

**IN THE CIRCUIT COURT FOR THE SECOND JUDICIAL CIRCUIT
IN AND FOR LEON COUNTY, FLORIDA**

SPEAK UP WEKIVA, INC. and
CHARLES W. O'NEAL,

Plaintiffs,

v.

Case No.: 15-CA-001781

FLORIDA FISH AND WILDLIFE
CONSERVATION COMMISSION,

Defendant.

**BRIEF OF AMICI CURIAE IN SUPPORT OF PLAINTIFFS'
EMERGENCY MOTION FOR TEMPORARY INJUNCTION AND
MOTION TO ACCELERATE CASE**

COME NOW Animal Hero Kids, Animal Legal Defense Fund, Animal Rights Foundation of Florida, Animal Welfare Institute, Center for Biological Diversity, CompassionWorks International, Environmental Action, Jungle Friends Primate Sanctuary, Lobby For Animals, South Florida Wildlands, and Stop the Florida Bear Hunt (hereinafter referred to collectively as "Amici"), who together have over 106,000 members and supporters in Florida, and HEREBY file this Brief of Amici Curiae in support of Plaintiffs' challenge to the constitutionality of the Florida Fish and Wildlife Conservation Commission's ("FWC") decision to open a hunting season on the state's imperiled population of black bears. See Fla. Admin.

Code Chapter 68A-4.009 (2); Fla. Admin. Code Chapters 68A-1, 4, 9, 12, 13, 15, 17 and 24 (the “Bear Hunt Rules”).

INTERESTS OF THE AMICI

Amici are nonprofit organizations that collectively represent the interests of tens of thousands of Florida’s citizens who have a strong interest in ensuring that Florida’s unique bear population is properly managed – based on the best available science – for its long-term survival. If allowed to stand, the FWC’s decision to open a bear hunting season would cause irreparable harm to Florida’s bears and Amici, and Amici strongly urge this Court to issue an injunction to protect the public’s interest in wildlife conservation. The Amici are as follows:

Animal Hero Kids fosters empathy and kindness in children and youth by encouraging and recognizing compassionate and courageous acts that help all species of animals, and offering complimentary, interactive, humane education programs highlighting stories of the rescue and aid of animals in need. Its programs reach 30,000 students each year. Animal Hero Kids opposes the hunt because of its interest in protecting Florida’s black bear population for future generations.

The Animal Legal Defense Fund (“ALDF”) is a national nonprofit organization that has been working to protect the lives and advance the interests of animals through the legal system for more than three decades. ALDF files high-

impact lawsuits to protect animals from harm, assists prosecutors in holding animal abusers accountable for their crimes, supports strong animal protection legislation, and provides resources and opportunities in animal law to law students and professionals. ALDF has over 4,400 members and 15,500 online supporters in Florida. ALDF members care deeply about the conservation and humane treatment of wildlife, and are concerned about threats to the Florida black bear population. ALDF's Florida members strongly oppose the impending trophy hunt of the Florida black bear.

The Animal Rights Foundation of Florida (“ARFF”) was founded in 1989 to promote and protect the rights of animals in Florida. Today, ARFF has more than 5,000 members across the state. ARFF has a longstanding interest in the protection of wildlife in Florida. ARFF was involved in the debate leading up to the 1993 decision to halt hunting of Florida's black bear. ARFF members have expressed opposition to reopening a bear hunt by speaking at meetings of the FWC and attending public demonstrations.

