

STATE OF INDIANA        )        IN THE MARION SUPERIOR COURT  
                                  )        CIVIL DIVISION  
COUNTY OF MARION     )

THE ANIMAL LEGAL DEFENSE FUND, )  
INC., JEFF ALTMAN, PROJECT        )  
COYOTE, INC., LAURA NIRENBERG, )  
ANIMAL WELFARE INSTITUTE, INC., )  
JEREMY MAINES and ALICE         )  
ZIMMERMAN,                         )

Plaintiffs,

) CAUSE NO. \_\_\_\_\_  
)  
)

vs.

ROBERT E. CARTER, in his official )  
capacity as Director of the Indiana )  
Department of Natural Resources, )  
Defendant.                         )

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs, by counsel, hereby file their Complaint For Declaratory And Injunctive Relief against Defendant Robert E. Carter, in his official capacity as Director of the Indiana Department of Natural Resources, thus:

Introduction

Defendant Robert E. Carter is now and has since in or about 2006 been the Director of the Indiana Department of Natural Resources (“Carter”, “Director”, “the Department” or “DNR”), having been appointed to that position by and serving at the pleasure of Governor Mitchell E. Daniels, Jr. He has been acting and continues to act without the requisite authority to waive Indiana wildlife-possession-permitting requirements for persons working with and having control over the animals used as live prey in “field trials” at the WCI Foxhound Training Preserve dog training grounds, located near Linton, Greene County, Indiana (“the Pen”, “the Bloody Prey Pen” or “the Death Pen”). Such “trials” involve placing defenseless, scared, wild

animals, usually coyotes and foxes, who were unfortunately often trapped, captured, transported to and released in an enclosed area with dogs-in-training, training to learn to hunt and viciously kill its prey.

DNR has, upon information and belief, a vested interest in the operation of the Pen; that is, DNR is believed-to-be the sole assignee of the assets of the corporation which owns, operates and manages the Pen in the event of a corporate dissolution.

Notwithstanding that conflict of interest, DNR has embarked upon a program to unilaterally alter any and all Indiana wildlife-possession-permitting requirements based upon its absurd and disingenuous interpretation of the rule regarding “possession” of animals. DNR has concluded that placing an animal in any enclosed area (in this case an enclosed area with small and unintentional perforations on and in its exterior fencing) does not constitute “possession” of animals if that area has not been maintained.

In contrast, Indiana law as set forth through its rule-making process defines “possession” as “to have direct physical control or to knowingly have the power and the intention to exercise dominion or control.” 312 IAC §9-1-12.

Defendant Carter’s waivers, as well as his novel and ill-conceived misinterpretation of the law, vitiate the entire Indiana state law scheme of wildlife-possession-permitting. That body of law is vital to protecting Indiana’s wildlife and residents and necessary to preventing the spread of a variety of diseases. Based upon Defendant Carter’s ludicrous misinterpretation, no one in possession of wildlife in the State of Indiana would need a wildlife-possession-permit if the animal holder simply fails to maintain the enclosed area in which the animal at issue is being kept and restrained. That is, ironically by maintaining “clean-hands”, literally, the holder-possessor of the prey can, with a straight-face, assert he, the holder-possessor, does not as a

matter of law “possess” the animal; by not maintaining the enclosed area, the holder-possessor of the animal would not “possess” it.

Wildlife-possession-permitting laws help protect the public and Indiana’s wildlife, by preventing the unlawful taking of wildlife, by controlling the threat that wildlife poses to humans, and by preventing the spread of communicable diseases to both humans and other wildlife. Defendant Carter’s conduct makes it more likely than not that humans and wildlife will be harmed, or infected with communicable diseases, by removing a substantial disincentive to possessing wildlife-possession-permit requirement. As a result of Defendant Carter’s failure and refusal to regulate as required the possession of wildlife, Plaintiffs seek a declaratory judgment that persons who do not have a valid wildlife-possession-permit but who have physical control over or intends to exert dominion and control over the animals used as live prey in “field trials” at the Bloody Prey Pen, are, as the plain language of 312 IAC §9-1-12 evidences, in unlawful possession of Indiana wildlife. Plaintiffs further seek injunctive and equitable relief enjoining the Defendant from unlawfully waiving the permit requirements and to conscientiously enforce all rules regarding the issuance of such permits.

