

How should a wildlife trustee act?

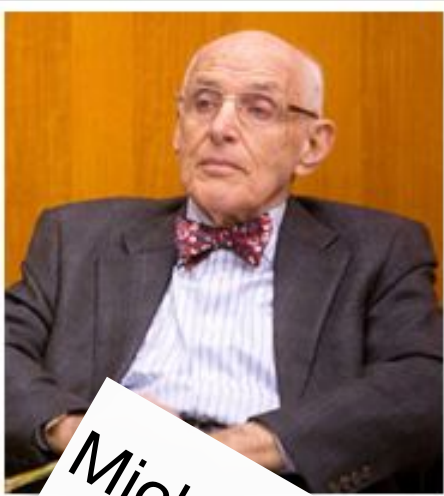


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Imagine Juliana v U.S. 2016 is decided in favor of the youths

1936-2014
Joseph Sax

<http://senate.universityofcalifornia.edu/JosephL.Sax.html>



Michigan Law Review 1970

THE PUBLIC TRUST DOCTRINE
IN NATURAL RESOURCE
LAW: EFFECTIVE JUDICIAL INTERVENTION
Joseph L. Sax

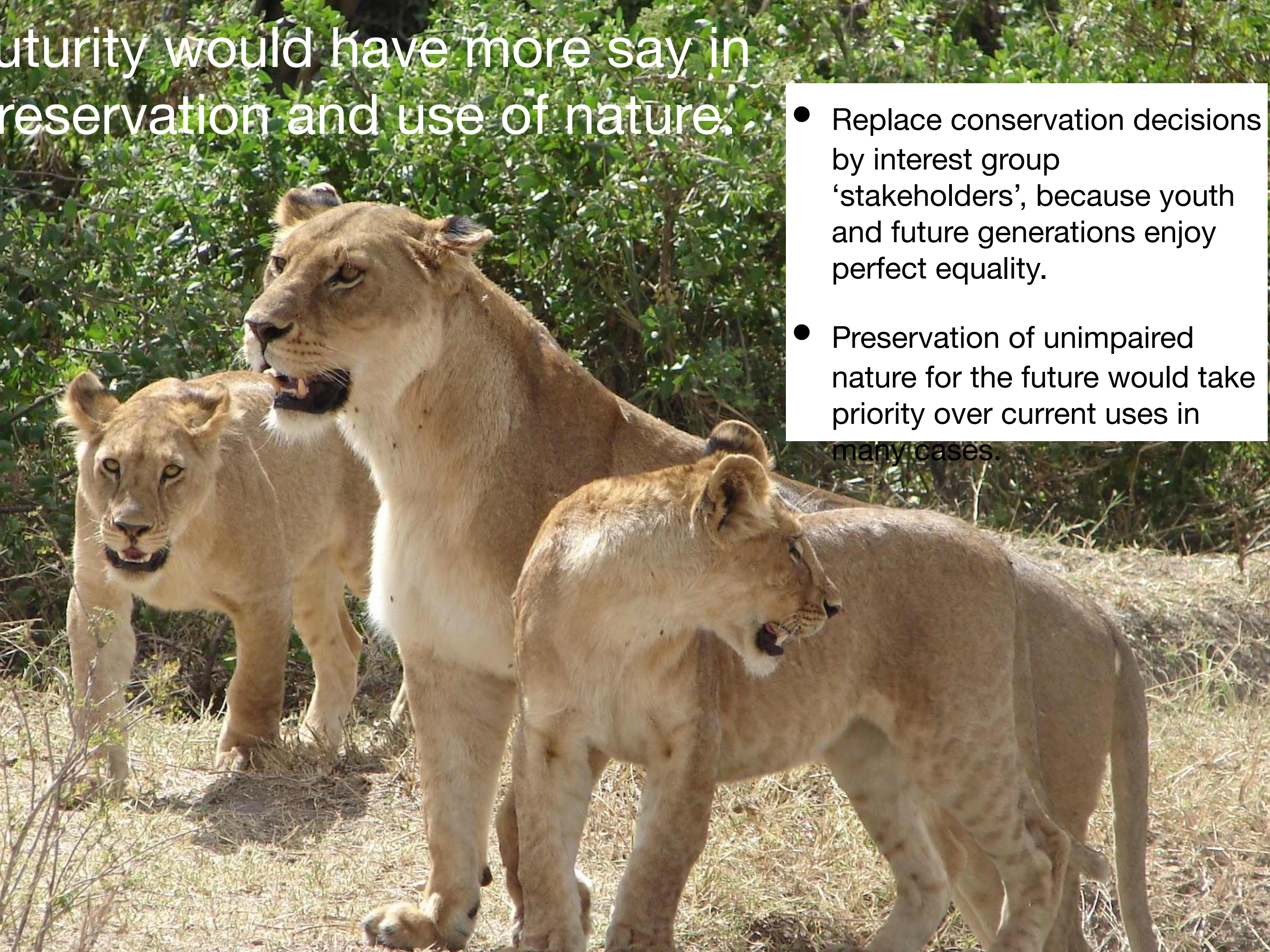
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- Futurity would have more say in preservation and use of nature.
- Trustees would be held to fiduciary standards or even higher standards.
- Courts would not defer to agency experts.

