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VIA HAND-DELIVERY

April 14, 2016

Joseph H. Orlando, Clerk,  
NJ Superior Court, Appellate Division  
25 Market Street, 5th Floor  
P.O. Box 006  
Trenton, NJ 08625-006

RE: APLNJ et al. v. New Jersey Fish and Game Council et al.  
Docket No. A-5285-14 Team 4

Dear Mr. Orlando:

Appellants hereby file this letter reply brief and  
appendix in the above-referenced matter.

## **Table of Contents of Brief**

PRELIMINARY STATEMENT .....	1
ARGUMENT .....	2
I. The Challenged Regulation Must Be Invalidated Because the Council Has Acted Beyond the Bounds of Its Authority .....	2
II. The Challenged Regulation Must Be Invalidated Because it Conflicts with both the Plain Text of the Act and The Legislature's Intent .....	6
A. Appellants' Challenge Presents a Clear Question of Law and the Court Owes No Deference to the Agency .....	7
B. The Express Language of the Act Prohibits Enclosed Leghold Traps Because Enclosed Leghold Traps are a Type of Steel-jaw Leghold Trap .....	8

C. The Legislature Intended to Prohibit Enclosed Steel-jaw Leghold Traps Because Enclosed Leghold Traps Operate in the Exactly Same Manner and Result in Exactly the Outcome as the Type of Traps the Legislature Sought to Prevent .....	16
CONCLUSION .....	20

#### **Table of Contents of Appendix**

Mark-up of Assembly Amendments to Senate Bill No. 831, Adopted February 6, 1984 .....	Aa1
Attorney General's brief in South Jersey Fur Trappers case, pages 17 & 18 .....	Aa5

### **PRELIMINARY STATEMENT**

In its opposition, the Council does not dispute that enclosed foothold traps ("enclosed traps") have triggers, steel springs and a metal bar that snaps down on an animal's leg/foot to restrain it. It does not dispute that the patent for the Egg trap expressly provides that that the trap has "jaws" to "grasp" the "paw or leg" to "restrain" the animal. And the Council does not dispute that "the Act prohibits all traps of the steel-jaw leghold type, whether modified or not."

Instead, the Council resorts to makeweight arguments that the Court should: disregard the patent documents; ignore the Legislature's inclusion of "type" in the Act's definition of traps of the steel-jaw leghold type ("leghold type traps"); narrow the Act's definition of steel-jaw leghold type traps to a subset of such traps in direct contravention to the broad plain meaning of the Act; give weight to semantics over substance (e.g. the name "enclosed foothold" traps makes them different from "leghold" type traps); and rely on insignificant dissimilarities in the traps (e.g. enclosed traps' trigger is pull rather than push-activated).

These arguments fly in the face of common sense, the express language of the Act, and the clear legislative intent to prohibit all leghold type traps. Moreover, the Legislature delegated no authority whatsoever to the Council to circumvent

the ban or legalize a trap that the Council deemed a less cruel alternative.

The undisputed facts establish that enclosed traps have the same essential design and function as the type of traps prohibited by the Act. Beneath the thin veneer of their enclosure, their jaws still clamp down on an animal's leg/foot with a terrific 60 pounds of force, and then hold the animal helpless and in pain for hours. The clear legislative intent of the Act bans traps of this type. Appellants ask the Court to see through the Council's attempt at disguise. Enclosed traps are wolves in sheep's clothing. They must be declared what they are --modified steel-jaw leghold traps-- and the challenged regulations purporting to legalize them must be invalidated.

#### **ARGUMENT**

##### **I. The Challenged Regulation Must Be Invalidated Because the Council Has Acted Beyond the Bounds of Its Authority.**

Administrative agencies like the Fish and Game Council "are creatures of legislation." N.J. Dep't of Labor v. Pepsi-Cola Co., 170 N.J. 59, 61 (2001). They "must act **only** within the bounds of the authority delegated to [them]." Elizabeth Fed. Sav. & Loan Ass'n v. Howell, 24 N.J. 488, 499 (1957) (emphasis added). The challenged regulation --the Council's latest attempt to exempt a modified type of steel-jaw leghold trap from the Act-- exceeds the bounds of its authority. This is the case for

two reasons: first, because the Act expressly prohibits all traps of the steel-jaw leghold type; and second, because the one-year alternatives study provision of the Act does not provide the Council with authority to promulgate the challenged regulation.