I.  
Parties

1. Plaintiff The Animal Legal Defense Fund, Inc., (“ALDF”), an entity organized and operating under the law of the State of California, is a national, non-profit organization comprised of, *inter alia*, members of the general public dedicated to ensuring that federal and state laws enacted for the benefit of animals are interpreted, administered and enforced by federal and state agencies in a manner consistent with the letter and the spirit of those laws, including those at issue in this cause, to protect animals. ALDF has over 1000 members in Indiana. ALDF undertakes various actions not only for the sake of the animals involved, but on

behalf of its members and other individuals who are directly impacted by the treatment suffered on these animals. As such, ALDF has a legitimate interest in ensuring that Indiana wildlife protection regulations are properly interpreted and appropriately and aggressively enforced.

2. Plaintiff Jeff Altman, (“Altman”), is an adult, a resident of and taxpayer in and to Hamilton County and the State of Indiana, and a member of ALDF.

In addition, Altman belongs to a wildlife rehabilitation organization in Indiana which is negatively impacted by Defendant Carter’s actions. He has a personal interest in the welfare of Indiana’s wildlife. Moreover, Altman has been and is personally injured, aggrieved and adversely affected by the Defendant Carter’s action and inactions.

3. Plaintiff Project Coyote, Inc., (“PC”), is a national non-profit organization that promotes active coexistence between people and wildlife, and compassionate conservation through education, science and advocacy. Project Coyote is a project of Earth Island Institute, an California nonprofit public benefit corporation that sponsors national and international projects. As such, PC has a legitimate interest in ensuring that Indiana wildlife protection regulations are properly interpreted and complied with.

As such, PC is personally injured, aggrieved and adversely affected by Defendant Carter’s actions and inactions.

4. Plaintiff Laura Nirenberg, (“Nirenberg”), is an adult and a member of PC and the Animal Welfare Institute, Inc., is a resident of and a taxpayer in and to La Porte County and the State of Indiana.

Nirenberg is an Indiana state licensed wildlife rehabilitator.

Nirenberg was an Indiana state licensed wildlife animal control officer from in or about 1996 to in or about 2010, and formerly a member of the Nuisance Wildlife Subcommittee of Defendant DNR's Division of Fish and Wildlife.

Nirenberg currently holds wildlife-possession-permits issued by the State of Indiana.

Nirenberg has rescued and rehabilitated , and continues to rescue and rehabilitate, the types of animals in Indiana that are trapped, captured and possessed for use as prey, including coyotes and foxes, in field trials at the Prey Pen. She also rescues and rehabilitates these animals when they escape from dog training grounds or are otherwise released. Defendant Carter's failure to require wildlife-possession-permits makes it more likely than not that more animals of this type will be trapped, injured, escape, and/or otherwise released, thus requiring her care. Also, because of the Defendant Carter's conduct, more animals of the type that Nirenberg works to rescue and rehabilitate will be orphaned, thus requiring her care.

As such, Nirenberg has been and is personally injured, aggrieved and adversely affected by the Defendant Carter's actions and inactions.

5. Plaintiff The Animal Welfare Institute, Inc., ("AWI"), an entity organized and operating under the law of the District of Columbia, is a national, non-profit organization that seeks to alleviate the suffering inflicted on animals by people. It has campaigned for decades to improve the welfare of wildlife and ensure the proper interpretation of, and compliance with, state and federal wildlife protection laws. AWI has a legitimate interest in ensuring that Indiana wildlife protection regulations are properly interpreted and appropriately and aggressively enforced.

As such, AWI is personally injured, aggrieved and adversely affected by the Defendant Carter's actions and inactions.

6. Plaintiff Jeremy Maines, ("Maines"), is an adult and a resident of the State of Florida.

Maines has expended his own time and personal financial resources attempting to ensure that Defendant Carter properly interprets and applies Indiana's permitting requirements, including, but not limited to, filing a formal complaint with the Indiana Public Access Counselor that caused the Defendants to disclose unlawfully withheld public records regarding the Death Pen.

