

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

ETTA BAVILLA,)
)
 Plaintiff,)
)
 vs.)
)
 STATE OF ALASKA, Department of)
 Corrections,)
)
 Defendant.)
)

Case No. 3AN-04-5802 CI

**REPLY TO PLAINTIFF'S OPPOSITION
TO DEFENDANT'S MOTION TO DISMISS**

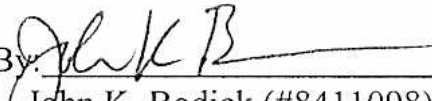
Defendant State of Alaska, Department of Corrections hereby replies to plaintiff's opposition to its motion to dismiss. Bavilla first contends that her claim is not brought under 42 U.S.C. §1983. However, Bavilla provides no alternative legal basis for her claim. As stated in defendant's motion to dismiss, the Alaska Supreme Court has not recognized a direct cause of action under the Alaska Constitution. Since no other cause of action exists to assert constitutional claims, Bavilla's due process claims must have been brought under 42 U.S.C. §1983. Otherwise, by her own admission, Bavilla has failed to state a claim upon which relief can be granted.

Bavilla next argues that her claims somehow survive defendant's motion to dismiss because they ask for declaratory and injunctive relief instead of damages. This argument is without merit. Bavilla provides no legal authority that allows her to sue the

State of Alaska under §1983 for purposes of her claims for injunctive and declaratory relief. The State of Alaska is not a "person" under §1983 for any purposes. There is no exception for claims for declaratory and injunctive relief. Bavilla has simply sued the wrong defendant. Since relief cannot be granted against the State of Alaska, the motion to dismiss must be granted and Bavilla's claims dismissed as a matter of law.

Dated this 20 day of July, 2004, at Anchorage, Alaska.

GREGG D. RENKES
ATTORNEY GENERAL

By: 
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I hereby certify that a true and correct copy
of the foregoing were served by mail on
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