IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

Esau Sinnok, et al., Plaintiffs, vs. State of Alaska, et al., Defendants.	Case No. 3AN-17-09910 CI

ORDER GRANTING STATE'S MOTION TO DISMISS

I. Facts and Procedural History

A group of Alaskan youth ages five to twenty ("Plaintiffs") filed a complaint on October 27, 2017, alleging that Defendants ("the state") have contributed to climate change through its actions with respect to fossil fuels and carbon emissions. Plaintiffs seek injunctive relief to order the state to prepare an accounting of carbon emissions and to create a climate recovery plan. Plaintiffs also seek declaratory relief that the state's actions have violated their fundamental rights to a stable climate system. Finally, Plaintiffs allege that Commissioner Hartig's September 27, 2017 denial of Plaintiffs petition for reduction of Alaska's greenhouse gas emissions was arbitrary and violated Plaintiffs' fundamental rights.

The pending motion is the state's December 11, 2017 motion to dismiss. The state argues that Plaintiffs' injunctive relief claims should be dismissed because climate change policy determinations must be made by the executive or legislative branch. The state also argues that Plaintiffs' declaratory relief claims should be dismissed on "prudential grounds" because the courts do not have the authority to grant Plaintiffs'

proposed remedies. Finally, the state argues that Commissioner Hartig's denial complied with the Administrative Procedures Act ("APA"), and that Plaintiffs have not alleged facts showing that the Commissioner's denial was arbitrary.

Plaintiffs opposed on January 19, 2018. Plaintiffs argue that there is some case law holding that climate change claims premised on alleged violations of fundamental rights fall within the jurisdiction of the judiciary. Plaintiffs also argue that prudential grounds weigh in favor of justiciability because the state has violated its duty to uphold a stable climate system. Finally, Plaintiffs argue that Commissioner Hartig's denial did not comply with due process.

The state replied on February 12, 2018. It argues that almost all courts have held that agencies or legislatures are better suited for making climate change policy decisions. The state also repeated its arguments regarding Commissioner Hartig's denial.

This court held oral argument on April 30, 2018. Plaintiffs filed an amended complaint on August 24. On September 5, the parties stipulated that Plaintiffs' amended complaint "necessitates no further briefing or argument for the Court to resolve [the state's] pending motion to dismiss." The state's motion is ripe.

II. Standard of Review

In reviewing a Rule 12(b)(6) motion to dismiss a complaint for failure to state a claim, Alaska courts must "liberally construe the complaint and treat all factual allegations in the complaint as true."[1] Dismissals "are viewed with disfavor and should only be granted on the rare occasion where it appears beyond doubt that the plaintiff

[1] *Clemenson v. Providence Alaska Medical Center,* 203 P.3d 1148, 1151 (Alaska 2009) (citing *Jacob v. State, Dep't of Health & Soc. Servs., Office of Children's Servs.* 177 P.3d 1181, 1184 (Alaska 2008)).

can prove no set of facts in support of the claims that would entitle the plaintiff to relief."[2] In other words, "the complaint need only allege a set of facts consistent with and appropriate to some enforceable cause of action."[3] "Even if the relief demanded is unavailable, the claim should not be dismissed as long as some relief might be available on the basis of the alleged facts."[4]

III. ***Kanuk v. State, Department of Natural Resources***

The only Alaska Supreme Court case cited by both parties that discusses climate change is *Kanuk v. State, Department of Natural Resources,* which had the same attorneys and two of the same plaintiffs as in this case.[5] In *Kanuk,* a group of Alaskan youth alleged that the state failed to take steps to "protect the atmosphere in the face of significant and potentially disastrous climate change," and that the state violated its duties under the Alaska Constitution and the public trust doctrine.[6] The state filed a motion to dismiss. The superior court dismissed all of plaintiffs' injunctive and declaratory relief claims, and held that the claims were non-judiciable because of the "political question doctrine."[7]

Plaintiffs appealed. As to plaintiffs' three injunctive relief claims, the Alaska Supreme Court cited *American Electric Power Co. v. Connecticut ("AEP").*[8] The plaintiff in *AEP* sought an order from the court to issue "a decree setting carbon dioxide

