

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

Case No. 23-CV-_____

Petitioner,

v.

Case Code: 30607; 30701; 30704

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

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

Respondents.

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

Petitioner Great Lakes Wildlife Alliance d/b/a Friends of the Wisconsin Wolf & Wildlife through its undersigned counsel, bring this Petition against Respondents Wisconsin Natural Resources Board and Wisconsin Department of Natural Resources, alleging as follows:

NATURE OF CASE

1. On October 25, 2023, the Wisconsin Board of Natural Resources (“NRB”) unanimously approved Wisconsin’s 2023 Wolf Management Plan (“Wolf Plan”) after it was developed and submitted for approval by the Wisconsin Department of Natural Resources (“DNR”). At the same meeting, NRB also approved proposed rule WM-03-21 (“Wolf Regulation”) to codify gray wolf harvest regulations. The Wolf Plan and its approval should be set aside as invalid because the NRB and DNR engaged in unlawful and discriminatory procedures in developing it, including violating Wisconsin’s Open Meeting Law and Administrative Procedure Act, and engaging in a pattern and practice of viewpoint discrimination that violated Petitioner’s rights under the Wisconsin Constitution, and failing to comply with their public trustee obligations to ensure the conservation of Wisconsin’s wildlife for future generations. Additionally, the Wolf Regulation and its approval should be set aside because it violates provisions of the APA.

2. Petitioner Great Lakes Wildlife Alliance, d/b/a Friends of the Wisconsin Wolf & Wildlife (the “Wildlife Alliance”) seeks a judicial declaration that the Wolf Plan is invalid and asks the Court to enjoin Respondents NRB and DNR from implementing any wolf hunting and trapping seasons or other management activities or actions pursuant to the 2023 Wolf Plan, unless and until such time as Respondents have cured the legal deficiencies that infected the planning process.

3. Petitioner further seeks a judicial declaration that Respondents engaged in discriminatory practices by selectively ignoring and disfavoring Petitioner’s public comments and scientific research submitted into the record, which silenced Petitioner’s voice in violation of its right to public participation and denied them due process and equal protection under the law, and ask the Court to enjoin Respondents from continuing such practices, to document in writing its

responses to substantive comments, including its reasons and supporting evidence for rejecting these, and to reopen public comments to ensure that all interested persons have an equal opportunity to submit comments.

4. Petitioner further seeks a judicial declaration that Respondents, because of the procedural violations and discrimination alleged in this Petition, failed to comply with their trustee duties to manage and conserve wildlife for future generations, which requires scientifically sound management practices.

PARTIES

Petitioner

5. 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 in Madison, Wisconsin. The Wildlife Alliance has roughly 15,860 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.

Petitioner’s Interests

6. The Wildlife Alliance and its members, supporters, and staff have a long-standing interest in the gray wolf and routinely advocate for wildlife protection in Wisconsin. It has actively participated in the development of wolf policy in Wisconsin, including as a petitioner in prior litigation to enforce compliance with state law, testifying at NRB hearings related to wolf matters,

serving on the DNR Wolf Management Plan Committee, submitting comments to the DNR and the NRB regarding the 2023 Wolf Plan, and commenting on new rules proposed by the DNR.

7. Many of Petitioner's members, supporters, and staff live in or near areas occupied by wolves in Wisconsin, including regions where wolves will be hunted, or they visit these areas for hiking, camping, photography, birdwatching, observing wildlife, and other recreational and professional pursuits. Petitioner's 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 Petitioner's members, supporters, and staff, and increases their use and enjoyment of Wisconsin's public lands. Petitioner's members, supporters, and staff have engaged in these activities in the past and have specific plans to continue to do so in the future.

8. Petitioner's members and supporters are adversely impacted by the threat that wolf hunters and trappers pose to companion animals throughout Wisconsin, including their own animals. Petitioner's 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 and trappers. Petitioner's members, staff, volunteers, and supporters have engaged in these activities in the past and intend to do so again soon.

9. Petitioner, as well as its 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, Petitioner's members, supporters, and staff have worked, and continue to work, to conserve wolves in Wisconsin and throughout the contiguous United States.

10. The interests of Petitioner's 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, the Wisconsin Administrative Procedures Act ("APA"), and Wisconsin Open Meeting Law in authorizing the hunting and trapping of wolves in Wisconsin at unsustainable levels and in failing to duly examine the benefits of wolves to people, property, and ecosystems.

11. The relief requested by Petitioner here, if granted, would redress, or at least lessen, the injuries of Petitioner's members, supporters, volunteers, and staff. The requested relief would require Respondents to comply with the requirements of the Wisconsin Constitution, state wildlife statutes, agency regulations, the APA, and Wisconsin's Open Meeting Law before approving a plan or regulation that establishes policies for hunting and trapping wolves, setting quotas, or allowing further hunting of wolves. This relief would reduce or eliminate bias against wolves and wildlife advocates from improperly influencing Wisconsin's wolf management plan and Respondents' corresponding management objectives and actions.

Respondents

12. Respondent Wisconsin Natural Resources Board ("NRB") 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 NRB directs and supervises the DNR in its implementation of "statutory wildlife responsibilities." Wis. Admin. Code § NR 1.015(3); *see* Wis. Stat. § 15.34(1). The NRB 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 NRB's principal office is located at 101 S. Webster Street in Madison, Wisconsin, in Dane County.

13. Respondent Wisconsin Department of Natural Resources ("DNR") 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 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). The DNR's principal office is located at 101 S. Webster Street in Madison, Wisconsin, in Dane County.

JURISDICTION AND VENUE

14. This Court has jurisdiction pursuant to Wis. Stat. §§ 227.40, 227.52, 227.53, 753.03, and 801.05.

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

16. This Petition is timely filed pursuant to Wis. Stat. §§ 227.53(2m) and 893.93(2).

LEGAL BACKGROUND

Administrative Due Process

17. The Wisconsin Constitution guarantees the equal rights of all people, the freedom of speech, and the right to assemble and petition the government, among other rights. Wis. Const. Art. I, §§ 1 and 3.

18. The Supreme Court of Wisconsin has determined that these provisions of the Wisconsin Constitution are “substantially the equivalent of the due-process and equal-protection-of-the-laws clauses of the Fourteenth amendment.” *Lathrop v. Donohue*, 10 Wis. 2d 230, 235, 102 N.W.2d 404, 407 (1960) (citing *Boden v. Milwaukee* (1959), 8 Wis. (2d) 318, 324, 99 N. W. (2d) 156, and *Pauly v. Keebler* (1921), 175 Wis. 428, 185 N. W. 554).

19. The right to due process, as secured by the Fourteenth Amendment to the U.S. Constitution, prohibits the states from depriving “any person of life, liberty, or property, without due process of law.” This guarantee extends to administrative due process, which requires that state laws may 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). An agency violates the right to 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”).

