

STATE OF WISCONSIN

CIRCUIT COURT  
BRANCH \_\_\_\_

SHEBOYGAN COUNTY

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TRAVIS KOBS,  
628 Washington Street  
Sheboygan Falls, WI 53085,

Plaintiff,

v.

STEVEN LITTLE, in his official capacity as Acting  
Secretary of the Department of Natural Resources  
101 South Webster Street  
Madison, WI 53703,

Defendant.

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Case type: 30701

Case Code: 24-CV-

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## SUMMONS

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THE STATE OF WISCONSIN, To each person named above as a Defendant:

You are hereby notified that the Plaintiff named above has filed a lawsuit or other legal action against you. The complaint, which is attached, states the nature and basis of the legal action.

Within 45 days of receiving this summons, you must respond with a written answer, as that term is used in chapter 802 of the Wisconsin Statutes, to the complaint. The court may reject or disregard an answer that does not follow the requirements of the statutes. The answer must be sent or delivered to the court, whose address is **Sheboygan County Clerk of Courts, 615 North 6th Street, Sheboygan, Wisconsin 53081**, and to the **Wisconsin Institute for Law & Liberty, Plaintiff's attorneys, whose address is 330 East Kilbourn Avenue, Suite 725, Milwaukee, Wisconsin 53202**. You may have an attorney help or represent you.

If you do not provide a proper answer within 45 days, the court may grant judgment against you for the award of money or other legal action requested in the complaint, and you may lose your right to object to anything that is or may be incorrect in the complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

Dated this 6<sup>th</sup> day of June, 2024.

Respectfully, Submitted,

WISCONSIN INSTITUTE FOR  
LAW & LIBERTY, INC.

*Electrically Signed by Skylar Croy*

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STATE OF WISCONSIN   CIRCUIT COURT SHEBOYGAN COUNTY  
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**VERIFIED COMPLAINT**

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Travis Kobs states his Verified Complaint as follows:

**INTRODUCTION**

1.     In 1999, the Department of Natural Resources promulgated a vague administrative rule, Wis. Admin. Code § NR 20.05(2): “No person may . . . [p]ossess or control any firearm, gun or similar device at any time while on the waters, banks or shores that might be used for the purpose of fishing.”

2.     A violation of the administrative rule is punishable by a forfeiture of \$200, together with court costs for a total of \$544.50.<sup>1</sup>

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<sup>1</sup> <https://www.wicourts.gov/publications/fees/docs/dnrbondschedule23.pdf>

3. The administrative rule is unconstitutional. Specifically, the rule violates Mr. Kobs's right to keep and bear arms, which is safeguarded by the Second Amendment to the United States Constitution.

4. Mr. Kobs requests that this Court declare that the administrative rule is unconstitutional and temporarily and permanently enjoin its enforcement.

### **PARTIES**

5. Mr. Kobs is a life-long Wisconsinite. He resides in Sheboygan County at 628 Washington Street, Sheboygan Falls, WI 53085.

6. For many years, Mr. Kobs has had a concealed-carry permit.

7. Mr. Kobs carries a 9mm pistol for self-defense when he feels that it is useful for his self-defense.

8. Mr. Kobs is a law-abiding citizen with no criminal history.

9. Mr. Kobs has never been cited by the Department.

10. Mr. Kobs frequently fishes and hunts—they are his pastimes.

11. Mr. Kobs plans to pursue his pastimes this summer.

12. Indeed, each year for over a decade, Mr. Kobs has purchased a “Conservation Patron License.”

13. The Department says such a license is “for the avid sportsperson.”<sup>2</sup>

14. The license consists of a fishing license, Great Lakes trout and salmon stamp, inland trout stamp, sturgeon hook and line inland license, sturgeon hook and line Lake Michigan license, pheasant stamp, gun deer hunting license, archery

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<sup>2</sup> <https://dnr.wisconsin.gov/permits/conservationpatron.html>

license, crossbow license, trapping license, otter application, fisher application, spring turkey application, spring turkey license (with a permit), turkey stamp, fall turkey license (with a permit), early goose permit (upon request), exterior and Horicon goose permit (upon request), waterfowl stamp, annual park sticker, annual state parks trail pass, and admission to Heritage Hill State Park.

15. Mr. Kobs uses numerous areas in Sheboygan County to fish and hunt, including the Nichols Creek Wildlife Area and the Onion River Fishery and Stream Bank Protection Area.

16. These areas partially consist of waters, banks, and shores.

17. Mr. Kobs plans to carry his 9mm pistol for self-defense against animals and humans this summer while he is in these areas and while he is on various lakes and rivers fishing.

18. Mr. Kobs fears prosecution under Wis. Admin. Code § NR 20.05(2).

19. Deputy Secretary Steven Little is the acting Secretary of the Department.

20. Secretary Little is sued only in his official capacity.

21. The Department is an administrative agency of Wisconsin and is responsible for enforcing the administrative rule.

22. Secretary Little maintains a main office in Dane County at 101 South Webster Street, Madison, WI 53703.

## JURISDICTION AND VENUE

23. This Court has jurisdiction to hear and decide this action under Article VII, Section 8 of the Wisconsin Constitution and is competent to provide relief under Wis. Stats. §§ 227.40 and 806.04(1), (8).

