

1998 STATE BALLOT INITIATIVES

I. COCKFIGHTING

A. *Arizona Ballot Initiative*

On the November 1998 ballot, Arizona voters passed Proposition 201, banning cockfighting within the state and setting out penalties for violation of this new law.¹ Cockfighting is a sport where cocks are often drugged to be more aggressive and then "fitted with razor-sharp blades to fight to the death in a pit."² The new law makes it a felony for any person to engage in cockfighting.³ The statute defines a cock as a "male chicken, including game fowl."⁴ The act of cockfighting is defined by the new law as knowingly: (1) "owning, possessing, keeping or training" cocks with the purpose of holding a cockfighting exhibition; (2) "for amusement or gain" allowing cocks to fight and/or cause injury to each other; or (3) simply allow any of these acts to occur on their premises.⁵ A person is guilty of a misdemeanor cockfighting offense if they knowingly attend a cockfighting event or are present at the location where the event planning is under way.⁶ The penalties for conviction under this statute include fines of up to \$150,000 and up to two years in prison for involvement in cockfighting, and a fine of up to \$2500 and up to six months in jail for attending an event.⁷

The ballot initiative passed by a wide margin with sixty-eight percent in favor of banning cockfighting, and thirty-two percent opposed.⁸ The Arizona ballot initiative process required the initiative organizers to gather 112,961 signatures over an eighteen month period to place the measure on the ballot.⁹ Over 188,000 signatures were gathered through the use of paid petition circulators.¹⁰ Efforts to ban cockfighting in the Arizona legislature

¹ Proposing an Amendment to Title 13, Chapter 29 of the Arizona Revised Statutes Relating to Cockfighting, Ariz. Legis. Serv. Prop. 201 (1998); *Election 98 Results*, HUMANELINES, Nov. 5, 1998. For an overview of Arizona's initiative process, see Jeffrey Allan Kilmark, *Government Knows Best? An Analysis of the Governor's Power to Veto and the Legislature's Power to Repeal or Amend Voter-Enacted Initiative and Referendum Petitions in Arizona*, 30 ARIZ. ST. L.J. 829 (1998).

² Chris Casteel, *Wrestler, Bill Challenging Cockfighting*, DAILY OKLAHOMAN, Feb. 3, 1999, at 1 (citing Humane Society spokesperson Wayne Pacelle).

³ ARIZ. REV. STAT. ANN. § 13-2910.03(B) (West Supp. 1999).

⁴ *Id.* § 13-2910.03(C).

⁵ *Id.* § 13-2910.03(A).

⁶ *Id.* § 13-2910.04.

⁷ *Id.* § 13-702.

⁸ *Election 98 Results*, *supra* note 1.

⁹ Joe Robertson, *Putting Rooster Fighting to a Vote*, TULSA WORLD, Jan. 3, 1999 [hereinafter Robertson I].

¹⁰ Mike McCloy, *Petitions Seek Cockfighting Ban: Animal Rights Group Works to Bring Issue Before Voters*, ARIZ. REPUBLIC, July 2, 1998, at B1.

had previously failed twenty-three times since 1954, due in part to the concerted efforts of the Arizona Game Fowl Breeders Association.¹¹

Despite broad support for the ban, many people involved in the sport expressed their anger over the ban. One advocate stated that cockfighting was a tradition worthy of continuing, arguing “[i]f (cockfighting) had started yesterday, I could understand. But it’s been around forever, it’s a tradition.”¹² At the time of the ban, there were approximately forty-five cockfighting pits throughout the state, drawing thousands of spectators with seats going for as much as fifty dollars to attend an event.¹³ Other advocates claimed there was nothing wrong with the sport, that the percentage of birds dying from the activity was low, and that the losers often live out their lives with female hens.¹⁴ Arizona’s Humane Society disagreed with the concept that just because something was tradition it should continue, noting that slavery was once part of American culture but has since been eradicated.¹⁵ Although supporters of cockfighting vow to continue the fight, local law enforcement plans to aggressively enforce the new law.¹⁶

Those involved in the sport vow to continue the practice, even if they must travel to New Mexico, one of three states where cockfighting is still legal.¹⁷ The other states where cockfighting is still legal are Oklahoma and Louisiana.¹⁸

Since the passage of Arizona’s cockfighting ban, legislative proposals have emerged addressing the cockfighting issue at the federal level and in several other state legislatures. In February 1999, Senator Wayne Allard of Colorado introduced Senate Bill 345 which would ban the transport of gamecocks across state lines from states where cockfighting is illegal to states where it is legal.¹⁹ This legislation would force cockfighting promoters to find their fighting birds instate, reducing availability. The bill was introduced with some fanfare in Washington, with professional wrestler Bill Goldberg acting as celebrity spokesperson for The Humane Society of the United States, a supporter of the bill.²⁰ Opponents to the interstate ban

¹¹ *Id.*

¹² Nancy San Martin, *Ruffling Feathers: Cockfighting Enthusiasts Proclaim Tradition, Lament New Arizona Law Making Sport Illegal*, DALLAS MORNING NEWS, Dec. 20, 1998, at 49A (quoting Raul Padilla).

¹³ Angelica Pence, *Going to Battle for Cockfighting, Arizona Gamecock Owners on Offensive Against Bill*, DALLAS MORNING NEWS, June 28, 1998, at 42A.

¹⁴ Martin, *supra* note 12, at 49A.

¹⁵ *Id.*

¹⁶ Mark Shaffer & Cathryn Creno, *Sheriffs Say Jails Ready for Defiant Cockfighters; But Fans of Blood Sport Vow to Fight State Ban*, ARIZ. REPUBLIC, Nov. 5, 1998, at A19.

¹⁷ Mark Oswald, *New Mexico Becomes Cockfight’s Sanctuary*, SANTA FE NEW MEXICAN, Jan. 7, 1999, at A1.

¹⁸ *Id.*

¹⁹ S. 345, 106th Cong. (1999).

²⁰ Casteel, *supra* note 2, at 1.

argue that for border towns in Texas, cockfighting supports the economy, which should be considered by Congress before it acts to ban the trade.²¹

Citizen groups in Oklahoma are starting a ballot initiative to place a cockfighting ban on the 2000 ballot.²² The legal hurdles for placing an initiative on the ballot, however, are more onerous than in Arizona or Missouri. In Oklahoma, valid signatures must be collected from eight percent of the number of voters in the previous general election and it must be done within ninety days of filing the petition.²³ Opponents to the proposal are organizing a first strike in an attempt to protect cockfighting and other animal-related sports against any potential initiative.²⁴

In addition to the current efforts in Congress and Oklahoma, some states where cockfighting is already banned are proposing raising the penalty for violation of the law from a misdemeanor to a felony.²⁵ Currently, nineteen states make engaging in cockfighting felony.²⁶

Efforts to ban the sport are more daunting in New Mexico and Louisiana where cockfighting is still legal. A bill was proposed in 1997 in New Mexico to ban cockfighting in the state, but it was met with overwhelming opposition.²⁷ A Louisiana state representative proposed a bill in 1997 to ban cockfighting in Louisiana, but it died in committee.²⁸ If cockfighting is to be banned in New Mexico or Louisiana, it will have to occur through legislative means because neither state has a petition initiative similar to the ones used in Arizona and Missouri.²⁹

B. Missouri

Missouri passed a ballot initiative to ban cockfighting, similar to the Arizona initiative.³⁰ The initiative passed with a sixty-three percent favorable vote.³¹ The new statute makes it a felony for any person to engage in: "(1) Baiting or fighting animal; (2) Permitting baiting or animal fighting to be done on any premises under his charge or control; (3) Promoting, conducting, or staging a baiting or fight between two or more animals; (4) Advertising a baiting or fight between two or more animals; or, (5) Collecting any admission fee for a baiting or fight between two or more animals."³²

²¹ Sun National Staff, *Federal Legislation Could Deal a Blow to Cockfighting: Interstate Transport of Birds Would be Illegal*, BALTIMORE SUN, Feb. 5, 1999, at A3.

