define what constitutes a "person aggrieved" under HRS § 91-14 with standing to request judicial review of contested cases pursuant to that statute. See, e.g., Life of the Land, Inc. v. Land Use Comm'n, 61 Haw. 3, 8, 594 P.2d 1079, 1082 (1979); Life of the Land II, 63 Haw. at 176, 623 P.2d at 440-41; Mahuiki v. Planning Comm'n, 65 Haw. 506, 515, 654 P.2d 874, 880 (1982); Ka Paʻakai O Ka ʻĀina v. Land Use Comm'n, 94 Hawaiʻi 31, 42-43, 7 P.3d 1068, 1079-80 (2000). Therefore, it appears that in

[32] Although Citizens used the phrase "injury in fact," it did not apply the three-part "injury in fact" test for HRS § 632-1 standing.

Citizens, we juxtaposed the "personal and special interests" requirement for a "person aggrieved" to have standing under HRS § 91-14 to an HRS § 632-1 declaratory relief action.

Then, in the 2001 Mottl case, 95 Hawaiʻi 381, 23 P.3d 716, we again acknowledged liberalized standing requirements for HRS § 632-1 declaratory judgment actions, but then applied the three-part "injury in fact" test for standing under that statute. In Mottl, we addressed whether the University of Hawaiʻi Professional Assembly and some of its members had standing to bring an HRS § 632-1 declaratory relief lawsuit asserting that the State of Hawaiʻi wrongfully reduced the University of Hawaii's allotment of appropriated funds.[33] We began our standing analysis by stating:

> It is well settled that the crucial inquiry with regard to standing is whether the plaintiff has alleged such a personal stake in the outcome of the controversy as

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[33] Specifically:

> The complaint alleged: (1) a violation of the principle of separation of powers implicit in the Hawaiʻi Constitution by reducing, without authority, the budgetary allocation to the University of Hawaiʻi below the amount legislatively appropriated; and (2) a violation of HRS ch. 37 by (a) failure to restore to the University of Hawaiʻi an amount sufficient to pay the faculty paychecks on June 30, 1998 when the federal injunction precluded implementation of the payroll lag, (b) causing monies encumbered in fiscal year 1998 for the purchase of supplies, services, and other purposes to be diverted to the payment of salaries, and (c) causing the University of Hawaii's budget in fiscal year 1999 to be impaired by the cost shifted from the fiscal year 1998.

Mottl, 95 Hawaiʻi at 385, 23 P.3d at 720.

> to warrant his or her invocation of the court's jurisdiction and to justify exercise of the court's remedial powers on his or her behalf. In deciding whether the plaintiff has the requisite interest in the outcome of the litigation, we employ a three-part test: (1) has the plaintiff suffered an actual or threatened injury as a result of the defendant's wrongful conduct; (2) is the injury fairly traceable to the defendant's actions; and (3) would a favorable decision likely provide relief for plaintiff's injury.
>
> . . . .
>
> On the other hand, for the purposes of establishing standing in an action for declaratory relief, HRS § 632–1 interposes less stringent requirements for access and participation in the court process. As this court explained in Richard v. Metcalf, 82 Hawaiʻi 249, 254 n.12, 921 P.2d 169, 174 n.12 (1996),
>
> > although HRS § 632–1 provides for standing to sue in cases of actual controversy, HRS § 632–6 (1993) clarifies that the purpose of HRS chapter 632 is to afford relief 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.

Mottl, 95 Hawaiʻi at 389, 23 P.3d at 724 (some internal quotation marks, ellipses, footnotes, brackets, and citations omitted) (emphases added).

In Mottl, we applied the three-part "injury in fact" test to HRS § 632-1 standing for the first time, and we ruled that the plaintiffs did not meet its requirements. See Mottl, 95 Hawaiʻi at 395, 23 P.3d at 730. After Mottl, a few opinions have expressly required plaintiffs to satisfy the three-part "injury in fact" test to establish standing in HRS § 632-1 declaratory judgment lawsuits. See, e.g., Cty. of Kauaʻi ex rel. Nakazawa v. Baptiste, 115 Hawaiʻi 15, 26, 165 P.3d 916, 927

(2007); Ala Loop Homeowners, 123 Hawaiʻi at 440-41, 235 P.3d at 1152-53.

