

U.S. District Court

District of Columbia

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**Case Name:** UNITED STATES ASSOCIATION OF REPTILE KEEPERS, INC. v. JEWELL et al

**Case Number:** [1:13-cv-02007-EGS](#)

**Filer:**

**Document Number:** No document attached

**Docket Text:**

**MINUTE ORDER.** Pending before the Court is [14] Defendant's Motion to Dismiss and [19] Motion for Oral Argument. In its motion, Defendant argues that Plaintiff's Complaint should be dismissed pursuant to Fed. R. Civ. P. 12(b)(1) because Plaintiff has failed to establish both prudential and constitutional standing. Def.'s MTD at 8-16. Further, Defendant argues that Counts 1 and 4 of Plaintiff's Complaint should be dismissed for the additional reason that they fail to state a claim pursuant to Fed. R. Civ. P. 12(b)(6). Id. at 16-19. In its opposition, Plaintiff argues that it can establish both prudential and constitutional standing and attaches affidavits from members of its organization purporting to show that their interests are within the "zone of interests" protected by the National Environmental Policy Act ("NEPA"), 42 U.S.C. § 4321, and the Lacey Act, 18 U.S.C. § 42, and that they have the kind of concrete, particularized injuries required by Article III. Pl.'s Opp'n at 2-14. Plaintiff also seeks leave to amend Counts 1 and 4 of its Complaint pursuant to Fed. R. Civ. P. 15(a)(2). In its Reply, Defendant concedes that for the purposes of its motion to dismiss, Plaintiff has established prudential standing with respect to the Lacey Act only and that it has constitutional standing. Def.'s Reply at 9-12. Defendant argues that amendment of Count 1 of Plaintiff's Complaint would be futile but concedes that Plaintiff must amend Count 4 to state a claim pursuant to the Lacey Act. Id. at 13-16. Accordingly, Defendant's Motion to Dismiss is hereby DENIED without prejudice. The Court hereby GRANTS Plaintiff's motion to amend its Complaint, contained in its opposition to Defendant's motion to dismiss. See Fed. R. Civ. P. 15(a)(2) ("The court should freely give leave when justice so requires."); see also Richardson v. United States, 193 F.3d 545, 548-49 (D.C. Cir. 1999) ("Leave to amend a complaint should be freely given in the absence of undue delay, bad faith, undue prejudice to the opposing party, repeated failure to cure deficiencies, or futility." (citing Foman v. Davis, 371 U.S. 178, 182 (1962))). Plaintiff shall file an Amended Complaint by no later than May 9, 2014. In light of the foregoing, [19] Defendant's Motion for Oral Argument is DENIED as moot. SO ORDERED. Signed by Judge Emmet G. Sullivan on April 26, 2014. (lcegs1)