

STATE OF WISCONSIN CIRCUIT COURT JEFFERSON COUNTY

HUNTER NATION INC.
6700 Squibb Road, Suite 103A
Mission, KS 66202, and

LUKE HILGEMANN


Plaintiffs,

v.

Case Type: Declaratory Judgment
Case Code: 30701

WISCONSIN DEPARTMENT OF
NATURAL RESOURCES
101 South Webster Street
PO Box 7921
Madison, WI 53707,

WISCONSIN NATURAL
RESOURCES BOARD
101 South Webster Street
PO Box 7921
Madison, WI 53707, and

PRESTON COLE, in his official
capacity as Secretary of the Wisconsin
Department of Natural Resources,
101 South Webster Street,
PO Box 7921
Madison, WI 53707,

Defendants.

COMPLAINT

Plaintiffs, through their undersigned counsel, as and for their complaint
against Defendants, allege as follows:

INTRODUCTION

1. The Department of Natural Resources (“DNR”) refuses to comply with unambiguous state law requiring it to allow the hunting and trapping of wolves. This refusal violates the constitutional and statutory rights of hunters throughout the State of Wisconsin. The Plaintiffs respectfully request that this Court order DNR to obey the lawful commands of the Legislature that created it and immediately establish an open season for hunting and trapping wolves.

THE PARTIES

2. Plaintiff Hunter Nation Inc. (“Hunter Nation”) is a non-profit business organized under the laws of the State of Kansas. Hunter Nation maintains its principal office at 6700 Squibb Road, Suite 103A, in the City of Mission, County of Johnson, and State of Kansas. Plaintiff Hunter Nation is a 501(c)(4) membership-based organization with members throughout the State of Wisconsin.

3. Plaintiff Hunter Nation is dedicated to, among other goals, promoting the right to hunt, encouraging future generations to carry on the great American tradition of hunting, educating the public regarding hunting, and combatting threats to hunting. Hunter Nation actively works to further these goals on behalf of its members.

4. Plaintiff Hunter Nation has been harmed because Defendants’ failure to follow state law have impeded its ability to further its own organizational goals. Additionally, Plaintiff Hunter Nation brings this action on behalf of its members located throughout Wisconsin. Hunter Nation has members who would like to exercise their constitutional and statutory rights to hunt wolves but, because of

Defendants' failure to follow state law, are unable to do so and thus are suffering a violation of those rights.

5. Plaintiff Luke Hilgemann is President and CEO and a member of Hunter Nation. He is a Wisconsin resident and taxpayer. Plaintiff Hilgemann resides at [REDACTED], in the [REDACTED], [REDACTED], and State of Wisconsin.

6. Plaintiff Hilgemann would like to exercise his constitutional and statutory rights to hunt wolves but, because of Defendants' failure to follow state law, is unable to do so. He is thus suffering a violation of those rights.

7. Additionally, as a taxpayer, Plaintiff Hilgemann has suffered a pecuniary loss as a result of Defendants' illegal refusal to establish a wolf hunt. Defendants plan to engage in a time-consuming and expensive review process over the next several months prior to permitting wolf hunting in Wisconsin. These planned expenditures are unlawful. Any necessary preliminary steps could be and should be completed before the end of February.

8. Defendant Wisconsin Department of Natural Resources ("DNR") is an administrative agency of the State of Wisconsin, created by statute. DNR's principal office is located at 101 South Webster Street, in the City of Madison, County of Dane, and State of Wisconsin. DNR is the state agency required by law to establish an open season for hunting and trapping wolves.

9. Defendant Wisconsin Natural Resources Board ("NRB") is an administrative agency of the State of Wisconsin, created by statute. NRB's principal

office is located at 101 South Webster Street, in the City of Madison, County of Dane, and State of Wisconsin. DNR is under the direction and supervision of the NRB.

10. Defendant Preston Cole is the Secretary of the Wisconsin Department of Natural Resources, and is sued in his official capacity only. Defendant Secretary Cole's principal office is located at 101 South Webster Street, in the City of Madison, County of Dane and State of Wisconsin.

JURISDICTION AND VENUE

11. This Court has jurisdiction pursuant to Wis. Stat. § 806.04(1)-(2), (5).

12. Venue in this Court is proper pursuant to Wis. Stat. § 801.50(3)(a).

STATEMENT OF CLAIM

13. The State of Wisconsin boasts a proud tradition of hunting exemplified by the state constitutional guarantee that “[t]he people have the right to fish, hunt, trap, and take game subject only to reasonable restrictions as prescribed by law.” Wis. Const. art. I, § 26.