20. The due process clause also extends to the First Amendment rights of free speech, political association, and political expression. *See Buckley v. Valeo* (1976), 424 U.S. 1, 15, 96 S. Ct. 612, 632. “It is beyond debate that freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the ‘liberty’ assured by the Due Process Clause of the Fourteenth Amendment, which embraces freedom of speech.” *NAACP v. Ala. ex rel. Patterson* (1958), 357 U.S. 449, 460, 78 S. Ct. 1163, 1171.

21. The equal protection clause of the Fourteenth Amendment protects citizens from unlawful discrimination. As encoded at 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.”

22. Wisconsin law also recognizes the doctrine of unconstitutional conditions, which prohibits public agencies from restricting access to governmental benefits based on speech or association. “This doctrine embodies the principle that freedom of speech would be rendered a hollow right if the government was permitted to place, as a condition on the receipt of a governmental benefit, any restrictions on speech it pleased.” *Madison Teachers, Inc. v. Walker*, 2014 WI 99, ¶29, 358 Wis. 2d 1, 851 N.W.2d 337 (citing *Lawson v. Housing Authority of Milwaukee*, 270 Wis. 269, 70 N.W.2d 605 (1955)).

23. When the constitutionality of administrative procedures have been called into question, Wisconsin courts have also looked to the principles of “fair play and substantial justice embodied in the due process requirements of the state and federal constitutions.” *Layton Sch. of Art & Design v. Wis. Emp’t Relations Com.*, 82 Wis. 2d 324, 363, 262 N.W.2d 218, 236 (1978).

Wisconsin’s Administrative Procedures Act

24. 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 APA. *Id.*

25. Indeed, the 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).

26. 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).

27. The 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.

28. In no way does the APA provide for different time periods for offering public comments to different segments of the public. *See generally* Wis. Stat. §§ 227.112, 227.136.

29. Judicial review of government decisions 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) (finding utility rates are appealable, even if only temporary in their effect).

30. The 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 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).

31. The 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).

32. 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 are also required to “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).

Wisconsin’s Open Meeting Laws

33. The fundamental purpose of the open meeting law is to ensure the right of the public to be fully informed regarding the conduct of governmental business. *State ex rel. Badke v. Vill. Bd. of Greendale*, 173 Wis. 2d 553, 570, 494 N.W.2d 408, 414 (1993). “Like the First Amendment which exists to protect unfavored speech, the Open Meetings Law exists to ensure open government in controversial matters” and “functions to ensure that these difficult matters are decided without bias . . . and with regard for the interests of the community.” *State ex rel. Hodge v. Town of Turtle Lake*, 180 Wis. 2d 62, 75-76, 508 N.W.2d 603, 608 (1993).

34. Pursuant to Wisconsin’s open meeting law, “the public is entitled to the fullest and most complete information regarding the affairs of government as is compatible with the conduct

of governmental business.” Wis. Stat. § 19.81(1). To further this policy, “all meetings of all state and local governmental bodies shall be publicly held in places reasonably accessible to members of the public and shall be open to all citizens at all times unless otherwise expressly provided by law.” Wis. Stat. § 19.81(2). Moreover, the provisions of this law are to be “liberally construed.” Wis. Stat. § 19.81(4).

35. A “meeting” is defined as “the convening of members of a governmental body for the purpose of exercising the responsibilities, authority, power or duties delegated to or vested in the body.” Wis. Stat. § 19.82(2). “If one-half or more of the members of a governmental body are present, the meeting is rebuttably presumed to be for the purpose of exercising the responsibilities, authority, power or duties delegated to or vested in the body.” *Id.*

36. The Supreme Court of Wisconsin has determined that “whenever members of a governmental body meet to engage in government business, be it discussion, decision or information gathering, the Open Meeting Law applies if the number of members present are sufficient to determine the parent body's course of action regarding the proposal discussed at the meeting.” *State ex rel. Newspapers, Inc. v. Showers*, 135 Wis. 2d 77, 80, 398 N.W.2d 154, 156 (1987). This also applies to “gatherings of less than one-half of the members of a governmental body.” *Id.* at 99.

37. Further, no type of “interaction between members” or “formal convening” is required for the open meeting law to be triggered. *State ex rel. Badke v. Vill. Bd. of Greendale*, 173 Wis. 2d 553, 571-72, 494 N.W.2d 408, 414-15 (1993) (citing *State ex rel. Lynch v. Conta*, 71 Wis. 2d 662, 685-686, 239 N.W.2d 313 (1976)). Rather, “[t]he possibility that a decision could be influenced dictates that compliance with the law be met.” *Id.* at 573.

38. “Listening and exposing itself to facts, arguments and statements constitutes a crucial part of a governmental body's decisionmaking.” *State ex rel. Badke v. Vill. Bd. of Greendale*, 173 Wis. 2d 553, 572, 494 N.W.2d 408, 415 (1993).

39. Both the DNR and NRB are government bodies and thus subject to the Open Meeting Law. These laws also apply to subcommittees and advisory committees of the DNR, “whether they are created by the board, the secretary, district directors, bureau directors or property managers,” and whether formal or informal. *See* Opinions of the Attorney General, Vol. 78, pp. 67-70 (1989).

Composition and Duties of DNR and the NRB

40. The DNR is under the “direction and supervision” of both a secretary (“Secretary”) and the seven-member NRB. *See* Wis. Stat. §§ 15.05(1)(b) & (c), 15.34(1) & (2). 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). “By statute, the Secretary wields ‘[a]ll of the administrative powers and duties of the department’ and ‘promulgate[s] rules for administering the department and performing the duties assigned to the department’ with ‘the approval of the board.’” *State ex rel. Kaul v. Prehn*, 2022 WI 50, ¶52, 402 Wis. 2d 539, 976 N.W.2d 821 (quoting Wis Stat. § 15.05(1)(b)) (internal citations omitted).

41. The NRB members are nominated and appointed by the Governor, with the advice and consent of the Senate. Wis. Stat. § 15.07(1). Each NRB 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). However, “Board [members] whose terms have expired may remain in office as holdovers until their successors are properly nominated by the Governor and confirmed by the senate. *State ex rel. Kaul v. Prehn*, 2022 WI 50, ¶35, 402 Wis. 2d 539, 976 N.W.2d 82.

42. A quorum of the NRB consists in a simple majority of board members, while a majority of the quorum is sufficient to “act in any matter “within the Board’s jurisdiction. Wis. Stat. § 15.07(4).

State Delegation of Trustee Responsibilities over Wildlife

43. 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 derive from 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.

44. Nearly 100 years ago, the Wisconsin 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).¹

45. 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.

46. 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(l).

47. 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).

¹ 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.

48. The DNR has recognized its vital trustee duties 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”).

49. Pursuant to these duties encoded in the Fish & Game Code (Chapter 29) and the Conservation Code (Chapter 23), the DNR “must 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 “is obliged to develop and implement appropriate scientific management practices to achieve these objectives.” Wis. Admin. Code § NR 1.95 (2)(d) (citing Wis Stat. §§ 23.09 and 29.011).

