

Brent R. Cole, Esq.
Law Office of Brent R. Cole, P.C.
821 N Street, Suite 208
Anchorage, AK 99501
(907) 277-8001
staff@akcolelaw.com
brent@akcolelaw.com

*Attorneys for Safari Club International,
Safari Club International Alaska Chapter, and
Alaska Outdoor Council*

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

ROBERT CASSELL,)	
)	
Plaintiff,)	
)	
v.)	
)	
STATE OF ALASKA, BOARD OF)	
GAME,)	
)	
Defendant.)	Case No.: 3AN-19-07460CI

**THE HUNTING COALITION'S AMICUS BRIEF
IN SUPPORT OF DEFENDANT'S OPPOSITION
AND CROSS-MOTION FOR SUMMARY JUDGMENT**

I. INTRODUCTION

Safari Club International ("SCI"), Safari Club International Alaska Chapter ("SCI Alaska"), and Alaska Outdoor Council ("AOC" and, together with SCI and SCI Alaska, the "Hunting Coalition") respectfully submit this amicus brief in support of Defendant State of Alaska, Board of Game's Opposition to Plaintiff's Motion for Summary Judgment and

The Hunting Coalition represents the views of two unique constituencies: resident hunters who disagree with the Plaintiff's position and recognize the important role that non-residents play in conservation in Alaska; and non-resident hunters who wish to continue to enjoy brown bear hunting on Kodiak Island and who seek to demonstrate that non-residents stand with Alaska residents—not against them. The Hunting Coalition submits this brief to assist the Court in understanding the contributions of non-residents to conservation in Alaska and how these contributions factor into the Constitutional analysis at issue. This brief also clarifies several statements by Plaintiff in his brief.

II. INTERESTS OF THE AMICI

The Hunting Coalition are nonprofit organizations representing thousands of Alaska residents and non-residents with strong interests in the conservation of wildlife, protection of habitat, and preservation of high-quality hunting opportunities in Alaska:

Safari Club International is a 501(c)(4) nonprofit organization with approximately 45,000 members worldwide. SCI has approximately 1,000 members and two chapters in the State, including SCI Alaska. Many SCI members live and hunt in Alaska; many non-resident members visit Alaska to enjoy its beautiful habitat, abundant wildlife, and unique hunting opportunities. SCI members, both residents and non-residents, participate in the hunting of Kodiak brown bears. Non-resident members will lose almost all of that hunting opportunity if Plaintiff succeeds in this case and only 10% of Kodiak brown bear tags are available for non-residents (and residents alike).

SCI regularly appears in court to defend Alaskan interests, including the State's interest in sustainably managing its wildlife resources. At present, SCI is involved in two

such cases: one in federal court in the District of Alaska¹ and one on appeal from a decision of that court to the Ninth Circuit.² SCI also filed three amicus briefs in the U.S. Supreme Court in support of Alaska resident John Sturgeon's challenge to an invalid National Park Service rule.

The *Alaska Chapter of Safari Club International* was incorporated in 1977. It is a leading Chapter within SCI and a leader in Alaska's hunting community, particularly in its four mission areas: Advocacy, Conservation, Education, and Humanitarian Services.

SCI Alaska, and its individual members, regularly participate in the Board of Game citizen proposal process. Specifically, SCI Alaska and its individual members participated in the process in which the Board considered Plaintiff's proposal to change the allocation of resident and non-resident tags for Kodiak brown bears. SCI Alaska and its individual members provided comments and testimony in opposition to this proposal. SCI Alaska is a member of AOC.

Alaska Outdoor Council represents over 10,000 Alaskans, including individual members and 48 clubs whose members hunt, fish, recreate, and otherwise enjoy Alaska's public lands. AOC was formed in 1955 when the three largest sportsmen's clubs joined together, recognizing that their unified voice was—and is—more powerful than that of a single club standing alone. AOC's members range from hunters and anglers to campers, pilots, ATV riders, photographers, and many others.

