

STATE OF INDIANA) LA PORTE COUNTY CIRCUIT COURT
) SS
COUNTY OF LA PORTE)

CENTER FOR WILDLIFE)
ETHICS, INC.)

Plaintiff,) CAUSE NO.

vs.)

CAMERON F. CLARK, in his)
official capacity as the Director)
of the Indiana Department of)
Natural Resources,)

Defendant.)

**COMPLAINT FOR DECLARATORY JUDGMENT,
EMERGENCY AND OTHER INJUNCTIVE RELIEF**

Plaintiff, by and through the counsel, pursuant to Indiana Code §§ 34-14-1-1, et seq. §§ IC 34-26-1-1 and Indiana TR 57 (Declaratory Judgment) and 65 (Injunctive Relief) hereby file their Verified Complaint For Declaratory Judgment and Motion for Emergency and other Injunctive Relief against Defendant, Cameron Clark, in his official capacity, Director of the Indiana Department of Natural Resources.

I. Introduction

In 2016 and again in 2017 the legislature considered and legislated rifle-hunting deer on public property and limited the activity to privately owned property. The limitation, presumably an experimental public safety measure, has a sunset provision that began June 30, 2016 and ends January 1, 2020. In 2016, the legislature enacted Indiana Natural Resources Code, §14-22-2-8, short-titled, “*Deer hunting; permitted firearms; required report*” and its companion statute

protecting private property rights, §14-22-10-1, short-titled, “*Consent to use private land*”. The primary legislation, IC §14-22-2-8 expressly and unequivocally limits Defendant’s legislative authorization to allow or permit rifle-hunting deer with any caliber of rifle to “privately owned” land for about three and one-half years, from June 30, 2016 until January 1, 2020. Indiana Code §14-22-10-1, subsection (b) clearly and unequivocally states, “*A hunter may use a rifle during the firearms season to hunt deer subject to the following :(1) The use of a rifle is permitted only on privately owned land* (emphasis added).”¹

Despite the clear legislative mandate Defendant Clark used the emergency rule process to circumvent the legislature and defy its mandate to allow the Indiana Department of Natural Resources (IDNR) to permit the use of rifle deer-hunting on public land. On November 8, 2017, Defendant published LSA Document #17-486(E), a so-called “emergency rule” that “temporarily amends” and purports, merely, to “supersede” the hunting equipment/ammunition provisions of IDNR’s Administrative Code, 312 IAC 9-3-3(c)(6). Remarkably, Section 2 of the “amendment” specifies sizes for rifle ammunition that may be used on public property despite the legislative mandate that no rifle of any cartridge can be used anywhere other than on privately-owned land. LSA Document #17-486(E) provides, in pertinent part:

SECTION 2. (a) This SECTION supersedes 312 IAC 9-3-3(d)(4)

(b) A rifle used on publicly owned land must fire a cartridge that meets the following specifications (emphasis added)

- 1. Fire a bullet of three hundred fifty-seven thousandths (.357) of an inch diameter or larger.*
- 2. Have a minimum case length of one and sixteen-hundredths (1.16) inches.*

¹ Only a year later, during the 2017 Legislative Session, the Indiana legislature amended IC § 14-22-2-8. The legislature did not alter the restriction limiting rifle-hunting to privately owned land in IC § 14-22-2-8(b)(1) but changed the size of ammunition acceptable for private-property rifle-hunting.

3. *Have a maximum case length of one and eight-tenths (1.8) inches.*

Additionally, Defendant used the emergency rule process to allow IDNR to exclude Plaintiffs from public properties identified as “state forests”. On November 8, 2017, Defendant published Emergency Rule LSA Document #17-491(E) that purports to “[t]emporarily add noncode provisions” to 312 IAC 8-1.5, the “definitions” portion of the Indiana Natural Resources Administrative Code. The temporary additions substantially and significantly broaden Defendant’s ability to authorize state forest property managers to engage in activity that is not defined elsewhere or enabled by statute under the guise of “forest resource management activity”. The additions also authorize the property managers to exclude the public from the premises, entirely, when Defendant is using them for “resource management activity”. Although the Rule defines several unrelated tasks and activities as “forest resource management activity”, the residual category, “other management activity”, is so broad that it could include anything Defendant could possibly define as “resource management”, including illegal rifle-hunting:

“This document supplements 312 IAC 8 to establish a process for restricting temporarily the use of a state forest during a particular forest resource management activity. (b) The following definitions apply to this document and to any action by the state forester taken under this document:

- (A) timber stand improvement;*
- (B) prescribed fire;*
- (C) pesticide application;*
- (D) timber sale;*
- (E) timber harvest;*
- (F) trail construction; or*
- (G) other management activity; which is conducted on a state forest. (emphasis*

added).