The **Animal Welfare Institute** (“AWI”) is a national non-profit, public interest organization founded in 1951. It has over 37,000 members and supporters worldwide, including over 2,000 in Florida. AWI is dedicated to alleviating the suffering caused to animals by people and to protecting species threatened with extinction. AWI's activities focus on minimizing impacts of human actions

detrimental to endangered and threatened species, as well as other wildlife, including harassment, habitat degradation, encroachment and destruction, and irresponsible and inhumane hunting and trapping practices. Through advocacy, litigation, legislation, research, and education, AWI acts to safeguard endangered or threatened wild animals and their habitats and to implement humane solutions to human-wildlife conflicts. AWI works with national and local governments and other policymakers to protect animals, often by preventing actions damaging to species and by promoting effective and safe wildlife protection laws and regulations. AWI also funds innovative strategies for humane, non-lethal wildlife conflict management and study. Its members are deeply concerned about the status of the Florida black bear and the FWC's plans to authorize a hunt. Approximately 2,000 of AWI's members and supporters sent the FWC letters opposed to the FWC's decision to allow a Florida black bear hunt.

Center for Biological Diversity (“Center”) is a nonprofit organization that works through science, law, and policy to secure a future for all species, great or small, hovering on the brink of extinction. The Center is dedicated to the preservation, protection, and restoration of biodiversity and ecosystems throughout the world. The Center has 1,335 members and 57,295 online supporters in Florida, and over 50,000 members and more than 900,000 online supporters worldwide. It is incorporated in California and headquartered in Tucson, Arizona, but maintains

a Florida office in St. Petersburg, Florida. Its members are deeply concerned about the status of the Florida black bear and the FWC's plans to authorize a hunt. Over 2,800 of the Center's members and supporters sent the FWC letters opposed to the FWC's decision to allow a Florida black bear hunt. Many also attended the FWC meetings in person and presented oral testimony against the Florida black bear hunt.

CompassionWorks International ("CWI") is a nonprofit animal advocacy organization focused on creating a more compassionate world for all beings by mobilizing effective activism, undertaking cruelty investigations, and engaging with other organizations in wildlife conservation efforts. One of its primary campaigns is to end the selfish and cruel act of trophy hunting. CWI's membership, over 1,000 strong in Florida, is outraged by the unnecessary and unwanted bear hunt that has been slated for October. Its members stand unified with numerous other organizations throughout Florida and across the country in using all of our resources to put an immediate stop to the terrible injustice that this hunt represents, both for the bears and for the citizens of Florida.

Environmental Action is a nonprofit advocacy and research group that has fought for protection of natural resources and public health since 1970. It uses a variety of strategies and tactics to inform and mobilize concerned citizens about pressing issues from climate change, to environmental justice to preservation of

flora and fauna. Its members in Florida and nationally are concerned about the haste in using a hunt to address bear-human interactions. That's why over 17,000 of its members have demonstrated support for this lawsuit and opposition of the hunt.

Jungle Friends Primate Sanctuary ("Jungle Friends") was incorporated in 1997 in Las Vegas, Nevada. The sanctuary relocated to Gainesville, Florida in 1999 for a more suitable climate for the New World monkeys in its care. While its immediate responsibility is to provide the best possible life for the 300+ monkeys who call Jungle Friends home, Jungle Friends' mission is not only to assist these individual primates, but to also engage the interest and support of the national (and international) community. Jungle Friends promotes compassion for all animals. Every animal it can assist becomes a part of the message that these beings are worthy of our efforts and must be included in our moral universe. Jungle Friends Board, staff and constituents of over 1,000 people are opposed to the hunt of Florida's black bears. By taking action for all animals in need, and by reaching out to others, Jungle Friends attempts to encourage, inspire and, wherever possible, assist others in taking specific actions for the good of all animals and for a more compassionate world.

Lobby for Animals raises awareness and educates people on the issues facing animals and the environment and helps them effectively address these issues

with their legislators. Lobby for Animals offers training videos, a bi-weekly legislative report highlighting current legislation throughout the United States, resource links and templates for constituent use. Lobby For Animals supplies the tools necessary and encourages all interested parties to learn about the importance of becoming proactive citizens within their communities and learn how to effectively speak up for animals and the environment that we all share.

