

STATE OF WISCONSIN

CIRCUIT COURT  
BRANCH NO. 9

DANE COUNTY

---

GREAT LAKES WILDLIFE ALLIANCE, et al.,

Petitioners,

vs.

Case No. 2021-CV-2103

WISCONSIN NATURAL RESOURCES BOARD, et al.,

Respondents.

---

PROCEEDINGS: Oral Ruling

DATE: October 22, 2021

BEFORE: The Honorable JACOB FROST

APPEARANCES: Petitioners GREAT LAKES WILDLIFE  
ALLIANCE, PROJECT COYOTE, ANIMAL WELLNESS  
ACTION, THE CENTER FOR HUMANE ECONOMY,  
and PATRICK CLARK appeared by Attorneys  
JESSICA BLOME and CLAIRE DAVIS  
via Zoom videoconferencing

Respondents WISCONSIN NATURAL RESOURCES  
BOARD, WISCONSIN DEPARTMENT OF NATURAL  
RESOURCES, FREDERICK PREHN, and  
PRESTON COLE appeared by Attorneys  
HANNAH JURSS, MICHAEL MURPHY, and  
STEVEN KILPATRICK  
via Zoom videoconferencing

Intervenor HUNTER'S NATION, INC.  
Appeared by Attorneys KEVIN ST. JOHN and  
LANE RUHLAND via Zoom videoconferencing

ALSO PRESENT: MICHELLE LUTE, PAUL COLLINS,  
SCOTT EDWARDS, and MELISSA SMITH

CLAIRE STEIN  
Official Court Reporter

P R O C E E D I N G S

(Proceedings commenced at 3:41 p.m.)

THE COURT: Good afternoon, everyone. I'm just getting the livestream going. Let me call Case No. 2021-CV-2103, Great Lakes Wildlife Alliance, et al., v. Wisconsin Natural Resources Board, et al.

Before we do our appearances, I brought in the attorneys whose names I saw and recognized from the waiting room, which is what I promised I would do yesterday to start us off. I now want to let in anyone else that each of you tell me should be in here. I let in a Mike Murphy because I see that is one of the people representing the DNR. His audio is not connecting for some reason, but I do have two of you here; so I'm just going to hope that his will connect.

Let me start with petitioners. Give me one name at a time of who I should -- who you're expecting to be in the waiting room.

MS. BLOME: Sure, Your Honor. Michelle Lute.

THE COURT: Okay. I'm admitting Michelle Lute.

MS. BLOME: Paul Collins.

THE COURT: Okay. I'm admitting Paul Collins.

MS. BLOME: Scott Edwards.

THE COURT: Admitting Scott Edwards.

MS. BLOME: Pat Clark.

1 THE COURT: I'm admitting Pat Clark.

2 MS. BLOME: Melissa Smith.

3 THE COURT: I'm admitting Melissa Smith.

4 MS. BLOME: And Camilla Fox if she's on.

5 THE COURT: I don't see any name that matches  
6 that.

7 MS. BLOME: Okay.

8 THE COURT: How about for the respondents. Do  
9 you have any people that you expected in the waiting  
10 room?

11 MS. JURSS: No one else beyond my cocounsel,  
12 Murphy and Kilpatrick, who are already admitted, Your  
13 Honor. Thank you.

14 THE COURT: Thank you. And I see  
15 Attorney St. John and Attorney Ruhland. Did you have  
16 anyone on behalf of your client?

17 MR. ST. JOHN: No, Your Honor.

18 THE COURT: All right. I'm just going to assume  
19 then that the other seven people in the waiting room are  
20 not involved, and I'm going leave them in the waiting  
21 room.

22 Okay. Welcome everyone. Why don't I have the  
23 attorneys now state your appearances. Petitioners, we  
24 went through name by name the representatives of your  
25 clients who are here; so we don't need to re-repeat

1           that. Just the attorneys.

2                   MS. BLOME: Yes. Good morning, Your Honor.  
3           Jessica Blome for the petitioners.

4                   MS. DAVIS: And Claire Loeb Davis for  
5           petitioners.

6                   THE COURT: For respondents, please.

7                   MS. JURSS: Yes, Your Honor. Assistant Attorney  
8           General Hannah Jurss joined by my cocounsel, Assistant  
9           Attorney General Mike Murphy and Steven Kilpatrick.

10                   THE COURT: And for our amicus party.

11                   MR. ST. JOHN: Thank you, Your Honor. Kevin  
12           St. John and Lane Ruhland for Hunter's Nation.

13                   THE COURT: Thank you all. I appreciate the  
14           briefs that everyone submitted on very short notice and  
15           very quick turnaround. They were extremely helpful. I  
16           reviewed all of them and the additional submissions,  
17           some of which were also helpful, including the very  
18           difficult to find procedural order from the Supreme  
19           Court. I didn't find it in my brief search; so it  
20           helped that it was included.

21                   We're here today for me to give my decision on the  
22           motion seeking a temporary injunction. There was also a  
23           discussion yesterday and a request that, if I grant that  
24           injunction, that I stay my decision pending appeal; so  
25           let me give my decision.

1 I've looked at all of that. I'm ready to address all  
2 of it. I suppose that -- I assume you'll make that  
3 motion no matter what, but I may ask respondents if they  
4 are still making that motion after you hear my decision.  
5 So what I'm going to do for the next substantial while is  
6 just go through my decision. If -- after I'm done with  
7 that, I'll certainly ask if anyone needs clarification  
8 or has questions or thinks that I missed anything at  
9 all. I'm going to begin with that in just a moment.

10 I'm going to start by reciting some of the law that  
11 I'm applying here, and I will just point out: I read  
12 all the briefs. There was a lot of law in there. I'm  
13 trying to be specific as to which cases or statutes I'm  
14 relying on, and I try to point that out when I do it.  
15 Generally speaking, I think all of the briefs agreed  
16 about what law applies at the temporary injunction  
17 stage; but I'm going to recite some of it, and I took  
18 this from Document 87 at 5 through 6 as a reasonable  
19 recitation of the law:

20 "Injunctions, whether temporary or permanent, are not  
21 to be issued lightly. The cause must be substantial. A  
22 temporary injunction is not to be issued unless a movant  
23 has shown a reasonable probability of ultimate success  
24 on the merits." That's from Werner v. A.L. Grootemaat,  
25 G-R-O-O-T-E-M-A-A-T, & Sons, Inc., 80 Wis. 2d 513.

1 That's from 1977.

2 A Court may issue a temporary injunction when the  
3 moving party demonstrates four elements: Quote, "One,  
4 the movant is likely to suffer irreparable harm if a  
5 temporary injunction is not issued; two, the movant has  
6 no other adequate remedy at law; three, a temporary  
7 injunction is necessary to preserve the status quo; and,  
8 four, the movant has a reasonable probability of success  
9 on the merits." That's from Milwaukee Deputy Sheriff's  
10 Association v. Milwaukee County, 2016 WI App 56 at  
11 paragraph 20.

12 "The granting or refusal of a temporary injunction is  
13 within the discretion of the Court." That's stated in  
14 the Werner case at page 519, and I do also consider from  
15 the Werner case that, even if the statutory requirements  
16 for an injunction are met, it's still within my  
17 discretion whether or not to grant it. It's not  
18 mandated.

19 "The moving party must satisfy the Court that, on  
20 balance, equity favors issuing the injunction." There  
21 was a reference to the W Supply Company, Inc. v. TV  
22 Appliance Mart, Inc. case for that point, 146 Wis. 2d  
23 216 at 224, 225 from the court of appeals from 1988.  
24 Some other general rules of law that I had in mind when  
25 I went through all my thinking and decision making when

1 interpreting a statute, I kept in mind the Supreme  
2 Court's instruction from State ex rel. Kalal, K-A-L-A-L,  
3 v. Circuit Court for Dane County, 2004 WI 58 at  
4 paragraph 44. Quote, "We assume that the legislature's  
5 intent is expressed in the statutory language," end  
6 quote. It also explains statutory interpretation  
7 "begins with the language of the statute. If the  
8 meaning of the statute is plain, we ordinarily stop the  
9 inquiry." That's at paragraph 45.

10 And then I'm also supposed to read a statute in the  
11 context in which it is used, not in isolation, but as  
12 part of a whole, avoiding interpretations of the statute  
13 that yield an absurd result. That's from paragraph 46.

14 There's also -- there was at least one case cited in  
15 Document 87 at page 25 for the point that the word  
16 "shall" is generally considered mandatory. The cite was  
17 to Karow, K-A-R-O-W, v. Milwaukee County Civil Service  
18 Commission, 82 Wis. 2d 565 at page 570, a 1978 Supreme  
19 Court decision where the Court in full said, "The  
20 general rule is that the word 'shall' is presumed  
21 mandatory when it appears in the statute."

22 So with all that legal background in mind, I turn to  
23 the specific case in front of me. There's two issues  
24 here: The constitutional challenge to the DNR's  
25 actions, and there was a constitutional challenge raised

1 to the wolf hunt law itself, 29.185, and the  
2 implementing act. There's also a second issue, which is  
3 a review of the DNR's actions relating to the 2021 wolf  
4 hunt, including setting quotas for how many wolves can  
5 be harvested and issuing and setting the number of  
6 licenses to be issued. That review is pursuant to  
7 Chapter 227.

8 I will start with the end. All the factors for  
9 issuing a temporary injunction are met based on the case  
10 in front of me. As I will explain in detail, I find  
11 petitioners have a reasonable likelihood of success on  
12 the claim that the DNR -- that the DNR, through its  
13 actions, violated the constitution. In other words, as  
14 the DNR applied Statute No. 29.185 and the implementing  
15 act, the way that they applied it and the current  
16 situation that resulted in with the fall 2021 wolf hunt  
17 violates the nondelegation doctrine; and, therefore, the  
18 constitution.

19 I also believe that there's a reasonable likelihood  
20 of success on the Chapter 227 review of the DNR's  
21 actions in setting a quota and licenses. The reason I  
22 think that is because the DNR relied on its violation of  
23 the constitution, its violation of 29.185 in rendering  
24 its decisions; and, therefore, its decisions are built  
25 on a faulty basis, meaning that they can't stand either;



1 so the likelihood of success as to both favors a  
2 temporary injunction.

