

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

ALASKA WILDLIFE ALLIANCE,)

Plaintiff,)

v.)

STATE OF ALASKA, ALASKA) Case No. 3AN-23-07495 CI

BOARD OF GAME, DOUGLAS)

VINCENT-LANG, Commissioner of)

the Alaska Department of Fish &)

Game, in his capacity as an official of)

the State of Alaska,)

Defendants.)

MOTION FOR RECONSIDERATION

The defendants (collectively “the State”) seek reconsideration of this Court’s May 7, 2025, Order to the extent it ordered or prohibited action beyond denying the Alaska Wildlife Alliance’s request for a temporary restraining order (“TRO”). The Court overlooked and misapplied material facts and law in determining that Judge Guidi’s March 14, 2025 Order “controls” and “should [] moot” a new BOG regulation adopted under different legal authority than that at issue in this case.¹

In reliance on *State v. Alaska Civil Liberties Union*,² and recognizing that the current case does not address the March 14 emergency regulation, the Court significantly limited the scope of the May 6, 2025, TRO hearing. This motion does not

¹ Alaska R. Civ. P. 77(k)(1)

² 159 P.3d 513, 514-15 (Alaska 2006).

1 challenge that limitation. However, the Court’s finding that the adoption of “the
2 emergency regulation did *not* address the due process notice mandate of the [March 14]
3 Order in a ‘rational and non-arbitrary manner’” misapplies applicable case law,
4 overlooks applicable statutes, and improperly opines on the State’s compliance with a
5 remand order pertaining to a different regulation.
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7 I. Misapplication of Law

8 The Court misapplied the holding of *State v. Alaska Civil Liberties Union*. The
9 Supreme Court held “that the regulations adopted by the state must be accorded the
10 usual presumption of constitutionality and must be reviewed under the test that applies
11 when a regulation is challenged on non-constitutional ground . . . [a]ny new
12 constitutional questions *arising from the details of implementing regulations* must be
13 asserted by future challenge in separate proceedings.”³
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15 In *State v. ACLU*, the Supreme Court remanded for the State to adopt regulations
16 conferring certain employment benefits to the same-sex partners of state employees.⁴
17 The State adopted such regulations, but the Superior Court determined that the
18 regulations did not comply with constitutional standards and ordered them modified.⁵
19 The State successfully petitioned for review. The Supreme Court confirmed their order
20 “did not empower the superior court to subject the individual details of the state’s
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23 ³ 159 P.3d 513, 514-15 (Alaska 2006) (emphasis added)

24 ⁴ *Id.* at 514.

25 ⁵ *Id.*

1 implementation plan to constitutional scrutiny. Constitutional review of such details at
2 the remedial stage of this case would hamper the primary goal of expeditious
3 compliance and exceed the scope of remedies sought in the original complaint.”
4 Similarly, the March 14 Order did not confer on-going jurisdiction to subject future
5 regulatory actions to constitutional scrutiny. AWA’s challenge to due process afforded in
6 the adoption of the emergency regulation was “a new constitutional question” not
7 addressed by the March 14 Order and any order on the enforceability of the emergency
8 regulation is beyond the scope of the remedies sought by AWA in this litigation. The
9 Court’s May 7 Order therefore goes beyond the limitation in scope imposed by
10 applicable case law and the Court’s own findings.
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13 II. The Court Overlooked or Misconceived Material Facts and Law

14 This Court’s Order explicitly found that the Court was “not permitted to address
15 new constitutional questions arising from the details of the implementation of new
16 regulations” such as whether an emergency actually existed.⁶ The Court correctly noted
17 that “[s]uch challenges would need to be in a new matter.”⁷ Yet the Court also found the
18 Board’s consideration of an emergency petition, which requires no prior notice before
19 adoption,⁸ was irrational and arbitrary. But the factual details surrounding the Board’s
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24 ⁶ Order re TRO, Other Equitable Relief, p. 5 (internal quotations omitted)

25 ⁷ *Id.*

26 ⁸ AS 44.62.250(a).

1 consideration of an emergency and adoption of the new regulation were properly not
2 within the Court's purview in this case.

3 In short, the Court erred in finding that the Board acted arbitrarily and
4 irrationally in adopting the emergency regulation because that action is not part of the
5 current case, and the applicable record evidence and testimony was (properly) not
6 considered. For the above reasons, the State requests that the Court reconsider its
7 conclusion that the emergency regulation is "mooted" by the Court's March 14, 2025
8 Order and that any request to enjoin the emergency regulation must be addressed "in a
9 new matter."
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11
12 DATED May 9, 2025

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