

Filed: November 9, 2006

IN THE SUPREME COURT OF THE STATE OF OREGON

STATE OF OREGON,

Petitioner on Review,

v.

CLARK ZANE COUCH,

Respondent on Review.

(CC MI010414; CA A119570; SC S52288)

On review from the Court of Appeals.*

Argued and submitted March 2, 2006.

Denise G. Fjordbeck, Assistant Attorney General, Salem, argued the cause and filed the briefs for petitioner on review. With her on the briefs were Hardy Myers, Attorney General, and Mary H. Williams, Solicitor General.

Foster A. Glass, Bend, argued the cause for respondent on review. With him on the briefs was Mark L. Pollot.

Sarah Uhlemann, Rebecca G. Judd, and Jonathan Lovvorn, Washington D.C., filed a brief on behalf of amicus curiae The Humane Society of the United States.

Before De Muniz, Chief Justice, and Carson, Gillette, Durham, Balmer and Kistler, Justices.**

DE MUNIZ, C. J.

The decision of the Court of Appeals is affirmed. The judgment of the circuit court is reversed, and the case is remanded to the circuit court for further proceedings.

*Appeal from Jefferson County Circuit Court,
Gary S. Thompson, Judge.
196 Or App 665, 103 P3d 671 (2004).

**Riggs, J., retired September 30, 2006, and did not participate in the consideration or decision of this case. Walters, J., did not participate in the consideration or decision of this case.

DESIGNATION OF PREVAILING PARTY AND AWARD OF COSTS

Prevailing party: Petitioner on Review

No costs allowed.

Costs allowed, payable by:

Costs allowed, to abide the outcome on remand, payable by:

1 DE MUNIZ, C. J.

2 In this case, the issues before the court are (1)
3 whether nonindigenous, exotic deer, held in private ownership,
4 can be considered "wildlife" as that term is defined in Oregon's
5 fish and game statutes; and (2) if not, whether the Oregon Fish
6 and Wildlife Commission (commission) nevertheless possesses the
7 authority to regulate such animals.

8 The trial court sustained defendant's demurrer to the
9 district attorney's information that charged defendant with more
10 than 50 violations of administrative rules related to possessing
11 or hunting certain kinds of nonindigenous deer in Oregon. The
12 trial court reasoned that the deer at issue did not qualify as
13 "wildlife" under the applicable statutes and that, as a result,
14 the commission had exceeded its delegated authority in regulating
15 them through its administrative rules. The Court of Appeals
16 reversed, holding that, although the animals at issue indeed did
17 not qualify as "wildlife," the trial court had erred in
18 sustaining the demurrer on the basis of facts not alleged in the
19 information. State v. Couch, 196 Or App 665, 103 P3d 671 (2004).
20 On review, we affirm the Court of Appeals decision, albeit for
21 different reasons, reverse the trial court's judgment, and remand
22 this case to the trial court for further proceedings.

23 In July 2001, the state filed a district attorney's
24 information charging defendant with more than 50 misdemeanor

1 violations involving rules promulgated under Oregon's wildlife
2 laws.¹ The caption for each count contained in the information
3 cited one or another of three state statutes as providing the
4 bases for each of the charges: ORS 498.002 (1999), amended by Or
5 Laws 2003, ch 656, § 10, ORS 498.022, and ORS 496.992, set out
6 respectively. ORS 498.002(1) (1999) provided:

7 "Wildlife is the property of the state. No person
8 shall angle for, hunt, trap or possess, or assist
9 another in angling for, hunting, trapping or possessing
10 any wildlife in violation of the wildlife laws or of
11 any rule promulgated pursuant thereto."

12 ORS 498.022 provides, in part:

13 "Except as the State Fish and Wildlife Commission
14 by rule may provide otherwise, no person shall
15 purchase, sell or exchange, or offer to purchase, sell
16 or exchange any wildlife, or any part thereof."

17 Finally, ORS 496.992(1) provides:

18 "Except as otherwise provided by ORS 153.022 and
19 other law, violation of any provision of the wildlife
20 laws, or any rule promulgated pursuant thereto, is a
21 Class A misdemeanor when the offense is committed with
22 a culpable mental state as defined in ORS 161.085."²

1 ¹ The phrase "wildlife laws" has a specific meaning under
2 Oregon law. It is the short title for the statutes set forth in
3 the Oregon Revised Statutes, chapters 496, 497, 498, and 501.
4 See ORS 496.002 (so stating).

