

Case No. 1:17-cv-11809

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

JOYCE ROWLEY, PRO SE

Plaintiff,

vs.

CITY OF NEW BEDFORD, MA

Defendant

PLAINTIFF JOYCE ROWLEY'S BRIEF  
IN SUPPORT OF PLAINTIFF'S STANDING

Joyce Rowley  
PO Box 50251  
New Bedford, MA 02745  
508-542-8247  
Plaintiff *pro se*

## **BRIEF IN SUPPORT OF PLAINTIFF'S STANDING**

This Brief is filed in response to the July 17, 2018 Order for a briefing on whether Plaintiff Joyce Rowley (Rowley) has standing to bring this Endangered Species Act of 1973 (ESA) citizen suit against Defendant City of New Bedford, MA (New Bedford).

### **STATEMENT OF FACTS**

1. On September 21, 2017, Rowley filed the original complaint on behalf of the Friends of Ruth & Emily, Inc., a 501(c)(3) non-profit organization that she founded, as a citizen suit under 16 U.S.C. 1540(g) [Dkt. 1:9]. The “Friends” is an all-volunteer group that espouses the relocation of Asian elephants Ruth and Emily from the city-owned Buttonwood Park Zoo in New Bedford to a warm-climate sanctuary in Tennessee, The Elephant Sanctuary.

2. Asian elephants are listed as endangered species in Appendix I of the Convention on the International Trade of Endangered Flora and Fauna (CITES), the governing authority on endangered species. [Dkt. 1:28]. The Complaint states that Ruth and Emily are “harmed” and “harassed” as per the definitions contained within Section 9 of 16 U.S.C. 1538(a)(1)(B),(D). [Dkt. 1:9]

3. Rowley is a member of the Friends, as well as a resident of New Bedford and member of the zoo. The Complaint states that Rowley derives spiritual, aesthetic and emotional benefits from observing the elephants and that these benefits are diminished by seeing them in their exhibit [Dkt. 1:15].

4. New Bedford filed a motion to dismiss under Local Rule of Civil Procedure 83.5.5(c), claiming Rowley could not represent the Friends, and so the Complaint should be struck. New Bedford did not file an Answer to the Complaint.

5. Rowley responded to that motion and attended the hearing on the matter December 12, 2017. In the interim, one of the elephants, Ruth, was further injured either by an action of the zoo staff or as a result of her environment [Dkt. 17-3]. Rowley filed a preliminary injunction on the day of the hearing requesting that she be allowed to bring in outside veterinary experts to assess Ruth and remove her from the zoo [Dkt. 16].

6. The Court did not act on the preliminary injunction, but allowed Rowley 30 days to find legal counsel. That time was extended once on Rowley's motion [Dkt. 19]. Unable to find pro bono counsel with specialized knowledge of ESA cases and relevant knowledge of elephants; or in the alternative to raise the hundreds of thousands of dollars necessary to pay for counsel, Rowley filed a motion to intervene on her own behalf. The Court allowed the motion as one of substitution [Dkt. 21, 23].

7. Rowley filed a second response to New Bedford's motion to dismiss, claiming it was now moot on March 29, 2018 as she is allowed to represent herself [Dkt. 24].

8. On June 18, 2018, Rowley filed a renewed preliminary injunction, again on behalf of Ruth, as she had suffered additional injuries as a result of her environment at the zoo [Dkt. 27, 28]. Ruth's left rear leg suffered trauma, according to zoo records, and she suffered a 4" laceration on her trunk [Dkt. 28-3, 28-4]. Rowley also observed new lesions or lacerations on Ruth's face, not entered into the zoo's clinical records [Dkt. 28-2].

9. New Bedford did not respond to the renewed preliminary injunction to date.

10. Rowley maintains that she has legal standing under the ESA citizen suit provisions in 16 U.S.C. 1540(g), Citizen Suit.

#### ARGUMENT

11. To establish standing, first plaintiffs must show an injury-in-fact that is concrete

and particularized, actual or imminent not conjectural or hypothetical. Second, there must be a causal relationship between the injury and the defendant's action, not an independent action of a third party not before the court. Third, plaintiffs must show that it is likely that a favorable action by the court will redress the injury (*Lujan v. Defenders of Wildlife, et al.*, 504 U.S. 555, 561, 112 S.Ct. 2130 (1992), where environmental organizations sued to enforce the requirement for ESA Section 7 consultations with the Department of the Interior for all federally-funded projects, not just those located within the United States and on the high seas.)

12. Injury, here, is defined as an invasion of a legally protected interest. *Lujan* and its predecessors clearly state that "...the desire to use or observe an animal species, even for primarily esthetic purposes, is a cognizable interest for the purpose of standing." (Id, 504 U.S. at 563).

13. Further, at the pleading stage, "...general factual allegations of injury resulting from the defendant's action may suffice..." (*Lujan v. National Wildlife Federation*, 497 U.S. 871 at 889, 110 S.Ct. 3177, at 3189 (1990)) and "...In response to a summary judgment motion, however, the plaintiff can no longer rest on such 'mere allegations,' but must 'set forth' by affidavit or other evidence 'specific facts,' Fed. R. Civ. Proc. 56(e)..." (*Gladstone, Realtors v. Village of Bellwood*, 441 U.S. 91, at 115, and n. 31, 99 S.Ct. 1601, at 1616, n. 31 (1979))

14. Here, Rowley has stated a cognizable protected interest by her observations from her near-daily visits with Ruth and Emily [Dkt. 1:14]. The injury-in-fact is concrete and particularized: Rowley's aesthetic benefits from those observations are "greatly diminished by observing their ongoing suffering from captivity." [Dkt. 1:15]. The diminishment is actual

and imminent, not conjectural or hypothetical as seen by the level of detail in Rowley's original pleading concerning the elephant exhibit's lack of adequate water, food, and shelter, and the resulting behavioral and physical harms which Rowley has observed in both elephants [Dkt. 1:40-65]. The injury to Rowley is ongoing, and thus, imminent, not hypothetical or conjectural as both elephants continue to suffer [Dkt. 17, 17-4 Photo of Ruth's ear in November 2017; 28:4-13, 28-2 Photo of Ruth's ear and facial injury in June 2018].

15. Rowley stated that there is no third party involved as the elephants are kept on city-owned property at a city zoo, and the employees involved are all city employees, not contractors or consultants (Dkt. 1:22-24).

16. Rowley's injury will be redressed by a favorable court decision and by the removal of Ruth and Emily to a warm climate sanctuary [Dkt. 1:66-75, [Dkt. 28:16, 34].

17. As stated previously, this case is still in the initial pleadings stage. These factual allegations were corroborated by public records received from New Bedford under the Massachusetts Public Records Access Act [M.G.L. 66], printouts of photographs, and review of the clinical records by an experienced veterinarian [Dkt. 17-1:5, Declaration by Joyce Rowley, Dkt. 28-1, Declaration by Julia Allen, D.V.M., PH.D].

#### CONCLUSION

18. Rowley has demonstrated she met the requirements for standing to bring this citizen suit against the City of New Bedford, MA under the ESA.

Respectfully submitted,

/s/Joyce Rowley  
Joyce Rowley, Pro se  
PO Box 50251  
New Bedford, MA 02745  
508-542-8297

I hereby certify that a true copy of the above document was filed through the ECF system and will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) on this date.

/s/Joyce Rowley  
Joyce Rowley, Pro se  
PO Box 50251  
New Bedford, MA 02745  
508-542-8297

Dated: August 6, 2018