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September 5, 2024

**VIA FEDERAL EXPRESS**

Clerk of the Court  
Ingham County Circuit Court  
Veterans Memorial Courthouse  
313 W Kalamazoo St, 1st Floor  
Lansing, MI 48933

Re: Michigan Trappers and Predator Callers  
Association, Inc.  
-v-  
Michigan Natural Resources Commission  
Case No. 24-000427-AA  
(Consolidated with 24-000225-AA)

Dear Clerk:

I have enclosed the original and one judge's copy of ***Appellant Michigan Trappers and Predator Callers Association, Inc.'s Brief on Appeal***, along with ***Proof of Service***. Please file in your usual manner, and do not hesitate to contact me with any questions. Thank you.

Sincerely,

MILLER JOHNSON

By

A handwritten signature in blue ink, appearing to read "Stephen J. van Stempvoort", is written over the printed name.

Stephen J. van Stempvoort

SJV:cmf  
Enclosures

cc (via Email): Aaron M. Phelps  
Neil E. Youngdahl  
Echo Aloe  
Nathan A. Gambill

STATE OF MICHIGAN

IN THE INGHAM COUNTY CIRCUIT COURT

MICHIGAN UNITED CONSERVATION  
CLUBS,

No. 24-000225-AA

Appellant,

v

HON. WANDA M. STOKES

MICHIGAN NATURAL RESOURCES  
COMMISSION,

Appellee.

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MICHIGAN TRAPPERS AND PREDATOR  
CALLERS ASSOCIATION, INC.,

No. 24-000427-AA

Appellant,

v

HON. WANDA M. STOKES

MICHIGAN NATURAL RESOURCES  
COMMISSION,

Appellee.

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**Appellant Michigan Trappers and Predator Callers Association, Inc.'s  
Brief on Appeal**

**\*\*\* ORAL ARGUMENT REQUESTED \*\*\***

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## **Order Appealed From and Relief Sought**

Michigan Trappers and Predator Callers Association (“MTPCA”) appeals from Wildlife Conservation Order Amendment No. 1 of 2024, issued by the Natural Resources Commission (“NRC”) on March 14, 2024 (the “Order”). This Court should vacate the Order to the extent that it amends Wildlife Conservation Order 3.610(1) to close the statewide coyote hunting season between April 16 and July 14. The effect of such a ruling would be a return to the previous version of Wildlife Conservation Order 3.610(1), which permitted a year-round coyote hunting season.

## Jurisdictional Statement

The Court of Appeals has instructed that “review of an NRC decision regarding game management” may “only be pursued according to the provisions of either the APA or the Revised Judicature Act.” *Michigan Bear Hunters Ass’n, Inc v Michigan Nat Res Comm’n*, 277 Mich App 512, 524; 746 NW2d 320 (2007). Under § 631 of the Revised Judicature Act, MCL § 600.631, any such appeal “shall be made in accordance with the rules of the supreme court.” *Id.*

The MTPCA is a nonprofit corporation whose members are sportsmen and women who are active in harvesting surplus furbearing animals in Michigan. The MTPCA’s purposes are to promote sound conservation legislation and administrative procedures, to save and faithfully defend from waste the natural resources of Michigan, to promote sound environmental education programs, and to promote a continued annual fur harvest using the best tools presently available for that purpose. The MTPCA’s members include hunters and trappers who harvest coyotes between April 15 and July 15 each year.

The MTPCA timely filed its claim of appeal on March 27, 2024, which is within 21 days of the NRC’s March 14, 2024 Order. MCR 7.104(A)(1). This Court therefore has jurisdiction over this appeal.

## Questions Presented

- I. Is the NRC's amendment of Wildlife Conservation Order 3.610(1) unauthorized by law because it violates the NRC's obligation under MCL § 324.40113a(2) to make wildlife management decisions that are consistent with the "principles of sound scientific management," given that it was motivated solely due to certain hunting interest groups' concerns about public perception, was not recommended by the Department of Natural Resources, and was adopted by NRC commissioners for admittedly nonscientific reasons?

Appellant answers: Yes.

Appellee answers: No.

- II. Is the NRC's amendment of Wildlife Conservation Order 3.610(1) supported by substantial evidence?

Appellant answers: Yes.

Appellee answers: No.

## Introduction

Proposal G, which is a ballot initiative that was adopted by Michigan voters in 1996 and is now codified at MCL § 324.40113a(2), requires the NRC to make wildlife management decisions that, “to the greatest extent practicable,” are consistent with the “principles of sound scientific management.” This voter initiative was intended to ensure that wildlife management decisions are predicated on scientific analysis, not on political considerations or public pressure. Recognizing that even well-intentioned decisions can have unintended, detrimental effects on natural resources, the goal of Proposal G was to ensure that scientific considerations drive decisions that are made about Michigan’s natural resources, not special interest groups, public intuition, or popular sentiment.

Despite its obligations under MCL § 324.40113a(2), the NRC amended Wildlife Conservation Order 3.610(1) on March 14, 2024 to reduce the coyote hunting season—which was previously year-round—to only “from July 15 to April 15” (the “Coyote Season Amendment”). The NRC adopted the Coyote Season Amendment even though (1) the proposal was prompted by certain hunting groups whose sole concern was public perception, not scientific or biological necessity; (2) the NRC’s own subject-matter experts—the Department of Natural Resources (“DNR”)—did not recommend that the NRC adopt the Coyote Season Amendment; and (3) the NRC commissioners who voted to adopt the amendment explained that they did so based on non-scientific considerations, including at least one commissioner who explained that he trusted the “instinct” of the hunting groups who proposed the amendment.

Many members of the Michigan Trappers and Predator Callers Association (“MTPCA”) are affected by the Coyote Season Amendment. But this dispute is about far more than the coyote hunting season. It is about the NRC’s obligation to make wildlife management decisions on the basis of science, instead of on politics.