50. Similarly, DNR is charged to manage the state forests to ensure a full range of benefits—including preservation of native biological diversity and terrestrial wildlife—for present and future generations. Wis Stat. § 28.04 (2). The NRB regulations also endorse “principles of professional wildlife management,” and affirm that the NRB “considers scientific findings to be the primary foundation of sound wildlife management programs,” and “[s]upports the maintenance of ecological diversity and health, and will do everything in its power to protect and maintain free-living populations of all species of wildlife currently existing in Wisconsin.” Wis. Admin. Code § NR 1.11(1), (7).

51. The NRB regulations also acknowledge that “effective policy implementation requires the input and support of an informed public” and state that the NRB “will make every

reasonable effort to obtain broad public input during its decision-making process.” Wis. Admin. Code § NR 1.11(2).

State Management of Gray Wolves

52. The Wisconsin Legislature, in 2011, first enacted legislation requiring the DNR to facilitate legal hunting and trapping of gray wolves in Wisconsin. Wis. Stat. § 29.185 (“Wolf Hunt Law”). The Wolf Hunt Law provides that “[i]f the wolf is not listed on the federal endangered list,” the DNR “shall allow the hunting and trapping of wolves and shall regulate such hunting and trapping as provided in this section and shall implement a wolf management plan. Wis. Stat. § 29.185(1m).

53. This law was enacted in response to the U.S. Fish and Wildlife Service’s (“USFWS”) December 2011 promulgation of a final rule removing the Western Great Lakes Distinct Population Segment of gray wolves from the federal endangered species list. Between 2012 and 2014, Wisconsin held its first legal wolf hunts in recent history. However, federal protections were reinstated at the end of 2014 in response to litigation, again making the hunting and trapping of gray wolves illegal.

54. The Wolf Hunt Law requires the DNR to submit proposed rules to implement the statute within eight months of its enactment. 2011 Wis. Act 169, § 21(1)(a).

55. Gray Wolves in Wisconsin were again delisted in 2021, upon which hunting groups demanded immediate implementation of the Wolf Hunt Law and won a lawsuit compelling a hastily planned spring hunting and trapping season that permitted such practices as hounding, baiting, night-hunting, and snow-mobile pursuit of wolves. By all accounts, this hunt was not well regulated and the number of wolves killed significantly exceeded the state quota. Another hunting season was opened in November 2021. For both of these gray wolf seasons, the DNR issued gray

wolf hunting and trapping licenses based on hastily prepared emergency regulations and its outdated 1999 wolf management plan that had not been updated since 2007.

56. In August 2021, responding to public outrage over the excessive and unregulated killing of gray wolves during the February 2021 hunt, Petitioner and other citizen organizations sued to prevent the DNR and the NRB from proceeding with another hunt, demanding that the agency develop and issue permanent rules and develop and implement an updated wolf plan, as required by the Wolf Hunt Law. *Great Lakes Wildlife Alliance, et al., v. Wisc. Natural Resources Bd., et al.*, Case No. 2021CV002103 (Dane Cty. Cir. Ct., Aug. 31, 2021); Wis. Stat. § 29.185(1m).

57. On April 26, 2022, this litigation was dismissed without prejudice, pursuant to a stipulation of the parties, after federal protections for gray wolves were restored by a federal judge in separate litigation. *Great Lakes Wildlife Alliance*, Order, Case No. 2021CV002103 (Dane Cty. Cir. Ct., April 26, 2021).

58. Gray Wolves currently remain listed as a federally endangered species within the state of Wisconsin. See Final Rule: Reinstatement of Endangered Species Act Protections for the Gray Wolf (*Canis Lupus*) in Compliance With Court Order, 88 Fed. Reg. 75506 (Nov. 3, 2023). Although the U.S. Fish and Wildlife Service (“USFWS”) issued a rule delisting gray wolves in January 2021, their status as endangered was reinstated when a federal court vacated this rule on February 10, 2020. *Id.*

BACKGROUND FACTS

Benefits of Wolves

59. 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.

60. 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 diversity of ecosystems.

61. This phenomenon is referred to as trophic cascade. Trophic cascades are powerful indirect interactions that can strongly affect 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, and improving resistance to invasive, non-native plants. As such, the presence (or absence) of healthy, sustainable wolf populations has direct and lasting impacts on the health of Wisconsin ecosystems.

62. 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

63. 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.

64. 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.

65. 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.

66. By 1999, the population had increased to 197 wolves, and the DNR reclassified wolves from endangered to threatened, and developed its first 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.

67. The 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, no further updates were made until the DNR commenced the development of a new wolf plan in 2021.

The 2023 Wolf Plan

68. In April 2021, DNR authorized the formation of a Wolf Management Plan Committee (“WMPC”) to assist in the development of an updated Wisconsin Wolf Management Plan (“Wolf Plan”).

69. The WMPC met from July to October 2021 and issued a Report in January 2022, summarizing its process of information gathering, meetings and discussions. Participants included twenty-seven (27) stakeholders, including tribal representatives, governmental entities, and nonprofit advocacy organizations, and ten (10) DNR staff members.

70. In addition to the WMPC, the DNR collected information from the public from April 15 to May 15, 2021, through an online questionnaire. This invited the public to rank statements addressing values and priorities for wolf management, and allowed for some brief open-ended comments. The DNR conducted a statistical analysis of 15,660 responses, which it summarized in a report dated July 19, 2021.

71. During May and June 2022, the DNR conducted a survey of public opinions and attitudes towards wolves and wolf management. Results were published in September 2022.

72. On November 10, 2022, the DNR released a draft Wolf Plan and announced the commencement of a 60-day public comment period, extending until January 10, 2023.

73. The public comment period was later extended until February 28, 2023. Approximately 3500 written comments were received during the official comment period. The DNR also hosted a virtual listening session during the public comment period, which took place on February 7, 2023.

74. On August 1, 2023, the DNR issued a revised draft wolf plan (Draft 7/26/2023).

75. On October 11, 2023, the DNR issued a second revised wolf plan (Draft 10/06/2023), as part of the agenda packet issues for the October 25, 2023, the NRB meeting at which the Wolf Plan would be considered for approval.

76. On October 25, 2023, the NRB approved the 2023 Wolf Plan.

77. The DNR also developed an approved its new Wolf Regulation during this period. This began with a preliminary scoping process for the new Wolf Regulation in April 2021, including for a permanent rule to replace Emergency Rule 1210. An initial hearing was held on April 23, 2021, which was followed by revisions to the scoping notice and a second preliminary hearing on June 7, 2021. The DNR released the draft rule for public comments in August 2023, and held a hearing on September 12, 2023. The NRB approved the regulation on October 25, 2023.