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reservation and use of nature.

- Replace conservation decisions by interest group 'stakeholders', because youth and future generations enjoy perfect equality.
- Preservation of unimpaired nature for the future would take priority over current uses in many cases.



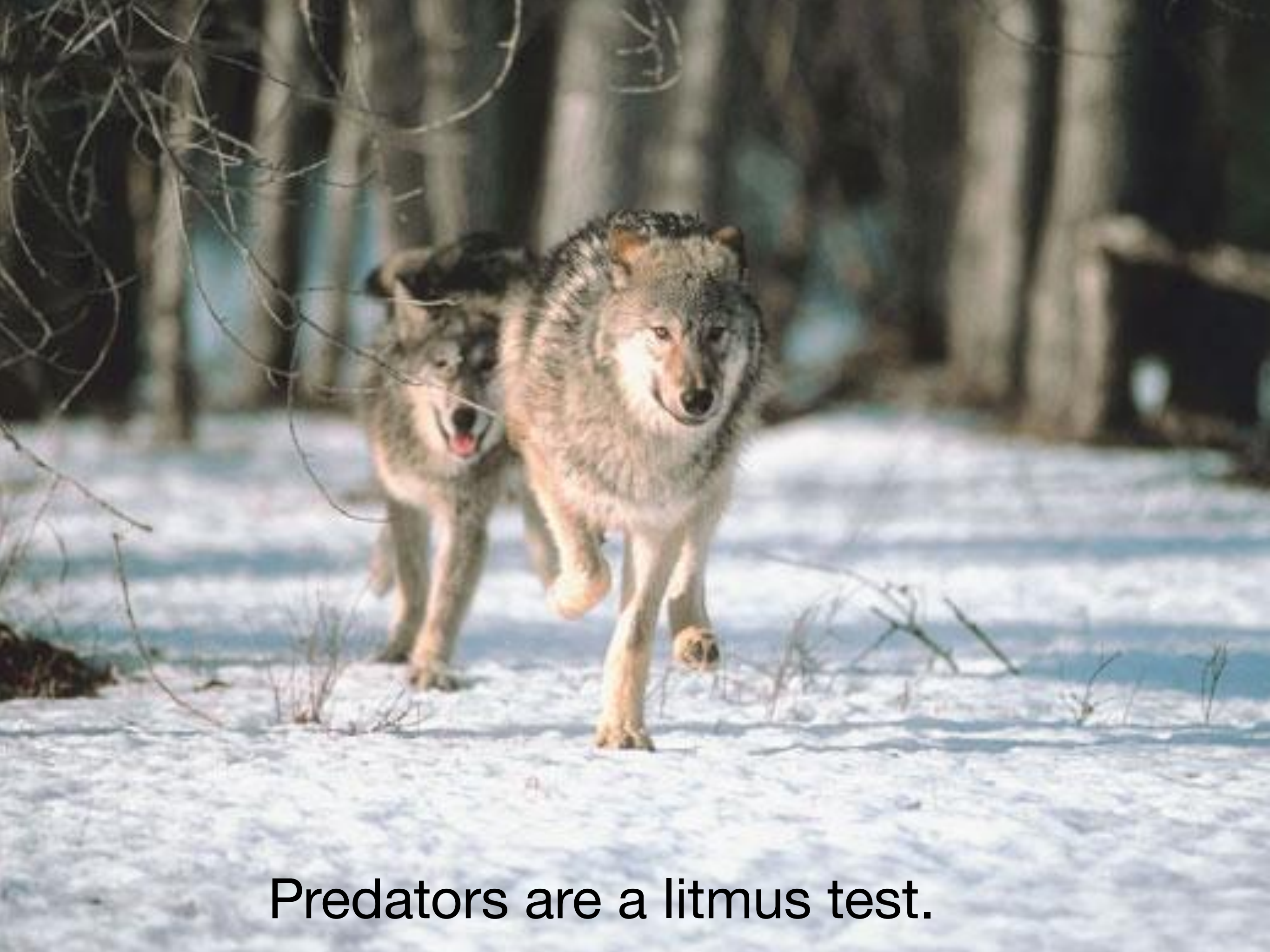


Trustees would be held to fiduciary standards or even higher standards.

