

Devin Brennan

Legislative Committee on Administrative Rules

Rep. Trevor Squirrell, Chair

5 October 2023

Testimony

Good morning! My name is Devin Brennan. I am a student at Vermont Law and Graduate School, where I am a candidate for a Juris Doctor with a Concentration in Animal Law and a Master of Animal Protection Policy.¹ My testimony focuses on the Fish and Wildlife Board's definition of trapping as hunting.²

The Fish and Wildlife Board's definition of hunting makes provisions of Vermont's Constitution redundant.³ The Vermont Supreme Court has stated, "In construing a statute, every part of the statute must be considered, and every word, clause, and sentence given effect if possible."⁴ Under the regulations and proposed rules of the Fish and Wildlife Department and Board, the meaning of "hunting" subsumes fishing, fowling, and trapping.⁵ In this way, the Fish and Wildlife Board's expanding interpretation of "hunting" renders redundant the words "fowling" and "fishing" in Vermont's Constitution.⁶

¹ *N.b.*, I do not represent Vermont Law and Graduate School, and my opinions are my own; I speak in my individual capacity.

² 10 V.S.A. App. § 44(3.20) (May 17, 2023) ("Trapping' means to hunt...").

³ See VT. CONST. § 67 ("The inhabitants of this State shall have liberty in seasonable times, to hunt and fowl on the lands they hold, and on other lands not inclosed, and in like manner to fish in all boatable and other waters (not private property) under proper regulations, to be made and provided by the General Assembly.").

⁴ *State v. Stevens*, 137 Vt. 473 (Sept. 17, 1979); see also ANTONIN SCALIA & BRIAN GARNER, *Surplusage Canon* in READING LAW 174–79 (2012) ("If possible, every word and every provision is to be given effect. None should be ignored. None should needlessly be given an interpretation that causes it to duplicate another provision or to have no consequence.").

⁵ 10 V.S.A. App. § 19(3.15) ("Hunting' means the taking of an animal by use of a firearm, muzzleloader, bow or crossbow or other implement authorized by the General Assembly, or the Vermont Fish and Wildlife Board to pursue or take any live animal."); 10 V.S.A. App. § 19a(3.11) ("Hunting' means the taking of an animal by use of a firearm, muzzleloader, bow or crossbow or other implement authorized by the General Assembly, or the Vermont Fish and Wildlife Board to pursue or take any live animal."); 10 V.S.A. App. § 44(3.20), *supra* note 2 ("Trapping" means to hunt...").

⁶ VT. CONST. § 67, *supra* note 3; see *Surplusage Canon*, *supra* note 4.

The Legislative Committee on Administrative Rules may object to arbitrary proposed rules under at least three conditions.⁷ First, if an agency’s rule lacks factual basis, the Committee may object to that rule as arbitrary.⁸ Second, if an agency’s rule does not rationally connect to the factual basis asserted for the agency’s rule, the Committee may object to that rule as arbitrary.⁹ Third, if an agency’s rule does not make sense to a reasonable person, the Committee may object to that rule as arbitrary.¹⁰ If the Committee finds any one of these three conditions holds, the Committee may object.

I believe the Committee has reason to object to the Board’s proposed rule. No neighboring state apparently defines fishing, fowling, or trapping as hunting.¹¹ Statutes, regulations, and licenses concerning hunting differ from those concerning trapping.¹² Not only does Vermont’s Constitution say nothing of trapping, but the Board’s proposed rule seemingly renders provisions of Vermont’s Constitution redundant.¹³ And given the plain meaning of “hunting” as an activity involving pursuit and given the lack of pursuit inherent in trapping, defining trapping as hunting does not make sense.¹⁴ For these reasons, I urge the Committee to consider objecting to the Board’s proposed rule. Thank you for your time and attention!

⁷ 3 V.S.A. § 842(b)(3).

⁸ 3 V.S.A. § 801(13)(A)(i).

⁹ 3 V.S.A. § 801(13)(A)(ii).

¹⁰ 3 V.S.A. § 801(13)(A)(iii).

¹¹ See Conn. Gen. Stat. §§ 26-1(7), (19), (21); Mass. Gen. Laws Ann. ch. 130 § 1, 131 § 1; Me. Stat. tit. 12 §§ 10001-23, 10001-27, 10001-64, 12601; N.H. Reg. (“angling”); N.Y. Env’t Conserv. Law §§ 11-0103(10), (12a), (12b).

¹² See, e.g., 10 V.S.A. §§ 4254(b), 4701, 4707, 4708; see also 10 App. V.S.A. § 14.

¹³ See ANTONIN SCALIA & BRIAN GARNER, *Omitted-Case Canon* in READING LAW 93–100 (“Nothing is to be added to what the text states or reasonably implies.... That is, a matter not covered is to be treated as not covered.”); see also *Surplusage Canon*, *supra* note 4.

¹⁴ See ANTONIN SCALIA & BRIAN GARNER, *Ordinary-Meaning Canon* in READING LAW 69–77 (2012) (“Words are to be understood in their ordinary, everyday meanings—unless the context indicates that they bear a technical sense.... The ordinary-meaning rule is the most fundamental semantic rule of interpretation.”)