Summary of SC96739, *Donald Hill, et al. v. Missouri Department of Conservation, et al.*
Appeal from the Gasconade County circuit court, Judge Robert Schollmeyer
Argued and submitted January 10, 2018; opinion issued July 3, 2018

Attorneys: The commission was represented by William Ray Price Jr., J. Kent Lowrey, Jeffery T. McPherson, Alexander C. Barrett and Paul Louis Brusati of Armstrong Teasdale LLP in St. Louis, (314) 621-5070; and the industry participants were represented by Jean Paul Bradshaw II, John A. (Jay) Felton, J. Eric Weslander, Rachel E. Stephens and Kurt U. Shchaefer of Lathrop & Gage LLP in Kansas City, (816) 292-2000.

This summary is not part of the opinion of the Court. It has been prepared by communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: The state's conservation commission, its members and the conservation department (collectively, the commission) appeal the circuit court's judgment declaring invalid certain regulations governing the "captive cervid industry" and enjoining the commission from enforcing the regulations. In a unanimous decision written by Judge Paul C. Wilson, the Supreme Court of Missouri reverses the judgment and enters judgment in the commission's favor. Under the state constitution, the terms "game" and "wildlife" are unambiguous, the commission has authority to regulate captive cervids as "game" and "wildlife," and the captive cervids owned by the industry participants here are subject to such regulation. Further, the industry participants failed to show they are protected by the state constitution's right to farm.

Facts: Under article IV, section 40(a) of the state constitution, the state's conservation commission regulates the state's bird, fish, game, forestry and wildlife resources. Acting through the state's conservation department, the commission regulates a variety of animal species, including elk and deer, which are of a family of species called "cervids." Participants in a "captive cervid industry" typically engage in selective breeding of cervids and operating private hunting preserves. Cervids can be infected with a fatal neurodegenerative disease known as chronic wasting disease, which first was detected in Missouri in 2010 on a ranch now known as Winter Quarters Wildlife Ranch LLC. Since then, the disease – which has an incubation period of 18 months and can go undetected long before the infected animal shows any symptoms – has been detected, post-mortem, in additional deer in Missouri. In an attempt to eradicate the disease, the commission proposed a series of regulatory amendments, to take effect in January 2015, directed at the captive cervid industry. To prevent the regulations from taking effect, several industry participants – Donald Hill and Oak Creek Whitetail Ranch LLC, Travis Broadway and Winter Quarters Wildlife Ranch, and Kevin Grace and Whitetail Sales and Service LLC – sued the commission. Following a trial, the circuit court declared the challenged regulations were invalid and enjoined the commission from enforcing them. The commission appeals.

REVERSED.

Court en banc holds: (1) The terms "game" and "wildlife" as used in article IV, section 40(a) are unambiguous, and the commission has authority under that constitutional provision to regulate captive cervids as "game" and "wildlife." In context, the term "wildlife" plainly

includes all species that are wild by nature. The industry participants' reading of the terms are unreasonable because they would have the commission's authority be determined not on a rational species-by-species basis but on an unworkable animal-by-animal basis. Under their definition, the commission's authority somehow would evaporate at some unexplained point at which an individual cervid might qualify as domesticated. Even if the terms were ambiguous, the history and context of article IV, section 40(a) strongly support the plain meaning of "wildlife" and "game." Captive or domesticated cervid operations similar to those owned by the industry participants here existed in Missouri since at least the early 1900s – long before the constitutional provision was adopted in 1936 – and those operations were regulated under statutes expressly including cervids as "game" and "wildlife" even if they were domesticated or raised in captivity. This Court must presume the voters were aware of and accounted for this common use when they adopted article IV, section 40(a). After voters adopted the provision, the commission began to regulate captive cervid operations and, in 1941, adopted a code of regulations explaining that deer and elk – whether free or confined, wild or domesticated – are "game" and "wildlife." The legislature subsequently adopted a definition of "wildlife" substantially similar to that used in federal law, which includes an animal as "wildlife" if the species to which the animal belongs is "wild," regardless of whether an individual animal within such a species is raised and domesticated in captivity.

(2) The captive cervids owned by the industry participants here are subject to regulation by the commission under article IV, section 40(a) because they are members of a species considered "wildlife," they are members of a species considered "game" and, even though they are owned privately, they are physically located within the state's borders and, therefore, are "resources of the state." As noted above, the commission's regulations under article IV, section 40(a) always have regulated captive deer and elk owned by private parties. The phrase "resources of the state" plainly and unambiguously refers to resources inside the state's territory or geographical boundaries. When Missouri voters approved the constitutional provisions creating the commission and authorizing it to regulate the game and wildlife "resources of the state," they understood this authority would extend to resources throughout the state and not just those actually owned by the state.

(3) The industry participants failed to show they are engaged in a "farming [or] ranching practice" within the meaning of the state constitution's "right to farm" in article I, section 35 and, therefore, cannot invoke this guarantee. Captive cervid operations such as those operated by the industry participants have been regulated closely for nearly a century, first by statute and later by regulations the commission adopted under article IV, section 40(a). The Court cannot conclude voters intended to overthrow this longstanding regulatory pattern when they adopted article I, section 35 in 2014 when there is no language in this provision to suggest they did so.