As in our adoption of the three-part "injury in fact" test in the context of HRS § 91-7 standing, discussed in Asato, it is unclear why we adopted the test for HRS § 632-1 standing in Mottl. Similar to the confusion in our case law regarding standing requirements for HRS § 91-7 that we clarified in Asato, our case law regarding standing requirements for HRS § 632-1 declaratory judgment actions has also been unsettled and confusing.[34] We therefore now clarify standing requirements for a declaratory judgment lawsuit under HRS § 632-1.

d. Standing Requirements under HRS § 632-1(b)

As discussed in Section IV.C.3.a, standing in Hawaiʻi state courts is a prudential doctrine in which our courts are directed to "weigh the wisdom, efficacy, and timeliness of an

[34] The Dissent opines that this court should follow the Intermediate Court of Appeals' ("ICA['s]") opinion in Bremner v. City & County of Honolulu, 96 Hawaiʻi 134, 28 P.3d 350 (App. 2001), in which the ICA applied the three-part "injury in fact" test to determine HRS § 632-1 standing. Bremner, however, cited to Bush, 81 Hawaiʻi at 479, 918 P.2d at 1135, as authority for its application of the three-part "injury in fact" test to HRS § 632-1 standing. See Bremner, 96 Hawaiʻi at 139, 28 P.3d at 355. Yet Bush was brought under 42 U.S.C. § 1983, not HRS § 632-1. See Bush, 81 Hawaiʻi at 477-78, 918 P.2d at 1133-34. Bremner also cited to Mottl as authority for its application of the three-part "injury in fact" test for HRS § 632-1 standing. See Bremner, 96 Hawaiʻi at 139, 28 P.3d at 355. As noted, however, it is unclear why Mottl applied the three-part "injury in fact" test to HRS § 632-1 standing, and, as discussed in this opinion, application of the test to declaratory relief actions under HRS Chapter 632 contravenes prudential considerations when the legislature has clearly delineated standing requirements under HRS § 632-1. Therefore, we decline to adopt Bremner, which is inconsistent with the language and legislative intent of HRS Chapter 632.

exercise of their power before acting, especially where there may be an intrusion into areas committed to other branches of government." Life of the Land II, 63 Hawaiʻi at 172, 623 P.2d at 438. To reiterate, we have noted that standing requirements may be tempered, or even prescribed, by legislative declarations of policy. See id. In HRS §§ 632-1 and 632-6, the legislature has declared its policy regarding standing, and has expressed its view regarding the "proper — and properly limited — role of [our] courts[,]" Yamasaki, 69 Haw. at 171, 737 P.2d 456 (citation omitted), with respect to declaratory judgment actions under HRS Chapter 632.

As discussed in Section IV.C.3.b, the language of HRS § 632-1 provides that declaratory relief is available in civil cases (1) where there is an actual controversy between contending parties; or (2) (a) 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 (b) a declaratory judgment will serve to terminate the uncertainty or controversy giving rise to the proceeding.

As further discussed in Section IV.C.3.b, the language of HRS § 632-1(b) would seemingly allow for declaratory relief in civil cases where there is an "actual controversy" or "antagonistic claims" between contending parties. We first address the meaning of "actual controversy."

As noted in Kaleikau v. Hall, 27 Haw. 420 (Haw. Terr. 1923), Hawai'i's Declaratory Judgment Act, enacted in 1921, was copied in toto from the declaratory judgment act of Kansas. Kaleikau, 27 Haw. at 426. The Kansas Supreme Court first addressed its declaratory judgment act in State ex rel. Hopkins v. Grove, 201 P. 82 (Kan. 1921). The Kansas Supreme Court noted that its statute was explicitly limited in its operation to cases of "actual controversy." Grove, 201 P. at 83. In addressing what constituted an "actual controversy," the court stated:

> Against the validity of the statute it is urged that the occasion for judicial action cannot arise until a claim is made that an actual wrong has been done or is immediately threatened, and, moreover (what is much the same thing stated in another way), that a decision cannot properly be classed as a judgment, as strictly judicial act, unless, besides determining the merits of the controversy between the parties, deciding which is right, it affords (or denies) some additional remedy--in other words "consequential relief"--and therefore that power to decide a controversy in the absence of the conditions indicated is not judicial and cannot be conferred upon courts by the Legislature. This view appears to us to be unsound, and to be the result of confusing declaratory judgments with advisory opinions and decisions in moot cases, and perhaps also of an inclination to treat a general practice that has been long established as having acquired the force of a constitutional guaranty. A mere advisory opinion upon an abstract question is obviously not a judgment at all, since there are no parties to be bound, and the rights of no one are directly affected. The