In terms of delegation of authority to act, the Council does not dispute that it only has the authority delegated to it by the Legislature. As the Council's October 2013 report investigating enclosed traps acknowledged, while the Legislature had delegated authority to the Council to designate the taking of wildlife, the Legislature may at any time reclaim such authority or prohibit specific means. The Report then cited examples of the Legislature prohibiting specific means as including statutory bans on: pole traps; leghold type traps in counties of the first and second class (in legislation prior to the enactment of the Act); and leghold type traps throughout the state (in the Act). Ra5. Thus, there is no dispute that a statutory ban on a specific type of trap enacted by the Legislature deprives the Council of any authority to permit the use of that type of trap. As discussed more fully in Point II of this brief, enclosed traps are banned by the expressed language and legislative intent of the Act. Therefore, the Council has exceeded its authority in enacting the challenged regulation.

In the face of the expressed language and legislative intent, which enacted a sweeping prohibition on leghold traps -- the broadest one in the nation-- the Council is forced to resort to the one-year alternatives study provision of the Act as a claimed source of authority for the Council to enact the challenged regulation. The amendment did provide a one-year period for the study of alternatives to steel-jaw leghold type traps; however, the provision did not delegate any authority to the Council, and the study period expired in 1985 without any alternative trap identified.

N.J.S.A. 23:4:22.4 provides, pertinent part:

The Board of Governors of Rutgers, The State University, shall direct the Department of Wildlife Management at Cook College to conduct a study to identify or develop an animal trap which substantially reduces injury and pain to both targeted and nontargeted animals which are caught in the trap and which could serve as an alternative to the steel-jaw leghold type animal trap. The results of this study shall be published in a report to the New Jersey Fish and Game Council, hereinafter referred to as the "council," in the Department of Environmental Protection within one year of the effective date of this amendatory and supplementary act.

Thus, pursuant to the express terms of the provision, the Legislature gave the sole authority to identify alternative traps to Rutgers-- and delegated no authority whatsoever to the Council. The Legislature's intention in delegating authority to Rutgers and not the Council is clearly demonstrated in the legislative history. Specifically, in his July 12, 1985,

letter addressing the Council's previous attempt to circumvent its authority by legalizing a jawed leghold trap, Attorney General Kimmelman reviewed the legislative materials and stated that the Council was so biased in its support of leghold traps that the Legislature did not trust them on the subject. Aa70. The Attorney General further opined that the delegation of authority to Rutgers and not the Council was therefore intentional. Attorney General Kimmelman stated:

The Legislature made a specific delegation of the authority to identify an alternative to a trap of the steel-jaw leghold type to Rutgers University and not the Fish and Game Council... The rationale for avoiding the Division of Fish and Game, and the Fish and Game Council clearly must have been the Legislature's awareness of the opposition of these agencies to bans on traps of the steel-jaw leghold type as reflected in the lobbying efforts and position statements of these agencies to S831 and prior legislation of a similar purpose. Aa70.

In addition, by the express terms of the provision, the alternatives study period expired in 1985-- thirty years before the Council enacted the challenged regulation on the claimed authority of the study provision. Here, in its opposition brief, the Council concedes that in 1985, Rutgers issued a report that "did not identify or propose any alternatives to the steel-jaw leghold type trap." Ra6. Accordingly, when the one-year period lapsed in 1985, so too did any authority under the one-year study provision.

Moreover, in passing the one-year alternatives study provision, the Legislature struck "modification of" leghold traps "currently in use" from the amendment. Ara2<sup>1</sup> This establishes that any "alternative" that Rutgers could identify would have to be an entirely different trap. No technically modified leghold trap was permissible.

For all these reasons, the Legislature did not give the Council any authority in 1984 to identify or authorize alternatives to the leghold trap; and even if it had, the authority did not include authority to identify a modified leghold trap, and the authority expired thirty years before the Council enacted this regulation.

As extensively discussed by Appellants in their brief on the merits, pro-leghold trap interest groups are again behind the Council's latest attempt to circumvent the Act by taking action beyond the authority delegated to it by the Legislature. Ab12-16. The challenged regulation should be declared invalid as beyond the authority granted to the Council by the Legislature.

**II. The Challenged Regulation Must Be Invalidated Because it Conflicts with both the Plain Text of the Act and the Legislature's Intent.**

The Act clearly and unambiguously bans the manufacture, sale, possession, importation, distribution or use of any animal trap of the steel-jawed leghold type. N.J.S.A. 23:4-22.1;

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<sup>1</sup> "Ara2" refers to Appellants' Reply Appendix page 2.