¹ *Alaska Wildlife Alliance v. Haaland*, No. 3:20-CV-209 (D. Alaska).

² *SCI & State of Alaska v. Haaland*, No. 21-35030 (9th Cir.), consolidated with *State of Alaska & SCI v. Haaland*, No. 21-35035.

AOC's goals and commitments include participation in legislative, regulatory, administrative, and judicial policy-making decisions affecting Alaska's natural resources and their uses. Accordingly, AOC regularly participates in the Board's citizen proposal process. AOC and its individual members provided comments and testimony in opposition to Plaintiff's proposal.

III. ARGUMENT

A. The Court should reject Plaintiff's interpretation of the Alaska Constitution, which seeks to impose a requirement for the benefit of resident hunters—not the benefit of Alaska's citizens overall.

Plaintiff asks this Court to interpret Article VIII of the Alaska Constitution in an entirely novel way—for the benefit of resident hunters alone, instead of for the benefit of Alaskans. In so doing, Plaintiff seeks to dictate the "public interest" identified in Article VIII. But it is not Plaintiff's role, nor this Court's, to determine the public interest. The Constitution grants this authority to the *legislature*. Plaintiff's interpretation is inconsistent with the Constitution and the public trust doctrine.

Under Article VIII, section 1, it is "the policy of the State to encourage the settlement of its land and the development of its resources by making them available for maximum use consistent with the public interest."³ Plaintiff admits that this section, with sections 2 and 3, "codify the 'public trust doctrine' in Alaska, which 'imposes on the State a trust duty to manage the fish, wildlife and water resources of the state for the benefit of the people.'"⁴

³ Alaska Const., art. VIII, § 1.

⁴ Pl. Mot. for Summ. J. at 21 (citing Alaska Const., art. VIII, §§ 1-3).

Plaintiff also admits that “‘the people’ in this context mean[s] *Alaskans*.”⁵ Yet, Plaintiff’s interpretation of these constitutional provisions would not benefit Alaskans on the whole. Instead, it would create a super-priority for resident hunters and mandate that wildlife be managed for their maximum benefit alone. This super-priority would arise at the expense of the Alaskan public, who benefits from the conservation and economic contributions of non-residents including through low hunting license and tag fees;⁶ it would also arise at the expense of Alaskans who utilize wildlife resources as professional hunters and guides.⁷ The cases cited by Plaintiff do not support this interpretation; rather, they hold that wildlife is a public-trust resource and should be managed by the State as a trustee for the benefit of the state’s citizens—but they do *not* require the selection of any particular group of citizens as most favored.⁸

In addition, Plaintiff’s interpretation of these provisions would improperly transfer responsibility for determining “the maximum benefit of the people” to Plaintiff, and to this

⁵ Pl. Mot. for Summ. J. at 21.

⁶ The legislature has, for years, made big game hunting permits available for competitive auction or raffle to raise money for fish and game law enforcement, transplanting game, management, and education, among other purposes. AS 16.05.343. This statute does not limit the sale of the permits to residents in any way, or prohibit the sale of permits to non-resident hunters.

⁷ Plaintiff’s reading of the Alaska Constitution glosses over the fact that guided hunting pre-dated the Constitution, and its drafters did not and would not ignore this foundational industry, or carve its members out from the use of wildlife resources.

⁸ For example, in *Shepherd v. State Department of Fish and Game*, the Alaska Supreme Court held that: “[a]s the trustee of [fish and wildlife] resources for the people of the state, the state is required to maximize for state residents the benefits of state resources.” 897 P.2d 33, 40 (Alaska 1995). The court did not require the state to maximize the benefit for one set of residents over others or preclude the state from allocating some hunting opportunity to non-residents. *See id.* at 41 (noting the state “may” prefer state residents to non-residents).

