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Judges hear case on alleged Clean Water Act violation of St. Simons wetlands

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A panel of judges in the U.S. Court of Appeals for the Eleventh Circuit heard oral arguments Friday in a case regarding alleged illegal filling of wetlands at the Inn at Sea Island on St. Simons Island.

The hearing, held via Zoom, is the latest installment in a years-long effort led by Glynn Environmental Coalition, the Center for a Sustainable Coast and local resident Jane Fraser on their claim that Sea Island violated the Clean Water Act.

John Brunini of the Butler Snow law firm, representing GEC, the Center for a Sustainable Coast and Fraser in the oral argument, argued that a previous dismissal of the case should be overturned.



James Durham argued on behalf of Sea Island in support of the case's previous dismissal.

The arguments centered on whether citizens of Glynn County have constitutional standing to challenge alleged illegal fills of wetlands on St. Simons Island by a Sea Island Co.-related entity.

The litigation process began in 2019 when GEC and the center filed an intent to file a lawsuit. Receiving no response from Sea Island, the two filed a lawsuit in April 2019 in the U.S. District Court for the Southern District of Georgia claiming Sea Island was in violation of the Clean Water Act when it filled wetlands and sodded over an area, which they claim has also affected the Dunbar Creek and Twitty Park areas.

Sea Island had requested a permit to fill wetlands near the Shops of Sea Island, located off the Sea Island Causeway on St. Simons, as part of a larger development project in that area.

The lawsuit claimed that the manner in which the wetlands were filled was in violation based on the initial plans submitted to the U.S. Army Corps of Engineers. They claim Sea Island's permit application falsely included construction of a commercial structure that was never built.

The area where the wetlands were is now a portion of landscaping. Sodding is not a permitted activity under the permitting program, according to the plaintiffs.

A number of court filings took place from 2019 to 2021. The local court dismissed the case due to what it said was a lack of standing from the plaintiffs, and that decision was appealed.

The 11th District Court of Appeals agreed in October 2021 to hear oral arguments.

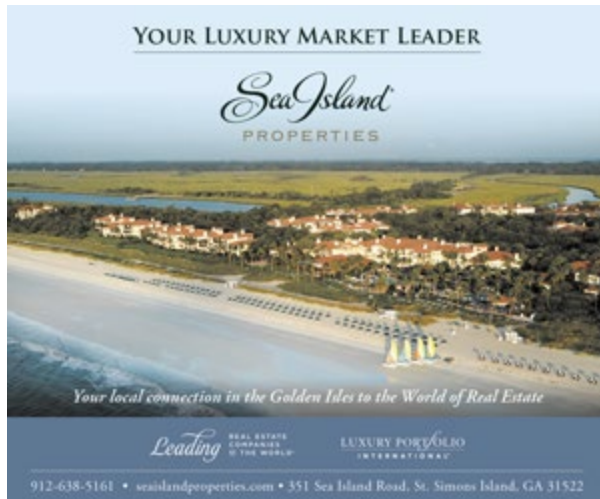
Plaintiffs said they were encouraged by the opportunity.

Appeals in the 11th Circuit only succeed at reversing the lower court less than about 10% of the time, said Rachael Thompson, executive director of GEC.

The U.S. Court of Appeals for the Eleventh Circuit covers cases in Georgia, Alabama, and Florida.

On the panel Friday were Chief Judge William H. Pryor Jr., Judge Adalberto Jordan and Judge Michael L. Brown.

“I think this case is a fairly simple case,” Pryor said at the start of the hearing. “I’ll tell you, I’m very sympathetic to your argument in one respect that I think makes this case easy ... The Supreme Court has told us that an aesthetic injury is an injury for standing purposes so long as the individual uses the affected area and is a person for whom the aesthetic value of the area will be lessened by the challenged activity.”



An individual can meet that burden, he said, by establishing at the pleading stage that he or she uses an area affected by the alleged violations and that her aesthetic interests in the area have been harmed.

An affidavit submitted by Fraser seems to cover that, he said.

Precedent has made clear that a plaintiff must show an injury that is concrete and particularized and actual or imminent, Durham said.

“And when we talk about concrete and particularized, it has to be to the individual and that an actual harm has been suffered,” he said.

The three judges indicated that Fraser’s affidavit fulfilled this.

“She says in paragraph seven, on page two, that before the fill that she had derived aesthetic pleasure from this wetland, which she described as a pleasing natural resource and from other similar wetland habitats in this county by viewing the area in its natural habitat,” Pryer said.

Fraser also stated that the wetland had been replaced by sod areas and as a result is less aesthetically pleasing, Pryer added.

Fraser has lived in the area for 25 years and visited it for 25 years prior, Brunini said, and purchased property based on the coast's "aesthetic interests."

Of additional interest, Jordan said, is that Fraser owns property and lives near the area under discussion.

"It's not as if she is a person, at least from the pleadings, who is visiting the area once a year or something like that or once every two or three years as a recreational tourist or something," he said. "She is an inhabitant of the area."

In a press release following the hearing, GEC indicated their arguments had been well received.

"Our joint appeal emphasizes that we are strong advocates for environmental organizations having the standing to pursue enforcement regarding ongoing violations of the Clean Water Act on behalf of our members, local citizens who live adjacent to, enjoy and recreate in our wetlands," Thompson said.

GEC's main objectives, she said, are correcting the violation by restoring the wetlands, raising public awareness about illegal development activities that threaten St. Simons' character and discouraging developers from cutting corners.

"Coastal Georgia residents adamantly oppose attempts to illegally sod, develop and destroy their marshes and wetlands," said Karen Graine, co-director of the Center for a Sustainable Coast. "The ongoing appeal aims to assure organizations like the Center for a Sustainable Coast and the Glynn Environmental Coalition have standing to take action when violations of the Clean Water Act are identified."

Sea Island Co. did not respond to requests for comment.

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