N.J.S.A. 23:4-22.2. The Legislature's remedial and humanitarian purpose in enacting this broad and absolute prohibition of "the most inhumane and cruel of traps" was to stop the use of traps comprised of jaws that act "as a holding device" and can cause "hours or even days of excruciating pain." Committee Statement to Act's progenitor bill A-3027, Aa1. And where the purpose of legislation is "remedial and humanitarian," its remedial provisions are to be construed liberally giving due regard to the plain meaning of the language and the legislative intent. Service Armament Co. v. Hyland, 70 N.J. 500, 558-559 (1976).

However, by means of promulgating the challenged regulation, the Council attempts to legalize a type of modified steel-jaw leghold trap called an "enclosed" foothold trap. See N.J.A.C. 7:25-5.12(g). The regulation must be invalidated, as the rulemaking is beyond the bounds of the Council's authority (see Argument I supra) and it is in direct contravention to both the plain text of the Act and the Legislature's intent.

**A. Appellants' Challenge Presents a Clear Question of Law and the Court Owes No Deference to the Agency.**

This issue presents a clear question of law: whether the challenged regulation adopted by the Council violates N.J.S.A. 23:4-22.1 and N.J.S.A. 23:4-22.2. As a purely legal issue, this court owes the Council no deference in deciding this matter. "[B]ecause questions of law are the province of the judicial

branch, we are in no way bound by an agency's interpretation of a statute or its determination of a strictly legal issue[.]' Russo v. Bd. of Trs., Police and Firemen's Ret. Sys., 206 N.J. 14, 27 (2011) (internal citations and quotation marks omitted). "A court will not permit an agency's legal determination to stand if the court believes it to be error.' Ibid (citation and internal quotation marks omitted). 'Like all matters of law, we apply de novo review to an agency's interpretation of a statute or case law.' Ibid. Because the present appeal involves a 'strictly legal issue,' the applicable standard of review is de novo. Ibid (citation and internal quotation marks omitted).'" In re Board's Main Extension Rules N.J.A.C. 14:3-8.1, 426 N.J. Super. 538, 548 (App. Div. 2012).

**B. The Express Language of the Act Prohibits Enclosed Leghold Traps Because Enclosed Leghold Traps are a Type of Steel-jaw Leghold Trap.**

The Council argues "[t]he Act's plain language cannot reasonably be read to prohibit enclosed foothold traps--only traps of the "steel-jaw leghold type." Rb13. To distinguish "enclosed" steel-jaw leghold traps from the prohibited steel-jaw leghold type, the Council makes two strained readings of the statutory prohibition: (1) the Council attempts to impermissibly narrow the Act's definition of steel-jaw leghold type traps in direct contravention to the plain meaning of the Act; and (2) the Council resorts to semantics rather than substance (e.g.

"enclosed foothold" trap rather than "leghold" type trap), and immaterial arguments (e.g. that the trigger used in enclosed traps is pull rather than push-activated).

First, in terms of impermissible narrowing, the Council ignores the text of the Act and attempts to eviscerate the Act's prohibition by narrowly defining traps of the prohibited "steel-jaw leghold type." The Council's attempt to narrow the Act's definition of steel-jaw leghold type traps is in direct contravention to the plain meaning of the Act. "To determine the Legislature's intent, we begin with the language of the statute, giving the terms used therein their ordinary and accepted meaning." Beim v. Hulfish, 216 N.J. 484, 498 (2014) (Internal citations omitted). The language of the Act is broad and plainly and explicitly prohibits all traps of the "steel-jawed leghold **type.**" (N.J.S.A. 23:4-22.1; N.J.S.A. 23:4-22.2) (Emphasis added); See also, South Jersey Fur Farmers v. New Jersey Fish and Game Council, N.J. Superior Court, Trial Division, 1986, Docket No. L-75029-85, Aa10 ("It is difficult if not impossible to read an ambiguity into the statutory prohibition imposed on traps of the steel-jaw leghold type."). The word "type" itself indicates object groups that share common qualities in function, use, or design. See Giordano v. Allstate Ins. Co., 260 N.J. Super. 329, 332 (App. Div. 1992) (a minivan is "unavoidabl[y]" a "station wagon type" automobile because it is "designed,

equipped, and obviously intended to be used precisely as a passenger automobile or station wagon is designed, equipped and used," despite efforts to market it instead as a van); Light v. Miller 303 Pa.Super. 527, 532 (1982) (a vehicle is a "station wagon type" vehicle if it performs the same sort of functions that station wagons are designed to perform, sharing "a common quality or qualities") (quoting Webster's New Collegiate Dictionary). The type of traps that the Legislature prohibits encompasses traps that grasp animals' limbs with jaws to restrain them. South Jersey Fur Farmers v. New Jersey Fish and Game Council, Aa10 ("What can't be disputed is that all of these traps, cushioned or otherwise, function by the jaws closing on the animal's leg and, therefore, are all jawed leghold traps").