78. The final Wolf Regulation not only encodes provisions of the outdated emergency rule, EmR1210, which was last amended in 2012, but also incorporates other “updates” to implement recommendations of the 2023 Wolf Plan. *See* DNR, Nat. Resources Bd. Agenda Item No. 5.G (October 2023 Bd. Mtg.).

Public Comments on Wolf Plan

79. The agenda packet for the October 25, 2023, the NRB meeting included a document explaining that the DNR performed a statistical analysis on the 3500 written comments it received during the public comment period. This analysis grouped the comments into categories based on key words and phrases, but provided no further analysis of the substance of the comments, or even the number in each category.

80. A file containing a compilation of the public comments was also released online. This document indicated that the vast majority of comments were in favor of gray wolf protection and restoration.

81. The DNR's public opinion survey also indicated that most Wisconsinites (66%) favored maintaining or increasing current wolf population levels, while a much smaller percentage of respondents (19%) favored reducing or eliminating the wolf population. *See* Wolf Plan, p. 116.

82. Neither the Wolf Plan nor its supporting documents includes an analysis of the substantive comments that were received or the DNR's responses to those comments. Instead, a statistical analysis accompanied the Wolf Plan agenda package, showing only that comments were grouped into broad categories based on keywords.

83. In fact, many comments, including those submitted by Petitioner, provided substantive comment based on scientific studies addressing some of the scientific assumptions and methodologies that the DNR relied on in the draft Wolf Plan, including comments addressing alleged inadequacies of the DNR's proposed methods for estimating and monitoring gray wolf populations, and proposed methods for reducing human-wolf conflicts. The DNR did not respond to these comments.

84. Petitioner and its members submitted comments on the Wolf Plan and the Wolf Regulations including references to scientific information and studies provided by trained wildlife biologists and wolf experts, in the expectation and belief that these comments and scientific studies would be analyzed and considered in the formulation of the new wolf plan. This includes comments by Dr. Francisco Santiago-Ávila and Dr. Adrian Treves, as well as other public comments that referred to petitioner's research and scientific studies, but there is no evidence that these comments were seriously evaluated or considered at all during the DNR's review of public comments.

85. For example, the revised Wolf Plan dismissed the findings of Dr. Santiago-Ávila regarding impacts of hunting on poaching, with a bald assertion that this had been "disproved" by

another study by the DNR staff, but no further explanation of why the work was disregarded. Wolf Plan at p. 28. The Plan also disregards peer-reviewed research raising concerns about the reliability of scaled occupancy models (“SOM”), the type of model recently adopted by DNR to estimate wolf populations. However, the revised Wolf Plan does not acknowledge these limitations or propose an adequate method for verifying potential inaccuracies. As a consequence, of these inaccuracies, basing harvest quotas on DNR’s current wolf population estimates and methodology may imperil wolf populations.

86. The DNR also failed to provide a reasoned response to public comments explaining that the Wolf Plan makes outdated and inaccurate assumptions about wolf-human conflicts or acknowledge scientific studies that found these assumptions to be inaccurate. Both the Wolf Plan and the Wolf Regulation endorse the false assumption that increased recreational hunting and trapping will reduce conflicts. In fact, this assumption is unsupported. Studies submitted by Petitioner and its members and supporters show that hunting does not reduce the frequency of wolf-human conflicts and may actually increase wolf-human conflicts.

87. Nevertheless, both the Wolf Plan and the Wolf Regulation prescribe setting wolf harvest quotas based on “wolf population, population trends, established population goals, ecological considerations, and wolf conflict with agricultural and land uses.” Proposed Rule WS-03-21 § 24(1) (creating Wis. Admin. Code § NR 10.14). This is just one example of Respondents’ practice of adopting gray wolf policies and regulations that ignore public comments and disregard scientific research in the record before the agency.

88. Similarly, instead of basing management goals on the best available science, the Wolf Plan also proposes as arbitrary number of wolves to be carrying capacity based on assumptions about human tolerance for wolves rather than biological and ecological science,

thereby misrepresenting the normal meaning of carrying capacity. This appears to be rationalized by calling the voluntary opinion and attitude survey a “scientific survey” even though it was not peer reviewed, contains no analysis of potential bias, and is solely designed to classify opinions about wolves with no reference to scientific knowledge.

89. In addition to ignoring or rejecting public comments that it disagreed with, DNR went out of its way to solicit and collect comments from interest groups that it favored, including late comments.

90. After the public comment period on the draft Wolf Plan closed on February 28, 2023, the DNR Secretary and multiple NRB board members continued to meet with stake holders and accepted additional public input during closed meetings.

91. On March 15, 2023, the Wisconsin Farm Bureau Federation published an article that acknowledged that the public comment period had closed, but nevertheless stated that it would be filing formal comments to the DNR and encouraged its members to review the plan and file comments as well. The article stated that “[t]he review process is the next step in what the DNR has promised will be an extensive public input process.” “Understanding the DNR Wolf Management Plan” (Mar. 15, 2023), <https://wfbf.com/policy/understanding-the-dnr-wolf-management-plan/>.

92. The Wisconsin Wildlife Federation, the Wisconsin Association of Sporting Dogs, and Wisconsin Wolf Facts hosted three hybrid (in person and online) listening sessions on the Wolf Plan for their members, at least two of which were held after the close of public comments and none of which were announced to the general public.

93. The initial listening session, held in Solon Springs, Wisconsin on February 18, 2023, was attended by DNR Secretary Payne, NRB Chairperson Bill Smith, and NRB Board Members Marcy West, and Sandra Naas.²

94. A few days later, at the February 22, 2023, NRB meeting, Secretary Payne spoke about the listening session and stated that a link to the recorded meeting had been shared with DNR leaders and all NRB members, so they could hear the comments of “people living in wolf country.” Secretary Payne also stated that there would be changes to the draft plan and that his staff would be working with stakeholders like WWF on those revisions.

95. A second privately hosted listening session was held in Prentice, Wisconsin on April 22, 2023. This session was attended by nearly 80 people, including DNR Secretary Payne, NRB Chairperson Smith, as well as NRB Board Member Naas. This event was advertised on the Mid-West Farm Report as an opportunity for “farmers, hunters, and rural people” to make public comments, which would be recorded and sent to WDR staff. The zoom link for attendees was not made public, but could be requested from Laurie Groskopf of the Wisconsin Association of Sporting Dogs. See “Wolf Management Listening Sessions Continue” (April 19, 2023), <https://www.midwestfarmreport.com/2023/04/19/wolf-management-listening-sessions-continue/>.

96. Petitioner’s members were denied access to this meeting.

97. The third privately hosted listening session was held on July 12, 2023, in Clintonville, Wisconsin, and was attended by approximately 40 people, including NRB Chairperson Bill Smith. Again, the meeting was recorded for the purpose of sharing the attendees’ comments with DNR Secretary Payne and DNR staff. *See* Lakeland Times, “Third wolf listening

² Sandra Naas’s service as an NRB Board Member subsequently ended in September 2023.

session brings sides together” (July 21, 2023), <https://lakelandtimes.com/news/2023/jul/21/third-wolf-listening-session-brings-sides-together/>.

