



“SERVING THE HUNTER WHO TRAVELS”

“Hunting provides the principal incentive and revenue for conservation. Hence it is a force for conservation.”

Special To The Hunting Report World Conservation Force Bulletin

by John J. Jackson, III

The End of Nonresident Hunting Rights

In late 2004, a bill was introduced in the US Senate to totally end nonresident hunting and fishing rights in all the states of the United States of America. The purpose is to authorize states to exclude nonresident hunters and anglers at will and to permit states to charge nonresidents any price whatsoever with absolutely no limit. Though aimed to give states total discretion to discriminate against recreational hunters and anglers, it covers commercial users as well. It will permit states to prevent and/or willfully burden out-of-state hunting guides and commercial fishermen and women from plying their trade from state to state. The objective is contrary to all other natural resource use in America.

The aim of the bill is to reverse nearly a quarter of a century of evolving legal cases holding that under the Dormant Commerce Clause of the United States Constitution states cannot discriminate against interstate wildlife trade because that power is reserved to Congress. The line of cases

has struck down regulatory discrimination against interstate transportation of minnows [U.S. Supreme Court case *Hughes v. Oklahoma*, 441 U.S. 322 in 1979 that overruled another wild animal case, the *Geer* case of 1896], tax discrimination against nonprofit na-



ture camps catering to nonresident nature recreationalists [U.S. Supreme Court *Camps Newfound/Orvatoma, Inc. vs. Town of Harrison*, 520 U.S. 564 in 1997], and hunting license allocation discrimination (limits) against nonresident deer and elk hunters [*Conservation Force, Inc. v. Manning*, 301

F.3d 985, 9th Cir., 2002, which lead to the *Montoya v. Shroufe* judgment on July 13, 2004, in Arizona’s Federal District Court], rendered in that order. Those cases have ruled that our forefathers held the Constitutional Convention primarily to prevent states from preferring their citizens over citizens of other states through discriminatory barriers of law and regulation against interstate trade of natural resources. Whether the object of trade is petroleum or waste, individual states cannot separate themselves from the union by discrimination against other states and those states’ citizens. The purpose of the Senate bill is to separate hunted and fished wildlife and fish resources from other natural resources and for Congress to give total and absolute authority to the states to establish discriminatory barriers against nonresidents. The bill also eliminates the Privileges and Immunities Clause protection afforded nonresident commercial users of game and fish, which are rights that have existed for hundreds of years.

Sectors of the all powerful International Association of Fish and Wildlife Agencies appear to be behind the bill. Readers may remember that 22 states that are members of that organization appealed the Ninth Circuit Court of Appeals’ decision that Arizona’s discrimination towards out-of-state residents was facially illegal and must undergo the strictest scrutiny under the Dormant Commerce Clause. The U.S. Supreme Court denied writs, i.e., refused the 22 states.

The bill is S 2978 introduced by Senator Harry Reid on October 11, 2004, and referred to the Senate Judiciary Committee. In a news release dated December 3, 2004, the Senator states, “Please be assured that I recognize that this issue is of profound importance to Nevada sportsmen and am



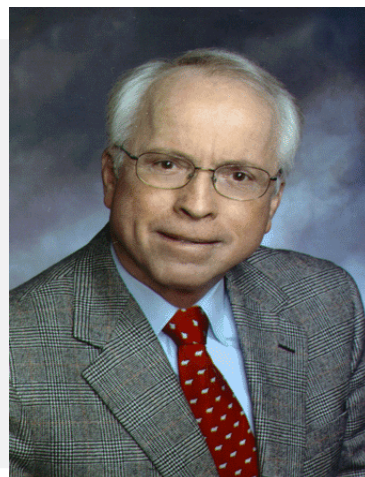
working with my colleagues to pass this bill as quickly as possible.” [(View this and more at <http://reid.senate.gov/sportsmen.cfm>)]. The Senator almost succeeded in attaching it as a rider to an end-of-the-session omnibus budget bill!