²² Joe Robertson, *Citizens Halting Inhumane Cockfighting*, TULSA WORLD, Mar. 9, 1999.

²³ Robertson I, *supra* note 9.

²⁴ *Id.*

²⁵ Sun National Staff, *supra* note 21, at A3.

²⁶ *Id.*

²⁷ Oswald, *supra* note 17, at A1. The Governor of New Mexico seemed ambivalent to the industry and was quoted as saying, "I have the sense that it's better to do [cockfighting] with chickens than other forms of pugilism." *Id.*

²⁸ *A Club We Should Disband*, TIMES-PICTAYUNE, Nov. 23, 1998, at B4.

²⁹ *Id.*; Oswald, *supra* note 17, at A1.

³⁰ Proposition A: An Amendment to Chapter 578 of the Revised Statutes of Missouri of 1994 (1998).

³¹ *Election 98 Results*, *supra* note 1.

³² MO. ANN. STAT. § 578.005(B)(1) (West Supp. 1999).

The new statute also makes it a misdemeanor to knowingly attend a cockfighting event, to sell or transport an animal bred for fighting, and to own, possess, or manufacture cockfighting implements.³³ The initiative exempts persons engaged in livestock or agricultural activities and rodeo practices sanctioned by the Rodeo Cowboy's Association.³⁴

Cockfighting was illegal in Missouri for 112 years.³⁵ However, in 1985, in *State v. Young*,³⁶ the Missouri Supreme Court held that a previous cockfighting ban statute was unconstitutional on vagueness grounds.³⁷ The court found that banning cockfighting is within the police powers of the state because "its purpose is to discourage and prohibit the cruel practice of animal baiting and fighting."³⁸ However, the court found that individual citizens were not given reasonable notice of exactly what was banned under that statute because it was unclear what constituted aiding or assisting a cockfighting operation.³⁹

Current legislation will also face legal and legislative challenges. Since the passage of Proposition A in November 1998, several bills have been filed in the Missouri legislature by pro-cockfighting legislators interested in watering down the law.⁴⁰ Opponents claimed the language was vague and could ban other animal-related sports like rodeos and the use of hunting dogs.⁴¹

Pro-cockfighting interests claim the anti-cockfighting movement is run by animal rights activists "who see cruelty aspects in any use of animals."⁴² One supporter of the sport states, "[w]e're just letting them do what they want to do . . . [l]etting them fight, to me, is an honor to them."⁴³ Biologists have noted that while gamecocks do, by nature, fight one another, that is often the case for many species because it is "nature's way of ensuring that the strongest pass on their genes to the next generation."⁴⁴ While such fights occur in a natural setting, death of the losing cock is not usually part of the equation.⁴⁵

Opponents to the Missouri initiative also argued that cockfighting is a better fate for these birds than the normal chicken. "They say fighting cocks have a better life than the 42 days allowed for millions of caged

³³ *Id.* § 578.005(B)(2).

³⁴ *Id.* § 578.005(E).

³⁵ *Ballot Proposal Takes Aim at Animal Fighting*, ST. LOUIS POST-DISPATCH, Oct. 31, 1998, at Voters Guide 4.

³⁶ 695 S.W.2d 882 (Mo. 1985).

³⁷ *Id.* at 886.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ Sarah Casey Newman, *Need a Gift For a Pooch? Spend Dollars For Scents*, ST. LOUIS POST-DISPATCH, Feb. 13, 1999, at L47.

⁴¹ *A Club We Should Disband*, *supra* note 28, at B4.

⁴² World Staff Writer, *It's toCrow for Cockfighting Debate Heats Up in the State*, TULSA WORLD, Nov. 29, 1998 (quoting Sharon McFarland, a gamefowl breeder).

⁴³ *Id.* (quoting Lynn Moore).

⁴⁴ *Our Shame—"Cockfighting Capital of the World,"* TULSA WORLD, Dec. 1, 1998.

⁴⁵ *Id.*

chickens that are bred for the supper table."⁴⁶ Proponents of the measure raised over \$450,000 for the campaign, arguing that "[t]he infliction of pain and distress has no redeeming quality other than the unusual entertainment value that it presents to a very small number of people."⁴⁷

II. TRAPPING

Trapping initiatives were run in Arizona, Colorado, and Massachusetts between 1992 and 1996. Campaigns in all three states were successful in banning leg-hold and other body-gripping traps, although it took Arizona two attempts to pass the issue. Trapping initiatives also arose in two states for the 1998 elections; Alaska had the opportunity to ban wolf-snaring, while California had the opportunity to ban all leg-hold and body-gripping traps, and the use of poisons for predator control.

A. Alaska Wolf Snare Ban

On the November 1998 ballot, Alaska voters rejected a proposal to ban wolf snaring in the state.⁴⁸ Wolf snares are wire loops designed to catch and strangle wolves.⁴⁹ They are anchored to trees or bushes, and have a cinching device which allows the loop to get smaller but not bigger; the wolf then strangles itself as it struggles to get free.⁵⁰ The proposed initiative created prohibitions on: (1) using a snare with the intent of trapping a wolf and (2) possessing, purchasing, or selling the skin of a wolf known by the person to have been caught with the use of a snare.⁵¹ Violation of either part would result in a Class A misdemeanor, punishable with a fine of up to \$5000 and one year in prison.⁵² This proposal only affected snaring and would not have ended the use of leghold traps or other devices to capture wolves.

Earlier in the year, various citizens and community organizations brought action against the state to remove the issue from the ballot.⁵³ The superior court agreed, granting summary judgment to the plaintiffs and decertifying the issue.⁵⁴ Plaintiffs argued the state was a trustee for its natural resources under Article VIII of the Alaska Constitution and that the legislature had exclusive law-making powers over natural resource

⁴⁶ Terry Ganey, *Would You Watch This for Fun? Do You Mind That Others Do? Referendum Would Ban Cockfighting in Missouri; Yes, The Fights Are to the Death*, ST. LOUIS POST-DISPATCH, Nov. 1, 1998, at B1.

⁴⁷ *Id.* (quoting Nancy H. Grove, the leading financial contributor to the initiative drive).

