

FILED
08-31-2021
CIRCUIT COURT
DANE COUNTY, WI
2021CV002103

Honorable Jacob Frost
Branch 9

STATE OF WISCONSIN

CIRCUIT COURT

DANE COUNTY

GREAT LAKES WILDLIFE
ALLIANCE d/b/a FRIENDS OF THE
WISCONSIN WOLF & WILDLIFE,
117 Ardmore Drive
Madison, WI 53713

PROJECT COYOTE, a project of the
EARTH ISLAND INSTITUTE,
655 Redwood Highway
Mill Valley, CA 94941,

ANIMAL WELLNESS ACTION,
611 Pennsylvania Avenue, SE, #136
Washington D.C., 20003,

THE CENTER FOR HUMANE
ECONOMY,
611 Pennsylvania Avenue, SE, #136
Washington D.C., 20003, and

PATRICK R. CLARK,
N8639 Shorecrest Road
Beaver Dam, WI 53916,

Petitioners,

v.

WISCONSIN NATURAL RESOURCES
BOARD,
101 South Webster Street
Madison, WI 53707,

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

FREDERICK PREHN, in his capacity
claiming to be on the Wisconsin Natural
Resources Board,
413 Jefferson Street
Wausau, WI 54403, and

SUMMONS

Case No. 21-CV-_____

Case Code: 30607; 30701; 30704

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

Respondents,

SUMMONS

THE STATE OF WISCONSIN to each person named above as a Respondent:

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

Within forty-five (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 delivered to the Court, whose address is:

Dane County Courthouse
215 S. Hamilton St.
Madison, WI 53703

and to attorneys for the Petitioners, whose address is:

Joseph S. Goode, Esq.
Laffey Leitner & Goode LLC
325 E Chicago St.
Suite 200
Milwaukee, WI 53202

You may have an attorney help or represent you.

If you do not provide a proper answer within forty five (45) days, the Court may grant a 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 31st day of August, 2021.

By: s/ Joseph S. Goode

Joseph S. Goode
LAFFEY, LEITNER & GOODE LLC
325 E. Chicago St.
Suite 200
Milwaukee, WI 53202
(414) 312-7003
jgoode@llgmke.com

OF COUNSEL:
Jessica L. Blome
Pro Hac Vice to Be Filed
GREENFIRE LAW, PC
2001 Addison St.
Suite 300
Berkley, CA 94704
(510) 900-9502
jblome@greenfirelaw.com

Claire Loeb Davis
Pro Hac Vice to Be Filed
ANIMAL & EARTH ADVOCATES
2226 Eastlake Ave. E
Suite 101
Seattle, WA 98102
(206) 601-8476
claire@animalearthlaw.com

FILED
08-31-2021
CIRCUIT COURT
DANE COUNTY, WI
2021CV002103
Honorable Jacob Frost
Branch 9

STATE OF WISCONSIN

CIRCUIT COURT

DANE COUNTY

GREAT LAKES WILDLIFE
ALLIANCE d/b/a FRIENDS OF THE
WISCONSIN WOLF & WILDLIFE,
117 Ardmore Drive
Madison, WI 53713

Case No. 21-CV-_____

PROJECT COYOTE, a project of the
EARTH ISLAND INSTITUTE,
655 Redwood Highway
Mill Valley, CA 94941,

Case Code: 30607; 30701; 30704

ANIMAL WELLNESS ACTION,
611 Pennsylvania Avenue, SE, #136
Washington D.C., 20003,

THE CENTER FOR HUMANE
ECONOMY,
611 Pennsylvania Avenue, SE, #136
Washington D.C., 20003, and

PATRICK R. CLARK,
N8639 Shorecrest Road
Beaver Dam, WI 53916,

Petitioners,

v.

WISCONSIN NATURAL RESOURCES
BOARD,
101 South Webster Street
Madison, WI 53707,

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

FREDERICK PREHN, in his capacity
claiming to be on the Wisconsin Natural
Resources Board,
413 Jefferson Street
Wausau, WI 54403, and

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

Respondents,

**PETITION FOR JUDICIAL REVIEW, DECLARATORY
JUDGMENT, AND INJUNCTIVE RELIEF**

Petitioners Great Lakes Wildlife Alliance d/b/a Friends of the Wisconsin Wolf & Wildlife, Project Coyote, a Project of the Earth Island Institute, Animal Wellness Action, the Center for a Humane Economy, and Patrick R. Clark, through their undersigned counsel, as and for their Petition against Respondents, allege as follows:

NATURE OF CASE

1. On January 4, 2021, the United States Fish & Wildlife Service (“USFWS”) published a final rule removing Wisconsin’s gray wolves from the federal endangered species list. In response, the Wisconsin Department of Natural Resources (“DNR”) announced it would open a wolf hunting season in November 2021, as required under 2011 Wis. Act 169 (“Wolf Hunt Law”), which mandates that whenever wolves are not on the federal or state endangered species list, DNR “shall allow the hunting and trapping of wolves” through a “single annual open season” that runs from November through February. Following a lawsuit brought by an out-of-state hunting group, however, DNR was forced to open a wolf hunting season in February 2021 (“February 2021 Hunt Season”).

2. Starting on February 22, 2021, thousands of licensed and unlicensed hunters stormed Wisconsin’s woods, using snowmobiles, GPS technology, predator calls, traps, and packs

of domesticated hounds, to pursue wolves for hours throughout the day and night. In a massacre that generated national and international outrage, permitted hunters in Wisconsin reported killing 218 wolves in just over 60 hours, overshooting the quota set by DNR by 99 wolves.

3. DNR's experts and outside scientists agree that the real death toll from the February 2021 Hunt Season was much higher than 218 wolves, after accounting for illegal and unreported kills, bodies that were never found, and wolves mortally injured during the carnage. One scientific study conservatively estimated that roughly 100 additional wolves were killed because of the hunt. In all, scientists estimate that the February 2021 Hunt Season reduced the Wisconsin wolf population by *at least* 30%—to approximately only 700 wolves. Since it took place during breeding season, the February 2021 Hunt Season also had a devastating impact on wolf population growth and reproduction. Hunters reported killing 102 female wolves, more than 50% of which may have been pregnant at the time. In all, researchers estimate that 60-100 of Wisconsin's 245 known wolf packs may lose all pup production in 2021 due to the hunt.

4. In the wake of this “abomination,”¹ DNR is planning another wolf hunt for November 2021, with an even higher kill-quota of 300 wolves. The 300-wolf quota was decided by an illegal vote taken by an improper body, both influenced and ultimately decided by a person who was no longer a member of that body, based on political considerations that disregarded facts, science, and the expertise of agency biologists, and under the umbrella of an unconstitutional law.

5. On July 26, 2021, DNR recommended that the November 2021 wolf hunt go forward with what it characterized as a “conservative” quota of 130 wolves, admitting that it did

¹ See Nate Blakeslee, ‘*An abomination*’” *the story of the massacre that killed 216 wolves*, The Guardian (July 27, 2021), <https://www.theguardian.com/world/2021/jul/27/wolves-wisconsin-massacre-environment-conservation> (one anonymous DNR employee called the hunt a “fucking abomination”).

not have an estimate of the wolf population following the “rushed, ill-advised,” February 2021 hunt, and thus could not make an accurate prediction of how killing another 130 wolves would affect the state’s wolf population.

6. Although the authority to decide the number of wolves to be killed in the fall hunt is vested in DNR by both statute and rule, on August 11, 2021, the Wisconsin Natural Resources Board (“Board”) held a hearing to consider and vote upon DNR’s recommendation. This hearing was led by Board Chair Frederick Prehn, who is squatting in an expired Board seat after refusing to relinquish it to his duly appointed successor. Rather than conducting a reasoned debate, Prehn entertained a confusing morass of motions and amendments that he failed to clarify before soliciting votes, and led the Board in a bidding war that ignored DNR’s recommendation from the beginning of the hearing—starting instead with consideration of a proposed quota of 504 wolves. In the end, Prehn cast the deciding vote to set a quota of 300 wolves—more than twice DNR’s recommendation—and to constrain DNR from making any adjustments to the quota to account for excess wolves killed during the February 2021 Hunt Season.

7. In a parody of reasoned deliberation, the Board spurned the recommendations of DNR’s experts, disregarded science, and ignored the facts to arrive at a politically contrived conclusion that flouts the Board’s constitutional and statutory responsibility to protect and conserve the state’s wildlife. Absent court intervention, the result will be another devastating blow to Wisconsin’s wolf population.

8. Petitioners Great Lakes Wildlife Alliance, Project Coyote, Animal Wellness Action, Center for a Humane Economy, and Patrick Clark seek a declaratory judgment invalidating the August 11, 2021 decision by the Board – which purports to set a quota of 300 wolves for the November 2021 hunt, and which prevents DNR from using its expertise to make appropriate

adjustments to that quota to adjust for wolves killed during the February 2021 Hunt Season (collectively, this decision is referred to as the “Fall 2021 Quota”). Petitioners ask the Court to enjoin DNR from issuing any hunting licenses in accordance with the invalid Fall 2021 Quota unless and until it has corrected the legal deficiencies that infected the entire process.

9. Petitioners further seek a declaratory judgment invalidating the Wolf Hunt Law, under which the Fall 2021 Quota was issued, and the emergency rule improperly promulgated under that statute, Em. R. 1210 (rev. Aug. 15, 2014) (“Emergency Rule 1210”) because they violate the separation of powers and the public trust doctrine enshrined in the Wisconsin Constitution.

PARTIES

Petitioners

10. Petitioner Great Lakes Wildlife Alliance d/b/a Friends of the Wisconsin Wolf & Wildlife (the “Wildlife Alliance”) is a non-profit corporation with its principal place of business at 117 Ardmore Dr., Madison, Wisconsin, 53713. The Wildlife Alliance has roughly 8000 supporters spread through every county of Wisconsin, including hunters, non-consumptive users, animal welfare advocates, farmers, politicians, business owners, and diverse Wisconsin citizens who want to move wildlife management toward an ethical, science-based, democratic vision of wildlife conservation that respects diversity and the intrinsic value of life. The further destruction of wolves in Wisconsin due to the challenged actions will adversely affect the substantial recreational, aesthetic, and conservational interests of the Wildlife Alliance, and its volunteers, members, and supporters.

11. Petitioner Project Coyote is a project of the Earth Island Institute, a non-profit corporation that serves as a hub for grassroots campaigns dedicated to conserving, preserving, and restoring the ecosystems on which civilization depends. Project Coyote’s mission is to promote

compassionate conservation and coexistence between people and wildlife through education, science, and advocacy. Project Coyote is based 655 Redwood Highway, Mill Valley, CA 94941. It has more than 62,000 members nationwide, and more than 750 members in Wisconsin. The further destruction of wolves in Wisconsin due to the challenged actions will adversely affect the substantial recreational, aesthetic, and conservational interests of Project Coyote and its staff, volunteers, members, and supporters.

