In the Missouri Court of Appeals
Eastern District
DIVISION ONE

DONALD HILL, et al,	)	No. ED105042
	)	
Respondents,	)	Appeal from the Circuit Court
	)	of Gasconade County
vs.	)	
	)	Hon. Robert D. Schollmeyer
MISSOURI DEPARTMENT OF	)	
CONSERVATION, et al.,	)	
	)	Filed: October 10, 2017
Appellants.	)	

The Missouri Conservation Commission ("the Commission"), its individual members, James Blair, David Murphy, Marilynn Bradford and Don Bedell, and the Missouri Department of Conservation (collectively "Appellants") appeal from the judgment entered in favor of Donald Hill, Travis Broadway, Oak Creek Whitetail Ranch, LLC, Winter Quarters Wildlife Ranch, LLC, Kevin Grace and White Tail Sales and Service, LLC, (collectively "Respondents") enjoining enforcement of amended regulations enacted by the Commission pertaining to the importation and possession of deer, which took effect in January of 2015. We would reverse the judgment of the trial court. However, because of the general interest and importance of the questions involved here, we transfer this case to the Missouri Supreme Court under Rule 83.02.

The Commission, a constitutional entity, was created by Missouri voters through a ballot initiative in 1936, which vested the Commission with authority over the "control, management, restoration, conservation and regulation of the bird, fish, game, forestry and all wildlife resources of the state, including hatcheries, sanctuaries, refuges, reservations and all other property owned,

acquired or used for such purposes and the acquisition and establishment thereof, and the administration of all laws pertaining thereto." MO. CONST. art. IV, § 40(a). The Commission now acts through the Missouri Department of Conservation. *See* Section 252.002.

Among the wildlife the Commission regulates are elk and white-tailed deer, which are native to Missouri. Both species are in the family *cervidae*, commonly known as cervids. Respondents participate in Missouri's captive cervid industry, which relies on two main types of activities: (a) selective breeding of cervids for desirable genetic traits like large antler racks and (b) the operation of private hunting preserves, where hunters pay thousands of dollars to hunt and take trophy bucks. Respondents rely on an interstate market in captive cervids to obtain the animals they need for their breeding operations and to meet demands for hunting on their preserves.

Respondent, Donald Hill, is the co-owner of Oak Creek Whitetail Ranch, a 1,300-acre hunting preserve and white-tailed deer breeding operation, and Respondent, Travis Broadway, is the owner of Winter Quarters Wildlife Ranch, a 3,000-acre hunting preserve and luxury lodge. Respondent, Kevin Grace, runs a breeding facility for white-tailed deer, sika and red deer. He also brokers deals between breeders and hunting preserves and presides over captive cervid auctions each year.

Chronic Wasting Disease ("CWD") is a fatal neurodegenerative disease infecting cervids. It is spread directly through animal-to-animal contact as well as indirectly through environmental contamination. CWD was first detected in Missouri in February 2010 at Heartland Wildlife Ranches ("Heartland"). There is no method approved by the United States Department of Agriculture for testing cervids for CWD while they are still alive. The approved test must be performed post-mortem. CWD also has an incubation period of eighteen months, meaning a cervid can be CWD-positive for a period of time without showing any signs of the disease.

In an effort to manage the continued threat of CWD, the Commission proposed a series of amended regulations, which went into effect January 2015 and were directed at Missouri's captive cervid industry. The industry had been subject to previous unchallenged regulation by the Commission. Respondents filed the present action against Appellants challenging these amended regulations and seeking to enjoin Appellants from enforcing them. Respondents claim that because their captive cervids were not "game" or "wildlife resources of the state" under Article IV, Section 40(a) of the Missouri Constitution, the Commission did not have the constitutional authority to regulate Respondents' cervids. Respondents also claim the amended regulations interfere with their fundamental right to farm. The specific amended regulations that Respondents challenged include the following:

1. 3 CSR 10-4.110(1), prohibiting the possession of wildlife except as permitted by the Commission's regulations and clarifying that it applied to "wildlife raised or held in captivity";

2. 3 CSR 10-9.220(2), designating all white-tailed deer, white-tailed deer hybrids, mule deer and mule deer hybrids in the state, without regard for ownership or captivity, as "Class I Wildlife" and imposing fencing and confinements requirements;

3. 3 CSR 10-9.220(3), imposing new fencing and confinement requirements for facilities that hold cervids;

4. 3 CSR 10-9.353 and 3 CSR 10-9.359, imposing a variety of permitting, record-keeping and reporting requirements on breeding cervids;

5. 3 CSR 10-9.565(1)(B) and 3 CSR 10-9.566: imposing comparable veterinary-testing, record-keeping and reporting requirements on hunting preserves;

6. 3 CSR 10-9.353(2), (9) and 3 CSR 10-9.565(1)(B)(9), prohibiting out-of-state cervids from being shipped to breeding facilities or held on hunting preserves ("Only cervids born inside the state of Missouri may be propagated, held in captivity, and hunted on big game hunting preserves.").

