

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
THIRD JUDICIAL DISTRICT AT ANCHORAGE

MICHELLE STONE BITTNER, )  
)  
Plaintiff, )  
)  
v. )  
)  
STATE OF ALASKA, BOARD OF, )  
GAME AND COMMISSIONER, )  
DEPARTMENT OF FISH AND GAME,) )  
)  
Defendants. )  
\_\_\_\_\_)

**ORDER GRANTING MOTION  
TO DISMISS AND DENYING  
MOTION TO AMEND**

Case No. 3AN-23-07487 CI

**1. Motion to Dismiss**

Having considered defendants' September 22, 2023 Motion to Dismiss First Amended Complaint, as well as the Opposition and Reply briefs, IT IS HEREBY ORDERED that the motion is GRANTED pursuant to Civil Rule 12(b)(6). For the reasons expressed by defendants, the complaint fails to state a claim for relief. The court agrees with defendants' argument that plaintiff lacks standing. There is no claim of citizen-taxpayer standing and plaintiff's individual circumstances do not create interest-injury standing. Neither the First Amended Complaint nor the Second Amended Complaint allege she has suffered any actual injury as a result of the State's predator control program. Furthermore, Bittner is not an "interested person" within the meaning of AS 44.62.300 and, therefore not entitled to challenge the validity of 5 AAC 92.111(c).

Although the Alaska Supreme Court set a low bar in *Kanuk v. State*, 335 P.3d 1088, 1092 (Alaska 2014), in which plaintiffs complained the state was failing to adequately address climate change, the court still required individual plaintiffs allege injuries that were both specific and personal. The harms they alleged included local flooding, erosion, tree kill and forest fires. Bittner makes no similar claims. Nor does Bittner purport to be either a hunter, guide, photographer or a subsistence user affected directly or indirectly by the State's predator

control program. Even as a mere viewer of wildlife, she does not allege any travel experience in the area that is the subject of her complaint.


Bittner asks the court to take notice of her proposed Second Amended Complaint. There she pleads that she was “personally devastated” by the deaths of bears and wolves pursuant to the state’s program. (Parag. 13) The court is unaware of any legal authority supporting the proposition that being emotionally triggered by government action constitutes a sufficient “injury” to establish standing. If that were true, then anyone with a strong emotional reaction to the predator control program would have standing to bring suit against the state regardless of where they live or any actual connection to Alaska. No doubt all of the plaintiffs in the *Kanuk* were very upset with the state’s alleged inaction on climate change, but nowhere does the opinion suggest that their emotional reaction alone was sufficient to create standing. Bittner’s Second Amended Complaint, therefore, also fails to establish interest-injury standing.

With respect to the State’s argument that Bittner is not an “interested person” who is statutorily qualified to bring this action, the court adopts the State’s argument in its entirety.

**2. Motion for Leave to Amend**

Having considered plaintiff’s September 25, 2023 Motion for Leave to Amend Paragraph 13 of First Amended Complaint, as well as the Opposition and Reply briefs, IT IS HEREBY ORDERED that the motion is DENIED. In light of the court’s determination that even the proposed Second Amended Complaint fails to allege interest-injury standing, the proposed amendment would be futile.

**ORDERED** this 31<sup>st</sup> day of October, 2023, at Anchorage, Alaska.

  
\_\_\_\_\_  
ANDREW GUIDI  
Superior Court Judge

I certify that on 10/31/23  
a copy of the above was mailed/emailed to  
each of the following at their  
addresses of record: Bittner/Peterson/Brooking  
C. Phelps, Law Clerk  
Judicial Assistant

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GAME AND COMMISSIONER, )  
DEPARTMENT OF FISH AND )  
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Defendants. )

✓ ~~Proposed~~ **Order Granting Motion to Strike**

The Court, having reviewed the pleadings filed in this matter, hereby grants the State's Motion to Strike Plaintiff's Motion for Declaratory Judgments.

IT IS ORDERED that the Motion for Declaratory Judgments is stricken.

DATED October 31, 2023, at Anchorage, Alaska.

Andrew Guidi  
The Honorable Andrew Guidi  
Superior Court Judge

I certify that on 10/31/23 a copy of the following was mailed/ faxed/ hand-delivered to each of the following at their addresses of record. Bittner / Peterson / Brooking  
C. Phelps, Law Clerk  
Administrative Assistant

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~~Proposed~~ <sup>Re</sup> Order ~~Granting~~ Motion to Suspend

IT IS ORDERED that the State's Motion to Suspend is ~~Granted~~ <sup>Denied as moot</sup>. At such time other outstanding motions are resolved, <sup>in light of the court's decision granting the motion to strike</sup> the court will determine if or when a State response to ~~the motion for declaratory judgment.~~ <sup>The motion for declaratory judgment.</sup> Bittner's Motion for Declaratory Judgments may be required.

DATED October 31, 2023, at Anchorage, Alaska.

Andrew Guidi  
The Honorable Andrew Guidi  
Superior Court Judge

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C. Phelps Law Clerk  
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