Yet, the Council attempts to limit the definition of traps prohibited by the Act to a single trap: a trap comprised of "a pair of semi-circular metal jaws that snap shut on each other when actuated by an animal stepping onto the trigger pan." Rb25. The plain text of the Act does not limit its prohibition to only this type of trap. South Jersey Fur Farmers v. New Jersey Fish and Game Council, Aa21 (Affirming trial court's finding that modified steel-jaw leghold traps were prohibited because the Act prohibits "all types" of jawed leghold traps). In fact there are many different types of jawed leghold traps including those with a square jaw, a double jaw, an offset jaw, a coil spring or a

long spring, or an under spring, an auxiliary arm, so-called padded jaws or offset jaws, one spring or two, and an enclosure or without. The Legislature could have enumerated more specific types of traps that were banned; it did not. The Legislature could have made an exception for the already extant "enclosed" steel-jawed leghold traps; it did not. Instead the Legislature chose to unambiguously and explicitly prohibit steel-jawed leghold traps of "all types." Id., Aa21. The word "all" commonly means "each" or "every one of". See Vandermade v. Appert, 125 N.J. Eq. 366, 369 (1939) ("all" means "every one" or "the whole of"; "a more comprehensive word cannot be found in the English language") (quoting Words and Phrases, First Series, Volume 1, 312); Sherburne v. Sischo, 143 Mass. 439, 442 (1887); E.R. Wiggins Builders Supplies, Inc. v. Smith, 121 Vt. 143, 146 (1959); State v. Main Cent. R. Co., 66 Me. 488, 510 (1877); McGee v. Dillon, 103 Pa. 433, 435 (1883) ("all" means "each"; "there is no number of cases so large as to be excluded from the word 'all'"). The Council cannot narrow out of existence the broad prohibition plainly stated in the Act, intended by the Legislature, and expounded by the Court, especially when doing so effectively destroys the intended remedial and humanitarian purposes of the Act.

Second, the Council points to a few immaterial dissimilarities in the appearance and design of "enclosed"

leghold traps compared to what it narrowly defined as the prohibited steel-jaw leghold type trap. The Council's maneuvering fails to justify the distinction. "Enclosed" steel-jaw leghold traps are simply another type of steel-jaw leghold trap, of which there are many, and all are explicitly and unambiguously banned by the Act. Shrouding the device in an enclosure doesn't change its very nature as a trap of the steel-jaw leghold type.

The Council's analysis of dissimilarities in the appearance and design of enclosed leghold traps compared to its own definition of the trap prohibited by the Act only reinforces how similar these traps are in form, function, and outcome. The Council points out that these two types of leghold traps have different style triggers. Rb14. The Act does not make exceptions for steel-jawed leghold traps based on trigger design. The Council claims that housing placed over the steel-jaw leghold trap makes enclosed traps slightly "more species-selective." Rb14; Ra8 (Stating enclosed foothold traps are "more selective than steel-jaw foothold traps (90-99% vs. 80-96%) (Internal punctuation omitted). The Act does not make exceptions for steel-jaw leghold traps based on degree of species-selectivity; indeed, so-called dog-proof or species specific leghold traps existed at the time of enactment. The Association of Fish and Wildlife Agencies- the non-governmental association that

commingles state and federal wildlife regulators and the industries they regulate- has re-labeled all types of leghold devices - longspring, coil-spring, double-jaw, enclosed, "Stop-Loss™," off-set jaw, laminated jaw, padded jaw, unpadded jaw - referring to them instead as "foothold traps." With all such traps, when an animal triggers the trap, spring operated steel jaws snap shut with up to 60 pounds of force, clamping the animal's appendage in the jaws of the trap causing prolonged trauma, pain, and shock to the animal. Ab16-17. Though called leghold, in fact, the traps may catch a toe or toes, a foot or a leg and sometimes even two feet or two legs. Just as the Court found in the controlling South Jersey Fur Farmers case, "all of these traps... function by the jaws closing on the animal's leg and, therefore, are all jawed leghold traps." Aa10.