⁴⁸ *Election 98 Results*, *supra* note 1. For a review of the Alaska initiative process, see M. Katheryn Bradley & Deborah L. Williams, "Be it Enacted by the People of the State of Alaska . . ."—A Practitioner's Guide to Alaska's Initiative Law, 9 ALASKA L. REV. 279 (1992).

⁴⁹ ALASKANS AGAINST SNARING WOLVES, PLEASE VOTE YES ON 9 (1998).

⁵⁰ *Id.*

⁵¹ *Brooks v. Wright*, 971 P.2d 1025, 1026 (Alaska 1999).

⁵² *Id.*; ALASKA STAT. §§ 12.55.035, .135 (Michie 1998).

⁵³ *Brooks*, 971 P.2d at 1026.

⁵⁴ *Id.*

management.⁵⁵ The Alaska Supreme Court disagreed and ordered the issue reinstated to the ballot on August 17, 1998.⁵⁶ The Court held that Article VIII did not explicitly create a public trust and the legislature does not have exclusive law making authority over the subject matter of Article VIII.⁵⁷

The issue was backed by Alaskans Against Snaring Wolves, Inc. (AASW), who received a large part of its funding from Friends of Animals and other national animal rights and protection groups.⁵⁸ The group argued that wolf snaring is cruel because the captured animal often does not die quickly, it struggles for days trying to escape.⁵⁹ AASW contends that snaring wolves in order to protect caribou populations is not necessary because caribou populations are high and not threatened by wolves. There are more than one million caribou in the state and the numbers are rising.⁶⁰ Additionally, the group argued that there would be little economic impact on the state if snares were banned. Department of Fish & Game figures show that only about one-third of wolves are killed by snares and only 5.4% of income generated by furs comes from wolves killed in snares.⁶¹

Many snares are left behind after the end of trapping season and threaten other animals due to their relatively low cost (about \$5, as compared to \$75 for a leg-hold trap).⁶² AASW pointed to a state sponsored wolf snaring program conducted in the early 1990s which showed the indiscriminate nature of snaring activities.⁶³ The program captured 109 wolves, and about one-third of those snared were found alive.⁶⁴ The snares also caught ninety-six other animals including: moose, caribou, grizzly bears, eagles, and wolverines.⁶⁵ Of these ninety-six, sixty-two were found dead and many others were seriously injured by the snares.⁶⁶

Opponents of the measure included hunters, trappers, and native organizations who grouped together to form the Coalition for the Alaskan Way of Life to fight the ballot measure.⁶⁷ The Coalition argued that banning snares would endanger Alaskan traditions and the native way of life.⁶⁸ The group also argued that a vote against the measure was a vote

⁵⁵ *Id.*

⁵⁶ *Id.* at 1033.

⁵⁷ *Id.*

⁵⁸ Natalie Phillips, *Outsiders Aid Both Wolf-Snare Sides*, ANCHORAGE DAILY NEWS, Oct. 30, 1998, at D1.

⁵⁹ ALASKANS AGAINST SNARING WOLVES, *supra* note 49.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ Phillips, *supra* note 58, at D1.

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

against outside influence,⁶⁹ despite the fact that the Coalition itself raised almost half its funds from out-of-state sources.⁷⁰

One of the Coalition's persuasive arguments claimed that the proposal would allow law enforcement to "round up any wolf pelts, ruffs or heirlooms, regardless of when the wolf was snared."⁷¹ It further stated that the law would prevent anyone from owning parkas, mittens, mukluks, and even children's dolls if they are trimmed with fur.⁷² AASW argued the law would do no such thing; it would merely prohibit the sales of wolf pelts killed by snares after the law goes into effect.⁷³ Alaska's Attorney General refused to give a definite statement, but did note that new laws are usually never enforced retroactively unless the law specifically provides for such action.⁷⁴

The initiative failed, thirty-six percent in favor to sixty-four percent opposed.⁷⁵ Interestingly, Alaska's youths taking part in the Kids Voting Program would have opted to pass the initiative, despite agreeing with their parents on most other issues.⁷⁶

B. California Trap and Poison Ban

In the November 1998 elections, California voters passed Proposition 4, banning the use of body-gripping traps and two types of poison in the state. The new law places an outright ban on the use of any body-gripping trap, including steel-jawed leghold traps, padded-jaw leghold traps, conibear traps, and snares.⁷⁷ Live traps and common rat and mouse traps, were excluded, along with the use of padded-jaw leghold traps in the "extraordinary case" where it is "the only method available to protect human safety."⁷⁸ The law also prohibits the use of sodium fluoroacetate (Compound 1080) or sodium cyanide to poison or attempt to poison any animal.⁷⁹ The law specifically includes all federal, state, and local employees, and overrides other sections of the state Food and Agricultural Code.⁸⁰ Violation of the law is a misdemeanor, punishable with fines from

⁶⁹ Ben Hopson Jr., *Measure No. 9: Snares Are Important to Alaska Culture: Wolf Snaring Bites Both Ways*, ANCHORAGE DAILY NEWS, Oct. 17, 1998, at D10 (Hopson was interim president of Indigenous Survival International and co-chair of the Coalition for the Alaskan Way of Life).

⁷⁰ Natalie Phillips & Elizabeth Manning, *Voters Squash Ban on Wolf Snaring*, ANCHORAGE DAILY NEWS, Nov. 4, 1998, at D1.

⁷¹ Associated Press Political Service, *Wolf Initiative Ads Snare Criticism*, Oct. 19, 1998.

⁷² *Id.*

⁷³ *Id.*

⁷⁴ Phillips, *supra* note 58, at D1.

⁷⁵ *Election 98 Results*, *supra* note 1.

⁷⁶ Associated Press Political Service, *Alaska Kids Vote Results Mostly Those of Adults; Some Exceptions*, Nov. 5, 1998.

⁷⁷ CAL. FISH & GAME CODE § 3003.1 (West 1999).

⁷⁸ *Id.*

⁷⁹ *Id.* § 3003.2.

⁸⁰ *Id.*

\$300 to \$2000, and up to one year in the county jail.⁸¹ The initiative passed, fifty-seven percent to forty-three percent.⁸²

Proposition 4 was sponsored by The Humane Society of the United States, the International Fund for Animal Welfare, and the Doris Day Animal League.⁸³ The organizations focused on the cruel use of leg-hold traps to catch and kill tens of thousands of animals for the fur trade each year in California.⁸⁴ State figures showed 24,136 animals taken during the 1997-98 trapping season.⁸⁵ These numbers included bobcats, beavers, and foxes taken for their pelts, as well as coyotes killed to minimize predation on livestock.⁸⁶ Steel jaw leghold traps are considered cruel because they are indiscriminate, harming or killing any animal that triggers them; often, a captured animal will attempt to chew off its own leg in an attempt to escape.⁸⁷ These traps have been banned in more than eighty countries, as well as several states.⁸⁸ Padded-jaw traps have also been proven to cause injury to animals, and death results when the trapper bludgeons the animal.⁸⁹ Proponents of the initiative argued against the use of poison because not only do poisoned animals suffer an agonizing death, they pass on the poison to other animals who feed on them.⁹⁰

Opponents of the ban included the California Farm Bureau Federation, the Wildlife Legislative Fund of America, the California State Association of Counties, California Wool Growers Association, and the National Trappers Association.⁹¹ They argued the proposition was too extreme and could threaten human health and safety in addition to wildlife and livestock.⁹² Trapping is a tool used to control wild animal populations, animals that carry disease, and predators that kill livestock and endangered species.⁹³ They claimed ranchers and farmers would be helpless in their fight to protect crops and livestock.⁹⁴ Additionally, opponents claimed existing wildlife laws and professional wildlife managers were controlling the balance of nature by using traps.⁹⁵

In an unusual turn of events, the National Audubon Society joined the fight against the ban on traps and poisons.⁹⁶ The Society cited endangered species protection programs which relied upon trapping as a method to

⁸¹ *Id.* § 12005.5 (West Supp. 1999).

