

☞ **07hr_JCR-AR_Misc_pt38a**



☞ Details: Complaint.

(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2007-08

(session year)

Joint

(Assembly, Senate or Joint)

Committee for Review of Administrative Rules...

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
 - (**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
 - (**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

* Contents organized for archiving by: Stefanie Rose (LRB) (August 2012)



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30 May 2008

Clerk of Circuit Court
Iowa County Courthouse
222 North Iowa Street
Dodgeville, WI 53533

RE: State of Wisconsin v. Richard J. Limmex
Iowa County Case Nos. 07-FO-046, 07-FO-047, 07-FO-048,
07-FO-049, 07-FO-050, and 07-FO-051

Dear Clerk:

Enclosed please find Defendant's Motion to Dismiss on Statutory and Constitutional Grounds for filing in the above matters.

A copy of this Motion is being served on Attorney General J.B. Van Hollen, Representative Daniel LeMahieu and Senator Robert Jauch.

Very truly yours,

A handwritten signature in black ink, appearing to read "Moeser", written over a horizontal line.

Matthew D. Moeser

MDM:lah
060776
Clerk 053008
Enclosure

cc: District Attorney Larry E. Nelson (w/enc.)
Attorney General J.B. Van Hollen (w/enc.)
Representative Daniel LeMahieu (w/enc.)
Senator Robert Jauch (w/enc.)
Mr. Richard J. Limmex (w/enc.)
Attorney Stephen L. Morgan (w/o enc.)

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH 1

IOWA COUNTY

STATE OF WISCONSIN,

Plaintiff,

Case No. 2007 FO 46, 47, 48, 49, 50, and 51

v.

RICHARD J. LIMMEX,

Unclassified: 30703

Defendant.

**DEFENDANT'S MOTION TO DISMISS ON STATUTORY AND
CONSTITUTIONAL GROUNDS**

TO: District Attorney Larry E. Nelson
Office of the District Attorney
Iowa County, Wisconsin
222 N. Iowa Street
Dodgeville, WI 53533-1595

Attorney General J. B. Van Hollen
Wisconsin Department of Justice
Risser Justice Center
17 West Main Street
P. O. Box 7857
Madison, WI 53707-7857

Joint Committee for Review of Administrative Rules
Representative Daniel LeMahieu (Co-Chair)
Room 17 North
State Capitol
Madison, WI 53708

Joint Committee for Review of Administrative Rules
Senator Robert Jauch (Co-Chair)
Room 118 South
State Capitol
Madison, WI 53707

Please take notice that Defendant Richard J. Limmex (“Limmex”), by his attorneys Murphy Desmond S.C., by Stephen L. Morgan and Matthew D. Moeser, will move and hereby does move for an order from the Circuit Court for Iowa County, Judge William Dyke, Presiding , on June 18, 2008, at 11:00 a.m., at the Iowa County Courthouse, located at 222 North Iowa Street, Dodgeville, Wisconsin, 53533 for an order dismissing the above-referenced cases on the grounds that the prosecution of Limmex in the instant matters is barred by the express language of Wis. Admin Code § NR 19.60 which excludes prosecutions based on, “Feed . . . found solely as a result of normal agricultural or gardening practices.” *See* Wis. Admin Code NR 19.60(3)(a)3. In the alternative, any prosecution of Limmex for alleged violations of Wis. Admin Code § NR 19.60 is in violation of his rights to (i) the due process of law and (ii) equal protection under both the Fourteenth Amendment and Article I, Section 1, and Article I, Section 8 of the Wisconsin Constitution by penalizing Limmex for engaging in lawful agricultural uses of his land.

In support of this Motion, Limmex alleges the following facts to be true:

- Limmex owns land in Iowa County, Wisconsin;
- Limmex maintains a portion of his land for use in growing hay and corn;
- Limmex is 75 years old and through crop sharing agreements is paid with bales of hay as rent for the use of his land;
- Limmex advertises and sells bales of hay to other farmers;
- The charges against Limmex, itemized in the attached letter from Wisconsin Department of Natural Resources (“DNR”) Warden David Youngquist (“Youngquist”), relate entirely to bales of hay located on (i) on Limmex’s land, (ii) in

sheds or lean-to's, or on a trailer near farm buildings; or to corn under a gravity box near a farm building;

- Much of the hay was covered with twine or other netting;
- Limmex did not spread corn, hay, or other material in his fields to feed deer nor did Limmex place salt licks in his fields for deer; and
- Limmex did not place or maintain any hay, corn, or other material on his land with the intention to feed deer or other wildlife.