98. The DNR revised the previously revised Wolf Plan after these listening sessions and additional comments were received by the DNR. At least some of these changes appear to reflect comments that were improperly solicited from private events or selectively accepted after the close of public comments.

99. The Wolf Regulations include provisions that implement and codify some recommendations of the revised Wolf Plan, as well as other provisions, such as allowances for hunting with dogs and bait, that are based on an outdated emergency rule that was never properly reviewed for consistency with the factual record and management goals.

CLAIMS FOR RELIEF

First Claim for Relief

Violation of the Wisconsin Open Meeting Laws

100. Petitioner realleges and incorporates by reference every allegation in the preceding paragraphs as if set forth in full.

101. Wisconsin’s Open Meeting Law requires that “all meetings of all state and local governmental bodies shall be publicly held in places reasonably accessible to members of the public and shall be open to all citizens at all times unless otherwise expressly provided by law.” Wis. Stat. § 19.81(2). Moreover, the provisions of this law are to be “liberally construed.” Wis. Stat. § 19.81(4).

102. A “meeting” is defined as “the convening of members of a governmental body for the purpose of exercising the responsibilities, authority, power or duties delegated to or vested in the body.” Wis. Stat. § 19.82(2).

103. The Supreme Court of Wisconsin has determined that the Open Meeting Law applies whenever “the number of members present are sufficient to determine the parent body’s course of action regarding the proposal discussed at the meeting.” *State ex rel. Newspapers, Inc. v. Showers*, 135 Wis. 2d 77, 80, 398 N.W.2d 154, 156 (1987). This includes “gatherings of less than one-half of the members of a governmental body,” *Id.* at 99, when there is a “possibility that a decision could be influenced.” *State ex rel. Badke v. Vill. Bd. of Greendale*, 173 Wis. 2d 553, 573, 494 N.W.2d 408, 415 (1993).

104. “Listening and exposing itself to facts, arguments and statements constitutes a crucial part of a governmental body’s decisionmaking.” *Id.* at 572.

105. Both the DNR and the NRB are government bodies subject to the Open Meeting Law. These laws also apply to subcommittees and advisory committees of the DNR, “whether they are created by the board, the secretary, district directors, bureau directors or property managers,” and whether formal or informal. *See* Opinions of the Attorney General, Vol. 78, pp. 67-70 (1989).

106. Because the NRB maintains a seven-member Board, a quorum for conducting business consists of four members and a binding decision can be made by three members. Thus, in some cases, two members would be sufficient to exert influence by blocking a decision of the Board.

107. On February 18, 2023, the Secretary of the DNR and three NRB Board Members participated in a private listening session where they were exposed to facts, arguments and statements that were relevant to the formulation and approval of a new wolf plan. Recordings of this information were also provided to DNR staff responsible for developing the revised Wolf Plan.

108. The Secretary and at least two NRB board members, including the chairperson, attended a second private listening session on April 22, 2023, and at least one NRB board member,

the chairperson, attended a third session in mid-July 2023. At both meetings, the DNR and/or NRB representatives collected and recorded additional facts, arguments and statements pertaining to revisions of the draft wolf plan.

109. These meetings were not properly noticed or made open to the public and thus did not comply with the Open Meeting Law requirements.

110. Information gathered by the Secretary and the subset of board members who attended these meetings was shared with DNR staff for the purpose of influencing revisions to the Wolf Plan that would ultimately be submitted to the NRB for approval. The NRB board members attending these meetings were engaged in activities “for the purpose of exercising the responsibilities, authority, power or duties delegated to or vested in the body.” Wis. Stat. § 19.82(2). These activities had the potential to influence the DNR’s decisions to revise the draft Wolf Plan and to influence the NRB’s decision to approve the revised Wolf Plan.

111. Three board members attending a private meeting in which they engaged in board-related activities was sufficient to determine the board’s course of action and to issue a binding decision.

112. Attendance at a private listening session by the NRB Chairperson and one other Board Member is also sufficient to influence the outcome of a decision because these Board Members also recorded the extra-procedural public comments to share with DNR staff for the purpose of influencing revisions to the Wolf Plan.

113. Pursuant to Wis. Stat. §§ 19.96 and 19.97, this Court has the authority to impose penalties and to issue “such other legal or equitable relief, including but not limited to mandamus, injunction or declaratory judgment, as may be appropriate under the circumstances.” Wis. Stat. § 19.97(2). This Court may also award costs and attorney fees to a private party acting on behalf of

the state and prevailing in such an action. Wis. Stat. § 19.97(4). This Court should set aside the NRB's approval of the revised Wolf Plan and remand the document for such further review as will ensure that the Wolf Plan reflects the factual record that was properly before the agency and was not unduly influenced by board members' actions and promises made to select interest groups outside of public meetings.

114. The requested relief would substantially redress the alleged injury to Petitioner by invalidating the decision that was improperly influenced by official board member actions taken at private events outside the view of the general public.

115. Therefore, the Court should grant the requested relief and enjoin the NRB from engaging in board business at private meetings or otherwise seeking to solicit or collect comments from special interest groups outside truly public meetings and hearings that are properly noticed in accordance with statutory requirements.

116. Pursuant to Wis. Stat. § 19.97, Petitioner must file this claim as a Verified Petition and will provide service hereof on the Dane County District Attorney's Office as required by statute for the pursuit of this claim. In the event this claim is pursued by local authorities within the 20 days afforded by statute, Petitioner will dismiss this claim without prejudice. Wis. Stat. § 19.97 (1) and (4).

Second Claim for Relief
**Violation of the Wisconsin Administrative Procedures Act – Failure
to Follow Required Procedure**

117. Petitioner realleges and incorporates by reference every allegation in the preceding paragraphs as if set forth in full.

118. The NRB took final action by adopting the 2023 Wolf Plan. That action constitutes an "administrative decision" reviewable under Wis. Stat. § 227.52; or in the alternative, constitutes the adoption of a "rule" or "guidance document" reviewable under Wis. Stat. § 227.40.

119. 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).

120. 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).

121. 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).

122. The DNR operates under the “direction and supervision” of both the Secretary and the NRB. Wis. Stat. §§ 15.05(1)(b) & (c), 15.34(1) & (2). The Secretary is the head of the DNR and wields “[a]ll of the administrative powers and duties of the department” and “promulgate[s] rules for administering the department and performing the duties assigned to the department” with “the approval of the board.” *State ex rel. Kaul v. Prehn*, 2022 WI 50, ¶52, 402 Wis. 2d 539, 976 N.W.2d 821 (quoting Wis Stat. § 15.05(1)(b)) (internal citations omitted).