> situation is substantially the same where opposing parties present a moot question––one the decision of which can have no practical effect. Where a judgment is sought of such character as to be of no benefit unless accompanied by an order the carrying out of which is impossible, the futility of the proceeding is a sufficient basis for a court's refusal to entertain it, whether or not jurisdiction to do so exists. But some judgments are wholly or in part self–operative. They perform a valuable function in and of themselves. It is often said that a cause of action arises only upon the breach of a duty––the invasion of a right. This, however, is merely the announcement of a general rule of practice subject to possible exceptions and to legislative change. . . .

201 P. at 84.

Thus, the Kansas Supreme Court indicated that an "actual controversy" under the Kansas declaratory judgment act (which Hawaiʻi copied in its entirety) did not require additional "consequential relief," but could not be an "advisory opinion" upon an abstract question or that involved a "moot" case, for which a declaratory judgment would have no practical effect. Therefore, at the time of the enactment of Hawaiʻi's declaratory judgment act, it appears an "actual controversy" was one that that did not lack justiciability based on the "advisory opinion" prohibition or "mootness" prongs of justiciability concerns. Much later, in Life of the Land II, we indicated that an "actual controversy" was one that generally satisfied prudential rules of self-governance, including "standing." Life of the Land II, 63 Haw. at 171-78, 624 P.2d at 437-42.

Accordingly, the first prong of HRS 632-1(b) allowing for declaratory relief in a case of "actual controversy" between

contending parties merely mandates that prudential requirements, including standing, be satisfied, but does not set out any actual standing requirements.

In the second prong of HRS § 632-1(b), however, the legislature has expressed its policy and has expressed its view regarding the "proper – and 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.

The Chief Justice's Dissent acknowledges that "[w]hen 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.'" Dissenting Opinion by Recktenwald, C.J. (citing S. Stand. Comm. Rep. No.

263, in 1921 Senate Journal, at 616). Consistent with this purpose, the plain language of HRS § 632-1 does not require satisfaction of a three-part "injury in fact" test for a party to have standing.[35] Imposition of this additional requirement when standing requirements of HRS § 632-1 have otherwise been met limits the availability of declaratory relief in our state courts. Thus, imposition of an additional "injury in fact" requirement contravenes the legislature's specific declaration of policy regarding HRS § 632-1 standing as well as its general declaration of policy under HRS § 632-6 that Chapter 632 "be liberally interpreted and administered, with a view to making the courts more serviceable to the people." Requiring satisfaction of an additional "injury in fact" test for standing

[35] The Chief Justice opines that HRS § 632-1 does not set out standing requirements and would hold that a party would usually need to satisfy the common law three-part "injury in fact" test to have standing to seek declaratory relief under HRS § 632-1. The Chief Justice does not address whether Tax Foundation would satisfy the three-party "injury in fact" test here and instead applies the common law two-part "taxpayer standing" test articulated in Hawaii's Thousand Friends v. Anderson, 70 Haw. 276, 283, 768 P.2d 1293, 1299 (1989), that "(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 [by the increase of the burden of taxation], which, in cases of fraud, are presumed. 70 Haw. at 282, 768 P.2d at 1298. He opines that Tax Foundation satisfies both requirements for taxpayer standing in this case. It therefore appears that the Chief Justice considers "taxpayer standing" to be a more relaxed common law standing test than the three-part "injury in fact" test. "Taxpayer standing" clearly does not require a showing of the third prong of the "injury in fact" test – that "a favorable decision would likely provide relief for the plaintiff's injury."

under HRS § 632-1 contravenes prudential considerations of the "proper – and properly limited – role of courts."

To summarize, restricting standing by imposing standing requirements that do not exist in the language of HRS § 632-1, despite the express intent of the legislature, is antithetical to prudential considerations. As stated by the United States Supreme Court, courts "cannot limit a cause of action that [the legislature] has created merely because 'prudence' dictates." Lexmark Int'l, Inc. v. Static Control Components, Inc., 572 U.S. 118, 128 (2014).[36]

We therefore hold that a party has standing to seek declaratory relief in a civil case brought pursuant to HRS § 632-1 (1) where antagonistic claims exist between the parties (a) that indicate imminent and inevitable litigation, or (b) 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.

