

April 2015

Shell Gulf of Mexico, Inc. v. Center for Biological Diversity

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Recommended Citation

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***Shell Gulf of Mexico, Inc. v. Center for Biological Diversity*, 771 F.3d 632 (9th Cir. 2014)**

Nicholas R. VandenBos

ABSTRACT

In an attempt to stave off what it saw as impending litigation, Shell Gulf of Mexico, Inc. filed suit under the Declaratory Judgment Act against a range of environmental groups opposed to Shell's oil exploration in the Beaufort and Chukchi seas of Alaska's Arctic Coast. Shell requested a declaratory judgment that its oil spill response plans, as approved by the Bureau of Safety and Environmental Enforcement, did not violate the Administrative Procedures Act. Although noting the novelty of Shell's argument, the United States Court of Appeals for the Ninth Circuit concluded the district court had erred in determining a justiciable case existed between Shell and the environmental groups.

I. INTRODUCTION

The issue before the court in *Shell Gulf of Mexico, Inc. v. Center for Biological Diversity* was whether the parties possessed adverse legal interests under the Administrative Procedures Act ("APA") such that Shell Gulf of Mexico, Inc. ("Shell") was entitled to a declaratory judgment on the sufficiency of two oil spill response plans as approved by the Bureau of Safety and Environmental Enforcement ("Bureau").¹ While noting that Shell did have a substantial practical interest in any litigation the defendant environmental groups might file against the Bureau for its decision to approve Shell's oil spill containment plans, the Ninth Circuit held that practical interest alone was not enough.² Instead, under the Declaratory Judgment Act ("Act"), opposing parties in an action for declaratory judgment must possess adverse interests as evaluated through the law under which the declaratory judgment suit is filed.³

II. FACTUAL AND PROCEDURAL BACKGROUND

The Beaufort and Chukchi seas of Alaska's Arctic Coast hold the potential to provide significant oil and gas reserves.⁴ Shell

¹ *Shell Gulf of Mexico, Inc. v. Center for Biological Diversity*, 771 F.3d 632, 634 (9th Cir. 2014).

² *Id.* at 636.

³ *Id.*

⁴ *Id.* at 633-634.

has heavily invested in exploration and development of those resources.⁵ In addition to their energy potential, the Beaufort and Chukchi also host a healthy ecosystem supporting significant populations of wildlife.⁶ As a result, “[m]any environmental organizations and citizen activists, including the defendants in this case, vehemently oppose Shell’s Arctic oil and gas exploration activities.”⁷ Further, such organizations frequently litigate in an effort to prevent Arctic oil and gas exploration, and some have “stated their intentions to continue resisting Shell’s plans in court.”⁸

Shortly after obtaining approval from the Bureau of two oil spill response plans, as required by the Oil Pollution Act, Shell filed suit against the Center for Biological Diversity and others (“Defendants”) “seeking a declaration that the Bureau’s approval did not violate the APA.”⁹ Shell “alleged that the environmental groups were engaged in an ongoing campaign to prevent Shell from drilling for oil in the Arctic, and that some of the environmental groups had threatened to bring litigation challenging the Bureau’s approval of the oil spill response plans.”¹⁰ According to Shell, based on past opposition to Shell’s activities, and public criticism, it was “virtually certain” that the Defendants would file suit to challenge Bureau approval.¹¹

In their motion to dismiss, Defendants argued Shell’s lawsuit failed to satisfy the Article III case or controversy requirement.¹² The district court denied the motion.¹³ Some of the defendants subsequently filed suit against the Bureau, challenging its approval of the oil spill response plans.¹⁴ That case, *Alaska Wilderness League v. Jewell*, No. 13 35866 (9th Cir. filed Sept. 17, 2013) was consolidated with the instant case, and the district court entered summary judgment for Shell.¹⁵

⁵ *Id.*

⁶ *Id.*

⁷ *Id.* at 634.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

III. ANALYSIS

The Oil Pollution Act requires companies to file oil spill response plans before “handling, storing, or transporting oil.”¹⁶ Only after receiving approval from the Bureau of Safety and Environmental Enforcement may companies proceed with oil operations.¹⁷

Under the Declaratory Judgment Act, “any court of the United States ... may declare the rights and other legal relations of any interested party seeking such declaration.”¹⁸ However, the Act “does not create new substantive rights.”¹⁹ Instead, it “merely expands the remedies available in federal courts.”²⁰ A purpose of the Act is to give potential defendants a chance to determine whether they have “any legal obligations to their potential adversaries.”²¹ As such, the Act provides a “procedural mechanism for removing the threat of impending litigation,” but does not broaden federal court jurisdiction.²²