12. Petitioner Animal Wellness Action is a national non-profit corporation that works to promote animal welfare by advocating for the passage and enforcement of laws that shield animals from malicious cruelty. Animal Wellness Action's principal place of business is at 611 Pennsylvania Avenue, SE, #136, Washington D.C., 20003. It maintains 135,000 supporters nationwide, with 2,170 in Wisconsin. The further destruction of wolves in Wisconsin due to the challenged actions will adversely affect the substantial recreational, aesthetic, and conservational interests of Animal Wellness Action and its staff, volunteers, members, and supporters.

13. The Center for a Humane Economy is the first organization of its kind in the animal protection movement, because its mission is to encourage corporations to honor their duties to social responsibility. The Center for a Humane Economy's principal place of business is at 611 Pennsylvania Avenue, SE, #136, Washington D.C., 20003. On behalf of its tens of thousands of supporters nationwide and in Wisconsin, the Center for a Humane Economy also supports laws and regulations that improve the welfare of animals in captivity and in the wild. The Center for a Humane Economy engages regularly on wolf protection efforts, including promoting responsible state policies towards wolf management and fighting for restoration of federal safeguards under the Endangered Species Act. The further destruction of wolves in Wisconsin due to the challenged

actions will adversely affect the substantial recreational, aesthetic, and conservational interests of the Center for a Humane Economy and its staff, volunteers, members, and supporters.

14. Patrick Clark is an adult resident of Wisconsin and a Wisconsin taxpayer, whose address is N8639 Shorecrest Road, Beaver Dam, Wisconsin, 53916. Clark is a member of the board of directors of the Wildlife Alliance.

Petitioners' Interests

15. The Wildlife Alliance, Project Coyote, Center for Humane Economy, and Animal Wellness Action (collectively, the "Nonprofit Petitioners") and their members, supporters, and staff have a long-standing interest in the gray wolf and routinely advocate for gray-wolf protection in Wisconsin. They have actively participated in the development of wolf policy in Wisconsin, including testifying at Board hearings related to wolf matters, submitting comments to DNR and the Board regarding the February wolf hunt and the development of the quota for the November hunt, participating in the development of the 1999 Wolf Management Plan, serving on the DNR Wolf Management Plan Committee, and commenting on the scope of new emergency rules proposed by DNR.

16. Many of Nonprofit Petitioners' members, supporters, and staff live in or near areas occupied by wolves in Wisconsin, including all six wolf harvest zones where wolves will be hunted under the Fall 2021 Quota, or they visit these areas for hiking, camping, photography, birdwatching, observing wildlife, and other recreational and professional pursuits. Petitioners' members, supporters, and staff gain aesthetic enjoyment from observing, attempting to observe, hearing, seeing evidence of, and studying wild wolves, including observing signs of wolves in these areas, and observing ecosystems enhanced by these animals. The opportunity to possibly view wolves, or signs of wolves, in these areas is of significant interest and value to Nonprofit

Petitioners' members, supporters, and staff, and increases their use and enjoyment of Wisconsin's public lands. Nonprofit Petitioners' members, supporters, and staff have engaged in these activities in the past and have specific plans to continue to do so in the future.

17. Nonprofit Petitioners' members and supporters are adversely impacted by the threat that wolf hunters pose to companion animals throughout Wisconsin, including their own animals. Nonprofit Petitioners' members also have an interest in the health and humane treatment of animals, and work to rehabilitate sick and injured wildlife, including wildlife that are injured, but not killed by Wisconsin hunters. Nonprofit Petitioners' members, staff, volunteers, and supporters have engaged in these activities in the past and intend to do so again soon.

18. Nonprofit Petitioners, as well as their members, supporters, and staff, are dedicated to ensuring the long-term survival and recovery of the gray wolf throughout the contiguous United States, and specifically in Wisconsin, and to ensuring that Respondents comply with all applicable state and federal laws related to the survival and recovery of the gray wolf in Wisconsin. In furtherance of these interests, Nonprofit Petitioners' members, supporters, and staff have worked, and continue to work, to conserve wolves in Wisconsin and throughout the contiguous United States.

19. The interests of Nonprofit Petitioners' members, supporters, and staff have been, and will continue to be, injured by Respondents' authorization of wolf hunting in Wisconsin. The interests of Nonprofit Petitioners' members, supporters, and staff have been, and will continue to be, injured by Respondents' failure to comply with their obligations under the Wisconsin Constitution, state wildlife statutes, agency regulations, and the Wisconsin Administrative Procedures Act ("APA") in authorizing the hunting of wolves in Wisconsin at unsustainable levels.

20. The relief requested by Petitioners here, if granted, would redress, or at least lessen, the injuries of Nonprofit Petitioners' members, supporters, volunteers, and staff. The relief requested by Petitioners, if granted, would require Respondents to comply with the requirements of the Wisconsin Constitution, state wildlife statutes, agency regulations, and the Wisconsin APA before setting a quota or allowing further hunting of wolves. The relief requested by Petitioners, if granted, would reduce the number of gray wolves killed by Wisconsin hunters.

21. Petitioner Clark is a member of the Lewiston Outing Club, Wisconsin's oldest existing hunting club, which is situated on 605 acres in the Lewiston Bog, just five miles east of Wisconsin Dells. The Lewiston Bog was home to a pack of wolves that Clark and his family named the Bog Pack, which included Roosevelt, Shaggy, Winston, Clyde, and a pup named Wolfie. Clark and his family enjoyed watching the pack grow and thrive on trail camera footage and listening to their howls echoing through the tamaracks in the evenings.

22. As the Bog Pack grew, Clark noticed dramatic changes to the property, as the overpopulation of deer was brought under control, the population of coyotes decreased, and new species started to appear, including foxes, ruffed grouse, mink, long-tailed weasels, barred owls, beaver and muskrats. The vegetation of the bog also changed as different flora began to thrive and new plant species started to appear, including rare and endangered orchids. Clark and his family enjoyed watching the Bog Pack and observing the new species of flora and fauna. Sharing pictures of these species kept the family close after Clark's children went to college.



Photos taken from Clark's trail cameras in summer 2018 show two members of the Bog Pack.

23. An unusual amount of rainfall in 2018-2020 caused the water level to rise in the Lewiston Bog, and pushed the Bog Pack out of the area, so Clark saw them less frequently on his trail cameras. After gray wolves were removed from the federal endangered species list in 2020, Clark tried several tactics to try to encourage the pack to move back to the property so they would be safe. He was unsuccessful. During the bloody frenzy of the February 2021 Hunt, hound hunters killed seven of nine Bog Pack wolves near a muck farm in Marquette County.



Hound hunters pose with the bodies of seven of nine members of the Bog Pack. The hunters posted this photograph on Facebook on Feb. 27, 2021, after covering their faces with smiley-face emojis.

24. Clark hopes that if wolf hunting is not allowed in the area in November 2021, that the remaining members of the Bog Pack might move back to the Lewiston Bog and the pack will grow again, before the bog loses all the ecological benefits that wolves brought to the area.

25. Observing the Bog Pack has caused Clark to become actively involved as an advocate for the protection of gray wolves in Wisconsin and nationwide. Clark has actively participated in the development of wolf policy in Wisconsin, including testifying at the Board hearings related to wolf matters, and submitting comments to DNR and the Board regarding the February wolf hunt and the development of the quota for the November hunt, including telling the story of the Bog Pack.

26. The relief requested by Petitioners here, if granted, would lessen, Clark's injuries, as it would reduce the number of gray wolves killed by Wisconsin hunters, and increase the changes that the Bog Pack will survive and return to the Lewiston Bog.

Respondents

27. Respondent Wisconsin Natural Resources Board is an “agency” of the State of Wisconsin, as that term is defined by Wis. Stat. § 227.01(1) and used throughout Wis. Stat. ch. 227. The Board directs and supervises DNR in its implementation of “statutory wildlife responsibilities.” Wis. Admin. Code § NR 1.015(3); *see* Wis. Stat. § 15.34(1). The Board includes seven members, who are nominated and appointed by the Governor, with the advice and consent of the Senate. Wis. Stat. § 15.07(1). Each Board member serves for a fixed term of six years, Wis. Stat. § 15.34(2)(a), with the term expiring on May 1 of the final year. Wis. Stat. § 15.07(1)(c). The Board’s principal office is located at 101 S. Webster Street in Madison, Wisconsin.

28. Respondent Wisconsin Department of Natural Resources is an “agency” of the State of Wisconsin, as that term is defined by Wis. Stat. § 227.01(1) and used throughout Wis. Stat. ch. 227. DNR is charged with the “protection, development and use of forests, fish and game, lakes, streams, plant life, flowers and other outdoor resources in this state.” Wis. Stat. § 23.09(1); *see also id.* § 23.09(2). It is also responsible for establishing and maintaining hunting and fishing seasons, bag limits, and other restrictions on hunting and fishing to “conserve the fish and game supply and ensure the citizens of this state continued opportunities for good fishing, hunting and trapping.” Wis. Stat. § 29.014(1). DNR’s principal office is located at 101 S. Webster Street in Madison, Wisconsin.

29. Respondent Frederick Prehn is an adult person who resides in Wisconsin and illegally claims to be a member of the Board. His address is 413 Jefferson St., Wausau, Wisconsin, 54403.

30. Respondent Preston Cole is the Secretary of DNR and is named in his official capacity.

JURISDICTION AND VENUE

31. This Court has jurisdiction pursuant to Wis. Stat. §§ 227.40, 227.52, and 227.53.

32. Venue in this Court is proper under Wis. Stat. §§ 227.40, 227.53(1)(a)(3), and 801.50(2)(a), (b) & (c).

LEGAL BACKGROUND

Wisconsin's Administrative Procedures Act

33. Under the Wisconsin Constitution, the people consent to the Legislature making laws because they “have faith that the procedural hurdles required to pass legislation limit the ability of the Legislature to infringe on their rights.” *Wis. Legislature v. Palm*, 2020 WI 42, ¶32, 391 Wis. 2d 497, 942 N.W.2d 900 (2020) (citing Wis. Const. art. V, § 10). The Legislature may delegate its law-making authority to administrative agencies only if there are “procedural safeguards to prevent the ‘arbitrary, unreasonable or oppressive conduct of the agency.’” *Id.* ¶34 (internal citation omitted). These procedural safeguards are generally those imposed by the Wisconsin APA. *Id.*

34. Indeed, the Wisconsin APA applies extensive safeguards to the promulgation of rules by state agencies, beginning with an expansive definition of a “rule,” to include any “regulation, standard, statement of policy, or general order of general application that has the force of law and that is issued by an agency to implement, interpret, or make specific legislation enforced or administered by the agency or to govern the organization or procedure of the agency.” Wis. Stat. § 227.01(13) (including numerous exceptions that are not relevant here).

