

STATE OF WISCONSIN

CIRCUIT COURT  
BRANCH 17

DANE COUNTY

---

WISCONSIN FEDERATED HUMANE SOCIETIES INC., *et al.*  
Plaintiffs,

vs.

CATHY STEPP, SECRETARY, WISCONSIN DEPARTMENT OF  
NATURAL RESOURCES, *et al.*  
Defendants,

Case No. 12-cv-3188

Classification Code: 30701

and

WISCONSIN BEAR HUNTERS ASSOCIATION, *et al.*,  
Defendant-Intervenors.

---

BRIEF OF *AMICUS CURIAE* THE AMERICAN SOCIETY FOR THE PREVENTION OF CRUELTY TO  
ANIMALS IN SUPPORT OF PLAINTIFFS

---

The American Society for the Prevention of Cruelty to Animals (ASPCA), the nation's oldest humane organization and a recognized expert in the field of animal welfare, submits this *amicus curiae* brief in support of Plaintiffs.<sup>1</sup> By promulgating emergency rules that authorize the virtually unfettered use of dogs to hunt wolves, the Wisconsin Department of Natural Resources (DNR) exceeded its statutory authority under Act 169 and violated the letter and spirit of Wisconsin's animal cruelty and animal fighting laws. Therefore, the court should declare the DNR's emergency rules void and permanently enjoin the DNR from authorizing the use of dogs to hunt wolves unless it promulgates rules that conform to state law.

---

<sup>1</sup> While the issue of standing is fully briefed by Plaintiffs, it is important to note that Wisconsin grants humane officers broad statutory authority to investigate animal related crimes, including the power to conduct inspections, issue citations and take custody of animals. Wis. Stat. Ch. 173. Members of Wisconsin Federated Humane Societies, a plaintiff in this action, have staff who are certified humane officers and for this reason alone have a substantial interest in the outcome of the litigation.

## Wisconsin Has a Strong History of Animal Protection

Animal protection laws predate the birth of our nation and today animal cruelty is a crime in every state. While state laws differ as to species covered, many protect a wide variety of animals. Wisconsin defines “animal” broadly, to protect “every living: (a) [w]arm blooded creature, except a human being; (b) [r]eptile; or (c) [a]mphibian.” Wis. Stat. §951.01(1).

Like the sentient beings they are designed to protect, animal welfare laws are living and breathing legislative creations that have changed to reflect shifting community values and evolving science. Wisconsin has played an integral role in the evolution of animal protection measures and enjoys a rich history of enacting animal protective laws, often ahead of its sister states. In addition to broad anti-cruelty and animal fighting provisions, Wisconsin has implemented additional protections for “companion” animals. These measures include provisions criminalizing dog- and cat-napping, Wis. Stat. §951.03; imposing penalties for harassing police, fire and service animals, §§951.095, 951.097; and outlawing inhumane methods of euthanasia, §951.025. The State also prohibits “canned hunts”—an activity considered unsportsmanlike by hunters because it involves shooting animals that are tied, staked, caged or otherwise confined with no reasonable means of escape. Wis. Stat. §951.09.

Wisconsin’s principal animal cruelty provision is consistent with the State’s strong track record in affording broad legal protections for animals. Wis. Stat. §951.02 provides that “[n]o person may treat any animal, belonging to the person or another, in a cruel manner.” “Cruel” is defined as “causing unnecessary and excessive pain or suffering or unjustifiable injury or death.” Wis. Stat. §951.01(2). Notably, section 951.02 does not require proof of intentional behavior to establish a crime (although intentional conduct that involves mutilation,

disfigurement or death elevates the offense to a felony). It is likewise a felony in Wisconsin to instigate, promote, aid or abet a fight between dogs, birds or between any other animals (or between an animal and a person). Wis. Stat. §951.08.

### **The DNR Exceeded Its Authority in Enacting the Emergency Rules**

All states exempt certain conduct from their animal cruelty laws, and in Wisconsin these exemptions include normal and accepted veterinary practices, slaughter for food, and the use of animals in teaching, research and experimentation. Wis. Stat. §§951.02, 951.015. Although hunting is not expressly exempted from the coverage of chapter 951, section 951.015(1) provides that chapter 951 “may not be interpreted as controverting any law regulating . . . the taking of wild animals, as defined in s. 29.001(90) . . . .” Defendants erroneously rely on this latter provision to refute Plaintiffs’ claims. While there is little doubt that the provisions governing animal cruelty and those relating to hunting must be read together in order to effectuate the legislature’s intent in fashioning each, there is no doubt that the unrestrained use of dogs to hunt wolves authorized by the DNR’s rules falls outside the scope of §29.185 (6)(a)(2) & (c). That section authorizes the use of dogs solely to “track or trail” wolves. Indeed, any organized initiative compelling dogs to attack or kill wolves would also run afoul of the criminal prohibition on animal fighting.