It is not in anyone’s interest to allow the NRC to violate Proposal G when making wildlife management decisions. The obligation to follow the science limits the politics on all sides of the equation. If the Coyote Season Amendment is upheld, the NRC will be given permission to make wildlife management decisions at the behest of special interest groups even when the scientific analysis does not support a change to the status quo. That regime would allow the NRC to make wildlife management decisions that are not directed by the best available science but that shift whenever the political winds change. Michigan voters resoundingly rejected that approach to wildlife management when they approved Proposal G. The NRC’s order should be vacated to the extent that it adopted the Coyote Season Amendment.

### **Statement of Facts**

- A. When wildlife management decisions are not based on science, they can harm the wildlife populations that they are intended to protect.**

Proposal G was adopted in order to prevent Michigan from making ill-advised wildlife decisions based on public perception and subjective value-judgments rather than on science.<sup>1</sup> In this respect, Proposal G is consistent with what is

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<sup>1</sup> See Chris Lamphere, “Proposal G: From ‘ballot box biology’ to professional wildlife management.” *Michigan Out-Of-Doors* (Jul 6, 2022), available at

generally known as the North American Model of Wildlife Conservation, under which “the nation’s fish and wildlife resources belong to all Americans and they must be managed sustainably, so that current and future generations can enjoy their abundance.”<sup>2</sup>

The North American Model is predicated on a scientific approach to wildlife management, not a political one.<sup>3</sup> That is because good intentions can backfire. What may initially seem like intuitive common sense may in reality have longer-term adverse effects to both the regulated species and the wider environment.

Unfortunately, examples abound of natural resources decisions that stem from good intentions but bad science. For example, European brown trout were introduced for the first time in the United States when they were stocked in the Pere Marquette River by the U.S. Fish Commission in 1883.<sup>4</sup> Although brown trout is a highly prized sportfish, it is more aggressive than some native fish species, including

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<https://www.michiganoutdoors.com/proposal-g-from-ballot-box-biology-to-professional-wildlife-management/>.

<sup>2</sup> Testimony of Dan Ashe, Director, U.S. Fish and Wildlife Service, U.S. Department of the Interior, before the House Committee on Science, Space, and Technology, Subcommittee on Investigations and Oversight, on "The Science of How Hunting Assists Species Conservation and Management" (June 19, 2012). Available at <https://www.fws.gov/testimony/science-how-hunting-assists-species-conservation-and-management>.

<sup>3</sup> Martin Nie et. al., *Fish and Wildlife Management on Federal Lands: Debunking State Supremacy*, 47 *Envtl. L.* 797, 812 (2017).

<sup>4</sup> Fuller, P., J. Larson, A. Fusaro, T.H. Makled, M. Neilson, and A. Bartos, 2024, “*Salmo trutta* Linnaeus, 1758,” U.S. Geological Survey, Nonindigenous Aquatic Species Database, Gainesville, FL. Available at <https://nas.er.usgs.gov/queries/FactSheet.aspx?speciesID=931>.

the Michigan arctic grayling. By the 1930s, grayling were extinct in Michigan—in part because non-native brown trout had outcompeted grayling for resources.<sup>5</sup>

Similarly, during the Great Depression, the United States Soil Conservation Service—hoping to prevent soil erosion—offered farmers \$8 for every acre that they would plant with kudzu, a plant imported from Asia. That effort backfired spectacularly. In fact, in the 1990s, Congress listed kudzu under the Federal Noxious Weed Act.<sup>6</sup>

More recent examples exist, too. In 1996, for instance, Massachusetts banned most types of beaver trapping by ballot referendum, citing “public safety and wildlife protection” concerns.<sup>7</sup> Although the beaver population had been maintained at a sustained level before the trapping ban, within four years of the ban, the beaver population doubled and beaver damage complaints increased 90%. The increase in beaver dams also resulted in the destruction of wetland habitats, with negative consequences to other species. Having lost its ability to manage the beaver population scientifically, Massachusetts has been forced to manage the population reactively—

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<sup>5</sup> Chris Hunt, “The Michigan Arctic Grayling,” *Trout Unlimited* (Mar. 2, 2020). Available at <https://www.tu.org/magazine/conservation/the-michigan-arctic-grayling/>. See also “Michigan grayling only a memory,” *Michigan Grayling*. Available at <https://michigangrayling.com/michigan-grayling-only-a-memory/>.

<sup>6</sup> Bill Finch, “The True Story of Kudzu, the Vine That Never Truly Ate the South,” *Smithsonian Magazine* (Sept. 2015, Vol. 46, no. 5. p. 19). Available at <https://www.smithsonianmag.com/science-nature/true-story-kudzu-vine-ate-south-180956325/>.

<sup>7</sup> Association of Fish & Wildlife Agencies, “Conservation Brief: The Implication of a Statewide Ban on Trapping: The Massachusetts Experience.” Available at <https://www.fishwildlife.org/application/files/8016/4460/6980/Conservation-Brief-Beaver-FINAL.pdf>.

that is, whenever a beaver is identified as a nuisance. Ironically, by 2020, the number of beavers that were killed each year as nuisances was roughly the same as the number of beavers that had been harvested each year before the trapping ban.<sup>8</sup>

New Jersey, similarly, ended bear hunting in 2020 after its governor made a campaign promise to stop the practice. After the ban went into effect, however, black bear damage and nuisance incidents in the state skyrocketed. Recognizing that “the data demands that we act now to prevent tragic bear-human interactions,” New Jersey’s governor reinstated a bear hunt, with goals of reducing the state’s bear population to specific targets.<sup>9</sup> After the hunt was reinstated, fewer negative bear interactions were reported.<sup>10</sup> Data-driven management was successful; politics-driven management was not.

The same thing happened with gray wolves in Minnesota. They remain listed under the federal Endangered Species Act even though their numbers exceed the federal targets for an appropriate wolf population, based on the U.S. Fish and Wildlife Services’ studies and recommendations. The subsequent overpopulation of wolves has contributed to a decline in moose populations in northern Minnesota. In turn, when moose populations cannot support the wolf population, the wolf

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<sup>8</sup> *Id.* See also Jillian Garrett, “The Beavers That Ate Massachusetts,” *Sports Afield*. Available at <https://sportsafield.com/2023/the-beavers-that-ate-massachusetts/>.