As such, Maines has been and is personally injured, aggrieved and adversely affected by the Defendant Carter's actions and inactions.

7. Plaintiff Alice Zimmerman ("Zimmerman"), is an adult, a resident and taxpayer of and to Greene County and the State of Indiana. She resides in close proximity to the Prey Pen.

Zimmerman has been and is personally injured, aggrieved and adversely affected by the Defendant Carter's conduct, conduct that makes it more likely than not that the type of animals which are trapped and possessed for use and sacrifice as prey, including coyotes and foxes, in field trials, similar to the Prey Pen, will be brought into close proximity to her home for use in such trials. Zimmerman has small pets, and fears for their safety and her own as a result of the Pen's operations. Also, because of her proximity to the Pen, Zimmerman fears and is at increased risk of contracting zoonotic diseases, which are more likely to occur because of the Defendant Carter's actions and inactions.

8. Defendant Robert E. Carter whose office is within the Department of Natural Resources, 402 West Washington Street, Indianapolis, IN 46204, in his official capacity as Director of the Indiana Department of Natural Resources is charged, *inter alia*, with interpreting and enforcing Indiana wildlife regulations, including, but not limited to, 312 IAC §9-3-14.5 (prohibiting the possession of furbearing mammals no more than twenty (20) days after the close of the hunting or trapping season except under certain exceptions), *id.* at §9-11-1 (providing terms by which a

permit for wildlife possession may be had), and *id.* at §9-3-12 (providing terms by which coyotes may be taken and possessed without a permit outside of the hunting and trapping season).

The Defendant Department and the office of Defendant Carter are creatures of statute, IC 14-9-1-1 and 14-9-2-1, with certain enumerated duties and responsibilities e.g. IC 14-22-2-3 and -4, *passim*. The Defendant Department, in accord with IC 14-22-2-3, 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.
- (2) Organize and pursue a program of research and management of wild animals that will serve the best interests of the resources and the people of Indiana.

Further, the Defendant Department is required to adopt rules to, *inter alia*, establish the methods, means and time of taking or attempting to take, chasing, transporting or attempting to transport and selling or attempting to sell wild animals with or without dogs. IC 14-22-2-6(a)(4).

However, a thorough investigation based upon the welfare of the wild animal and the welfare of the people must be made in advance of adopting any rule. IC 14-22-2-6(b). No such “thorough investigation” was conducted.

## II. Facts

9. Plaintiffs incorporate by reference ¶¶ 1 through 8 above as if fully set forth.

10. Prior to the date which at this time is unknown upon which Defendant Carter began to over-ride and countermand the Department’s promulgated rules and procedures regarding wildlife-possession-permits, the issuance of wildlife-possession-permits conformed to the promulgated rules. 312 IAC §§9-3-14.5, 9-11-1.

11. For reasons about which Plaintiffs are ignorant and ill-informed, on a date which at this time is unknown, Defendant Carter initiated and has continued to implement new and different rules on the issue of wildlife-possession-permits.

12. That which Defendant Carter has done and continues to do is without authority and contrary to the promulgated rules.

13. If not enjoined, prohibited and prevented, by this Court, Defendant Carter will continue his unlawful conduct.

14. Upon information and belief, Defendant Carter intends to cease enforcement of “his” rules in or about December, 2011.

15. Defendant Carter has waived and is expressly waiving any wildlife permitting requirements for persons working with and having control over the wildlife used as live prey in the Prey Pen, or who have or have had direct physical control, or knowingly have or have had the power and the intention to exercise dominion or control over such wildlife.

16. Defendant Carter has determined that persons working with animals placed in the Linton dog hunt pen are not in possession of those animals located on its premises due to the existence – of small holes in the preserve’s outer perimeter, and thus that those persons are not in violation of IAC §9- 11- 1 for possessing such wildlife off-season.

17. On or about December 10, 2010, a representative of and speaking for DNR stated:

“[t]he pen in Linton is not currently in violation of the law. As stated previously, anyone who live-traps a coyote or fox during the open trapping season for that animal can keep it alive in any size enclosure and under any condition. Furthermore, the current perimeter fence around this enclosure is not completely escape-proof. At least one or more areas exist along the perimeter fence that would allow a coyote or fox to escape. Since the fence is not completely escape-proof, they are not in violation of the law outside the season.”