123. To be legally effective and binding, any decision made by the NRB 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). The NRB annually selects one board member to serve as its chairperson for a one-year term. Wis. Stat. § 15.07(2).

124. During the development of the Wolf Plan, the DNR Secretary and NRB members violated the APA by deliberately soliciting and accepting public comments at private events that

were not open to the public, and by soliciting and accepting public comments from favored groups after the official close of the public comment period.

125. The DNR Secretary and NRB Chairperson made public statements affirming that comments collected during private events hosted by stakeholders on February 18, 2023, April 22, 2023, and July 12, 2023, would be recorded and provided to the DNR staff to inform their revisions to the Draft Wolf Plan.

126. The DNR did not provide the public with notice of the opportunity to submit public comments at privately hosted meetings attended by the DNR Secretary, staff and NRB Board Members, and did not provide the general public with the same opportunity to submit comment as was enjoyed by individuals who were invited to submit comments at these exclusive events, in violation of Wis. Stat. §§ 227.10 (2m) and (3)(c), 227.12(1) and (6), and 227.17.

127. Some members of the Wildlife Alliance were denied access to the privately sponsored meetings that were organized to favor specific segments of the public over others in violation of Wis. Stat. § 227.10 (3)(c).

128. Respondents' communications relating to additional private meetings with favored groups in April and August 2022 confirm that these meetings were also attended by DNR Staff and leadership and members of the NRB, and that public comments were collected and recorded at these meetings and circulated to DNR staff and leadership for the purpose of influencing DNR's revisions to the Wolf Plan.

129. Respondents did not respond to requests from Petitioner for similar opportunities to meet and discuss its concerns about the draft Wolf Plan.

130. The DNR and NRB leadership thus violated established procedure by selectively allowing certain members of the public to enjoy an extended public comment period that was not

available to the public, thereby exceeding the scope of discretion delegated to the NRB by law, and inconsistent with agency rules and official policies, in accordance with Wis. Stat. § 227.57(8).

131. Even if the DNR had authority to formulate a proposed Wolf Plan and the NRB had authority to decide whether to approve it, both acted unlawfully and unfairly by doing so without complying with the applicable rulemaking procedures.

132. This Court has authority to declare the 2023 Wolf Plan invalid, and to declare that the DNR and NRB exceeded delegated authority and violated statutory procedural requirements in developing and approving the 2023 Wolf Plan, and to remand the proposed Wolf Plan to the agency for further review to address these defects. Wis. Stat. §§ 227.40, 227.52 and 227.57.

133. This Court also has authority to remand the 2023 Wolf Plan to the DNR for further review 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 Petitioner’s right to Due Process under the U.S. Constitution. Wis. Stat. § 227.57(4).

134. Declaring the Wolf Plan invalid and remanding it for further review to cure procedural defects would substantially redress the alleged injury to Petitioner by invalidating the product of an unfair and biased procedure and by requiring respondents to comply with the APA.

135. Therefore, the Court should declare the 2023 Wolf Plan invalid and remand the 2023 Wolf Plan with instructions that the agency adhere to all statutory requirements of the APA in re-issuing a draft Wolf Plan for public review.

Third Claim for Relief
**Violation of the Wisconsin Administrative Procedures Act – Action
Taken Without a Factual Basis**

136. Petitioner realleges and incorporates by reference every allegation in the preceding paragraphs as if set forth in full.

137. 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).

138. “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).

139. 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).

140. 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).

141. Respondents’ pattern and practice of disregarding disfavored public comments and scientific studies submitted by Petitioner and others, including studies and research of gray wolf experts Dr. Francisco Santiago-Ávila and Dr. Adrian Treves, was irrational, arbitrary, capricious, and devoid of a reasonable supporting factual basis. Because this conduct ignored facts and science relevant to gray wolf management that were duly submitted to the agency through established procedures, the resulting Wolf Plan cannot be said to be based on the full factual record before the agency.

142. Respondents disregarded scientific research and expert opinions in the factual record, including peer-reviewed studies of various strategies for managing wolf-human conflicts,

regarding deficiencies in evidence related to the frequency of poaching, regarding deficiencies of the DNR's methods of establishing gray wolf population estimates, and regarding flawed procedures for establishing ecological carrying capacity and population targets. Failure to consider this information could have serious implications for establishing sustainable wolf populations, preventing over-hunting, and maintaining and securing the benefits to humans and ecosystems that are generated by such populations.

143. Respondents also failed to evaluate the dangers of overhunting due to extreme and intensive hunting practices, such as the increasing use of baiting and dogs (hounding) to hunt wolves. These extreme practices were responsible for the majority of wolf kills in recent hunts, and contributed to Respondents' failure to enforce quotas or prevent excessive killing of wolves in 2021 failures not adequately evaluated in the current Wolf Plan or Wolf Regulation. Instead of re-examining the provisions of Emergency Rule EmR1210 that contributed to these exceedances, Respondents' new Wolf Regulation makes these provisions permanent, with only minor modifications. Increased advocacy by hunting groups promoting the use of dogs and bait may cause large numbers of wolves to be killed before Respondents are aware that quotas have been met, again impairing their ability close such areas to protect wolves. While the new Wolf Regulation will shorten the time allowed to report wolf kills, it provides no enforcement mechanism to ensure that hunters will comply with this provision. Neither the Wolf Plan nor the Wolf Regulation addresses evidence of the growth in extreme hunting practices, or associated evidence of under-reporting and delayed reporting of wolf kills.

144. By soliciting additional public comments from favored groups and viewpoints, and considering these in its development of the Wolf Plan, Respondents allowed opinions and

unverified accounts of wolf aggression towards hunters to unduly influence on its revisions to the Wolf Plan and related Wolf Regulation.

145. By failing to respond to petitioner's public comments and other public comments referencing petitioner's research, and by not providing any reasoned explanation for its rejection of certain peer-reviewed research studies and associated comments, DNR acted in a manner that was irrational, arbitrary, capricious, and devoid of a reasonable supporting factual basis.

146. By further encoding recommendations of this flawed wolf plan into its Wolf Regulation, and by adopting other provisions from an outdated emergency rule that was never properly evaluated for its consistency with gray wolf conservation and management goals, respondents acted in a manner that was irrational, arbitrary, capricious, and devoid of a reasonable supporting factual basis.

147. Under Wis. Stat. § 227.57(7), the Court should set aside the 2023 Wolf Plan and the Wolf Regulation, and order the Respondents to take specific action to correct the errors, or remand the decision to the agencies for further examination in accordance with the law, because the decisions to approve these documents was not based on or consistent with the facts Respondents had before them.

148. Under Wis. Stat. § 227.57(8), the Court should reverse or remand the 2023 Wolf Plan and the Wolf Regulation because Respondents' failure to base its decision on a reasoned or adequate factual basis means that the decisions were beyond the scope of discretion delegated to Respondents, violates a statutory provision, and is inconsistent with an agency policy.