24. In fact, the administrative rule was promulgated pursuant to Wis. Stats. §§ 29.014 and 29.041, and § 29.014(4) provides that “[n]o person may challenge the validity of a[n administrative] rule promulgated under this chapter in any prosecution of that person for a violation . . . unless that person has previously brought a separate action under s. 227.40 seeking a declaratory judgment on the validity of the rule.”

25. Mr. Kobs is aware that the State has successfully relied on Wis. Stat. § 29.014(4) in the past to foreclose challenges to an administrative rule during a prosecution. *See State v. Smith*, No. 2008AP373, unpublished slip op., 2008 WL 3852145, at \*2 (Wis. Ct. App. Aug. 20, 2008) (concluding a defendant in a forfeiture action could not challenge the validity of a rule because he did not bring a pre-enforcement action).<sup>3</sup>

26. Accordingly, Mr. Kobs files this “separate action” now because Wis. Stat. § 29.014(4) purportedly forecloses him from attacking the validity of the administrative rule in a later prosecution if he does not.

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<sup>3</sup> Mr. Kobs does not cite this opinion for “precedent or authority” but to establish a fact: his credible fear of enforcement. *See* Wis. Stat. § (Rule) 809.23(3)(a) (explaining an unpublished opinion may not be cited as “precedent or authority”). A copy of the unpublished opinion is provided in the appendix as Exhibit 1.

27. Stated differently, a pre-enforcement action is necessary to fully preserve Mr. Kobs's rights. *See also* Wis. Stat. § 29.014(3) ("Any rule of the [D]epartment is subject to [judicial] review in the manner provided in ch. 227 . . .").

28. This Court is the proper venue because Mr. Kobs resides in Sheboygan County, and Wis. Stat. § 227.40(1) states that "the exclusive means of judicial review of the validity of a[n administrative] rule . . . shall be an action for declaratory judgment . . . brought in the circuit court for the county where the party asserting the invalidity of the rule . . . resides."

### **BACKGROUND**

29. The administrative rule's history provides helpful context for understanding Mr. Kobs's claim.

30. Musky fishing is dangerous because muskies have sharp teeth that can cause substantial damage.

31. Accordingly, fishermen often try to ensure that a musky is dead or at least incapacitated before reeling it in fully.

32. Until 1966, fishermen commonly shot muskies with a small-caliber pistol while the musky was hooked but before reeling it in all the way.

33. That year, however, the administrative rule's predecessor went into effect.

34. The predecessor rule read, “it shall be unlawful for any person to take any fish . . . with the aid or use of any firearm in any manner or by any means other than angling and trolling.”<sup>4</sup>

35. The predecessor rule prohibited a particular “use of any firearm;” however, it did not regulate the possession or control of one.

36. The predecessor rule, given its text and history, was understood by fishermen to ban using small-caliber firearms to kill muskies.

37. Indeed, John Dettloff, an amateur historian and outdoors enthusiast, explained that “[s]hooting muskies was a legal and often recommended method used to kill a fish which had been brought boatside to be landed” until the predecessor rule went into effect. John Dettloff, *They Shoot Muskies, Don’t They?, in Three Record Muskies in His Day: The Life and Times of Louie Spray* 233, 233 (2002).

38. Mr. Dettloff continued, “[i]t was not uncommon to see a muskie fisherman walking about wearing a side arm, almost as if it w[ere] a badge of identification as to his pursuit.” *Id.*

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<sup>4</sup> [https://docs.legis.wisconsin.gov/code/register/1965/119b/rules/wcd\\_20.pdf](https://docs.legis.wisconsin.gov/code/register/1965/119b/rules/wcd_20.pdf)



39. Mr. Dettloff even included photographs in his book chapter on the legal history of shooting muskies in Wisconsin, one of which is reproduced below. *Id.*



40. The predecessor rule came about primarily because some government bureaucrats claimed that shooting muskies was un-sportsmen-like.

41. For example, in 1965, Guido Rahr, the then-chairman of the Conservation Commission (the Department's predecessor), issued a statement that "[t]he existing practice of using firearms as an aid in landing game fish after they have been hooked and played is contrary to the spirit of the rules of the commission and is not in keeping with the dignity of the sport of angling." Ex. 2.

42. That same year, the author of one newspaper article questioned whether using a firearm in this manner was "unmanly, undignified, and unsporting," even though the author acknowledged that it was a common practice "favored by some of the veteran anglers and guides" in northern Wisconsin. *Id.*

43. The predecessor rule remained in place for over three decades.

44. Then, in 1999, the Department repealed and recreated Wis. Admin. Code Ch. NR 20, and therein adopted the administrative rule in its current form.

45. In the Department’s rulemaking documents, it reported that the chapter “has been rewritten to rearrange sections, clarify rules, eliminate redundancy and conflicting rules on specific waters and to make minor substantive changes.”<sup>5</sup>

46. The rewrite, however, made at least one major substantive change.

47. The predecessor rule, which only prohibited the actual use of a firearm to take fish, was rewritten to the current rule, which prohibits the possession or control of a firearm that “might be used for the purpose of fishing.”<sup>6</sup>

48. The administrative rule is especially broad.

49. As one commentator has explained, many states regulate the actual use of a firearm to take fish; however, the administrative rule in Wisconsin is “among the most stringent” because it “goes farther . . . by prohibiting the possession or control” of “any firearm” that “might be used for the purpose of fishing.” Michael L. Smith, *Shooting Fish*, 12 Ky. J. Equine, Agric., & Nat. Resources L. 187, 235–36 (2019–20).