18. On or about February 15, 2011, another representative of and speaking for DNR\* stated:

“[b]asically, the existence of holes in the fence at the training preserve you mention create a situation where the coyotes in the enclosure are considered to not be in possession. Coyotes can be run year round. Therefore, coyotes in this non-confining facility can be run year round.”

19. Possession is defined as having “direct physical control or to knowingly have the power and the intention to exercise dominion or control.” 312 IAC §9-1-12. To allow as it relates to any failure to maintain the fence to pierce the intended definition of possession, any enclosure, would be a perversion of the plain and ordinary meaning of those words. Any other reading would allow those inclined to evade the permitting requirement by their own misconduct.

20. Defendant Carter’s actions and inactions are in direct conflict with Indiana Natural Resources Commission (INRC’s) Proposed Rule LSA #11-4, which amends 312 IAC §9-10-7 (governing requirements for field trial permit applications and field trials for coyote and foxes on a dog training ground). That rule would regulate, exclusively, the Bloody Prey Pen, and is premised on the fact that, per the INRC, persons working with and exercising control over wildlife used as prey in the pen are in “possession” of those animals as defined by 312 IAC §9-1-12. If they were not, no rule requiring a field trial permit would be necessary.

21. By determining that the Pen is not in possession of those coyotes and foxes within its perimeter during the off-season, Defendant Carter has failed to discharge his legal duty with respect to interpreting and administering Indiana’s wildlife protection regulations.

22. Without a declaratory judgment against and injunctive relief to restrain, prohibit and prevent Defendant Carter from intentionally misinterpreting and misapplying the law related to

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\* That statement may be attributable to Mark Reiter, Department of Natural Resources, Fish and Wildlife Division.

the Bloody Prey Pen, Plaintiffs will lose the benefits of lawful interpretation and administration of Indiana's wildlife protection regulations, and will continued to be harmed as described above.

23. Plaintiffs therefore require a judicial determination that the term "possession," as it exists in IC §9-1-12, includes controlling and placing wildlife in an enclosure, like the one used for the Bloody Prey Pen, regardless of the failure to maintain that pen.

24. As a result of the foregoing, a judicial declaration is necessary and appropriate at this time so that that Plaintiffs' rights may be vindicated.

### III. Cause of Action

25. Plaintiffs incorporate by reference ¶¶ 1 through 24 above as if fully set forth.

26. An actual case or controversy of a justiciable nature, based upon a flagrant misinterpretation of Indiana law, exists between each of the Plaintiffs and Defendant Carter regarding whether and when wildlife possession permits are required. Each of the Plaintiffs and Defendant Carter have a substantial present interest in the outcome of this matter.

28. A fortiori, with certain exceptions, all wild animals are the property of the people of Indiana, therefore, any damage to wild animals, i.e., the wild animals used as prey at the Prey Pen, is damage to the people of Indiana including Plaintiff ALDF's Indiana members, Plaintiff Altman and Plaintiff Nirenberg.

29. Each of the Plaintiffs requests a judicial declaration pursuant to TR 57 and IC §34-14-1-1, *et seq.*, determining that unpermitted persons working with and having control over the animals used as live prey in "field trials" at the Prey Pen are, as the plain language of 312 IAC §9-1-12 states, in unlawful possession of Indiana wildlife.

IV.  
Relief

WHEREFORE, each of the Plaintiffs prays that this Court will:

1. ENTER a declaratory judgment in favor of the Plaintiffs and against Defendant Carter that (a) the process of adopting the wildlife-possession-permit rules by Defendant Carter was fatally flawed and in violation of the process required in IC 14-22-2-6; and, (b) persons without permits working with and having control over the animals used as live prey in “field trials” at the Prey Pen are, in unlawful possession of Indiana wildlife in violation of 312 IAC §9-1-12;
2. ENTER a preliminary junction to be made permanent enjoining, restraining, prohibiting and preventing the Defendant from unlawfully waiving the permit requirements, and to take other just and appropriate action deemed necessary by the Court;
3. AWARD to Plaintiffs attorney’s fees and costs;
4. GRANT such other and further relief as the court may deem just and proper.

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