⁸² *State Propositions*, S.F. CHRON., Nov. 5, 1998, at A26.

⁸³ Cal. Secretary of State—Vote 98—Argument in Favor of Proposition 4 (visited Apr. 4, 1999) <<http://vote98.ss.ca.gov/VoterGuide/Propositions/4yesarg.htm>>.

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ Virginia Ellis, *Propositions 4 and 6: Animal Cruelty Measures Play to Emotional Issues*, L.A. TIMES, Nov. 1, 1998, at A26.

control coyote and red fox predation on nesting bird species.⁹⁷ Anti-trapping activists counter that there are equally effective alternatives available to wildlife managers.⁹⁸

Federal officials removed hundreds of steel-jaw traps in California in the weeks following the passage of the ban.⁹⁹ The traps captured about 17,000 animals each year; about one-quarter of the traps had been placed in order to protect endangered species.¹⁰⁰ One area affected by the removal was the San Francisco Bay National Wildlife Refuge, which had been trapping red fox to protect the California clapper rail, a small endangered shorebird.¹⁰¹

The first charges for violation of this law were against two men in Redding for trapping five beavers in February 1999.¹⁰² Danial Genaro was asked by Peter Knighten to remove some beavers that were causing landscape damage; Genaro agreed to remove them in return for the pelts.¹⁰³ The Haven Humane Society officials became aware of the wire loop snares used to trap the beavers after a dog was caught in one of them.¹⁰⁴ After the charges were brought, Genaro was not apologetic, stating "[i]f this society is at such a point that I should be devoured for killing some beavers, then just kick me into a ditch and be done with me."¹⁰⁵

III. HUNTING

Ten separate initiative campaigns addressed various hunting issues from 1990 to 1997. In 1990, California citizens voted to ban trophy hunting of mountain lions, as well as provide habitat for deer, mountain lions, and threatened and endangered species. Voters rejected a movement to repeal this ban six years later.¹⁰⁶ Six states saw battles over whether to ban the baiting and/or hounding of black bears and other species. Bear baiting is described as setting out a pile of material to attract a bear, then shooting the bear, usually from a blind.¹⁰⁷ Hounding involves setting out a pack of radio-collared dogs to track and chase a bear.¹⁰⁸ When the bear eventually climbs a tree to escape, the hunters shoot it.¹⁰⁹ Initiative drives to ban these activities were successful in Colorado, Massachusetts, Oregon, and

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ Associated Press, *Removal of Leg Traps May Doom Rare Species*, SAN DIEGO UNION & TRIBUNE, Nov. 15, 1998, at A3.

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² Associated Press, *2 Redding Men Charged Under New Anti-Trapping Law*, SACRAMENTO BEE, Mar. 14, 1999, at B4.

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ Steven A. Capps, *Mountain-Lion Protections Survive California Vote*, OREGONIAN, Mar. 28, 1996, at A9.

¹⁰⁷ See, e.g., Nancy Perry, *The Oregon Bear and Cougar Initiative: A Look at the Initiative Process*, 2 ANIMAL L. 203, 203-04 (1996).

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

Washington, but were defeated in Idaho and Michigan. Additionally, in 1996, Alaskan voters approved a prohibition on same-day airborne hunting of wolves, foxes, lynx, and wolverine.

The 1998 election cycle saw two initiatives relating to hunting: one in Minnesota proposing to make hunting and fishing a virtual constitutional right, and one in Ohio attempting to reverse a legislative decision by once again outlawing mourning dove hunting.

A. *Minnesota Hunting, Fishing & Trapping Initiative*

In Minnesota, voters faced the decision of whether to add a clause to their constitution making hunting, fishing, and the taking of game a constitutional right. The amendment states that “[h]unting and fishing and the taking of game and fish are a valued part of our heritage that shall forever be preserved for the people and shall be managed by law and regulation for the public good.”¹¹⁰ An earlier version of the amendment offered to protect the activities as a “right,” but the state legislature, which sends constitutional amendments to the people for approval, revised the language to exclude “right” in favor of the present vague statement.¹¹¹ The amendment passed with an overwhelming majority of seventy-seven percent to twenty-three percent.¹¹²

The Humane Society of the United States and Friends of Animals and Their Environment (FATE) opposed the amendment on two grounds. First, the organizations were concerned it could establish constitutional protection for use of the leg-hold trap. FATE director Howard Goldman argues against the use of this type of trap, stating that “[i]t’s barbaric. It causes an enormous amount of pain and suffering to all wildlife. These animals belong to all the people of the state, not just trappers.”¹¹³ The Minneapolis-Saint Paul Star-Tribune published an eloquent guest editorial from minister Richard Gist arguing against the amendment. Gist stated: “[c]ompassion struggles, always. Indifference brushes it aside, selfish pursuit forces it on the defensive. When cruelty is given free reign, compassion becomes muted, even derided.” In the editorial, Gist related some of the many responses he received from the public after he published an earlier letter in which he related the story of how his family pet was killed in a leg-hold trap. “Everywhere,” Gist writes, “family pets were being killed or maimed in traps and snares, and nowhere were the tragedies taken seriously by either the Department of Natural Resources or most trappers.” He concluded with the statement:

I suspect that many in the world of trapping fear that my children’s generation may be even more compassionate than their father’s. The only way to remove the issue from future debate and legislative regulation is to write it in stone,

¹¹⁰ MINN. CONST. art. XIII, § 12.

¹¹¹ Doug Smith, *Animal Rights Groups Target Constitutional Amendment*, STAR-TRIBUNE, Sept. 26, 1998, at 1B [hereinafter *Animal Rights Groups*].

¹¹² Doug Smith, *Big Margin Surprises Amendment Supporters*, STAR-TRIBUNE, Nov. 15, 1998, at 19C.