35. The APA requires an agency to “promulgate as a rule each statement of general policy and each interpretation of a statute which it specifically adopts to govern its enforcement or administration of that statute.” Wis. Stat § 227.10(1).

36. The Wisconsin APA requires a state agency to adhere to numerous procedural safeguards in promulgating rules, including requirements that it give notice of the scope of a proposed rule, allow a preliminary public hearing and comment period, submit the draft rule to legislative council staff for review, issue written notice of the rule proposal, conduct a public hearing to allow comment on the proposal, submit the final draft rule to the Governor for approval, and submit the rule for legislative review before promulgation. *See, generally*, Wis. Stat. §§ 227.135, 227.136, 227.15, 227.17, 227.18, 227.185, and 227.19.

37. An agency may promulgate an emergency rule without complying with most of the Wisconsin APA's notice, hearing, publication, approval, and presentment requirements. Wis. Stat. § 227.24(1)(a). An emergency rule is typically only allowed when "public peace, health, safety or welfare necessitates putting the rule into effect" more quickly than normal APA procedures would allow. *Id.* Emergency rules normally remain in effect for only 150 days. Wis. Stat. § 227.24(1)(c).

38. Under the Wisconsin APA, judicial review is appropriate for final agency actions that "determine the further legal rights of the person seeking review." *Waste Mgmt. of Wis., Inc. v. DNR*, 128 Wis. 2d 59, 90, 381 N.W.2d 318 (1986). A "critical" element of whether an agency action is final and ripe for judicial review is "whether the party objecting to it will have a later opportunity for review of the order." *Sierra Club v. DNR*, 2007 WI App 181, ¶27, 304 Wis. 2d 614, 736 N.W.2d 918. An agency order having "immediate impact upon the parties concerned" is reviewable, even if the agency may at some time in the future revisit its decision. *See Friends of Earth v. Publ. Serv. Comm'n*, 78 Wis. 2d 388, 405, 254 N.W.2d 299 (1977) (utility rates are appealable, even if only temporary in their effect).

39. The Wisconsin APA expressly confers rule-making authority for an agency to "promulgate rules interpreting the provisions of any statute enforced or administered by the

agency, if the agency considers it necessary to effectuate the purpose of the statute, but a rule is not valid if the rule exceeds the bounds of correct interpretation.” Wis. Stat. § 227.11(2)(a). The Wisconsin APA also provides that a “statutory or nonstatutory provision containing a statement or declaration of legislative intent, purpose, findings, or policy does not confer rule-making authority on the agency or augment the agency’s rule-making authority beyond the rule-making authority that is explicitly conferred on the agency by the legislature.” Wis. Stat. § 227.11(2)(a)(1).

40. The Wisconsin APA provides the exclusive means for judicial review of the validity of a rule or guidance document and requires that such action be an action for declaratory judgment. Wis. Stat. § 227.40(1). In a proceeding challenging the validity of an agency rule or guidance document, the Court must “declare the rule or guidance document invalid if it finds that it violates constitutional provisions or exceeds the statutory authority of the agency or was promulgated or adopted without compliance with statutory rule-making or adoption procedures.” Wis. Stat. § 227.40(4)(a).

41. The right to Due Process is secured by the Fourteenth Amendment to the U.S. Constitution, which prohibits the states from depriving “any person of life, liberty, or property, without due process of law.” The Due Process guarantee requires state laws not be “unreasonable, arbitrary or capricious, and that the means selected [to achieve a valid governmental objective] shall have a real and substantial relation to the object sought to be attained.” *Nebbia v. New York*, 291 U.S. 502, 525 (1934).

42. An agency violates the constitutional guarantee of due process when it acts irrationally by adopting a rule that lacks sufficient factual support. *Liberty Homes, Inc. v. Dep’t of Indus., Lab. & Hum. Rels.*, 136 Wis. 2d 368, 385-86, 401 N.W.2d 805 (1987) (“it is the proper role of the court to undertake a study of the record which enables the court to penetrate to the

reasons underlying agency decisions so that it may satisfy itself that the agency has exercised reasoned discretion by a rule choice that does not deviate from or ignore the ascertainable governmental objective”).

43. Under 42 U.S.C. § 1983, “Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . subjects, or causes to be subjected, any citizen of the United States . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.”

44. The standard of review for agency decisions other than the enactment of administrative rules is detailed by Wis. Stat. § 227.57, which provides, in part:

- a. The Court shall remand an action to the agency if it finds “either the fairness of the proceedings or the correctness of the action has been impaired by a material error in procedure or a failure to follow prescribed procedure.” *Id.* § 227.57(4); *see Bracegirdle v. Dep’t of Regul. & Licensing, Bd. of Nursing & Div. of Enforcement*, 159 Wis. 2d 402, 416, 464 N.W.2d 111 (Ct. App. 1990) (section 227.57(4) ensures that an agency’s procedure meets the requirements of Due Process, which “is really a question of the presence or absence of ‘fair play’”) (internal quotations and citation omitted).
- b. The Court shall set aside, modify, or remand an agency action if it finds the “agency has erroneously interpreted a provision of law and a correct interpretation compels a particular action.” Wis. Stat. § 227.57(5).
- c. If an agency has taken an action based on facts that were determined without a hearing, the Court may set aside, modify, or order specific agency action “if the facts compel a particular action as a matter of law, or it may remand the case to the agency for further

examination and action within the agency’s responsibility.” *Id.* § 227.57(7); *R.W. Docks & Slips v. DNR*, 145 Wis. 2d 854, 860, 429 N.W.2d 86 (Ct. App. 1988) (if the circuit court “is unable to rule that the facts compel a particular action as a matter of law, it may remand,” including when the record is “inadequate for proper review”).

- d. The Court shall reverse and remand an action if it finds an agency has acted outside the bounds of the discretion delegated by statute, if its action violates a constitutional or statutory provision, or if the action “is inconsistent with an agency rule, an officially stated agency policy or a prior agency practice, if deviation therefrom is not explained to the satisfaction of the court by the agency.” Wis. Stat. § 227.57(8). Administrative agencies 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). Wisconsin courts will “narrowly construe imprecise delegations of power to administrative agencies.” *Palm*, 2020 WI 42, ¶52.
- e. Regardless of the relief requested by the petition, the Court shall provide whatever relief is appropriate, and if it remands an action to an agency, “it may make such interlocutory order as it finds necessary to preserve the interests of any party and the public pending further proceedings or agency action.” Wis. Stat. § 227.57(9).
- f. The Court “shall not substitute its judgment for that of the agency on an issue of discretion,” *id.* § 227.57(8), and shall afford due weight to the “experience, technical competence, and specialized knowledge of the agency.” *Id.* § 227.57(10). However, the Court “shall accord no deference to the agency’s interpretation of law.” *Id.* § 227.57(11).

Composition and Duties of DNR and the Board

45. DNR is under the “direction and supervision” of both a secretary (“Secretary”) and a seven-member Board. *See* Wis. Stat. §§ 15.05(b), 15.34(2)(a) & (b). The Secretary is nominated and appointed by the Governor, with the advice and consent of the Senate, and serves at the pleasure of the Governor. Wis. Stat. § 15.05(1)(c). The Secretary is the head of DNR and operates “within and pursuant to the statutorily delegated authority and jurisdiction of that administrative agency,” although he or she does not have the authority to adopt rules. MC 1103.1(VIII) (May 22, 2019) (Manual Code for “The Organization and Operation of the Natural Resources Board”). “All of the administrative powers and duties of the Department are vested in the Secretary under the policy direction of the Board.” *Id.* Administrative rules promulgated by the Board specifically allocate additional responsibilities to the Board, such as the approval of the bear hunting quota, Wis. Admin. Code § NR 10.102(1), and the method of evaluating deer populations, Wis. Admin. Code § NR 10.104(5)(a)(6)(b).

46. Led by the Secretary, DNR is comprised of roughly 2,500 employees, including scientists, enforcement officers, and conflict specialists. Among its scientific staff are biologists who specialize in studying wolf population and management.

47. Board members are also nominated and appointed by the Governor, with the advice and consent of the Senate. Wis. Stat. § 15.07(1). Each Board member serves for a fixed term of six years, Wis. Stat. § 15.34(2)(a), with the term expiring on May 1 of the final year. Wis. Stat. § 15.07(1)(c). Unlike some other public offices, the term for Board members does not include a holdover period. *Compare* Wis. Stat. § 15.34(2)(a) (“The natural resources board shall consist of 7 members appointed for staggered 6-year terms.”), *with, e.g.*, Wis. Stat. § 7.30(6)(a) (municipal election officials “shall hold office for 2 years and until their successors are appointed and

qualified.”); Wis. Stat. § 62.14(1) (Commissioners of the board of public works “shall hold their offices . . . for 3 years or until their successors are qualified.”).

48. To be legally effective and binding, any decision made by the Board must be made by a majority of a quorum of its authorized members exercising their joint authority. *See* Wis. Stat. § 15.07(4) (“a majority of a quorum may act in any matter within the jurisdiction of the board”); Wis. Stat. § 990.001(8) (“All words purporting to give a joint authority to 3 or more public officers or other persons shall be construed as giving such authority to a majority of such officers or other persons.”).

49. One of the Board members serves as Chair, selected annually by the Board members for a one-year term. Wis. Stat. § 15.07(2); *see also* MC 1103.1(III)(A). The Board Chair has the authority to designate the time and place of Board meetings, may call special meetings, and consults with the Secretary on agenda items. MC 1103.1(IV)(A)(1), (B) & (C). The Chair conducts Board meetings in accordance with Robert’s Rules of Order and may determine how long members of the public may talk to the Board regarding items on the agenda. *Id.* (IV)(F)(1) & (V)(A).

State Delegation of Trustee Responsibilities over Wildlife

50. Wisconsin Courts have long accepted the applicability of the public trust doctrine, which deems that the state holds and manages wildlife, fish, and waterways as a trustee, and must conserve and manage those resources for the benefit of the public. The doctrine is based on the principle that natural resources are universally important to the lives of people, and that the public should have an opportunity to access them for purposes including recreation, aesthetic enjoyment, fishing, hunting, trapping, and travel. *See Illinois Steel Co. v. Bilot* 109 Wis. 418, 425, 84 N.W. 855 (1901) (applying the Doctrine to Lake Michigan). These principles go back to Roman civil

law, but in Wisconsin, their roots trace to the original text of the state Constitution, which deems that the “navigable waters leading into the Mississippi and St. Lawrence, and the carrying places between the same, shall be common highways and forever free, as well to the inhabitants of the state as to the citizens of the United States.” Wis. Const. art. IX § 1.