- Accounting and prudence (Sax 1970, 1980-1981)
- Accountability (Horner 2000)
- Futurity has no voice so even higher standards?
(Treves et al. in review)

Courts would not defer to agency experts.

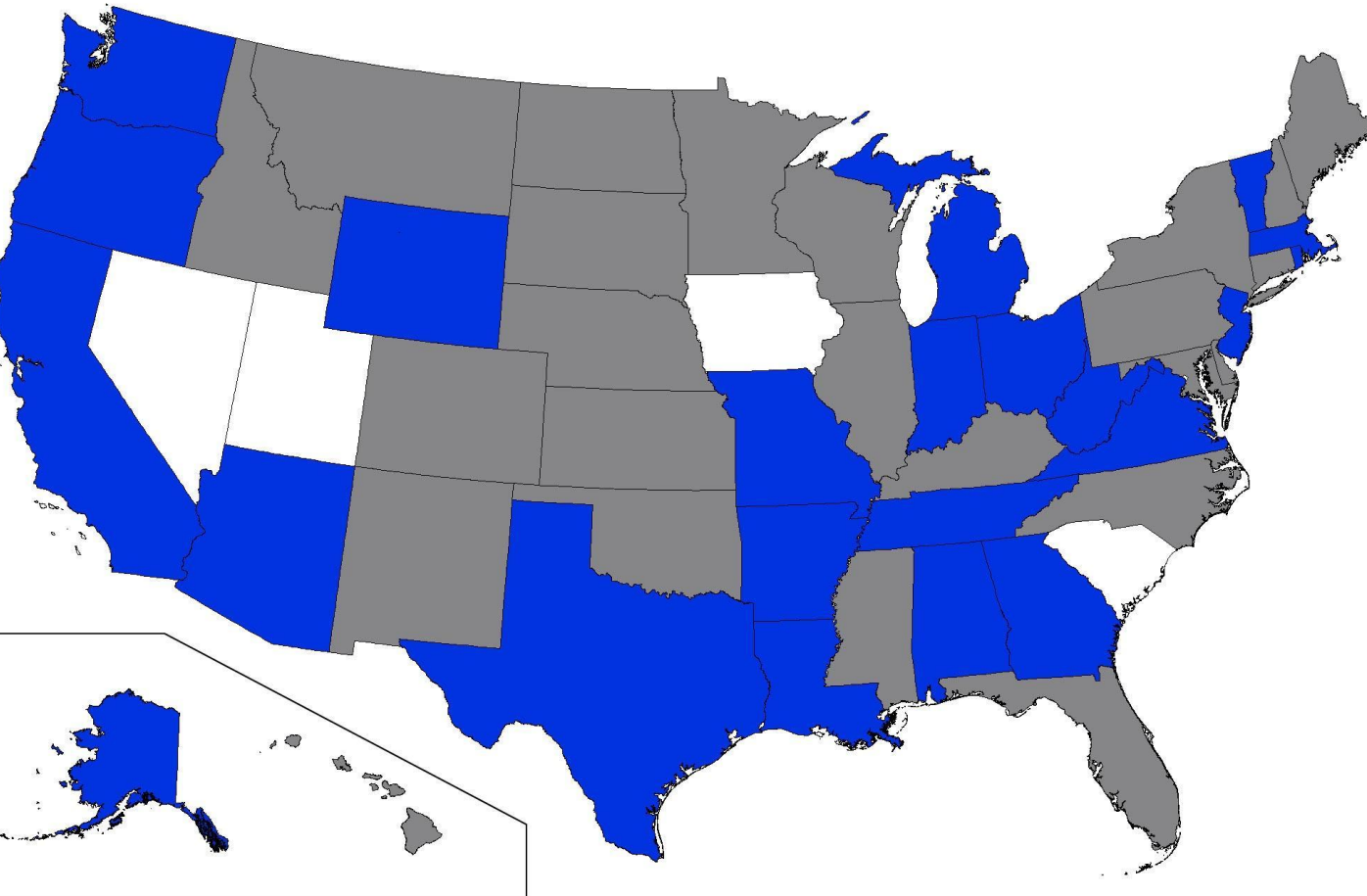
- Wildlife control will face greater scrutiny
- The quality of science would matter.
- Agency capture by powerful excessively narrow interests would be more difficult.
- Etc.