3 There is no other adequate remedy at law that anyone  
4 has pointed out to me to address violations of the  
5 statute or the constitution as DNR applied the statute  
6 that applies here; so I find that that favors the  
7 temporary injunction. The movants and, as I explained  
8 in some detail yesterday, maybe not this year but  
9 perhaps this year and perhaps in future years, the  
10 amicus party, the Hunter's Nation, or other hunters or  
11 hunter groups all are likely to suffer irreparable harm  
12 if a temporary injunction is not issued. That's because  
13 violating the statute, as written by the legislature,  
14 and violating the constitution affects the rights of the  
15 people who expect our statutes to be enforced and our  
16 constitution to be followed.

17 That includes the constitutional rights that  
18 Attorney St. John pointed out that hunters enjoy. That  
19 includes the statutory rights that all citizens of  
20 Wisconsin enjoy, to enjoy the wildlife of our state and  
21 to have it preserved, and it impacts and causes an  
22 irreparable harm for the right we all enjoy to expect  
23 the DNR to follow the law and the constitution; so a  
24 temporary injunction is needed to preserve the status  
25 quo.

1           The status quo, as I see it, is applying the law,  
2 including 29.185; so my injunction aims to do that by  
3 righting the course. DNR is currently not following the  
4 law and not following the constitution. The temporary  
5 injunction that I'll issue at the end is meant to  
6 preserve this status quo, which is that our law should  
7 be followed. The injunction intends to order DNR to  
8 follow the law and the constitution.

9           Next I want to talk about the submissions that came  
10 in today. I reviewed them. They discussed challenges  
11 to the constitutionality of a law. They broke out the  
12 difference between a facial challenge and an as-applied  
13 challenge. One case that I looked at and that was cited  
14 was League of Women Voters of the Wisconsin Educational  
15 Network, Inc. v. Walker, 2014 WI 97.

16           Paragraph 13, in particular, explains an as-applied  
17 challenge addresses a specific application of the  
18 statute against the challenging party; and, when I'm  
19 looking at it as an as-applied challenge, I consider the  
20 facts of the particular case in front of me to determine  
21 whether the challenging party has, quote, "shown that  
22 the constitution was actually violated by the way the  
23 law was applied in that situation." That's from  
24 paragraph 13. That case was cited at Document No. 95,  
25 page 1.

1           In an as-applied challenge, the Supreme Court has  
2 explained that I presume that the statute is  
3 constitutional, but I don't presume that the State or  
4 agency applied the statute in a constitutional manner;  
5 so that's two different things. "To prevail on an  
6 as-applied challenge, the challenging party must prove  
7 beyond a reasonable doubt that, as applied to him or  
8 her, the statute is unconstitutional." That's from  
9 Matter of Visitation of A.A.L., 2019 WI 57 at  
10 paragraph 12.

11           At the outset the wolf hunt law is not facially  
12 unconstitutional. I would object, as not likely to  
13 succeed, the arguments that it is. It can be applied  
14 lawfully. Perhaps, had the DNR, in fact, followed what  
15 the law intended and pursued, not only emergency  
16 rulemaking, but permanent rulemaking leading to  
17 permanent rules, the law would be constitutional as  
18 applied; and as long as we get DNR to do that, the law  
19 is constitutional.

20           The problem -- the constitutional violation is when  
21 DNR skirts the expectations of the law to avoid the  
22 oversight that the APA Chapter 227 expects and requires  
23 through the rulemaking process. DNR didn't makes rules.  
24 It didn't go through the full permanent rulemaking  
25 process. It had an emergency rule enacted in 2012.

1 That's the only rule that exists at all today. The  
2 application for a permanent rule is no longer pending.  
3 There's no new applications for emergency or permanent  
4 rules yet, and the emergency rule, as DNR explicitly  
5 says in some of their comments or explanations of how  
6 they came up with the quotas and the licenses -- they  
7 say the emergency rule doesn't fit the reality of today,  
8 including changes in the laws. It needs to be updated  
9 to reflect the laws as they exist today.

10 So the constitutional violation isn't in the statute  
11 itself. It's in the way DNR applied the statute. I am  
12 not overruling the wolf hunt law. I'm not declaring it  
13 unconstitutional. I'm not saying it's enjoined from  
14 ever being enforced. In fact, I'm saying it has to be  
15 enforced as written and intended.

16 The result that we're in today is a perverse one that  
17 the law did not intend. I would imagine that it's  
18 unexpected. The legislature, in their nonstatutory  
19 provisions, did waive the requirement where an emergency  
20 rule normally lasts a limited amount of time --  
21 150 days. They did so, saying that it would last until  
22 a permanent rule is made, and then they set a deadline  
23 for filing proposed permanent rules. It was a  
24 relatively quick deadline of eight months, and the clear  
25 intention of that -- and you don't even have to

1 interpret it. It's obvious -- is that a permanent rule  
2 would be enacted, eliminating the emergency rule.

3 That they got rid of the 150 days requirement  
4 certainly wasn't an intent to let an emergency rule  
5 exist for nine years and covering periods where the wolf  
6 was both eligible to be hunted and not eligible to be  
7 hunted and then back to being eligible to be hunted  
8 without adjusting to reflect any of the changes of those  
9 nine years. As applied, the actions of the DNR in not  
10 securing a permanent rule and in relying on an emergency  
11 rule from nine years ago is unconstitutional. Why is it  
12 unconstitutional? I rely on the Supreme Court. I rely  
13 on the Palm decision.

14 Wisconsin Legislature v. Palm, 2020 WI 42. I'm going  
15 to go through it in some amount of detail. Palm was  
16 explicit and loud and clear in declaring the need for  
17 oversight of an agency's decisions, the need to have  
18 oversight of delegations of legislative authority to  
19 agencies in the executive branch. Without that  
20 oversight, you have a nondelegation problem. I'm going  
21 to quote a fair amount from Palm, starting at  
22 paragraph 28 through 29. I'm going to leave out all of  
23 the internal cites. I'm just going to read the text of  
24 what the Supreme Court says. They do cite to a variety  
25 of cases in these different quotes I'm giving.

1           "Rulemaking exists precisely to ensure that kind of  
2           controlling, subjective judgment asserted by one elected  
3           official, Palm, is not imposed in Wisconsin. We  
4           recognize that emergency rulemaking procedures  
5           contemplate that rules may have to be promulgated in  
6           response to extraordinary circumstances. Wisconsin  
7           Statute Section 27.24(1)(a) explains that an agency may  
8           promulgate a rule as an emergency rule without complying  
9           to the notice, hearing, and publication requirements  
10          under this chapter if preservation of the public peace,  
11          health, safety, or welfare necessitates putting the rule  
12          into effect prior to the time it would take effect if  
13          the agency complied with the procedures. An emergency  
14          rule promulgated under Section 227.24(1)(a) remains in  
15          effect for 150 days," and then they cite the statute,  
16          "unless extended by the legislature's joint committee  
17          for review of administrative rules."

18          Palm, in paragraph 31, showed the Supreme Court's  
19          concern with sweeping delegations of legislature power,  
20          and that was their -- their term, "sweeping delegation  
21          of legislative power" to an agency without proper  
22          oversight. In that circumstance, it involved a  
23          secretary of a department taking actions that did not go  
24          through the rulemaking process. Supreme Court held that  
25          they were rules, they had to go through rulemaking, and

1       they avoided reading the statute as saying rulemaking  
2       wasn't required because, had they read it that way, it  
3       would have been unconstitutional as violating the  
4       nondelegation doctrine; so, in effect, what Secretary  
5       Palm did, the Supreme Court said, caused a nondelegation  
6       problem because she needed to go through rulemaking.

7               So here we also have a sweeping delegation of  
8       legislative power. When you look at the wolf hunt law,  
9       the legislature sets a framework, including the timing  
10      of the open season on wolf hunting, some of the  
11      technical details about how to select who gets a  
12      license, but they left all the meat of what a wolf hunt  
13      means, what it looks like, and, in fact, big decisions,  
14      including when to end it if it needs to end early. They  
15      left all of that to the DNR figure out, and they gave  
16      very little guidance as to exactly how DNR is going to  
17      do that. In other words, they delegated a lot of  
18      legislative decision making to the DNR to figure out how  
19      to fill in the law.

20             That includes leaving it to the DNR to determine what  
21      the zones are that the state is divided into, meaning  
22      where can people hunt and how many wolves will be able  
23      to be harvested in those zones. They left it to the DNR  
24      to figure out how many wolves can be taken in the state  
25      as a whole, as well as in each of those zones. That has

1 a very big impact on if and how the wolf is able to be  
2 hunted. They gave it to the DNR to decide how many  
3 licenses to issue, and that was left pretty well  
4 exclusively to the authority of the DNR to legislate how  
5 many to issue.

6 DNR was also told to create a wolf management plan  
7 with no further direction what that means. In other  
8 words, the DNR has wide legislative discretion to come  
9 up with a wolf management plan and to set limits and  
10 goals and guidelines for how many wolves should be in  
11 Wisconsin, how we should figure out how many should be  
12 hunted on a yearly basis, and everything else that a  
13 wolf management plan entails.

14 This, as I explained a bit yesterday, gives a lot of  
15 discretion to DNR as I read the statute. They can set  
16 quotas as low as DNR deems appropriate. That could be,  
17 as I explained -- the only instruction from the  
18 legislature is that it has to be an even number. That  
19 could be zero, that could be two, or that could be a  
20 much bigger number. DNR gets wide discretion to figure  
21 that out. They can close the zones the DNR determines  
22 is needed to manage the wolf population. That gives a  
23 lot of discretion to the DNR.