51. Nearly 100 years ago, the Supreme Court acknowledged that these same principles apply to the Legislature’s declaration that the state has “title” to all wild animals in the state. *Krenz v. Nichols*, 197 Wis. 394, 398, 222 N.W. 300 (1928) (quoting Wis. Stat. § 29.02, which is virtually identical to the current language of section 29.011). The Court found that “[a]ll the authorities are to the effect that the state holds title to the wild animals in trust for the people,” and that “[a]s trustee for the people, the state may conserve wild life and regulate or prohibit its taking in any reasonable way it may deem necessary for the public welfare, so long as it does not violate any organic law of the land.” *Krenz*, 197 Wis. at 400. It has thus been long established that “wild animals, including migratory birds, within the state, so far as it can be said such animals and birds are the subject of ownership, are owned by the state in its sovereign capacity in trust for the benefit of the people of the state[.]” *State v. Herwig*, 17 Wis. 2d 442, 446, 117 N.W.2d 335 (1962).²

52. Wisconsin's trustee responsibilities were reaffirmed in 2003, with the passage of a state constitutional amendment to give the people the “right to fish, hunt, trap, and take game subject only to reasonable restrictions as prescribed by law.” Wis. Const. art. I, § 26.

² In a 2013 decision, the Wisconsin Supreme Court declined to extend the Doctrine to non-navigable wetlands and dry land, because doing so would have significant ramifications for private property owners. See *Rock-Koshkonong Lake Dist. v. DNR*, 2013 WI 74, ¶ 77, 350 Wis. 2d 45, 833 N.W.2d 800 (2013). There are no such private property concerns related to the “ownership” of fish and wildlife.

53. Virtually unchanged for the past 100 years, Wisconsin law declares that the “legal title to, and the custody and protection of, all wild animals within this state is vested in the state for the purposes of regulating the enjoyment, use, disposition, and conservation of these wild animals.” Wis. Stat. § 29.011(1).

54. The Wisconsin Legislature has delegated many of its responsibilities for wildlife management to DNR, including the responsibility to promulgate rules, and establish plans, projects and policies that will “provide an adequate and flexible system for the protection, development and use of forests, fish and game, lakes, streams, plant life, flowers and other outdoor resources in this state.” Wis. Stat. § 23.09 (1) & (2). Similarly, the Legislature has delegated to DNR the responsibility to set hunting and fishing seasons, and to set other “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.” Wis. Stat. § 29.014(1).

55. DNR has recognized its vital trustee responsibilities in its own rules, where it acknowledges that “[t]he primary goal of wildlife management is to provide healthy life systems necessary to sustain Wisconsin’s wildlife populations for their biological, recreational, cultural and economic values.” Wis. Admin. Code § NR 1.015(2) (“Wildlife management is the application of knowledge in the protection, enhancement and regulation of wildlife resources for their contribution toward maintaining the integrity of the environment and for the human benefits they provide”). Pursuant to both the Fish & Game Code (Chapter 29) and the Conservation Code (Chapter 23), DNR thus recognizes that its responsibility is to “provide for the protection, development and use of forests, fish and game, lakes, streams, plant life, flowers and other outdoor resources of the state,” and to “develop and implement appropriate scientific management practices to achieve these objectives.” Wis. Admin. Code § NR 1.95 (2)(d).

State Management of Gray Wolves

56. A license is required to hunt wolves in Wisconsin. Wis. Stat. § 29.185(2). Since 2011, the Wolf Hunt Law has required DNR to issue such licenses. Specifically, the Wolf Hunt Law provides that “[i]f the wolf is not listed on the federal endangered list,” DNR “shall allow the hunting and trapping of wolves” and “establish a single annual open season . . . 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(1m), 5(a).

57. The Wolf Hunt Law also mandates that DNR shall “implement a wolf management plan,” and that it may “limit the number of wolf hunters and trappers and the number of wolves that may be taken by issuing wolf harvesting licenses.” Wis. Stat. § 29.185(1m); *see id.* at (3)(bn)(1) (“the department shall determine the number of licenses that will be available for a given year”). The Wolf Hunt Law mandates that DNR shall divide the state into wolf-harvesting zones and that it “may close a wolf harvesting zone to both hunting and trapping of wolves” if it determines that closure is “necessary to effectively manage the state’s wolf population.” Wis. Stat. § 29.185(5)(c). The Wolf Hunt Law requires DNR to allow hunters to use domesticated dogs to hunt wolves, but it provides that dogs cannot be used until after the end of deer-hunting season. Wis. Stat. § 29.185(6)(c).

58. Nonstatutory provisions in the Wolf Hunt Law required DNR to submit proposed rules to implement the statute within eight months of its enactment. 2011 Wis. Act 169, § 21(1)(a). These provisions allow DNR to promulgate emergency rules that will “remain in effect until the date on which the permanent rules take effect,” without providing the evidence typically required of emergency rules, that they are “necessary for the preservation of the public peace, health, safety,

or welfare.” *Id.*, § 21(1)(b). These provisions do not set forth any schedule for the adoption of permanent rules to replace DNR’s emergency rules. *Id.*

59. DNR adopted its first emergency wolf-hunt rules under this provision in 2012. These rules were last revised in 2014 and remain in effect. Em. R. 1210 (filed Aug. 15, 2012; revision filed Aug. 15, 2014) (“Emergency Rule 1210”).³ In response to concerns about the longevity of Emergency Rule 1210, DNR told the 4th District Court of Appeals that it had permanent rules to regulate wolf hunts that were “targeted for adoption in 2014.” *Wis. Federated Humane Societies, Inc. v. Stepp*, No. 2013AP902, unpublished slip op., ¶15 (WI App July 10, 2014). However, it has never promulgated such permanent rules.⁴ Emergency Rule 1210 is Wisconsin’s oldest active emergency rule, by a margin of several years.

60. Among other things, Emergency Rule 1210 indicates that DNR will determine the wolf harvest quota “annually,” taking into consideration several factors, which include:

- a. Population estimates and trends.
- b. Population goals established in a wolf-management plan approved by the Board.
- c. Projected impacts of wolf-harvest quotas on the wolf population and conservation genetics.
- d. Ecological impacts of wolf predation and the ecological importance of wolves.
- e. The take of wolves for depredation management purposes and previous levels of harvest.
- f. The impact of disease, illegal harvest, and other causes of mortality on the wolf population.
- g. Off-reservation treaty rights established under *Lac Courte Oreilles Indians v. State of Wis.*, 775 F. Supp. 321, 323 (W.D. Wis. 1991) and on-reservation jurisdiction of Native American tribes.

³ Citations within this Complaint to NR 10 of the Administrative Code are to the subsections contained in Emergency Rule 1210.

⁴ DNR filed a proposed permanent rule on November 30, 2012. Clearinghouse Rule 12-049. It was withdrawn on December 31, 2016.

Wis. Admin. Code § NR 10.145(1m). A Note to Emergency Rule 1210 provides that DNR will “annually gather information from the wolf harvesting season and will utilize that information in establishing recommendations for subsequent seasons and permanent rules.”

BACKGROUND FACTS

Benefits of Wolves

61. Wolves play an important role in the ecosystems in which they live. Research has shown that the restoration of the wolf in the U.S. has helped to revitalize and restore ecosystems, including riparian corridors, which in turn restore the health of America’s navigable waters.

62. The presence of healthy wolf populations improves habitat and increases the health of countless species. The presence of wolves influences the population and behavior of their prey, changing the browsing and foraging patterns of prey animals and how they move about the land. Wolves help improve the health of ungulate populations by culling sick animals, controlling conditions such as chronic wasting disease. This impact ripples throughout plant and animal communities, often altering the landscape itself. For this reason, wolves are described as a “keystone” species whose presence is vital to maintaining the health, structure, and balance of ecosystems.

63. This phenomenon is referred to as trophic cascade. Trophic cascades are powerful indirect interactions that can control entire ecosystems. They occur when predators limit the density and/or behavior of their prey and thereby enhance survival of the next lower trophic level, including plant species and healthy waterways. For example, rampant deer overpopulation can lead to a 40% decline in plant species. In Northern Wisconsin, researchers found deer were limiting tree regeneration in 8 out of 10 of the tree types studied. Wolves help to control the deer population, allowing forests to regenerate and mature. As such, the presence (or absence) of healthy, sustainable wolf populations has direct and lasting impacts on the health of Wisconsin ecosystems.

64. A healthy wolf population also has a direct beneficial impact on humans. For example, a recent study estimated that wolves reduce deer-vehicle collisions by 24%, both by thinning the deer population and by causing deer to avoid travel corridors such as roads. In Wisconsin alone, researchers estimated that the wolf population has saved residents \$10.9 million a year by reducing collisions with deer, in addition to reducing human injuries and fatalities.

History of Wolves in Wisconsin

65. Wisconsin was the first state to legally protect wolves in 1957, the first state to list wolves as a state endangered species in 1975, and the first state to create a wolf recovery plan in 1989.

66. Prior to European settlement, 3,000-5,000 wolves are believed to have lived in the area that is now Wisconsin. The Legislature passed a bounty on wolves in 1865, which resulted in them being exterminated across most of the state. By the 1950s only a few wolves remained in the far northern part of the state, and wolves were declared extirpated from Wisconsin in 1960.

67. After wolves were placed on the federal endangered species list in 1974, the species began to recover in neighboring Minnesota, and to expand their range into Wisconsin, with the first breeding pack being confirmed in Douglas County in 1978. The gray wolf was listed as a state endangered species in 1975. Wisconsin established a state recovery plan in 1989, which set a goal to reclassify gray wolves from state endangered to threatened once the population had remained above 80 wolves for three consecutive years.

68. By 1999, the population had increased to 197 wolves, and DNR reclassified wolves from endangered to threatened, and developed the current wolf management plan (“1999 Wolf Plan”). The 1999 Wolf Plan contemplated delisting the wolf from the state threatened species list when the population reached 250. Once the population reached a management goal of 350 wolves,

the plan contemplated that the state could kill wolves in response to wolf predation on livestock and might consider the possibility of a public hunt.

69. DNR's Wolf Science Advisory Committee created an addendum to the Plan in 2007. Although the Plan provides that it shall be updated every 5 years, there have been no further updates in the past 14 years.

70. On December 28, 2011, USFWS published a final rule to remove the Western Great Lakes Distinct Population Segment of gray wolves from the federal endangered species list. In response to this change, the Wisconsin Legislature approved the Wolf Hunt Law, which took effect in April 2012. In 2012, Wisconsin held the first legal wolf hunt in recent history. Wolves were also hunted in Wisconsin in 2012 and 2013, before litigation forced USFWS to return gray wolves in the Great Lakes area to the endangered species list at the end of 2014.

February 2021 Wolf Hunt

71. On March 14, 2019, USFWS proposed removing wolves from the federal endangered species list nationwide. Roughly 1.8 million Americans submitted comments opposing delisting, and the scientific peer reviews commissioned by USFWS found that the agency's proposal ignored science to reach a predetermined conclusion. Nevertheless, USFWS published a final rule to remove wolves from the endangered species list on November 3, 2020, to take effect on January 4, 2021. This decision is currently being challenged in litigation in federal court.