50. As this commentator further explained, “[b]ecause any gun *might* be used for fishing, this regulation essentially prohibits the possession of firearms on waters, banks, or shores of bodies of water.” *Id.* at 236.

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<sup>5</sup> [https://docs.legis.wisconsin.gov/1999/related/public\\_hearing\\_records/jcr\\_administrative\\_rules/clearinghouse\\_rules\\_crule/99hr\\_jcr\\_ar\\_crule\\_98\\_148\\_pt01a.pdf](https://docs.legis.wisconsin.gov/1999/related/public_hearing_records/jcr_administrative_rules/clearinghouse_rules_crule/99hr_jcr_ar_crule_98_148_pt01a.pdf)

<sup>6</sup> <https://docs.legis.wisconsin.gov/code/register/1999/521b/insert/nr20.pdf>

51. The administrative rule, therefore, purportedly gives law enforcement officers “broad” authority to arbitrarily “stop or arrest those who do possess guns near water for any reason.” *Id.*

52. Notably, in subsection (1), the administrative rule also bans “[f]ishing by any means other than hook and line”—the prohibition on possession or control of any firearm in subsection (2) is in addition to the ban in subsection (1). *See* Wis. Admin. Code § NR 20.05(1).

53. On May 28, 2024, a demand letter was sent to the Department, asking it to acknowledge that the administrative rule is unconstitutional and to begin the process of repealing the rule. Ex. 3.

54. A response was requested by June 4, 2024.

55. No response has been received as of the filing of this Verified Complaint.

56. The Department has not even acknowledged receipt of the demand letter.

#### **FIRST CLAIM FOR RELIEF: The Second Amendment**

57. Mr. Kobs incorporates all paragraphs of this Verified Complaint as if fully set forth herein.

58. Under Wis. Stat. § 227.40(4)(a), this Court “shall declare” the administrative rule “invalid” if the rule “violates constitutional provisions.”

59. The administrative rule violates the Second Amendment, which safeguards the right to keep and bear arms. *See generally* Smith, *Shooting Fish*, at 233 (explaining the rule is a “particularly” good example of a regulation that “could potentially be subject to Second Amendment challenge”).

60. The United States Supreme Court recently clarified the doctrinal framework for addressing Second Amendment claims. *N.Y. State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1, 17 (2022).

61. First, this Court should determine if “the Second Amendment’s plain text covers . . . [the conduct]” at issue—if it does, the conduct is “presumptively protect[ed].” *Id.*

62. Notably, the United States Supreme Court favors a broad reading of “arms”: “arms” covers “any thing that a man wears for his defense, or takes into his hands, or useth in wrath to cast at or strike another.” *District of Columbia v. Heller*, 554 U.S. 570, 581 (2008) (quoting 1 *A New and Complete Law Dictionary* (1771)).

63. Second, if the plain text covers the conduct, the government—in this action, Secretary Little—must “affirmatively prove” that the rule “is part of the historical tradition that delimits the outer bounds of the right . . . .” *Bruen*, 597 U.S. at 19.

64. At this second step, the administrative rule must be declared unconstitutional unless Secretary Little can point to a “historical analogue.” *Id.* at 30 (quoted source omitted).

65. Although the analogue need not be a literal “*twin*,” it must be “well-established and representative,” so as not to “risk[] endorsing outliers that our ancestors would never have accepted.” *Id.*

66. Turning to step one, Mr. Kobs desires to possess (i.e., keep and bear) a small-caliber pistol (i.e., an arm) near and on waters, banks, and shores for self-defense against animals and humans.

67. Mr. Kobs's conduct is covered by Second Amendment's plain text; accordingly, it is presumptively protected. *Id.* at 10 ("We . . . hold . . . that the Second and Fourteenth Amendments protect an individual's right to carry a handgun for self-defense outside the home.").

68. Turning to step two, Secretary Little cannot possibly meet his high burden.

69. Indeed, until 1966, not only could Wisconsinites possess a small-caliber pistol near and on waters, banks, and shores—they could and often did use a pistol to shoot fish.

70. From 1966 to 1999, only the actual use of a firearm to shoot fish was banned.

71. Accordingly, the administrative rule's ban on firearms—even for self-defense—in certain locations is not in keeping with a historical tradition of firearms regulation. *See* 9 Wis. Att'y Gen. Op. 162 (1920) (explaining the Department's predecessor had "no authority" to promulgate a rule forbidding a person with a firearm from being "in the woods" within the 10-day period immediately preceding the start of hunting season).<sup>7</sup>

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<sup>7</sup> [https://www.doi.state.wi.us/sites/default/files/dls/ag-opinion-archive/1920/Volume%2009\\_1920.pdf](https://www.doi.state.wi.us/sites/default/files/dls/ag-opinion-archive/1920/Volume%2009_1920.pdf)

72. Instead, the administrative rule is a novel late-twentieth century regulatory invention.

73. The Department lacks a compelling interest for the administrative rule.

74. The Department especially lacks any interest in telling a law-abiding citizen with a concealed carry permit, like Mr. Kobs, where he can carry a firearm.