¹¹³ *Animal Rights Groups*, *supra* note 111, at 1B.

now. But we're talking about our Constitution, which is not a vehicle for special interest groups to manipulate the future.¹¹⁴

Second, the groups argued there is no need for the amendment because hunting and fishing activities are not threatened. Additionally, the amendment is inappropriate for the constitution. With approximately one million anglers and five-hundred-thousand hunters in the state, these activities are deeply entrenched in Minnesota heritage and are not likely to be taken away anytime in the near future, said opponents.¹¹⁵ Minnesota has no citizen-initiated amendment process, so it is impossible for animal rights groups to bring initiatives similar to those brought in other states in recent years.¹¹⁶ Also, a constitutional right for recreational pursuits sets a bad precedent. Goldman stated it is inappropriate to provide protection to recreational pastimes "while basic needs such as food, shelter and health care are not addressed."¹¹⁷

The Minnesota Outdoor Heritage Foundation, an umbrella group made up of most of the state's hunting and fishing organizations, was the driving force behind the amendment. The group claims the amendment was necessary to fend off attacks on hunting, fishing, and trapping made by animal rights groups. A spokesperson for one hunting organization, Pheasants Forever, stated: "[t]hese outdoor traditions have been part of a way of life in Minnesota, and all this amendment would do is affirm these traditions into the future. . . . [Animal rights groups] don't want to just end trapping, they want to end all of these activities."¹¹⁸ The groups also pointed out that trapping is not mentioned in the amendment and argued that the legislature or the state Department of Natural Resources could outlaw leg-hold traps if they decided to.¹¹⁹

B. Ohio Mourning Dove Hunting Ban

Ohio Statewide Issue Number 1 proposed a statutory amendment to end mourning dove hunting.¹²⁰ The issue was proposed by initiative petition. An organization called Save the Doves collected more than 300,000 signatures to place it on the ballot.¹²¹ The initiative proposed three simple changes to Ohio state law. First, it removed mourning doves from the list of game birds.¹²² Second, it removed a sentence regarding the timing of

¹¹⁴ Richard Gist, *A Constitutional Right to Cruelty: Proposal Aims to Make Pain Permanent*, STAR-TRIBUNE, Oct. 25, 1998, at 23A.

¹¹⁵ Dennis Anderson, *Minnesota Poll*, STAR-TRIBUNE, Oct. 18, 1998, at 1A (showing that 89% of residents believe that fishing is an ethical behavior, and 79% believe that hunting is ethical).

¹¹⁶ *Voters Guide*, STAR-TRIBUNE, Oct. 30, 1998, at 12V [hereinafter *Star's Voters Guide*].

¹¹⁷ *Animal Rights Groups*, supra note 111, at 1B.

¹¹⁸ *Id.*

¹¹⁹ *Star's Voters Guide*, supra note 116, at 12V.

¹²⁰ *Voters Guide*, DAYTON DAILY NEWS, Oct. 22, 1998, at 2 [hereinafter *Dayton's Voters Guide*].

¹²¹ Dale Dempsey, *Doves Will Remain Fair Game*, DAYTON DAILY NEWS, Nov. 4, 1998, at 1A.

¹²² *Dayton's Voters Guide*, supra note 120, at 2.

mourning dove season.¹²³ Third, it added the words “[n]o person shall take or hunt a mourning dove.”¹²⁴ Mourning dove hunting was banned in 1917, allowed again in 1975, banned in 1976, and made legal again in 1995 by the state General Assembly.¹²⁵

Proponents of the ban argued that the mourning dove is an international symbol of peace—a gentle songbird which does not damage crops or livestock.¹²⁶ The bird is fast and many are only wounded by hunters, resulting in a slow, painful death.¹²⁷ Each dove only yields about two ounces of meat.¹²⁸ Proponents also claimed many hunters do not eat the birds; they only use them for target practice.¹²⁹

Opponents of the ban included Ohians for Wildlife Conservation (a pro-hunting group) and the Ohio Division of Wildlife (ODW).¹³⁰ In 1994, ODW recommended to the legislature that dove hunting be resumed, arguing the bird had a healthy population.¹³¹ Additionally, ODW stated that hunting has “almost no impact on mourning dove populations” because less than ten percent of the population is taken every year, while fifty to seventy percent of the population dies annually from natural causes.¹³² Under this theory, it is fine to kill doves because most of them would die anyway. Ohians for Wildlife Conservation ran advertisements painting the animal rights activists as extremists, arguing that the ban would lead to further restrictions on hunting and fishing in general, medical research, zoos, meat eating, and some farming techniques.¹³³ Opponents also argued that hunting was an important source of revenue for both the state economy and ODW through license fees.¹³⁴ Opponents raised an estimated two million dollars more than Save the Doves.¹³⁵

After an emotional campaign, this issue was rejected by Ohio voters, forty percent to sixty percent.¹³⁶ Including Ohio, dove hunting is currently allowed in 38 states.¹³⁷

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ *Id.*; Mike Wainscott, *Dove Hunters Win State Ally*, CIn. Post, Aug. 13, 1998, at 12B.

¹²⁶ *Dayton's Voters Guide*, *supra* note 120, at 2.

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ Dempsey, *supra* note 121, at 1A.

¹³⁰ Wainscott, *supra* note 125, at 12B; *State Issue 1: Allow Mourning-Dove Hunting to Continue*, COLUMBUS DISPATCH, Sept. 28, 1998, at 6A [hereinafter *State Issue 1*].

¹³¹ Wainscott, *supra* note 125, at 12B.

¹³² *Dayton's Voters Guide*, *supra* note 120, at 2.

¹³³ Dempsey, *supra* note 121, at 1A.

¹³⁴ *State Issue 1*, *supra* note 130, at 6A.

¹³⁵ Dempsey, *supra* note 121, at 1A.

¹³⁶ *Election 98 Results*, *supra* note 1.

¹³⁷ *Dayton's Voters Guide*, *supra* note 120, at 2.

IV. ANIMAL FARMING

A. *California Horse Slaughter*

At the November polls, California voters approved Proposition 6, otherwise known as the Prohibition of Horse Slaughter and Sale of Horsemeat for Human Consumption Act of 1998.¹³⁸ The Act recognizes horses as "an important part of California's heritage that deserves protection from those who would slaughter them for food for human consumption."¹³⁹ Section four of the Act makes it illegal for a person to import, export, or transfer ownership of any horse with the intent of killing it or having it killed if that person knew or should have known that any part of the horse would be used for human consumption.¹⁴⁰ Violations are felonies, punishable by imprisonment in state prison for sixteen months or two to three years.¹⁴¹ Additionally, section five of the Act makes it illegal to offer horsemeat for sale for human consumption; violations are misdemeanors, punishable with fines up to \$1000 and between thirty days and two years in jail.¹⁴² The ban does not apply to horses that are processed for pet food or glue. The proposition passed fifty-nine percent to forty-one percent.¹⁴³

While horsemeat is hardly ever eaten in the United States, it is common fare in restaurants in Belgium and France, and considered a delicacy in Japan.¹⁴⁴ Statistics from the Department of Food and Agriculture show that 97,000 U.S. horses were slaughtered in 1997 for export to these foreign markets; 3000 were from California.¹⁴⁵ Animal rights activists argue those numbers are actually higher, estimating that approximately 10,000 California horses end up as gourmet steaks on foreign tables each year.¹⁴⁶ Proponents of the ban, led by Kathleen Doyle of Save the Horses Initiative, ran an emotional campaign arguing that pets should not be slaughtered.¹⁴⁷ They point to the practice of "killer buyers" who purchase numerous horses for a few hundred dollars at livestock auctions, packing them into trucks for long hauls without food or water to out of state slaughterhouses.¹⁴⁸ At the slaughterhouse, the horses show terror before they are killed with a spike driven into their heads (horses processed for other purposes are killed painlessly, but horses eaten by people cannot be drugged because it would contaminate the meat).¹⁴⁹

¹³⁸ CA Secretary of State—Vote 98—Text of Proposition 6 (visited Feb. 17, 1999) <<http://vote98.ss.ca.gov/VoterGuide/Propositions/6text.htm>>.