After issuing a preliminary injunction, the trial court held a hearing on the full merits of Respondents' claims. Following that hearing, the trial court declared all the challenged amended

regulations to be invalid pursuant to Section 536.050.1[1] and prohibited the Commission from directly or indirectly relying on or enforcing them. The trial court, however, specifically allowed the Commission to rely on and enforce the regulations as they existed prior to the January 2015 amendments.

The trial court addressed Article IV, Section 40(a) of the Missouri Constitution, which vests in the Commission the "control, management, restoration, conservation and regulation of the bird, fish, game, forestry and all wildlife resources of the state . . . ." The trial court found that the evidence showed that the Respondents' cervids were not "game . . . [or] wildlife resources of the state" but were privately owned by Respondents and that Appellants therefore "have not been granted valid rulemaking authority on this subject." In addition, the trial court found that Respondents and others affected by the regulations at issue were allowed both to import "white-tailed deer, white-tailed deer hybrids, [and] mule-deer hybrids" into Missouri and to hold live cervids imported into Missouri in licensed big game hunting preserves, subject to existing regulations by the Missouri Department of Agriculture or any other relevant state or federal regulations not challenged in the present case, including the Commission's regulations as they existed prior to the January 2015 amendments.

The trial court found that if the amended regulations were enforced, Respondents "would suffer irreparable harm in the form of lost business, loss of customer goodwill, and being subject to unauthorized enforcement activities in a manner that intrudes upon their property rights." The trial court also noted: the regulations had been under development for years, the prevalence of

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[1] Section 536.050.1 provides:

> The power of the courts of this state to render declaratory judgments shall extend to declaratory judgments respecting the validity of rules, or of threatened applications thereof, and such suits may be maintained against agencies whether or not the plaintiff has first requested the agency to pass upon the question presented. . . .

CWD in Missouri remains extremely low, the Commission is managing CWD through measures shown to stabilize its prevalence in other states, no mass mortalities attributed to CWD have occurred since the amended regulations were proposed, there have been no new CWD-positive tests in captive preserves in the previous five years and CWD has had no impact on hunting patterns in Missouri since it was first detected, except in some target areas. The trial court also noted that captive cervids pose less of a risk to the spread of CWD outside their captive preserves, and the state has a better ability to respond to a CWD-positive cervid in a captive preserve because the cervids are enclosed.

The trial court further found that Respondents are engaged in "farming and ranching" practices protected by the Missouri Constitution. In particular, the trial court noted that Respondents' activities, including "acquiring, keeping, feeding and caring for herds of cervids," breeding the cervids for desired traits and building and maintaining appropriate fencing and other facilities to contain the cervids, fall within the plain and ordinary meaning of "farming and ranching" practices. The trial court further found: the amended regulations substantially burden Respondents' right to farm and ranch by eliminating the interstate market for captive cervids and causing Respondents to potentially incur hundreds of thousands of dollars to comply with the amended fencing regulations. The trial court noted that Respondents face the possibility of the cancellation of scheduled hunts and an inability to meet their customers' demand for both breeding and hunting events if they are unable to import cervids from outside the state. The trial court concluded that because the amended regulations would significantly impact Respondents' right to farm and ranch, the amended regulations were subject to strict scrutiny.

The trial court found the amended regulations are not narrowly tailored, and therefore, do not survive strict scrutiny. The trial court also concluded: the importation ban is not narrowly

tailored and is "patently both over-inclusive and under-inclusive." It is over-inclusive because it prohibits importation of healthy cervids under a separate United States Department of Agriculture program, and it is under-inclusive in that the Commission claims that eliminating interstate movement of cervids is essential to managing CWD but the Commission itself also recently imported elk, which are also cervids. The trial court found that historically an "extraordinarily small percentage" of cervids shipped from CWD-certified herds were later found to be CWD-positive.