75. The Department has no reason to believe that Mr. Kobs will use his firearm to shoot fish.

76. Additionally, the administrative rule is not narrowly tailored because it bans possession or control of firearms even for self-defense.

77. Any interest the Department may have in regulating the actual use of a firearm to shoot fish is already realized in the administrative rule, which, in subsection (1), bans “[f]ishing by any means other than hook and line.” *See* Wis. Admin. Code § NR 20.05(1). Mr. Kobs does not challenge the constitutionality of this subsection (although, he does not concede it either). He challenges only subsection (2).

78. Accordingly, the administrative rule should be declared unconstitutional and its enforcement prohibited.

### **REQUEST FOR RELIEF**

WHEREFORE, Mr. Kobs requests that this Court:

A. Enter a declaratory judgment that the administrative rule violates the Second Amendment as applied to law-abiding citizens with concealed-carry permits;

B. Enter an order temporarily and permanently enjoining Secretary Little, the Department, and its officers and agents, from enforcing the rule against Mr. Kobs;

and

C. Enter an order granting Mr. Kobs such other and further relief as this Court deems appropriate.

Dated: June 6, 2024.

WISCONSIN INSTITUTE FOR  
LAW & LIBERTY, INC.

*Electronically signed by Skylar Croy*

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**UNSWORN DECLARATION**

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I, Travis Kobs, the plaintiff in this action, make this Unsworn Declaration pursuant to 2023 Wisconsin Act 245 as follows:

1. I have personal knowledge of myself, my activities, and my intentions.
2. I have reviewed the Verified Complaint.
3. The statements in the Verified Complaint concerning myself, my activities, and my intentions are true and correct.
4. If called upon to testify, I would competently testify as to the matters relevant to my claim and me.
5. I have also reviewed all the materials in the attached exhibits and declare that they are true and correct representations of an unpublished opinion, a newspaper article, and a demand letter.
6. I declare under the penalty of false swearing under the law of Wisconsin that the foregoing is true and correct.

Dated: 06/05/2024

Location: 628 Washington St, Sheboygan Falls, WI 53085

Printed Name: Travis Kobs

Signature: 



314 Wis.2d 261

Unpublished Disposition

See Rules of Appellate Procedure, Rule 809.23(3), regarding citation of unpublished opinions. Unpublished opinions issued before July 1, 2009, are of no precedential value and may not be cited except in limited instances. Unpublished opinions issued on or after July 1, 2009 may be cited for persuasive value.

NOTE: THIS OPINION WILL NOT APPEAR IN A PRINTED VOLUME. THE DISPOSITION WILL APPEAR IN A REPORTER TABLE.

Court of Appeals of Wisconsin.

STATE of Wisconsin, Plaintiff-Respondent,

v.

Barry J. SMITH, Sr., Defendant-Appellant.

No. 2008AP373.

I

Aug. 20, 2008.

Appeal from an order of the circuit court for Ozaukee County:  
[Paul V. Malloy](#), Judge. *Affirmed*.

### Opinion

¶ 1 NEUBAUER, J.<sup>1</sup>

\*1 Barry J. Smith, Sr., appeals from a circuit court order imposing a civil forfeiture for fishing without a valid fishing license contrary to [WIS. STAT. § 29.024\(1\)](#). Smith's citation was based on the fact that the annual license he purchased in July 2006 had expired in March 2007, the expiration date indicated on the face of the license. Smith requests this court to determine the meaning of "annual" to mean twelve months from the time of issue. Smith is essentially challenging the Department of Natural Resource's rule, promulgated under [§ 29.024](#), that all fishing licenses expire on March 31 regardless of the purchase date. Because Smith failed to follow the statutory method for review of the DNR's rule, we are without jurisdiction to review Smith's argument. Accordingly, we affirm the order.

¶ 2 The relevant facts are brief and undisputed. On May 27, 2007, Conservation Warden Benjamin Herzfeldt was working in the area of the Milwaukee River in the Village of Thiensville, Ozaukee County. Herzfeldt observed Smith fishing at that location. Herzfeldt approached Smith and inquired as to whether he had a valid fishing license. It was

subsequently determined through the review of state records by Herzfeldt's dispatcher that Smith did not have a valid 2007 fishing license.

¶ 3 At trial, Smith, appearing pro se, apparently presented his 2006 fishing license to the circuit court.<sup>2</sup> Smith argued that he was entitled to an *annual* fishing license under [WIS. STAT. § 29.193\(3\)](#), which he interpreted as meaning twelve months from the time of issue, and that he had been ticketed ten months after having his license issued on July 4, 2006. Herzfeldt indicated that 2006 annual licenses expired on March 31, 2007. The trial court informed Smith that the DNR could define the period of time for an annual license. The trial court also informed Smith that rules promulgated under WIS. STAT. ch. 29 are prima facie reasonable and lawful, only subject to review under statewide WIS. STAT. ch. 227 review, and the rules could only be challenged by an action under [§ 227.40](#).

¶ 4 Smith was found guilty and ordered to pay a fine of \$188.20. On appeal, Smith, again pro se, renews his argument that [WIS. STAT. § 29.219\(2\)](#), governing "annual fishing license[s]," should be read as entitling a qualifying resident of Wisconsin to a date-to-date twelve-month license. Smith requests reversal of the decision of the trial court and refund of any fine paid.