¹³⁹ *Id.*

¹⁴⁰ CAL. PENAL CODE § 598c (West 1999).

¹⁴¹ *Id.*

¹⁴² *Id.* § 598d.

¹⁴³ *Election 98 Results*, *supra* note 1.

¹⁴⁴ *Horsemeat Ban Initiative* (NPR radio broadcast, Oct. 29, 1998).

¹⁴⁵ *Id.*

¹⁴⁶ Steve Geissinger, *Sale of Horses for Food Targeted: Initiative Seeks to Keep Meat Off Foreign Tables*, SAN DIEGO UNION-TRIBUNE, Aug. 21, 1998, A3.

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

Opponents of the ban included many California cattle ranchers, spokesmen for livestock auctions, representatives from the slaughterhouse industry, and the Libertarian Party.¹⁵⁰ They argued the ban was not necessary and that slaughter for horsemeat is a logical and profitable use of unwanted horses.¹⁵¹ Ted Brown, Libertarian candidate for Senate in the 1998 race, argued “[t]he government has no business telling people what to eat, as long as they are fully informed as to what they’re eating.”¹⁵² Livestock auction operators believe owners who no longer want a horse will avoid the expense of having a horse destroyed and will just “take off the halter and let it go.”¹⁵³

Since only a fraction of the horses slaughtered for human consumption come from California, and there are no slaughterhouses in the state, slaughterhouse owners do not expect the new law to have much effect on the horsemeat market.¹⁵⁴ Still, there has been a marked decrease in horse sales in California auctions in 1999. At the January Jones Horse Auction in Bakersfield, only sixty horses were sold, less than one-third of the sales from previous years.¹⁵⁵ Doyle stated the “killer buyers” were no longer present at the auction, or were not buying.¹⁵⁶ Many horses were sold to slaughterhouses for as much as \$1000 in 1998, creating a significant financial incentive to continue supplying them with horses.¹⁵⁷ Some predict that horses will simply be shipped to a middleman in another state before being sold off for slaughter, but no trends have yet emerged.¹⁵⁸ One California animal rights organization, Political Animals, has offered a \$10,000 reward for any information leading to an arrest and conviction under the new law.¹⁵⁹ The group mailed brochures to all California auction yards cautioning them to comply with the new law.¹⁶⁰

B. Colorado Hog Farming Initiatives

Colorado voters placed two opposing initiatives regarding hog farming on the November 1998 ballot.¹⁶¹ The first, Amendment 13, proposed to amend the Colorado Constitution to prohibit regulations that single out the hog industry by requiring all laws regarding livestock operations be uniform. Hog farm opponents placed Amendment 14 on the ballot, which required large hog feeding operations to be responsible for the wastes

¹⁵⁰ *Horsemeat Ban Initiative*, *supra* note 144.

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ *Horsemeat Ban Alters California Auctions*, FORT WORTH STAR-TRIBUNE, Jan. 23, 1999, at 7.

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ For a discussion of the Colorado initiative process, see generally Richard B. Collins & Dale Oesterle, *Structuring the Ballot Initiative: Procedures That Do and Don't Work*, 66 U. COLO. L. REV. 47 (1995).

they produce by providing strict regulations for the treatment and disposal of that waste. Voters rejected Amendment 13, thirty-nine percent to sixty-one percent, and approved Amendment 14, sixty-two percent to thirty-eight percent.¹⁶²

1. *Hog Farming Restrictions Ban*

Amendment 13 proposed a basic requirement for the uniform application of all laws to livestock operations.¹⁶³ Under the amendment, any law which did not treat livestock operations uniformly, based on the similarity of the potential environmental impact, would be unconstitutional.¹⁶⁴ The amendment also allowed the legislature to distinguish between large and small operations.¹⁶⁵ Large operations are defined as one thousand animal units, and an animal unit is equal to one cow, or its equivalent as defined by the legislature.¹⁶⁶ The legislature could also differentiate between feed lots and open-range grazing.¹⁶⁷

Proponents of Amendment 13 included Citizens for a Strong Local Economy, large commercial hog-feeding operations, and Colorado Livestock Feeders Association.¹⁶⁸ They argued that regulations for livestock operations should not be based on the type of animal raised, but on the environmental impact of the operation.¹⁶⁹ Since the legislature could distinguish between large and small operations, small family farms would not be unfairly burdened with costly legislation.¹⁷⁰

Opponents of the Amendment included Rocky Mountain Farmers Union, Environmental Defense Fund, and Protecting Colorado's Water and Economy.¹⁷¹ They argued that different types of operations have inherent differences, and the legislature should be able to regulate commercial operations more stringently.¹⁷² One concern was that uniform requirements could burden smaller operators, forcing some out of business.¹⁷³

2. *Hog Farming Liability*

The major opponents of Amendment 13 were also the backers of Amendment 14, which was successful. While the first initiative attempted to prevent large hog operations from being singled out for regulation,

¹⁶² *Election 98 Results*, *supra* note 1.

¹⁶³ *Colorado Secretary of State—General Election Ballot—November 3, 1998* (last modified Sept. 19, 1998) <http://www.state.co.us/gov_dir/sos/elections/measures.htm> [hereinafter *Colorado Amendment Text*].

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

¹⁶⁸ Dick Foster, *Hog Farms Battle Opponents at Polls*, ROCKY Mtn. NEWS, Sept. 20, 1998, at 29A.

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

¹⁷² *Id.*

¹⁷³ Dick Foster, *Hog Farms Battle Opponents at Polls*, ROCKY Mtn. NEWS, Sept. 20, 1998, at 29A.

Amendment 14 provided specific regulations for those very same operations. The amendment applies to all commercial hog feeding operations that can house 800,000 pounds or more of swine (equivalent to just under 3000 market hogs at 270 pounds each), and requires them to operate under individual discharge permits from the Department of Public Health and the Environment.¹⁷⁴ The law also requires operators to cover waste impoundment lagoons if they do not use air or oxygen in their waste treatment method.¹⁷⁵ Additional rules allow the legislature to establish minimum distances between new land waste application sites or impoundments and houses, schools, or municipal boundaries, and to set fees to be assessed to large operations to cover enforcement of the new rules.¹⁷⁶ The new law also has a citizen suit provision to allow for enforcement actions against large commercial feeding operations.¹⁷⁷

Amendment 14's backers claimed Colorado was the only remaining state with a hog industry that did not regulate the environmentally dangerous farming activity.¹⁷⁸ This was the case because corporate hog farm owners have blocked passage of environmental protections by the state legislature.¹⁷⁹ Proponents also point to the tremendous potential of huge factory farms to pollute the environment—each one of the twenty farms present in 1998 generated the same amount of waste as a city of 250,000 people.¹⁸⁰ Environmental releases from hog farms in other states, including North Carolina, Iowa, Minnesota, and Missouri, have resulted in pollution of both surface and ground waters.¹⁸¹

This was also a corporate farm versus family farm fight. The corporations touted their benefit to the local economy through payroll, purchases from local suppliers, and property taxes.¹⁸² Opponents argue, however, that these are not new jobs—they are merely shifted from family farms to industrial hog operations.¹⁸³

Hog farmers claim the initiative places unfair financial hardships on them, especially since their operations do not pose as much of a threat as opponents claim.¹⁸⁴ Colorado operations are state-of-the-art, with waste lagoons properly lined and irrigation sprinklers limited to scattering only as much nitrates as the soil can absorb.¹⁸⁵ Additionally, since the water table is much lower than in other states where there have been pollution problems, there is less likelihood of groundwater contamination in Colo-

¹⁷⁴ *Colorado Amendment Text*, *supra* note 163.