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[2] *Id.*
[3] *Id.* (citing *Odom v. Fairbanks Mem'l Hosp.,* 999 P.2d 123, 128 (Alaska 2000).
[4] *Adkins v. Stansel,* 204 P.3d 1031, 1033 (Alaska 2009) (citing *Miller v. Johnson,* 370 P.2d 171, 172 (Alaska 1962)).
[5] 335 P. 3d 1088 (Alaska 2014).
[6] *Id.,* at 1090.
[7] *Kanuk v. State, Dep't of Natural Resources,* 2012 WL 8262431 (Alaska Superior Court, March 16, 2012).
[8] *Kanuk,* 335 P. 3d at 1098 (citing *AEP,* 131 S. Ct. 2527, 2532 (2011)).

emissions for each defendant at an initial cap, to be further reduced annually."[9] The United States Supreme Court held that:

> The expert agency [EPA] is surely better equipped to do the job than individual district judges issuing ad hoc, case-by-case injunctions. Federal judges lack the scientific, economic, and technological resources an agency can utilize in coping with issues of this order. Judges may not commission scientific studies or convene groups of experts for advice, or issue rules under notice-and-comment procedures inviting input by any interested person, or seek the counsel of regulators in the States where the defendants are located. Rather, judges are confined by a record comprising the evidence the parties present.[10]

Just as *AEP* held that "the inquiry was better reserved for the EPA," the Court in *Kanuk* reasoned that the courts "lack the scientific, economic and technological resources an agency can utilize."[11] "The limited institutional role of the judiciary supports a conclusion that the science and policy based inquiry is better reserved for executive-branch agencies or the legislature," and that courts cannot impose "[its] own judicially created scientific standards" when an executive or legislative body creates a policy.[12] The Court therefore affirmed dismissal of plaintiffs' three injunctive relief claims per the political question doctrine.

As to plaintiffs' four declaratory relief claims, the *Kanuk* Court cited *Lowell v. Hayes.*[13] In *Lowell,* a city councilman filed a defamation action against city officials. His amended complaint included a request for a declaratory judgment that the defendants had violated his civil rights and falsely accused him of perjury. The superior court granted defendants' Rule 12(b)(6) motion to dismiss plaintiff's declaratory judgment claims.

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[9] *AEP,* 131 S.Ct at 2532.
[10] *Kanuk,* 335 P.3d at 1098-99 (citing *AEP,* 131 S.Ct at 2540).
[11] *Kanuk,* 335 P.3d at 1099.
[12] *Id.* at 1098-99.
[13] 117 P.3d 745, 754 (Alaska 2005).

Plaintiff appealed. In its discussion of prudential considerations, the Alaska Supreme Court reasoned that declaratory judgments "are rendered to clarify and settle legal relations, and to 'terminate and afford relief from the uncertainty, insecurity, and controversy giving rise to the proceeding,' and 'a court should decline to render declaratory relief when neither of these results can be accomplished.'"[14] The Court therefore affirmed dismissal of plaintiff's claims.[15]

The *Kanuk* Court agreed with the superior court that plaintiffs' four declaratory relief claims were judiciable under the political question doctrine. The Court reasoned that "whether the State has breached a legal duty is a question we are well equipped to answer – assuming the extent of the State's duty can be judicially determined in the first place."[16] But the Court held that plaintiffs' claims for declaratory relief did not present an actual controversy appropriate for determination.[17] The *Kanuk* Court then applied the reasoning in *Lowell* and held that "although declaring the atmosphere to be subject to the public trust doctrine could serve to clarify the legal relations at issue, it would certainly not settle them."[18] The Court held that declaratory judgment would not impact greenhouse gas emissions in Alaska, protect plaintiffs from the alleged injuries, or compel the state to take certain action.[19] Thus, on prudential grounds the Court affirmed the superior court's dismissal of plaintiffs' declaratory relief claims.

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[14] *Id.* at 755 (quoting *Jefferson v. Asplund,* 458 P.2d 995, 997-98 (Alaska 1969)); *see also* Charles Alan Wright et al., Federal Practice and Procedure § 2759 at 543 (3d ed. 1998) (quoting Edwin Borchard, Declaratory Judgments 299 (2d ed. 1941)).
[15] *Lowell,* 117 P.3d at 758.
[16] *Kanuk,* 335 P.3d at 1100.
[17] *Id.* at 1100-01.
[18] *Id.* at 1102.
[19] *Id.* at 1102-1103 (citing *Lowell,* 117 P.3d at 755).