<sup>9</sup> Tracey Tully, “Gov. Murphy Reinstates Bear Hunting in New Jersey, a Year After Ending It,” *New York Times* (Nov. 15, 2022). Available at <https://www.nytimes.com/2022/11/15/nyregion/bear-hunt-new-jersey.html>

<sup>10</sup> “New Jersey’s controversial bear hunt returns,” *Eyewitness News* (Oct. 9, 2023). Available at <https://abc7ny.com/bear-hunt-season-new-jersey-controversial/13877663/>



population crashes. Instead of being well-managed, the population of both species lurches through boom-bust cycles. Failing to follow the science with respect to wolf population management has led to negative repercussions not only for the wolves' prey species but also for the wolves themselves.<sup>11</sup>

Michigan wildlife management struggles from the same sort of well-intentioned but misguided impulses. Public comments submitted to the NRC in connection with this case, for example, demanded that Michigan's wildlife policies "should be grounded not only in science, but also in ethics, and prioritize the values of the vast majority of Michigan residents over appeasing the demands of a small number of misinformed individuals . . ." (AR Vol. 6, at 8; see also AR Vol. 6, at 293 (letter from Michigan Bear Hunters Association, to similar effect)). Although that request may sound appealing in the abstract, it is in actuality a request that Michigan's wildlife resources be managed by subjective value-judgments rather than by biological facts. When government actors fail to follow the science in making wildlife management decisions, their decisions can result in substantial, unintended harm not only to the species at issue but to the larger environment.

**B. Proposal G was adopted in order to ensure that wildlife management decisions are made for scientific reasons instead of for political ones.**

Michigan's primary legal response to the problem of nonscientific wildlife management is Proposal G. Proposal G was overwhelmingly approved by

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<sup>11</sup> Mark Morrison, "De-listing gray wolves may save Minnesota's moose," *The Free Press* (Dec. 16, 2018). Available at [https://www.mankatofreepress.com/sports/outdoors/morrison-de-listing-gray-wolves-may-save-minnesotas-moose/article\\_37d07b2e-00d1-11e9-8789-7f6b67a1bd94.html](https://www.mankatofreepress.com/sports/outdoors/morrison-de-listing-gray-wolves-may-save-minnesotas-moose/article_37d07b2e-00d1-11e9-8789-7f6b67a1bd94.html)

Michigan voters on November 5, 1996, by a margin of 68.71% to 31.29%.<sup>12</sup> See *Mothering Justice v Att’y Gen*, \_\_\_ Mich \_\_\_; No. 165325, 2024 WL 3610042, at \*7 (Mich. July 31, 2024) (explaining voter-initiative process).

Proposal G added MCL § 324.40113a, which—when Proposal G was adopted in 1996—provided as follows:

(1) The legislature finds and declares that:

(a) The wildlife populations of the state and their habitat are of paramount importance to the citizens of this state.

(b) The sound scientific management of the wildlife populations of the state, including hunting of bear, is declared to be in the public interest.

(c) The sound scientific management of bear populations in this state is necessary to minimize human/bear encounters and to prevent bears from threatening or harming humans, livestock, and pets.

(2) The commission of natural resources shall have the exclusive authority to regulate the taking of game as defined in section 40103 in this state. ***The commission of natural resources shall, to the greatest extent practicable, utilize principles of sound scientific management in making decisions regarding the taking of game.*** Issuance of orders by the commission of natural resources regarding the taking of game shall be made following a public meeting and an opportunity for public input.

MCL § 324.40113a (1996) (emphasis added).

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<sup>12</sup> Ballotpedia, “Michigan Proposal G, Natural Resources Commission’s Authority Referendum (1996).” Available at [https://ballotpedia.org/Michigan\\_Proposal\\_G,\\_Natural\\_Resources\\_Commission%27s\\_Authority\\_Referendum\\_\(1996\)](https://ballotpedia.org/Michigan_Proposal_G,_Natural_Resources_Commission%27s_Authority_Referendum_(1996)).

Although MCL § 324.40113a has since been amended by the Legislature, it continues to provide that the NRC “shall, to the greatest extent practicable, utilize principles of sound scientific management in making decisions regarding the taking of game.” MCL § 324.40113a(2).

The statutes immediately surrounding MCL § 324.40113a likewise insist that the NRC must follow the science. MCL § 324.40110(1), for example, provides that the NRC must make decisions about establishing hunting seasons consistent with “its duty to use principles of sound scientific wildlife management, as expressed in section 40113a.” MCL § 324.40110(1). The statute further provides that the NRC “may decline to issue orders authorizing an open season for a game species if doing so would conflict with principles of sound scientific wildlife management.” MCL § 324.40110(1).

As Proposal G and its accompanying statutes reflect, Michigan has chosen to ensure the long-term viability of Michigan’s wildlife resources by taking politics out of the equation when making wildlife management decisions.

**C. The Coyote Season Amendment was proposed by certain interest groups for political reasons, not scientific ones.**

This appeal challenges the NRC’s adoption of the Coyote Season Amendment, which amends Wildlife Conservation Order 3.610(1) to close the statewide coyote hunting season between April 16 and July 14. Before the NRC adopted the Order, the statewide coyote hunting season was open year-round, 365 days a year.

The NRC did not adopt the Coyote Season Amendment for scientific reasons. As the DNR's Bear, Furbearer, and Small Game Specialist, Cody Norton, explained, the genesis of the Coyote Season Amendment was not based in any scientific study or any demonstrated biological need. There was no indication that coyotes were being over-harvested in Michigan or that their numbers were dropping. In fact, the DNR did not itself recommend any change to the year-round coyote hunting season. (AR Vol. 1, at 54; AR Vol. 5, at 238). Instead, the DNR presented to the NRC a proposal that was "brought forward by several stakeholder groups that requested the season be shortened." (AR Vol. 1, at 50).