[36] Our discussion of recent cases in Section IV.C.3.c, indicates that some of our decisions may have had that result.

Our holding is consistent with standing requirements set out by the legislature through the language of the statute. The common law three-part "injury in fact" test is simply inconsistent with HRS Chapter 632. For example, the first prong of the three-part "injury in fact" test for standing requires a showing that "the plaintiff has suffered an actual or threatened injury as a result of the defendant's conduct." This is a greater showing than required by HRS § 632-1(b), which does not require an "actual or threatened injury." The second prong of the three-part "injury in fact" test requires a showing that "the injury is fairly traceable to the defendant's actions," a requirement that also does not exist under the language of HRS § 632-1(b). The third prong of the "injury in fact" test is also more stringent, as it requires a showing that "a favorable decision would likely provide relief for the plaintiff's injury," rather than a showing that a declaratory judgment will serve to terminate the uncertainty or controversy. The third prong also clearly violates the language of HRS § 632-1(a), which provides that declaratory relief may be sought whether or not consequential relief could be claimed.[37]

[37] The Dissent asserts that construing HRS § 632-1 as delineating its own standing requirements "injects unnecessary complexity into a simple doctrine and a straightforward line of case law," and suggests that "stray[ing] from this court's precedent applying the 'injury in fact' test to HRS § 632-1 actions" constitutes a complexity about standing that creates a barrier to justice. The three-part "injury in fact" test for standing is, however, far from "simple" or "straightforward." See, e.g., Juan Olano, Note, The

(continued . . .)

Finally, our holding regarding the requirements for standing under HRS § 632-1 is consistent with the "less stringent requirements for access and participation in the court process" under HRS § 632-1, and recognizes that "[o]ur touchstone remains the 'needs of justice.'" Life of the Land II, 63 Haw. at 176, 623 P.2d at 441 (citation omitted).[38]

e. Tax Foundation Has Standing under HRS § 632-1

Applying the standing requirements delineated above to the facts of this case, we hold that Tax Foundation has HRS § 632-1 standing as: (1) (a) antagonistic claims exist between Tax Foundation and the State with respect to whether HRS § 248-2.6 (1993 & Supp. 2005) requires additional amounts from its rail surcharge payments be paid over to HART; and, under prong (ii),

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(. . . continued)
Struggle to Define Privacy Rights and Liabilities in a Digital World and the Unfortunate Role of Constitutional Standing, 72 U. Miami L. Rev. 1025, 1038-43 (2018) (discussing "Constitutional Standing Requirements and the Confusing Injury-in-fact Jurisprudence"); F. Andrew Hessick, Standing, Injury in Fact, and Private Rights, 93 Cornell L. Rev. 275, 276 (2008) ("Although seemingly simple on its face, this [injury in fact] doctrine has produced an incoherent and confusing law of federal courts." (footnote omitted)).

[38] The Dissent states that "removal" of the "injury in fact" "requirement" "marks a departure from a long history of judicial intervention only in justiciable controversies that are presented in an adversary context." As discussed, however, there is no "long history" of the "injury in fact" requirement for standing in Hawaiʻi courts; the concept was introduced in 1981 in Life of the Land II, and not in the context of HRS § 632-1, but in the context of HRS § 91-7. See Life of the Land II, 63 Haw. at 173, 623 P.2d at 438-49. It was not until the 2001 Mottl case that the "injury in fact" test was applied to HRS § 632-1. The statutory language of HRS § 632-1 has never included an "injury in fact" requirement, so there was no "injury in fact" requirement to remove. In addition, nothing in this opinion removes the requirement of a "justiciable controvers[y] presented in an adversary context."

based on its historical purpose as a governmental financial accountability watchdog, Tax Foundation has a concrete interest in an alleged right to have additional amounts from its rail surcharge payments paid over to HART pursuant to HRS § 248-2.6 (1993 & Supp. 2005), an alleged right challenged or denied by the State, which has or also asserts a concrete interest in the right to keep those additional amounts; and (2) a declaratory judgment will serve to terminate the uncertainty or controversy giving rise to the proceeding. In fact, the uncertainty or controversy is now terminated through the majority opinion on the merits in favor of the State. See Opinions of the Court Parts One and Three.[39]

/s/ Sabrina S. McKenna

/s/ Richard W. Pollack

/s/ Michael D. Wilson

[39] We again stress that we are not addressing "taxpayer standing," as does the Chief Justice's Dissent, but rather Tax Foundation's HRS § 632-1 standing. Based on the existence of HRS § 632-1 standing, it is not necessary to address "traditional standing" or "taxpayer standing."