Defendant’s illegal act immediately and irreparably harms Plaintiff by depriving its members of their lawful use and enjoyment of public lands and safe use of those lands beginning on November 18, 2017. The Defendant suffers no prejudice if this court issues an immediate, emergency injunction.

Beginning July 2017, Indiana Code IC §14-22-11-3 authorizes Defendant IDNR and the clerk of the circuit court in each Indiana County to issue lawful hunting licenses. A bond is not necessary. This court's injunction will have no effect on licensing revenue because the hunters pay only for the legal licenses authorized by the legislature. Any fee Defendant collects through a license purporting to authorize deer rifle-hunting on public land not only exceeds statutory authority, it would likely violate the Separation of Powers Doctrine. The public interest is served by an immediate, temporary injunction because Defendant's illegal agency acts affect anyone lawfully using Indiana's public lands from November 18, 2017 to December 3, 2017 and from December 26, 2017 until January 7, 2018.

II. PARTIES AND VENUE

A. Plaintiff

1. Plaintiff, The Center for Wildlife Ethics, Inc., (CWE) is a non-profit organization holding tax exempt status pursuant to IRC 501(C)(3) and incorporated in Indiana in 1998. CWE's principal place of business and headquarters is currently, and has been, located at 4988 West 150 North, La Porte, IN 46350, in La Porte County, Indiana for the past nineteen (19) years.
2. CWE has approximately five-hundred and fifty members, many of whom are Indiana residents. CWE's members use Indiana's state forests, parks, and other public lands for many purposes such as hiking and dog-walking during November, December, and January.
3. CWE's members will use Indiana's public lands during November and December of 2017 and January of 2018, as they have in the past. They will hike, watch wildlife and engage in their ordinary activities on IDNR-regulated and other public land in Indiana from Saturday, November 18, 2017 until Sunday, December 3, 2017 and from December 26, 2017 until January 7, 2018.

CWE's members are directly and personally affected, aggrieved, and injured by Defendant's illegal acts.

4. Defendant's illegal act will cause irreparable injury to CWE's members by illegally excluding them from their regular hiking, wildlife observation, and other customary uses of Indiana's state forests, public parks, and other public property during the deer rifle-hunting season; or worse, by exposing CWE's members to personal injuries if IDNR does not deny access to public lands where Defendant permits rifle-hunting. The deer hunting season begins Saturday, November 18, 2017 and lasts until Sunday, December 3, 2017; the "antlerless deer" hunting season lasts from December 26, 2017 until January 7, 2018.

5. CWE has associational standing to bring this constitutional challenge to IDNR's illegal agency action. CWE's members would otherwise have standing to bring this challenge in their own right, the interests CWE seeks to vindicate are germane to its organizational purposes and mission, and neither the claims asserted nor the relief requested herein requires any of CWE's individual members to participate in this action. CWE has an institutional interest in ensuring that Indiana's wildlife protection statutes and regulations are properly interpreted and properly enforced.

B. Defendant

6. Defendant Cameron Clark is and has been the Director of the Indiana Department of Natural Resources at all times relevant to this action. Mr. Clark's office is within the Department of Natural Resources, 402 West Washington Street, Indianapolis, IN 46204.

7. Defendant and IDNR are creatures of statute, IC §14- 9-1-1 and §§14-9-2-1, et seq., whose duties and responsibilities are limited by statute, see e.g. §§IC 14-22-2-3 and 4. Defendant IDNR shall: (1) Provide for the protection, reproduction, care, management, survival and regulation of

wild animal populations regardless of whether the wild animals are present on public or private property in Indiana.