The Council also argues semantics over function when it claims enclosed leghold traps do not have "jaws." First, the patents for the enclosed traps endorsed by the Council explicitly state the traps utilize "jaws". Aa23 (Describing the enclosed foothold trap as comprised of "a jaw assembly for grasping the paw or leg of the animal.") The patents' descriptions of the jaw assembly are supported by Webster's Third New International Dictionary's definition of a prototypical "jaw" as "something resembling the jaw of an animal in form or action." Ab29. An animal's jaw is comprised of a

mobile bottom jaw that acts against the stationary upper jaw of the skull. As demonstrated by the enclosed traps' patents, this is the type of jaw employed in the enclosed foothold traps endorsed by the Council. Aa33 (Describing the enclosed foothold trap as employing a "restraint bar" that snaps shut to trap the "raccoon's inserted paw...up against an internal fixed grip bar... in the housing [that] acts to hold or restrain the raccoon.")). The Council recognizes that this is the type of jaw mechanism found in an enclosed leghold trap. Rb17 ("[T]he Egg™ Trap uses a pull-activated mechanism to trigger a single round bar extension... that serves to restrain the paw of the animal."; "The patent for the Lil' Grizz Get'rz™ Trap also describes the trap using a movable restraint bar"). The enclosed leghold traps' patents, dictionary definitions, and the Council's own findings demonstrate that enclosed steel-jaw leghold traps restrain the animal by use of steel "jaws" and are therefore banned by the plain text of Act. In point of fact, the jaw of the unmodified leghold trap can be described as a "round bar."

Finally, the Council points out that enclosed leghold traps are sometimes referred to as something other than a "steel-jawed leghold trap," and concludes that therefore "enclosed" steel-jawed leghold traps are not explicitly banned by the Act. Rb13-14. First, leghold traps are also routinely called "steel-jaw



leghold traps." In fact, the terms "leghold trap" and "steel-jaw leghold trap" were used interchangeably in 1984 by both the sponsors of the Act's progenitor bill A-3027, and the Division of Fish and Wildlife in its position statement and testimony before the Assembly and Senate. Ab6, Fn1. In addition, the publications relied upon by the Council readily acknowledge that enclosed traps are "coil-springed," "foothold," or "leghold traps."<sup>2</sup> Similarly, the Egg trap patent refers to the trap as a "leg-hold trap encased in an egg-shaped plastic cover."<sup>3</sup>

Second, the Council's reliance on semantics over form and function is again unpersuasive in demonstrating that enclosed steel-jaw leghold traps are not a type of steel-jaw leghold trap. Enclosed leghold traps, regardless of label, are by design and function a prohibited steel-jaw leghold type trap encased in an enclosure made of either metal or plastic. Aa23

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<sup>2</sup> The Council relies upon the Association of Fish and Wildlife Agencies' own "Best Management Practices" publication, which refers to enclosed foothold traps as "foothold," or, in ordinary usage, "leghold" traps. Association of Fish and Wildlife Agencies, Best Management Practices for Trapping in the United States, Introduction, 2006, p 7. Similarly, the council relies upon "Best Management Practices for Trapping in the United States," a publication of the aforementioned Association, as the basis for the proposed rule. In that document, the Association groups all leghold type traps, including enclosed leghold traps, under "foothold" traps. In fact, it describes enclosed or encapsulated "foothold" traps as a type and modification of the "coil-spring" "foothold," or "leghold," trap. Association of Fish and Wildlife Agencies, Best Management Practices for Trapping in the United States, Introduction, 2006, p 7.

<sup>3</sup> Fox, Camilla H., Cull of the Wild, 2004, p.33.

(Patent abstract describing the enclosed trap as "[a] trap assembly for capturing small animals formed from a housing that encloses a jaw assembly for grasping the paw or leg of the animals."). The Council's semantic parsing cannot overcome the similarities in form, function, and inhumane result. As the proverbial "wolf in sheep's clothing" is still a wolf, a steel-jaw leghold trap with an enclosure is still a leghold type trap prohibited by the Act.

The plain and unambiguous text of the Act requires a finding that "enclosed" steel-jaw leghold traps are a type of steel-jaw leghold trap and are therefore prohibited by the Act.

**C. The Legislature Intended to Prohibit Enclosed Steel-jaw Leghold Traps Because Enclosed Leghold Traps Operate in the Same Manner and Result in the Same Outcome as the Type of Traps the Legislature Sought to Prevent.**

The Council asserts that the Legislature's intent in banning all types of steel-jaw leghold traps was twofold: "first, it sought to prohibit a specific type of trap because of the undue pain it caused and because such traps could snap shut on domestic pets potentially injuring and maiming them; second, it sought to encourage development of more humane, alternative traps." Rb20 citing Aa2-3.