1 ² We note that the captions for counts 48-50 in the
2 information refer to "ORS 496.99." We assume that to be a
3 scrivener's error, because no such statute exists. Such a
4 mistake, however, does not invalidate those counts, because the
5 charging part of the information adequately sets out the crime
6 charged. See State v. Briggen, 112 Or 681, 683, 231 P 125 (1924)
7 (to determine crime charged, court looked to charging part of
8 indictment, not caption).

1 With regard to the specific charges set out in the
2 information, the state alleged that defendant had violated the
3 following Department of Fish and Wildlife rules relating to the
4 private holding, hunting, or propagation of cervids:³ (1)
5 selling certain cervid species without the required licenses or
6 permits, OAR 635-049-0020 (2000); (2) possessing two particular
7 cervid species without the required licenses, OAR 635-049-0020
8 (2000); and (3) unlawfully hunting, killing, or attempting to
9 hunt or kill, exotic mammals or game mammals held by a private
10 party, OAR 635-064-0010 (2000).⁴ The misconduct underlying each
11 count at issue in this case allegedly occurred in 2000 and
12 involved either fallow deer, Axis deer, or Sika deer.⁵ Fallow

1 ³ OAR 635-045-0002(12) (2000) defined "cervid" as "any
2 member of the family cervidae (deer), including gametes or
3 hybrids."

1 ⁴ OAR 635-049-0020 (2000) provided, in part: "It is
2 prohibited to possess, purchase, sell, exchange or otherwise hold
3 any cervid or part thereof in the state of Oregon unless
4 specifically excepted" by rule.

5 OAR 635-064-0010 (2000) provided, in part: "It is
6 unlawful to hunt, kill, or attempt to hunt or kill, exotic
7 mammals * * * or game mammals * * * held or obtained by private
8 parties[.]" However, OAR 635-064-0010 (2000) did allow such
9 animals to be (1) slaughtered for meat or fur production; (2)
10 euthanized as a result of health, safety, science, or valid
11 husbandry concerns; and (3) hunted following an expressed
12 authorization from the Wildlife Division Director.

1 ⁵ One additional count alleged that defendant unlawfully
2 had possessed elk in violation of OAR 635-049-0020. Because the
3 trial court did not dismiss that count and the trial court's
4 decision regarding that count has not been assigned as error on
5 appeal, it is not relevant to our discussion.

1 deer are a species indigenous to Europe and the Middle East, Axis
2 deer are native to India, and Sika deer are native to Japan. All
3 three species are cervids.

4 In his demurrer, defendant argued that, because the
5 deer that were the subject of the state's allegations were
6 captive and nonindigenous, they did not qualify as "wildlife" and
7 therefore were beyond the scope of the commission's authority to
8 regulate. In response, the state argued that the legislature
9 intended the term "wildlife" to include both indigenous and
10 nonindigenous species, whether captive and privately owned, or
11 untamed and unrestrained.

12 The trial court sustained defendant's demurrer. It
13 reasoned that

14 "wildlife [are] indigenous species that are running
15 free or swimming free on the lands or the waters of
16 this state. In contrast, game mammals being raised on
17 a game farm within a confined setting and under the
18 ownership of a property landowner, which are not
19 indigenous and that are not running free on public and
20 private lands in this state, are not wildlife per se."

21 Building on that foundation, the trial court ultimately concluded
22 that

23 "[t]he regulations that have been passed by the Fish
24 and Wildlife Commission are ultra vires acts that go
25 beyond the delegation set forward by the Oregon State
26 Legislature. These animals are not wildlife, but
27 privately owned, exotic species of cervids, held for a
28 substantial period of time."

29 The state appealed the order sustaining defendant's
30 demurrer, and the Court of Appeals reversed. The Court of

1 Appeals rejected the state's argument that, under the relevant
2 statutes, "wildlife" included nonnative deer species held in
3 captivity. The Court of Appeals examined the long history of the
4 term's application in legal matters, as well as this court's
5 previous decisions regarding "wildlife" regulation, and concluded
6 that the statutory term "wildlife" referred to "animals ferae
7 naturae⁶ that have not previously been subject to lawful
8 capture." Couch, 196 Or App at 678. Nevertheless, the Court of
9 Appeals determined that the trial court had erred in sustaining
10 defendant's demurrer because the allegations contained in the
11 information did not establish the "manner in which the deer were
12 brought into this state and whether they have been held by
13 defendant in lawful, private captivity." Id. at 679.