In this instant case, Plaintiffs list thirteen prayers for relief. The state argues that Plaintiffs' ninth and tenth claims for injunctive relief are "materially indistinguishable" from claims in *Kanuk* and should therefore be dismissed. Plaintiffs seek to:

> (9) Order Defendants to prepare a complete and accurate accounting of Alaska's GHG emissions, including an accounting of Alaska's in-boundary and extraction-based emissions, including emissions attributable to fossil fuels extracted in Alaska and transported and combusted out of state.
> (10) Order DEC, Commissioner Hartig, and Governor Walker, in collaboration with Defendants, to develop and submit to the Court by a date certain an enforceable state climate recovery plan, which includes a carbon budget, to implement and achieve science-based numeric reductions of Alaska's in-boundary and extraction-based emissions, including emissions attributable to fossil fuels extracted in Alaska and transported and combusted out of state, consistent with global emissions reductions rates necessary to stabilize the climate system and protect the vital Public Trust Resources on which Youth Plaintiffs depend.

The state claims that the court would need "to determine public policy" if it agreed with Plaintiffs. The state argues that this court should follow the *Kanuk* ruling that public policy decisions are "entrusted to the legislative and executive branch."[20] The state also argues that Plaintiffs' allegations of "affirmative actions" ("the systemic authorization, permitting, encouragement, and facilitation of activities resulting in dangerous levels of [greenhouse gas emissions], without regard to Climate Change Impacts" through the state's "Energy Policy") are no different than the claims alleged and dismissed in *Kanuk* of "failing to take steps to protect the atmosphere in the face of significant and potentially disastrous climate change."[21]

Plaintiffs oppose by arguing that "affirmative actions" taken by the state through its "Energy Policy" put this case in direct contradiction to the claims of state inaction in *Kanuk*.[22] Plaintiffs cite *State, Dep't of Nat. Res. v. Tongass Cons. Soc.* in support of

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[20] State's Motion to Dismiss, pg 10-11.
[21] *Id.*
[22] Plaintiffs Opposition to Defendants Motion to Dismiss, page 9.

their argument that their claims are now "plac[ed] squarely within clear constitutional jurisprudence."[23] Plaintiffs argue that the determination of whether particular claims present nonjusticiable political questions depends on whether they are matters of legislative inaction or affirmative legislative action.[24] The issue then is whether the state's "Energy Policy" implicates the political question doctrine.

The "established principle that courts should not attempt to adjudicate 'political questions' . . . stems primarily from the separation of powers doctrine, particularly 'the relationship between the judiciary and the coordinate branches of the . . . Government.'"[25] In *Baker v. Carr,* the U.S. Supreme Court listed six elements, "one or more of which will be prominent on the surface of any case involving a political question":

> [1] a textually demonstrable constitutional commitment of the issue to a coordinate political department; or [2] a lack of judicially discoverable and manageable standards for resolving it; or [3] the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; or [4] the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or [5] an unusual need for unquestioning adherence to a political decision already made; or [6] the potentiality of embarrassment from multifarious pronouncements by various departments on one question.[26]

"Unless one of these [*Baker*] formulations is inextricable from the case at bar, there should be no dismissal for non-justiciability on the ground of a political question's presence."[27]

Plaintiffs cite *Tongass* in support of their argument that this case is judiciable because of the state's affirmative actions. But *Tongass* did not hold that state action is

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[23] *Id.,* page 7.
[24] *Id.* (citing *State, Dep't of Nat. Res. v. Tongass Cons. Soc.,* 931 P.2d 1016, 1020 n.3 (Alaska 1997).
[25] *Kanuk,* 335 P.3d at 1096 (quoting *Abood v. League of Women Voters of Alaska,* 743 P.2d 333, 336 (Alaska 1987)).
[26] *Kanuk,* 335 P.3d at 1096-97 (quoting *Baker v. Carr,* 369 U.S. 186, 217 (1962)).
[27] *Baker,* 369 U.S. at 217.

per se within the ambit of the political question doctrine. The *Tongass* Court held that it is "not possible to draw the exact boundary between justiciable and nonjusticiable questions," but rather that the key to determining whether a claim implicates the political question doctrine is an analysis of the *Baker* factors.[28]

Plaintiffs allege that the state action in this case is the state's "Energy Policy" described in Paragraph 7, 237 and 239 of Plaintiffs' amended complaint, and that their claims are judiciable because their claims do not implicate the third *Baker* factor. At the April 30 oral argument, this court asked Plaintiffs multiple times "what Energy Policy?", and Plaintiffs could not cite to any such policy.