72. On December 4, 2020, DNR announced that it would comply with the Wolf Hunt Law after wolves were delisted by holding a wolf hunt beginning November 2021. In support of its decision to wait until November, DNR cited the need to update the 1999 Wolf Plan, update Emergency Rule 1210, gather sufficient population data to develop a science-based quota, and consult with Wisconsin's tribal partners. As part of this consultation, tribal treaty rights require

DNR to give the Ojibwe tribe an opportunity to reserve up to 50 percent of the quota of wolves to be hunted in the territories the tribe ceded to the state.

73. On January 15, 2021, a dozen members of the Senate Committee on Sporting Heritage, Small Business & Rural Issues and the Assembly Committee on Sporting Heritage wrote to the Board, asking it to hold an emergency meeting to vote on whether to require DNR to hold a wolf hunt before the end of February 2021. The letter cited a purportedly urgent need to allow hunters to kill wolves in Wisconsin before they were potentially returned to the federal endangered species list by a federal court ruling.

74. On January 22, 2021, the Board held a special meeting to reconsider DNR's decision not to hold a wolf hunt before the end of February 2021. After hearing from DNR's staff scientists, community experts, hunting groups, and members of the public, the Board voted 4-3 against holding a February hunt, directing DNR to prepare for a hunt in November 2021.

75. On February 2, 2021, Hunter Nation, Inc., a Kansas-based hunting rights organization, filed suit against DNR, the Board, and Secretary Cole, alleging that the Wolf Hunt Law required DNR to hold a wolf hunt before the end of February 2021.

76. On February 11, 2021, the Circuit Court of Jefferson County held that plaintiffs had shown DNR and the Board had a "plain and positive duty" to hold a hunt immediately and issued a writ of mandamus, compelling DNR to hold a wolf hunt before the end of February 2021.

77. On February 15, 2021, the Board held a special meeting to determine how it would comply with the court order. DNR recommended that the Board approve a quota of 200 wolves from non-reservation lands for the February 2021 hunt, with 10 permits being issued for each wolf that could be killed. DNR acknowledged there was a lot of uncertainty with its quota recommendation, and the significant impact it could have on a such a small wolf population, which

it estimated to be roughly 1,000 wolves. DNR acknowledged that because of the tight timeframe, it had not had time to obtain public or tribal input, the Wolf Advisory Committee was unable to meet, and that it would have liked to take more time to develop its quota recommendation.

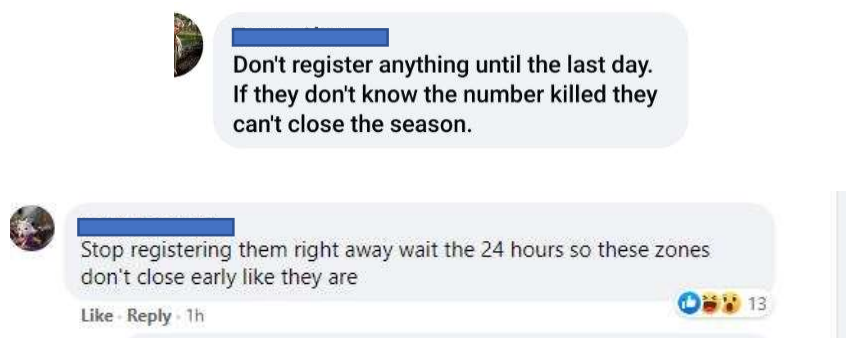
78. Board Vice-chair Greg Kazmierski moved that the Board accept DNR's recommended quota, but that it up the number of permits to 20 for each wolf to be killed "because there's such a short window to accomplish the harvest by the end of February, by upping those numbers of hunters in the field, it will give us a better shot at filling that quota." The Board unanimously voted to approve the quota of 200 wolves, with 20 licenses to be issued for each wolf to be killed.

79. Following established practice consistent with federal treaty law, the Ojibwe Tribes exercised their right to claim 50% of the quota of wolves residing within lands that they had ceded to the United States. The result was that the Tribes claimed 81 wolves from the quota of 200 leaving 119 wolves to be killed through the public hunt. The Ojibwe Tribes declared their intent to protect the 81 wolves that were their portion of the quota.

80. DNR accepted applications for wolf hunt licenses between February 16 and 21, 2021, during which window 18,503 people applied to receive a hunt license. DNR notified 2,380 people that they were authorized to purchase a license, and 1,548 licenses were ultimately sold. The number of licenses sold represented a 13-to-1 ratio of hunters for each of the 119 wolves approved to be killed, or about 1.5 licenses issued for every wolf living in the state.

81. The hunt season began on Monday, February 22, 2021. By 10 a.m. the next day, DNR staff ordered three of the state's six wolf zones to be closed because the quota had been met. It ordered the remaining zones to be closed just five hours later, at 3 p.m. on February 23, 2021.

82. In accordance with the Wolf Hunt Law, these closures did not take effect until 24 hours after they were announced, so wolf hunting continued until 3 p.m. on February 24, 2021. In addition, Emergency Rule 1210 gave hunters 24 hours to report their kills, and multiple social media posts showed hunters urging others to exploit that timeline by delaying their registration of kills until the last minute, to keep the season open as long as possible to maximize the number of wolves killed regardless of the quota. For example, the following screenshots were taken from comments to posts on the Wisconsin Wolf Hunting Facebook page in the middle of the hunt:



83. In all, hunters reported killing 218 wolves during the 60 hours of the February 2021 Hunt Season, exceeding the non-tribal quota of 119 by 99 wolves, or 83%. In one wolf hunt zone, Zone 6, hunters exceeded the quota by 265%. Of the 218 wolves reported killed, 160 were reported killed on public lands. This number does not account for unreported kills, kills by unregistered hunters, or animals who were mortally wounded in the hunt but not recovered.

84. A total of 86% of the reported wolf kills during the February 2021 Hunt Season were from hunters using dogs to track and chase wolves. Although the Wolf Hunt Law limits each hunter to using a maximum of 6 domesticated dogs to pursue a wolf, hunting parties during the February 2021 Hunt Season often consisted of groups of hunters with multiple sets of dogs and multiple vehicles. These hunting parties used radios and cell phones to coordinate and track wolves over long distances, substituting fresh dogs so that they could chase wolves over long distances

until they became exhausted. Field reports suggested that many unlicensed hunters would frequently accompany each hunter with a license, meaning that several thousand people likely participated in the hunt.

85. Hunters reported killing 102 female wolves and 116 male wolves. These wolves included 20 wolf pups, 110 subadults, and 85 adults. DNR staff inspected the carcasses presented for inspection and noted that at least 11 wolves had suffered multiple gunshot wounds, and 1 had been mauled by hunting dogs. Due to the compressed time frame, DNR did not require hunters to submit the carcasses of wolves killed, although 21 hunters voluntarily submitted wolf carcasses to the Great Lakes Indian Fish and Wildlife Commission for examination. Reports from that examination have not yet been publicly revealed.

86. DNR experts and outside scientist agree that the real death toll from the February 2021 Hunt Season was much higher than the reported number, after accounting for wolves maimed during the carnage and illegal and unreported kills. One peer-reviewed study conservatively estimated that 98-105 additional wolves were illegally killed during this period. In all, scientists estimate that the February 2021 Hunt Season directly reduced the Wisconsin wolf population by at least 30%—to approximately only 700 wolves.

87. Since it took place during breeding season, the February 2021 Hunt Season also had a devastating impact on wolf population growth and reproduction. Experts estimate that as many as 65% of the adult female wolves and more than 50% of the yearling female wolves were likely pregnant at the time they were killed. Many of the adult males killed would have also been breeding mates of pregnant adult females, potentially leaving them to try to raise pups on their own. Other wolves may be unable to successfully mate because their mate was killed. In all, researchers estimate that 60-100 packs may lose all pup production in 2021 because of the

February 2021 Hunt Season—impacting up to 40% of the expected reproduction from Wisconsin’s known 245 wolf packs outside reservation areas.

Board Member Prehn’s Usurpation of Public Office

88. Frederick Prehn was appointed to the Board by former Governor Scott Walker on May 18, 2015, and confirmed by the Senate on November 6, 2015, for a fixed term of six years ending on May 1, 2021.⁵ On April 30, 2021, Governor Tony Evers appointed Sandra Naas to fill Prehn’s Board seat effective May 1, 2021. So far, the Republican-controlled Senate has not given any indication that it plans to schedule hearings on Naas’s appointment.

89. Prehn illegally refuses to vacate his seat and allow Naas to take his place, even though he openly acknowledges his term has expired. Prehn claims he retains a right to the Board position until the Senate confirms Naas to succeed him, even though there is no statutory provision permitting Board members to exercise authority on the Board following the expiration of their terms. If Prehn relinquishes his seat to Naas, control of the Board would switch over from appointees put in place by Walker to appointees selected by Evers.

90. Although Prehn has publicly claimed that he has not discussed retaining his seat with state senators, an August 30, 2021 article in the *Milwaukee Journal Sentinel* revealed that he called the state Senate Majority Leader on May 25, 2021 to discuss the issue.⁶ The article also reveals Prehn discussed his strategy to remain in the seat with Scott Meyer, a registered lobbyist

⁵ WIS. S. JOURNAL, Nov. 2015 Extraordinary Session, Advice and Consent of the Senate (Nov. 6, 2015).

⁶ Laura Schulte, *Prehn corresponded with Republican leadership about decision not to step down from Natural Resources Board, emails show*, Milwaukee Journal Sentinel (August 30, 2021), available at: <https://www.jsonline.com/story/news/2021/08/30/natural-resources-board-chair-frederick-prehn-emailed-gop-staying-past-term/5578055001/>.

for Hunter Nation, the Kansas-based organization that sued to force DNR to hold the disastrous February 2021 Hunt.

91. Prehn has told the media that one of the reasons that he has refused to leave his seat is so that he can participate in votes related to the fall 2021 wolf hunt. He told the *Milwaukee Journal Sentinel* on June 25, 2021, that “[i]f the board switches over, I think the wolf hunt is in jeopardy.”⁷

92. In addition to claiming to exercise continuing authority as a Board member despite the expiration of his term, Prehn has also continued to act as the Board Chairman. He acted as Chairman during the August 11, 2021 meeting during which the Board considered the Fall 2021 Quota—setting the agenda, running the meeting, framing the discussion, moving the issue toward resolution, and characterizing the issues up for vote. On August 17, 2021, the State of Wisconsin filed a petition for *writ of quo warranto* in Dane County Circuit Court, alleging that “Prehn has usurped, intruded into, or unlawfully held or exercised” his position as a Board member; and asking the court for an order removing and excluding him from the Board. Case No. 2021-CV-001994 (Hon. Nia Trammell). That case is pending as of the date of this complaint.

