

Understanding Arizona's Propositions: Prop 109

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Proposition 109 – Constitutional Right to Hunt and Fish

Proposition 109 asks voters to approve adding the “right to hunt, fish and harvest wildlife lawfully” to the Arizona Constitution. Additionally, the proposed constitutional change requires “lawful public hunting and fishing shall be a preferred means of managing and controlling wildlife.” This ballot measure was referred to voters by the Legislature.ⁱ

The measure would change the way wildlife is managed in Arizona. Currently, the Arizona Game and Fish Department is tasked with managing wildlife and is governed by a commission comprised of five governor-appointed members.

Game and Fish Department's specific mission is “to conserve, enhance and restore Arizona's diverse wildlife resources and habitats through aggressive protection and management programs, and to provide wildlife resources and safe watercraft and off-highway vehicle recreation for the enjoyment, appreciation and use by present and future generations.”ⁱⁱ

Regulation of hunting and fishing are two key responsibilities of the agency.

Proposition 109 would squarely place responsibility for the management of wildlife with the Legislature, which may delegate rule-making authority to the Game and Fish Commission. Proposition 109 is the only ballot measure in November that moves additional responsibility to the Legislature.

If voters approve Proposition 109, Arizona would become the 13th stateⁱⁱⁱ to include the right to hunt and fish in its state constitution. Three other states – Tennessee, South Carolina and Arkansas^{iv} – are voting on this same measure in 2010.

It is unclear if Proposition 109 is successful if it will trump existing law regulating hunting, including Arizona's ban on certain kinds of traps.

The National Rifle Association (NRA) was involved in crafting the language of the constitutional amendment on the ballot^v in response to what members perceive as a possible future threat from animal rights groups such as the Humane Society of the U.S.^{vi} to impede hunting and fishing, or even make it illegal outright. There appears to be no current campaign in Arizona to limit or abolish hunting or fishing.

The NRA has been involved in similar initiatives in other states and is focused on more aggressively including protections for hunting in all state constitutions in response to what they term as “the anti-hunting zealots who are conspiring daily to put an end to our proud and honorable heritage.”^{vii}

There is no anticipated fiscal impact if the Arizona measure passes.^{viii}

Yes on Proposition 109?

Proponents of the measure, including the Game and Fish Commission^{ix} and the governor^x, note that hunting and fishing are longstanding traditions especially here in the West, and that a constitutional amendment protects that heritage. Supporters contend this embeds a protection for hunting and fishing in a proactive way to address any future impediment to exercising that right, while simply codifying a right that already exists under Arizona law.

Further, proponents of Prop 109 stress that the North American Model of Wildlife Conservation, which is utilized by Game and Fish, employs hunting and angling as cornerstones for wildlife management and has been and continues to be the “world’s most successful.”^{xi}

“Making hunting and fishing a right instead of a privilege raises the level of scrutiny applied to such restrictions and should help keep the science in wildlife policy.”

*– Jerry Thorsen, treasurer
Arizona Wildlife Federation*

*– Brad Powell, VP
Arizona Wildlife Federation*

Source: Secretary of State’s Office

Additionally, Arizona Game and Fish does not receive any General Fund money and is supported largely from the revenue generated from the sale of licenses and tags for hunting and fishing, as well as other related fees and penalties. Supporters of Proposition 109 note it is these fees that pay for a large component of Arizona’s wildlife management efforts. If hunting and fishing were eventually deemed illegal, the need for wildlife management would continue, but alternative funding would have to be found.

Critics of the proposition claim there is no threat to the practice of hunting and fishing, but Prop 109 supporters point out that Arizonans have outlawed the use of certain kinds of traps^{xii} after two ballot attempts,^{xiii} and that California voters outlawed sport hunting of mountain lions in 1990.^{xiv}

While opponents believe this amendment politicizes wildlife management by delegating exclusive authority to enact laws and regulations to the Legislature, supporters point out that Arizona’s proposed amendment specifically states that rule-making authority can be delegated to the Game and Fish Commission. Supporters also note the current setup with authority vested in the commission is inherently political, as the membership is appointed by the governor.

No on Proposition 109?

Opponents of Prop 109, including the Animal Defense League of Arizona, believe that vesting the Legislature with the responsibility to regulate wildlife management via the state Constitution would politicize this practice.

Additionally, they note this amendment is a response to a non-existent threat. They say this is a solution in search of a problem.

While Arizonans outlawed trapping in 1994, there have been no significant restrictions placed on the ballot in the 16 years since.