But the Ninth Circuit wrote that the third *Baker* factor is implicated "when, to resolve a dispute, the court must make a policy judgment of a legislative nature, rather than resolving the dispute through legal and factual analysis."[29] The paragraphs cited by Plaintiffs do not identify specific policies the state has enacted that have directly contributed to climate change. Plaintiffs' general claims allege that the state has permitted oil and gas drilling, coal mining, and fossil fuel use, but Plaintiffs do not allege how this is evidence of the state breaching any legal duty. Plaintiffs do not explain how the "systemic authorization, permitting, promotion, encourage and facilitation of activities [of the state]" has "exacerbated Climate Change." Indeed, Plaintiffs concede that Alaska at most contributes a very small share of global pollution and that their requested claims would not "fix" climate change materially.

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[28] *Tongass,* 931 P.2d at 1018. *See League of Women Voters of Alaska,* 743 P.2d at 336 ("Justiciability is of course not a legal concept with a fixed content or susceptible of scientific verification. Its utilization is the resultant of many subtle pressures, including the appropriateness of the issues for decision . . . and the actual hardship to the litigants of denying them the relief sought").

[29] *Equal Emp't Opportunity Comm'n v. Peabody W. Coal Co.,* 400 F.3d 774, 784 (9th Cir. 2005).

A court order granting Plaintiffs' injunctive relief claims would in essence create a policy where none now exists. If this court were to bypass the executive or legislative branch and make a policy judgment, it would violate the separation of powers and conflict with the third *Baker* factor. Plaintiffs do not avoid the problem in *Kanuk* where the Court held that it is not the judiciary's role to make a policy decision "in the first instance."[30] Plaintiffs' ninth and tenth claims are "materially indistinguishable" from the "best available science" claims presented in *Kanuk,* and therefore are non-judiciable political questions.

IV. Plaintiffs' Seven Declaratory Relief Claims (1-6 & 8) Correspond Closely With Claims in *Kanuk* Dismissed On Prudential Grounds

Plaintiffs also request a declaratory judgment that includes the following: that the state refrain from infringing on Plaintiffs' constitutional rights; that the state protect Plaintiffs' rights to a stable climate system and protection of natural resources; and that this court declare that the state has violated the public trust doctrine. The justiciability of a claim for declaratory relief:

> [R]equires more than the conclusion under *Baker* that the case does not involve a political question; also required is an 'actual controversy,' one that 'is appropriate for judicial determination' because it is 'definite and concrete, touching the legal relations of parties having adverse legal interests . . . . It must be a real and substantial controversy admitting of specific relief through a decree of a conclusive character, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts.[31]

Plaintiffs allege that the judiciable claim in each of their seven prayers for declaratory relief is that the state violated their fundamental right to a stable climate system. Plaintiffs cite *Juliana v. United States* in support of their argument that "the

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[30] *Kanuk,* 335 P.3d at 1100.

[31] *Jefferson,* 458 P.2d at 998-99 (Alaska 1969) (quoting *Aetna Life Ins. Co. v. Haworth,* 300 U.S. 227, 240-41 (1937)).

constitutionally-rooted principle of separation of powers calls upon the judiciary to confront the merits of climate cases premised on violations of fundamental rights."[32]

In *Juliana,* a group of young people sued the United States and other executive agencies, alleging that fossil fuels burned by the defendants would "significantly endanger plaintiffs, with the damage persisting for millennia."[33] Plaintiffs sought a declaration that their constitutional and public trust rights had been violated, and an order stopping defendants from violating those rights and directing defendants to develop a plan to reduce carbon emissions. The federal government filed a motion to dismiss for failure to state a claim.

The *Juliana* Court denied the federal government's motion to dismiss, for three reasons. The first was that "federal courts retain broad authority 'to fashion practical remedies when confronted with complex and intractable constitutional violations,'" and that no *Baker* factor implicates the political question doctrine.[34] The second was that "the right to a climate system capable of sustaining human life is fundamental to a free and ordered society," and that plaintiffs "may therefore proceed with their substantive due process challenge . . . ."[35] The third was that "plaintiffs' right of action to enforce the government's obligations as trustee [re: public trust doctrine] arises with the constitution . . . [and that] plaintiffs' public trust claims are properly categorized as substantive due process claims."[36]

Along with *Juliana,* Plaintiffs cite two Alaska Supreme Court cases in support of their argument that "Alaska's Constitution affords *at least* as much protection of