Predators are a litmus test.

Imagine Juliana v U.S. 2016 is
decided in favor of the youths

Let's consider variation in the
trustees
and
how the atmosphere differs from
wildlife...



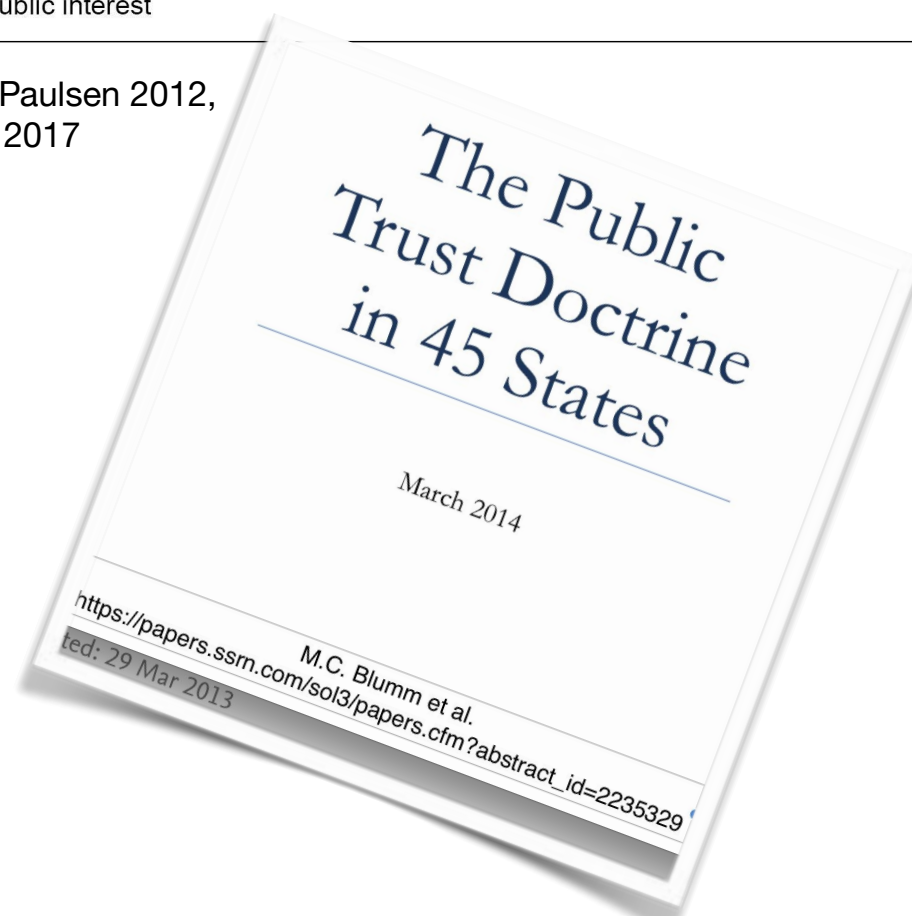
KEY

No acknowledgement of the public trust in wildlife

Expressly use terms "trust" or "trustee" in reference to state mgmt. of wildlife

Use trust-like language--such as "sovereign ownership of wildlife for the benefit of all people" or for "the common good," or discussion of the "sovereign capacity" for regulating wildlife in a manner consistent with the public interest

Adapted from Blumm & Paulsen 2012,
mapped in Treves et al.. 2017



Wisconsin

• **Two Constitutional provisions**

Navigable waters and right to hunt and fish

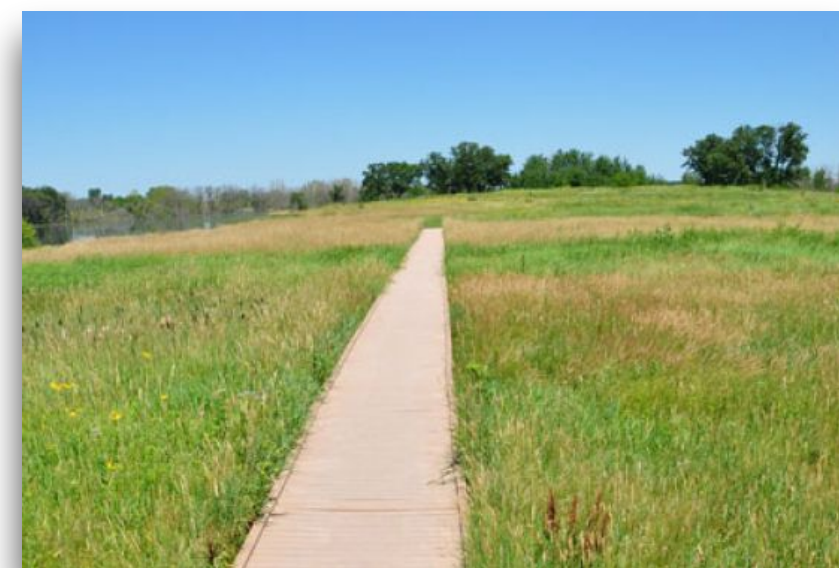
• **Supreme Court common law**

Wisconsin Supreme Court cases have interpreted state ownership of wildlife to be in trust (Krenz v. Nichols, 222 N.W. 300, 303 WI Supreme Court 1928)

• **Statute**

WDNR should preserve forests "to benefit the present and future generations." (WI STAT. ANN. § 28.04.2)

"legal title to, and the custody and protection of, all wild animals within this state is vested in the state for the purposes of regulating the enjoyment, use, disposition, and conservation of these wild animals." (WI STAT. ANN. § 29.011).



Comparing climate change to species depletion

Similarities

Differences

Both are depleted if used and replenished if left alone.

Ecosystems will change irreversibly if atmospheric conditions or certain species are substantially impaired.

Both can lead to acute loss of life and property.

Humans are only one factor driving changes.

U.S. governments have control over most of the threats.

Extreme atmospheric conditions threaten public well-being, but only a few extinctions or ecosystem collapses do so.

U.S. extinctions are seen as past errors, or a sad consequence of economic development.

Biodiversity and its threats are more diverse than GHGs.