24 As I talked about, as I read the statute, yesterday I  
25 explained, theoretically, that could allow DNR to close



1 a zone the exact same time that it opens, meaning that  
2 nobody really gets to hunt there if they determined that  
3 that was needed to manage the wolf population in that  
4 zone. A broad delegation of power to an agency is  
5 acceptable constitutionally if oversight occurs. That's  
6 what Palm explained. I'll quote again. Paragraph 31  
7 this time. "Palm points to statutes that she asserts  
8 give her broad authority to impose regulations, but it  
9 does not follow she can impose regulations without going  
10 through a process to give the people faith in the  
11 justness of the regulation."

12 What the Supreme Court did not do in Palm is declare  
13 unconstitutional any of the laws that gave Secretary  
14 Palm authority to take action in the face of an  
15 epidemic. All the Supreme Court did was explain, yes,  
16 she has that authority; but she needs to go through the  
17 rulemaking process to implement much of that authority.  
18 The same is true for the DNR.

19 They can be given wide authority here. That's not  
20 the problem. The problem is they can only be given that  
21 wide authority if they go through oversight processes,  
22 including rulemaking. Palm discussed in detail the  
23 nature of oversight needed for this sort of agency  
24 delegation to be acceptable constitutionally.

25 Paragraph 33 is where I begin. It goes through

1 paragraph 35. Again, I'm leaving out cites to cases,  
2 although I'll mention some of the names of cases. "We  
3 have allowed the legislature to delegate its authority  
4 to make law to administrative agencies; but, as we  
5 stated in Martinez v. D-I-L-H-R, such a delegation is  
6 allowed only if there are adequate standards for  
7 conducting the allocated power. Stated otherwise, a  
8 delegation of legislative power to a subordinate agency  
9 will be upheld if the purpose of the delegated statute  
10 is ascertainable and there are procedural safeguards to  
11 ensure that the board or agency acts within that  
12 legislative purpose."

13 JF Ahern and Company, "When a grant of legislative  
14 power is made, there must be procedural safeguards to  
15 prevent the arbitrary, unreasonable, or oppressive  
16 conduct of the agency. Procedural safeguards generally  
17 are those requirements imposed by the Administrative  
18 Procedures Act, codified at Chapter 227."

19 And there the Supreme Court had a concern, "Palm  
20 cannot point to any procedural safeguards on the power  
21 she claims. In oral argument, she continuously  
22 referenced judicial review, but judicial review takes  
23 place after an allegation is made that an individual's  
24 rights have been violated. That is why our case law  
25 consistently speaks of procedural and judicial

1       safeguards. Rulemaking provides the ascertainable  
2       standards that hinder arbitrary or oppressive conduct by  
3       an agency. Judicial review does not prevent oppressive  
4       conduct from initially occurring."

5               That's what I have in mind when I'm reviewing how the  
6       DNR has acted. The delegation is fine. I can read the  
7       statute as constitutional in delegating that authority,  
8       as long as I read it as we're still requiring DNR to  
9       submit to rulemaking. It does that. The nonstatutory  
10      provisions specifically make that clear. There's other  
11      statutes as well that generally require DNR to go  
12      through rulemaking for many of its decisions.

13              Now, I addressed a ton yesterday, but I'm repeating  
14      some of it today in my ruling. DNR argued that the  
15      ability of the legislature to step in at any time by  
16      changing the law or of the governor to take executive  
17      action to direct DNR to act in certain ways. The DNR  
18      argued to me that that's enough oversight. Palm held  
19      quite differently either implicitly, if not explicitly,  
20      because those same arguments were true in Palm. The  
21      legislature could have changed the laws delegating  
22      authority to Secretary Palm. They could have rewritten  
23      it however they wanted. The governor could have taken  
24      action. They could have directed Secretary Palm to do  
25      any number of things.

1           The Supreme Court knew that, I'm sure, and if that  
2           was enough, they would have said so. They didn't  
3           directly say it, but they implied it. That can't have  
4           been enough, otherwise the Palm decision wouldn't have  
5           had to require rulemaking. It wouldn't have had to go  
6           on at length about the importance and need for  
7           rulemaking with this kind of a decision. They wouldn't  
8           have had to go into length about the importance of APA,  
9           but they did.

10           They went into all of that detail. They reviewed all  
11           those issues, and they said, "Unless Secretary Palm goes  
12           through rulemaking, we have a nondelegation problem."  
13           It's not enough that the legislature could change the  
14           law if they wanted to. It's not enough that the  
15           governor could potentially take some actions. Indeed,  
16           the big problem with both of those is they potentially  
17           require a lot more complication and, potentially, time  
18           than going through rulemaking would and having clear  
19           rules that have been vetted and approved and control the  
20           agency going forward.

21           The whole point of Palm was that more is needed than  
22           just having a legislature who can change the law. So  
23           another important note I take from Palm is the Supreme  
24           Court had all those concerns about the need for  
25           rulemaking in the context of a worldwide pandemic that

1 was killing people. And even in light of something as  
2 serious as that emergency, the Supreme Court said  
3 rulemaking still has to happen. Oversight still has to  
4 happen, whether it's an emergency rule or permanent  
5 rule. Why wouldn't that same sort of oversight be  
6 required for this wolf hunt and DNR's actions relating  
7 to this law? Of course, it's required.

8 The protections that rulemaking provide protect both  
9 sides, opponents of wolf hunts and those in favor of  
10 wolf hunts. Though we're here today on an opponent to  
11 the wolf hunt's challenge, the next time it could be the  
12 people who want a wolf hunt who are upset with the DNR  
13 and upset with the lack of rules. Nothing in the law,  
14 as I've said a few times, says that the DNR couldn't set  
15 a quota at zero year after year as long as they find  
16 that that's needed for the management of the wolf  
17 population. Nothing says they couldn't close certain  
18 zones before the hunt really can even begin or very  
19 quickly during. They have a lot of discretions to make  
20 those decisions.

21 Surely, those who support the wolf hunt would want  
22 oversight of rulemaking and the judicial review behind  
23 it to avoid against some of those sort of results just  
24 as much as people who want the wolf protected need  
25 rulemaking to ensure that their concerns are properly

1 addressed and considered by the DNR.

2 Palm also rested in part on the fact that the  
3 decisions that Secretary Palm were making affected the  
4 rights -- the constitutional rights of citizens, and  
5 that made it even more clear that procedural protections  
6 of rulemaking were needed and critical. The same  
7 applies here. It's a different constitutional right,  
8 but it is still a constitutional right. As Hunter's  
9 Nation explained in their briefs or -- in their first  
10 brief, hunts and hunting and decisions about hunting  
11 impact constitutional rights of the people of Wisconsin.

12 Surely, the fact that it impacts a constitutional  
13 right relating to hunting is the same sort of serious  
14 affect as was the issue in Palm. All constitutional  
15 rights are important.

16 The DNR's current violation of constitutional rights  
17 is an irreparable harm. Wisconsin -- I'm just going to  
18 recite some of law that Hunter's Nation gave me.  
19 There's the Wisconsin Constitution, Article 1 at  
20 Section 26, which explains explicitly the right to hunt,  
21 trap, and fish. Then there's a variety of cases, Roman  
22 Catholic Diocese of Brooklyn v. Cuomo, C-U-O-M-O, 141 S.  
23 Ct. 63 at page 67, a 2020 per curiam decision, where the  
24 Court noted that a violation of the right to free  
25 exercise of religion is an irreparable harm.

1           The next one, I'm not even going to try to pronounce.  
2           I'm just going to spell it: U-Z-U-E-G-B-U-N-A-M v.  
3           P-R-E-C-Z-E-W-S-K-I, 141 S. Ct. 792 at pages 796-97, a  
4           2021 case: "Every violation of a right imports  
5           damages."

6           And then there's Alee v. A-L-E-E, A-L-E-E, I believe,  
7           v. Medrano, M-E-D-R-A-N-O, 416 U.S. 802 at page 835:  
8           "The denial of meaningful access to the courts is  
9           described as an irreparable injury to constitutional  
10          rights demanding prompt relief."

11          State v. Jenich, J-E-N-I-C-H, 94 Wis. 2d 75 from  
12          1980. That was one that involved double jeopardy  
13          issues, which involved irreparable injury concerns.  
14          Those all came from Document 88 at page 10.

15          In addition to the rights of hunters, the petitioners  
16          have rights too. They have the constitutional  
17          expectation that laws will be followed and the  
18          nondelegation doctrine will be respected. They also  
19          have statutory rights. They have the right to expect  
20          that the legislature will act within its branch and the  
21          executive will be in its branch. That's the  
22          nondelegation problem. They have a right to expect  
23          agencies to follow constitutionally required safeguards.

24          They also have statutory rights to enjoy the animals  
25          of the State of Wisconsin, which are held in trust. By

1 statute, the state holds them in trust for the people to  
2 be taken only with the permission of the state. They  
3 also have the right to have animals reasonably regulated  
4 and hunts reasonably regulated. The wolf hunt law says  
5 exactly that. It tells the DNR that they shall regulate  
6 the hunt.

7 There are all these statutory and constitutional  
8 expectations the DNR is violating. The loss of life of  
9 animals due to violations of the law by the DNR would be  
10 an irreparable harm, as would the violations of  
11 statutory and constitutional rights. For the loss of  
12 life of animals, I agreed with the reference to Habitat  
13 Education Center, Inc. v. Bosworth, 363 F. Supp. 2d 1090  
14 at page 1113 in the Eastern District of Wisconsin. It's  
15 not precedent, but it was persuasive. There the Court  
16 similarly found that the loss of wildlife was an  
17 irreparable harm that money damages would not  
18 compensate; and they can't be restored to life,  
19 certainly.

20 I want to address a little bit more about some of the  
21 arguments raised by DNR that we discussed yesterday.  
22 The argument that other statutes exempting other agency  
23 decisions from rulemaking somehow means there's no  
24 problems here. It doesn't apply, and it's not  
25 persuasive. None of the statutes DNR cited were similar



1 to what I'm faced with. Further, we're not talking  
2 about a law where an agency was exempted from rulemaking  
3 by the legislature. This law and other parts of  
4 Chapter 29 and the nonstatutory provisions all expected  
5 and required that the DNR would go through rulemaking  
6 and, in fact, the legislature modified the rulemaking  
7 requirements a little bit -- the emergency rulemaking  
8 requirements a little bit to ensure that rulemaking  
9 happened.

