

**IN THE CIRCUIT COURT OF COLE COUNTY
STATE OF MISSOURI**

THE MISSOURI CONSERVATION
COMMISSION, MARILYNN J. BRADFORD,
DAVID W. MURPHY, NICOLE E. WOOD, and
DON C. BEDELL, in their official capacities as
Commissioners of the MISSOURI
CONSERVATION COMMISSION, and SARA
PARKER PAULEY, in her official capacity as the
Director of THE MISSOURI DEPARTMENT OF
CONSERVATION,

Plaintiffs,

vs.

ERIC SCHMITT, in his official capacity as the
ATTORNEY GENERAL OF THE STATE OF
MISSOURI, and CHRIS CHINN, in her official
capacity as Director of the MISSOURI
DEPARTMENT OF AGRICULTURE.

Defendants.

Cause No. 18AC-CC00339

ORDER, JUDGMENT, AND PERMANENT INJUNCTION

This cause comes before the Court on Plaintiffs' Request for a Permanent Injunction. Having reviewed Plaintiffs' Verified Petition, Defendants' Answer, the pleadings filed in connection with Plaintiffs' Motion for TRO, and the parties' trial briefs, and having heard the evidence and argument from Plaintiffs and Defendants, IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. The Missouri Constitution vests the "control, management, restoration, conservation, and regulation of...game...and all wildlife resources of the state" in the Conservation Commission. Mo. Const. Art. IV, Section 40(a).
2. The Legislature is prohibited from enacting laws inconsistent with the Conservation Commission's authority. *Id.*, Section 44.

3. As part of its constitutional mandate, the Conservation Commission regulates “cervids.”

4. “Cervid” is the common name for species in the family *cervidae*, including white-tailed deer and mule deer, among others.

5. The Missouri Supreme Court recently confirmed that “captive cervids” are no different than wild cervids when it comes to the Conservation Commission’s authority over them. *Hill v. Missouri Dep’t of Conserv.*, 2018 WL 3235854, at *3 (Mo. banc July 3, 2018).

6. Defendants admit that captive cervids are “game” and “wildlife resources of the state” to be regulated by the Conservation Commission.

7. The Conservation Commission regulates “captive cervids.” The Conservation Commission, as part of its “Wildlife Code,” prohibits the sale of white-tailed deer and mule deer within Missouri. 3 C.S.R. 10-10.743.

8. The Conservation Commission’s regulations are designed to limit the risk of illegally harvested deer being incorporated into commercial sale of legally harvested or slaughtered deer.

9. The Conservation Commission is also concerned that commercial sale of white-tailed deer, for example, could also exacerbate chronic wasting disease (“CWD”) in Missouri. CWD is a disease similar to scrapies in sheep and Mad Cow Disease in cattle.

10. The Missouri Legislature has passed laws that govern and regulate the inspection of meat and meat products.

11. The current version of the State’s “Meat Inspection” statutes define “Meat” as “any edible portion of livestock or poultry carcass or part thereof.” § 265.300(7) RSMo.

12. Similarly, the statutes define “Meat product” as “anything containing meat intended for or capable of use for human consumption, which is derived, in whole or in part, from livestock or poultry.” § 265.300(8) RSMo.

13. The “Meat Inspection” statutes also define a “Commercial plant” as one where “livestock or poultry” are slaughtered, and “Unwholesome” as meat produced from “livestock or poultry” which have died in a manner other than slaughter.

14. Recently, however, the Legislature passed Senate Bill 627 (“S.B. 627”), which amends certain definitions in the “Meat Inspection” statutes to include “captive cervids” alongside livestock and poultry. The amended definitions (with pertinent amendments underlined) are:

- “Commercial plant,” any establishment in which livestock, poultry, or captive cervids are slaughtered for transportation or sale as articles of commerce intended for or capable of use for human consumption, or in which meat or meat products are prepared for transportation or sale as articles of commerce, intended for or capable of use for human consumption (§ 265.300(4));
- “Meat,” any edible portion of livestock, poultry, or captive cervid carcass or part thereof (§ 265.300(7));
- “Meat product,” anything containing meat intended for or capable of use for human consumption, which is derived, in whole or in part, from livestock, poultry, or captive cervids (§ 265.300(8)); and
- “Unwholesome”:
 - (b) Produced in whole or in part from livestock, poultry, or captive cervids which have died other than by slaughter (§ 265.300(13)(b)).

15. S.B. 627 was signed by the Governor and was scheduled to become effective on August 28, 2018. On August 27, 2018, this Court issued a Temporary Restraining Order (“TRO”) enjoining Defendants from enforcing Sections 265.300(4), (7), (8), and (13), as amended by S.B. 627. On November 5, 2018, this Court entered a Preliminary Injunction enjoining the same.