DNR Action and Recommendations Following February 2021 Hunt

93. In the more than nine months since the USFWS announced that it was going to remove Wisconsin wolves from the federal endangered species list, and the six months since the February 2021 Hunt Season, DNR has not updated its outdated 1999 Wolf Plan. Instead, it has set forth a timeline to present a final draft of a revised plan to the Board by June 2022.

⁷ Laura Schulte, *Calls have come for Frederick Prehn to vacate his Natural Resources Board seat. Here's why he says he isn't going anywhere*, Milwaukee Journal Sentinel (June 25, 2021), available at: <https://www.jsonline.com/story/news/politics/2021/06/25/wisconsin-natural-resources-board-chair-why-he-isnt-stepping-down-frederick-prehn/5323445001/>.

94. DNR has not proposed permanent rules to take the place of Emergency Rule 1210 in the nine years since it adopted the first version of the rule, or the nine months since the USFWS announced that it was going to remove Wisconsin wolves from the federal endangered species list and the six months since the end of the February 2021 Hunt Season. Instead, it has proposed a scope statement for a new emergency rule. DNR has not released the text of the new proposed emergency rule but has indicated that it plans to submit the new proposed emergency rule for Board approval at its next scheduled meeting on September 21-22, 2021.

95. On July 26, 2021, DNR recommended that the Board adopt a “conservative” quota of 130 wolves for the fall 2021 wolf hunt. In its recommendation, DNR acknowledged that it cannot accurately estimate the current Wisconsin wolf population, because:

- a. The February 2021 Hunt Season truncated DNR’s winter wolf track survey before it could be completed.
- b. It has no estimates for the impact the February 2021 Hunt Season had on the wolf population’s rate of reproduction.
- c. Hunting during the breeding season leads to uncertainty, and it has no models that allow it to predict the outcome of that hunt.
- d. It has no population management experience with the effects of holding two wolf hunts in a single calendar year.
- e. The Wisconsin wolf population is relatively small and could be subject to rapid fluctuations.

96. DNR ran its uncertain numbers through models to estimate the impact of a fall wolf quota of 130 wolves. In doing so, DNR ignored the full potential impact of the February 2021 Wolf Hunt, engaged in speculation as to several key population metrics, and ignored prevailing science. For example, DNR did not attempt to subtract any additional wolves from the population due to wolves killed through poaching related to the February 2021 Wolf Hunt, ignoring the peer-

reviewed scientific study estimating there had been 98-105 additional deaths. DNR also used an estimate of background mortality that ignored scientific projections, in favor of a compromise number taken from the consensus of a citizen committee. And instead of attempting to estimate the impact of the February 2021 Wolf Hunt on the spring breeding system, DNR just assumed that the wolf population had bred successfully.

97. In recommending a quota of 130 wolves, however, DNR also provided that it would be “taking further administrative action” to determine the number of licenses that should be issued, and to assess “whether the quota approved by the Board should be adjusted to account for the results of the February 2021 hunt, which included the overharvest of 99 wolves.”

98. In presenting DNR’s recommendation, DNR Deputy Secretary Todd Ambs told the Board:

Make no mistake about it, as we stated consistently since the end of last year when we received notice of the delisting plans. The only way to have a transparent, inclusive, and science-based hunt following delisting, was to have a single hunt in 2021 this November. The courts did not agree with us. So we had to have a rushed ill-advised hunt in literally a matter of days, and the results speak for themselves.

99. The Board received more than a thousand written comments on the fall 2021 wolf hunt, and 55 people testified at the August 11, 2021 hearing. Among those commenting were several scientists who warned DNR and the Board that setting a fall quota as high as 130 wolves could have dire consequences to the wolf population.

100. Adrian Wydeven, DNR’s former head for wolf conservation and recovery between 1990 and 2013, warned that the state population was likely now at about 700 wolves, and that the fall 2021 quota should be set at no more than 30 wolves. He said that current surveys also indicated that pack reproduction had been significantly decreased by the February 2021 Wolf Hunt. He testified that killing another 130 wolves could have “destabilizing effects on packs throughout the

state,” and could trigger the USFWS to return Wisconsin wolves to the federal endangered species list.

101. Dr. Adrian Treves, the founder of the Carnivore Coexistence Lab at the University of Wisconsin-Madison, asked the Board to set the quota at the minimum level allowable by law. He warned in written comments that DNR’s recommended quota could have “disastrous effects on the overall health of Wisconsin’s wolf population and drop its numbers down to dangerously low numbers.” Dr. Treves said a hunt at that level could drop the population below the level of 250 wolves, meriting a return to the state endangered species list.

102. Prior to the August 11, 2021 meeting, Dr. Treves submitted scenarios estimating the effect of DNR’s proposed quota, which he had constructed with the assistance of his colleagues at the Carnivore Coexistence Lab. These scenarios started from the only published, peer-reviewed estimate of the state population made following the February 2021 Wolf Hunt, which put the state wolf population at between 695 and 751 wolves.⁸ The most likely scenarios suggested that a fall 2021 hunt quota of 130 wolves would leave a population of 272-401 non-reservation wolves by April 2022, and that by summer 2020, the wolf population would likely fall below the state re-listing level of 250 wolves.

103. However, Dr. Treves emphasized that the uncertain impacts of the February 2021 Wolf Hunt on the wolf-breeding season made it difficult to come up with reliable predictions. Based on that uncertainty alone, he urged the Board to set the quota as low as possible, because DNR’s recommendation could have a “potentially catastrophic impact” on the state wolf population.

⁸ See Adrian Treves, Francisco Santiago-Avila and Karann Putrevu, *Quantifying the effects of delisting wolves after the first state began lethal management*, PeerJ, 9:e11666, DOI 10.7717/peerj.11666 (July 5, 2021).

104. DNR's claimed objective in setting the November 2021 wolf quota was "to maintain the long-term sustainability of the population as the Department undertakes development of a Wisconsin Wolf Management Plan which will provide the framework for future population management."

August 11, 2021 Board Vote on Fall 2021 Quota

105. Former Board member Prehn chaired the August 11, 2021 hearing on DNR's quota recommendation. Following public comments, which Prehn limited to two minutes apiece, the discussion started with Vice-Chair Kazmierski immediately moving to ignore DNR's recommendation and set the quota at 504 wolves. Kazmierski's motion also provided that any further administrative action by DNR to adjust the quota would have to be approved by the Board.

106. Kazmierski challenged DNR's recommendation for being designed to result in no wolf population change, contending that this was contrary to the outdated 1999 Wolf Plan, which he claimed required the Board to approve killing wolves down to a population of no more than 350.

107. Kazmierski's interpretation was contradicted by several members of DNR, including DNR Chief Legal Counsel Cheryl Heilman, who said that the 1999 Wolf Plan did not set a goal for public hunting, because it did not consider a public hunt season, but that the 350 number was "a minimum that was set that would allow consideration of a public hunt and would allow consideration of other depredation activities."

108. Deputy Secretary Alms echoed this position: "The Management plan in 1999 did not speak to the question of a harvest number. Period."

109. Kazmierski also conceded that his number was an attempt to nullify the expected reservation by the Ojibwe Tribes, and that he had calculated it to allow hunters to kill 300 wolves after the tribal reservation was removed.

110. Board member William Bruins ignored the population modeling that DNR presented, as well as the comments by outside scientists. Instead of any science, he decided to substitute simple math. Bruins reasoned that wolf population numbers were at about 1,100 before the February 2021 Wolf Hunt, from which he subtracted “a couple of hundred that were killed,” and rounding, arrived at a population of about 900. Bruins reasoned that if hunters killed another “300 wolves this fall, we would be at 600,” which would still be above the population “goal” set by the 1999 Wolf Plan.

111. On multiple occasions, Prehn tried to push the Board toward a quota of 300 wolves, reasoning that it would not “annihilate 25 to 50% of the wolf pack, but this Board feels that 130 with a possibility of 70 kills is not adequate.”

112. What followed was a classic bidding war of various proposed quotas, during which motions were frequently adjusted mid-course, and Prehn abandoned the requirements set by Robert’s Rules of Order to state the matter before the Board hastily and vaguely before each vote. Kazmierski’s motion to amend DNR’s recommendation to a quota of 300 was rejected by the Board; a suggestion to set the quota at 275 failed to get a second; then a motion to set the quota at 350 failed. When the motion was made to change the quota to 300, Prehn pushed the Board forward with the admonition that he “hope[d] this is the last amendment because we do have a meeting to do.”

113. The Board voted 4-3 to approve the motion to amend DNR’s proposal to set the quota at 300, with the provision that DNR would need to obtain Board approval for any

administrative adjustments made because of the February 2021 Wolf Hunt. Voting in favor of the motion were Prehn, Bruins, Kazmierski, and Terry Hilgenberg, while Sharon Adams, Marcy West, and William Smith voted against the motion.⁹ Following approval of the amendment, the Board voted to approve the main motion as proposed by the DNR, which passed by a vote of 5-2, with only Adams changing her previous vote to vote in favor of the motion as amended.

114. After the vote was complete, Secretary Cole challenged Prehn: “So now, for the viewing public, you get a sense as to why the Chair chose to stay. I wonder what the vote would have been with Sandy Nass sitting in that chair.” In response, Prehn asked the board liaison what the final vote was on the last motion. When she responded that it was 5-2, he said, “I think it would have passed without me present, Mr. Secretary,” inaccurately implying that it was that final vote that had changed the quota from 130 to 300.

115. Throughout the debate over the November 2021 Wolf Quota, Prehn used his position as Chair to push the Board toward his predetermined “compromise” quota of 300 wolves—and once that proposal was raised, tried to rush the vote with an insistence that the Board needed to move onto other business. In taking the vote, Prehn failed to follow Robert’s Rules of Order, the procedure adopted by the Board in its Manual Code, which requires the chairperson to “mak[e] clear the exact question the assembly is called upon to decide” before calling for a vote. *See* Robert’s Rules of Order Newly Revised § 4:34 (12th ed., 2020).

⁹ As of the time of filing, the Board had not posted a draft “Brief of Action” for the August 11, 2021 meeting, which it issues in lieu of minutes. As a result, the record of these votes was taken from examination of the videotape of the hearing, and a transcript produced from that tape. The afternoon portion of the hearing that includes the Board’s vote may be viewed at: <https://dnrmedia.wi.gov/main/Play/bf190d8ae4244fc3a6f6c8ad34f8d0ca1d?catalog=9da0bb432fd448a69d86756192a62f1721>.

116. In the end, Prehn cast the deciding vote to amend DNR's recommendation to increase the fall 2021 quota to 300 wolves.