14. This case concerns the hunting of a particular type of game, the gray wolf (*canis lupus*).

15. On March 15, 2019, that is, almost two years ago, the United States Fish and Wildlife Service proposed removing the gray wolf from the federal endangered species list. 84 Fed. Reg. 9648. That proposal set in motion a process culminating in a November 3, 2020 final rule delisting the gray wolf, effective January 4, 2021. 85 Fed. Reg. 69778.

16. The Wisconsin Legislature has commanded in clear language that “[i]f the wolf is not listed on the federal endangered list and is not listed on the state endangered list, the department [of natural resources (“DNR”)] shall allow the hunting and trapping of wolves.” Wis. Stat. § 29.185(1m). And it has specifically ordered the DNR to “establish a single annual open season for both hunting and trapping wolves that begins on the first Saturday in November of each year and ends on the last day of February of the following year.” Wis. Stat. § 29.185(5)(a).

17. As noted above, it is undisputed that the wolf is not currently listed on the federal endangered species list.

18. It is also undisputed that the wolf is not currently listed on the state endangered species list.

19. Yet Wisconsinites remain unable to exercise their right to hunt wolves because DNR refuses to allow it. Instead, despite having months (if not years) to prepare, DNR has announced that it will not allow the hunting of wolves until November 2021.

20. This substantial delay is significant. It is no secret that the listing or delisting of the gray wolf from federal and state endangered species lists is a highly controversial issue.

21. Indeed, on January 20, 2021, newly-elected President Joe Biden issued an “Executive Order on Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis,” ordering “[t]he heads of all agencies [to] immediately review all existing regulations, orders, guidance documents, policies,

and any other similar agency actions . . . promulgated, issued, or adopted between January 20, 2017, and January 20, 2021, that are or may be inconsistent with, or present obstacles to” policies of his administration, including the “prioritiz[ation]” of “environmental justice.” The White House announced that this review will include review by the U.S. Department of the Interior of the decision to remove the wolf from the federal endangered species list.

22. In other words, there is a substantial possibility that Wisconsinites’ time to hunt wolves is limited.

23. In a January 15, 2021 letter, one dozen members from the Senate Committee on Sporting Heritage, Small Business & Rural Issues and the Assembly Committee on Sporting Heritage asked the NRB to hold an emergency meeting and “require implementation of a wolf hunt season in January and February of 2021.” The letter noted that the Committees had held a joint informational meeting, that “the consensus was that wolves in Wisconsin need to be hunted now” in light of the fact that “Wisconsin may not have the opportunity to manage its wolf population in the near future” and that “Wisconsin is required under state statu[t]e 29.185 (1m) to open a season immediately.”

24. On January 22, 2021, the NRB held a special meeting to consider the legislators’ request. After deliberation it did not order the DNR to permit the hunting and trapping of wolves.

25. This case is not about whether hunting wolves is a good or bad policy idea. That decision was made by the Wisconsin Legislature in 2011, *see* 2011 Wis. Act 169, and it might have been made for any number of reasons.

26. For example, the Legislature was, no doubt, aware that the DNR had set a population objective of 350 wolves statewide which Wisconsin has met and exceeded every year since 2004. Indeed, DNR's own numbers show that as of 2011 the number of wolves in Wisconsin exceeded two times that goal (782) and now exceeds almost three times that amount (1,034).

27. Perhaps the Legislature was concerned about the many wolf depredations that occur annually in Wisconsin, representing killed or injured pet dogs, cows, sheep, horses and other livestock. For example, the DNR's own numbers show over seven dozen confirmed or probable wolf depredation events in 2020 alone, not including verified harassment and threats and unconfirmed depredations or complaints. Wisconsin Department of Natural Resources, *Wolf Depredation Reports in 2020*, available at <https://dnrx.wisconsin.gov/wdacr/public/depredation/2020>.

28. Or perhaps the Legislature was aware of the controversy over gray wolves and wished to ensure that hunters' rights to hunt this particular animal was protected as a matter of statute and constitutional law, removing it from the control of unelected agency bureaucrats.