South Florida Wildlands Association (“SFWA”) works to protect habitat and wildlife in the Greater Everglades. SFWA carries out this work inside public and private lands alike. In 2012, SFWA was one the environmental organizations leading the charge to keep the Florida black bear on Florida’s Imperiled Species List. With a total population of approximately 3,000 bears living in geographically and genetically isolated pockets, SFWA believes then and now that Florida’s bear population would continue to benefit from a ban on hunting and non-development of available bear habitat. SFWA reaches tens of thousands of south Floridians through its email list, posts on social media, and frequent coverage of its work in local news outlets.

Stop the Florida Bear Hunt is an organization opposed to the undemocratic, unscientific, and immoral hunt of Florida’s black bears scheduled to commence on October 24th, 2015. With over 4,100 members, Stop the Florida Bear Hunt has actively participated in opposing the bear hunt by raising awareness

of the importance of the Florida black bear, participating in available public processes and engaging in lawful protests across the state of Florida including in St. Augustine, Fort Myers, Jacksonville, Tampa, West Palm Beach, Sarasota, Tallahassee, St. Petersburg, Orlando, Gainesville, Melbourne, and Miami.

ARGUMENT

I. INTRODUCTION

The Florida black bear (*Ursus americanus floridanus*) is a rare subspecies of the American black bear found only in the Southeast. Due to threats such as habitat destruction and road mortality, the State of Florida protected these bears as “threatened” wildlife for over four decades. See Fla. Stat. § 379.2291. In the 1970s, Florida’s black bear population dwindled to a mere 300 bears, a fraction of the 11,000 bears that historically roamed Florida’s forests and scrublands. Today, as a result of significant legal protections and conservation efforts, the bear population has increased, albeit to nowhere near its historic populations. While these improvements provide reason to hope that populations could once again reach sustainable levels, it has been only three years since the FWC removed the Florida black bear from its “threatened species list,” see Fla. Stat. § 379.2291, and the underlying threats to the bear population, such as habitat degradation and mortality due to collisions with motor vehicles, have only intensified.

Florida black bears now face a new threat – a trophy hunt with insufficient protections to ensure that decades of conservation efforts are not undone in a mere two days. At the rate that permits are being issued (and will continue to be issued until the eve of the hunt), this ill-advised scheme will set more hunters loose on the iconic Florida black bear than are known to live in the state. This hastily approved hunt will almost certainly inflict irreparable damage on an already fragile species. With only weeks until the bear season is set to commence, the Amici urge this Court to issue an injunction to stop the hunt.

II. THE HISTORY AND STATUS OF FLORIDA BLACK BEAR CONSERVATION

In 1974, as the Florida bear population dwindled to alarming levels, the FWC recognized the Florida black bear as “threatened.” See F.A.C. 39-27.003-005. Despite the state protections, in 1982, the United States Fish and Wildlife Service (“USFWS”) identified the Florida black bear as a candidate for listing under the federal Endangered Species Act (“ESA”). 47 Fed. Reg. 58454 (Dec. 30, 1982); 50 Fed. Reg. 37958 (Sept. 18, 1985); 54 Fed. Reg. 554 (Jan. 6, 1989); 56 Fed. Reg. 58804 (Nov. 21, 1991). In 1991, USFWS determined that listing the Florida black bear was warranted, but precluded due to higher priority listing actions. 56 Fed. Reg. 596 (Jan. 7, 1991).

In 1997, the USFWS and Fund for Animals entered into a stipulated settlement agreement whereby USFWS agreed to decide whether to federally

protect the Florida black bear by December 1998. See Joint Notice of Filing, Fund for Animals v. Babbitt, No. 1:92-cv-00800 (D.D.C. Jan. 21, 1997). On December 8, 1998, USFWS determined that listing the Florida black bear was not warranted, in part due to the adequacy of existing state regulatory mechanisms. 63 Fed. Reg. 67613 (Dec. 8, 1998). Following additional litigation, the USFWS in 2004 concluded again that the Florida black bear did not warrant listing due to the adequacy of existing state regulatory mechanisms. 69 Fed. Reg. 2101 (Jan. 14, 2004). USFWS specifically cited the fact that the FWC protected the bear as “threatened” and that both Florida and Georgia only allowed the killing of “problem” bears in very rare circumstances, *and* only after other preventative measures had been exhausted. Id. at 2102 (“Additional protection is provided to bears under specific State law . . . and the taking of a threatened species or their nests/dens are issued only for scientific or conservation purposes and only if the permitted activity will not have a negative impact on the survival potential of the species.”). In fact, the USFWS based its decision in part on the fact that there were “low levels of threat as demonstrated by *a lack of significant take of bears from sources including hunting.*” Id. (emphasis added).