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[32] Plaintiffs' Opposition to Defendants' Motion to Dismiss, page 15 (citing *Juliana v. United States,* 217 F. Supp. 3d 1224 (D. Or. 2016)).
[33] *Juliana,* 217 F. Supp. 3d at 1233.
[34] *Id.* at 1241-42 (citing *Brown v. Plata,* 563 U.S. 493, 526 (2011)).
[35] *Id.* at 1250, 1252.
[36] *Id.* at 1261.

individual liberties" for a stable climate.[37] In *State, Dept. of Health & Social Services v. Planned Parenthood of Alaska, Inc.,* the Court held that a state regulation denying Medicaid to some patients for medically necessary abortions was unconstitutional because the "regulation at issue affects the exercise of a constitutional right, the right to reproductive freedom."[38] The Court's conclusion was similar to other state court's conclusions that "government health care programs that fund other medically necessary procedures may not deny assistance to eligible women whose health depends on obtaining abortions."[39] In *Myers v. Alaska Psychiatric Institute,* the Court held that "Alaska's statutory provisions permitting nonconsensual treatment with psychotropic medications implicate fundamental liberty and privacy interests . . . [and] the right to refuse to take psychotropic drugs is [a] fundamental [right]."[40] The Court's decision was similar to other state's courts that "have declared that the right to refuse psychotropic medication is fundamental."[41]

While the issues in *Planned Parenthood* and *Myers* have been subject to extensive judicial review, climate change is a relatively new issue to the courts. The state in its motion to dismiss cited three non-Alaska cases that have dismissed climate change cases similar to this present case.

The first case is *Sanders-Reed ex rel. Sanders-Reed v. Martinez.*[42] A New Mexico resident and a nonprofit conservation organization filed a complaint against the state, seeking judgment declaring that the public trust doctrine imposed duty on the

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[37] Plaintiffs' Opposition to Defendants' Motion to Dismiss, page 15 (emphasis in original).
[38] 28 P.3d 904, 909 (Alaska 2001).
[39] *Id.* at 905, n.2.
[40] 138 P.3d 238, 246-248 (Alaska 2006).
[41] *Id.* at 246, n. 55.
[42] 350 P.3d 1221 (N.M. 2015).

state to regulate greenhouse gas emissions.[43] The New Mexico Supreme Court held that "separation of powers principles would be violated by adhering to Plaintiffs' request for a judicial decision that independently ignores and supplants the procedures under the Air Quality Control Act."[44] The Court held that if plaintiffs' request was granted, it would reverse the agency's decision, "foreclose" on the agency's fact-finding function, discourage reliance on the Air Quality Control Act's "exclusive statutory scheme," and "circumvent procedural or substantive limitations that would otherwise limit review" of the agency's actions.[45]

The second case is *Alec L. v. Jackson.*[46] In *Alec L.,* various citizens and organizations sued the EPA and the Department of the Interior seeking declaratory and injunctive relief for their alleged failure to reduce greenhouse gas emissions.[47] The court framed plaintiffs' requests as the following:

> First, in order to find that there is a violation of the public trust . . . the Court must make an initial determination that current levels of carbon dioxide are too high and, therefore, the federal defendants have violated their fiduciary duties under the public trust. Then, the Court must make specific determinations as to the appropriate level of atmosphere carbon dioxide, and determine whether the climate recovery plan sought as relief will effectively attain that goal. Finally, the Court must not only retain jurisdiction of the matter, but also review and approve the Defendants' proposal for reducing greenhouse gas emissions. Ultimately, Plaintiffs are effectively seeking to have the Court mandate that federal agencies undertake specific regulatory activity, even if such regulatory activity is not required by any statute enacted by Congress.
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> These are determinations that are better left to the federal agencies that are better equipped, and that have a Congressional mandate, to serve as the primary regulatory of greenhouse gas emissions.[48]

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[43] *Id.*
[44] *Id.* at 1227.
[45] *Id.*
[46] 863 F. Supp. 2d 11 (D.D.C. 2012).
[47] *Id.*
[48] *Id.* at 16-17.