29. Any of these reasons, or all of them, or others, may have motivated the Legislature to enact the statutes that it did. But, as noted, the Legislature's

motivations are beside the point. Wisconsin Stat. §§ 29.185(1m) and (5)(a) are now the law of the land as both a constitutional and a statutory matter.

30. Defendants could, if they wished, comply with state law in time to allow for hunting before the last day of February.

31. Absent an order of this Court, Defendants have made clear that they do not intend to do so.

Claim I – Declaration under Wis. Stat. § 806.04 – Violation of Wis. Stat. §§ 29.185(1m) and 29.185(5)(a)

32. Plaintiffs reallege and incorporate by reference the allegations set forth above as if fully set forth herein.

33. Plaintiffs seek a declaration that Defendants are violating state statutes requiring them to permit the hunting and trapping of wolves.

34. Defendants are state administrative agencies and one of their officials.

35. As administrative agencies, Defendants are “creature[s] of the legislature” and have “only those powers as are expressly conferred or necessarily implied from the statutory provisions under which [they] operate[].” *Brown Cty v. DHSS*, 103 Wis. 2d 37, 43, 307 N.W.2d 247 (1981). Although the statutory commands here are clear, Wisconsin courts will “narrowly construe imprecise delegations of power to administrative agencies.” *Wisconsin Legislature v. Palm*, 2020 WI 42, ¶52, 391 Wis. 2d 497, 942 N.W.2d 900.

36. Wisconsin Stat. § 29.185(1m) provides that “[i]f the wolf is not listed on the federal endangered list and is not listed on the state endangered list, the

department [of natural resources (“DNR”)] shall allow the hunting and trapping of wolves.”

37. Wisconsin Stat. § 29.185(5)(a) requires the DNR to “establish a single annual open season for both hunting and trapping wolves that begins on the first Saturday in November of each year and ends on the last day of February of the following year.”

38. Because the wolf is not currently listed on the federal or state endangered species lists, Defendants are required to permit hunting and trapping of wolves through the end of February. They possess no discretion to simply wait until the next season comes around. Defendants’ own apparent estimation that the hunting and trapping of wolves is not a pressing matter is irrelevant in light of the Legislature’s decision.

39. Defendants’ failure to permit the hunting and trapping of wolves violates both §§ 29.185(1m) and 29.185(5)(a).

40. Defendants’ actions cause the Plaintiffs harm in several ways. Plaintiff Hilgemann and the Wisconsin members of Plaintiff Hunter Nation possess constitutional, *see* Wis. Const. art. I, § 26, and statutory, *see* Wis. Stat. §§ 29.185(1m) and 29.185(5)(a), rights to hunt wolves in accordance with Wis. Stat. Ch. 29, and Defendants are violating these rights. Defendants are impeding Plaintiff Hunter Nation’s ability to further its own organizational goals. And Defendants’ decision to engage in a time-consuming and expensive review process over the next several months prior to permitting wolf hunting in Wisconsin will cause Plaintiff Hilgemann,

a Wisconsin taxpayer, a pecuniary loss. These planned expenditures are unlawful. Any necessary preliminary steps could be and should be completed before the end of February.

Claim II – Declaration under Wis. Stat. § 806.04 – Violation of Wis. Const. art. I, § 26

41. Plaintiffs reallege and incorporate by reference the allegations set forth above as if fully set forth herein.

42. Plaintiffs seek a declaration that by refusing to permit the hunting and trapping of wolves Defendants are violating the constitutional right of Plaintiff Hilgemann and the constitutional rights of the Wisconsin members of Plaintiff Hunter Nation to fish, hunt, trap, and take game.

43. Article I, § 26 of the Wisconsin Constitution provides that “the people have the right to fish, hunt, trap, and take game subject only to reasonable restrictions as prescribed by law.”

44. This provision “was intended to codify the common law right to hunt that existed prior to its adoption,” whereby “the citizens of the state have a common law right to hunt and fish game as they see fit in the absence of state regulations, so long as they do not infringe private rights.” *Wisconsin Citizens Concerned for Cranes & Doves v. Wisconsin Dep’t of Nat. Res.*, 2004 WI 40, ¶45, 270 Wis. 2d 318, 677 N.W.2d 612.

45. Put differently, Wisconsinites’ rights to hunt extends until circumscribed by the state.

46. The Wisconsin Legislature has seen fit to permit the hunting and trapping of wolves from November through February. The ability to hunt during these times is of constitutional dimension.