While the existence of state law protections was integral to the federal government’s decision not to grant additional protections, in 2012, the State removed the Florida black bear from its threatened species list. And now, just three

years later, the FWC intends to commence an unsustainable bear hunt. While decades of legal protections and conservation efforts have made progress toward recovering the state's bears, bear hunting is both premature and potentially devastating.

For example, only 18 percent of the Florida black bear's original habitat remains. See Exhibit 1, *FWC Bear Facts*.¹ Its remaining habitat is degraded and fragmented, resulting in high rates of vehicle collisions and smaller, more isolated populations. Exhibit 2, Dixon, J.D., M.K. Oli, M.C. Wooten, T.H. Eason, J.W. McCowan, and M.W. Cunningham, *Genetic consequences of habitat fragmentation and loss: the case of the Florida black bear (Ursus americanus floridanus)*, *Conserv. Genet.* (2007) 8:455-64. In fact, according to the FWC, vehicle collisions mortality has consistently increased from 33 in 1990 to 196 in 2014 with the peak of 285 bear deaths in 2012. See Exhibit 3, *Bears and Roads*, FWC Report.²

Due to the current and projected trend of substantial bear habitat loss and fragmentation, with 2.3 million acres of bear habitat projected to be destroyed by 2060, bear populations will become smaller and more isolated from one another, exacerbating threats from genetic isolation and road mortality. See Exhibit 4, *FWC*

¹ <http://myfwc.com/conservation/you-serve/wildlife/faqs/> (last visited September 23, 2015).

² <http://myfwc.com/conservation/you-serve/wildlife/black-bears/roads/> (last visited September 23, 2015).

*Report, Wildlife 2060: What's at stake for Florida?*³ As the FWC has recognized, “[b]lack bears require large areas, occur at low densities, and reproduce at slow rates. The increased number of bears reported in recent years appears to be the result of population growth that has occurred gradually over several decades in response to the closure of hunting seasons statewide,” Exhibit 5, *FWC Report, Wildlife Habitat Conservation Needs in Florida, “Chapter 1: Scope of Florida’s Biological Diversity.”*⁴ Combined with extant threats from habitat loss, genetic isolation, and road mortality, a hunt on Florida’s vulnerable bear populations may irreparably hinder the species’ recovery.

Proponents of the hunt claim that more bears must be killed to address increased human-bear interactions, a solution that is not supported by science. Numerous studies have found that *hunting does not lead to reduced conflicts with bears*. For example, a seven-year study of relationships among food availability, human-bear conflict, and hunting in Ontario found that “human–bear conflict was not correlated with prior harvests, providing no evidence that larger harvests reduced subsequent HBC [human-bear conflict].” Exhibit 6, Martyn E. Obbard, et al. 2014. *Relationships among food availability, harvest, and human–bear conflict at landscape scales in Ontario, Canada*. *Ursus* 25(2): 98-110. The scientists

³ <http://myfwc.com/media/129053/FWC2060.pdf> (last visited September 23, 2015).

⁴ <http://myfwc.com/media/1205682/TR15.pdf> (last visited September 23, 2015).

concluded that “[a]lthough it may be intuitive to assume that harvesting more bears should reduce HBC, empirical support for this assumption is lacking despite considerable research.” *Id.* at 106 (citing (Garshelis 1989, Treves and Karanth 2003, Huygens et al. 2004, Tavss 2005, Treves 2009, Howe et al. 2010, Treves et al. 2010)).