As for the amended regulations related to fencing, the trial court noted the previous version of the regulations included fencing standards for these captive preserves. The trial court found that because the Commission suggested that a variance to the amended fencing regulations could be granted, the amended regulations could not be considered strictly necessary to achieve a compelling state interest. In addition, the trial court found the amended fencing regulations are not narrowly tailored because they are not based on documentation of any existing problems that would be ameliorated by the amended regulations.

The trial court also awarded Respondents reasonable fees and expenses. This appeal follows.

In Point I, Appellants claim the trial court erred in entering judgment for Respondents on their claim that the regulations are unauthorized and contrary to Missouri law because captive cervids are "game" and "wildlife resources of the state" under the Missouri Constitution and the Commission has authority to enact regulations concerning captive cervids because they can pass CWD and other disease to Missouri's free-ranging cervids. In Point II, Appellant's claim the trial court erred in entering judgment for Respondents on their claim that the regulations violated their right to farm because (a) the right to farm is subject to the Commission's constitutional powers,

(b) the Respondents are not engaged in farming or ranching practices, (c) the court gave insufficient weight to the Commission's constitutional authority, (d) the challenged regulations do not heavily burden any right to farm the Respondents may have, (e) the challenged regulations are rationally related to a legitimate state interest and (f) the challenged regulations are narrowly tailored to achieve a compelling state interest. In Point III, Appellants claim, in the alternative, that the trial court erred in enjoining enforcement of the regulations, under Respondents' right to farm claim, as to all persons because the injunction is overbroad and void as to non-parties.

We review a declaratory judgment under principles set forth in *Murphy v. Carron*, 536 S.W.2d 30, 32 (Mo. banc 1976). *Motor Control Specialties v. Labor and Indus. Relations Comm'n*, 323 S.W.3d 843, 849 (Mo. App. W.D. 2010). We will affirm the judgment in a court-tried civil case "unless there is no substantial evidence to support it, it is against the weight of the evidence, or it erroneously declares or applies the law." *Pearson v. Koster*, 367 S.W.3d 36, 43 (Mo. banc 2012) (citing Murphy v. Carron, 536 S.W.2d 30, 32 (Mo. banc 1976)). Questions of law are reviewed de novo, and we give no deference to the trial court's legal conclusions. *Motor Control Specialties*, 323 S.W.3d at 849. "The circuit court's interpretation of the Missouri Constitution is reviewed de novo." *Swallow Tail, LLC*, 2017 WL 892549 at *3 (internal quotation marks omitted). We also apply de novo review to regulations. *Turner v. Mo. Dep't of Conservation*, 349 S.W.3d 434, 442 (Mo. App. S.D. 2011).

"Properly promulgated agency rules and regulations have the same force and effect as statutes," and "[t]he party challenging the validity of a statute bears the burden of proving the statute is unconstitutional." *Id.* (internal quotations omitted); *see also Miller v. City of Manchester*, 834 S.W.2d 904, 907 (Mo. App. E.D. 1992) (resolving conflict between an ordinance and a Commission regulation by applying the same principles that govern conflicts between ordinances

and statutes because "[r]ules duly promulgated pursuant to properly delegated authority have the same force and effect of law"). Accordingly, Respondent bears the burden of proving the amended regulations here are unconstitutional.

Missouri courts have held that administrative agencies enjoy no more authority than that granted by statute. *Termini v. Missouri Gaming Comm'n*, 921 S.W.2d 159, 161 (Mo. App. W.D. 1996); *Dishon v. Rice*, 861 S.W.2d 126, 128 (Mo. App. E.D. 1994); *Hearst Corp. v. Director of Revenue*, 779 S.W.2d 557, 558-59 (Mo. banc 1989). "Regulations may be promulgated only to the extent and within the delegated authority of the statute involved." *Termini*, 921 S.W.2d at 161. "An administrative agency cannot infer power from the statute simply because that power would facilitate the accomplishment of an end deemed beneficial." *Dishon*, 861 S.W.2d at 128. While the authority here is granted by constitutional amendment and not statute, we find the same law applies such that the Commission's regulations may be promulgated only to the extent and within the authority delegated by the constitutional amendment at issue. "Erroneous regulations are a nullity." *Hearst Corp.*, 779 S.W.2d at 559; *see also Pen-Yan Inv., Inc. v. Boyd Kansas City, Inc.*, 952 S.W.2d 299, 304 (Mo. App. W.D. 1997) ("Regulations which exceed the authority granted the promulgating agency are null and void.").