As Mr. Norton explained, the sole reason for those groups' proposal was a concern over public perception. Those groups proposed that the season be shortened "so that it does not include the time when coyotes have dependent young, due to concern about public perception and potential impacts to coyote hunting and trapping seasons that could result from negative public perception." (AR Vol. 1, at 50). The record does not reflect any explanation for why the proposal was forwarded to the NRC other than the fact that an advisory workgroup had suggested it. (AR Vol. 5, at 79).

At the NRC's February 8, 2024 meeting, the DNR elaborated on why the proposal was being brought before the NRC:

COMMISSIONER WALTERS: Do we know why this was even brought up?

MR. NORTON: Yeah, I think the, you know, I tried to get at it. But basically, there are stakeholders that are concerned that if we're taking coyotes during the time when they have dependent young, that leaves our coyote

hunting and trapping, there may be other predator hunting and trapping vulnerable to potential legislation or other things if non-hunters don't view that positively and want to seek change.

COMMISSIONER WALTERS: So, it was more in the form of fear; fear of legislation changes or fear that some anti-hunting groups may try to influence in a totally different capacity. Fair?

MR. NORTON: Yeah, I think -- I think concern, yeah, concern that it can negatively impact other activities or further impact predator hunting, yep.

(AR Vol. 1, at 62).

Mr. Norton's assessment was supported by the testimony of those individuals who pushed for the NRC to adopt the proposal. The Regional Director of the U.P. Bear Houndsmen, for example, explained that he was "worried about . . . voters." (AR Vol. 1, at 110). He believed that, if ordinary voters saw photographs or heard descriptions of female coyotes being killed and of coyote pups starving in their dens, then public opinion would turn against hunting rights and hunters would lose some of their hunting rights. (AR Vol. 1, at 110). A representative of the Michigan State Fox Hunters Association said the same thing: "If we continue the practice of killing pregnant and nursing mothers, the animal rights groups will easily use that as grounds for the end of coyote hunting in this state." (AR Vol. 1, at 114).

The same sentiments were repeated at the NRC's March 14, 2024 meeting. Mike Thorman, a representative of the U.P. Bear Houndsmen, explained that his group was "very sensitive about public opinion" and had a history of opposing politically sensitive hunting practices "[b]ecause who wants to give that arrow in the quiver of the various animal rights people that are here . . ." (AR Vol. 3, at 288). He

explained that his group, in particular, was in the crosshairs: the Humane Society “has showed up at bear hunters workgroup, and said we’re gonna stop hounding, they call it, and the state of Michigan is our number one goal.” (AR Vol. 3, at 289). He was “terribly concerned about how all hunters look. We—the public does not look at us as a coyote hunter or a duck hunter or a deer hunter. Look what them hunters are doing, is how this would shake out.” (AR Vol. 3, at 290). As he put it, “[I]t’s our kids and their kids we have to protect, and we have to view what we’re doing in public.” (AR Vol. 3, at 292). Other supporters of the proposal said the same thing. (AR Vol. 3, at 296 (noting that discussions suggesting nursing coyotes are killed, leaving pups to starve would “contribut[e] to [the] animal rights circus”)).

**D. The Commissioners who adopt the Coyote Season Amendment fail to identify scientific bases for their decision.**

At its March 14, 2024 meeting, the NRC voted 4-2 to adopt the Coyote Season Amendment. (AR Vol. 3, at 356-357).<sup>13</sup>

Three of the four commissioners who voted in favor of the Coyote Season Amendment explained that their decision was not primarily predicated on science. Commissioner Anthony, for example, explained that he was voting to adopt the Coyote Season Amendment because “I trust very, very deeply in [the] instinct” of the bear-hunting groups who supported the motion. (AR Vol. 3, at 333).

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<sup>13</sup> The NRC’s March 14, 2024 Order is available at [https://www.michigan.gov/dnr/-/media/Project/Websites/dnr/Documents/Boards/NRC/2024/March-2024/Approved\\_01WCO2024.pdf?rev=da4a8b0c91264975b819aa2d36e5bcf6&hash=D0956F404B39C860ACA1B635E0216DA0](https://www.michigan.gov/dnr/-/media/Project/Websites/dnr/Documents/Boards/NRC/2024/March-2024/Approved_01WCO2024.pdf?rev=da4a8b0c91264975b819aa2d36e5bcf6&hash=D0956F404B39C860ACA1B635E0216DA0).

NRC Chair Baird explained, “I think public perception is important; I think others think that, too.” (AR Vol. 3, at 355). He argued that “the science exists” but that it “doesn’t answer the question,” such that the NRC could rely upon “other legitimate considerations.” (AR Vol. 3, at 355).

Commissioner Cozad voted to adopt the amendment because he thought it would make minimal change. (AR Vol. 3, at 335). Nevertheless, he observed that further scientific analysis would have been appropriate before adopting the amendment: “I would suggest that if a change is made again, that we track it perhaps a little more diligently, generate more data, and again, assess it over time.” (AR Vol. 3, at 336).

Commissioner Clark did not explain her vote at the March 14, 2024 meeting. At the NRC’s February 8, 2024 meeting, however, Commissioner Clark noted her view that many of the references “to Proposal G and our responsibility to rely on science” relied upon “a misconception about science as being like objectively divorced from value that we all as human beings, you know, make value judgments.” (AR Vol. 1, at 153).

Commissioners Nyberg and Walters voted against the amendment. Commissioner Nyberg expressed concern that the DNR had recommended “a substantial change” to the Wildlife Conservation Order “without taking a position on it and without providing testimony to provide the rationale for why it’s recommending that change.” (AR Vol. 3, at 338). Commissioner Nyberg opined that the NRC should “table this order until the Deer Management Initiative has the opportunity to weigh

in, once it's done its thorough review of predator impacts . . ." (AR Vol. 3, at 339). As Commissioner Nyberg explained, "if it is true that the primary justification for including this change is because the furbearer workgroup suggested it, I'm concerned about what that precedent means for the future in other wildlife conservation orders." (AR Vol. 3, at 339).

Commissioner Walters opined that the nuisance-hunting regulations were insufficient to enable hunters to control coyote populations in the offseason. (AR Vol. 3, at 337).

