

MONTANA TENTH JUDICIAL DISTRICT COURT, FERGUS COUNTY

UNITED PROPERTY OWNERS OF
MONTANA, INC., a Montana non-
profit corporation,

Plaintiff,

vs.

MONTANA FISH AND WILDLIFE
COMMISSION and MONTANA
DEPARTMENT OF FISH, WILDLIFE &
PARKS,

Defendants,

and

MONTANA WILDLIFE FEDERATION,
MONTANA BACKCOUNTRY HUNTERS
AND ANGLERS, MONTANA
BOWHUNTERS ASSOCIATION,
HELLGATE HUNTERS AND
ANGLERS, HELENA HUNTERS AND
ANGLERS, SKYLINE SPORTSMEN'S
ASSOCIATION, AND PUBLIC LAND
AND WATER ACCESS ASSOCIATION,
Intervenors.

Cause No.: DV-14-2022-0000036-DK

Judge: Gregory R. Todd

**AMENDED ORDER
REGARDING COUNT IV**

Count IV of the First Amended Complaint sought a Declaratory Judgment that Mont. Code Ann. § 87-1-301(1)(a) was unconstitutional (Dkt. #13). Plaintiff United Property Owners of Montana, Inc. (UPOM) filed a Motion and Brief seeking Partial Summary Judgment on August 8, 2022 (Dkt. #2021).

Defendants, Montana Fish and Wildlife Commission and Montana Department of Fish, Wildlife and Parks (FWP) filed a Cross Motion for Summary Judgment on November 18, 2022 (Dkt. #31). Intervenor filed a Response to UPOM's Motion (Dkt. #32) and a Notice of Joinder supporting FWP's Cross Motion for Summary Judgment (Dkt. #37). UPOM replied to its own Motion and responded to FWP's Cross Motion in Dkt. #40. FWP replied in Dkt. #46.

On February 3, 2023, Judge Perry issued her Order Denying Plaintiff's Motion for Partial Summary Judgment as to Count IV and Order Denying Defendants' Cross Motion for Summary Judgment as to Count IV as Moot. At the oral argument on May 3, 2024, the Court invited the parties to comment on what, if anything, should be done to clarify Judge Perry's Order on Count IV. The conclusion of Judge Perry's Order at page 9 (Dkt. #47) states:

“The Court finds that under controlling law, Plaintiff failed to meet its burden with respect to concluding Mont. Code Ann. § 87-1-301(1)(a) is facially unconstitutional.

IT IS HEREBY ORDERED:

- 1) Plaintiff's Motion for Partial Summary Judgment as to Count IV (Dkt. #20) is DENIED.
- 2) Defendants' Cross Motion for Partial Summary Judgment as to Count IV (Dkt. #31) is DENIED as moot. The statute, not declared facially unconstitutional, is presumed to be constitutional and does not need further order of this Court to be lawful.”

According to UPOM the status of Judge Perry's Order is “unresolved” (Dkt. #157 p.10) and “problematic” (Dkt. #159 p.4). UPOM suggests that this Court review Judge Perry's Order and the briefings on Count IV and then issue a new Order.

This Court has read Judge Perry's Order, all the briefs on the matter, and the supplemental briefing. This Court agrees with the analysis and conclusion of Judge Perry in her Order. To clarify any alleged confusion regarding the final wording of the Order,

IT IS ORDERED THAT THE COURT'S ORDER DKT. #47 IS AMENDED TO READ:

- 1) UPOM's Motion for Partial Summary Judgment as to Count IV (Dkt. #20) is DENIED.
- 2) Defendants' Cross Motion for Summary Judgment as to Count IV (Dkt. #31) is GRANTED.

ELECTRONICALLY SIGNED AND DATED BELOW.

Cc: Hon. Gregory R. Todd
Jack G. Connors/Jacqueline R. Papez, *Counsel for Plaintiff*
Jeffrey Hindoien/Kevin Rechhoff, *Counsel for Defendants*
David Wilson/Graham Coppes/Robert Farris Olsen, *Counsel for Intervenor*s