10 So the problem is that rulemaking didn't actually  
11 happen. That's what leads to the unconstitutional issue  
12 and the unconstitutionally perverse results here of an  
13 emergency rule lasting for nine years and still being  
14 the only thing to rely on, even when the DNR admits it  
15 doesn't fit today's circumstance, and there's no effort  
16 to fix that. DNR also ignored the requirement to pursue  
17 permanent rules. To say that they did, in fact, pursue  
18 them for a couple of years only to abandon them is not  
19 an excuse.

20 Let's look at the nonstatutory provisions a little.  
21 This is from Section 21 of the act that created the  
22 Statute 29.185. Under sub. (1) (a) of Section 21, the  
23 legislature directed that the DNR shall submit, in  
24 proposed form, any rules that are necessary to implement  
25 or interpret Section 29.185. And I'll be clear: I'm

1       only talking about 29.185 here. There was some point in  
2       the briefs about 29.188. I didn't read anything that  
3       the petitioners filed as challenging that other statute  
4       or anything to do with it. I'm not making any findings  
5       to do with 29.188. None of my orders have anything to  
6       do with it; so I'm only going to focus on the language  
7       to do with 29.185.

8               So they were mandated -- "shall" is mandatory, or  
9       it's presumed mandatory. They needed to submit, in  
10      proposed form, rules necessary to implement 29.185 to  
11      the legislative council staff, under Section 227.15(1)  
12      of the statute, "no later than the first day of the  
13      eighth month beginning after the effective date of this  
14      paragraph." Sub. (1)(b) then puts in place, "using the  
15      procedure under 227.4 of the statutes, the Department of  
16      Natural Resources shall" -- again, mandatory -- "shall  
17      promulgate any rules necessary to implement or interpret  
18      Section 29.185 of the statutes as created by this act  
19      for the period before the effective date of the  
20      permanent rules that are submitted under paragraph A."

21              The rest of that section eliminates the requirement  
22      to find an emergency and the 150 day duration; but the  
23      language the clear: They shall submit rules. They  
24      shall submit emergency rules. There's timeframes to do  
25      -- to pursue the permanent rules. To be mandated to do

1 all of this clearly meant and intended and reflects the  
2 intent that a permanent rule would actually go in  
3 effect, that the emergency rule was only meant to apply  
4 until the permanent rule went into effect. It's absurd  
5 to argue that it's okay that we're sitting here nine  
6 years later with no permanent rule, none even pending --  
7 it was withdrawn in 2015, five years ago. It would be  
8 absurd to read that as being expected, intended, or  
9 desired by the legislature. It wasn't. There was  
10 supposed to be an emergency rule until that eighth month  
11 when a permanent could be filed, and then it could go  
12 through its process. The emergency rule would stay in  
13 effect until that process concluded. You can't just  
14 start the process and drop the ball and say you followed  
15 this expectation.

16 That would cause the statute to become  
17 unconstitutional if, in fact, the DNR was allowed to  
18 only enact an emergency rule and then let it just sit  
19 there with no further action, no further review for the  
20 rest of time for nine years. For even some lesser  
21 amount of time should have upset the delegation doctrine  
22 and the nondelegation doctrine. That's the problem --  
23 is how DNR acted. It's not the statute itself.

24 The legislature knows how to be explicit when they  
25 want to exempt something from 227 rulemaking. DOJ, in

1       their brief, cites many examples. The legislature, in  
2       fact, in this very act and statute said there's no need  
3       to pursue permanent rules under 227 when the DNR is  
4       opening and closing zones under (5) (c) and (5) (d).  
5       There 29.185(5) (e) says those decisions, quote, "need  
6       not be promulgated as rules under Chapter 227"; so they  
7       were clear when they didn't want something to be a rule  
8       in 29.185. The other decisions that the DNR makes had  
9       to be pursuant to rulemaking.

10       That's, for now, the extent of my decision as to the  
11       constitutional as-applied challenge and why I found, at  
12       the outset, that there is a very high likelihood that  
13       the petitioners will succeed on that challenge. Now I  
14       want to talk about the 227 review. So as I just  
15       explained at length, Emergency Rule 1210, as applied to  
16       the fall 2021 hunt, is unconstitutional. The way the  
17       DNR is applying it to this hunt is unconstitutional as  
18       violating the nondelegation doctrine. The failure to  
19       pursue or even currently have pending a proposed final  
20       rule violated the act. It's against what this law  
21       required.

22       Action in reliance on an unconstitutional rule and  
23       action of the DNR surely must themselves be invalid as  
24       beyond what the statute and constitution allow. I can't  
25       possibly find that the DNR is violating 29.185, yet that

1       it's actions, in violation of that statute, are  
2       acceptable under 227. They're not. 227 says, in fact,  
3       I have to take action when the DNR doesn't follow the  
4       statutes and the constitution.

5               So there petitioners do have a reasonable likelihood  
6       of success on the merits of the 227 challenge as well.  
7       Hunter's Nation brought up a question whether the review  
8       is pursuant to 227.40 or 227.52. I, frankly, don't  
9       think it makes a difference, regardless of which one it  
10      is, and the petitioners did rely on both. Hunter's  
11      Nation didn't dispute that they were pursuing a  
12      challenge under 227.52, but they actually referred to  
13      227.40 in amended petition paragraphs 29, 37, 119, 122,  
14      129, 133, 138, 142, 171, 174, 175, 183, and 190. They  
15      were pretty clear that they were relying on both;  
16      therefore, I'll look at both of those statutes.

17              227.57, particularly section 7s, 8 and 9, tell me,  
18      under Section 7 first, that I am required to set aside,  
19      modify, or order an agency action if, after an action  
20      without a hearing, if I find that the facts compel a  
21      particular action as a matter of law or I may remand the  
22      case to the agency for further examination and action  
23      within the agency's responsibility.

24              Subsection (8), "The Court shall reverse or remand  
25      the case to the agency if it finds that the agency's

1 exercise of discretion is outside the range of  
2 discretion delegated to the agency by law is  
3 inconsistent with an agency rule, an officially stated  
4 agency policy, or a prior agency practice if deviation  
5 therefrom is not explained to the satisfaction of the  
6 Court by the agency or is otherwise in violation of a  
7 constitutional or statutory provision; but the Court  
8 shall not substitute its judgment for that of the agency  
9 on the issue of discretion."

10 And then nine: "The Court's decision shall provide  
11 whatever relief is appropriate, irrespective of the  
12 original form of the petition. If the Court sets aside  
13 agency action or remands the case to the agency for  
14 further proceedings, it may make such an interlocutory  
15 order as it finds necessary to pursue the interests of  
16 the public pending further proceedings or agency  
17 action."

18 In other words, even if the petition isn't perfect,  
19 my decision shouldn't provide appropriate relief.

20 Turning to 227.40(4)(a), "If any proceeding pursuant to  
21 this section for judicial review of a rule or guidance  
22 document, the Court shall declare the rule or guidance  
23 document invalid if it finds that it violates  
24 constitutional provisions or exceeds the statutory  
25 authority of the agency or was promulgated or adopted

1 without compliance to statutory rulemaking or adoption  
2 procedures."

3 In other words, both of these seem to give me similar  
4 responsibilities and similar authority to take action.  
5 DNR violated the law, as I've already explained, and  
6 thereby violated the constitution. I'm not going to  
7 repeat why. I went through it at length, but I will go  
8 into a little bit more detail about how they did not  
9 follow 29.185 as written. 29.185(m) explains that, if  
10 the wolf is not listed on the federal endangered list  
11 and is not listed on the state endangered list, the  
12 department shall allow the hunting and trapping of  
13 wolves and shall regulate such hunting and trapping as  
14 provided in the section and shall implement a wolf  
15 management plan. That's three things they have to do  
16 all together. It's not three individual things that  
17 don't rely on each other. They're all part of the same  
18 things. They're going to allow hunting and trapping,  
19 but, when doing so, they also have to regulate the  
20 hunting and trapping, and they have to implement a wolf  
21 management plan.

22 And then it says, "In regulating wolf hunting and  
23 trapping, the department may limit the number of wolf  
24 hunters and trappers and the number of wolves that may  
25 be taken by issuing wolf harvesting licenses." This is

1 the delegation to legislate. This is what the  
2 legislature delegated. The DNR sets regulations for  
3 hunting and trapping. The DNR sets a wolf management  
4 plan. This includes decisions as to how many hunters  
5 can participate. This -- and when I say "hunters," I  
6 mean hunters and trappers. I'm just going to say  
7 "hunters" instead of repeating both.

8 This also includes the delegation to determine a  
9 quota for wolves if there is one above zero at all; so,  
10 therefore, this sort of regulation has to occur through  
11 rulemaking. The acts said so, as I've already  
12 explained. It set up a process for emergency, then  
13 permanent rules, but DNR has not followed that law.  
14 They haven't established the rules. None currently  
15 exist because my holding is that the emergency rule from  
16 2012 is unconstitutional applied today.

17 So now there's no rule, meaning DNR has not complied  
18 with 29.185 to regulate the hunting and trapping and to  
19 implement a wolf management plan. In other words, to  
20 allow a hunt without properly regulating the hunting and  
21 trapping and without implementing a wolf management plan  
22 is acting contrary to the statute and contrary to the  
23 DNR's authority.

24 As far as the record before me shows thus far, there  
25 is no wolf management plan at all. Nothing is being



1       pursued that reflects today. The statute says that the  
2       DNR shall implement the plan. They were told that when  
3       this went into effect nine or ten years ago. It does  
4       not say that they use a law that predates the new law.  
5       It says they have to implement a plan. It doesn't say  
6       follow the plan that existed from before today and  
7       doesn't apply to the facts we're talking about. They  
8       didn't do that. DNR has never said anything to the  
9       contrary. They have never tried to implement any sort  
10      of plan that reflects this new law, this new period of  
11      time where the wolf can be hunted.

12             The old plan was well before there were enough wolves  
13      for them to be anywhere near being not endangered or not  
14      on the endangered list; therefore, the DNR has violated  
15      the statute by relying, to the extent it did, on that  
16      old plan or considering it at all.