The co-sponsors are Senator Ted Stevens of Alaska, Senator Max Baucus of Montana, Senator Conrad Burns of Montana, Senator John Ensign of Nevada, Senator Benjamin Nelson of Nebraska and Senator John McCain of Arizona. A powerful lot.

We do not think those Senators are fully informed. It has been presented to them narrowly as a state’s rights issue and that the courts are obstructing wildlife management by the states. In fact, it is not a management issue in the biological sense. Rather, it is an allocation process that generally can

and does take place independently of biological decision-making. It is a process in which nonresidents are not represented except those few represented indirectly by outfitters and guides. The outfitters and guides that contribute so very much to auction revenue and the success of the industry’s major hunter conservation organizations have been taking a whipping for sticking up for nonresident rights. Moreover, most nonresident hunters and anglers do not utilize guides or outfitters. There are two million licensed hunters and nine million anglers that hunt or fish out-of-state each year. [National Survey of Fishing, Hunting, and a Wildlife Associated Recreation]. There are many more separate individuals over a period of years. Those nonresidents greatly outnumber resident hunters and anglers in the states that wish to discriminate. Those nonresidents have had to turn to the courts for help. Now it is imperative that nonresidents let their Senators and Representatives (Companion bill expected) know that they want their rights protected, not abolished. The bill would be unfair to more Americans than it favors and it seriously impacts the right of use of federal land managed by the U.S. Government which is half the land in the United States.

Fourteen (14%) percent of licensed hunters hunt out-of-state each year and twenty-six (26%) percent of anglers fish out-of-state. [National Survey of Fishing, Hunting, and Wildlife Recreation]. The states with the most hunters and anglers are not complaining, such as Texas, Pennsylvania and Michigan. The states with nominal resident populations and the most extensive federal lands are the very ones that want the unconditional right to hoard hunting and fishing resources for themselves. Some states will raise the license prices so high that only the very wealthy can hunt when and if they can get a license at all. The guiding industry will become more volatile, as will those national organizations that depend upon outfitter hunt donations for all their conservation work. It will not return to the way it was. The discrimination had been growing



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worse and was partially held in check by litigation and the threat of litigation.

This is an undesirable fight between hunters that will test the mettle of those that represent hunters who travel. Most, if not all, hunting and fishing organizations represent both resident and nonresident hunters and/or anglers. Locked in division and indecision they may be unable to oppose the legislation because of their resident hunter constituency. Even Conservation Force that has been a leader in advancing the interstate and international hunting industry will have to take special steps to defend nonresident hunting and fishing interests that have become so very important to the conservation paradigm in America.

Conservation Force expects fallout from its defense of nonresident sportsmen and women, but we must be responsible. If we do not represent nonresident hunters and anglers, who will?

More than half of the land in the West is United States land. This bill will terminate any and all nonresident rights of hunting and fishing access on those public lands as well as state and private lands – all lands! Many of the species such as saltwater fish and waterfowl are migratory. Many elk and deer populations move from state to state. The passage of the bill would be a tragic mistake. It must be stopped.

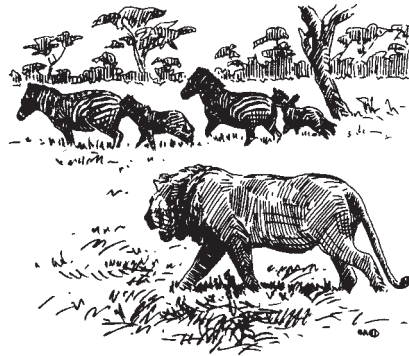
Conservation Force has created the Non-Residents Rights Defense Fund (NR Rights Defense Fund) to oppose the legislation. It is to be separately

administered from all other Conservation Force programs and must be wholly self-sustaining. We will take pains to ensure that other Conservation Force revenue is not commingled or utilized to oppose the legislation else there will be objections from our general donors that are so very important for all the other important things we do. Somebody has to save nonresident hunting and fishing, but we cannot do anything without direct support from nonresident hunting and fishing interests. This has to be separately funded and administered. The Defense Fund officially started January 1, 2005. Dedicate your tax deductible donation to oppose this legislation to “Conservation Force’s NR Rights Defense Fund”.