A decade ago, the FWC’s own bear program managers confirmed that:

[h]unting does not “solve” the nuisance problem. Nuisance bears utilize the urban-wildland interface while harvested individuals would generally be taken from more forested locations (wildlife management areas, national forests, etc.) and therefore are not typically the individuals causing nuisances. Evidence has shown that nuisance situations will occur whenever there is an available resource, regardless of bear population sizes and harvest levels. Having nuisance animals does not mean we have a nuisance population (nuisance occurs at the individual level and not at a population level).

Exhibit 7, *Statewide Assessment of Road Impacts on Bears in Six Study Areas in Florida from May 2001-September 2003, FWC Report prepared by Bear Management Program, July 2005*, at 4 (emphasis added).⁵

And FWC’s research likewise supports that opening a hunting season is not the proper solution, but that better trash disposal systems would be more beneficial. FWC Chairman Richard Corbett stated that “[p]roperly securing garbage and other attractants is the single most important action for reducing

⁵ <http://myfwc.com/media/426052/RoadImpactOnBearStudyFAQs.pdf> (last visited September 23, 2015).

conflict situations with bears.” Exhibit 8, *FWC Press Release, FWC Moving Forward with Comprehensive Approach to Reducing Conflicts with Bears*.⁶

However, despite its mandate to protect wildlife, only recently has the use of bear resistant trashcans become prevalent in counties with black bear populations, and, consistent with scientific studies, these counties have experienced a reduction in human-bear interactions. See Exhibit 9, FWC Press Release, Bear Resistant Garbage Cans Free to 100 in Leon County.⁷

III. THE COURT SHOULD ISSUE AN INJUNCTION STOPPING THE OCTOBER 24TH BEAR HUNT.

Under Florida law, to obtain temporary injunctive relief, the movant must demonstrate: (a) the likelihood of irreparable harm; (b) the unavailability of an adequate remedy at law; (c) substantial likelihood of success on the merits; and (d) consideration of the public interest. Wilson v. Sandstrom, 317 So.2d 732, 736 (Fla. 1975); Thompson v. Planning Commission, 464 So.2d 1231 (Fla. 1st DCA 1985). While the Court should consider all factors in issuing an injunction, where there is broad public impact, such relief should be “readily available.” As stated by the Florida Supreme Court:

The relief contemplated should be readily available where *the public right or injury to many is concerned* and is to be distinguished from

⁶ <http://myfwc.com/news/news-releases/2015/february/04/bears/> (last visited September 23, 2015).

⁷ <http://myfwc.com/news/news-releases/2014/april/09/bear-cans-leon/> (last visited September 23, 2015).

those cases where injunctive relief may be deferred without undue hardship pending the result of an action at law. Such considerations drive to the very heart of the inherent power of courts of equity to provide the type of relief here sought.

State Road Dept. of Florida v Frugoli, 23 So.2d 473, 475 (1960) (emphasis added);

see also Wilson, 317 So.2d at 737.

A. The Hunt Presents a High Likelihood of Irreparable Harm Because FWC has No Way of Ensuring that No More Than the Allotted Twenty Percent of the Florida Black Bear Population will be Killed.

The Florida outdoors, and its varied landscapes and unique wildlife, are an integral part of Florida’s culture, economy and way of life. The public importance of protecting our natural world is reflected in the fact that, unlike most other states, Florida’s management of wildlife is not by statute, but instead is mandated by its Constitution. Florida’s citizens demonstrated the importance of wildlife protection when they approved Amendment 5, known today as Article IV, Section 9 of the Florida Constitution, which was enacted to ensure adequate resources and oversight of Florida’s wild animals and aquatic life. As recognized by the FWC, the agency charged with the responsibility for regulating wildlife pursuant to Article IV, Section 9, “[c]ontinued support of fish and wildlife conservation is crucial to the long-term well-being and availability of these resources for public enjoyment.” Exhibit 10, *FWC Strategic Plan*, at 2.⁸

⁸ <http://strategicplan.myfwc.com/fwc-stratplan.pdf> (last visited September 23, 2015).