¶ 5 The State argues that because Smith has never sought a declaratory judgment on the validity of the rule under Chapter 227, as mandated by [WIS. STAT. § 29.014\(3\)](#), the trial court had no jurisdiction to determine the validity of the challenged DNR rule. For the same reason, the State asserts this court also has no jurisdiction to determine the validity of the rule on appeal.

### DISCUSSION

\*2 ¶ 6 Whether this court has jurisdiction is a question of law we review de novo. [Socha v. Socha](#), 183 Wis.2d 390, 393, 515 N.W.2d 337 (Ct.App.1994). We lack appellate jurisdiction over a question if the trial court lacked subject matter jurisdiction. [Harris v. Reivitz](#), 142 Wis.2d 82, 93, 417 N.W.2d 50, 54 (Ct.App.1987). Unlike most defects in briefing or procedure that may be waived at our discretion, an appellate court's lack of subject matter jurisdiction cannot be waived. [Id.](#) at 91, 417 N.W.2d 50.

**EXHIBIT**  
**1**

¶ 7 When a specific method of review is prescribed by statute, that method is exclusive. *Sewerage Comm'n of Milwaukee v. DNR*, 102 Wis.2d 613, 630, 307 N.W.2d 189 (1981). Failure to strictly comply with the prescribed procedure deprives the court of subject matter jurisdiction to conduct the review. *See Harris*, 142 Wis.2d at 92-93, 417 N.W.2d 50. We must thus examine whether a specific method of review of the DNR rule challenged by Smith is prescribed by statute.

¶ 8 The DNR rule mandating the expiration of Smith's annual fishing license on March 31 of the following year regardless of purchase date is promulgated under WIS. STAT. ch. 29. Relevant are WIS. STAT. §§ 29.014(1)<sup>3</sup> and 29.569.<sup>4</sup> Section 29.014(1) is an initial mandate and grant of broad authority to develop rules and seasons for taking fish and game. Section 29.569 specifies that an approval (commonly known as a license) issued under ch. 29 is valid for the period or season specified on its face. In other words, a fishing license such as Smith's is valid until the March 31 expiration date stamped on it.

¶ 9 WISCONSIN STAT. § 29.014(2)(b) specifies that rules promulgated under WIS. STAT. ch. 29 are prima facie reasonable and lawful until found otherwise in a final determination by a court. Such judicial review is to be conducted in the manner prescribed in WIS. STAT. ch. 227 if the rule has statewide effect. Sec. 29.014(3). Absent a declaratory judgment in the prescribed fashion, no person may challenge the validity of a rule promulgated under ch. 29 in a prosecution for the violation of that rule. Sec. 29.014(4).

¶ 10 Barring exceptions enumerated in WIS. STAT. § 227.40(2), the exclusive means of judicial review of the

validity of a rule shall be an action for declaratory judgment as to the validity of such rule, brought in the circuit court for Dane County in the prescribed manner. Sec. 227.40(1).

Equally important, WIS. STAT. § 29.014(3)-(4) explicitly provide for this review in cases such as this one. Here, Smith argues that the expiration date on his license is invalid as contrary to WIS. STAT. § 29.219's requirement that the DNR shall issue an "annual license" and WIS. ADMIN. CODE § NR 25.02(18)'s definition of a "license year" as "that period from July 1 through June 30 of the succeeding year." In effect, Smith challenges the legitimacy of the DNR's choice of March 31 as the date of expiration of a fishing license. It has never been contended at any point in the proceedings that Smith commenced a declaratory judgment action under § 227.40.

¶ 11 Smith's claim is exactly the sort of statewide impact validity challenge addressed by WIS. STAT. § 29.014(3)-(4) and the trial court appropriately refused to consider it for lack of jurisdiction due to the challenge being outside the statutorily prescribed method of review. *Sewerage Comm'n of Milwaukee*, 102 Wis.2d at 630, 307 N.W.2d 189. We similarly cannot consider such argument on appeal.<sup>5</sup> *Harris*, 142 Wis.2d at 93, 417 N.W.2d 50.

\*3 Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4.




#### All Citations


314 Wis.2d 261, 757 N.W.2d 850 (Table), 2008 WL 3852145, 2008 WI App 148

#### Footnotes

- 1 This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(g) (2005-06). All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.
- 2 The transcript indicates the trial court was made aware of Smith's license, and Smith includes a copy of what purports to be his license in his appellate appendix. We acknowledge the State's observation that the license

was not formally entered into the trial court record. While we cannot consider the added document on appeal, the fact relevant to the 2006 license-that it was issued on July 4, 2006-was testified to at trial.

- 3  [WISCONSIN STAT. § 29.014](#) provides in part: “The department shall establish and maintain open and closed seasons for fish and game and any bag limits, size limits, rest days and conditions governing the taking of fish and game that will conserve the fish and game supply and ensure the citizens of this state continued opportunities for good fishing, hunting and trapping.”
- 4 [WISCONSIN STAT. § 29.569](#) provides in relevant part: “Unless an approval issued under this chapter is suspended or revoked or unless another section of this chapter specifically provides otherwise, the approval is valid for the period or season specified on the face of the approval or on an attachment to the approval.”
- 5 Smith additionally argues he is not challenging the validity of the rule, the State is challenging the validity of  [WIS. STAT. § 29.219\(2\)\(a\)](#) and  [WIS. ADMIN. CODE § NR. 25.02\(18\)](#), and Smith is enforcing those same statutes. This argument is meritless.