14 Although the state prevailed on appeal, it nonetheless
15 petitioned for review in this court, arguing that, while the
16 Court of Appeals had been correct in reversing the trial court's
17 order below, the Court of Appeals nevertheless had erred in
18 holding that, as used in the pertinent statutes, "wildlife"
19 "refers to "animals ferae naturae that have not previously been
20 subject to lawful capture." Id. at 678. The state also argued
21 that, even if the Court of Appeals' definition of "wildlife" were
22 consistent with the legislature's intent, the commission's

1 ⁶ "Animals ferae naturae" means animals that retain their
2 wild nature. Black's Law Dictionary 87 (6th ed 1990).

1 authority "to prevent serious depletion of any indigenous species
2 and to provide the optimum recreational and aesthetic benefits
3 for present and future generations of the citizens of this state"
4 was not limited to animals that fell within the scope of that
5 definition; rather, it included animals such as the deer
6 identified in the state's charging information. We allowed the
7 state's petition for review to determine (1) the intent behind
8 the legislature's use of the term "wildlife" in the pertinent
9 statutes; and (2) the effect of that definition on the
10 commission's authority to regulate the animals and activities at
11 issue here.⁷ See generally State v. Snyder, 337 Or 410, 415-20,
12 97 P3d 1181 (2004) (notwithstanding fact that it prevailed on
13 merits before Court of Appeals, state permitted to petition for
14 Supreme Court review as to statutory interpretation issue,
15 because state qualified as aggrieved party and controversy
16 remained justiciable).

17 On review, the parties take different paths to arrive
18 at their respective definitions of "wildlife." Defendant, for
19 example, argues that the Court of Appeals properly interpreted
20 that term as it is used in Oregon's wildlife laws. The Court of
21 Appeals began its analysis with ancient Roman law and the
22 writings of Justinian, then moved through history, drawing from

1 ⁷ Neither the state nor the defendant claims error
2 respecting the Court of Appeals decision regarding the legal
3 sufficiency of the information.

1 the sixteenth-century judicial opinions of Lord Coke, the
2 eighteenth-century writings of William Blackstone, and this
3 court's early wildlife-related decisions. Relying on those
4 resources, the Court of Appeals essentially defined "wildlife" as
5 all animals existing, uncaptured, in a state of nature, and
6 emphasized the congruency between the term and its definition by
7 highlighting the term's use in statutes such as ORS 498.002:

8 "Thus, when ORS 498.002 declares that '[w]ildlife
9 is the property of the state,' we may understand that
10 the reference to 'wildlife' fairly clearly is to
11 animals ferae naturae over which the state has
12 sovereignty, subject to the traditional qualification
13 that the wildlife be 'in a state of nature and at
14 large,' and not previously subject to lawful capture.
15 That always has been the extent of the state's
16 authority to regulate 'wildlife,' and nothing in the
17 text or context of the statute suggests that the
18 legislature intended to depart from that longstanding
19 tradition."

20 Couch, 196 Or App at 677-78 (internal citation omitted). That
21 is, the Court of Appeals relied on the ownership provision set
22 out in ORS 498.002 to conclude that all animals existing,
23 uncaptured, in a state of nature qualified as "wildlife."

24 The state, on the other hand, contends that we should
25 give the term "wildlife" its dictionary definition: "living
26 things that are neither human nor domesticated; esp: the mammals,
27 birds, and fishes that are hunted by man for sport or food."
28 Webster's Third New Int'l Dictionary 2616 (unabridged ed 2002).
29 Under that definition, the state argues, "wildlife" clearly would
30 include the deer species named in the challenged information.

1 The state then emphasizes its own perception of congruency
2 between the term and its proffered definition by asserting that
3 statutes such as ORS 498.052 would make little sense under a
4 contrary reading:

5 "ORS 498.052 bars the release into the wild of
6 'domestically raised wildlife.' If the Court of
7 Appeals is correct that only free animals are wildlife,
8 there can be no such thing as 'domestically raised
9 wildlife.' The statute makes sense only if it includes
10 exotic and captive animals."