17             Even if I was wrong about the emergency rule  
18      violating the constitution, even if that happened and  
19      the rule applied, the DNR still didn't follow that rule.  
20      That rule at NR 10.145(1)(b) says the DNR is required to  
21      consider population goals established in a wolf  
22      management plan approved by the board. The only way  
23      that that rule follows the statute is if it's a plan  
24      that's being implemented after the law was enacted, a  
25      plan that reflects that there can be a wolf hunt and

1       that we have a population that could support that.

2             It -- if this rule was trying to make it acceptable  
3       to rely on a plan from 1999, that's contrary to the  
4       statute, and then the the rule is invalid; so assuming  
5       that the rule is invalid and it's referring to a wolf  
6       management plan that shall be implemented after this law  
7       was effective, there is no such plan.  If there's no  
8       such plan, the DNR can't consider the plan.  If they  
9       can't consider the plan, they violated the rule;  
10       therefore, they violated the rule by enacting quotas  
11       without a plan to refer to.

12             Further, let's just take a couple steps removed.  If  
13       the emergency rule actually applied and if it was  
14       acceptable to follow the 1999 wolf plan as updated, I  
15       believe, in 2007, which is still 14 years ago from today  
16       and 4 or 5 years before this law came into effect, even  
17       if they could consider that plan, that plan in it said  
18       that it would be subject to the public review of the  
19       plan and management goals every 5 years, and there's  
20       been no dispute that that hasn't happened anywhere near  
21       today's date, much less every 5 years since that plan  
22       went into place; therefore, if that's true, DNR's  
23       violating the plan, which requires public review of the  
24       plan and management goals every 5 years; therefore, they  
25       can't reasonably follow that plan because they're not

1 even following it at all.

2 All of these get to the same result: That the DNR is  
3 not following its own rules. It's not following the  
4 statute. It's violating the old plan. If the plan  
5 applies, it's violating the emergency rule. It's  
6 violating the statute. The DNR needs to stop it. They  
7 need to actually comply with the law. They need to  
8 regulate the hunt. They need to develop a wolf  
9 management plan. They need to implement rules so they  
10 can regulate the hunt. They need to be part of that  
11 oversight process that keeps the law constitutional.  
12 That's my job -- is to try to find a way to keep the law  
13 constitutional. That's what the Supreme Court said.  
14 That's what I'm doing.

15 I do want to point -- Exhibit 2 at page four, and  
16 this is Exhibit 2 to the petitioner's submissions, I  
17 don't have the docket number in front of me, but this  
18 was a DNR document. It says, "The wolf advisory  
19 committee will annually review wolf management in  
20 Wisconsin with the citizen stakeholder group. Policy or  
21 management changes will be recommended to the Department  
22 of Natural Resources land leadership team for Natural  
23 Resources Board approval. A public review of the plan  
24 and management goals will be conducted every five years  
25 by the Department of Natural Resources. That's just my

1 way of pointing out, even under the old plan, the DNR's  
2 violating things because they haven't done any of this  
3 sort of oversight that might save things.

4 Finally, I just want to point out another concern I  
5 noted in the emergency rules: NR 10.01(3)(j) says the  
6 open season for wolves is October 15 through the last  
7 day of February, unless the department determines that  
8 an earlier closure is necessary to effectively manage  
9 the state's wolf population to Section 29.185(5)(c).  
10 Well, that's also contrary to the statute unless the  
11 argument is that they can make a longer wolf hunt, but  
12 the statute was pretty explicit.

13 I know Attorney St. John mentions he argued  
14 persuasively to another court, it's mandatory dates.  
15 They're not subject to change by the DNR or to being  
16 ignored by the DNR; so this rule, to the extent it says  
17 October 15 would be the first day, also violates the  
18 plain language of the statute. 29.185(5)(a) says the  
19 first Saturday of November, not October 15th.

20 All right. Let's get then to some of the more legal  
21 details about a review under Chapter 227. I can review  
22 administrative decisions which adversely effect the  
23 substantial interest of any person either by action or  
24 inaction whether affirmative or negative in form, that's  
25 227.52. Pt. 53 gives the right to judicial review by

1 any person aggrieved by a decision specified in pt. 52.  
2 As I've already explained, pt. 40 of 227 gives judicial  
3 review rights as well.

4 As best I read it and heard the argument yesterday,  
5 DOJ -- the DNR are not arguing that the petitioners  
6 don't have standing to challenge the issues that have  
7 happened here, but I do find they do have standing. The  
8 actions the DNR has taken are in a final form where it's  
9 ripe to judicial review. There really is nothing else  
10 for them to do to get ready for the fall 2021 wolf hunt,  
11 and my big problem is what they've done leading up to  
12 that, or more appropriately, what they haven't done.

13 So I find that this is properly in front of me. It's  
14 properly in the Court. There's likelihood on the  
15 success of the merits. 227.57, as I already recited in  
16 depth, requires to me to set aside modifier or order  
17 agency action if the facts compel a particular action as  
18 a matter of law or to remand if needed.

19 So let's get to my orders: I'm granting a temporary  
20 injunction requiring the DNR to set the quota for wolves  
21 in all zones of Wisconsin to zero, to issue zero  
22 licenses until it complies with 29.185. That's the  
23 required result from the statute because it says the  
24 hunt can only happen if the DNR regulates it and if the  
25 DNR implements the wolf management plan. Because they

1 haven't done that, the hunt -- there can be an open  
2 season, but no tags can issued and no licenses can be  
3 issued until the DNR complies with its requirements. I  
4 enjoin the DNR from following or enforcing its previous  
5 emergency rule because doing so violates the  
6 nondelegation doctrine; so they need to come into  
7 compliance with the law. That's what I'm expecting, and  
8 that's when the temporary injunction can end is when DNR  
9 complies with 29.185 and with Chapter 227.

10 They need to develop a wolf management plan. 29.185  
11 explicitly requires it as one of the three conditions of  
12 -- for a wolf hunt. They need to pursue rulemaking,  
13 whether that's emergency rules -- and that, I'm not  
14 undoing the law or the act that was enacted. I'm saying  
15 the rule that they enacted in 2012 violates the  
16 constitution. I'm not undoing any of that law. I'm not  
17 declaring any of that law constitutional; so DNR still  
18 gets the benefit of not having to find an emergency.  
19 They still get the benefit of not having the 150-day  
20 expiration of the temporary emergency rules, but they  
21 have to actually pursue final rules.

22 The eight months -- that expired a long time ago. I  
23 can't reset that. All I can say is DNR has to move with  
24 all haste -- unreasonable haste, honestly -- to pursue  
25 final rules because they have unreasonably sat on that

1 statutory requirement for far too many years. Once  
2 there is a set of rules in place, whether it's new  
3 emergency rules pursuant to the statute or final rules,  
4 then the DNR can finally comply with this law. They can  
5 regulate the hunt. They can set quotas in compliance  
6 with the law. They can set numbers of licenses for  
7 hunters in compliance with the law, and then it can move  
8 forward constitutionally. It can move forward as the  
9 statute intended.

10 If I was wrong on the elimination of the emergency  
11 rule, if it really isn't unconstitutional and shouldn't  
12 have been -- unconstitutional as applied here -- and  
13 should remain in place, I still -- I issue an injunction  
14 still, but I make the following changes: I grant a  
15 temporary injunction requiring DNR to set the quota for  
16 wolves in all zones as zero and to issue zero licenses  
17 until it complies with its own rule and law. They need  
18 to actually follow the emergency rules by considering NR  
19 10.145(1m). Sub. (b) said there's a list of things they  
20 have to consider when they set these quotas. One of  
21 them is population goals established in a species  
22 management plan approved by the Natural Resources Board.  
23 As I clarified, that has to be one implemented in  
24 response to this law because that's what the statute  
25 says. They have to implement one in response to the

1 statute to hunt wolves. That did not exist for a long  
2 time because of their protected status; so, if DNR gets  
3 in place the proper management plan and then actually  
4 considers it under the old 2012 emergency rule, then my  
5 temporary injunction can be lifted and the hunt can  
6 continue, and they will have set appropriate quotas and  
7 selected the number of licenses to issue.

8 DNR can't just say, "No plan exists; and, therefore,  
9 we don't have to consider it." No. The rule that was  
10 approved -- the emergency rule that went through some  
11 amount of procedural oversight uses the the word  
12 "shall." You shall base your determination on a variety  
13 of factors, one of which is this plan. It's a plan  
14 required by the statute. You can't just say, "No plan  
15 exists; so we don't have to consider it." If that's  
16 what the rule says, the rule is invalid because it  
17 violates the statute.

18 I just want to point out, Document 73 at page 136  
19 shows the problem with what DNR did here. In their  
20 written explanation of their decisions for 2021, it  
21 said, "The existing wolf management plan was initially  
22 approved by the Natural Resources Board in 1999. An  
23 addendum was approved by the board in 2006 to 2007. The  
24 existing plan was prepared prior to implementation of  
25 public harvest and does not set a population goal.



1 Wolves remained on the endangered species list when the  
2 1999 plan was drafted. A wolf management plan called  
3 for a minimum population of 350 wolves before lethal  
4 management options such as public harvest and increased  
5 depredation flexibility could be considered. Neither  
6 the 1999 plan nor the 2006 to 2007 addendum address a  
7 population goal or cap for purposes of setting a quota.  
8 In short, the management plan does not clearly establish  
9 a population goal. Accordingly, the quota has no weight  
10 in determining the quota for the current year."

11 That is crystal clear. DNR is saying, "We're not  
12 going to follow the rule or the statute. We're just  
13 going to say it has no weight." Well, it has to have  
14 weight. Your rule says it has to have weight, and the  
15 statute says it has to have weight. You may give it  
16 very little weight, but you can't say it has no weight  
17 because it doesn't exist. You can't move forward unless  
18 it exists and you consider it. DNR didn't do that; so  
19 they're violating their own rule and statute.