Court. That reading is unsupported. Article VIII, section 2 unambiguously empowers the *legislature* with this authority.⁹ And, as discussed below, the legislature has delegated the authority to regulate hunting of wildlife to the Board of Game; in exercising its delegated authority, the Board has considered the whole picture instead of narrowly focusing on the interests of resident hunters alone. That picture reveals that non-resident hunters contribute *significantly* to the conservation, development, and use of wildlife in Alaska. For all these reasons, the Hunting Coalition respectfully requests this Court reject Plaintiff's erroneous interpretation of the Alaska Constitution.

B. Non-resident hunting contributes essential conservation benefits for Alaska's wildlife and the public interest.

Non-resident hunting plays an important role in wildlife conservation and management in Alaska and in securing hunting opportunities for resident Alaskans. The legislature and the Board correctly considered these important contributions in finding the allocation of resident and non-resident tags is consistent with managing Kodiak Island bears for the maximum benefit of *all* Alaskans.

First, non-resident fees comprise over 70% of conservation funding in Alaska.¹⁰ As one example, in 2019 residents paid \$2,844,685 for hunting licenses and tags; non-residents

⁹ Alaska Const., art. VIII, § 2 (charging the legislature to "provide for the utilization, development, and conservation of all natural resources belonging to the State ... for the maximum benefit of its people"); *see also Sullivan v. REDOIL*, 311 P.3d 625, 635 (Alaska 2013) (cited by Plaintiff at n.64) ("It is not the court's place to provide instruction on how the State should determine what action would be for the maximum benefit of the Alaskan people.").

¹⁰ State of Alaska Opp. & Cross-Mot. for Summ. J., Ex. E.

spent \$9,816,884.¹¹ Non-resident licenses and tags generated over three times the revenue, despite representing only 12% of license sales compared to residents (88%).¹² When those funds are matched by federal Pittman-Robertson revenues (3:1), non-resident fees make a huge impact—over \$35 million. Further, Pittman-Robertson funds are allocated based on the sale of hunting equipment and firearms *across the United States*.¹³ Non-residents who may never even set foot in Alaska thus help pay for the conservation of Alaska’s wildlife. These monies are used for wildlife management, habitat improvement, research, and other programs administered by the Department of Fish and Game (“Department”).¹⁴

Without this conservation funding from non-resident hunters, the State would have only two options: to significantly reduce its conservation and management programs, or to drastically increase license fees for resident hunters like Plaintiff. Rather than either unpalatable option, the Board’s decision to reject Plaintiff’s proposal and maintain the status quo for resident and non-resident tag allocations is well-supported.¹⁵

¹¹ See attached Ex. A, based on Alaska Department of Fish and Game data.

¹² State of Alaska Opp. & Cross-Mot. for Summ. J., Ex. D.

¹³ See, e.g., U.S. Fish and Wildlife Service, Federal Aid in Wildlife Restoration Act, available at <https://www.fws.gov/laws/lawsdigest/FAWILD>; State of Alaska Opp. & Cross-Mot. for Summ. J., Ex. C.

¹⁴ *Id.*; see, e.g., Department Budget 2017-2019 (showing allocation of Pittman-Robertson funds), available at <https://www.adfg.alaska.gov/index.cfm?adfg=divisions.wcbudgetcorefunding171819>.

¹⁵ It is also consistent with the allocation of resident and non-resident tags in many other states. Plaintiff asserts that allocating over 90% of tags to residents is “in line with the resident allocation percentages adopted by many other states,” Pl. Mot. for Summ. J at 15, but that assertion grossly over-simplifies the situation. In a state like New Mexico, “a minimum of 84 percent of hunting permits go to residents” *only for allocation of public land quotas*. On private land—comprising 50% of the state—the allocation of permits is equal opportunity for residents and non-residents.