The Council argues that the use of enclosed steel-jaw leghold traps comports with the Legislature's intent because "Appellants can point to no evidence in the legislative record

that shows the Legislature intended to prohibit enclosed foothold traps" (Rb21) and because a study commissioned by the Council claims enclosed traps offer benefits in injury reduction and species selectivity over existing traps. Rb26.

The Council's arguments fail for several reasons. First, as discussed previously in this brief, the Legislative intent was to flatly prohibit all traps of the steel-jaw leghold type. The New Jersey Act prohibits all "types" of leghold traps; and its sweeping ban is fully supported by an extensive legislative history and litigation. As established in Appellants' initial merits brief and herein, enclosed traps have the same essential design and function, and therefore are prohibited.

Second, in terms of reducing undue pain, the Act does not set forth any acceptable level of injury or pain. Thus, the Council's self-serving claims that enclosed traps may offer reduced injury or pain are immaterial to this challenge.

Third, enclosed foothold traps operate in the same manner, and result in the same outcome, as the "type" of traps the Legislature sought to prohibit. As extensively briefed by Appellants' in their brief on the merits, the extrinsic evidence clearly demonstrates that the Legislature was concerned with prohibiting traps comprised of jaws that snap shut on the animal, maiming the animal and holding the animal alive resulting in hours or days of excruciating pain. Ab7-10, 36-40.

The Council ignores the legislative intent. The Council admits that enclosed steel-jaw traps function in exactly the same manner as the type of jawed traps the Legislature intended to prohibit: when an animal triggers an enclosed leghold trap, a steel bar snaps shut against a stationary steel pole or casing, pinning the animal's leg in the jaws of the trap. Rb15. Just as Judge Farrell found in the South Jersey Fur Farmers case, "What can't be disputed is that all of these traps, cushioned or otherwise, function by the jaws closing on the animal's leg and, therefore, are all jawed leghold traps." Aa10.

Fourth, "enclosed" steel-jaw leghold traps do not comport with the Legislature's intention to ban all leghold type traps because it found them an unacceptable means of trapping. Textual descriptions cannot convey the startling violence with which an enclosed leghold trap's jaws slam together, holding the animal injured but alive. Animals caught by an Egg™ Trap, for example, were shown to fight against the trap and/or against the trap's surroundings for approximately seven hours, and suffered injuries including limb amputations, soft tissue macerations, bone fractures, hemorrhaging, and severed tendons.<sup>4</sup> The Council's

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<sup>4</sup> Proulx, Gilbert, et al., Injuries and Behaviors of Raccoons (*Procyon Lotor*) Captured in the Soft Catch and the Egg™ Traps in Simulated Natural Environmental, *Journal of Wildlife Disease*, 29(3), 1993, pp.447-452; Hubert, et al., 1996; Evaluation of Two Restraining Traps to Capture Raccoons, *Wildlife Society Bulletin* 24: 699-708.

own authorities demonstrate that enclosed steel-jaw leghold traps continue to inflict the "inhumane" and "excruciating" pain the Legislature sought to prevent. E.g., Ra60 (Reporting 74.5% of opossums trapped by the Egg™ Trap experienced moderate to severe injuries). And one trap explicitly endorsed by the Council, the Duffer Trap, failed to even meet the non-animal-friendly BMP injury threshold proposed in the publications relied upon by the Council. Ra11.

Fifth, enclosed traps also have been documented to trap both target and non-target animals, including domestic pets.<sup>5</sup> The Council's authority also demonstrates that enclosed foothold traps continue to trap non-target species. Ra42 (Reporting the Egg™ Trap continues to trap non-target species).

Finally, the Council argues that some other states and individuals define enclosed traps as outside their definition of leghold traps. However, what legislatures in other states choose to do, and how other individuals view leghold traps, is irrelevant. The controlling issue is that the New Jersey Legislature intended to ban all traps of the steel-jaw leghold type, and here, because enclosed traps have the same essential design and function, they are within the Act's ban no matter what other states or individuals opine for themselves. The argument that the opinions of outside sources should control

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<sup>5</sup> Hubert, et al, supra note 3.

over legislative intent was raised in the South Jersey Fur Farmers case, and correctly rejected by the Attorney General and Court. The AG wrote:

Finally, plaintiffs also assert that the padded and unpadded traps were recognized by experts as distinctly different types of traps and that the 'technical meaning' of the terms should control. This is neither in accord with the facts nor with the law. There was no evidence that the terms had any recognized technical acceptance at the time the Act was passed; later efforts to put technical labels on the traps are totally irrelevant. In any event, the controlling law is to use the ordinary meaning, not a technical or trade meaning. (Citations Omitted) Arb5-6

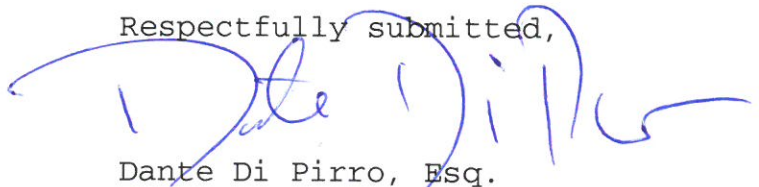
Here, the ordinary meaning of the term "traps of the steel-jaw leghold type" in the Act is clear and must control.