In their first claim, Appellants allege the trial court erroneously declared and applied the law in that captive cervids are "game" and "wildlife resources of the state" under the Missouri Constitution and the Commission has authority to enact regulations concerning captive cervids because they can pass CWD and other diseases to Missouri's free-ranging cervids. Specifically, Appellants argue that the trial court erred in concluding that privately owned animals are not "game" or "wildlife" and that privately owned wildlife is not a "resource of the state" under the Missouri Constitution.

The Commission's authority to enact the regulations at issue here is derived from the Missouri Constitution, Article IV, Section 40(a), which provides:

> The control, management, restoration, conservation and regulation of the bird, fish, game, forestry and all wildlife resources of the state, including hatcheries, sanctuaries, refuges, reservations and all other property owned, acquired or used for such purposes and the acquisition and establishment thereof, and the administration of all laws pertaining thereto, shall be vested in a conservation commission . . . .

Appellants claim that Respondents' captive cervids are "game" and "wildlife resources of the state" such that they are subject to regulation by the Commission pursuant to this constitutional amendment.

"Rules applicable to constitutional construction are the same as those applied to statutory construction, except that the former are given a broader construction, due to their more permanent character." *Boone County Court v. State*, 631 S.W.2d 321, 324 (Mo. banc 1982) (superseded by statute on other grounds); *see also De Mere v. Mo. State Highway and Transp. Comm'n*, 876 S.W.2d 652, 655 (Mo. App. W.D. 1994) (noting that to determine the intent and purpose of constitutional provisions, "the construction should be broad and liberal rather than technical, and the constitutional provision should receive a broader and more liberal construction than the statutes"). "The fundamental rule of constitutional construction is that courts must give effect to the intent of the people adopting the amendment." *Pestka v. State*, 493 S.W.3d 405, 411 (Mo. banc 2016). "The meaning conveyed to the voters is presumptively equated with the ordinary and usual meaning given thereto." *Boone County Court*, 631 S.W.2d at 324. The ordinary and usual meaning is derived from the dictionary. *Id.* "The grammatical order and selection of the associated words as arranged by the drafters is also indicative of the natural significance of the words employed." *Id.*

Accordingly, to determine whether the regulations here are authorized by the Missouri Constitution, we must look to the intent of the voters who adopted the constitutional amendment. We must determine the meaning conveyed to them, which is presumptively the ordinary and usual meaning given to the language in the amendment, and to determine the ordinary and usual meaning, we look to the dictionary. We must determine what the amendment authorizes the Commission to control, manage, restore, conserve and regulate. In particular, we must determine what is meant by "the bird, fish, game, forestry and all wildlife resources of the state . . . ."

While the parties look to case law beyond the context of Section 40(a) as well as language from Missouri statutes and Department of Agriculture regulations to interpret the language of Section 40(a), we are concerned with the dictionary definitions, as indications of the ordinary and usual meanings of the words. Specifically, if we assume that Respondents' captive cervids are "game" under the amendment, we must determine if the voters intended the amendment to require the cervids to also be "resources of the state" in order to be regulated by the Commission. If we conclude the amendment creates such a requirement, we must determine whether Respondents' captive cervids are in fact "resources of the state."

While we recognize that "game" can generally mean "[a]n animal or animals under pursuit or taken in hunting," *Webster's New International Dictionary* 1030 (1952),[2] without regard to ownership or captivity of the animals so as to include Respondents' captive cervids, the entirety of the language in Section 40(a) requires that we interpret "game" to modify "resources of the

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[2] Among the most applicable definitions of "game" in *Webster's New International Dictionary* are: "[s]port in the hunting field," "[a]n animal or animals under pursuit or taken in hunting: quarry; in a collective sense, the various animals (chiefly birds and mammals) which are considered worthy of pursuit by sportsmen," "[a] kept heard or flock of such animals" or "[t]he flesh of any game mammal or game bird considered as an article of food." *Webster's New International Dictionary* 1030 (1952).

state." Thus, in order for the Commission to have authority to regulate Respondents' captive cervids, they must qualify as "game resources of the state."