PART THREE
(By: Recktenwald, C.J., with whom
McKenna, Pollack, and Wilson, JJ., join)

D. The State's Application of HRS § 248-2.6 is Proper

Having determined that Tax Foundation has standing as a taxpayer to bring suit, we now consider the merits of its challenge.[40]

The parties dispute whether the plain language of HRS § 248-2.6 expressly requires the State to retain 10% of the Honolulu County surcharge, as the State contends, or whether the State is required to retain only those costs it actually incurs in its administration of the surcharge, as Tax Foundation contends.

HRS § 248-2.6 provides in relevant part:

> (a) . . . Out of the revenues generated by county surcharges on state tax paid into each respective state treasury special account or the mass transit special fund, the director of finance shall deduct ten per cent of the gross proceeds of a respective county's surcharge on state tax to reimburse the State for the costs of assessment, collection, disposition, and oversight of the county surcharge on state tax incurred by the State. Amounts retained shall be general fund realizations of the State.
>
> (b) The amounts deducted for costs of assessment, collection, disposition, and oversight of county surcharges on state tax shall be withheld from payment to the counties by the State out of the county surcharges on state tax collected for the current calendar year.

[40] We note that the circuit court did not reach the parties' arguments on the merits, having ruled that the cross-motions for summary judgment were moot. However, this court may decide questions of law even when they were not reached by the trial court. Gregg Kendall & Assocs., Inc. v. Kauhi, 53 Haw. 88, 94, 488 P.2d 136, 141 (1971); see also Bush v. Watson, 81 Hawai'i 474, 487, 918 P.2d 1130, 1143 (1996) (holding third-party agreements violated the Hawaiian Homes Commission Act despite trial court not ruling on that issue).

> (c) For the purpose of this section, the costs of assessment, collection, disposition, and oversight of the county surcharges on state tax shall include any and all costs, direct or indirect, that are deemed necessary and proper to effectively administer this section and sections 237-8.6 and 238-2.6.
>
> (d) For a county with a population equal to or less than five hundred thousand that adopts a county surcharge on state tax, after the deduction and withholding of the costs under subsections (a) and (b), the director of finance shall pay the remaining balance on a quarterly basis to the director of finance of each county that has adopted a county surcharge on state tax under section 46-16.8. . . .

HRS § 248-2.6.

It is well-established that:

> [W]here there is no ambiguity in the language of a statute, and the literal application of the language would not produce an absurd or unjust result, clearly inconsistent with the purposes and policies of the statute, there is no room for judicial construction and interpretation, and the statute must be given effect according to its plain and obvious meaning.

State v. Palama, 62 Haw. 159, 161, 612 P.2d 1168, 1170 (1980).

Additionally, "courts are bound, if rational and practicable, to give effect to all parts of a statute, and that no clause, sentence, or word shall be construed as superfluous, void, or insignificant if a construction can be legitimately found which will give force to and preserve all the words of the statute." Camara v. Agsalud, 67 Haw. 212, 215-216, 685 P.2d 794, 797 (1984).

Tax Foundation argues that HRS § 248-2.6 requires the State's initial 10% deduction to be reduced by the costs specified in subsection (c), and that the State must remit the remaining balance back to the City and County of Honolulu.

Whether subsection (c) requires a calculation of actual costs, when viewed in isolation, is ambiguous. However, when viewed in context with the rest of the statute, the scope of subsection (c) becomes clear. Nothing in the remaining portions of HRS § 248-2.6 suggests a requirement to engage in such a calculation and reimbursement. There is no language in the statute that establishes a procedure for remitting the funds in excess of the State's withholding. Beyond stating that "[a]mounts retained shall be general fund realizations of the State[,]" the text of HRS § 248-2.6 does not contemplate any other manner of the disposition of the 10% deduction.