117. On August 13, 2021, without the benefit of a final Brief of Action to clarify the status of the final vote, Adams released the following statement:

Following a very lengthy discussion at the recent board meeting involving the November wolf hunting season, there were a series of amendments and motions offered. During that discussion, I voted for what at the time I believed was a substitute amendment and turned out to be a final motion. I want to make it clear that I did not intend to vote for, nor do I support, a quota of 300 wolves for the upcoming November hunting season. I offer this statement today only for the purpose of clarifying the record.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

Violation of the Wisconsin Administrative Procedures Act: Failure to Follow Required Procedure

118. Petitioners reallege and incorporate by reference every allegation in the preceding paragraphs as if set forth in full.

119. The Board took final action by adopting the Fall 2021 Quota. That action constitutes an "administrative decision" reviewable under Wis. Stat. § 227.52; or in the alternative, is a "rule" reviewable under Wis. Stat. § 227.40.

120. The Court shall remand an administrative decision if it finds that "either the fairness of the proceedings or the correctness of the action has been impaired by a material error in procedure or a failure to follow prescribed procedure." Wis. Stat. § 227.57(4).

121. The Court shall reverse or remand an administrative decision that is "outside the range of discretion delegated to the agency by law; is inconsistent with an agency rule, an officially stated agency policy or a prior agency practice" or that "violates a statutory provision." Wis. Stat. § 227.57(8).

122. The Court shall declare an agency rule invalid if it exceeds the statutory authority of the agency or was adopted without compliance with applicable procedures. Wis. Stat. § 227.40(4)(a).

123. DNR is under the “direction and supervision” of both the Secretary and the Board. The Secretary is the head of DNR, who operates “within and pursuant to the statutorily delegated authority and jurisdiction of that administrative agency,” although internal Board policy provides that the Secretary does not have the authority to adopt rules. MC 1103.1(VIII). “All of the administrative powers and duties of the Department are vested in the Secretary under the policy direction of the Board.” *Id.*

124. Board members are also nominated and appointed by the Governor, with the advice and consent of the Senate. Wis. Stat. § 15.07(1). Each Board member serves for a fixed term of six years, Wis. Stat. § 15.34(2)(a), with the term expiring on May 1 of the final year. Wis. Stat. § 15.07(1)(c). The term for Board members does not include a holdover period. *See id.*

125. To be legally effective and binding, any decision made by the Board must be made by a majority of a quorum of its authorized members exercising their joint authority. Wis. Stat. §§ 15.07(4), 990.001(8). One of the Board members serves as Chair, selected annually by the Board members for a one-year term. Wis. Stat. § 15.07(2); *see also* MC 1103.1(III)(A).

126. The Wolf Hunt Law mandates that DNR “shall determine the number of [wolf hunt] licenses that will be available for a given year.” Wis. Stat. § 29.185(3)(bn)(1). Emergency Rule 1210 indicates that DNR will determine the wolf harvest quota “annually,” taking into consideration, among other things, the “population goals established in a species management plan approved by the Natural Resources Board.” Wis. Admin. Code § NR 10.145(1m)(b).

127. By adopting the Fall 2021 Quota, the Board assumed a power that was not delegated to it by either the Legislature, by the rules it had promulgated, or by its internal policies. The Board's August 11, 2021 vote was further illegal because it improperly attempted to control DNR's discretion in administering the quota.

128. Unlike other quotas, such as the quota for the bear season (Wis. Admin. Code § NR 10.102(1)), the authority to set an annual wolf hunt quota is not delegated to the Board. By statute and rule, DNR has the discretion to determine the number of wolf licenses granted each year, after determining the yearly wolf quota, while the Board's role in the process was limited to the approval of a wolf management plan. Wis. Stat. § 29.185(3)(bn)(1); Wis. Admin. Code § NR 10.145(1m)(b).

129. The Board's action in adopting the Fall 2021 Quota is thus invalid, because it was outside the discretion delegated to the Board by law, and inconsistent with agency rules and official policies, in accordance with Wis. Stat. § 227.57(8).

130. In the alternative, if the Fall 2021 Quota was an administrative rule, the development of which was entrusted to the Board, it was promulgated without adherence to the Wisconsin APA's statutory rulemaking procedures, and it is thus invalid. Wis. Stat. § 227.40(4)(a).

131. Even if the Board had the authority to decide the Fall 2021 Quota, it did so unlawfully, because the Board was improperly constituted, the decision was guided by a chairperson who was no longer legally seated on the Board, and the vote in favor of the Fall 2021 Quota was decided by a person who was no longer a member of the Board.

132. On August 11, 2021, Respondent Prehn was no longer acting as a legal member of the Board; his seat had expired on May 1, 2021, and he had illegally refused to relinquish it to the successor appointed by the Governor. Nevertheless, acting as Chair under color of law, Prehn

controlled the Board's deliberations over the Fall 2021 Quota, exerted influence over its decisions, mismanaged the meeting in violation of the Board's adopted policy, and cast the deciding vote in favor of the amendment which changed DNR's recommendation of a quota of 130 wolves to a quota of 300 wolves and constrained DNR's ability to take proper administrative action to administer that quota.

133. The Board's action was thus taken by an illegally constituted body without the authority to act, and its decision was not made by a valid vote of a majority of the quorum. *See* Wis. Stat. §§ 15.07(4), 990.001(8).

134. Under Wis. Stat. § 227.57(8), the Court should reverse or remand the Fall 2021 Quota, because it is outside the discretion delegated to the agency by law, is inconsistent with an agency rule or official policy, and/or because it violates a statutory provision.

135. Under Wis. Stat. § 227.57(4), the Court should remand the Fall 2021 Quota, because the "fairness of the proceedings or the correctness of the action" was "impaired by a material error in procedure or a failure to follow prescribed procedure," and thus violated Petitioners' right to Due Process under the U.S. Constitution.

136. In the alternative, Court should declare the Board's decision approving Fall 2021 Quota to be an invalid administrative rule under Wis. Stat. § 227.40(4)(a), because it exceeds the agency's statutory authority and was adopted without compliance with statutory rulemaking or adoption procedures.

137. The Court should find that Prehn acted under color of statute to deprive Petitioners of their right to Due Process.

138. The Court should remand the Fall 2021 Quota with instructions that the quota for the fall hunt and the method by which that quota should be administered should be decided by

DNR, without a vote of the Board. In the alternative, the Court should enjoin DNR from issuing wolf hunting licenses for the season beginning November 2021 until it is authorized to do so by a lawful majority vote of a quorum of active Board members.

SECOND CLAIM FOR RELIEF
Violation of the Wisconsin Administrative Procedures Act:
Acting Outside Statutory Authority

139. Petitioners reallege and incorporate by reference every allegation in the preceding paragraphs as if set forth in full.

140. The Board took final action by adopting the Fall 2021 Quota. That action constitutes an “administrative decision” reviewable under Wis. Stat. § 227.52; or in the alternative, is a “rule” reviewable under Wis. Stat. § 227.40.

141. The Court shall reverse or remand an administrative decision that is “outside the range of discretion delegated to the agency by law; is inconsistent with an agency rule, an officially stated agency policy or a prior agency practice” or that violates a “statutory provision.” Wis. Stat. § 227.57(8).

142. The Court shall set aside, modify, or remand an agency action if it finds the “agency has erroneously interpreted a provision of law and a correct interpretation compels a particular action.” *Id.* § 227.57(5).

143. The Court shall declare an agency rule invalid if it exceeds the statutory authority of the agency. Wis. Stat. § 227.40(4)(a).

144. The Wolf Hunt Law provides that “[i]f the wolf is not listed on the federal endangered list,” DNR shall “**establish a single annual open season . . . 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(1m), (5)(a) (emphasis added).

145. DNR has already conducted a wolf hunting season in 2021, which lasted from February 22 to February 24, 2021.

146. The Wolf Hunt Law also mandates that DNR shall “implement a wolf management plan.” *Id.* § 29.185(1m). Emergency Rule 1210 indicates that DNR will determine the wolf-harvest quota “annually,” taking into consideration the population goals established in a wolf management plan approved by the Board. Wis. Admin. Code § NR 10.145(1m).

147. The 1999 Wolf Plan is an official agency policy. It requires that DNR shall conduct a “public review of the plan and management goals” every five years. 1999 Wolf Plan at 4. The Plan was last revised in 2007, roughly 14 years ago.

148. DNR’s intent to proceed with a fall 2021 wolf hunt under the Fall 2021 Quota is illegal and ultra vires, because the Wolf Hunt Law authorizes only “a single annual open season” for hunting wolves. Wis. Stat. § 29.185(5)(a). It does not authorize DNR to divide the wolf hunting season into different parts, or to hold two wolf hunting seasons during a single year. Wisconsin courts will “narrowly construe imprecise delegations of power to administrative agencies.” *Palm*, 2020 WI 42, ¶52.

149. The Board’s adoption of the Fall 2021 Quota violates an agency rule and officially stated agency policy, because it was adopted without reference to a current and valid wolf management plan, as required by both the Wolf Hunt Law and Emergency Rule 1210. Under Wis. Stat. § 227.57(8), the Court should reverse or remand the Fall 2021 Quota, because it is outside the discretion delegated to the agency by law, is inconsistent with an agency rule or official policy, and/or because it violates a statutory provision.

150. In the alternative, the Court should declare the Board's decision approving the Fall 2021 Quota to be an invalid rule under Wis. Stat. § 227.40(4)(a), because it exceeds the agency's statutory authority.

151. The Court should remand the Fall 2021 Quota with instructions that DNR cancel the fall 2021 wolf hunt, because the Wolf Hunt Law does not authorize a second wolf hunt to take place in a single year.

152. In addition to, or in the alternative, the Court should enjoin DNR from opening another wolf hunting season and issuing wolf hunting licenses until it has developed a valid and current wolf management plan, which sets wolf population goals that will allow annual hunting quotas to be set as contemplated by Wis. Admin. Code § NR 10.145(1m).

THIRD CLAIM FOR RELIEF
Violation of the Wisconsin Administrative Procedures Act:
Action Taken Without a Factual Basis

153. Petitioners reallege and incorporate by reference every allegation in the preceding paragraphs as if set forth in full.

154. The Board took final action by adopting the Fall 2021 Quota. That action constitutes an "administrative decision" reviewable under Wis. Stat. § 227.52; or in the alternative, it resulted in a "rule" reviewable under Wis. Stat. § 227.40.

155. The Court shall reverse or remand an administrative decision that is "outside the range of discretion delegated to the agency by law; is inconsistent with an agency rule, an officially stated agency policy or a prior agency practice" or that violates a "statutory provision." Wis. Stat. § 227.57(8).

156. The Court shall set aside, modify, or remand an agency action if it finds the “agency has erroneously interpreted a provision of law and a correct interpretation compels a particular action.” *Id.* § 227.57(5).