20 This injunction maintains the status quo in two  
21 parts: It requires DNR to actually comply with the law  
22 or their rules, depending on which way you look at it;  
23 and I make both findings separately because both are  
24 separate. If the constitutional issue, if I screwed up  
25 on that, I still have my ruling on the likelihood of the

1 227 review succeeding, even taking out all my  
2 constitutional considerations. It's important that they  
3 both exist and they're two separate orders -- two  
4 separate injunctions because, even if a court of appeals  
5 disagreed on one, that doesn't mean that the DNR  
6 followed the law or followed the rules; so what I'm  
7 doing requires DNR to comply with 29.185 and requires  
8 them to comply -- if their emergency rules are still  
9 effective -- to actually comply with those. It requires  
10 them to comply with Chapter 227, with Chapter 29, with  
11 29.185, all of which require rulemaking and  
12 discretionary decision subject to oversight through  
13 rulemaking to actually come to these decisions.

14 The status quo, even under the statute, is that no  
15 wolf is harvested except pursuant to DNR regulation and  
16 authorization. Our laws are clear. You can't harvest  
17 an animal lawfully without permission. 29.011, title to  
18 wild animals: "The legal title to and the custody and  
19 protection of all wild animals in this state is vested  
20 in the state for the purposes of regulating the  
21 enjoyment, use, disposition, and conservation of these  
22 wild animals. The legal title to a wild animal or  
23 carcass taken or reduced to possession in violation of  
24 this chapter remains in the state. The title to a wild  
25 animal or carcass, lawfully acquired, is subject to some

1 conditions." In other words, you can only ever harvest  
2 a wolf if it's lawful, and it can only be lawful if it's  
3 pursuant to a lawfully issued license and tag from the  
4 DNR.

5 29.014: "The department shall establish and maintain  
6 open and closed seasons for fish and game and any bag  
7 limits, size limits, rest days, and conditions governing  
8 the taking of fish and game that will conserve the fish  
9 and game supply and ensure the citizens of this state  
10 continued opportunities for good fishing, hunting, and  
11 trapping." That's the status quo. The wolf hunt law  
12 didn't change the status quo. It just added some more  
13 details about what a wolf hunt will look like and when  
14 it will occur.

15 It didn't require, or it would have been explicit in  
16 saying, a certain number of wolves have to be harvested  
17 every year that they're off the endangered species list.  
18 It says nothing like that. It says the DNR says how  
19 many are harvested and how many people get to hunt. And  
20 until and unless the DNR properly decides those numbers,  
21 there's no right to do either.

22 Before I turn to a motion to stay pending appeal, any  
23 questions about my order?

24 MS. JURSS: I have a few questions, Your Honor,  
25 if I may.

1 THE COURT: Yep.

2 MS. JURSS: So just to make sure I understand,  
3 are you ordering -- affirmatively ordering the  
4 department to do anything specifically, or do I  
5 understand that Your Honor's order is this injunction  
6 remains in place until and unless the department has  
7 taken the specific action Your Honor articulated?

8 THE COURT: I think it's -- it's two looks at  
9 the same apple, essentially, is that -- I'm declaring  
10 that the law says they have to regulate, which means  
11 that they have to go through either emergency or  
12 permanent rules to actually be able to regulate the  
13 issues that they're required to for a hunt to proceed;  
14 so I'm telling them they're violating the statute, and  
15 until they comply with the statute, I can't allow the  
16 licenses to be issued or any tags to be issued.

17 I mean, is anyone asking me to order them that they  
18 have to comply with the statute? I guess I'm implying  
19 that they have to, but they always just have to comply  
20 with statutes. I'm just saying what they've done so far  
21 failed to do that, and they have to comply with the  
22 statute now, and only after they comply with the statute  
23 can they lawfully issue licenses and tags.

24 MS. JURSS: Well, I do think it's a significant  
25 distinction because as I -- the motion that's in front

1 of the Court is a temporary injunction; and so that  
2 would be a motion to prevent the department from taking  
3 action; and so I think it is important, at least from  
4 our perspective, that the department has clarity on --  
5 is the Court asking --

6 THE COURT: Yeah. I think I can clarify then.  
7 I understood the request on a motion in front of me as  
8 one for a temporary injunction, meaning to stop the  
9 department from taking actions that are unlawful.  
10 That's what I've done is -- the quotas that they've  
11 given and the licenses that -- the number of hunters  
12 that they want to license, the tags they want to give,  
13 were all set in violation of the law because they didn't  
14 do the rulemaking to regulate that that they need to; so  
15 I can't let those actions move forward because that  
16 violates the law.

17 I don't think that a temporary injunction -- I can  
18 tell them, "Now you have to actually go comply with the  
19 law." All I can say is, "I can't let the actions so far  
20 take effect because they violated the law."

21 MS. JURSS: Okay.

22 MS. BLOME: If I could interject briefly.  
23 813.02(1)(a) permits the Court to issue both a mandatory  
24 and a prohibitory injunction in order to preserve the  
25 status quo; so I agree with you that the distinction is

1 without merit. There does not need not be the  
2 distinction that Attorney Jurss is seeking.

3 THE COURT: Give that to me one more time.

4 MS. BLOME: 813.02(1)(a).

5 THE COURT: I don't see that in 813.02(1)(a).

6 MS. JURSS: I don't either, Your Honor.

7 THE COURT: All I see is that, if any part  
8 consists in restraining an act, that I can grant a  
9 temporary injunction to restrain such act.

10 MS. BLOME: I see the qualifier at the end.

11 THE COURT: Okay. That's what I'm doing then.

12 MS. JURSS: And I have one other question if I  
13 may, Your Honor.

14 THE COURT: Of course.

15 MS. JURSS: So we were just talking and, of  
16 course, the motion that's in front of the Court is for a  
17 temporary injunction, but I believe there were, at times  
18 when Your Honor was reading, it's -- or your decision  
19 that you were talking about, for example, the rule --  
20 Emergency Rule 1210 no longer exists; and so I just want  
21 to be clear with the Court, is this a temporary order or  
22 does Your Honor view this as a final order?

23 THE COURT: I think the only way I can get to my  
24 decision and to enjoin things was by enjoining that  
25 emergency rule, and I explained why, which is that I

1 think it's unlawful as applied here. I've been taking  
2 all of this as a temporary injunction request. Nobody  
3 asked me to make it as a final decision. Is anyone  
4 asking me to do that now?

5 MS. JURSS: Your Honor, if I could. Could we  
6 have -- could I request just a recess of a few minutes  
7 to contemplate that?

8 THE COURT: Am I even able to give a final order  
9 on a temporary injunction hearing?

10 MS. JURSS: Well, I would agree with Your Honor  
11 that I think it would be something where the parties  
12 would have to agree for it to be construed.

13 THE COURT: Okay. Well, what we're going to  
14 take time right now to do that, but you're free to --

15 MR. JURSS: Okay.

16 THE COURT: -- to cocounsel and opposing counsel  
17 and file whatever you want, which I'll review.

18 MS. JURSS: Okay.

19 THE COURT: Any other questions, Attorney Jurss?

20 MS. JURSS: I don't -- I don't have. Sorry,  
21 Your Honor.

22 THE COURT: Just go ahead.

23 MS. JURSS: Thank you. I don't have any other  
24 questions about Your Honor's temporary injunction order,  
25 but we do very much renew our motion for a stay pending

1 appeal, and if -- I know that the petitioners responded  
2 to that specifically in their supplemental briefing; so  
3 if I could make just a few brief points on that.

4 THE COURT: Not yet. I'm going to see if  
5 there's any other questions about my temporary  
6 injunction order.

7 MS. JURSS: Yes, Your Honor.

8 THE COURT: Attorney David or Attorney Blome,  
9 who's going to be handling this?

10 MS. DAVIS: No, Your Honor.

11 THE COURT: Okay. I'm going to ask one of you  
12 to please draft my order. You don't need to put all of  
13 my findings and explanation in there. That can just  
14 say, "For the reasons stated on the record." I just do  
15 like there to be some order that says what I'm ordering  
16 for the temporary injunction. Okay?

17 MS. DAVIS: Yes, Your Honor. When would you  
18 like us to get that to you?

19 THE COURT: Whenever you can.

20 MS. DAVIS: Okay.

21 THE COURT: And, Attorney Jurss, you pointed to  
22 a statute that requires some findings, but, as I saw it,  
23 it allows me to make oral rules. Do you have any  
24 concern for that approach of putting, "For the reasons  
25 stated on the record"?



1 MS. JURSS: No, Your Honor, we don't. I would  
2 ask, given the significance of this Court's decision and  
3 the sensitive timing of all of this, that Your Honor  
4 order the petitioners to have the proposed order to us  
5 and submitted to the Court within one business day.

6 THE COURT: Okay. Is there any problem with  
7 having it by the end of the day on Monday,  
8 Attorney Davis?

9 MS. DAVIS: No, Your Honor.

10 THE COURT: I mean, my order is effective  
11 immediately. It doesn't have to be reduced to writing  
12 to be effective; but I agree, it would be nice to have  
13 it out there in writing. I also expect you to make an  
14 effort to run the draft past Attorney Jurss to get her  
15 comments. If they are fine with it, then I can just  
16 sign it immediately, otherwise I have to hold it for  
17 seven days while they have an opportunity to object to  
18 it. That's under local rule, and I do follow that local  
19 rule.

20 MS. DAVIS: Will do, Your Honor.

21 THE COURT: Thank you. Yep. You're ready to go  
22 on the motion for a stay of my decision; correct?

23 MS. JURSS: Yes, Your Honor. So we moved for a  
24 stay in the event that this Court granted a temporary  
25 injunction yesterday. I'd just like to briefly go

1 through a few important points. I understand that this  
2 Court has issued a decision temporarily enjoining the  
3 department's ability to enforce the wolf hunt on an  
4 as-applied theory, but given that the effect of that is  
5 to prevent the department from enforcing state statute,  
6 the SEIU shift in the balancing for the stay should  
7 apply just as much here --

8 THE COURT: What state statute does that prevent  
9 the DNR from enforcing?

10 MS. JURSS: Well, the effect of it will be to  
11 prevent the department from being able to proceed with  
12 issuing of licenses. I understand Your Honor noted  
13 yesterday that, perhaps, that could be read to being  
14 zero, but if the --

15 THE COURT: It did, and I specifically ordered  
16 that they do set it at zero, which is in compliance with  
17 the law. The open season continues just as the law  
18 said. It's just that nobody has a lawful right to hunt  
19 or harvest a wolf.