Limmex also incorporates in support of this Motion all facts alleged in his (i) Motion to Dismiss: Suppression of Evidence and (ii) Motion to Dismiss Due to Selective Prosecution or Enforcement.

ARGUMENT

A. THE CLEAR LANGUAGE OF THE WISCONSIN STATUTES AND ADMINISTRATIVE CODE BAR THESE PROSECUTIONS.

Although Wis. Admin Code Chapter NR 19 does not define "normal agricultural or gardening practices," the Wisconsin Legislature has provided a definition of "agricultural practice" which clearly exempts Limmex from prosecution in the instant matters. Wisconsin Right to Farm Law defines "agricultural practice" as, "Any activity associated with an agricultural use." Wis. Stat. § 823.08(2)(a). "'Agricultural use' has the meaning given in [Wis. Stat. §] 91.01(1)." Wis. Stat. § 823.08(2)(b). That definition provides:

"Agricultural use" means beekeeping; commercial feedlots; dairying; egg production; floriculture; fish or fur farming; forest and game management; grazing; livestock raising; orchards; plant greenhouses and nurseries; poultry raising; **raising of grain, grass, mint and seed crops**; raising of fruits, nuts and berries; sod farming; placing land in federal programs in return

for payments in kind; owning land, at least 35 acres of which is enrolled in the conservation reserve program under 16 USC 3831 to 3836; participating in the milk production termination program under 7 USC 1446 (d); and vegetable raising.

Wis. Stat. § 91.01(1) (**emphasis added**).

It is a simple fact that farmers leave large bales of hay weighing over 1000 pounds in or near the edge of their fields. The hillsides and fields of Iowa County are covered with these bales. If the plain language of Wis. Admin Code NR 19.60(3)(a)3 does not apply to protect these farmers, in other words if leaving bales of hay in fields is not a “normal agricultural ... practice,” then all farmers are subject to citations!

The State of Wisconsin could have chosen to adopt through statute or regulation a provision of NR 19.60 that would grant to the DNR (or other unit of government) the authority to issue citations to farmers who had bales of hay or seed crops on their farms and the authority to issue citations if those farmers did not remove those bales or crops, but the State has not done so. Instead, the State has chosen to exempt from regulation any hay or corn that occurs as a result of normal agricultural practices. Therefore, this Court should dismiss the instant charges against Limmex.

B. THIS PROSECUTION OF LIMMEX VIOLATES HIS RIGHTS TO DUE PROCESS AND EQUAL PROTECTION OF THE LAW.

1. This Prosecution of Limmex Violates his Right to Equal Protection.

“Under the Equal Protection Clause of the Fourteenth Amendment, a state may not deny ‘any person within its jurisdiction the equal protection of the laws.’ States, therefore, must treat all similarly situated persons alike.” *Penterman v. Wisconsin Elec. Power Co.*, 211 Wis.2d, 458, 483, 556 N.W.2d 521 (1997) *citing City of Cleburne, Texas, v. Cleburne Living*

Center, 473 U.S. 432, 439 (1985). As alleged in Limmex's Motion to Dismiss Due to Selective Prosecution or Enforcement, it is clear that the State, specifically the DNR, has singled Limmex out as an individual for intentional discrimination by attempting to enforce an administrative regulation that has been filed in this Court as a result of the personal animus of Warden Youngquist. This act violates Limmex's right to the equal protection of law because he is not merely the subject of a solitary prosecution as a result of "governmental incompetence" in the form of a mistaken prosecution. *See Albright v. Oliver*, 975 F.3d 343, 348 (7th Cir. 1992). Instead, Limmex is the victim of a vindictive DNR Warden who has targeted Limmex alone among Iowa County farmers for prosecution.