**E. MTPCA files an appeal, which is consolidated with an appeal filed by the MUCC.**

Consistent with MCL § 600.631, the MTPCA timely filed its appeal of the NRC's order in Mackinac County Circuit Court. Over the MTPCA's objection, the NRC transferred the venue of the MTPCA's appeal to this Court, where the MTPCA's appeal was consolidated with the MUCC's appeal.

**Standard of Review**

"[R]eview of an NRC decision regarding game management" may "only be pursued according to the provisions of either the APA or the Revised Judicature Act." *Michigan Bear Hunters*, 277 Mich App at 524. Under § 631 of the Revised Judicature Act, MCL § 600.631, an agency's action is reviewed to determine whether it "was authorized by law." *Brandon Sch Dist v Michigan Educ Special Servs Ass'n*, 191 Mich App 257, 263; 477 NW2d 138 (1991). "[A]uthorized by law means allowed, permitted, or empowered by law." *Nw Nat Cas Co v Ins Com'r*, 231 Mich App 483, 488; 586 NW2d 563 (1998). Thus, "an agency's decision that 'is in violation of statute



[or constitution], in excess of the statutory authority or jurisdiction of the agency, made upon unlawful procedures resulting in material prejudice, or is arbitrary and capricious,’ is a decision that is not authorized by law.” *Id.*

## Argument

### I. **The NRC is required to make wildlife management decisions in accordance with the principles of “sound scientific management.”**

This appeal turns on whether, as a matter of law, the NRC complied with its duty to make wildlife management decisions by using the “principles of sound scientific management.” MCL § 324.40113a(2). The pertinent phrase—“principles of sound scientific management”—stems from Proposal G, as approved by Michigan’s voters in 1996.

Ballot initiatives like Proposal G are interpreted under “the rule of common understanding,” just like the text of Michigan’s Constitution is interpreted under the rule of “common understanding.” *Massey v Sec’y of State*, 457 Mich 410, 420 n.16; 579 NW2d 862 (1998). Under this rule, the relevant text is “read according to the ‘common understanding’ of ‘the great mass of the people’ who voted on it, avoiding ‘any dark or abtruse meaning in the words employed.’” *Id.* In other words, “[t]he interpretation that should be given it is that which reasonable minds, the great mass of the people themselves, would give it.” *Taxpayers for Michigan Const Gov’t v Dep’t of Tech, Mgmt & Budget*, 508 Mich 48, 60–61; 972 NW2d 738 (2021). “In determining the common understanding of the voters, the Court may also consider the circumstances surrounding the adoption of the provision and the purpose sought to be accomplished by the provision.” *Id.* at 61. See also *Lorencz v Ford Motor Co*, 439

Mich 370, 376–77; 483 NW2d 844 (1992) (“When determining legislative intent, statutory language should be given a reasonable construction considering its purpose and the object sought to be accomplished.”).

As the Court of Appeals has concluded, the requirement that the NRC comply with the principles of sound scientific management is intended to “remove politics and other non-scientific considerations from the management of fish, wildlife, and their habitats, and to place management of these natural resources on a scientific footing.” *Keep Michigan Wolves Protected v State, Dep’t of Nat Res*, No. 328604, 2016 WL 6905923, at \*5 (Mich. Ct. App. Nov. 22, 2016).

This reasoning is consistent with the commonly understood meaning of “scientific” management principles. Generally, “scientific” means “[c]onducted or systematized after the manner of science or according to results of investigation by science; practicing thoroughness or systematic methods approximating those of scientists or devised by scientists; applying expert knowledge or technical skill, as in sports, warfare, management . . .” Webster’s Third New International Dictionary 2238 (2002); see also American Heritage College Dictionary 1221 (3d ed. 2000) (defining “scientific” as “[o]f, relating to, or employing the methodology of science”).

By requiring that the NRC follow the principles of “sound scientific management,” therefore, MCL § 324.40113a requires the NRC to make science-based decisions—not decisions based on public perception, politics, or intuition, or at the behest of special interest groups.

**II. The NRC failed to follow the principles of sound scientific management when adopting the Coyote Season Amendment.**

The Coyote Season Amendment is not “authorized by law” because the NRC’s decision was “in violation of [a] statute”—namely, MCL § 324.40113a. *Nw Nat Cas Co*, 231 Mich App at 488. Because the NRC violated its obligation to follow “the principles of sound scientific management” to the “greatest extent possible,” the Coyote Season Amendment should be vacated. MCL § 324.40113a(2).

**A. A concern over “public perception” is not a sound scientific basis for amending the coyote season.**

Instead of basing its decision on the science, the NRC’s justification for the Coyote Season Amendment was a concern over public perception—in other words, political concerns, not scientific ones. The political nature of the NRC’s amendment is demonstrated by the proposal’s origin, by the DNR’s conduct, and by the NRC commissioners’ explanations of why they voted to adopt it.

*First*, as Mr. Norton explained, the Coyote Season Amendment was prompted by the political concerns of a group of hunters and was not based in any scientific study or any demonstrated biological need. (AR Vol. 1, at 50, 62). The amendment’s proponents explained that “if we continue the practice of killing pregnant and nursing mothers, the animal rights groups will easily use that as grounds for the end of coyote hunting in this state.” (AR Vol. 1, at 114).

The proposal, in other words, was purely political from the outset. Instead of being rooted in data, it was rooted in an attempt to forestall potential political blowback generated by the specter of orphaned coyote pups giving leverage to political opponents of hunting rights in Michigan. As Mr. Norton put it, “this is

largely a social issue,” not a biological one. (AR Vol. 6, at 267). No party has ever identified any data indicating that coyotes were being over-harvested in Michigan, such that a reduction in the season was warranted.

*Second*, the NRC’s own scientific experts—the wildlife management specialists at the DNR—did not recommend that the NRC adopt the Coyote Season Amendment. It is very unusual for the DNR to forward to the NRC a proposal that it did not itself recommend. (AR Vol. 1, at 55-55 (noting that “[w]e don’t have a lot of examples of when we’ve been neutral on something”). But that feature of this case also explains why there is no scientific data to support a change to the status quo. The NRC’s subject-matter experts were presenting to the NRC a proposal that came from particular interest groups, not from scientific analysis or biological necessity. As NRC Chair Tom Baird agreed, “[t]he procedure in this case has been problematic.” (AR Vol. 3, at 346, 348-349).