Despite the public's call to conserve and protect Florida's wildlife, specifically, the Florida black bear, FWC authorized the first trophy hunt of the Florida black bear since 1994, set to take place October 24, 2015. Based on information provided by the agency itself, the results could be devastating to the Florida bear population. The FWC authorized a hunt on 320 bears (20 percent of the estimated Florida black bear population, minus known mortality). However, as of September 24, 2015, the FWC has sold 2,267⁹ permits to kill Florida black bears. With 29 more days remaining in which the FWC may issue an unlimited number of permits, and an FWC-estimated 3,200 Florida black bears, it is highly likely the number of permitted bear hunters will substantially exceed the number of bears. *See Exhibit 11, Proposed Harvest Objectives for 2015*, at 3.¹⁰

Having that many hunters in the woods poses a dire risk to the bear because the FWC has committed to a two-day minimum hunt. As such, even if the 320 bear allotment is reached before the end of the second day, or even within hours of the hunt commencing, the agency is powerless to stop the additional slaughter of bears. Instead, the hunt will continue through the 48th hour. The self-reporting system adds to the uncertainty because it allows hunters to "phone in" their kill up to 12 hours after taking a bear. Moreover, the onus is on the hunters to discover

⁹ Based on information provided by FWC by phone on September 24, 2015.

¹⁰ <http://myFWC.com/media/3218556/7A-bear-harvest-objectives-presentation.pdf> (*last visited on September, 23, 2015*)

whether the FWC has closed the hunt by calling or going online at 9 p.m. each day to learn of possible closures. This system will result in inevitable lag time between when the quota is reached, when the hunt is canceled, and when the cancelation is communicated to the thousands of hunters roving some of Florida's most remote areas, some without cell service. Bear Hunt Rule 68-A-13.004(3)(g). In reality, the FWC has no way to prevent hunters from killing far more bears than what it contends is the appropriate quota. This could decimate the population of this iconic species and pose a serious threat to its future stability.

B. The Florida Black Bear Hunt will Harm the Public Interest of Many Floridians.

Meanwhile, public outcry over the proposal has been intense and overwhelmingly opposed to the hunt. During the six-month period the FWC considered the hunt, it received 191,776 comments, with at least 188,489 opposed to the hunt. Exhibit 12, *FWC Public Input on Proposed Changes to Bear Management Plan*. Even the most generous assumptions would put support of the hunt at less than 2 percent. That means that the overwhelming majority of people who wrote, called, and emailed the FWC were opposed to the hunt. The public opposition to the bear hunt has not waned. Protests are scheduled to occur in cities across the state, including in St. Augustine, Fort Myers, Jacksonville, Tampa, West Palm Beach, Sarasota, Tallahassee, St. Petersburg, Orlando, Gainesville, Melbourne, and Miami. Exhibit 13, Affidavit of Adam Suglaski, ¶ 2. There can be

no doubt that the outcome of this case impacts “the public right or injury to many,” see State Road, 23 So.2d at 475, weighing in favor of granting an injunction to stop the hunt.

IV. CONCLUSION

The planned bear hunt could undermine decades of work to save Florida’s iconic black bear from extinction. If the hunt goes forward as planned, there will be no way to turn back the clock and undo the irreparable damage to the bears. And the vast majority of Floridians who have spoken up in favor of the Florida black bear will have their voices ignored. Compared to the *de minimus* impact of not allowing the hunt to proceed this fall, the weighing of hardships demands an injunction in favor of this demonstrated public interest in conserving Florida black bears. As such, Amici respectfully request that this Court issue an immediate injunction to stop the Florida bear hunt.

Respectfully submitted,

/s Justine Thompson Cowan

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25 day of September 2015 the foregoing was electronically filed with the Clerk of Courts using the Florida Courts E-filing Portal, which will send a notice of electronic filing to:

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