2. This Prosecution of Limmex Violates his Right to Substantive Due Process.

"Substantive due process protects citizens against arbitrary or wrongful state actions regardless of the fairness of the procedures used to implement them." *State v. Jadowski*, 2004 WI 68, ¶ 42, 272 Wis.2d 418, 680 N.W.2d 810. A claim that a person's substantive due process rights have been violated arises when a person shows a deprivation of a liberty or property interest protected by the Constitution of the Wisconsin Constitution. "It is well settled that the rights of ownership and use of property have long been recognized [in the State of Wisconsin]. *Penterman*, 211 Wis.2d at 480-81. As alleged in the Motion filed by Limmex, the State is arbitrarily and wrongfully attempting to enforce an administrative code regulation against Limmex despite a clear exemption for hay and corn, among other materials, present on his land as a result of "normal agricultural or gardening practices."

3. As Applied to Farmers, Wis. Admin Code § NR 19.60 is Unconstitutionally Vague and Overbroad.

a. Vagueness and the Lack of Notice.

“The two-prong test for vagueness assesses whether: (1) the ordinance is sufficiently definite to give persons of ordinary intelligence who seek to avoid its penalties fair notice of the conduct required or prohibited; and (2) the ordinance provides standards for those who enforce the laws and adjudicate guilt.” *Fond Du Lac County v. Mentzel*, 195 Wis.2d 313, 320, 536 N.W.2d 160 (Ct. App. 1995) *citing State v. McManus*, 152 Wis.2d 113, 135, 447 N.W.2d 654 (1989). If this Court rejects Limmex’s claim that the Wis. Admin Code § NR 19.60, can apply to his conduct as alleged by the State, this Court must then strike down that code section as unconstitutionally vague. Nothing in Wis. Admin Code § NR 19.60 provides any notice to a farmer or landowner that the presence of bales of hay or of corn located in a gravity box would in any way, shape, or form, violate that sections provisions. Indeed, the section itself appears to explicitly prohibit prosecutions thereunder for hay and corn, among other materials, that are present on land as a result of “normal agricultural or gardening practices.”

b. Overbreadth.

“The essential vice of an overbroad law is that by sweeping protected activity within its reach it deters citizens from exercising their protected constitutional freedoms, the so-called “chilling effect.” *Bachowski v. Salamone*, 139 Wis. 2d 397, 411, 407 N.W.2d 533 (1987) (*citations omitted*). If farmers are now subject to prosecutions for having bales of hay

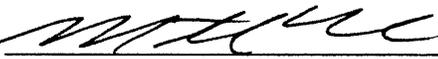
and corn in gravity boxes on their farms, it cannot but have a chilling effect on the constitutionally protected right to own and use property for agricultural purposes.

CONCLUSION

Limmex respectfully requests the opportunity to prove the truth of the factual allegations contained in this and his other Motions at the hearing currently scheduled in these matters for June 18, 2008. Limmex also respectfully requests the opportunity to present further legal arguments in support of this and his other Motions at that same hearing or as part of a briefing schedule established by this Court.

Respectfully submitted this 28th day of May, 2008.

MURPHY DESMOND S.C.
Attorneys for Defendant

By: 
Stephen L. Morgan
State Bar Number: 1015099
Matthew D. Moeser
State Bar Number: 1034198
33 East Main Street, Suite 500
P.O. Box 2038
Madison, WI 53701-2038
(608) 257-7181



State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Jim Doyle, Governor
Scott Hassett, Secretary
Lloyd L. Eagan, Regional Director

David J. Youngquist
1500 N. Johns Street
Dodgeville, Wisconsin 53533
Telephone 608-753-9079
TTY Access via relay - 711

March 3, 2007

Richard J. Limmex
6734 Lower Wyoming Road
Spring Green, WI 53588

Subject: Citations for the illegal feeding of deer

Mr. Limmex:

Enclosed you will find six citations related to our contact with you on February 3, 2007 when Conservation Warden Joe Frost, Iowa County Sheriff's Deputy Gunderson and I were at your residence regarding the feed that you had placed to feed the deer on your property. They are as follows:

