

COPY

Ronald Huber, Appellant

v

Maine Department of Transportation

APPEAL OF SUPERIOR COURT DECISION DOCKET # AP-09-001

Identification of Party. Party is Ronald Huber, 148 Broadway, #105,

Rockland Maine. Party filed an 80C was petition with Maine Superior Court

Judgment or part of Judgment appealed

Appellant appeals the Knox County Superior Court's dismissal in Ronald Huber vs Maine Department of Transportation, Docket # AP-09-001 of his demand for relief.

In particular, his demand that the Court declare that Public Law Chapter 277 *An*

Act Regarding the Management and Use of Sears Island violates the Maine

Constitution's Article 3 Distribution of Powers .

Statement of Issues

In his petition, the Appellant asked at (24) the Superior Court for

"[R]elief from the un-Constitutional exercise of PL 277 which gives the Joint

Committee on Transportation executive powers to approve or disapprove Sears

Island-related land use, ownership or jurisdiction decisions, in violation of the

separation of powers outlined in Sections 1 and 2 of the Maine Constitution's Article III:

Distribution of Powers. PL 277 is also inconsistent with statutory authority given legislative

joint committees in MRSA 3 §165. Joint committees, authority."

At (28) , in his Demand For Relief, Appellant asked the Superior Court:

"...to find Public Law Chapter 277 An Act Regarding the Management and Use of Sears Island

to be an unconstitutional delegation of Executive Branch land use decisionmaking power to

the Maine Legislature's Joint Committee on Transportation, in violation of Sections 1 and 2 of the Maine Constitution's Article III Distribution of Powers..."

In its decision, however, Superior Court has declined to address this question. when considering standing. The court wrote:

In order to establish standing to pursue an appeal from governmental action, a party must demonstrate the infliction of a particularized injury."

The court *cites Collins v State (ME 85)* in support of its standing decision, when it wrote:

"a claim must present "a real and substantial controversy touching on the legal relations of parties with adverse legal interests."

The Appellant holds that the constitutional question on distribution of powers is a real and substantial controversy touching on the legal relations of parties with adverse legal interests."

Appellant is a party with adverse legal interests, with a history of years of protective actions concerning Sears Island in conflict with Maine Department of Transportation, during time which Appellant was granted legal standing by the state of Maine's Board of Environmental Protection to pursue action against MDOT's Sears Island plan in the 1990s. If PL 277 is not found unconstitutional, then the Appellant's ability to defend the island from development is necessarily yet unconstitutionally weakened, as decisions by the executive branch of Maine government relating to Sears Island are subject to being countermanded at any time by whim of the chair of a legislative committee that was inappropriately granted executive authority over Sears Island.

Appellant holds, and the Record shows, that this kind of arbitrary and unconstitutional

countermanding of agency intentions, and then reversal of the countermanding several weeks later, actually took place during interactions between the Committee and the Maine Department of Transportation; ultimately leading to the Executive branch granting the conservation easement.

Regarding standing, in order to establish standing to pursue an appeal from governmental action, a party must demonstrate the infliction of a particularized injury.

The court cites *Collins v State* ME 85 in support of its standing decision, when it wrote:

"a claim must present "a real and l substantial controversy touching on the legal relations of parties with adverse legal interests."

This however is unrelated to this constitutional argument of his petition, which is not rendered moot by the court's decision on Appellants' standing concerning the conservation easement between the state of Maine and the land trust itself.

The Superior Court wrote:

"The plaintiffs purport to challenge the creation of the conservation easement..."
and

"The resulting question is whether they have sustained a legally recognized injury through the governmental creation of the conservation easement affecting the Protected Property and the adoption of a plan for commercial development of the Transportation Parcel. "

While that question does arise from the Appellant's 80C petition, as noted above, *it is not the only question*. The purpose of the complaint in pertinent part is to challenge the constitutionality of Public Law 277, not only the 2008 and 2009 actions taken by the Maine Legislature's Joint Committee on Transportation in 2009 pursuant to that law.

Unless PL 277 is ruled unconstitutional , that legislative committee will likely have further new management proposals for Sears Island brought before it, and continue to act in violation of the distribution of powers in the Maine Constitution.

Relevant Parts of the Record.

* Petition for Review of Agency Action. Paragraphs 24 and 28

* MDOT's Motion to Dismiss . Page 3 Paragraph 1

* Appellants Reply to Motion to dismiss. Pages 1, 2, 3

* Superior Court Decision Pages 1 and 5

Conclusion

For the reasons set forth above Appellant Ronald Huber asks the Honorable Court to declare Public Law 277 unconstitutional.

Ron Huber Petitioner
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Rockland Maine 04841

Ron Huber

418 Maine Street

Rockland ME 04841

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Clerk

Knox County Superior Court

**Attached is my Notice of Appeal oof Superior Court Decision in Ronald Huber V
Maine Dept of Transportation Docket AP-09001**

Sincerely

RonHuber