20 MS. JURSS: I understand, Your Honor. The --  
21 but given the significance of the decision, I think that  
22 the analysis that the Wisconsin Supreme Court set forth  
23 in the SEIU decision and the other decisions that -- the  
24 League of Women Voters decision and the others the  
25 petitioners put forth should apply. But even if it

1 doesn't, this is unquestionably a dramatic decision, and  
2 the balance -- the Gudenschwager test -- right -- which  
3 the State Supreme Court certainly incorporated into its  
4 analysis in SEIU -- it just acknowledged that the  
5 analysis would be different -- doesn't require a  
6 prerequisite showing. It requires a balancing of the  
7 factors. And the circuit court's nondelegation decision  
8 for the reasons -- and I understand, and I'm not trying  
9 to rehash that decision, but I just note that we did  
10 discuss yesterday whether there were other cases about  
11 the adequacy of emergency rules, even adjusted emergency  
12 rules for the purpose of a nondelegation analysis, and  
13 that there aren't cases that say that emergency rules  
14 like this would present a nondelegation problem; so I  
15 think this is a significant decision. It's a decision  
16 that the appellate court reviews de novo; and so I  
17 think, in light of that, there is very much reason to  
18 grant stay.

19 And I think in terms of the irreparable harm and  
20 balancing for the State, obviously the department was  
21 prepared and is prepared but -- for the Court's order to  
22 proceed with having the hunt with the quota that it  
23 determined; and so I think it is a significant decision;  
24 and so we would ask that this Court stay its decision  
25 pending appeal.

1 THE COURT: Thank you. I appreciate the brief  
2 and the supplemental argument. Attorney Davis or  
3 Attorney Blome, do one of you want to supplement your  
4 brief as well or respond at all?

5 MS. DAVIS: Yes. Yes, Your Honor. Just -- just  
6 briefly. I think Attorney Jurss has misstated the SEIU  
7 decision, which is not really premised on the  
8 significance of a decision, but which speaks to  
9 specifically overturning a statute and to the fact that  
10 that, you know, short circuits the democratic process  
11 and results in substantial irreparable harm of the first  
12 magnitude to the legislature and to the democratic  
13 process.

14 We don't have that here; so I think that that order  
15 and the other orders that we submitted do not apply.  
16 Instead, what we have is the Court exercising its, you  
17 know, duty to oversee agency actions and to ensure that  
18 agency actions comply with the law. That's very  
19 standard duty. That's not understood as declaratory  
20 action, but that is really seen throughout, you know,  
21 Section 227, and the circuit courts are expected to  
22 exercise that authority over agency action.

23 So given that you're not suspending the operation of  
24 a statute, I think the SEIU factors are simply not  
25 operable here. And the State has now failed to state an

1 irreparable harm that would result from failing to grant  
2 a stay. I mean, Attorney Jurss said that the DNR is  
3 prepared to go forward with the hunt with the quota  
4 determined. Well, if the department does not go forward  
5 with the hunt pending appeal and Your Honor's decision  
6 might be reversed, the department could go forward with  
7 the hunt at some later point, perhaps, with the quota  
8 that's determined. That's not irreparable harm, but I  
9 think that we have adequately briefed the significant  
10 irreparable harm to, you know, many different interests  
11 that would take place if the hunt were to go forward  
12 with the established quota, in addition to the  
13 constitutional harms that Your Honor accurately  
14 identified today.

15 THE COURT: Thank you for all the argument. I'm  
16 going to thank Attorney St. John as well for his brief.  
17 I reviewed it. It was helpful to me. I agree with one  
18 of those last points you were making, Attorney Davis, in  
19 that, in fact, as I've explained my decision, the ball  
20 is in DNR's court as to how fast some of these things  
21 move. I understand the emergency rulemaking, and  
22 rulemaking also puts the ball in other people's courts.  
23 That's the whole point of it. That's how we protect  
24 against nondelegation problems; but, at least  
25 theoretically, if DNR would hurry up and comply with the

1 law, would allow the season that runs from November to  
2 February to be resumed and new quotas established at  
3 some point and a license determination to be made in  
4 compliance with the law at some point in the 2021 to '22  
5 season. So thank you for all the arguments as for the  
6 request for a stay pending appeal. I'm denying that  
7 request. I do want to go through why and the law.

8 I reviewed the submissions on this. The test for a  
9 stay pending appeal is whether the moving party -- so,  
10 here, the DNR -- makes a strong showing that it is  
11 likely to succeed on the merits of the appeal; two,  
12 shows that, unless a stay is granted, it will suffer  
13 irreparable injury; three, shows that no substantial  
14 harm will come to other interested parties; and, four,  
15 shows a stay will do no harm to a public interest. That  
16 was from Docket 95 at page 2. That is referring to  
17 State v. Gudenschwager, 191 Wis. 2d 431 at page 440, a  
18 1995 decision.

19 Gudenschwager further explains, "These facts are not  
20 prerequisites, but rather are interrelated  
21 considerations that must be balanced together. An  
22 appellate court will only grant a failure to stay based  
23 on erroneous exercise of discretion"; so it's actually  
24 not -- oh, that's a failure -- "will overturn a failure  
25 to grant a stay." That's not a de novo review. It's an

1 erroneous exercise of discretion from Gudenschwager.

2 I did find the SEIU Local v. Vos case helpful. This  
3 is a nonpublished decision from June 11, 2019. It's a  
4 written decision from the Supreme Court on a procedural  
5 issue. It wasn't the ultimate reported decision. It --  
6 I had some trouble finding it. DNR provided it to me.  
7 That was helpful. If -- if the Supreme Court reviews my  
8 transcript from today, I would like to just express: It  
9 would be quite helpful if they clearly published  
10 decisions like that that impact the law I have to  
11 provide and apply on a procedural issue that I'm facing  
12 like this so that we lower courts could actually know  
13 what they want us to apply and do.

14 I reviewed SEIU. I kept everything it said in mind.  
15 I applied it and the Gudenschwager factors. It doesn't  
16 say -- it, in fact, applies the Gudenschwager factors.  
17 It doesn't get rid of them. It just explains how to  
18 apply some of them in certain contexts. And for  
19 following reasons I'm not going to stay my injunction:  
20 First, on the factor of whether or not I think that the  
21 appeal has a strong showing that it's likely to succeed  
22 on the merits. I don't. And I don't -- I'm not relying  
23 on my analysis for the temporary injunction. I'm  
24 looking at this brand new, applying Gudenschwager,  
25 applying SEIU; and the reasons I don't think you have a

1 reasonable likelihood of success -- and, keep in mind,  
2 it's not clear from the briefs because you didn't know I  
3 was going to issue two injunctions, one on the  
4 constitutional issue, one on the 227 issue -- but SEIU  
5 the -- what happened here -- I look at Palm. I look at  
6 what the Supreme Court said in a relatively similar  
7 circumstance of an agency overstepping what it could do  
8 and what was delegated to it. I took the Supreme Court  
9 at their word in that case. I assume that what they  
10 said a year ago is what they meant to be the law. I  
11 assume it reflects how they would look at this appeal;  
12 so thinking of it from that appellate perspective of  
13 taking them at their word that oversight is crucial,  
14 especially when we're talking about decisions that  
15 affect rights and constitutional rights, I am quite  
16 convinced that the Supreme Court would think that the  
17 chance of succeeding and overturning my injunction on  
18 the merits is not very likely to proceed.

19 I think they would agree that the wolf hunt law means  
20 what it says and it has to be followed by the DNR, that  
21 they have to regulate these things, and regulation  
22 requires rulemaking. That they have to implement a wolf  
23 management plan because it says they have to. I'm  
24 trying to uphold the law here, and that's what the  
25 Supreme Court said to do; and I think the Supreme



1 Court's going to try to uphold the law as well,  
2 including the importance of keeping procedural oversight  
3 in place to avoid a constitutional nondelegation problem  
4 for the entire law.

5 The Supreme Court was very explicit in Palm on the  
6 importance of procedural oversight on agency decisions  
7 that do or potentially affect important citizen  
8 constitutional type rights; so, taking the Supreme Court  
9 at their word, they -- I just can't see how they would  
10 -- wouldn't agree and find that violating that law and  
11 not having oversight are not problems, and the DNR has  
12 to comply and has to participate in oversight.

13 SEIU warned lower courts of a very specific issue  
14 that some trial courts were repeatedly having trouble  
15 with, which is where a lower court deemed a statute  
16 unconstitutional and just stopped the statute through an  
17 injunction from having effect. I didn't do anything  
18 like that. In fact, I'm the one enforcing the statute  
19 and telling DNR they have to comply with it. I have not  
20 found that any part of the statute or the act  
21 implementing it unconstitutional.

22 I have found the DNR's actions in applying that  
23 statute to the fall 2021 hunt unconstitutional because  
24 they haven't gone through the rulemaking that they need  
25 to to make it unconstitutional and to comply with the

1 statute; so SEIU doesn't -- those cautions that were  
2 made there don't apply here. I'm not overturning a law.  
3 I'm not declaring a law unconstitutional. They dealt  
4 with a facial unconstitutionality -- taking a statute or  
5 a part of it, saying it doesn't apply at all because  
6 it's unconstitutional, and enjoining it before an  
7 appellate court would review. I'm doing the opposite.  
8 I'm trying to enforce the law and trying to get the DNR  
9 to follow it.