11 What both the state and the Court of Appeals have
12 failed to fully embrace, however, is the fact that the
13 legislature has expressly defined the term "wildlife" as it is
14 used within the wildlife statutes. Consequently, we first must
15 examine that definition. See, e.g., State v. Cox, 336 Or 284,
16 289, 82 P3d 619 (2003) (inquiry into former jeopardy claim first
17 focused on legislature's definition of operative offense); SAIF
18 v. Lewis, 335 Or 92, 97, 58 P3d 814 (2002) (where legislature
19 statutorily had defined phrase at issue, court's analysis focused
20 on statutory definition). The task before us is one of statutory
21 construction; consequently, we employ the methodology set out in
22 PGE v. Bureau of Labor and Industries, 317 Or 606, 610-12, 859
23 P2d 1143 (1993). Our goal is to discern the intent of the
24 legislature by examining the statutory text in context. Id. at
25 610.

26 The legislature's definition of "wildlife" is set out
27 in ORS 496.004(19). It provides:

1 "As used in the wildlife laws, unless the context
2 requires otherwise:

3 " * * * * *

4 "(19) 'Wildlife' means fish, shellfish, wild
5 birds, amphibians and reptiles, feral swine as defined
6 by State Department of Agriculture rule and other wild
7 mammals."

8 The text of that statute represents the starting point of our
9 analysis. PGE, 317 Or at 610. It also represents the best
10 evidence of the legislature's intent. Id.

11 As a threshold matter, we note that, unlike the
12 definitions proposed by the Court of Appeals and the state, the
13 statutory definition of the term "wildlife" does not set out
14 general characteristics against which every animal can,
15 regardless of species, be compared and appropriately categorized.
16 In other words, the statutes do not declare that "wildlife" means
17 any animal that retains its wild nature and remains at large, or
18 is generally hunted for food or sport. Instead, the plain text
19 of ORS 496.004(19) first demonstrates that not all animals need
20 be "wild" to be defined as "wildlife" under the statute. Of all
21 the animals listed in ORS 496.004(19), only two kinds must
22 expressly be "wild" in order to fit within the definition: "wild
23 birds" and "wild mammals" other than feral swine.

24 The wildlife laws do not define "wild." As a common
25 word, however, we give the term its "plain, natural, and ordinary
26 meaning." Id. at 611. In this case, the most sensible meaning

1 of "wild," given its use within the statute, is found in its
2 primary dictionary definition: "[L]iving in a state of nature:
3 inhabiting natural haunts (as the forest or open field): not
4 tamed or domesticated[.]" Webster's at 2614. Consequently only
5 birds and mammals living untamed or in a state of nature are
6 considered "wildlife" under ORS 496.004(19). At the same time,
7 however, that prerequisite is conspicuously absent with regard to
8 the remaining animals listed in the statute. Unlike birds and
9 mammals, neither fish, shellfish, amphibians, nor reptiles need
10 be "wild" to qualify as "wildlife" under the definition. The
11 result, from a textual perspective, is that, regardless of their
12 situations in or out of nature, fish, shellfish, amphibians, and
13 reptiles appear to be wildlife per se for the purposes of ORS
14 496.004(19).

15 Additionally, the current definition of "wildlife" in
16 the Oregon statutes has developed in such a way that its history
17 further demonstrates that the definition has not -- in the
18 legislature's view -- been a static concept. See Krieger v.
19 Just, 319 Or 328, 336, 876 P2d 754 (1994) (context of a statute
20 includes its prior versions). Prior to 1971, the word was
21 undefined in Oregon's wildlife laws. In its stead, the
22 legislature relied on its definitions for "game animals," ORS
23 496.006 (1969); "game bird," ORS 496.008 (1969); "game fish,"
24 496.010; and "fur-bearing animals," ORS 498.095(9) (1969) to help

1 give meaning to Oregon's fish and game laws. In 1971, however,
2 the legislature created the following definition and added it to
3 those statutes:

4 "'[W]ildlife' means game fish, wild mammals except
5 whales and porpoises, birds, amphibians and reptiles."

6 ORS 496.006(3) (1971). In 1989, the legislature amended that
7 definition to provide, "'[w]ildlife' means fish, wild birds,
8 amphibians, reptiles and wild mammals," ORS 496.004(15) (1989)
9 before giving it its present form in 2001. If nothing else,
10 those changes illustrate that, for at least the last 35 years,
11 the meaning of "wildlife" in what is now ORS 496.004(19) has
12 accommodated the exclusion or inclusion of different elements
13 according to the legislature's determination of the state's
14 policy needs.