Second, the participation of non-resident hunters, and the fact they typically have a better harvest success rate than residents, helps to advance the Department's management objectives. In his brief, Plaintiff falsely asserts that "all big game is scarce."¹⁶ In fact, both ungulate and predator populations are over-populated in parts of Alaska, including in areas where non-resident hunting is encouraged because the resident harvest is insufficient for management purposes. The participation of non-resident hunters is particularly significant in areas where overly-abundant wildlife can detrimentally impact fragile arctic habitat.¹⁷

Last, higher non-resident license and tag payments help keep license fees affordable for resident hunters.¹⁸ A few examples illustrate the disparity between resident and non-resident costs:

Species Tag	Resident Cost	Non-Resident Cost
Brown/grizzly bear	\$0 in some areas, \$25 in others	\$1,000
Muskox	\$500	\$2,200
Moose	\$0	\$800

In states like Colorado, the non-resident allocation of drawing permits may be limited (in Colorado it is close to an 80/20 split), but non-residents are eligible for preference points in the draw, *and* may purchase over-the-counter licenses for species like deer and elk, without limitation. Simply put, few if any states have a "pure" 90/10 split between residents and non-residents, and most offer significant opportunities for non-residents.

¹⁶ Pl. Mot. for Summ. J. at 7.

¹⁷ For example, the Department encourages non-residents (through professional hunters and guides) to participate in management hunting of a caribou herd outside Fairbanks, which is over-populated and causing detrimental impact to the habitat. Residents harvest only a fraction of the management objective for that herd.

¹⁸ Resident hunting fees remained the same for literally decades until 2017. State Ex. C.

Resident hunters, like Plaintiff himself, would face higher license and tag fees and therefore bear the brunt of a reduction in non-resident fees or participation. As the State's brief points out, AS 44.62.210(a) requires that the Board "pay special attention to the costs to private persons of the proposed regulatory action."¹⁹ The Board properly considered this impact—which would not serve the maximum benefit of the people of Alaska—in voting against Plaintiff's proposal. In sum, Plaintiff's interpretation of the Alaska Constitution runs counter to the interests of Alaskans in conserving the State's wildlife and in utilizing hunting opportunities, and that interpretation should be rejected.

C. The Court should reject Plaintiff's challenge as an improper attempt to leapfrog the Board of Game and legislative processes.

Plaintiff's suit should be dismissed for two additional reasons: a constitutional challenge to the Board's rejection of his proposal is improper, and Plaintiff has another remedy available—he can seek legislative amendment of the list of resident priority species.

The Board is the government entity mandated to "provide for the conservation and development" of Alaska's wildlife resources.²⁰ It adopts regulations for "the conservation, development, or utilization of game in a manner that addresses whether, how, when, and where the public asset of game is allocated or appropriated." The Board's responsibilities include "setting quotas, bag limits, harvest levels, and sex, age, and size limitations on the taking of game," and "regulating sport hunting and subsistence hunting as needed for the

¹⁹ State of Alaska Opp. & Cross-Mot. for Summ. J. at 10.

²⁰ AS 16.05.221(b).

conservation, development, and utilization of game.”²¹ In carrying out its responsibilities, the Board considers public proposals for changes to its hunting and trapping regulations. It annually requests that the public submit proposals, and makes proposal submission forms available on its website.²² Proposals that satisfy eligibility criteria are posted for public review and comment, and review and comment by advisory committees, where appropriate.²³ The Board then schedules open-forum discussion on submitted proposals during its various meetings around the State.²⁴

During Board meetings, the proposal’s proponent is invited to explain its scope and need. Other members of the public may testify. The Board receives data collected by the Department to ensure the proposal’s impact is consistent with its mandate to ensure both conservation and utilization in the public trust.²⁵ Board members provide their views on a proposal’s merits. The seven-member Board then votes on whether to adopt a proposal.²⁶ If a proposal is not adopted, its proponent may re-submit it during the next Board meeting covering that area (which typically occurs on a three-year cycle).²⁷

²¹ AS 16.05.255.

²² The Board’s website explains the proposal submission process and provides necessary forms and other documents: <https://www.adfg.alaska.gov/index.cfm?adfg=gameboard.forms#proposal-process>.

²³ Advisory Committees are authorized by statute to make recommendations about local wildlife management to the Board, among other responsibilities. AS 16.05.260.

²⁴ The Board’s schedule, and the agendas for its various meetings, and also available on its website: <https://www.adfg.alaska.gov/index.cfm?adfg=gameboard.meetinginfo>.