The third and final case was *Svitak ex rel. Svitak v. State.*[49] Plaintiffs in that case filed a complaint for declaratory and injunctive relief.[50] They did not contend that Washington State violated a specific state law or constitutional provision; rather, plaintiffs challenged Washington's failure to "accelerate the pace and extent of greenhouse gas reduction."[51] The Washington Court of Appeals held that the claims could not be redressed by the state because plaintiffs did "not challenge an affirmative state action or the state's failure to undertake a duty to act as unconstitutional."[52] If the courts imposed a new "regulatory program," it would "involve resolution of complex social, economic, and environmental issues" which would "invade[ ] the prerogatives of the legislative branch, thereby violating the separations of powers doctrine."[53] The Washington Court of Appeals concluded that it "is not the role of the judiciary to second guess the wisdom of the legislature. Because our state constitution does not address state responsibility for climate change, it is up to the legislature, not the judiciary, to decide whether to act as a matter of public policy."[54]

Notwithstanding *Juliana,* the three above cases do not support Plaintiffs' claim that "the constitutionally-rooted principle of separation of powers calls upon the judiciary to confront the merits of climate cases premised on violations of fundamental rights."[55] Plaintiffs do not cite any other cases besides *Juliana* to support their argument that individuals have a constitutional right to a stable climate system; no Alaska Supreme Court or United State Supreme Court case has held that.

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[49] No. 69710-2-1, 2013 WL 6632124 (Wash. App. Dec. 16, 2013).
[50] *Id.*
[51] *Id.*
[52] *Id.* at *2.
[53] *Id.*
[54] *Id.*
[55] Plaintiffs' Opposition to Defendants' Motion to Dismiss, page 15.

Without a definite and concreate controversy, this case appears to be the same as *Kanuk* and similar to the above three cases that contradict *Juliana*. The *Kanuk* Court held that declaratory relief would not advance Plaintiffs' interests in obtaining a reduction in greenhouse gas emissions or avoid further litigation, even if Plaintiffs' claims were judiciable. A declaratory judgment would not impact greenhouse gas emissions in Alaska, protect Plaintiffs from the alleged injuries, or compel the state to take certain action. Like *Kanuk,* this court cannot determine a "real and substantial controversy" in this case appropriate for declaratory judgment. Plaintiffs' declaratory relief claims are therefore dismissed on prudential grounds for the same reasons stated in *Kanuk.*

V. Commissioner Hartig Complied with the ADA

On August 28, 2017, Plaintiffs sent a petition to the Department of Environmental Conservation (DEC) in which they proposed regulations with the goal to create a stable climate system and counter climate change. Commissioner Hartig denied the petition on September 27, 2017, and wrote that Plaintiffs could appeal his decision within 30 days subject to judicial review described in *Johns v. Commercial Fisheries Entry Comm'n.*[56]

In *Johns,* the Alaska Supreme Court held that courts have the power to determine whether an agency's denial complies with the APA and if it was arbitrary.[57] The *Johns* Court directed courts to look at AS 44.62.230 to determine compliance with "due process."[58] Alaska Statute 44.62.230 states that "[u]pon receipt of a petition

[56] 699 P.2d 334 (Alaska 1985).
[57] *Id.* at 339.
[58] *Johns,* 699 P.2d at 339.

requesting the adoption, amendment, or repeal of a regulation . . . a state agency shall, within 30 days, deny the petition in writing or schedule the matter for public hearing."[59]

This court must now consider whether Commissioner Hartig's denial complied with the statutory requirements. Plaintiffs essentially argue under their seventh prayer for relief that Commission Hartig's denial was arbitrary because the denial violated Plaintiffs' fundamental constitutional rights. But Plaintiffs do not allege any facts that show Commissioner Hartig arbitrarily denied their petition. It appears that Plaintiffs simply disagree with his decision. But Commissioner Hartig timely issued a four page written decision that addressed each of Plaintiffs' points. Commissioner Hartig explained with supporting statutes, case law and well-reasoned analysis why the DEC could not implement Plaintiffs' proposed regulations. Commissioner Hartig's denial therefore satisfied the statutory due process requirements described in *Johns.* [60]

VI. Conclusion

For the above reasons, the state's motion to dismiss is **GRANTED.**

DATED at Anchorage, Alaska this 30th day of October 2018.

Gregory Miller
Superior Court Judge

I certify that on 10/30/2018
a copy of the above was emailed to:
Brad DeNoble, Andrew Welle & Seth Beausang

Judicial Administrative Assistant

[59] *Id.* at 339-40.

[60] Plaintiffs final three additional prayers for relief are: (11) Retain continuing jurisdiction over this matter for the purposes of enforcing the relief awarded; (12) Declare Plaintiffs are the prevailing party and award them all costs and attorney's fees to which they are entitled to pursuant to Civil Rule 79 and AS 09.06.010(c)(1); and (13) Award Plaintiffs such other and further relief as the Court deems just and equitable. These three prayers for relief are directly related to the ten prayers for relief described above. Therefore, the three prayers for relief listed in this footnote are also dismissed.