We base this conclusion partially on the word "the" that precedes the word "bird" in the phrase, "the bird, fish, game, forestry and all wildlife resources of the state . . . ." Applying the rules of statutory construction to constitutional construction here, we recognize that every word, clause, sentence, and provision must have effect. *See Saint Charles County v. Dir. of Revenue*, 407 S.W.3d 576, 578 (Mo. banc 2013) (internal quotations omitted); *see also Boone County Court*, 631 S.W.2d at 324. Without the "the" preceding "bird," we could read the following as independent elements of a series of items the Commission is authorized to regulate: "bird," "fish," "game," "forestry" and "all wildlife resources of the state." However, using the definite article "the" limits the elements of the series and requires they be read in conjunction with subsequent language, namely, "resources of the state." *See Russell v. Terminal R.R. Ass'n of St. Louis*, 501 S.W.2d 843, 849 (Mo. banc 1973) (Seiler, J., dissenting opinion) ("Use of the definite article 'the' limits 'occurrence' to a specific, particular, single occurrence. It does not permit several occurrences or a combination thereof."); *Hopkins v. State*, 802 S.W.2d 956, 957-58 (Mo. App. W.D. 1991) (noting the "use of the definite article 'the', as opposed to the indefinite article 'a', denotes the particular judgment or the particular sentence which resulted from a felony conviction on a guilty plea and delivery to custody").

In addition, we find the singular use of the word "bird" rather that the plural "birds" following "the" to indicate that the elements of the series modify "resources of the state" and do not constitute independent elements of the series. The amendment does not give broad authority to regulate "the birds." The authority to regulate "the bird" only makes sense if read in conjunction with subsequent language in the phrase, namely, "resources of the state."

In other words, we read Section 40(a) as authorizing the Commission to:

- control, manage, restore, conserve and regulate the bird resources of the state,
- control, manage, restore, conserve and regulate the fish resources of the state,
- control, manage, restore, conserve and regulate the game resources of the state,
- control, manage, restore, conserve and regulate the forestry resources of the state and
- control, manage, restore, conserve and regulate all wildlife resources of the state.

The alternative construction would result in concluding that the Commission has the authority to:

- control, manage, restore conserve and regulate the bird,
- control, manage, restore, conserve and regulate the fish,
- control, manage, restore, conserve and regulate the game,
- control, manage, restore, conserve and regulate the forestry and
- control, manage, restore, conserve and regulate all wildlife resources of the state.

This reading is illogical.

Based upon our construction here, we must determine whether Respondents' captive cervids are "resources of the state." To do so, we must determine the meaning of these terms conveyed to the voters who adopted Section 40(a), which is presumptively the ordinary and usual meaning given to these terms. As previously indicated, to determine the ordinary and usual meaning of this language, we look to the dictionary. *Webster's New International Dictionary* defines "resources" as "[a]vailable means as of a country or business; computable wealth in money, property, products, etc.; immediate and possible sources of revenue; as, America's rich natural *resources* . . . ." *Webster's New International Dictionary* 2122 (1952) (emphasis in original).[3] We find cervids, whether captive or free-ranging, to be resources of the state in that

[3] While *Webster's New International Dictionary* defines "resource" or "resources" in other ways, these are the definitions we find most applicable to the language of Section 40(a). *Webster's New International Dictionary* 2122 (1952).

they are "available means" of the state. *See id.* They are considered "available means" of the state or "computable wealth" in that they are "products" of the state. *See id.* Just as this dictionary definition provides the example of "America's rich natural *resources*," we find cervids, whether captive or free-ranging, to be among Missouri's natural resources. *See id.* (emphasis in original). We agree with Appellants' suggestion that in the same way coal, minerals or oil are, in common parlance, resources of a state, regardless of ownership, Respondents' captive cervids are resources of the state of Missouri. Accordingly, we would find Respondents' captive cervids to be "game resources of the state," and as such, subject to regulation by the Commission.

"[I]n arriving at the intent and purpose[,] the construction should be broad and liberal rather than technical, and the constitutional provision should receive a broader and more liberal construction than statutes." *State Highway Comm'n v. Spainhower*, 504 S.W.2d 121, 125 (Mo. 1973). This is because "a constitution is expected to be effective over a longer period of time, and its method of revision or amendment is more cumbersome than the legislative process." *Rathjen v. Reorganized Sch. Dist. R-II of Shelby County*, 284 S.W.2d 516, 530 (Mo. banc 1955). Here, our "broad and liberal rather than technical" construction of the amendment is consistent with the language of Section 40(a), which indicates an intent to restore and conserve the game and wildlife resources of the state.

