SUPREME COURT OF THE UNITED STATES

No. 02–196

NATIONAL PARK HOSPITALITY ASSOCIATION, PETITIONER *v.* DEPARTMENT OF THE INTERIOR ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

[May 27, 2003]

JUSTICE STEVENS, concurring in the judgment.

Petitioner seeks this Court's resolution of the straightforward legal question whether the Contract Disputes Act of 1978 (CDA), 41 U. S. C. §601 *et seq.*, applies to concession contracts with the National Park Service. Though this question is one that would otherwise be appropriate for this Court to decide, in my view petitioner has not satisfied the threshold requirement of alleging sufficient injury to invoke federal-court jurisdiction. If such allegations of injury were present, however, this case would not raise any of the concerns that the ripeness doctrine was designed to avoid.

I

The CDA provides certain significant protections for private parties contracting with federal agencies. It authorizes *de novo* review of a contractor's disputed decision, payment of prejudgment interest if a dispute with the agency is resolved in the contractor's favor, and expedited procedures for resolving minor disputes. §§ 607–612. The value to contractors of these protections have not been quantified in this case, but they are unquestionably significant.

Ever since the enactment of the CDA in 1978, the National Park Service has insisted that the statute does not apply to contracts with concessionaires who operate restaurants, lodges, and gift shops in the national parks. See, *e.g.*, Lodging of Federal Respondents 1. In its view, the statute applies to Government contracts involving the procurement of goods or services that the Government agrees to pay for, not to licenses issued by the Government to concessionaires who sell goods and services to the public. After the enactment of the National Parks Omnibus Management Act of 1998, 16 U. S. C. §§5951–5966, the Park Service issued a regulation restating that position. 36 CFR §51.3 (2002). There is nothing tentative or inconclusive about the agency's position. The promulgation of the regulation indicated that the agency had determined that a clear statement of its interpretation of the CDA would be useful to potential concessionaires bidding for future contracts. Under the Park Service's view, nearly 600 concession contracts in 131 national parks fall outside of the CDA. Lodging of Federal Respondents 6.

Petitioner is a trade association whose members are parties to such contracts and periodically enter into negotiations for future contracts. They are undisputedly interested in knowing whether disputes that are sure to arise under some of those contracts will be resolved pursuant to the CDA procedures or the less favorable procedures that will apply if the Park Service regulation is valid.

II

In our leading case discussing the "ripeness doctrine" we explained that the question whether a controversy is "ripe" for judicial resolution has a "twofold aspect, requiring us to evaluate both the fitness of the issues for judicial decision and the hardship to the parties of withholding court consideration." *Abbott Laboratories* v. *Gardner,* 387

U. S. 136, 148–149 (1967). Both aspects of the inquiry involve the exercise of judgment, rather than the application of a black-letter rule.

The first aspect is the more important and it is satisfied in this case. The CDA applies to any express or implied contract for the procurement of property, services, or construction. 41 U. S. C. §602(a). In the view of the Park Service, a procurement contract is one that obligates the Government to pay for goods and services that it receives, whereas concession contracts authorize third parties to provide services to park area visitors. Petitioner, on the other hand, argues that the contracts provide for the performance of services that discharge a public duty even though the Government does not pay the concessionaires. Whichever view may better reflect the intent of the Congress that enacted the CDA, it is perfectly clear that this question of statutory interpretation is as "fit" for judicial decision today as it will ever be. Even if there may be a few marginal cases in which the applicability of the CDA may depend on unique facts, the regulation's blanket exclusion of concession contracts is either a correct or an incorrect interpretation of the statute. The issue has been fully briefed and argued and, in my judgment, is ripe for decision.

The second aspect of the ripeness inquiry is less clear and less important. If there were reason to believe that further development of the facts would clarify the legal question, or that the agency's view was tentative or apt to be modified, only a strong showing of hardship to the parties would justify a prompt decision. In this case, it is probably correct that the hardship associated with a delayed decision is minimal. On the other hand, as the Park Service's decision to promulgate the regulation demonstrates, eliminating the present uncertainty about the applicable dispute resolution procedures will provide a benefit for all interested parties. If petitioner had alleged

sufficient injury arising from the Park Service's position, I would favor the exercise of our discretion to consider the case ripe for decision. Because such an allegation of injury is absent, however, petitioner does not have standing to have this claim adjudicated.

III

To establish an Article III case or controversy, a litigant must establish that he has "standing." *Whitmore* v. *Arkansas,* 495 U. S. 149, 155 (1990). To have standing, a "plaintiff must allege personal injury fairly traceable to the defendant's allegedly unlawful conduct and likely to be redressed by the requested relief." *Allen* v. *Wright,* 468 U. S. 737, 751 (1984). This requirement specifically applies to parties challenging the validity of administrative regulations. See *Sierra Club* v. *Morton,* 405 U. S. 727, 735 (1972).

In the complaint filed in the District Court, petitioner alleged that the resolution of the merits of its dispute over the validity of the Park Service regulation was important, but it failed to allege that the existence of the regulation had caused any injury to it or to its members:

> "The applicability of the CDA to concession contracts is important to concessioners because NPS concession contracts are of lengthy duration, often require significant upfront financial commitments, and by their terms provide the agency with broad unilateral discretion to alter many aspects of those contracts over time. The unlawful decision by the NPS to exempt itself from the CDA is thus of great importance to the contract solicitation process." App. 22.

At oral argument, counsel reiterated that the resolution of this question was "important" and that concessionaires "need to know now, in terms of deciding whether to bid on certain contracts, what their rights are under those contracts." Tr. of Oral Arg. 7–8. After argument, when asked

to brief the issue of ripeness, petitioner stated that its members "need to know *before* a dispute arises—and in fact, *before* deciding whether to bid on a concessions contract—what procedural mechanisms will apply to contractual disputes," and that "the prices at which concessioners 'compete for Government contract business' would be directly affected." Supplemental Brief for Petitioner 1, 5 (citations omitted). It is fair to infer from the record before us, however, that petitioner's members have bid on, and been awarded, numerous contracts without having the benefit of a definitive answer to the important legal question that their complaint has identified.

Neither in its complaint in the District Court, nor in its briefing or argument before this Court, has petitioner identified a specific incident in which the Park Service's regulation caused a concessionaire to refuse to bid on a contract, to modify its bid, or to suffer any other specific injury. Rather, petitioner has focused entirely on the importance of knowing whether the Park Service's position is valid. While it is no doubt important for petitioner and its members to know as much as possible about the future of their business transactions, importance does not necessarily establish injury. Though some of petitioner's members may well have suffered some sort of injury from the Park Service's regulation, neither the allegations of the complaint nor the evidence in the record identifies any specific injury that would be redressed by a favorable decision on the merits of the case. Accordingly, petitioner has no standing to pursue its claim.

For this reason, I concur in the Court's judgment.