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

¹⁷⁸ Galen Travis, *Farming Hits the Pig-Time: Amendment 13: Bar Regulation of Farms: Initiative 14: Protect Farms' Environment: Big Farms Must Have Safeguards*, *DENV. POST*, Sept. 27, 1998, at K01.

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

¹⁸² Foster, *supra* note 168, at 29A.

¹⁸³ Travis, *supra* note 178, at K01.

¹⁸⁴ Foster, *supra* note 168, at 29A.

¹⁸⁵ *Id.*

rado.¹⁸⁶ Finally, corporate farmers claim lagoon covers are prohibitively expensive, posing a physical and financial nightmare.¹⁸⁷

Many corporate farmers allege that they will not be able to comply with the new requirements effective on July 1, 1999.¹⁸⁸ With hog prices already extremely low, some estimate that state hog production will shrink by thirty to fifty percent.¹⁸⁹

C. *South Dakota Corporate Farming*

South Dakota became center stage in the battle between family farms and multi-million dollar agricultural companies when residents approved a state constitutional amendment limiting corporate involvement in agriculture.¹⁹⁰ The state constitution now provides a general restriction against any corporation or syndicate from obtaining any interest in real estate used for farming, or from engaging in farming.¹⁹¹ Corporations and syndicates are broadly defined to include all current types of limited liability business forms.¹⁹² Exceptions are made for family farm corporations or business associations formed under state law and comprised of individuals related within four degrees of kinship.¹⁹³ The only other remaining business association available in South Dakota is the general partnership, and only then if the general partners are real people, not limited liability business forms.¹⁹⁴ The article defines farming as "the cultivation of land for the production of agricultural crops, fruit, or other horticultural products, or the ownership, keeping, or feeding of animals for the production of livestock or livestock products."¹⁹⁵ Enforcement is provided by an affirmative duty on the state Attorney General to bring suit to force any corporation or syndicate to cease any activity in violation of the article.¹⁹⁶ Citizens may also sue to enforce the law if the Attorney General fails to do so.¹⁹⁷

Fifteen exceptions apply to the general prohibition on corporate involvement.¹⁹⁸ The two largest exceptions are family farm corporations, already mentioned, and corporations or syndicates already engaged in these activities in the state.¹⁹⁹ These corporations or syndicates are limited, however, to the level of activity they are currently engaged in.²⁰⁰ Co-

¹⁸⁶ *Id.*

¹⁸⁷ Joe Vansickle, '98 Elections—More Bad News, NAT'L HOG FARMER, Nov. 30, 1998.

¹⁸⁸ *Id.*

¹⁸⁹ *Id.*

¹⁹⁰ Judith Graham, *S. Dakota Prunes Corporate Control Over Farms*, CHARLESTON GAZETTE & DAILY MAIL, Dec. 6, 1998, at 17D.

¹⁹¹ S.D. CONST. art. XVII, § 21.

¹⁹² *Id.*

¹⁹³ *Id.* § 22.

¹⁹⁴ *Id.* § 21.

¹⁹⁵ *Id.*

¹⁹⁶ S.D. CONST. art. XVII, § 24.

¹⁹⁷ *Id.*

¹⁹⁸ *Id.* § 22.

¹⁹⁹ *Id.*

²⁰⁰ *Id.*

operatives are also exempt when the majority of their shareholders are family farm corporations or syndicates, or natural persons actually involved in farming activities.²⁰¹ Other exceptions are provided to allow: (1) corporate or syndicate leases of agricultural land for alfalfa production, or growing seed, nursery plants, or sod; (2) nonprofit corporation farming activities; (3) farms operated for research or experimental purposes, where any commercial sales are only incidental to the research or experimental objectives of the operation; and (4) general allowances for temporary acquisition of land or livestock.²⁰²

While the amendment does not specifically mention it, hog farming was the issue driving the ballot initiative. South Dakotans saw the number of hog farms crash from 25,000 in 1964, to 2800 in 1997.²⁰³ Additionally, the entire nature of hog farming has been revised. Previously, most farms raised a few hogs; now the business has become dominated by modern hog barns that house hundreds of animals and send thousands to market each year.²⁰⁴ Proponents of the amendment, including the 14,000-member South Dakota Farmers Union and the Dakota Rural Association, believed that the future of rural communities, air and water quality, and the very survival of independent farmers is at risk.²⁰⁵

Some observers believe the motivation for this campaign came from the legislature's failure to pass a bill in 1997 that would have made corporate hog farms liable for the environmental damage they cause.²⁰⁶ Additionally, the Governor directed \$750,000 in taxpayer funds to an environmental cleanup fund, rather than taxing companies directly.²⁰⁷ Both of these governmental actions fueled voter anger towards corporate hog operations.²⁰⁸

Opponents of the initiative included the 10,000-member South Dakota Farm Bureau.²⁰⁹ They argued that in order to survive and remain profitable, farmers needed the option of going into business with large corporations.²¹⁰ They believe eliminating this option will hurt farmers in the long run because South Dakota farmers will lose important sources of funding that are needed in today's difficult market.²¹¹ With hog prices the lowest in thirty-four years, owners of large farms argue that bigger is better, and it is the only way to profit under the current system.²¹²

²⁰¹ S.D. CONST. art. XVII, § 22.

²⁰² *Id.*

²⁰³ Joe Kafka, *As Failing Finances Push Many Farmers to the . . .*, ASSOCIATED PRESS POL. SERV. Oct. 12, 1998.

²⁰⁴ *Id.*

²⁰⁵ Graham, *supra* note 190, at 17D.