Briefly Noted

HSUS and The Fund for Animals Merge: The two most effective anti-hunting organizations have merged to be more effective. They are now called The HSUS. They have had common leadership, including President Wayne Pacelle, common causes like the Argali lawsuit they filed together, and even a common website, HUMANELINES (www.humanelines.org). As of January 1, 2005, they are one and the same. Together, they boast to have more than eight million members and a planned budget of more than \$95 million. Most significantly, they have announced a new Animal Protection Litigation section with six additional in-house litigation attorneys in 2005. One of the trial lawyers, Jonathan Lovvorn, is to be a Vice President and comes to them from the firm of Meyer & Glitzenstein, which animal rights and protection groups commonly hire. That firm was our opponent in the Argali suit. Lovvorn reportedly co-teaches a seminar on animal law with his wife at George Washington University School of Law. The new organization has also launched a new 501(c)(4) political organization named HSUS Fund for Animals for greater lobbying activities. You can trust that we will be monitoring these developments closely.

Botswana Lion Reopened: Botswana’s 2005 hunting quota once again includes lion after a four year closure. The quota has been approved by the President who has issued a Presidential Directive that all lion hunts be accompanied by a Department of Wildlife and National Parks “Escort Guide,” as is already required for leopard and



elephant hunts.

The lion quota limit is “1” in some of the Community Managed Areas, which is the same for leopard in all but one Community Managed Area. It is also “1” for each of the Concession Areas, identical to the leopard in each of those areas. All totaled, the countrywide quota for lion is 27 in 27 different areas and 28 for leopard in 28 different areas.

The President himself has warned the hunting community that it is very important that all lion hunting be conducted ethically and lawfully or it will be closed. There are virulently anti-hunting individuals in Botswana so it is incumbent upon every hunter to defensively avoid giving them any opportunity to have the hunting closed again. Please.

Incidentally, the Director of Wildlife from Botswana, Professor Craig Packer and I will be holding a special program on lion status and management at the Dallas Safari Club Convention. It is scheduled to run 8:30 a.m. to 9:30 a.m. on Friday morning during the Exhibitors’ Breakfast before the morning show opening.

RIGHT TO HUNT, FISH AND TRAP: My home state of Louisiana just added the right to hunt, fish and trap to the state’s Constitution. It is embodied in the first article of the highest law of our state. Though it is not an absolute right in that it is subject to regulation, no one wants it to be an absolute and unconditional individual right. The Constitutional amendment is public recognition and acknowledgement of the importance of hunting, fishing, and trapping. It is the ultimate statement of public policy in this state. Hunting

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is a right! Hunting is recognized to be of fundamental importance and deserving of protection. No court in this state will ever slight hunting for only being an unprotected activity as has occurred elsewhere. This will silence the Antis' claims that hunting is an unpopular and unprotected anachronism. The Amendment passed with eighty-one (81%) percent of the vote. Though we wonder about the 19% that voted against the amendment, the right is now law. It is not an “end-all” but it is satisfying relief.