149. In the alternative, under Wis. Stat. § 227.40(4)(a), the Court should declare the 2023 Wolf Plan and the Wolf Regulation to be invalid rules because they were approved without

sufficient factual support in violation of federal Constitutional guarantees of substantive due process.

150. The requested relief would substantially redress the alleged injury to Petitioner by invalidating the product of arbitrary and capricious actions and requiring respondents to proceed in a manner consistent with the APA and rights to due process.

151. Therefore, the Court should declare the 2023 Wolf Plan and Wolf Regulation invalid and remand these actions to Respondents with instructions that the agency adopt a wolf plan and regulations that are consistent with the factual record and to fully explain its adoption of any wolf management policies or practices that are not supported by scientific studies included in the administrative record.

Fourth Claim for Relief
**Violation of the Wisconsin Constitution – Freedom of
Speech and Association, Petition, Due Process and Equal Protection**

152. Petitioner realleges and incorporates by reference every allegation in the preceding paragraphs as if set forth in full.

153. The Wisconsin Constitution guarantees the equal rights of all people, the freedom of speech, and the right to assemble and petition the government, among other rights. Wis. Const. Art. I, §§ 1 and 3.

154. The Supreme Court of Wisconsin has determined that these provisions of the Wisconsin Constitution are “substantially the equivalent of the due-process and equal-protection-of-the-laws clauses of the Fourteenth amendment.” *Lathrop v. Donohue*, 10 Wis. 2d 230, 235, 102 N.W.2d 404, 407 (1960).

155. The Fourteenth Amendment to the U.S. Constitution, prohibits the states from depriving “any person of life, liberty, or property, without due process of law.” This guarantee

extends to administrative due process, which requires that state laws may 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).

156. An agency violates the right to 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).

157. The “freedom to engage in association for the advancement of beliefs and ideas is [also] an inseparable aspect of the ‘liberty’ assured by the Due Process Clause of the Fourteenth Amendment, which embraces freedom of speech.” *NAACP v. Ala. ex rel. Patterson* (1958), 357 U.S. 449, 460, 78 S. Ct. 1163, 1171.

158. The equal protection clause of the Fourteenth Amendment prohibits state agencies from engaging in unlawful discrimination. Pursuant to 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.”

159. Petitioner has engaged in the Wolf Advisory Committee and submitted public comments, including references to expert comments by Dr. Francisco Santiago-Ávila and Dr. Adrian Treves, in a good faith effort to have a voice in Wisconsin’s management of gray wolves. In so doing, Petitioner and its members and supporters, have exercised their freedoms of speech and association, with the intent to petition their government agencies to recognize the ecological benefits of wolf recovery, and to promote the humane treatment of animals, and to oppose intensive

and cruel hunting and trapping practices that are unsupported by scientific evidence and threaten to decimate recovering populations.

160. Petitioner and its members and supporters have engaged in the public process to advance conservation science, and to promote a scientifically sound and ethical approach to wolf management.

161. However, Petitioner is informed and believes that Respondents have thwarted these efforts by engaging in a pattern and practice of disregarding public comments and scientific studies with which they disagree, including those submitted by petitioner's members and wolf experts, Dr. Santiago-Ávila and Dr. Adrian Treves, as well as other public comments referencing their research.

162. Petitioner is informed and believes that Respondents have an express or implicit underground policy of disregarding the research and expert opinion of Dr. Santiago-Ávila and Dr. Adrian Treves, stemming from past disagreements, which has prevented the fair and impartial consideration of their research findings, comments, and expert opinions concerning gray wolf ecology and behavior, and responses to management practices.

163. These agency actions violate procedural due process because the refusal to consider Petitioner's submitted comments and scientific research is unreasonable, arbitrary, or capricious, and inconsistent with the objective "to develop and implement appropriate scientific management practices to achieve these objectives." Wis. Admin. Code § NR 1.95 (2)(d) (citing Wis Stat. §§ 23.09 and 29.011). These actions also contradict the regulation stating that the NRB "will make every reasonable effort to obtain broad public input during its decision-making process." Wis. Admin. Code § NR 1.11(2).

164. Respondents violated Petitioner's due process rights by rejecting Petitioner's public comments and submissions of scientific studies, and by not providing any reasoned explanation for its rejection of these comments and peer-reviewed research studies, which constitutes adopting a rule that lacks sufficient factual support.

165. Respondents also violated Petitioner's due process rights pertaining to freedom of association by disregarding or refusing to consider other public comments because they cited, attached, or otherwise referenced disfavored scientific research and peer reviewed studies.

166. In addition, Respondents engaged in unlawful discrimination against Petitioner by rejecting consideration of Petitioner's comments and scientific research, which prevented them from exercising the right to petition the government through public comments – a right that would be rendered meaningless if the government can disregard such comments without due process. Rejecting comments solely on the basis of association with disfavored views or individuals is a violation of the equal protection clause and contrary to the principles of fair play and substantial justice.

167. Similarly, Wisconsin law also recognizes the doctrine of unconstitutional conditions, which “embodies the principle that freedom of speech would be rendered a hollow right if the government was permitted to place, as a condition on the receipt of a governmental benefit, any restrictions on speech it pleased.” *Madison Teachers, Inc. v. Walker*, 2014 WI 99, ¶29, 358 Wis. 2d 1, 851 N.W.2d 337 (citing *Lawson v. Housing Authority of Milwaukee*, 270 Wis. 269, 70 N.W.2d 605 (1955)).

168. Here, the action of rejecting or disregarding public comments and research studies solely on the basis of authorship, or personal or institutional bias, deprived Petitioner of the governmental benefit of having its comments fairly considered and evaluated as part of the wolf

management planning process, effectively denying them any meaningful voice in how wolves will be managed by the state of Wisconsin. This also deprived the benefit of fair consideration to all other persons who submitted comments only to have these rejected due to their association with Petitioner, thus denying such persons from having a voice in wolf management due to a disfavored association.

169. This Court has the authority to declare that the 2023 Wolf Plan is invalid as a rule or guidance document because the procedures by which it was developed violated fundamental rights of due process and equal protection and the right to petition the government, as set forth in Article I of the Wisconsin Constitution. Wis. Const. Art I, §§ (1) and (4); Wis Stat. § 227.40(4).

170. This Court has the authority to reverse or remand agency actions that violate constitutional provisions and may set aside or modify an agency action where the fairness of the proceedings is impaired by failure to follow prescribed procedure. Wis Stat. § 227.57(4) and (8).

171. The Court should set aside the 2023 Wolf Plan and remand it to the agency for further review and consideration of public comments that complies with statutory procedures established to guarantee due process and equal protection, and compel respondents to consider all public comments fairly and to refrain from engaging in unlawful viewpoint discrimination against Petitioner or any other members of the public.