1. Place, deposit, or allow placement of any material to feed or attract wild animals. The bond amount is \$329. This is for the hay and corn found nearest to your residence.
2. Place, deposit, or allow placement of any material to feed or attract wild animals. The bond amount is \$329. This is for the round bale of hay across the road from your residence.
3. Place, deposit, or allow placement of any material to feed or attract wild animals. The bond amount is \$329. This is for the large square bale on the property behind the power sub station.
4. Place, deposit, or allow placement of any material to feed or attract wild animals. The bond amount is \$329. This is for the hay that you put out on the Larimore Trust property.
5. Fail to remove illegal feed materials after notified to do so. The bond amount is \$329. This is for the round bale on the trailer that I saw on February 6, 2007, where the netting surrounding the bale had broken open on that the deer were still accessing in the same location as the hay we found on February 3, 2007. On February 3, 2007, Warden Frost and I told you to remove the hay in this area so that the deer could not access it
6. Fail to remove illegal feed materials after notified to do so. The bond amount is \$329. This is for the square bale that you had initially placed on your property behind the power sub station. Warden Frost and I told you to remove this bale and on February 6, 2007 I saw that you had moved it and placed it between a row of round bales and the standing corn on the ground on your property, close to the buildings and the deer were still accessing it. There was an empty hay wagon with sides nearby that you could have easily placed this bale of hay into so that the deer would not be able to access it.

The total amount of the fines is \$1,974.00. You have a court date of April 9, 2007 at 9:00 a.m. at the courthouse in Dodgeville, if you choose to contest the citations. If you do not want to contest the citations, you must send a money order payable to the Iowa County Clerk of Court by the court date and a plea of "No contest" will be entered on your behalf.

If you fail to either pay the citations or appear in court, there will be a warrant issued for your arrest.

If you have questions, please call.

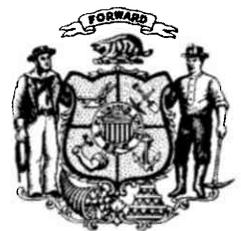
Sincerely,

A handwritten signature in black ink, appearing to read "David J. Youngquist". The signature is stylized with a large, sweeping initial "D" and "Y".

David J. Youngquist
Conservation Warden



WISCONSIN STATE LEGISLATURE





: 33 East Main Street
: Suite 500
: Madison, WI 53703-3095

: **Mailing Address:**
: P.O. Box 2038
: Madison, WI 53701-2038

: **Phone:**
: 608.257.7181

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Matthew D. Moeser
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mmoeser@murphydesmond.com

2 June 2008

Clerk of Circuit Court
Iowa County Courthouse
222 North Iowa Street
Dodgeville, WI 53533

RE: State of Wisconsin v. Richard J. Limmex
Iowa County Case Nos. 07-FO-046, 07-FO-047, 07-FO-048,
07-FO-049, 07-FO-050, and 07-FO-051

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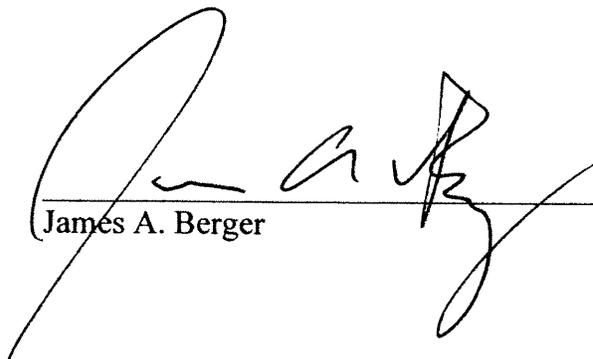
Very truly yours,

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Matthew D. Moeser

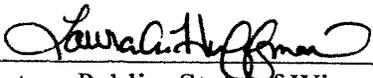
MDM:lah
060776
Clerk 060208
Enclosure

cc: District Attorney Larry E. Nelson (w/enc.)
Attorney General J.B. Van Hollen (w/enc.)
Representative Daniel LeMahieu (w/enc.)
Senator Robert Jauch (w/enc.)
Mr. Richard J. Limmex (w/enc.)
Attorney Stephen L. Morgan (w/o enc.)