15 That fact, together with the other observations noted
16 above, lead us to conclude that the term "wildlife" means
17 whatever the legislature says that it means. As this court noted
18 in Enertrrol Power Monitoring Corp. v. State of Oregon, 314 Or 78,
19 84, 836 P2d 123 (1992), regarding a similarly amorphous phrase:

20 "Given the 'will-o'-the wisp character of the term
21 "state agency," that term 'means whatever the
22 legislature says it means; its breadth or narrowness
23 fluctuates according to the legislative definition.'"

24 The same holds true in this case. Here, the legislature has
25 declared that, unless the context requires otherwise, "wildlife"
26 means "fish, shellfish, wild birds, amphibians and reptiles,

1 feral swine as defined by State Department of Agriculture rule
2 and other wild mammals." We are obliged to apply the
3 legislature's definition. As a result, some animals -- birds and
4 mammals -- indeed must be "wild" to be categorized as wildlife
5 under the definition in ORS 496.002(19), while other animals --
6 fish, shellfish, amphibians and reptiles -- need not meet that
7 requirement.

8 That fact is further borne out by the text of ORS
9 496.705. Subsection (1) of that statute provides:

10 "The State Fish and Wildlife Commission may
11 institute suit for the recovery of damages for the
12 unlawful taking or killing of any of the wildlife
13 referred to in subsection (2) of this section that are
14 the property of the state."

15 (Emphasis added.) The statute goes on to list a specific
16 schedule of civil damages for unlawfully killing a variety of
17 different animals. The point is this: If our construction of
18 the term "wildlife" were not congruent with its statutory
19 definition, there would have been no need for the legislature to
20 specifically limit the reach of ORS 496.705 to "wildlife" that is
21 the property of the state. But the legislature did exactly that
22 and, in the process, underscored the fact that not all animals
23 need be "wild" to qualify as "wildlife" under the statutory
24 definition. Consequently, the Court of Appeals' contrary holding
25 in that regard is incorrect. That said, however, the deer at
26 issue in this case are, indeed, mammals and, in keeping with ORS

1 496.004(19), must therefore exist untamed and undomesticated in a
2 state of nature if they are to fall within the ambit of any
3 statute directed solely at the regulation of "wildlife."

4 It is important to note that whether the particular
5 deer at issue here are "wild" or not is a question that has yet
6 to be litigated at trial; consequently, we cannot speak
7 dispositively to the status of those animals in that regard.
8 Assuming, arguendo, that the deer in this case are not "wild,"
9 however, we must answer the question whether Oregon's wildlife
10 laws nevertheless provide the commission with authority to
11 regulate such animals.

12 The answer to that question is an unqualified "yes."
13 Whether regulated as "wildlife" or not, deer clearly fall within
14 the regulatory authority that the commission has been given over
15 "game mammals."

16 "Game mammals," are defined in ORS 496.004(9) as:

17 "antelope, black bear, cougar, deer, elk, moose,
18 mountain goat, mountain sheep and silver gray
19 squirrel."

20 Unlike the animals listed in the statutory definition of
21 "wildlife," the statutory definition of "game mammals" does not
22 require any of the listed species to be wild, a designation that
23 the legislature has demonstrated that it is clearly able to make
24 when it wants to. Because deer are expressly included in the
25 "game mammal" definition, it follows that the commission's

1 authority to regulate nonwild deer species exists in statutes
2 that focus on game mammal regulation in Oregon. Under ORS
3 497.071(1), for example, funds derived from the sale of hunting
4 and fishing permits are expressly earmarked "to provide adequate
5 revenue to the State Fish and Wildlife Commission whereby game
6 mammal herds and game fish populations may be increased for the
7 benefit of Oregon hunters and anglers." (Emphasis added.) More
8 to the point in this case, ORS 497.228 places strict controls on
9 any person engaged in the business of propagating game mammals⁸
10 for sale:

11 "(1) No person shall engage in the business of
12 propagating game birds or game mammals for sale unless
13 a wildlife propagation license is first obtained from
14 the State Department of Fish and Wildlife.

15 "(2) The State Fish and Wildlife Commission may
16 refuse to issue a license to an applicant if the
17 commission finds that the conduct of the wildlife
18 propagation business would tend to be harmful to
19 existing wildlife populations.