172. The requested relief would substantially redress the alleged injury to Petitioner by invalidating the product of unlawful discriminatory actions, and by restoring Petitioner's right to petition the government and have a meaningful voice in wolf management decisions by compelling respondents to consider all public comments in fairness as required to ensure due process and equal protection.

Fifth Claim for Relief
**Violation of the Wisconsin Constitution – Public
Trust Doctrine**

173. Petitioner realleges and incorporates by reference every allegation in the preceding paragraphs as if set forth in full.

174. 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.

175. This duty is articulated by Article I, Section 26 and Article IX, Section 1 of the Wisconsin Constitution, affirmed by common law, and encoded into the statutory language that guides the DNR and the NRB in the administration of their responsibilities.

176. It is well established that “the state holds title to the wild animals in trust for the people.” *Krenz v. Nichols*, 197 Wis. 394, 400 (1928); *State v. Herwig*, 17 Wis. 2d 442, 446, 117 N.W.2d 335 (1962). This trustee duty is also encoded into the Fish and Game Code. Wis. Stat. § 29.011.

177. The state’s trustee responsibilities for wildlife is also reaffirmed by the 2003 amendment to the Wisconsin Constitution that established the “right to fish, hunt, trap, and take game subject only to reasonable restrictions as prescribed by law.” Wis. Const., art. I, § 26. Ensuring the right to hunt and trap animals in perpetuity requires the state to conserve wildlife for future generations.

178. The DNR regulations also affirm 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). The DNR “must 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 “is obliged to develop and implement appropriate scientific management practices to achieve these objectives.” Wis. Admin. Code § NR 1.95 (2)(d) (citing Wis Stat. §§ 23.09 and 29.011).

179. The NRB regulations also endorse “principles of professional wildlife management,” and affirm that the NRB “considers scientific findings to be the primary foundation of sound wildlife management programs,” and “[s]upports the maintenance of ecological diversity and health, and will do everything in its power to protect and maintain free-living populations of all species of wildlife currently existing in Wisconsin.” Wis. Admin. Code § NR 1.11(1), (7).

180. By engaging in activities that violate Wisconsin’s Open Meeting Laws and procedural protections of the APA, and deliberately soliciting and accepting extra public comments from selected groups after the close of public comments, Respondents allowed bias and favoritism, and politics, to influence its development of the Wolf Plan and Wolf Regulation, rather than basing this on sound scientific findings.

181. By disregarding or ignoring scientific research and expert opinions submitted by disfavored groups, Respondents failed to consider and evaluate a significant body of peer-reviewed research investigating gray wolf ecology, population modelling, and effective mitigation of wolf-human conflicts.

182. Respondents have acted in contradiction to their trustee duties and commitment to consider scientific findings to advance sound wildlife management.

183. Insofar as the 2023 Wolf Plan disregarded portions of the full public record and disregarded credible scientific studies without providing a reasoned explanation for doing so, the Wolf Plan reflects agency actions that are irrational, arbitrary, capricious, and devoid of a reasonable supporting factual basis. As such, it cannot provide an adequate basis for a science-

based wildlife management and undermines respondents' abilities to fulfill their trustee obligations to conserve and manage state wildlife, including gray wolves, for the benefit of current and future generations.

184. Further, by encoding elements of this flawed Wolf Plan into its permanent Wolf Regulation, and by adopting other provisions from outdated emergency regulations that were never evaluated for consistency with current science or gray wolf conservation goals, Respondents' Wolf Regulation codifies gray wolf hunting rules that are irrational, arbitrary, capricious, and devoid of a reasonable supporting factual basis, and which may impede the science-based wildlife management of gray wolves.

185. This Court has the authority to remand an agency action that is impaired by procedural errors, and may set aside an action where the facts require further examination, or reverse or remand an action that violates constitutional or statutory provisions. Wis. Stat. § 227.57(4), (7), (8).

186. Therefore, the Court should set aside and remand the 2023 Wolf Plan for further analysis of the factual record because the current plan fails to base conclusions on a reasoned analysis of the factual record and available science, which contradicts constitutional and statutory mandates, and impairs respondents' ability to carry out their trustee duty to ensure the conservation of gray wolves.

187. The requested relief will substantially redress the injury to Petitioner by requiring Respondents to develop a wolf plan that will be adequate to meet their trustee duties.

PRAYER FOR RELIEF

WHEREFORE, Petitioner Great Lakes Wildlife Alliance d/b/a Friends of the Wisconsin Wolf & Wildlife respectfully requests that the Court enter an order:

- a. Declaring the 2023 Wolf Plan invalid and void because of procedural violations of the APA that occurred during the planning process;
- b. Declaring the 2023 Wolf Plan invalid and void due to violations of Wisconsin's Open Meeting Law by certain NRB Board Members and DNR staff during the planning process;
- c. Declaring Respondents' approval of the 2023 Wolf Plan an arbitrary, capricious, and irrational agency action taken without an adequate or reasonable consideration of the factual record, and ignored large portions of that record;
- d. Declaring Respondents' approval of the 2023 Wolf Regulation, WM-03-21, was an arbitrary, capricious, and irrational agency action taken without an adequate or reasonable consideration of the factual record, and ignored large portions of that record by relying on the 2023 Wolf Plan and adopting provisions of an outdated emergency rule that was never properly reviewed for consistency with the factual record or management goals;
- e. Declaring Respondents violated the rights of Petitioner and its members by selectively rejecting public comments from disfavored parties, and those associated with disfavored parties, thereby undermining Petitioner's freedoms of speech and association and right to petition the government as guaranteed by the Wisconsin Constitution;
- f. Declaring the 2023 Wolf Plan and Wolf Regulation are invalid because they violate the DNR's trustee responsibilities to conserve wildlife for current and future generations;

- g. Enjoining the DNR from authorizing a wolf hunting season or issuing hunting licenses to kill gray wolves unless and until the DNR and NRB take the necessary steps to comply with the APA, Wisconsin's Open Meeting laws, controlling statutes, and the Wisconsin Constitution;
- h. Awarding Petitioner its costs, attorneys' fees, and other expenses associated with this litigation, as appropriate under Wis. Stat. §§ 19.97(4) and 814.245, and in accordance with this Court's equitable powers; and
- i. Awarding such other relief as deemed appropriate by the Court and making such interlocutory orders as necessary to preserve the interests of the parties.

Dated this 22nd day of November, 2023

By:

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VERIFICATION

I, Melissa Smith, director of Great Lakes Wildlife Alliance, the petitioner in this action, have read the foregoing Verified Petition For Judicial Review, Declaratory Judgment, And Injunctive Relief and know its contents. The facts alleged in the above Petition are within my own knowledge and I know these facts to be true, except as to matters alleged therein on information and belief.

I declare under penalty of perjury under the laws of the State of Wisconsin that the above is true and correct and that this declaration is executed on November 22, 2023, at Madison, Wisconsin.

Melissa Smith