The language of HRS § 248-2.6 expressly requires that the State retain 10% of the surcharge proceeds, and a literal application of the statute's language does not produce an absurd or unjust result. HRS § 248-2.6(a) provides that the State "shall deduct ten per cent . . . to reimburse the State for the costs of assessment . . . ." Subsections (b) and (d) prescribe the timing and payment of the surcharge balance to the counties, and (c) explains the broad range of costs contemplated by the legislature in determining that 10% was an appropriate retention. This construction of HRS § 248-2.6(a) does not render the remaining subsections superfluous, void, or insignificant, as contended by Tax Foundation. Nor is this application of the language clearly inconsistent with the

purpose of reimbursing the State for the costs of assessment, collection, disposition, and oversight of the county surcharge.

The legislative history of Act 247 also supports the interpretation that HRS § 248-2.6 requires the State to retain 10% of surcharge proceeds. Prior to its final amendment in conference committee, the bill that eventually became HRS § 248-2.6(a) contained the following language regarding the State's retention of costs:

> [T]he director of finance shall retain, from time to time, sufficient amounts to reimburse the State for the costs of assessment, collection, and disposition of the county surcharge on state tax incurred by the State . . . .

H.B. 1309, H.D. 2, S.D. 2, 23rd Leg., Reg. Sess. (2005) (emphasis added), available at https://www.capitol.hawaii.gov/session2005/bills/HB1309_SD2_.htm.

The conference committee amended this subsection to its current form, which states:

> [T]he director of finance shall deduct ten per cent of the gross proceeds of a respective county's surcharge on state tax to reimburse the State for the costs of assessment, collection, and disposition of the county surcharge on state tax incurred by the State.

Conf. Comm. Rep. No. 186, in 2005 House Journal, at 1829; 2005 Senate Journal, at 1092; 2005 Haw. Sess. Laws Act 247, § 5 at 773 (emphasis added).

The legislative history therefore reflects the legislature's intent to set the costs at 10% instead of requiring the State to calculate, "from time to time, sufficient

amounts" to reimburse itself for the costs of the surcharge's administration. Accordingly, we conclude that HRS § 248-2.6 requires the State to retain 10% of the surcharge's gross proceeds.

E. HRS § 248-2.6 Survives Constitutional Scrutiny

1. HRS § 248-2.6 Does Not Violate the Equal Protection Clauses of the Hawaiʻi or U.S. Constitutions

Tax Foundation argues that the State's interpretation of HRS § 248-2.6 violates the equal protection clauses of the state and federal constitutions. See Haw. Const. art. I, § 5; U.S. Const. amend. XIV. "[T]he equal protection clauses of the United States and Hawaiʻi Constitutions mandate that all persons similarly situated shall be treated alike[.]" DW Aina Lea Development, LLC v. Bridge Aina Lea, LLC., 134 Hawaiʻi 187, 218, 339 P.3d 685, 716 (2014) (quotation marks and brackets omitted). "Equal protection jurisprudence has typically been concerned with governmental classifications that affect some groups of citizens differently than others." Id. (quotation marks and brackets omitted). It is well-established that "unless fundamental rights or suspect classifications are implicated, we will apply the rational basis standard of review in examining a denial of equal protection claim." KNG Corp. v. Kim, 107 Hawaiʻi 73, 82, 110 P.3d 397, 406 (2005) (quoting Sandy Beach Def. Fund v. City Council, 70 Haw. 361, 380, 773 P.2d 250, 262 (1989))

(emphasis omitted). The rational basis standard of review applies here because Tax Foundation does not allege that either a fundamental right or a suspect classification is implicated.[41]

Under rational basis review, "[t]he test of constitutionality is whether that statute has a rational relation to a legitimate state interest." Maeda v. Amemiya, 60 Haw. 662, 669, 594 P.2d 136, 141 (1979) (citations omitted). The party challenging the constitutionality of a statutory classification has the burden of showing that the classification is not rationally related to its statutory purpose. Sandy Beach Def. Fund, 70 Haw. at 380, 773 P.2d at 262. Furthermore, the rational basis standard "is especially deferential in the context of classifications made by complex tax laws. [I]n structuring internal taxation schemes the States have large leeway in making classifications and drawing lines which in