Smith also advances a one-line statement at the end of his argument that the controversy at bar should have been resolved on a “notice of adjudicative facts” Smith filed with the court on the day of the trial. This argument is neither comprehensible nor adequately developed. We decline to develop issues for advocates, *State v. Pettit*, 171 Wis.2d 627, 647, 492 N.W.2d 633 (Ct.App.1992), and will not consider such completely undeveloped argument, see, e.g.,  *State v. Shaffer*, 96 Wis.2d 531, 545-546, 292 N.W.2d 370 (Ct.App.1980).



# Muskies, Northern Entered in Contest

Bob Vander Velden Lands Huge Fish on Lake Butte des Morts

BY JIM HARP  
Post-Crescent Outdoor Editor  
Muskeg and northern muskie stole the spotlight among the latest entries to be received in the Post-Crescent's annual Master Angler contest.  
Heading the list is Bob Vander Velden's 43-pound, 12-inch muskie which he caught on Big Lake Butte des Morts, Vander Velden, of route 1, Appleton, is a veteran muskie fisherman and guide. He caught the monster on a Bobbit Tail lure about 4:15 p.m. last Sunday. It is believed to be the largest muskie ever taken from the area.  
Mr. Dan Sajak, 3412 S. East Street, Appleton, entered a 36-pound muskie which he caught on the Chippewa Flowage. The fish was 48 1/2 inches long and he took it on a mud puppy lure.  
Used Dardevil  
Ed Kersten, 303 W. Fourth Street, Kaukauna entered a 45 1/2 inch muskie which weighed 22 1/2 pounds. The 22 and 18 pound fish were taken from White Sand Lake by using a Dardevil lure.  
The fourth muskie to be entered was a 18-pounder caught by Richard Van Ryzin, Appleton, and 1233 W. Lawrence Street.  
The fifth muskie was a 18-pounder caught by Frank Walker, 1814 W. Michigan Street, Appleton, caught on a spinner in Lake Winnebago. He took fish on a spinner in Lake Winnebago. He took fish on a spinner in Lake Winnebago. He took fish on a spinner in Lake Winnebago.

## Use of Pistol Is Opposed

Resolution Now Being Studied by Advisory Groups

Post-Crescent Outdoor Editor  
MADISON — The use of firearms in the landing of game fish, favored by some of the northern Wisconsin muskellunge country, is being studied by the state conservation commission.  
Some important officials of the state conservation commission think so, and are contemplating a change in the fishing code to prohibit the use of a pistol or other firearm in landing large fish such as musky.  
The objection came from Guido Rahr, of Manitowish, senior member and chairman of the conservation commission, who drafted a resolution for an amendment to the fishing rules which is now being studied by the commission in September.  
A decision will be made by the commission in September, after a hearing on the resolution.  
The existing practice of landing game fish after they have been hooked and played in the water is being studied by the commission and its advisory groups.  
The resolution would prohibit the use of a pistol or other firearm in landing large fish such as musky.

## SINGLE SHOT

By Friday night's perch lunch and beer domed? There's no need for beer drinkers to become alarmed, the brewers are doing better than ever, but those who enjoy going to the corner saloon for perch fillets should take notice.  
Lake Michigan, long-time source for tons of perch taken by commercial fishermen, is undergoing a change. In plain words, the perch are not as plentiful as in the past and prices are continuing to rise.  
To get a few answers about the Green Bay perch situation, Single Shot checked with a few sources and here is what we were able to find out.  
Dick Harris, head man at the conservation headquarters in Oshkosh, said he feels the reason for the perch dropoff in the Bay itself is a combination of pollution in the lower Bay waters and competition from the alewife.  
There is little doubt about the pollution factor in the Bay. Even duck hunters will tell you about the bad taste ducks acquire after wading along the Bay shores during the summer. In areas where it was common for fishermen to return to the Fox Cities with fish bags of 50 to 100 perch from a morning's fishing, there are now boats bobbing empty at docks and few anglers about.  
The low water of the last several years also may have had some effect on the perch fishing. Dave Otto, outdoor writer for the Green Bay Press-Gazette, reports that when fishermen in the Packer City area a mess of perch they talk about going to Lake Winnebago to get them.  
Otto also said that it was not just perch that have become scarce in the Bay waters. The smallmouth black bass have proved to be another scarce fish this year as few have been taken in the familiar spots which usually produce well.  
Sid Herman, who does a lot of outdoor writing for the Manitowish Herald-Times, says the situation is much the same along the Manitowish piers.  
"Where we used to go out and get 100 perch in an hour we now get about six or seven, and sometimes not that many," Herman offered. "I have been out there a number of times with little success and you don't see boats out on the reef anymore either." He said. "We have always had thousands, they once come up to five inches, dead ones, those alive—we have 'em."  
Harris said that what the Conservation Department would like to do is start a complete study of the Bay waters with an eye toward improving the lake conditions.  
"Something like that would require some man working full time on it—stationed there and will help available when he needed it," Harris said.  
At any rate, the future of your Friday night perch lunch is questionable.