It took several years to get the right through the state legislature before it was put to popular vote. That was because of the advice of the state's Department of Wildlife & Fisheries' legal counsel that it might spark litigation, which has been the position of the International Association of Fish & Wildlife Agencies' Legal Committee for a number of years. Once it cleared the state legislature, naysayers argued that it was “trivial,” to which we replied that the trivialization of it by some is exactly why it needed to be protected. It is not trivial to hunters or to America's wildlife conservation paradigm. Some argued that it was “unnecessary” in Louisiana but PETA had mistakenly placed billboard signs in the state showing a dog rolling its eyes at a fish hook and line tugging at his lip and had also threatened to protest fishing rodeos (tournaments). Conservation Force assisted the Louisiana Wildlife Federation that spearheaded the whole effort with our databank of anti-hunting and fishing examples from around the country that helped make the threat from Antis real. State Senator Joe McPherson, who is a longstanding member of the Louisiana Wildlife Federation and also founder of the newly formed Louisiana Legislative Sportsmen's Caucus [offshoot of the Congressional Sportsmen's Caucus], introduced the legislation and championed it all the way. The HSUS and Fund for Animals deliberately kept a low profile, knowing that we would turn their appearance and presence against them. It was not even carried in their nationwide alerts that we carefully monitored. The Antis' only hope

of defeating the Constitutional right was for the Constitutional Amendment to fail from apathy for lack of a perceived present threat to sportsmen and women. That may have been true, but 81% of the voters felt it was important anyway. It is the public recognition and acceptance of the importance of hunting, fishing, and trapping that makes me much more comfortable about my way of life today than yesterday in the “Sportsmen's Paradise.”



The right to hunt, fish, and trap was also made a Constitutional right in Montana on Election Day. What is especially notable about it, the vote was approximately 81% in favor and 19% opposed, identical to the breakdown in Louisiana according to the HSUS - Fund for Animals website. With Loui-

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The Hunting Report and Conservation Force would like to thank International Foundation for the Conservation of Wildlife (IGF) for generously agreeing to pay all of the costs associated with the publishing of this bulletin. IGF was created by Weatherby Award Winner H.I.H Prince Abdorreza of Iran 25 years ago. Initially called The International Foundation for the Conservation of Game, IGF was already promoting sustainable use of wildlife and conservation of biodiversity 15 years before the UN Rio Conference, which brought these matters to widespread public attention. The foundation has agreed to sponsor *Conservation Force Bulletin* in order to help international hunters keep abreast of hunting-related wildlife news. Conservation Force's John J. Jackson, III, is a member of the board of IGF and Bertrand des Clers, its director, is a member of the Board of Directors of Conservation Force.



International Foundation for the
Conservation of Wildlife

siana and Montana, nine states have adopted the Constitutional right to hunt, fish and trap.

The HUMANELines ... Election issue on November 3 reported that the Antis lost every hunting-related ballot measure. There has never been such a sweeping victory against them. They lost their Alaska ballot measure to outlaw bear baiting. [41% voted to end baiting and 59% voted against the measure]. Statistically, 50% more voters were in favor of allowing bear baiting than those against. Also, Alaska succeeded in making future ballot initiatives harder. The Antis also lost Question 2 in Maine that would have made bear baiting, hounding, and trapping illegal. [47% voted to end the practices but 53% voted against the Question]. Florida also made ballot initiatives more difficult by making it harder for activists to collect signatures [68.3% voted for ballot signature restrictions and 31.7% voted against]. The Antis did defeat a proposition in Arizona that would have made citizen ballot initiatives more difficult.

The Antis claim to be “regrouping and rallying their forces” in Alaska and Maine to continue the initiatives to limit bear hunting methods. They complain that they lost because “hunting and gun groups” “outspent animal advocates by a margin of two to one in Maine and a margin of eight to one in Alaska.”

Humane USA, the political action lobbying arm of the HSUS, listed its “key animal protection allies on both sides of the aisle” that it was “able to help re-elect.” See if you know them. They are: Barbara Boxer (D-CA), Blanche Lincoln (D-AR), Patty Murray (D-WA), Harry Reid (D-NV), Arlen Specter (R-PA) in the U.S. Senate; and Earl Blumenauer (D-OR), Peter DeFazio (D-OR), Elton Gallegly (R-CA), Marcy Kaptur (D-OH), Jim Moran (D-VA), David Price (D-NC), Chris Shays (R-CT), Rob Simmons (R-CT), and Ed Whitfield (R-KY) in the House.

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