James A. Berger

Subscribed and sworn to before me this
30th day of May, 2008.



Laura A. Hoffman
Notary Public, State of Wisconsin
My Commission Expires: 12/25/2011

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH 1

IOWA COUNTY

STATE OF WISCONSIN,

Plaintiff,

Case No. 2007 FO 46, 47, 48, 49, 50, and 51

v.

RICHARD J. LIMMEX,

Unclassified: 30703

Defendant.

**DEFENDANT'S MOTION TO DISMISS ON STATUTORY AND
CONSTITUTIONAL GROUNDS**

TO: District Attorney Larry E. Nelson
Office of the District Attorney
Iowa County, Wisconsin
222 N. Iowa Street
Dodgeville, WI 53533-1595

Attorney General J. B. Van Hollen
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Risser Justice Center
17 West Main Street
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Joint Committee for Review of Administrative Rules
Representative Daniel LeMahieu (Co-Chair)
Room 17 North
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Center, 473 U.S. 432, 439 (1985). As alleged in Limmex's Motion to Dismiss Due to Selective Prosecution or Enforcement, it is clear that the State, specifically the DNR, has singled Limmex out as an individual for intentional discrimination by attempting to enforce an administrative regulation that has been filed in this Court as a result of the personal animus of Warden Youngquist. This act violates Limmex's right to the equal protection of law because he is not merely the subject of a solitary prosecution as a result of "governmental incompetence" in the form of a mistaken prosecution. *See Albright v. Oliver*, 975 F.3d 343, 348 (7th Cir. 1992). Instead, Limmex is the victim of a vindictive DNR Warden who has targeted Limmex alone among Iowa County farmers for prosecution.

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3. As Applied to Farmers, Wis. Admin Code § NR 19.60 is Unconstitutionally Vague and Overbroad.

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and corn in gravity boxes on their farms, it cannot but have a chilling effect on the constitutionally protected right to own and use property for agricultural purposes.

CONCLUSION

Limmex respectfully requests the opportunity to prove the truth of the factual allegations contained in this and his other Motions at the hearing currently scheduled in these matters for June 18, 2008. Limmex also respectfully requests the opportunity to present further legal arguments in support of this and his other Motions at that same hearing or as part of a briefing schedule established by this Court.

Respectfully submitted this 28th day of May, 2008.

MURPHY DESMOND S.C.
Attorneys for Defendant

By: 
Stephen L. Morgan
State Bar Number: 1015099
Matthew D. Moeser
State Bar Number: 1034198
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P.O. Box 2038
Madison, WI 53701-2038
(608) 257-7181



State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Jim Doyle, Governor
Scott Hassett, Secretary
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David J. Youngquist
1500 N. Johns Street
Dodgeville, Wisconsin 53533
Telephone 608-753-9079
TTY Access via relay - 711

March 3, 2007

Richard J. Limmex
6734 Lower Wyoming Road
Spring Green, WI 53588

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6. Fail to remove illegal feed materials after notified to do so. The bond amount is \$329. This is for the square bale that you had initially placed on your property behind the power sub station. Warden Frost and I told you to remove this bale and on February 6, 2007 I saw that you had moved it and placed it between a row of round bales and the standing corn on the ground on your property, close to the buildings and the deer were still accessing it. There was an empty hay wagon with sides nearby that you could have easily placed this bale of hay into so that the deer would not be able to access it.

The total amount of the fines is \$1,974.00. You have a court date of April 9, 2007 at 9:00 a.m. at the courthouse in Dodgeville, if you choose to contest the citations. If you do not want to contest the citations, you must send a money order payable to the Iowa County Clerk of Court by the court date and a plea of "No contest" will be entered on your behalf.

If you fail to either pay the citations or appear in court, there will be a warrant issued for your arrest.

If you have questions, please call.

Sincerely,

A handwritten signature in black ink, appearing to read "David J. Youngquist". The signature is fluid and cursive, with a large, sweeping flourish at the end.

David J. Youngquist
Conservation Warden