16. “The elements of a claim for permanent injunction include: (1) irreparable harm, and (2) lack of adequate remedy at law.” *County of Boone v. Reynolds*, 549 S.W.3d 24, 29 (Mo. App. 2018).

17. Plaintiffs have shown that the amendments to Sections 265.300(4), (7), (8), and (13) of the Missouri Revised Statutes contained in S.B. 627 are contrary to the Missouri Constitution and the Conservation Commission’s authority granted therein.

18. The Constitution vests control of the State’s game and wildlife in the Conservation Commission.

19. White-tailed deer and mule deer are game and wildlife of the State.

20. The Conservation Commission prohibits the commercial sale of white-tailed deer meat and mule deer meat. 3 C.S.R. 10-10.743.

21. The amendments to Sections 265.300(4), (7), (8), and (13) of the Missouri Revised Statutes purport to allow the sale of white-tailed deer meat and mule deer meat.

22. There is a direct conflict between the Conservation Commission’s regulations prohibiting commercial sale and the Legislature’s statute allowing commercial sale.

23. The Legislature cannot enact laws that usurp constitutional authority. Statutes must be interpreted consistently with the Constitution. *State ex rel. Mo. Pub. Def. Comm’n v. Waters*, 370 S.W.3d 592, 599 (Mo. banc 2012). Statutes cannot trump the Constitution, which expressly forbids laws inconsistent with the Conservation Commission’s authority. Mo. Const. art. IV, § 44.

24. The language in the challenged amendments is clear—captive cervids may be commercially sold in Missouri as meat and meat products. “[W]here a statute’s language is clear and unambiguous, there is no room for construction.” *Wolff Shoe Co. v. Dir. of Revenue*, 762 S.W.2d 29, 31–32 (Mo. banc 1988). “The courts are without authority to read into a statute a

legislative intent which is contrary to the intent made evident by giving the language employed in the statute its plain and ordinary meaning.” *Habjan v. Earnest*, 2 S.W.3d 875, 881 (Mo. App. 1999). “There is no room for construction even when a court may prefer a policy different from that enunciated by the legislature.” *Kearney Spec. Rd. Dist. v. County of Clay*, 863 S.W.2d 841, 842 (Mo. banc 1993).

25. Enforcement of Sections 265.300(4), (7), (8), and (13) (as amended by S.B. 627) would amount to the Missouri legislature usurping the Conservation Commission’s constitutional authority.

26. Defendants do not stand to be injured if they are enjoined from enforcing Sections 265.300(4), (7), (8), and (13) of the Missouri Revised Statutes as amended by S.B. 627. The “Meat Inspection” statutes currently in effect will remain in effect. The only thing Defendants will not be allowed to do is carry out the Legislature’s attempt to exercise what is rightly the Conservation Commission’s authority over captive cervids.

27. It is in the public interest to ensure that the Missouri Constitution is upheld and laws enacted are not inconsistent with it; thus, an injunction is consistent with public policy.

28. The Court finds it is also in the public interest to limit the opportunity for illegal processing and selling of free-ranging white-tailed deer and mule deer.

29. Plaintiffs have shown that enforcement of Sections 265.300(4), (7), (8), and (13) of the Missouri Revised Statutes, as amended by S.B. 627, will provide additional opportunity for those who would (and do) illegally process white-tailed deer and mule deer to do so.

30. Plaintiffs have also shown that enforcement of the challenged amendments may subject Missourians to increased health risk.

31. Enforcement of Sections 265.300(4), (7), (8), and (13) of the Missouri Revised Statutes as recently amended by Senate Bill 627 passed by the Missouri General Assembly and signed by the Governor would violate the Missouri Constitution by infringing upon Plaintiffs' constitutionally-granted authority to regulate the game and wildlife resources of the State as provided by Mo. Const. Art. IV, Section 40(a).

32. Plaintiffs will suffer significant, immediate, and irreparable harm in the absence of permanent injunctive relief.

33. Plaintiffs lack an adequate remedy at law.

34. Defendants are hereby PERMANENTLY ENJOINED and RESTRAINED from enforcing Sections 265.300(4), (7), (8), and (13) of the Revised Statutes of Missouri as recently amended by S.B. 627. Defendants may continue to enforce Sections 265.300(4), (7), (8), and (13) of the Revised Statutes of Missouri that are currently in effect.

35. The Court does NOT enjoin and/or restrain the enforcement of any other statutory amendment in S.B. 627 other than the amendments to Sections 265.300(4), (7), (8), and (13) of the Revised Statutes of Missouri.

IT IS SO ORDERED ON THIS 24th DAY OF JANUARY, 2019



Jon E. Beetem, Circuit Judge – Division I