In sum, the enclosed traps endorsed by the Council continue to use steel jaws to indiscriminately and brutally slam shut on the legs of target and non-target species. Concealed by its enclosure is a leghold type trap which must be exposed for the brutal and illegal device it is, and must remain banned.

#### **CONCLUSION**

For the foregoing reasons, the court should declare the challenged regulation invalid.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'Dante Di Pirro', is written over the typed name.

Dante Di Pirro, Esq.

c: DAG Jin Zhou

Marked 2-7676

R-60

Assembly Amendments

to

ADOPTED

Senate Bill No. 831

Amend: FEB 6 1984

Proposed by Assemblyman Herman  
2/6/84  
Sponsored by Senator Orechio

Page	Sec.	Line
1	title	1
1	4	1
1	4	2-3

Omit "and" insert "supplementing chapter 4 of  
Title 23 of the Revised Statutes, amending  
P.L. 1971, c. 405,"

Omit "Mouse" insert

"The Board of Governors of  
Rutgers, the State University, shall direct the  
Department of Wildlife Management at Cook College  
to conduct a study to identify or develop an  
animal trap which substantially reduces injury  
and pain to both targeted and non-targeted  
animals which are caught in the trap and which  
could serve as an alternative to,  
the steel-jaw leghold trap."

The results of this study shall be published in  
a report to the New Jersey Game Council, hereinafter  
referred to as the "council," in the  
Department of Environmental Protection within one  
year of the effective date of this act. For the  
purposes of this act, the steel-jaw leghold type  
animal trap does not mean mouse"

Omit line 2 entirely and on line 3 omit  
"of this act"

Avr1



Assembly Amendments

to

Senate Bill No. 831

Amend:

Proposed by Assemblyman Herman  
2/6/84  
Sponsored by Senator Orechio

Page	Sec.	Line	
1	title	1	Omit "and" insert "supplementing chapter 4 of Title 23 of the Revised Statutes, amending P.L. 1971, c. 405,"
1	title	2	After "405" insert "and making an appropriation"
1	1	1-2	Omit entirely
1	2	1-2	Omit entirely
1	3	1-3	Omit entirely
1	4	1	Omit "4. Mouse" insert <p>"1. (New section) The Board of Governors of Rutgers, the State University, shall direct the Department of Wildlife Management at Cook College to conduct a study to identify or develop an animal trap which substantially reduces injury and pain to both targeted and non-targeted animals which are caught in the trap and which could serve as an alternative <del>and</del> <del>to the steel-jaw leghold trap currently in use.</del> <del>the steel-jaw leghold trap currently in use.</del> The results of this study shall be published in a report to the New Jersey Game Council, hereinafter referred to as the "council," in the Department of Environmental Protection within one year of the effective date of this act. For the purposes of this act, the steel-jaw leghold type animal trap does not mean mouse"</p>

Ara 2



Assembly Amendments

to

Senate Bill No. 831

Amend:

Page	Sec.	Line	
1	4	2-3	Omit line 2 entirely and on line 3 omit "of this act"
1	5	1-5	Omit entirely and insert section 2 as follows:  <div> <p>"2. (New section) The council shall, pursuant to the "Administrative Procedure Act," P.L. 1968, c. 410 (C.52:14B-1 et seq.), adopt the rules and regulations necessary to carry out the provisions of this act. These regulations shall provide at least the following:</p> <p>a. <del>If the study conducted pursuant to section 1 of this act identifies or develops a suitable alternative animal trap, the council shall establish, not later than the third anniversary of the effective date of this act, a program for the phased withdrawal of the steel-jaw leghold type animal trap from use in the State which prescribes the conditions under which the suitable alternative may be used.</del></p> <p>b. <del>If the study conducted pursuant to section 1 of this act fails to identify or develop a suitable alternative animal trap, the council shall prescribe, not later than the third anniversary of the effective date of this act, the emergency conditions under which the steel-jaw leghold type trap may continue to be used to protect the public health, and for the control of predators damaging agricultural crops or livestock."</del></p> </div>