Thus, declaratory judgments in federal courts are restricted to “controversies which are such in the constitutional sense.”²³ To meet this standard, a declaratory judgment must present facts showing “there is a substantial controversy, between parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.”²⁴

The Ninth Circuit applied this reasoning to Shell’s claims to find that it and the Defendants did not have adverse legal interests. Although Shell argued its case was justiciable in part because the parties were “mired in a substantial, real, and immediate controversy over the lawfulness of its Arctic oil and gas explorations,” the court held Shell and the environmental groups lacked the “adverse legal interests” required for federal courts to possess subject matter jurisdiction.²⁵ For this reason, the court found it unnecessary to address whether Shell presented sufficient

¹⁶ *Id.* citing 33 U.S.C. § 1321(j) (2012).

¹⁷ *Id.*

¹⁸ 28 U.S.C. § 2201(a) (2012).

¹⁹ *Shell Gulf of Mexico*, 771 F.3d at 635.

²⁰ *Id.* citing *Countrywide Home Loans, Inc. v. Mortgage Guar. Ins. Corp.*, 642 F.3d 849, 853 (9th Cir. 2011).

²¹ *Id.* citing *Seattle Audubon Society v. Mosely*, 80 F.3d 1401, 1405 (9th Cir. 1996).

²² *Id.* citing *Skelly Oil co. v. Phillips Petroleum Co.*, 339 U.S. 667, 671 (1950).

²³ *Id.* citing *Aetna Life Ins. Co. of Hartford, Conn. v. Haworth*, 300 U.S. 227, 240 (1937).

²⁴ *Id.* citing *Md. Cas. Co. v. Pac. Coal & Oil Co.*, 312 U.S. 270, 273 (1941).

²⁵ *Id.* at 636.

evidence that a “substantial controversy” existed between the parties²⁶

To assert an adverse legal interest, “a party bringing a declaratory judgment action must have been a proper party had the defendant brought suit on the underlying cause of action.”²⁷ To evaluate “the adverse legal interests arising from the law underlying the request for declaratory relief, courts examine both the persons who can assert rights under that law and those who have obligations under it.”²⁸ The court identified the APA as the law underlying Shell’s claim, and noted that actions under the APA “may be brought only against federal agencies.”²⁹ Further, the court noted that claims under the APA cannot be brought against private parties.³⁰ Therefore, the court concluded, Shell and the environmental groups did not possess adverse interests. Instead, the “only entities with adverse legal interests [were] the Bureau and the environmental groups.”³¹

Holding otherwise, the court noted, would have two noteworthy, and unusual, effects.³² The first would “allow the district court to declare the Bureau’s actions unlawful under the APA in a judgment that is not binding on the Bureau itself,” because the Bureau would not have participated in the lawsuit³³ Second, by allowing the lawsuit to proceed, and assuming the Bureau did not intervene, the court would allow “the lawfulness of agency action to be adjudicated without hearing the agency’s own justification for its actions.”³⁴ The court reversed and remanded for further proceedings consistent with its opinion.³⁵

IV. CONCLUSION

Presented with a legal strategy designed to pre-empt likely future lawsuits and allow for streamlined resource extraction, the Ninth Circuit concluded that, though Shell’s practical and economic interest in potential litigation might be substantial, such

²⁶ *Id.*

²⁷ *Id.* citing *Collin County, Texas v. Homeowner’s Ass’n for Values Essential to Neighborhoods*, 915 F.2d 167, 171 (5th Cir. 1990).

²⁸ *Id.*

²⁹ *Id.* citing *City of Rohnert Park v. Harris*, 601 F.2d 1040, 1048 (9th Cir. 1979).

³⁰ *Id.* citing *W. State University of S. California v. American Bar Ass’n*, 301 F. Supp. 2d 1129, 1133 (C.D. Cal. 2004).

³¹ *Id.*

³² *Id.* at 637.

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.* at 638.

concerns did not of themselves create a justiciable controversy. Rather, because no adverse legal interests existed between Shell and the environmental groups it sued, Shell's claim was not justiciable, and declaratory judgment was therefore not appropriate. Instead of nipping a challenge in the bud, Shell would need to await the outcome of any Administrative Procedures Act litigation between environmental groups and the Bureau of Safety and Environmental Enforcement concerning Shell's oil spill response plans.