Regardless of whether the Commission has authority to regulate captive cervids, it undoubtedly has authority to regulate free-ranging cervids which are both "game resources of the state" and "wildlife resources of the state." Given the highly communicable nature of CWD in that it can be spread both directly and indirectly through environmental contamination, the Commission's efforts to restore and conserve free-ranging cervids would be threatened without the authority to regulate all cervids capable of infecting free-ranging cervids with this fatal disease.

We would find the Commission's authority to regulate free-ranging cervids, therefore, to include the authority to regulate importation and possession of other cervids, which could pose a serious and fatal threat to those free-ranging cervids.

Point I would be granted. However, we transfer this case to the Missouri Supreme Court under Rule 83.02 because of the general interest and importance of the questions involved.

In Point II, Appellant's claim the trial court erred in entering judgment for Respondents on their claim that the regulations violated their right to farm because (a) the right to farm is subject to the Commission's constitutional powers, (b) the Respondents are not engaged in farming or ranching practices, (c) the court gave insufficient weight to the Commission's constitutional authority, (d) the challenged regulations do not heavily burden any right to farm the Respondents may have, (e) the challenged regulations are rationally related to a legitimate state interest and (f) the challenged regulations are narrowly tailored to achieve a compelling state interest. We would find that the "right to farm" amendment to the Missouri Constitution, Article I, Section 35, was not intended to protect Respondents here and that the challenged regulations are rationally related to a legitimate state interest such that they do not create a constitutional violation.

Because agency rules and regulations have the same force as statutes, *Turner*, 349 S.W.3d at 442, we analyze the constitutionality of the challenged regulations here as courts analyze the constitutionality of a challenged statute. The first step is to determine whether the challenged law "implicates a suspect class or impinges upon a fundamental right explicitly or implicitly protected by the Constitution." *Weinschenk v. State*, 203 S.W.3d 201, 210 (Mo. banc 2006). "If so, the classification is subject to strict scrutiny." *Id.* at 211 (internal quotation marks omitted). If not, we apply a rational basis review "to determine whether the challenged law is rationally related to some legitimate end." *Amick v. Dir. of Revenue*, 428 S.W.3d 638, 640 (Mo. banc 2014). The

second step requires us to apply the appropriate level of scrutiny to the challenged regulation. *See id.*

The challenged regulations here do not implicate a suspect class since they do not classify "on the basis of race, national origin, gender or any other arbitrary personal characteristic." *Id.* Respondents assert the regulations are subject to strict scrutiny because they impinge upon their fundamental rights. "The fundamental rights requiring strict scrutiny are the right to interstate travel, to vote, free speech, and other rights explicitly or implicitly guaranteed by the constitution." *Labrayere v. Bohr Farms, LLC*, 458 S.W.3d 319, 331-32 (Mo. banc 2015). Respondents claim the challenged regulations violate their right to farm, which is guaranteed by Article I, Section 35 of the Missouri Constitution. This Section provides:

> That agriculture which provides food, energy, health benefits, and security is the foundation and stabilizing force of Missouri's economy. To protect this vital sector of Missouri's economy, the right of farmers and ranchers to engage in farming and ranching practices shall be forever guaranteed in this state, subject to duly authorized powers, if any, conferred by article VI of the Constitution of Missouri.

As previously noted, "The fundamental rule of constitutional construction is that courts must give effect to the intent of the people adopting the amendment." *Pestka*, 493 S.W.3d 405, 411 (Mo. banc 2016). While there could be some ambiguity as to whether Respondents' activities are considered "farming" or "ranching" under Article I, Section 35, since cervids are not traditional farm or ranch animals and Respondents' activities are not all traditional "farming' or "ranching" practices, language within the amendment itself provides us with a clear indication of the intent behind the provision, and we must give effect to that intent. The first phrase of the amendment provides, "That agriculture which provides food, energy, health benefits, and security is the foundation and stabilizing force of Missouri's economy." MO. CONST., ART. 1, § 35. This

amendment was enacted to protect the "vital sector of Missouri's economy" that provides "food, energy, health benefits or security." *Id.* Neither selective breeding of cervids for desirable genetic traits nor the operation of private hunting preserves, where hunters pay thousands of dollars to hunt and kill trophy bucks, provides "food, energy, health benefits or security." *See id.* Even under our broader constitutional construction, given the intent of this amendment as clearly indicated by its introductory language, we would not find the amendment was intended to protect Respondents here.