## Outdoor Writers Say Bill Penalizes Firearm, Not User

Group Raps Governmental Land Buying  
BY DALE MOREY AND  
AL VANDER BLOEMEN  
The Outdoor Writers Association of America, largest organized group of professional writers and editors covering the outdoors sports and recreation field, has expressed its disapproval of a bill introduced in the Wisconsin Legislature that would penalize the use of firearms on government land.  
The bill, introduced by Rep. James Bosson, Jr., of Tustin, would prohibit the use of firearms on government land. The bill would prohibit the use of firearms on government land. The bill would prohibit the use of firearms on government land.  
The bill would prohibit the use of firearms on government land. The bill would prohibit the use of firearms on government land. The bill would prohibit the use of firearms on government land.



## conservation notes

There are more drownings at this time of the year than at any other time. Most drowning victims are people in the boat—some operating the boat and some watching weight requirements as to how much weight they can take on board. Don't trust your luck. In the northern pike division, James Bosson, Jr., of Tustin, entered a fish weighing 15 Van Wychem, 306 E. 10th Street, Appleton, caught a 32 pound, 15-ounce largemouth muskie which he caught on a spinner in Lake Winnebago. He took fish on a spinner in Lake Winnebago. He took fish on a spinner in Lake Winnebago.

## Stream, Lake Access More Important Now

Over 600 Miles Of Water Frontage Under State Control

Post-Crescent Outdoor Editor  
MADISON — Providing stream and lake access to Wisconsin sports fishing has become an increasing part of the work of the state Conservation Department, which is engaged in a program to acquire and protect game fish.  
Today more than 600 miles of water frontage throughout Wisconsin, including many miles of trout streams, are under state control as a means of providing the fishermen and others the chance to get to waters where the publicly-owned fish live.  
A substantial spur in the purchase and leasing program has come during the last few years, with the impetus of new Outdoor Recreation Act which has provided generous situations of new money to the state.  
Permanent state control has been assured thus far, through perpetual easements or outright purchase, on 187 water areas within the state with a frontage of more than 300 miles, according to John G. Brach, newly named assistant superintendent of fish management for the Conservation Department.  
One of the important discoveries of the fish management division as it has worked on the fishing access problem is that land control by easement acquisition will be just as effective as outright purchase in many cases, but for much less cost. Brach said. Recent experience has shown that easement acquisition can be provided at about 12 percent of the cost of purchase in many cases.  
The Outdoor Writers' statement of policy pointed out that penalties must be meted out to persons who abuse the privilege in possession and use firearms. It is as unreasonable to allow legislation against an inanimate object the gun, as it would be to ban magazines, knives, hatchets and other common place instruments which have been or could be used in assaults or homicides.  
Since the avowed purpose of the Dadd Bill is to reduce the crime rate, the OWIA pointed out that criminals, already outside the law, would not be deterred by another law and that there are currently adequate laws "on the books" to deal with misuse of firearms, providing the courts invoked them in deliberate shootings and firearms accidents.  
Land Acquisition  
Wisconsin citizens are going away to be hearing more and more about land acquisition since vast amounts of money have been made available to governmental agencies for the purchase of recreational lands and the Wisconsin Conservation Commission has power of condemnation, similar to that of the State Highway Commission, by which it can acquire land to be used for recreation purposes.  
The OWIA statement in effect recommended caution in the use of eminent domain powers, particularly in the case of private land being managed by its private owner as a conservation and recreational project.  
The point is that if a land area is being managed in such a way that it is being used essentially for what the governmental agency intends when it acquires it, there is little reason to take it off the tax roll or placing an additional tax burden on other property owners in the area or depriving landowners of their possession and rights.

## Folder Welcomes New Residents, Visitors to State

MADISON — A printed folder designed to provide the visitor to Wisconsin with helpful information about the state, has just been released by the Wisconsin Department of Conservation.  
The folder covers highways, fishing, camping, hunting, pets, and animals, boating, and other information. It is available to new residents, foreign regulations, and human rights statistics.  
Copies are available to new residents, foreign regulations, and human rights statistics.  
Copies are available to new residents, foreign regulations, and human rights statistics.

## Master Angler Contest Leaders

WALLEYE DIVISION		
Rank	Angler	Weight
1	Bob Tamm, 41 Beane St., Oshkosh	4 1/2 lbs. 10 oz.
2	Robert Miller, 41 S. New London	4 1/2 lbs. 10 oz.
3	John Smith, 100 W. Lincoln Ave., Appleton	4 1/2 lbs. 10 oz.
4	John Smith, 100 W. Lincoln Ave., Appleton	4 1/2 lbs. 10 oz.
5	John Smith, 100 W. Lincoln Ave., Appleton	4 1/2 lbs. 10 oz.
LARGEMOUTH BASS DIVISION		
1	John Smith, 100 W. Lincoln Ave., Appleton	4 1/2 lbs. 10 oz.
2	John Smith, 100 W. Lincoln Ave., Appleton	4 1/2 lbs. 10 oz.
3	John Smith, 100 W. Lincoln Ave., Appleton	4 1/2 lbs. 10 oz.
SMALLMOUTH BASS DIVISION		
1	John Smith, 100 W. Lincoln Ave., Appleton	4 1/2 lbs. 10 oz.
2	John Smith, 100 W. Lincoln Ave., Appleton	4 1/2 lbs. 10 oz.
3	John Smith, 100 W. Lincoln Ave., Appleton	4 1/2 lbs. 10 oz.
MUSKELLUNGE DIVISION		
1	John Smith, 100 W. Lincoln Ave., Appleton	4 1/2 lbs. 10 oz.
2	John Smith, 100 W. Lincoln Ave., Appleton	4 1/2 lbs. 10 oz.
3	John Smith, 100 W. Lincoln Ave., Appleton	4 1/2 lbs. 10 oz.
BROWN TROUT DIVISION		
1	John Smith, 100 W. Lincoln Ave., Appleton	4 1/2 lbs. 10 oz.
2	John Smith, 100 W. Lincoln Ave., Appleton	4 1/2 lbs. 10 oz.
3	John Smith, 100 W. Lincoln Ave., Appleton	4 1/2 lbs. 10 oz.
NORTHERN PIKE DIVISION		
1	John Smith, 100 W. Lincoln Ave., Appleton	4 1/2 lbs. 10 oz.
2	John Smith, 100 W. Lincoln Ave., Appleton	4 1/2 lbs. 10 oz.
3	John Smith, 100 W. Lincoln Ave., Appleton	4 1/2 lbs. 10 oz.