²⁰⁶ *Id.*

²⁰⁷ *Id.*

²⁰⁸ *Id.*

²⁰⁹ *Id.*

²¹⁰ *Id.*

²¹¹ *Id.*

²¹² *Id.*

The ballot initiative passed with fifty-nine percent of the vote.²¹³ The Attorney General, Mark Barnett, expects a legal challenge based on federal constitutional grounds.²¹⁴

V. OTHER WILDLIFE-RELATED ISSUES

A. *Utah Supermajority Requirement for Wildlife Protection Initiatives*

Utah voters approved Proposition 5, an amendment to the state constitution regarding wildlife protection initiatives.²¹⁵ The new amendment requires that any citizen-initiated drive "to allow, limit, or prohibit the taking of wildlife or the season for or method of taking wildlife" be approved by a two-thirds majority of the voters in an election.²¹⁶ The proposition was approved by both houses of the state legislature by the required two-thirds vote before being submitted to the voters,²¹⁷ and passed by fifty-six percent to forty-four percent on election day.²¹⁸

The amendment was formed as a preemptive strike against pro-wildlife and animal public interest groups. The supporters were led by Utahns for Wildlife Heritage and Conservation, a coalition of sporting groups who saw an opportunity to use Utah's current strong support for hunting and fishing to make sure that their interests will be represented in the future.²¹⁹ By requiring a two-thirds majority vote to change any wildlife related law, these groups and the voters of the state, have effectively eliminated any chance animal interest groups have of challenging hunting practices such as baiting and hounding of black bears—activities which opponents see as cruel and unsporting.²²⁰ While animal interest organizations may still lobby the state legislature and state agencies to make changes, these lines of action have traditionally had little success because the major source of agency funding is through the purchase of hunting and fishing licenses.²²¹

Newspaper articles attributed the success of the proposition to both the media message and the money raised for the campaign.²²² Proposition supporters told the public the proposition would protect wildlife by keeping management in the hands of state officials.²²³ Wildlife Heritage ran advertisements stating the proposition would preserve Utah's wild land-

²¹³ *Election 98 Results*, *supra* note 1.

²¹⁴ Graham, *supra* note 190, at 17D.

²¹⁵ *Election 98 Results*, *supra* note 1.

²¹⁶ UTAH CONST. art. VI, § 1.

²¹⁷ Zack Van Eyck, *Does Public Understand Prop. 5? Backers, Foes Unsure*, DESERT NEWS, Oct. 7, 1998, at A09.

²¹⁸ *Election 98 Results*, *supra* note 1.

²¹⁹ Judy Fahys, *Prop 5's Formula for Success . . . Spend Well and Spin Well: Proposition 5 Was a Lesson in Advertising*, SALT LAKE TRIB., Nov. 8, 1998, at A1.

²²⁰ *Id.*

²²¹ See, e.g., Perry, *supra* note 107, at 203.

²²² Fahys, *supra* note 219, at A1.

²²³ *Id.*

scapes, conserve its wildlife, and uphold its hunting traditions.²²⁴ The advertisements made no mention, however, of how it would change the constitution or reduce the power of citizens to check their government.²²⁵ Wildlife Heritage outspent opponents by a ten to one margin in advertisements.²²⁶ Raising almost \$600,000 by late October, the group was able to repeatedly reach voters and hammer home their message.²²⁷

The Utah Voting Rights Coalition brought together animal public interest groups, including The Humane Society of the United States and its local chapters, as well as groups concerned with voting rights, including the League of Women Voters and Utah Common Cause.²²⁸ Opponents generally argued the proposition was anti-democratic, that it disenfranchises and disempowers voters (whether they are for or against hunting), and that it makes hunting a specially protected class under the constitution.²²⁹

Supporters of the proposition have also set their sights on a similar initiative for the Idaho ballot in 2000.²³⁰ The Ballot Rights Coalition, made up of the National Rifle Association and over a dozen other groups representing gun manufacturers and sporting groups, was one of the major backers of the proposition, pledging that the 1998 elections were the start of broader efforts.²³¹ Jay McAninch, the Coalition's administrator, claimed his group intends to "roll back the unfounded, emotional inroads they made over the past eight years and set in stone our birthright as the nation's stewards of its wildlife and wild places."²³²

²²⁴ *Id.*

²²⁵ *Id.*

²²⁶ *Id.*

²²⁷ Fahys, *supra* note 219, at A1.

²²⁸ Judy Fahys, *Question Like Prop 5 Likely To Be on Idaho Ballot in 2000*, SALT LAKE TRIB., Nov. 21, 1998, at A1.

²²⁹ Mike Cannon, *Prop. 5 Isn't Pro-Wildlife; It's Anti-Democratic*, DESERT NEWS, Nov. 1, 1998, at AA3.

²³⁰ Fahys, *supra* note 228, at A1.

²³¹ *Id.*

²³² *Id.*

TABLE 1
SUMMARY OF 1998 WILDLIFE BALLOT INITIATIVES

STATE	ISSUE	PASSED (P) DEFEATED (D)	DID POSITION OF ANNUAL PUBLIC INTEREST GROUP PREVAIL?
Alaska	Ban Wolf Snaring	D 36%-64%	N
Arizona	Ban Cockfighting	P 65%-32%	Y
California	Ban Cruel and Indiscriminate use of Traps and Poisons	P 55%-32%	Y
Colorado	Ban Horseslaughter for Human Consumption	P 59%-41%	Y
	Ban Restrictions on Hog Industry	D 39%-61%	Y
	Hold Corporate Hog Farmers Responsible for Waste Produced	P 62%-38%	Y
Minnesota	Make Hunting/Fishing/Taking of Game a Constitutional Right	P 77%-23%	N
Missouri	Reinstate Ban on Cockfighting	P 63%-37%	Y
Ohio	Ban Mourning Dove Hunting	D 40%-60%	N
South Dakota	Restricts Corporate Farm Investment	P 59%-41%	Y
Utah	Supermajority Vote Required for Future Wildlife Initiatives	P 56%-44%	N

TABLE 2
SUMMARY OF PREVIOUS WILDLIFE BALLOT INITIATIVES, 1990-1997

YEAR	STATE	ISSUE	PASSED (P) DEFEATED (D)	DID POSITION OF ANNUAL PUBLIC INTEREST GROUP PREVAIL?
1997	Alabama	Make Hunting a Constitutional Right	P	N
	Florida	Trust Fund to Restore Wildlife Habitat	P	Y
1996	Alaska	Ban Same-Day Airborne Hunting of Some Species	P	Y
	Arkansas	Tax Increase for Wildlife Protection	P	Y
	California	Repeal 1990 Mountain Lion Initiative	D	Y
	Colorado	Ban Leghold/Body-Gripping Traps	P	Y
	Idaho	Ban Baiting/Hounding Black Bears	D	N
	Massachusetts	Ban Leghold/Body-Gripping Traps; Ban Hounding of Bears and Bobcats; Reinstate Fish and Wildlife Board	P	Y
	Michigan	Ban Baiting/Hounding Black Bears	D	N
	Oregon	Repeal Ban on Bear Baiting and Hounding of Bears and Mountain Lions	D	Y
	Washington	Ban Bear Baiting and Hounding of Bears, Cougars, Bobcats, and Lynx	P	Y
	1994	Arizona	Ban Leghold/Body-Gripping Traps	P
Oregon		Ban on Bear Baiting and Hounding of Bears and Mountain Lions	P	Y
1992	Arizona	Ban Leghold/Body-Gripping Traps	D (passed in different form in 1994)	N
	Colorado	Ban Baiting/Hounding Black Bears	P	Y
1990	California	Ban Mountain Lion Hunting; Set Aside Wildlife Habitat	P	Y