*Third*, the commissioners who voted to adopt the Coyote Season Amendment doubled down on the fact that their decision was predicated on politics and that they were not changing the status quo for scientific reasons. The commissioners’ explanations for their votes are crucial, because “an agency’s order must be upheld, if at all, on the same basis articulated in the order by the agency itself.” *Ass’n of Businesses Advocating Tariff Equity v Pub Serv Comm’n*, 192 Mich App 19, 24; 480 NW2d 585 (1991). See also *Motor Vehicle Mfrs Ass’n of US, Inc v State Farm Mut Auto Ins Co*, 463 US 29, 50 (1983) (“[T]he courts may not accept appellate counsel’s post hoc rationalizations for agency action. It is well-established that an

agency's action must be upheld, if at all, on the basis articulated by the agency itself.”).

None of the NRC's commissioners identified a scientific basis for adopting the Coyote Season Amendment. Quite the opposite. Commissioner Anthony explained that he was voting to adopt the Coyote Season Amendment because “I trust very, very deeply in [the] instinct” of the bear-hunting groups that supported the motion. (AR Vol. 3, at 333). NRC Chair Baird opined that the science did not cut either way and that “we take so called social or nonscientific considerations into account all the time.” (AR Vol. 3, at 344). And Commissioner Cozad agreed that the scientific analysis could have been performed “more diligently” than it was. (AR Vol. 3, at 336). In other words, the NRC (and the DNR) could have done its job better than it did. That is an admission that the NRC failed to comply with Proposal G's mandate that it rely upon the science to “the greatest extent practicable.”

Adopting the pet proposal of particular interest groups—trusting in their “instinct” despite admitting that the scientific analysis was not performed as “diligently” as it could have been—is precisely what Proposal G was adopted in order to prevent. The whole point of Proposal G was “to remove politics and other non-scientific considerations” from the analysis. *Keep Michigan Wolves Protected*, 2016 WL 6905923, at \*5. Wildlife management decisions must be based on what the science demands, not based on instinct or on whether those decisions will be popular or unpopular with the voting public.

When the NRC caves to real or perceived political pressures, then it has not made a decision “to the greatest extent practicable” on the basis of sound scientific principles. In basing its decision on instinct and political considerations instead of on the science, the NRC contradicted the core dictate of Proposal G. See MCL § 324.40113a(2).

**B. The NRC did not take steps “to the greatest extent practicable” to scientifically determine the consequences of its decision.**

**1. Absence of evidence is not evidence of absence.**

The NRC may argue that, as long as none of the extant science directly contradicts its proposal, then it may make any wildlife management decision that it wants, without needing to obtain additional scientific studies about the consequences of its decisions. But the NRC is obligated to follow the science “to the greatest extent practicable.” MCL § 324.40113a. That duty is not discharged merely by asserting that the absence of evidence is evidence of absence. That is a logical fallacy, not the hallmark of scientific inquiry.

Instead, a statutory requirement that an agency comply with certain objectives “to the ‘extent’ or ‘maximum extent practicable,’ . . . undoubtedly places limits on the agency’s discretion.” *Wyoming v United States*, 279 F3d 1214, 1237 (CA 10, 2002). Giving the phrase its ordinary meaning, it “imposes a clear duty on the agency to fulfill the statutory command to the extent that it is feasible or possible.” *Biodiversity Legal Found v Babbitt*, 146 F3d 1249, 1254 (CA 10, 1998). Although the NRC does not need to move heaven and earth, it must nevertheless do everything that it can with the resources at its disposal.

That is not what it did here. Even Commissioner Cozar recognized that the DNR could have tracked the data “a little more diligently.” (AR Vol. 3, at 335-336). That is an admission that the NRC could have done better—that is, that it did not fulfill its statutory obligations “to the greatest extent practicable.” MCL § 324.40113a. See also *Wyoming*, 279 F3d at 1239 (plaintiff sufficiently stated a claim against agency when agency “failed to conduct any independent studies on the efficacy and biosafety” of a vaccine and relied upon a “statistical analysis of limited depth and scope” instead).

There is a good reason why Proposal G requires a scientific basis before the NRC may make a wildlife management decision that changes the status quo. If this was not the rule, then the NRC could make any wildlife decision that it wanted as long as the NRC didn’t find scientific evidence that specifically prevented it from engaging in its chosen course of action. That would create perverse incentives. The less scientific inquiry that the NRC performed, the more likely that the NRC would be able to do what it wanted. That sort of regime would incentivize the NRC to engage in as little scientific inquiry as possible—the opposite of what Proposal G was intended to promote.

That concern is on full display here. The DNR did not recommend a change to the coyote hunting season; instead, it forwarded a proposal from an interest group that was presented for political reasons alone. The NRC commissioned no scientific studies to determine whether an open season during the spring months would adversely affect coyote pups, the overall coyote population, or other species.

The NRC failed to specify a target coyote population that it hoped would be attained through the Coyote Season Amendment, nor did it specify any other biological or scientific ends that it hoped to accomplish through the amendment. And most of the NRC commissioners who voted to adopt the amendment explained that they were doing so for nonscientific reasons, whether “instinct” or otherwise.

None of this is consistent with what Proposal G demands. The NRC needs a scientific justification to make a change to the status quo. If the science supports a change in the NRC’s policy, then the NRC can make the change. But absent a scientific reason for departing from the status quo, the decision is not based in the science; it is based in politics.

**2. The DNR’s analysis failed to assess the effect of the Coyote Season Amendment on any wildlife population.**

Commissioner Cozad was correct to point out the deficiencies in the DNR’s analysis.

For example, the only biological-impact analysis provided by the DNR was as follows:

***Biological***

**Since the coyote hunting season was extended to year-round, statewide harvest estimates and average number of coyotes harvested per hunter have not increased. The Department does not expect a significant biological impact.**

(AR Vol. 2, at 79; AR Vol. 6, at 239; see also AR Vol. 1, at 51-53, AR Vol. 2, at 66; AR Vol. 5, at 99-100).