²⁵ <https://www.adfg.alaska.gov/index.cfm?adfg=gameboard.forms#proposal-process>.

²⁶ <https://www.adfg.alaska.gov/index.cfm?adfg=gameboard.forms#proposal-process>; see also the current Board membership at: <https://www.adfg.alaska.gov/index.cfm?adfg=gameboard.bogmembers>.

²⁷ But a proponent could submit an Agenda Change Request to the Board in an “off” year, asking that the Board deliberate on the proposal out-of-cycle.

Simply put, an extremely participatory process exists in which extensive public input is given to, and received by, the Board. Unless the Board's action is alleged to be arbitrary and capricious—and Plaintiff makes no such argument²⁸—the Board process provides the remedy for a rejected proposal: resubmission during the next session. If this suit succeeds, however, Plaintiff will have cut the Board out of the decision-making process for hunting regulation in Alaska. That result is inconsistent with the Board's statutory authority and the State's well-established system for regulation of game management. The Court should not allow Plaintiff to leapfrog the Board and its role.

In addition, Plaintiff ignores the reality that he had another option available after his proposal was denied: he could, and still can, seek a change in law from the State legislature. Alaska residents have already been given priority to harvest certain species for personal or family consumption (moose, deer, elk, and caribou).²⁹ If the legislature agreed that such an action would provide for the maximum benefit of Alaskans on the whole, brown bear could be added to that statutory list, and Plaintiff would have the priority that he seeks.

Rather than fully participating in these established processes, Plaintiff filed an ill-supported constitutional challenge to the Board's system of allocation of tags, a system that has helped successfully manage and conserve the healthy Kodiak brown bear population.³⁰ The Court should reject Plaintiff's challenge.

²⁸ See Pl. Mot. for Summ. J. at 18-19.

²⁹ AS 16.05.255(d).

³⁰ Plaintiff admits the Kodiak brown bear population currently exceeds 3,500. Pl. Mot. for Summ. J. at 10.

**D. The Court should reject Plaintiff's "us v. them" mentality—
non-resident hunters are partners in conservation in Alaska.**

Plaintiff's brief essentially takes an "us v. them" position: in his brief, Alaska residents are aligned against non-residents, and the two sides operate at cross purposes. The Hunting Coalition, on behalf of their thousands of Alaskan members and tens of thousands of non-resident members, take issue with this view.

Many Alaskans have strong personal connections with non-residents through their work and livelihoods, social networks, and interests. And many non-Alaskans have strong interests in supporting Alaska's wildlife conservation efforts. They appreciate the extensive efforts that Alaska, including the Board and the Department, take to maintain the State's independent character, healthy wildlife populations, and vast and beautiful habitat. For this reason, non-residents are so willing to pay higher fees for the opportunity to participate in some of the many hunting opportunities that Alaska makes available.

In addition, an organization like SCI, which is not based in Alaska (although SCI has many Alaskan members and two Alaska chapters), strongly supports Alaska's wildlife conservation efforts and is willing to stand up for those efforts and the State's interests when threatened. For example, SCI has defended Alaska's authority to manage its wildlife, even on federal lands, in numerous court cases. At present, SCI is defending the State's authority to manage wildlife on the Kenai National Wildlife Refuge before the federal Ninth Circuit Court of Appeals.³¹ In addition, SCI was the first and, until recently, the only defendant-

³¹ Notably, in the federal district court case, SCI and the State of Alaska co-briefed their motion for summary judgment. *See* Case No. 3:17-CV-00013 (D. Alaska).

intervenor in a case challenging the National Park Service's deference to Alaska's wildlife management authority on National Preserves.³² SCI also filed three amicus briefs in the U.S. Supreme Court in support of resident John Sturgeon's challenge to an illegal National Park Service rule. Non-residents primarily fund these advocacy efforts, because they care about the future of Alaska, Alaskans, and wildlife in the State. And the Hunting Coalition's resident members appreciate the contributions that non-residents make.