10 So the presumption of constitutionality -- well, I  
11 upheld it. I found the law constitutional. I don't  
12 have the same concern -- the Supreme Court shouldn't  
13 have the same concerns with my decision as they did in  
14 SEIU. With an as-applied challenge, the Supreme Court  
15 themselves have told us in Matter of Visitation of  
16 A.L.L., 2019 WI 57 at paragraph 12, that the Court  
17 presumes the statute is constitutional, but does not  
18 presume that the State applied the statute in a  
19 constitutional manner. In other words, none of those  
20 same presumptions that caused the Supreme Court concern  
21 about lower courts stopping the enforcement of the law  
22 apply here. It's actually the opposite. There's no  
23 presumption that the DNR acted and applied the statute  
24 in a constitutional manner. SEIU just doesn't fit these  
25 facts.

1 Further, even if SEIU -- if I take the intent of it  
2 that, when a law is passed and it goes through a  
3 legislative process and it gets through all those  
4 hurdles to become a law and we shouldn't likely stop it  
5 from being enforced and enforceable, that actually just  
6 confirms the importance of my injunction because my  
7 injunction is the one saying this law matters and DNR  
8 has to follow it.

9 If what was in front of the Court in SEIU was like it  
10 is here where an agency is violating the law, I have a  
11 feeling the Supreme Court would come out the opposite  
12 and say, when an agency is violating a law and violating  
13 people's rights, you do have to act. That's when a  
14 trial court has to come in and act. We can't wait for  
15 it to get all the way up to the Supreme Court, otherwise  
16 all those comments in Palm about, "We can't wait for  
17 judicial review when constitutional rights are being  
18 affected when statutes are being violated" -- if the  
19 words that the Supreme Court used have any meaning, it  
20 just confirms that I have to have my injunction in place  
21 here, otherwise I will let rights continue to be  
22 violated over and over through this action of the DNR  
23 until a court of appeals can get to it, and I don't know  
24 when that would happen.

25 I also don't find this to be a close case or a novel

1 issue that's in front of me. The 227 review -- that's  
2 routine. That happens repeatedly with DNR actions, with  
3 PSC actions, with all sorts of agencies; and all I did  
4 was interpret a statute and found that the DNR is just  
5 ignoring what the law required both in the statute and  
6 in the implementing act's nonstatutory provision. It's  
7 not some unique, brand new law where I'm reviewing  
8 things for the first time to decide whether they're  
9 constitutional or not. No. I'm saying the law says  
10 this. It's very clear, and the DNR's ignoring that, and  
11 they made decisions that ignore that. This is routine.

12 The same is true for the nondelegation review.  
13 Nondelegation reviews -- there was no case that was  
14 pointed to me that says every time you look at a  
15 nondelegation problem in an as-applied context, it's  
16 novel and it's unique. No. They can be routine. There  
17 can be routine violations of the constitution by people  
18 in an as-applied context; so here it's pretty routine.  
19 The Supreme Court, just a year ago, gave me really good  
20 guidance in Palm and about what kind of oversight's  
21 required, and I'm applying that guidance to an ordinary  
22 circumstance of an agency not following rulemaking  
23 requirements; so there's nothing novel that I can see.

24 Turning to the other factors: All of that had to do  
25 with why I don't believe the appellate court or the

1 Supreme Court would think there's a high likelihood of  
2 success on appeal. Number two has to show that, unless  
3 the stay the granted, it will suffer irreparable injury.  
4 DNR hasn't explained what that injury would be. I don't  
5 know what it would be; so I don't see an injury at all  
6 by telling the DNR that they have to follow a statute,  
7 they have to comply with the law, they have to go  
8 through rulemaking. And if -- I guess, if the DNR  
9 wanted to argue that following Chapter 227 is going to  
10 harm them, that following the statute is going to harm  
11 them, that implementing a wolf management plan is going  
12 to cause them an irreparable harm, I think we have much  
13 bigger problems with the DNR than just actually  
14 enforcing the law.

15 So there's no irreparable injury to them. If I take  
16 the argument -- and Attorney St. John shared one with me  
17 of a possible irreparable harm to there not being a hunt  
18 with licenses issued and tags sets for hunters, that  
19 that would be an irreparable harm to the hunters. I  
20 don't agree with that either. The harm is if I let a  
21 hunt proceed in violation of law. Well, one, for more  
22 obvious reasons, that harms the people who are against  
23 the DNR's actions in violation of the statute in  
24 violation of their rules, and believe that, because they  
25 didn't follow those rules and they didn't have this plan

1 and they didn't look at it, that perhaps their numbers  
2 aren't good and aren't numbers that comply with their  
3 duty to preserve populations to maintain a continuous  
4 hunting experience year after year.

5 Their harm the pretty obvious. Once the wolves are  
6 dead, once their numbers are down, that's an irreparable  
7 injury. We can't just go to Walmart and get new wolves.  
8 We can't revive them. That's permanent. That's  
9 irreparable harm, or it could only be repaired over a  
10 long course of time, which many Courts have said is, in  
11 fact, irreparable.

12 If the claim is that hunters didn't get to hunt as  
13 much as they would have liked this year, that isn't a  
14 irreparable injury. That can be changed for one reason:  
15 If the DNR actually does what it is supposed to, the  
16 hunt maybe will happen this season with tags issued and  
17 quotas set in appropriate amounts in compliance with the  
18 law, as opposed to just a hunt with no licenses and no  
19 tags. But the point that the petitioners made that,  
20 even if let's just assume that wolves aren't harvested,  
21 which means that the wolf population will continue at  
22 least where it is, if not grow bigger, that would  
23 support the idea that next year there will be even more  
24 room to issue licenses, to set higher quotas, to have a  
25 hunt in compliance with this law in which even more

1 hunters get to participate than if I let an unlawful  
2 number of quotas and tags and actions by the DNR  
3 proceed; so their injury is not irreparable. It, in  
4 fact, may not be an injury at all.

5 Not enforcing a statute, not requiring the DNR to  
6 comply with a statute, not enforcing the constitution,  
7 those are all irreparable harms; and that is one of the  
8 factors I have to consider as well. And then there's a  
9 third factor: Shows that no substantial harm will come  
10 to other interested parties; but, as I just explained,  
11 these two kind of overlap; so hunters will still enjoy  
12 the ability to hunt, possibly this season, hopefully  
13 next season, assuming DNR actually complies with the law  
14 and acts according to it. The only substantial harm  
15 that will come without action or if I stay the  
16 injunction is without the injunction. That's the harm.  
17 The DNR will continue to violate the law if I don't  
18 enjoin them from doing so. That harms the citizen of  
19 Wisconsin.

20 If an inappropriate number of wolves are harvested  
21 because DNR didn't follow the law and didn't follow its  
22 own rules if it didn't even have a management plan to  
23 consider, that hurts hunters, as I just explained. That  
24 hurts those with less opportunity to enjoy the benefit  
25 of the wolves because they'll be reduced. It hurts

1 hunters because of less opportunity to hunt in future.  
2 It could result, I would suppose, in the wolf being a  
3 protected animal, meaning no hunts can occur; and the  
4 law can't give any of that benefit; so these favor not  
5 staying the injunction.

6 Finally, the fourth one I've already touched on a  
7 bit: A showing that the stay will do no harm to the  
8 public interest. In SEIU the Supreme Court said it  
9 pretty well: "The public as a whole suffered  
10 irreparable harm of the first magnitude where a statute  
11 enacted by its elected representative is declared  
12 unenforceable and enjoined before an appellate review  
13 can occur."

14 Well, isn't the same surely true that the public as a  
15 whole suffers irreparable harm of the first magnitude  
16 when a statute enacted by its elected representatives is  
17 ignored and violated by the DNR? Of course, it does.  
18 Of course, that suffers an injury. If -- if a Court  
19 saying that a statute's not going to actually be  
20 enforced is an irreparable injury of the first  
21 magnitude, surely, absolutely, so is an agency ignoring  
22 the law and violating it.

23 So you failed to show that the stay of my injunction  
24 will do no harm to the public. It will harm the public.  
25 It's an irreparable harm of allowing the DNR to ignore



1 their right to the statute being enforced and  
2 constitutional.

3 All of these factors weigh against staying. I've  
4 considered it from this new perspective, considered it  
5 after looking at SEIU, considered it from what I think  
6 the court of appeals and Supreme Court would look at it  
7 like brand new, different from my consideration of the  
8 temporary injunction because they are different  
9 evaluations. The Supreme Court was, of course, right;  
10 and they were very clear in SEIU about that; and I'm  
11 following what they tell me. Any questions on that or  
12 anything else you think I need to put on the record,  
13 Attorney Jurss?

14 MS. JURSS: Not about that, Your Honor. The one  
15 thing I would ask, and this is a request to Madame Court  
16 Reporter, is that we're going to be requesting expedited  
17 -- or we are requesting expedited transcripts of both  
18 this hearing and our hearing yesterday, and that's it  
19 from me. Thank you.

20 THE COURT: Attorney Jurss, that was your  
21 motion. Would you mind filing your motion on that one?  
22 And, again, it can be "for the reasons stated on the  
23 record" that I denied your motion.

24 MS. JURSS: Yes, we can do that. And we'll use  
25 the same timeline of exchanging with counsel to then

1 have it to you on Monday.

2 THE COURT: I appreciate that. Thank you.  
3 Attorney Davis, any questions about that final ruling or  
4 anything else you think we need to put on the record?

5 MS. DAVIS: No, Your Honor. Thank you.

6 THE COURT: Thank you all. I appreciate  
7 everyone's hard work on this. I hope you all have a  
8 good evening and a fantastic weekend. I'll look for  
9 those orders on Monday. Thank you, everyone. We're  
10 adjourned.

11 (Proceedings were adjourned at 5:20 p.m.)

12

13

14

15

16

17

18

19

20

21

22

23

24

25

STATE OF WISCONSIN            )  
  ) ss.  
COUNTY OF DANE                )

I, Claire Stein, hereby certify that I am the official court reporter for Circuit Court, Branch 9, Dane County, Wisconsin, that I have carefully compared the foregoing 67 pages with my stenographic notes, and that the same is a true and accurate transcript.

Dated at Madison, Wisconsin, this 28th of October, 2021.

Electronically signed by:  
CLAIRE STEIN  
Official Court Reporter

*The foregoing certification of this transcript does not apply to any reproduction of the same by any means unless under the direct control and/or direction of the certifying court reporter.*