As is evident, that analysis measures only the number of coyotes harvested; it does not assess the coyote population. In other words, it is a measure of



hunting activity, not a measure of coyote numbers. Those are two different—and not necessarily correlated—things.

Moreover, although the DNR assessed that the move in 2016 to a year-round coyote season in 2016 had no effect on the overall coyote population (AR Vol. 6, at 273), the DNR did not assess whether a move in the opposite direction would have a different effect. The DNR stated that it did “not expect” a significant biological impact of reducing the season. (AR Vol. 2, at 79). But the DNR appears to have predicated its expectations on an assumption that every relevant environmental factor was exactly the same as it was in 2016. The DNR performed no study to test that assumption or to determine whether any relevant factor had changed in the interim.

The DNR’s assumptions may be right; they may be wrong. But there is no way to tell, because the NRC never required it to obtain data and test those assumptions. The DNR’s expectations are operating on guesswork, without any analysis to back them up.

Nor does the DNR’s analysis make any attempt to measure the biological impact of a potentially increased coyote population on other wildlife populations. This failure is noticeable, particularly given the evidence in the record that new-born fawns, for example, “are optimal prey for coyotes,” and, “in multi-predator systems throughout North America, coyote predation tends to dominate white-tailed deer mortality during the first 6 months after birth.” (AR Vol. 2, at 299). Some studies suggest that, to protect new-born fawns, coyotes should be harvested

“in the months before does drop their fawns.” (AR Vol. 6, at 6). Others note that “[c]oyotes, because of their abundance, are probably the most destructive of western American carnivores.” (AR Vol. 2, at 310; see also AR Vol. 1, at 119, 151 (noting effect of coyotes on deer population); AR Vol. 1, at 148 (noting effect of coyotes on red fox population)). And one of the peak periods of coyote depredation on livestock (including sheep) is in April, when the season would be closed under the Coyote Season Amendment. (AR Vol. 3, at 255-256; see also AR Vol. 3, at 256-257).

Yet the NRC performed no analysis of the potential effects on other species of an increased coyote population. (In fact, the DNR’s Deer Management Initiative recommended in June 2024 that, to address deer management issues in the Upper Peninsula, the NRC should adopt a year-round coyote season in order to reduce deer predation.<sup>14</sup> It therefore appears that the NRC’s reduction of the coyote season is contrary to the DNR’s current recommendations.)

To the extent that the science did point in any direction, there was no data to support a change in the status quo. The information provided to the NRC indicated that “[t]o cause a decline in the coyote population, 90% of coyotes must be removed”—and even then, “the population can recover in less than five years without continued intensive removal.” (AR Vol. 5, at 187). Written testimony from Michigan

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<sup>14</sup> Chad Stewart, “DMI Summaries and 2024 Deer Regulation Recommendations” (June 13, 2024). Available at [https://www.youtube.com/watch?v=pe41iy\\_AIsE](https://www.youtube.com/watch?v=pe41iy_AIsE) (scroll to 22:36). See also NRC Meeting Agenda (June 13, 2024). Available at [https://www.michigan.gov/dnr/-/media/Project/Websites/dnr/Documents/Boards/NRC/2024/June-2024/Agenda\\_June\\_Approved.pdf?rev=f25ece9a933447a8a996e3fe661ac6df](https://www.michigan.gov/dnr/-/media/Project/Websites/dnr/Documents/Boards/NRC/2024/June-2024/Agenda_June_Approved.pdf?rev=f25ece9a933447a8a996e3fe661ac6df).

State University researchers likewise noted that, even if the data showed that 30% of the coyote population in Michigan is harvested each year, that data would not cause concern, because “sustained harvest rates exceeding 70% are generally needed to reduce coyote abundance.” (AR Vol. 2, at 222; see also AR Vol. 2, at 326). And public comments from Michigan hunters who harvested hundreds of coyotes, including between April and July, indicated that almost none of the female coyotes harvested showed evidence of active mammary systems. (AR Vol. 6, at 41).

Even assuming that hunting activity was an approximate measure of coyote population, the DNR concluded that “there are no trends in harvest per day of effort that would indicate a change in coyote abundance due to implementation of a year-round season in 2016.” (AR Vol. 6, at 273).

That is a point worth underscoring. As far as the DNR could determine, the coyote population has not been reduced in Michigan even though Michigan has had an open, 365-day season on coyotes for the last eight years. Because a universal open season—allowing hunters to take as many coyotes as they want, on any day that they want—has not had any negative effect on the overall coyote population, there is no scientific basis to support a change in the status quo or to partially close the season.

**3. The NRC’s analysis did not bear any of the hallmarks of scientific analysis.**

The NRC’s analysis of the Coyote Season Amendment did not bear any of the other hallmarks of scientific analysis, either. Ordinarily, wildlife management plans should include, for example, “a measurable objective, like managing a deer herd

to balance the population at a number that makes hunters happy and also reduces car crashes,” “evidence-based” analysis, transparency about estimations of hunting rates and population sizes, and an independent, external review.<sup>15</sup>

The NRC did not engage in any of this analysis when adopting the Coyote Season Amendment. The NRC never identified any measurable objective by which it could test whether the Coyote Season Amendment would have its intended effect. The NRC shortened the hunting season without identifying any testable hypothesis through which it could be determined that the amendment has actually worked. In fact, the Coyote Season Amendment does not appear to have any intended biological effect at all—only a “social” or “public perception” one.