Accordingly, despite Plaintiff's characterizations of non-resident hunting as an "us v. them" issue, many resident Alaskans disagree with Plaintiff's view and the relief sought. The Hunting Coalition respectfully requests that the Court bear this in mind in interpreting the intent behind the Alaska Constitutional provisions at issue, which were adopted with full knowledge of the important role that non-residents can play.

V. CONCLUSION

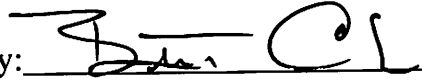
For the foregoing reasons and the reasons set forth in Defendant's brief and the brief of amicus Alaska Professional Hunters Association, the Hunting Coalition respectfully requests that this Court deny Plaintiff's motion for summary judgment and grant summary judgment in favor of the State.

³² See Case No. 3:20-CV-209 (D. Alaska). Until the Alaska Professional Hunters Association recently intervened, SCI was the only party in this suit unequivocally committed to defending the State's wildlife management authority, as Defendant National Park Service is currently reviewing the challenged rule for consistency with Executive Orders issued on January 20, 2021.

LAW OFFICE OF BRENT R. COLE, P.C.
821 N Street, Suite 208
Anchorage, Alaska 99501
(907) 277-8001
(907) 277-8002 fax

DATED this 8th day of April, 2021, at Anchorage, Alaska.

LAW OFFICES OF BRENT R. COLE, P.C.
*Attorneys for Safari Club International,
Safari Club International Alaska Chapter, and
Alaska Outdoor Council*

By: 
Brent R. Cole
AK State Bar No. 8606074

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 8th day of April, 2021, a true and correct copy of the foregoing was served on the following in the manner indicated:

Matthew T. Findley
Eva R. Gardner
Ashburn & Mason
1227 W. 9th Avenue, Suite 200
Anchorage, AK 99501
Attorneys for Plaintiff

☐ U.S. Mail
☐ Facsimile
☒ Electronic Delivery
☐ Hand Delivery

Cheryl Rawls Brooking
Aaron Peterson
Office of the Attorney General
1031 W. 4th Avenue, Suite 200
Anchorage, AK 99501
Attorneys for Defendant

☐ U.S. Mail
☐ Facsimile
☒ Electronic Delivery
☐ Hand Delivery

Adam Cook
Shane Coffey
James Lister
Birch Horton Bittner & Cherot
510 L Street, Suite 700
Anchorage, AK 99501
Attorneys for Amicus Alaska Professional
Hunters Association

☐ U.S. Mail
☐ Facsimile
☒ Electronic Delivery
☐ Hand Delivery

Susan Orlansky
Reeves Amodio LLC
500 L Street, Suite 300
Anchorage, AK 99601
Attorneys for Amicus Resident Hunters of
Alaska

☐ U.S. Mail
☐ Facsimile
☒ Electronic Delivery
☐ Hand Delivery

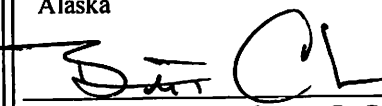

Staff at Law Office of Brent R. Cole, P.C.

EXHIBIT A

Resident Hunting Gross Revenue by Calendar Year					
	2016	2017	2018	2019	2020
Resident Hunting License	\$2,215,741	\$2,658,515	\$2,802,839	\$2,709,185	\$2,993,991
Resident Big Game Tag	\$148,250	\$124,775	\$128,125	\$135,500	\$150,175
				\$2,844,685	\$3,144,166
Nonresident Hunting Gross Revenue by Calendar Year					
	2016	2017	2018	2019	2020
Nonresident Hunting License	\$1,476,660	\$1,648,373	\$2,019,171	\$2,237,189	\$1,865,464
Nonresident Big Game Tag	\$5,661,310	\$4,757,845	\$6,832,930	\$7,579,695	\$5,952,305
				\$9,816,884	\$7,817,769

Diff.

*Source: License, Stamps and Tags Issued 2016; 2017; 2018; 2019; 2020