20 "(3) The commission, by rule, may prescribe
21 requirements for the care, inspection, transportation
22 and the sale, taking or other disposition of the game
23 birds or game mammals and for such record keeping and
24 reporting procedures as will insure that the
25 propagation activities are conducted in such manner as
26 will not be harmful to existing wildlife populations."

27 Defendant, however, appears to assert that ORS 498.002
28 -- with its declaration that "[w]ildlife is the property of the

1 ⁸ The term "propagate" is undefined in Oregon's wildlife
2 laws. We note that that word ordinarily means both to "increase
3 by natural reproduction" and to "foster the spread of" something.
4 See Webster's at 1817 (so stating).

1 state" -- is more than simply an important source of commission
2 authority. In defendant's view, it is apparently the only
3 source. He argues that the commission's power therefore extends
4 to only animals that are the property of the state, not to
5 animals that are privately owned. We disagree, for several
6 reasons.

7 First, defendant cites no authority for the proposition
8 that ORS 498.002 is the only source of the commission's
9 regulatory authority, and we know of none. Indeed, if nothing
10 else, our discussion of game mammals demonstrates that the
11 wildlife laws contain other sources of authority besides ORS
12 498.002 under which the legislature has authorized the commission
13 to act. Second, defendant's argument is premised on the notion
14 that "wildlife" can refer to only animals living untamed in a
15 state of nature. As we have established, however, that premise
16 cannot be squared with the plain text of the term's definition in
17 ORS 496.004(19). Finally, it is incorrect to assume -- as
18 defendant implies in his argument -- that the state must own or
19 have some possessory interest in a thing before it can be
20 regulated.

21 Defendant also argues that the provisions of ORS
22 497.228, set out above, regulating game mammal propagation confer
23 something other than a general regulatory authority on the
24 commission. Specifically, defendant argues that ORS 497.228 is

1 simply a recodification of former ORS 497.770 (1971), repealed by
2 Or Laws 1973, ch 723, § 130, a statute that explicitly recognized
3 that the degree of authority it imparted to the commission was
4 limited. When former ORS 497.770 (1971) was in force, it
5 required the commission -- on receipt of a nominal five dollar
6 fee -- to issue permits to virtually any interested individual
7 allowing them to engage in the business of raising and selling
8 any kind of game animal in Oregon. At the time, the statute made
9 clear that its provisions were intended only

10 "to aid the game commission in the enforcement of the
11 state game laws and not to place the game raisers under
12 the jurisdiction of the game commission."

13 Former ORS 497.770(5) (1971). That statute, however, was not
14 "recodified" as petitioner asserts; it was repealed in 1973. Or
15 Laws 1973, ch 723, § 130. That same year, the legislature
16 enacted ORS 497.228, and with it a regulatory scheme that was
17 considerably more robust than its predecessor. Not only was the
18 commission now authorized to deny propagation licenses when to do
19 otherwise would harm existing wildlife populations, it also was
20 empowered to create requirements for the care, inspection,
21 transportation, and ultimate disposition of game mammals. Those
22 changes do not suggest that the legislature intended ORS 497.228⁹
23 to be an extension of business as usual under former ORS 497.770

1 ⁹ Save for the fact that it no longer refers to "game
2 fish," ORS 497.228 remains in force today in essentially the same
3 form as it did when it was enacted in 1973.

1 (1971); indeed the opposite is true, and defendant is mistaken
2 when he argues otherwise.

3 We summarize our disposition of this case as follows.
4 First, "wildlife" means what the legislature stated in ORS
5 496.004(19). The Court of Appeals erred in fashioning a
6 definition for the term that deviated from the text of that
7 statute. Second, the commission possesses the authority to
8 regulate deer in Oregon either as "wildlife," ORS 496.004(19), or
9 as a "game mammal," ORS 496.004(9). Finally, we note that
10 defendant also challenges the sufficiency of the charging
11 instrument based on federal constitutional law.¹⁰ The nature of
12 the rulings below, however, made it unnecessary for either the
13 trial court or Court of Appeals to address those issues, and we
14 decline to consider them now without a more fully developed
15 record.

16 The decision of the Court of Appeals is affirmed. The
17 judgment of the circuit court is reversed, and the case is
18 remanded to the circuit court for further proceedings.

1 ¹⁰ Specifically, defendant argues that the regulations at
2 issue in this case both violate the Commerce Clause of the United
3 States Constitution, Article I, section 8, clause 3, and have
4 been preempted by existing federal laws and regulations.