



WISCONSIN INSTITUTE FOR LAW & LIBERTY, INC.
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TESTIMONY ON BEHALF OF THE WISCONSIN INSTITUTE FOR LAW & LIBERTY, INC. IN SUPPORT OF SUSPENDING NR 20.05(2)

Co-Chairs Nass & Neylon:

I am Skylar Croy, an attorney with the Wisconsin Institute for Law & Liberty. WILL is a non-partisan, non-profit law and policy center dedicated to safeguarding individual liberty, including the right to keep and bear arms.

I am here on the WILL's behalf to explain why this Committee should suspend NR 20.05(2). DNR has articulated that the rule is inconsistent with state law. I agree and will not re-hash what has already been said. Instead, I will explain why the rule violates the right to keep and bear arms.

For context, WILL represents an avid sportsman who sued over the rule this summer.¹ The rule provides, in relevant part: "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." A violation is punishable by a forfeiture of \$200, together with court costs for a total of \$544.50 (and potentially more).²

As noted in the complaint, "[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."³ It purportedly gives law enforcement officers "broad" authority to arbitrarily "stop or arrest those who do possess guns near water for any reason."⁴

The rule violates the Second Amendment to the United States Constitution. First, it conflicts with a long tradition of firearm possession in the great outdoors. To quote Judge Richard Posner, "one doesn't have to be a historian" to realize that those living in the "wild west" during the eighteenth century often carried firearms as they traveled.⁵ Just a few years ago, a federal court in Illinois concluded that a similar ban in so-called "Forest Preserve Districts" was unconstitutional because "the record

¹ Case No. 2024CV315.

² <https://www.wicourts.gov/publications/fees/docs/dnrbondschedule24.pdf>.

³ Michael L. Smith, Shooting Fish, 12 Ky. J. Equine, Agric., & Nat. Resources L. 187, 236 (2019–20).

⁴ *Id.*

⁵ *Moore v. Madiagn*, 702 F.3d 933, 936 (7th Cir. 2012).

contain[ed] little evidence” that firearms could be banned in the “wilderness.”⁶ As that court further explained, the great outdoors has not historically been understood as a “sensitive place” in which otherwise impermissible firearms regulations might be justified.⁷

Second, the rule’s breadth is shocking. It does not even exempt law-abiding citizens with a concealed carry permit—like our client—from its reach. Moreover, because approximately 15 percent of Wisconsin is covered by water, the rule applies to a wide swath of locations.⁸

The rule never should have been promulgated, and during our litigation, DNR agreed to repeal the rule “as soon as practicable and without delay.” The litigation was put on hold until January 1, 2025, to give DNR a chance to repeal it.

DNR has now conceded that the rule is inconsistent with state law. We applaud DNR for doing the right thing.

We hope that this Committee will too. Thank you for your time. I look forward to answering any questions.

Respectfully,



Skylar Croy
Associate Counsel

⁶ *Solomon v. Cook Cnty. Bd. of Comm’rs*, 559 F. Supp. 3d 675, 678, 691–92 (N.D. Ill. 2021).

⁷ *Id.* at 692; see also *United States v. Gearheart*, unpublished slip op., No. 6:23-po00079-HBK-1, 2024 WL 1676725, at *9 (E.D. Cal. Apr. 18, 2024) (quoting *Solomon*, 559 F. Supp. 3d at 693–94) (“While Yosemite National Park arguably may contain sensitive places, i.e., the Yosemite Court, government buildings and schools, ‘the Court is aware of no case suggesting that properly designating one location a ‘sensitive place’ allows the government to give the same designation to a different, non-adjacent location.’”).

⁸ USGS, *Water Use in Wisconsin* (2019), <https://www.usgs.gov/centers/upper-midwest-water-science-center/science/water-use-wisconsin#:~:text=Wisconsin%20encompasses%20more%20than%2056%2C000,Lake%20Michigan%20and%20Lake%20Superior>.