Although Mr. Norton also explained that “[t]he proposed change would also make the coyote hunting season more consistent with hunting seasons for most of our other game species,” there is nothing in the record that supports the proposition that all species should be subject to the same hunting seasons. (AR Vol. 1, at 50). Nor is there anything in the record that suggests any scientific reason to subject coyotes—which have been hunted in year-round open seasons for almost a decade without any identified decrease in population—to the same hunting season that is applicable to other species. In fact, the research shows that “coyotes have a higher resilience and

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<sup>15</sup> Jason Daley, “Does Science Really Guide the Way We Manage Wildlife?” *Sierra: The Magazine of the Sierra Club* (Mar. 26, 2018). Available at <https://www.sierraclub.org/sierra/does-science-really-guide-way-we-manage-wildlife>. See also Kyle A. Artelle, et al. “Hallmarks of science missing from North American wildlife management,” *Sci. Adv.* 4, eaao0167 (2018). Available at <https://www.science.org/doi/10.1126/sciadv.aao0167>.

behavioural flexibility, and tend to encounter people, pets and livestock in more diverse and complicated ways than sensitive carnivores (e.g. wolverines, lynx, etc.).” (A.R. Vol. 2, at 235). And the vast majority of other states allow year-round open season for coyote hunting. (AR Vol. 6, at 279-280).

Proposal G demands professional management of Michigan’s natural resources through analysis that resembles the scientific method, not ad hoc guesswork that is not supported by any data.

**C. To the extent that the NRC followed “social science,” it was not following “scientific management” principles.**

There is also some suggestion that the NRC believed that it could follow the science by following “social science.” As the chief of DNR’s Wildlife Division, Sara Thompson, observed, “The real difference to contend with is whether [P]roposal G is only about biological science or whether the intent is to include social science as well.” (AR Vol. 5, at 86).

But as commonly understood by the voters who approved it, “principles of sound scientific management” do not include social science. The commonly understood meaning of the terms of Proposal G require the NRC to engage in “scientific” wildlife management through empirical analysis of biological and environmental consequences. Webster’s Third New International Dictionary 2238.

And even if social science was a legitimate consideration, neither the DNR nor the NRC ever assessed the “social science.” The scientific method was never followed. No voter data was collected; no statistical analysis was performed; no hypotheses were formulated or tested. Instead, the proponents of the Coyote Season

Amendment deployed “social science” as a codeword for their own hunches about what potential voters and special interest groups might be concerned about, years down the road. The NRC cannot end-run Proposal G by claiming that buckling to political pressure and special interest groups amounts to following the principles of “social science.”

Because the NRC failed to comply with its obligations under Proposal G when it adopted the Coyote Season Amendment, the amendment is not authorized by law. *Nw Nat Cas Co*, 231 Mich App at 488. It should be vacated.

### **III. The Coyote Season Amendment is not supported by competent, material, and substantial evidence.**

The Coyote Season Amendment is not supported by substantial evidence, either. “Substantial evidence is that which a reasonable mind would accept as adequate to support a decision, being more than a mere scintilla, but less than a preponderance of the evidence.” *VanZandt v State Employees Retirement Sys*, 266 Mich App 579, 584, 701 NW2d 214 (2005) (quotation marks and citation omitted). “Evidence is competent, material, and substantial if a reasoning mind would accept it as sufficient to support a conclusion.” *City of Romulus v Mich Dep’t of Environmental Quality*, 260 Mich App 54, 63, 678 NW2d 444 (2003).

For the reasons stated above, the available information does not support the Coyote Season Amendment. The NRC was obligated to use scientific management principles “to the greatest extent practicable.” And yet, even though its subject-matter experts, the DNR, did not recommend that the NRC adopt the amendment, the NRC commissioned no scientific analysis of the potential effects of the

amendment, identified no target coyote population that it was attempting to achieve through the amendment, and identified no biological or scientific rationale that was furthered by adopting the amendment. Worryingly, the NRC's flawed process resulted in an outcome that places Michigan far outside the mainstream: In adopting the Coyote Season Amendment, the NRC has adopted a limitation that has been adopted in none of the other 49 states that have coyote populations. (AR Vol. 6, at 279-280).

It is possible that valid scientific reasons exist for adopting some variant of the Coyote Season Amendment. But it is also possible that the amendment—despite its potential intuitive appeal or good intentions—will backfire, just like many other well-intentioned but unscientific natural resources management decisions have in the past.

Either way, the NRC has a statutory obligation to do the scientific analysis that is necessary to support its decision to change the status quo. It did not do so here.

### **Conclusion**

The Court should vacate Wildlife Conservation Order Amendment No. 1 of 2024 to the extent that it amends Wildlife Conservation Order 3.610(1) to close the statewide coyote hunting season between April 15 and July 15. The effect of such a ruling would be a return to the previous version of Wildlife Conservation Order 3.610(1), which permitted a year-round coyote hunting season.

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Dated: September 5, 2024

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**CERTIFICATE OF COMPLIANCE**

1. This brief complies with the type-volume limitations of MCR 7.111(B) and MCR 7.212(B)(1) and (G) because this brief contains 7,647 words. As required under MCR 7.212(B)(2), this statement of countable words includes only the elements of the brief listed in MCR 7.212(C)(6)-(8).

2. Under MCR 7.212(B)(3), this statement of the number of countable words relies on the word count of the word-processing system used to prepare the brief.

  
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STATE OF MICHIGAN  
CIRCUIT COURT FOR THE 30TH JUDICIAL CIRCUIT  
INGHAM COUNTY

MICHIGAN UNITED CONSERVATION CLUBS,

Appellant,

v

No. 24-000225-AA

MICHIGAN NATURAL RESOURCES  
COMMISSION,

HON. WANDA M. STOKES

**PROOF OF SERVICE**

Appellee.

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MICHIGAN TRAPPERS AND PREDATOR  
CALLERS ASSOCIATION, INC.,

No. 24-000427-AA

Appellant,

v

HON. WANDA M. STOKES

MICHIGAN NATURAL RESOURCES  
COMMISSION,

Appellee.

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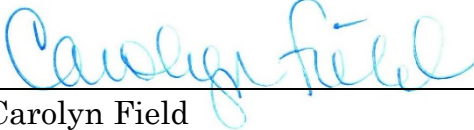
**PROOF OF SERVICE**

Carolyn Field states that she is an employee of Miller Johnson and that on the 5th day of September, 2024, she served a copy of ***Appellant Michigan Trappers and Predator Callers Association, Inc.'s Brief on Appeal*** on:

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