This is the Largest muskellunge ever monster from Big Lake Butte des Morts. The fish weighed 43 1/2 pounds and was 53 1/2 inches long. It had a girth of 28 inches. (Post-Crescent Photo)

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May 28, 2024

*Sent via Email*

Department of Natural Resources Board Liaison  
[dnrrnbliasion@wisconsin.gov](mailto:dnrrnbliasion@wisconsin.gov)

**Re: Demand that Wis. Admin. Code § NR 20.05(2) Be Repealed**

Dear Board Members:

On behalf of our client, Travis Kobs, we demand that the Department of Natural Resources (the “Department”) immediately stop enforcing Wis. Admin. Code § NR 20.05(2) and begin the process of repealing the administrative rule. Section NR 20.05(2) provides that “[n]o person may . . . [p]ossess or control any firearm, gun or similar device at any time while on the waters, banks or shores that might be used for the purpose of fishing.” A violation is punishable by a forfeiture of \$200, with expected total court costs of \$544.50.<sup>1</sup> The rule is unconstitutional on several grounds, including its inconsistency with the right to keep and bear arms. *See N.Y. State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1, 10 (2022).

To cure this problem, we are asking that the Department publicly acknowledge that the rule is unconstitutional and unenforceable and to do so by June 4, 2024. Furthermore, as part of the cure, the Department must also begin the process of repealing the rule. We are asking the Department to provide a time frame for the repeal process and again to provide that time frame by June 4<sup>th</sup>. If the Department does not begin the cure process as set forth above, we will pursue appropriate legal action, which may include a federal civil-rights lawsuit in which we seek an injunction and attorneys’ fees.

Mr. Kobs is a lifelong Wisconsinite, a concealed-carry permit holder, and an avid hunter and fisher. He has no criminal history. Accordingly, as a law-abiding citizen, he has a constitutional right to carry a pistol for self-defense, even outside the home, as the United States Supreme Court recently made clear. *See id.* Mr. Kobs owns a 9mm pistol and desires to carry his pistol even when he is near or on Wisconsin’s waters, banks, and shores.

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<sup>1</sup> <https://www.wicourts.gov/publications/fees/docs/dnrbondschedule23.pdf>

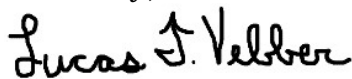
The rule infringes Mr. Kobs’s right to keep and bear arms. Many states regulate the actual use of a firearm to take fish; however, the rule in Wisconsin is “among the most restrictive” because it “goes farther . . . by prohibiting the possession or control” of “any firearm” that “might be used for the purpose of fishing.” Michael L. Smith, *Shooting Fish*, 12 Ky. J. Equine, Agric., & Nat. Resources L. 187, 235. (2019–20). As one commentator has explained, “[b]ecause any gun might be used for fishing, this regulation essentially prohibits the possession of firearms on waters, banks, or shores of bodies of water.” *Id.* at 236. The rule is a violation of the Second Amendment. *Id.* at 233.

Additionally, the rule is unconstitutional on other grounds, including its inconsistency with the right to fish and hunt and the non-delegation doctrine. *See* Wis. Const. art. I, Section 26 (“The people have the right to fish, hunt, trap and take game subject only to reasonable restrictions as prescribed by law.”); *see also* Wis. Stat. § 29.041 (purporting to give the Department the rulemaking authority to “regulate hunting and fishing on and in all interstate boundary waters[] and outlying waters” but without specifying any substantive standards to guide the Department’s decision-making).

Mr. Kobs desires and intends to exercise his rights, and he is understandably concerned about being subject to an enforcement action. The Wisconsin statutes require that he must challenge the rule prior to any such enforcement action. *See* Wis. Stat. § 29.014(4) (“No person may challenge the validity of a rule promulgated under this chapter in any prosecution of that person for a violation of this chapter or rules promulgated under this chapter unless the person has previously brought a separate action under s. 227.40 seeking a declaratory judgment on the validity of the rule.”).

We look forward to your response by June 4.

Sincerely,



Lucas T. Vebber  
Deputy Counsel



Daniel P. Lennington  
Deputy Counsel



Skylar Croy  
Associate Counsel