157. “If the agency’s decision depends on facts determined without a hearing, the court shall set aside, modify or order agency action if the facts compel a particular action as a matter of law, or it may remand the case to the agency for further examination.” Wis. Stat. § 227.57(7).

158. The Court “shall not substitute its judgment for that of the agency on an issue of discretion,” *id.* § 227.57(8), and shall afford due weight to the “experience, technical competence, and specialized knowledge of the agency.” *Id.* § 227.57(10).

159. A court shall declare an agency rule invalid if it violates constitutional provisions. Wis. Stat. § 227.40(4)(a). A state agency violates the constitutional guarantee of due process when it acts irrationally, arbitrarily, and capriciously by adopting a rule that lacks sufficient factual support. *Liberty Homes, Inc. v. Dep’t of Indus., Lab. & Hum. Rels.*, 136 Wis. 2d 368, 401 N.W.2d 805 (1987).

160. The Board’s decision to set the Fall 2021 Quota was irrational, arbitrary, capricious, and devoid of a reasonable supporting factual basis. It ignored facts and science, including the information and opinion offered by the experts at DNR, who comprise the “experience, technical competence, and specialized knowledge of the agency.” *See* Wis. State. § 227.57(10).

161. Under Wis. Stat. § 227.57(7), the Court should set aside the Fall 2021 Quota, modify the Fall 2021 Quota, order the Board to take specific action to correct the errors made in setting the Fall 2021 Quota, or remand the decision to the Board for further examination in accordance with the law, because the Board’s decision is not based on or consistent with the facts it had before it.

162. Under Wis. Stat. § 227.57(8), the Court should reverse or remand the Fall 2021 Quota, because the Board's failure to base its decision on a reasoned or adequate factual basis means that the decision is outside the Board's range of delegated discretion, violates a statutory provision, and is inconsistent with an agency policy.

163. In the alternative, under Wis. Stat. § 227.40(4)(a), the Court should declare the Fall 2021 Quota to be an invalid rule, because it lacks sufficient factual support in violation of federal Constitutional guarantees of substantive due process.

164. The Court should enjoin DNR from opening another wolf hunting season and issuing wolf hunting licenses under the Fall 2021 Quota.

FOURTH CLAIM FOR RELIEF
Violation of the Wisconsin Constitution:
Unlawful Delegation of Legislative Authority

165. Petitioners reallege and incorporate by reference every allegation in the preceding paragraphs as if set forth in full.

166. The Fall 2021 Quota was adopted in reliance on the Wolf Hunt Law, which provides that “[i]f the wolf is not listed on the federal endangered list,” DNR “shall allow the hunting and trapping of wolves” and “establish a single annual open season . . . 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(1m), (5)(a).

167. Nonstatutory provisions in the Wolf Hunt Law allow DNR to promulgate emergency rules that will “remain in effect until the date on which the permanent rules take effect,” without providing the evidence typically required of emergency rules, that they are “necessary for the preservation of the public peace, health, safety, or welfare.” 2011 Wis. Act 169, § 21(1)(b).

These provisions do not set forth any schedule for the adoption of permanent rules to replace DNR's emergency rules. *Id.*

168. DNR adopted its first emergency wolf hunt rules under this provision in 2012. These rules were last revised in 2014 and remain in effect. In response to concerns about the longevity of Emergency Rule 1210, DNR told the 4th District Court of Appeals that it had permanent rules to regulate wolf hunts that were “targeted for adoption in 2014.” *Wis. Federated Humane Societies, Inc.*, No. 2013AP902 ¶15. Emergency Rule 1210 is Wisconsin's oldest active emergency rule, by a margin of several years.

169. Under the Wisconsin Constitution, the people consent to the Legislature making laws because they “have faith that the procedural hurdles required to pass legislation limit the ability of the Legislature to infringe on their rights.” *Palm*, 2020 WI 42, ¶32 (citing Wis. Const. art. V, § 10). The Legislature may delegate its law-making authority to administrative agencies only if there are “procedural safeguards to prevent the ‘arbitrary, unreasonable or oppressive conduct of the agency.’” *Id.* ¶34, (internal citation omitted). These procedural safeguards are generally those imposed by the Wisconsin APA. *Id.*

170. In particular, the Wisconsin APA requires a state agency to adhere to numerous procedural safeguards in promulgating rules, including requirements that it give notice of the scope of a proposed rule, allow a preliminary public hearing and comment period, submit the draft rule to legislative council staff for review, issue written notice of the rule proposal, conduct a public hearing to allow comment on the proposal, submit the final draft rule to the Governor for approval, and submit the rule for legislative review before promulgation. *See, generally*, Wis. Stat. §§ 227.135, 227.136, 227.15, 227.17, 227.18, 227.185, and 227.19.

171. An agency may promulgate an emergency rule without complying with most of the Wisconsin APA's notice, hearing, publication, approval, and presentment requirements. Wis. Stat. § 227.24(1)(a). An emergency rule is typically only allowed when "public peace, health, safety or welfare necessitates putting a rule into effect" more quickly than normal APA procedures would allow. *Id.* Emergency rules normally remain in effect for only 150 days. Wis. Stat. § 227.24(1)(c).

172. The Wolf Hunt Law includes a facial violation of the separation of powers mandated by the Wisconsin Constitution, because it allows the Board to continue to regulate the Wisconsin wolf population in perpetuity without adopting permanent rules that adhere to the Wisconsin APA's requirements of notice, comment, presentment, and approval.

173. In the alternative, the Wolf Hunt Law violates the separation of powers mandated by the Wisconsin Constitution as applied, because the Board has allowed Emergency Rule 1210 to remain in effect since 2014, without promulgating a permanent rule to replace it in accordance with the APA's requirements of notice, comment, presentment, and approval.

174. The Court should invalidate the Wolf Hunt Law as unconstitutional, both facially and applied, and invalidate Emergency Rule 1210, which was propagated under the Wolf Hunt Law in violation of constitutional principles.

175. The Court should invalidate the 2021 Fall Quota under Wis. Stat. § 227.57(8), because it is based on an unconstitutional statute and rule, and thus violates a Constitutional provision.

176. The Court should enjoin DNR from opening another wolf hunting season and issuing wolf hunting licenses until such licenses are authorized by a valid statute or permanent agency rule.

FIFTH CLAIM FOR RELIEF
Violation of the Wisconsin Constitution:
Public Trust Doctrine

177. Petitioners reallege and incorporate by reference every allegation in the preceding paragraphs as if set forth in full.

178. DNR and the Board have a positive duty as public trustees to manage wildlife, including gray wolves, for the benefit of the public interest, which requires, at a minimum, that Respondents have reliable information about the wolf population and can make a reasoned decision based on science that a wolf hunt would not harm the survival of the population.

179. This duty is articulated by Article II, Section 26 and Article IX, Section 1 of the Wisconsin Constitution, reinforced by hundreds of years of case law, and reaffirmed by the statutory principles that guide DNR and the Board in the administration of their responsibilities.

180. On February 11, 2021, the Circuit Court of Jefferson County held that DNR and the Board had a “plain and positive duty” to hold a wolf hunt in February 2021, even though it contravened the best judgment of DNR’s experts, who warned it could harm the long-term survival of the state’s wolf population.

181. The Wolf Hunt Law violates the Wisconsin Constitution by depriving DNR and the Board of the ability to fulfill their duties by exercising the discretion conferred upon them and requiring them to provide for a wolf hunting season regardless of the facts, the science, and contrary to their best professional judgment.

182. In adopting the 2021 Fall Quota, the Board violated its constitutional and statutory responsibility to conserve and manage state wildlife for current and future generations, by adopting a quota that ignored the facts, science, and best professional judgment of DNR experts regarding the effect it would have on the state wolf population.

183. The Court should invalidate the Wolf Hunt Law as a violation of the public trust doctrine enshrined in the Wisconsin Constitution.

184. The Court should invalidate the 2021 Fall Quota under Wis. Stat. § 227.57(8) and a violation of the Board's public trust responsibilities under statute and the Constitution, and because it is based on an unconstitutional statute, and thus violates a Constitutional provision.

185. The Court should enjoin DNR from opening another wolf hunting season and issuing wolf hunting licenses until such licenses are authorized by a valid statute or permanent agency rule.

PRAYER FOR RELIEF

WHEREFORE, Petitioners Wildlife Alliance, Project Coyote, Animal Wellness Action, Center for Humane Economy, and Patrick Clark respectfully request that the Court enter an order:

- a. Declaring that the 2021 Fall Quota is invalid and void, because it robbed DNR of the discretion granted to it by statute, rule, and agency policy;
- b. Declaring that the 2021 Fall Quota was invalid and void, it was decided through a fundamentally unfair process, in which the meeting was controlled by a chairperson with no legal right to be present, and the deciding vote was cast by a former Board member who held no authority to cast such a vote;
- c. Declaring that the 2021 Fall Quota is invalid and void, as an unlawful agency decision outside the discretion delegated to the agency by law, which is inconsistent with a statutory provision, agency rule and official policy;
- d. Declaring that 2021 Fall Quota was an arbitrary, capricious, irrational agency action taken without an adequate or reasonable factual basis in the record;
- e. Declaring that the 2021 Fall Quota, the Wolf Hunt Law and Emergency Rule 1210 are invalid because they violate the separation of powers under the Wisconsin Constitution;

- f. Declaring that the 2021 Fall Quota, the Wolf Hunt Law, and Emergency Rule 1210 are invalid because they violate DNR's responsibilities to conserve wildlife for current and future generations in accordance with the public trust doctrine;
- g. Enjoining the DNR from issuing hunting licenses to kill gray wolves or otherwise allowing another wolf hunting season, unless and until DNR and the Board take the necessary steps to comply with the Administrative Procedures Act, controlling statute, and the U.S. and Wisconsin Constitutions;
- h. Awarding Petitioners their costs, attorneys' fees, and other expenses associated with this litigation, as appropriate under 42 U.S.C. § 1988, Wis. Stat. § 814.245, and in accordance with this Court's equitable powers; and
- i. Awarding such other relief as deemed appropriate by the Court and make such interlocutory orders as necessary to preserve the interests of the parties.

Dated this 31st day of August, 2021.

By: s/ Joseph S. Goode

Joseph S. Goode
LAFFEY, LEITNER & GOODE LLC
325 E. Chicago St.
Suite 200
Milwaukee, WI 53202
(414) 312-7003
jgoode@llgmke.com

OF COUNSEL:
Jessica L. Blome
Pro Hac Vice to Be Filed
GREENFIRE LAW, PC
2001 Addison St.
Suite 300
Berkley, CA 94704
(510) 900-9502
jblome@greenfirelaw.com

Claire Loeb Davis
Pro Hac Vice to Be Filed
ANIMAL & EARTH ADVOCATES
2226 Eastlake Ave. E
Suite 101
Seattle, WA 98102
(206) 601-8476
claire@animalearthlaw.com