8. Defendant IDNR does not have statutory authority to permit or allow rifle-hunting deer on public lands. The agency's power is limited to privately-owned property.

9. On November 8, 2017 Defendant used the emergency rule process to exceed the scope of Defendant's statutory authority limiting rifle-hunting of deer to privately-owned property and to extend rifle-use to public lands (LSA Document #17-486(E), attached hereto). The "rule" purports to "temporarily amend" and "supersede" the ammunition provisions of IDNR's Administrative Code, 312 IAC §9-3-3(c)(6).

10. On November 8, 2017 Defendant used the emergency rule process to exceed the scope of Defendant's statutory authority by adopting so-called "Definitions" that illegally and facetiously exclude the public from public land. Defendant is likely to define rifle-hunting on state forest property as "forest resource management activity" and illegally exclude the public from those premises accordingly (LSA Document #17-486(E), attached hereto).

11. The Defendant suffers no prejudice if this court issues an immediate, emergency injunction. As of July 2017 Indiana Code IC §14-22-11-3 authorizes Defendant IDNR and the clerk of the circuit court in each Indiana County to issue lawful hunting licenses. This court's injunction will have no effect on licensing revenue because the hunters pay only for the legal licenses authorized by the legislature. Any fee Defendant collects through a license purporting to authorize deer rifle-hunting on public land not only exceeds statutory authority, it would likely violate the Separation of Powers Doctrine.

12. The harm visited upon Plaintiff is immediate and of the moment. Upon information and belief, Defendant intends to authorize rifle-hunting on public lands beginning on Saturday, November 18, 2017.

13. Declaratory relief is appropriate because Plaintiff requires a declaratory judgment as to its members' rights to enter public lands during the rifle deer-hunting season.

14. Without a declaratory judgment against and injunctive relief to restrain, prohibit and prevent Defendant Clark from exceeding statutory authority, Plaintiffs' members are stripped of their right to lawfully enter public lands and may suffer personal injury if Defendant fails to illegally restrict Plaintiffs' access to public property.

C. Venue

15. Pursuant to Indiana Trial Rule 57(A) La Porte County is the preferred venue. CWE, an organizational plaintiff, has its principal place of business in La Porte County. Defendant, a governmental entity, is located in Indianapolis, Marion County which is predominantly urban and suburban. The public lands where rifle-hunting is most likely to occur are in La Porte County rather than in Marion County where there is no significant public land.

III. Cause of Action

Declaratory Judgment

16. Plaintiff incorporate by reference paragraphs 1 through 15 above as if fully set forth herein.

17. In 2016, the legislature enacted Indiana Natural Resources Code, §14-22-2-8, short-titled, "*Deer hunting; permitted firearms; required report*" and its companion statute protecting private property rights, §14-22-10-1, short-titled, "*Consent to use private land*".

18. The primary legislation, IC §14-22-2-8 expressly and unequivocally limits Defendant's legislative authorization to allow or permit rifle-hunting deer with any caliber of rifle to

“privately owned” land for about three and one-half years, from June 30, 2016 until January 1, 2020. Indiana Code §14-22-10-1, subsection (b) clearly and unequivocally states, “A hunter may use a rifle during the firearms season to hunt deer subject to the following: (1) The use of a rifle is permitted only on privately owned land (emphasis added).”

19. Despite the clear legislative mandate Defendant Clark used the emergency rule process to circumvent the legislature and defy its mandate to allow IDNR to permit the use of rifle deer-hunting on public land.

20. On November 8, 2017, IDNR published LSA Document #17-486(E), a so-called “emergency rule” that “temporarily amends” and purports, merely, to “supersede” the hunting equipment/ammunition provisions of IDNR’s Administrative Code, 312 IAC 9-3-3(c)(6). Section 2 of the “amendment” specifies sizes for rifle ammunition that may be used on public property despite the legislative mandate that no rifle of any cartridge can be used anywhere other than on privately-owned land. LSA Document #17-486(E) provides, in pertinent part:

SECTION 2. (a) This SECTION supersedes 312 IAC 9-3-3(d)(4)

(b) A rifle used on publicly owned land must fire a cartridge that meets the following specifications (emphasis added)

1. Fire a bullet of three hundred fifty-seven thousandths (.357) of an inch diameter or larger.

2. Have a minimum case length of one and sixteen-hundredths (1.16) inches.

3. Have a maximum case length of one and eight-tenths (1.8) inches.

21. Defendant’s use of the emergency rule process allows IDNR to exclude Plaintiff from public properties identified as public lands.