47. By ignoring the Legislature's lawful commands, Defendants are violating those constitutional rights.

48. Further, Defendants' decision to wait until November 2021 to permit hunting is not "reasonable" within the meaning of Wis. Const. art. I, § 26.

49. Nor is it "prescribed by law"; in fact, the law requires the opposite of what DNR is doing.

50. Defendants' actions cause the Plaintiffs harm in several ways. Plaintiff Hilgemann and the Wisconsin members of Plaintiff Hunter Nation possess constitutional, *see* Wis. Const. art. I, § 26, and statutory, *see* Wis. Stat. §§ 29.185(1m) and 29.185(5)(a), rights to hunt wolves in accordance with Wis. Stat. Ch. 29, and Defendants are violating these rights. Defendants are impeding Plaintiff Hunter Nation's ability to further its own organizational goals. And Defendants' decision to engage in a time-consuming and expensive review process over the next several months prior to permitting wolf hunting in Wisconsin will cause Plaintiff Hilgemann, a Wisconsin taxpayer, a pecuniary loss. These planned expenditures are unlawful. Any necessary preliminary steps could be and should be completed before the end of February.

Claim III – Writ of Mandamus

51. Plaintiffs reallege and incorporate by reference the allegations set forth above as if fully set forth herein.

52. Plaintiffs seek a Writ of Mandamus requiring Defendants to act in accordance with their statutorily-mandated duties.

53. “A writ of mandamus may be used to compel public officers ‘to perform duties arising out of their office and presently due to be performed.’” *Pasko v. City of Milwaukee*, 2002 WI 33, ¶24, 252 Wis. 2d 1, 643 N.W.2d 72 (quoting *Law Enforcement Standards Bd. v. Village of Lyndon Station*, 101 Wis. 2d 472, 494, 305 N.W.2d 89 (1981)).

54. “In order for a writ of mandamus to be issued, four prerequisites must be satisfied: ‘(1) a clear legal right; (2) a positive and plain duty; (3) substantial damages; and (4) no other adequate remedy at law.’” *Id.* (quoting *Law Enforcement Standards Bd.*, 101 Wis. 2d at 494).

55. Plaintiffs Hilgemann and the Wisconsin members of Plaintiff Hunter Nation have constitutional, *see* Wis. Const. art. I, § 26, and statutory, *see* Wis. Stat. §§ 29.185(1m) and 29.185(5)(a), rights to hunt wolves through the end of February and Defendants have the plain and positive duty to permit it. The failure of Defendants to comply with their statutory duties violates these rights causing substantial injury for which there is no adequate remedy at law.

56. Defendants’ actions cause the Plaintiffs harm in several ways. As noted Plaintiff Hilgemann and the Wisconsin members of Plaintiff Hunter Nation possess constitutional and statutory rights to hunt wolves in accordance with Wis. Stat. Ch.

29, and Defendants are violating these rights. Defendants are impeding Plaintiff Hunter Nation's ability to further its own organizational goals. And Defendants' decision to engage in a time-consuming and expensive review process over the next several months prior to permitting wolf hunting in Wisconsin will cause Plaintiff Hilgemann, a Wisconsin taxpayer, a pecuniary loss. These planned expenditures are unlawful. Any necessary preliminary steps could be and should be completed before the end of February.

RELIEF REQUESTED

WHEREFORE, the Plaintiffs respectfully request that this Court:

A. Enter a declaratory judgment that Defendants' refusal to allow the hunting and trapping of wolves violates Wis. Stat. §§ 29.185(1m) and 29.185(5)(a);

B. Enter a declaratory judgment that Defendants' refusal to allow the hunting and trapping of wolves violates Wis. Const. art. I, § 26;

C. Issue a writ of mandamus requiring the Defendants to comply with §§ 29.185(1m) and 29.185(5)(a) by immediately allowing the hunting and trapping of wolves, including taking whatever actions are necessary to establish an open season;

D. Enter an order permanently enjoining Defendants from violating Plaintiffs' statutory and constitutional rights to hunt and trap wolves by refusing to comply with the requirements of Wis. Stat. §§ 29.185(1m) and 29.185(5)(a).

E. Award the Plaintiffs such costs as allowed by law; and

F. Grant the Plaintiffs such other and further relief as the court deems appropriate.

Dated this 2nd day of February, 2021.

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/s/ Electronically signed by Richard M. Esenberg

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