Additionally, opponents argue that wildlife is of equal value to non-hunters and non-anglers as to hunters and anglers, and the right to hunt and fish should not be held predominate.

Another criticism is that language in the proposition is vague and possibly could cause confusion and difficulty in interpretation down the line. Such confusion could result in expensive litigation in order to resolve.

Specifically, the measure states: “No law shall be enacted and no rule shall be adopted that unreasonably restricts hunting, fishing and harvesting wildlife or the use of traditional means and methods.”

“The Sierra Club is not anti-hunting – many of our members hunt and fish and we have along worked with hunters and anglers on conservation measures – but this measure goes too far. Proposition 109 is about the Legislature trying to grab more power, not about doing anything positive for wildlife.”

*– Jim Vaaler, chairperson
Sierra Club – Grand Canyon Chapter*

*– Don Steuter, conservation chair
Sierra Club – Grand Canyon Chapter*

Source: Secretary of State’s Office

Opponents’ chief concerns hinge on the words “traditional” and “unreasonably.” They ask several questions, including:

- Does codifying in the state Constitution that no rule can be adopted that restricts “traditional means” restrict Game and Fish from utilizing cutting edge science in wildlife management?
- Does “traditional” force the agency and its governing commission to rely almost exclusively on the use of hunting and fishing?
- What is reasonable and unreasonable lawmaking or rule-making authority to address hunting or fishing?
- While licenses are now required by the agency for hunting and fishing, what if down the line a challenge is raised that this is not deemed reasonable?
- What if even with extensive availability of hunting licenses and permits, there is still an overpopulation issue? How does this impact the use of sharpshooters or other means to artificially control animal population?
- What if there is a belief that not enough tags and licenses are being made available? Is that unreasonable?

Opponents of Proposition 109 believe these and a number of other potential scenarios that could be deemed “unreasonable” leave too much unanswered in the proposed constitutional language. Further, there is concern that the ballot proposition provides “exclusive authority” to the Legislature to enact laws regulating hunting and fishing. Prop 109 opponents question whether this would serve to outlaw citizens’ initiatives that might relate to wildlife management.

Finally, opponents note that this right is embedded alongside the concepts that government derives its power from the consent of the governed; due process; freedom of speech; eminent domain and bearing arms. Those opposed to the proposition note the measure’s language provides this particular “right” a gravity that is not appropriate.

The Bottom Line

A “yes” vote would amend the Arizona State Constitution to include the right to hunt and fish alongside rights such as the freedom of speech and provide the Legislature exclusive authority to enact laws to regulate hunting, fishing and the harvesting of wildlife. Finally, it requires that no rule unreasonably restrict this right.

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- ⁱ HCR 2008. <http://www.azsos.gov/election/2010/general/ballotmeasuretext/HCR%202008.pdf>
- ⁱⁱ http://www.azgfd.gov/inside_azgfd/inside_azgfd.shtml
- ⁱⁱⁱ <http://mainehuntingtoday.com/bbb/states-with-right-to-hunt-and-fish-constitutional-amendments/>. Since this publication, Oklahoma has also passed an amendment.
- ^{iv} <http://www.ncsl.org/default.aspx?tabid=20114>
- ^v <http://azgfd.net/artman/publish/NewsMedia/Arizona-Game-and-Fish-Commission-supports-right-to-hunt-and-fish-amendment.shtml>
- ^{vi} <http://www.nraila.org/Issues/Articles/Read.aspx?id=256&issue=021>
- ^{vii} *Ibid.*
- ^{viii} <http://www.azleg.gov/FormatDocument.asp?inDoc=/legtext/49leg/2r/summary/s.hcr2008nripd.doc.htm>
- ^{ix} <http://azgfd.net/artman/publish/NewsMedia/Arizona-Game-and-Fish-Commission-supports-right-to-hunt-and-fish-amendment.shtml>
- ^x Secretary of State's Office.
- ^{xi} *North American Model of Wildlife Conservation: The Untold Story*. Pamphlet produced by Arizona Game and Fish Department. http://www.azgfd.gov/h_f/documents/NAM%20Brochure.pdf
- ^{xii} <http://www.azsos.gov/election/1994/General/Canvass1994GE.pdf>
- ^{xiii} Secretary of State's Office. A ban on certain traps was also on the 1992 General Election Ballot.
- ^{xiv} http://www.sos.ca.gov/elections/init_history.pdf;
<http://iandrinstute.org/New%20IRI%20Website%20Info/I&R%20Research%20and%20History/I&R%20at%20the%20Statewide%20Level/Usage%20history/California.pdf>

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