22. On November 8, 2017 Defendant adopted Emergency Rule LSA Document #17-491(E) that purports to “[t]emporarily add noncode provisions” to 312 IAC 8-1.5, the “definitions” portion of the Indiana Natural Resources Administrative Code.

23. The temporary additions substantially and significantly broaden Defendant’s ability to authorize state forest property managers to engage in activity that is not defined elsewhere or enabled by statute under the guise of “forest resource management activity” and to exclude Plaintiff from the premises, entirely, when Defendant is using them for “resource management activity”.

24. Although the Rule defines several unrelated tasks and activities as “forest resource management activity”, the residual category, “other management activity”, is so broad that it could include anything Defendant could possibly define as “resource management”, including illegal rifle-hunting:

“This document supplements 312 IAC 8 to establish a process for restricting temporarily the use of a state forest during a particular forest resource management activity. (b) The following definitions apply to this document and to any action by the state forester taken under this document:

- (A) timber stand improvement;*
- (B) prescribed fire;*
- (C) pesticide application;*
- (D) timber sale;*
- (E) timber harvest;*
- (F) trail construction; or*
- (G) other management activity; which is conducted on a state forest.(emphasis*

added).

25. Defendant’s illegal agency acts deprive Plaintiff of certainty with respect to their legal right to lawfully use public lands, a declaratory judgment is appropriate.

Injunction – Emergency and Permanent

26. Plaintiff incorporate by reference paragraphs 1 through 25 above as if fully set forth herein

27. Defendant’s illegal act immediately and irreparably harms Plaintiff by depriving it of its lawful use and enjoyment of public lands and safe use of those lands beginning on November 18, 2017.

28. The Defendant suffers no prejudice if this court issues an immediate, emergency injunction.

29. A bond is not necessary. This court's injunction will have no effect on licensing revenue because the hunters pay for only for legal licenses authorized by the legislature. Any fee Defendant collects through a license purporting to authorize deer rifle-hunting on public land not only exceeds statutory authority, it would likely violate the Separation of Powers Doctrine.

30. The public interest is served by an immediate, temporary injunction because Defendant's illegal agency acts affect anyone lawfully using Indiana's public lands from November 18, 2017 to December 3, 2017 and from December 26, 2017 until January 7, 2017.

IV. Relief

WHEREFORE, Plaintiff prays that this Court will grant the following relief:

A. Enter a declaratory judgment in favor of the Plaintiff wherein this court declares, decrees and adjudges that Defendant Clark's agency act, LSA Document #17-486(E) exceeds the scope of Defendant's statutory authorization set forth in Indiana Natural Resources Code, §14-22-2-8, short-titled, "*Deer hunting; permitted firearms; required report*" and its companion statute protecting private property rights, §14-22-10-1, short-titled, "*Consent to use private land*"; and

B. Enter a declaratory judgment in favor of the Plaintiff wherein this court declares, decrees and adjudges that Defendant Clark's agency act, Rule LSA Document #17-491(E) exceeds the scope of Defendant's statutory authorization set forth in Indiana Natural Resources Code, §14-22-2-8, short-titled, "*Deer hunting; permitted firearms; required report*" and its companion statute protecting private property rights, §14-22-10-1, short-titled, "*Consent to use private land*"; and,

C. Enter an emergency, preliminary injunction to be made permanent enjoining, restraining, prohibiting and preventing the Defendant from unlawfully permitting rifle-hunting on any premises that is not privately owned; and,

- D. Grant Plaintiff's request for reasonable attorney's fees and costs; and,
- E. Grant any other and further relief as the Court may deem just and proper to the cause.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing with attached exhibits and Temporary Restraining Order has been duly served upon the following listed below, on November 16, 2017, by U.S. Postal Mail, postage prepaid:

/s/ Laura M. Nirenberg
Laura M. Nirenberg
Center for Wildlife Ethics, Inc.

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