Because we would find no fundamental right applies with respect to the challenged regulations and they do not draw a distinction on the basis of a suspect classification, we would "apply a rational basis review to determine whether the challenged law is rationally related to some legitimate end." *Amick*, 428 S.W.3d at 640. "[R]ational-basis review requires the challenger to show that the law is wholly irrational." *Id.* (internal quotation marks omitted). Under the rational relationship standard, plaintiff bears the burden to prove that the challenged regulation is irrational and must negate "every conceivable basis upon which the rule may be justified." *Id.* at 641 (noting the burden is on the party attacking the legislative arrangement to negate "every conceivable basis which might support it"). When a court reviews a regulation, "if there is any reasonable basis upon which it may constitutionally rest," the court must assume the body enacting the regulation was aware of such facts and passed the regulation pursuant thereto. *Gray v. City of Florissant*, 488 S.W.2d 722, 725 (Mo. App. E.D. 1979).[4]

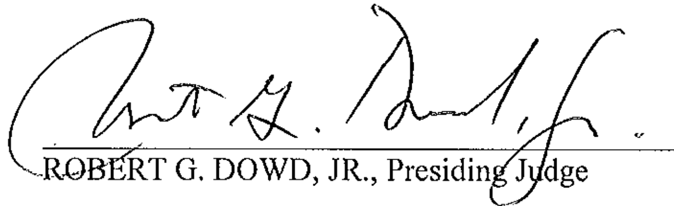
[4] In *Gray*, this Court analyzed the constitutionality of a rule contained in the Manual of Policies and Procedures of the Florissant Police Department setting certain weight requirements for its police officers. *Gray*, 588 S.W.2d at 725. This Court noted the "distinction between those cases involving irrebuttable presumptions impinging upon fundamental rights pertaining to matters of marriage and family life and those wherein legislative choices concerning matters of economics, business and social policy were involved." *Id.* Where cases involve "matters of economics, business and social policy," "the standard of review was whether the regulation in question bore any rational relationship to a legitimate legislative goal" and not "a more exacting scrutiny." *Id.* Because the present case involves matters of economics and business given the business activities Respondents' claim are threatened by the amended regulations, the regulations are subject to rational basis review and not a more exacting scrutiny.

Here, the Commission has a legitimate interest in protecting its wildlife resources, and as previously discussed, CWD is a serious and fatal threat to the cervids of the state. The fact that the disease can be spread both through animal-to-animal contact as well as indirectly through environmental contamination, regardless of whether the cervids involved are free-ranging or captive, adds to the concern over the disease and devastation it can cause. There is no way to test a living cervid for CWD, and the disease's eighteen-month incubation period means a cervid can be infected and potentially contaminate the environment or other animals for a period of time before showing any signs of the disease.

The importation ban, the increased fencing standards and record-keeping and veterinary requirements contained in the challenged regulations are rational means of dealing with the directly and indirectly communicable and fatal threat of CWD. As such, the regulations rationally relate to conceivable, legitimate regulatory goals of protecting the wildlife resources of the state. The importation ban is a rational means of reducing the risk of further spread of CWD into Missouri, especially into hunting preserves where cervid populations are more concentrated. The fencing standards are also a rational means of reducing the risk of any spread of CWD between captive cervids and the free-ranging cervids outside the fences forming the boundaries of captivity. The trial court's judgment does not specifically address the record-keeping and veterinary requirements in the amended regulations, and Respondents have otherwise failed to establish that they are irrational.

We would find Respondents have failed to show that any of the challenged regulations are "wholly irrational." We would find they have not met their burden to negate every conceivable basis upon which these regulations may be justified and have, therefore, failed to establish that the challenged regulations violated their constitutional rights.

Point II would be granted, and we would reverse the judgment of the trial court and find the amended regulations challenged herein to be valid and enforceable. However, we transfer this case to the Missouri Supreme Court under Rule 83.02 because of the general interest and importance of the questions involved. Because we would grant Points I and II, we need not address Point III.



ROBERT G. DOWD, JR., Presiding Judge

Sherri B. Sullivan, J. and
Kurt S. Odenwald, J., concur.