Rather than fulfilling its statutory duty to promulgate rules “necessary to implement or interpret” the “track or trail” provision of the enabling statute, the DNR’s rules essentially mimic the statutory language with minimal exceptions. Wis. Admin. Code NR §10.07(4). Therefore, the DNR exceeded its limited statutory authority by permitting activities not contemplated by §29.185.

## **The Rules Violate the Letter and Spirit of Wisconsin Cruelty and Fighting Laws**

That an activity characterized as “hunting” can nonetheless run afoul of Wisconsin state cruelty law was firmly established in *State v. Kuenzi*, 312 Wis. 2d 287 (Wis. Ct. App. 2011), where the court reinstated animal cruelty charges against two defendants who used snowmobiles to ram a large group of deer, doing a “burn out” on one and ripping open his abdomen and tying another live deer to a tree where he was left to die. In reversing the lower court’s ruling, the court rejected arguments that non-captive wildlife are not “animals” within the meaning of §951 and that all “hunting” activity is thereby outside the reach of the state cruelty law. With respect to the latter claim, the court held that:

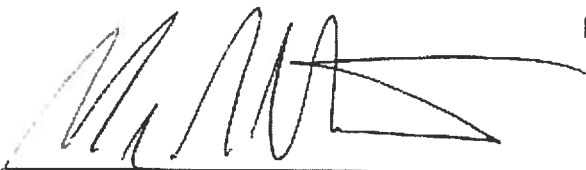
If the legislature intended a blanket prohibition on applying the cruel mistreatment statute to the taking of wild animals, it could have done so with simple direct wording, . . . The legislature did not. To the contrary, the "controverting" limitation plainly contemplates that chapter 951 may be applied to the taking of wild animals.

*Id.* at 313.

Here, the voluminous evidence presented to the Natural Resources Board (NRB) by some of the foremost wolf and dog behavior experts (many of whom honed their expertise during distinguished careers with the DNR), made clear that the only way to prevent the gruesome death of hunting dogs and consequent violations of state cruelty and fighting laws, was to promulgate rules with commonsense restrictions that take into account wolf behavior when confronted by predators (which is different than the behavior of other species including coyotes, bear and bobcats), particularly during mating and breeding seasons. These experts agreed that without specific limitations (discussed in detail in Plaintiffs’ brief) fatal encounters are virtually guaranteed, with dogs on the losing end of every bloody battle. Wolf depredation reports that document the brutal results of wolf-dog encounters and the concerns expressed by

hunters who lost dogs in surprise wolf attacks while hunting other species, confirmed that the experts' opinions were neither uncertain nor speculative.

In sum, Plaintiffs Motion for Judgment on the Merits should be granted because the DNR exceeded its authority in enacting the wolf hunting rules without the restrictions necessary to carry out the legislature's express limitation on the use of dogs to "track or trail" activity only. Because the rules instead allow unfettered use of dogs in the pursuit of wolves and guarantee tragic encounters that will mutilate and kill hunting companions and pets, they also violate the letter and spirit of Wisconsin's cruelty and fighting laws. Wisconsin should not permit this perhaps unwitting misstep to blemish its progressive reputation in the field of animal welfare. As the first state to allow the use of man's best friend in an endeavor that is so fraught with peril, Wisconsin should take the steps necessary to minimize the inevitable danger to its canine companions.




Michael Maistelman, Esq., SBN 1024681

P.O. ADDRESS:

Maistelman & Associates, LLC  
5033 W. North Avenue  
Milwaukee, Wisconsin 53208  
(414) 908-4254  
(414) 447-0232 (Facsimile)  
msm@maistelmanlaw.com

Respectfully submitted,

  
\_\_\_\_\_  
Stacy Wolf, Esq., *pro hac vice*  
\_\_\_\_\_  
Jennifer H. Chin, Esq., *pro hac vice*

The American Society for the Prevention of  
Cruelty to Animals  
520 Eighth Avenue, 8th floor  
New York, NY 10018  
(212) 876-7000

Dated: November 21, 2012