

David Devereaux, Written Testimony Supporting HJR 16 (a Joint Resolution proposing an amendment to the Oregon Constitution establishing the right to hunt, to fish, to trap and to harvest wildlife).

Hunting, fishing and trapping should be constitutionally protected rights in the state of Oregon. It is irrefutable that they are intricately tied to human culture and are crucial elements of Oregon's history and economy. Critics of hunting and fishing would have us believe that these activities are unnecessary and even cruel. These misconceptions are neither true or constitutional. Despite this undeniable history, according to the US Census Bureau, hunters only comprise 6% of Oregon's population. It is precisely these types of minority classes that the constitution, particularly the 14th amendment, were intended to protect.

I. Hunting and fishing are victims of urbanization. Constitutional protection is necessary to ensure the long-term survival of these important rural traditions.

- There is an alarming trend in America. There has always been a divide between urban and rural cultures, but the divide is widening and threatening to consume less represented, but no less important, rural traditions and activities. Nowhere is this divide more evident than efforts to restrict hunting and fishing in Oregon and America at large.
- These relentless attacks are being organized and funded by urban political organizations intent on extinguishing critical elements of rural America. Indeed, the current leadership of the HSUS has clearly stated, "If we could shut down all sport hunting in a moment, we would." [Wayne Pacelle, Associated Press, Dec 30, 1991] One step. One restriction at a time. This is the opposition's explicitly stated strategy.

II. A constitutional amendment is the best mechanism available to protect hunting and fishing in Oregon.

- According to the National Conference of State Legislators, many policymakers in America are beginning to recognize and understand that the divide between urban and rural societies requires constitutional action. In fact, 17 states have taken the steps to provide constitutional protections for hunting, fishing and trapping as an explicit response to urban political misconceptions and misrepresentations that threaten an industry and culture engrained in human society since its inception. [*Information provided by Douglas Shinkle of the National Conference of State Legislatures office in Denver, Colorado*] Constitutional protection would ensure that these activities would be guaranteed in the state of Oregon.
- The specifically articulated constitutional protections at issue would create a legal bright line clearly defining the powers of the state of Oregon protecting hunting and fishing into the future. **Issues involving hunting and fishing would receive strict scrutiny review under the 14th Amendment because hunting and fishing**

applying a rational basis test, the least restrictive form of judicial scrutiny, because the government's action is considered overtly unfair and arbitrary. [Justice O'Connor, *Lawrence v. Texas* - 539 U.S. 558 (2003)]

- Commercial animal slaughter, legally protected in Oregon, demands the same protections be extended to hunting and fishing. Billions of animals are commercially harvested and consumed every year in Oregon alone. Animal harvest, although regulated, is legally protected and accepted by this legislature and this state's courts.
 - The Humane Slaughter Act of 1958, recognized in all 50 states including Oregon, defines the legally protected methods of commercial slaughter. As long as the methods are humane then slaughter is legally protected. Utilizing this same criteria, hunting and fishing should, without question, receive these same protections. The well documented living conditions of commercially slaughtered animals reveals an undeniable truth: animals that are hunted have a comparatively higher quality of life. For example, billions of factory farmed animals per year, living in overcrowded conditions, have body parts removed without anesthesia so they don't harm or kill each other. And because they are genetically and chemically altered, hundreds of millions die before harvest. In comparison, the average game animal exists on a superior diet and in obviously non-crowded conditions for many years.
 - Oregon's "right-to-farm" law found at ORS 30.930 also extends protection to the commercial animal slaughter industry. The Legislative policy set out in Oregon statute finds that "farming and forest practices are critical to the economic welfare of this state," and that it is "in the interest of the continued welfare of the state for farming and forest practices to be protected from legal actions that may be intended to limit [such practices]."

It is irrefutable that hunting and fishing are also substantial contributors to Oregon's economy. According to statistics provided by the US Census Bureau, at the request of state natural resource committees, the total economic impact of hunting in Oregon amounts to \$879,563,630 annually. "Together, hunters and anglers may very well be the most important source of conservation funding in the United States." [*The Economic Importance of Hunting in America*, a report provided by the Animal Use Issues Committee of the International Association of Fish and Wildlife Agencies, (2002)]

- The 14th Amendment requires that hunting and fishing be given the same protections commercial animal slaughter receives because there is no meaningful legal distinction between the two similarly situated methods of animal use and harvest. In fact, the only meaningful differences between the two are stereotype and method, which are not justifications to deny equal access and protection of the law.

would be considered fundamental rights requiring much more stringent analysis. The burden of proof legally shifts requiring the state to demonstrate more than just a rational basis for its action. The state would have to demonstrate a clearly articulated legitimate state interest justification and prove that the proposed policy was the least restrictive means to achieve its legitimate purpose.

- Indeed, **the Joint Resolution clearly defines the legitimate state interests involved.** The Resolution states, "Individuals in this state have the right to hunt and fish, trap and harvest wildlife subject to laws enacted by the Legislative Assembly and rules adopted by state agencies that promote **sound wildlife conservation and management.**"
- **Any restraints on the fundamental right to hunt and fish would be limited to policies that, in form and substance, are truly intended to promote sound wildlife conservation and management.** This joint resolution truly balances elevating hunting and fishing as fundamental rights enumerated in Oregon's constitution with legitimate state action. **Any other policy motivation would be considered a violation of the substantive due process guarantees of the 14th Amendment.** The state's right to govern hunting and fishing standards and its natural resources would still be intact so the oppositions fears of unsound hunting and fishing practices are completely unfounded. **Constitutional protection would merely take any policy motivated by a baseline moral and ethical objection to hunting and fishing off the table.**

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III. Laws targeting hunting and fishing violate the Equal Protection guarantees of the 14th amendment.

- The 14th Amendment requires that all individuals and classes in society be afforded equal access to the protections of the laws of the land. Specifically, it was directed at state governments and legislators to ensure that no state would arbitrarily discriminate or deny equal protection of the laws. The 14th Amendment reads:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." (*Section One of the 14th Amendment to the US Constitution.*)

- The Equal Protection Clause "is essentially a direction that all persons similarly situated should be treated alike." [*Cleburne v. Cleburne Living Center, Inc.*, 473 U. S. 432, 439 (1985); see also *Plyler v. Doe*, 457 U. S. 202, 216 (1982)] In terms of hunting and fishing, the decision-making calculus is simple. If other (arguably egregious) forms of animal harvest are legally protected based on tradition and economic value then laws targeting hunting and fishing are unreasonable violations of the Equal Protection Clause. Importantly, this is true even when