Ara 3

Assembly Amendments

to

Senate Bill No. 831

Amend:

Page	Sec.	Line	
1	6	1	Omit "6." insert "3. (New section)" Omit "violating" insert "using a steel-jaw leghold type trap in violation of any rule or regulation under" After "shall" insert "," After "involved" insert ","
1	6	4-5	Omit ", or imprisonment for six months, or both fine and imprisonment,"
1	6	6	Omit "and each" insert "or"
1-2	7	1-7	Omit entirely and insert new sections 4 and 5 as follows: "4. Section 4 of P.L. 1971, c. 405 (C.23:4-38.3) is amended to read as follows:  4. Any person violating the provisions of <del>sections 2 or 3</del> <u>section</u> act shall be subject to a fine of not more than \$50.00 for each offense and to the forfeiture of his license to trap.  5. (New section) There is appropriated from the General Fund to Rutgers, the State University, the sum of \$50,000.00 for the study conducted pursuant to section 1 of this act. Of this amount, no more than 1% may be used for the administrative expenses of the University."

Ara 4

constitutional issues. Finally, the tenet does not apply where, as here, there are no serious constitutional issues. See Point III, infra.

In any event, as the Supreme Court of the United States noted just last year in language equally applicable to this case:

10 Even were the constitutional questions more significant, any doubts would be insufficient to overcome the mandate of the statute's language and history. 'Statutes should be construed to avoid constitutional questions, but this interpretative canon is not a license for the judiciary to rewrite language enacted by the legislature.' United States v. Albertini,  
U.S. 105 S.Ct. 2897, 85 L.Ed.2d  
(1985). [Sedima, S.P.R.L.v. Imrex Co.,  
Inc., U.S. 105 S.Ct. 3275, L.Ed.  
2d (1985).]

20 Finally, plaintiffs also assert that the padded and un-  
padded traps were recognized by experts as distinctly different  
traps and that the "technical meaning" of the terms should control.  
This is neither in accord with the facts nor with the law. There  
was no evidence that the terms had any recognized technical accept-  
30 labels on the traps are totally irrelevant. In any event, the  
controlling law is to use the ordinary meaning, not a technical or  
trade meaning. E.g. Body-Rite Repair Co., Inc. v. Director, Division of Taxation, 89 N.J. 540, 543 (1983) ("Expert testimony on  
esoteric concepts of syntax or trade usage has little relevance to  
the interpretation of statutory language..."); Ford Motor Co.  
40 v. New Jersey Department of Labor and Industry, 5 N.J. 494, 503  
(1950) ("In the absence of an explicit indication of a special  
meaning, words are to be given their common usage...").

N.J.S.A. 23:4-22.1 expressly prohibits the manufacture, sale, possession, importation or transportation of "an animal trap of the steel-jaw leghold types." N.J.S.A. 23:4-22.1 et seq. repeatedly refers to the prohibited traps as traps "of the steel-jaw leghold type" or "of the steel-jaw leghold types." See N.J.S.A. 23:4-22.1, 22.2, 22.3, 22.4, and 22.7. There is no exclusion whatsoever for traps of that type which are "padded" or "cushioned."

10 The Legislature provided only one exemption -- for "mouse and rat traps designed for use in or under buildings." N.J.S.A. 23:4-22.4. It is therefore beyond reasonable dispute that traps of the steel-jaw leghold type, whether padded or unpadded, violate the Act.

20 In recognition of the absence of any exemption for "padded" traps, plaintiffs contend that "padded" traps are not "steel-jawed" traps. That contention must be rejected.

First of all, it is not only basic, but a statutory imperative, that the language of a statute be given its "generally accepted meaning, according to the approved usage of the language." N.J.S.A. 1:1-1; International Flavors & Fragrances, Inc. v. Director, Division of Taxation, supra, 102 N.J. at 219; Service Armament Co. v. Hyland, supra, 70 N.J. at 556. It is therefore appropriate to refer to Webster's Third New International Dictionary. Id. 70 N.J. at 556-557. There, "jaw" is defined as follows:

40 1a: either of two complex cartilaginous or bony structures in most vertebrates that border the mouth, support the soft parts enclosing it, and usu. bear teeth on their oral margin comprising (1) an upper more or less firmly fused with the skull and (2) a lower hinged, movable, and articulated by a pair of condyles with the temporal bone ... (b): the bones, muscles, nerves and other parts constituting the walls of the mouth and serving to open and close it -- usu. used in pl....