

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

ROBERT CASSELL,)
)
 Plaintiff,)
)
 v.)
)
 STATE OF ALASKA, BOARD OF)
 GAME,)
)
 Defendants.)

Case No. 3AN-19-07460 CI

**ORDER DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT
AND GRANTING DEFENDANT'S CROSS-MOTION FOR SUMMARY
JUDGMENT**

This case presents a challenge to the constitutionality of 5 ACC 92.061(a)(1), a regulation that establishes an allocation between residents and nonresidents for drawing permits to hunt Kodiak brown bears in Game Management Unit 8. The plaintiff, Robert Cassell, is an Alaskan resident and hunter. Cassell complains that the existing allocation of not less than 60% of permits to resident hunters is unconstitutional. The Alaska Board of Game ("Board") is responsible for the allocation. The Board, is an agency of the State of Alaska, created by the Alaska State Legislature through the enactment of AS 16.05.221(b), and tasked with "the conservation and development of the game resources of the state[.]" Under both AS 16.05.241 and AS 16.05.255, the Board has the authority to adopt rules and regulations governing the taking of game.

On December 23, 2020, Cassell filed a motion for summary judgment asking the court to rule, as a matter of law, that 5 ACC 92.061 violates Article VIII §3 of the Alaska Constitution. On April 1, 2021, the Board filed its opposition and cross-motion for summary judgment. Several amicus curiae briefs have filed on both sides of the issue. The court heard oral argument December 20, 2021.

Having considered the briefs and arguments submitted by the parties, the court hereby DENIES Cassell's motion for summary judgment and GRANTS the Board's cross-motion. The court adopts the reasoning set forth in the briefs filed by the Board, by amicus


curiae Alaska Professional Hunters' Association and Hunting Coalition. The Board is not required by Article VIII §3 of the Alaska Constitution to allocate to resident hunters more than two-thirds of the harvestable bears in the Kodiak draw hunt. Further, Article VIII §3 protects Alaska hunting guides as well as resident hunters, and the balanced allocation now in place falls well within the permissible bounds set by the regulation and Article VIII §§ 2 and 4.¹

The Alaska Constitution does not prohibit allocating a share of the bear hunt to nonresidents, particularly when the hunt takes place largely on federally-owned land. Cassell can reasonably disagree with the particular allocation made by the Board, and he is free to urge the Legislature and/or Board to change the allocation, but he has failed to show why this court should make the decision.

ORDERED this 27th day of May 2022, at Anchorage, Alaska.


ANDREW GUIDI
Superior Court Judge

I certify that on 5/31/2022
a copy of the above was mailed to
each of the following at their
addresses of record:

M. Gendley
E. Gardner
A. Peterson *M. Brookings*
Chris McNeese, Judicial Assistant
B. Coloff *J. Justice* *S. Coffey*
A. Cook *S. Olanosky*


¹ The court finds Cassell's arguments generally weak and lacking in legal support, but one of the linchpins of his position--the contention that the regulation in question grants one-third of drawing permits "exclusively" to nonresidents—is particularly facile; a verbal sleight of hand. The regulation adopted by the Board in 1976 grants roughly two out of three drawing permits to Alaska residents, and there is not a single Kodiak brown bear hunt that excludes residents.