[41] The parties dispute whether Honolulu taxpayers have been classified by the legislature as a result of HRS § 248-2.6. Tax Foundation argues that Honolulu taxpayers are a "distinctive class" as a result of the State's interpretation of HRS § 248-2.6, because they alone fund State functions available to all Hawaiʻi residents through their contributions to the surcharge, a portion of which is retained by the State. The State asserts that the legislature has made no classification as a result of HRS § 248-2.6 because each county was permitted to levy a surcharge on state tax by passing the required ordinance, and therefore there is "no differential treatment of Honolulu residents even if other counties have not chosen to implement the surcharge." For the purposes of this discussion, we assume that Tax Foundation is correct since Honolulu taxpayers are subject to a different tax burden from those of other counties.

their judgment produce reasonable systems of taxation." Nordlinger v. Hahn, 505 U.S. 1, 11 (1992) (citations omitted).

Applying these principles here, the State's collection of 10% of the surcharge's gross proceeds pursuant to HRS § 248-2.6 is rational. The State's legitimate interest is in reimbursing itself for the costs incurred in its administration of the surcharge. The State's 10% retention of the surcharge's gross proceeds is rationally related to this interest because in 2005, it was uncertain what the potential burden of the surcharge's administration would be, and it was reasonable for the State to estimate administration costs at 10% of the surcharge's gross proceeds. The purpose of the 10% retention under HRS § 248-2.6(a), to reimburse the State for its costs, was served because costs were incurred as a result of administering the surcharge. Beyond this stated purpose, it is also rational for Honolulu taxpayers to bear an increased tax burden to further a state interest in mitigating increased burdens on State services incurred by State agencies due to the implementation of the mass transit rail system, the use and benefit of which the City and County of Honolulu alone receives.

Accordingly, the State's retention of 10% of the surcharge's gross proceeds has a rational relation to the purpose of reimbursing the State for the cost of administering the surcharge. HRS § 248-2.6 therefore does not violate the

protections guaranteed by the equal protection clauses of the Hawaiʻi or United States Constitutions.

2. HRS § 248-2.6 Does Not Violate the General Laws Provision of the Hawaiʻi Constitution

Tax Foundation also argues that the State's application of HRS § 248-2.6 is unconstitutional because it violates the general laws provision of the Hawaiʻi Constitution, found in Article VIII, § 1. That provision states:

> The legislature shall create counties, and may create other political subdivisions within the State, and provide for the government thereof. Each political subdivision shall have and exercise such powers as shall be conferred under general laws.

Haw. Const. art. VIII, § 1.

General laws, as used in Article VIII, § 1, are laws that:

> apply uniformly throughout all political subdivisions of the State. But a law may apply to less than all of the political subdivisions and still be a general law, if it applies uniformly to a class of political subdivisions, which, considering the purpose of the legislation, are distinguished by sufficiently significant characteristics to make them a class by themselves.

Bulgo v. County. of Maui, 50 Haw. 51, 58, 430 P.2d 321, 326 (1967).

Act 247 applies uniformly to all political subdivisions of the state because each county is given the opportunity to adopt the surcharge. See HRS § 46-16.8(a) ("Each county may establish a surcharge on state tax . . . ."). Any county that does so is subject to a withholding by the State of

10% of the gross proceeds of the surcharge as provided in HRS § 248-2.6. The fact that the City and County of Honolulu is the only county that has adopted the surcharge does not change the fact that HRS § 248-2.6 applies uniformly to all Hawaiʻi taxpayers who live in counties that have opted in and adopted the surcharge. Whether the statute requires the State to retain 10% of the surcharge's gross proceeds or retain only its actual costs similarly does not change the fact that each county is treated the same with respect to the disposition of those proceeds. Accordingly, the State's interpretation of HRS § 248-2.6 does not violate the General Laws provision of our constitution.

V. Conclusion

For the foregoing reasons, we vacate the circuit court's order and judgment granting the State's motion to dismiss for lack of subject matter jurisdiction. Because we conclude that the State's application of HRS § 248-2.6 is consistent with the statute's plain language and legislative intent, and that HRS § 248-2.6 does not violate the state or federal constitutions, we remand this case to the circuit court

with instructions to grant the State's motion for summary judgment.

Paul Alston and
Lori King Stibb
for appellant

/s/ Mark E. Recktenwald

/s/ Sabrina S. McKenna

Robert Nakatsuji and
Nathan S.C. Chee
for appellee

/s/ Richard W. Pollack

/s/ Michael D. Wilson

Michael A. Lilly
for amicus curiae