

## TESTIMONY ON OHIO HJR5

Presented by Vicki Deisner, Ohio Animal Advocates  
Before the House Energy and Natural Resources Committee  
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Chair Kick, Vice-Chair Lear, Ranking Minority Member Rogers, and distinguished members of the House Energy and Natural Resources Committee, I am Vicki Deisner, Executive Director of Ohio Animal Advocates (OAA). Thank you for this opportunity to provide testimony on behalf of OAA on Ohio HJR5, which seeks to amend the Ohio Constitution to establish “a right, which includes the right to use traditional methods, to hunt, fish, and harvest wildlife.” We encourage you to vote against the Resolution for four primary reasons: (1) the Resolution is ambiguous and would create significant regulatory uncertainty; (2) the Resolution is unnecessary and represents a solution in search of a problem; (3) the Resolution uses misleading language to make unpopular and controversial methods of take—such as trapping, baiting, and hounding—a constitutional right; and (4) the Resolution would severely limit the authority of the Ohio Department of Natural Resources (“ODNR”), the General Assembly, and the public to responsibly manage wildlife.

### I. The Resolution Is Ambiguous and Would Create Significant Regulatory Uncertainty.

The Resolution is poorly drafted and uses language that is far more extreme than right to hunt amendments adopted by other states. Adding the Resolution’s language to the Constitution would create ambiguity and a significant amount of unnecessary regulatory uncertainty. Below is a list of questions and issues that this Resolution raises, but fails to address:

- A. **Uncertainty Regarding ODNR’s Regulatory Authority:** the Resolution does not address how it would impact ODNR’s authority to manage wildlife populations, promote wildlife conservation, and issue regulations governing hunting, fishing, and trapping within the state. As discussed further in Section IV, the Resolution appears to limit ODNR’s authority to regulate all three of these categories, which would have severe negative repercussions for science-based wildlife management in Ohio.
- B. **Unknown Impact on Existing Wildlife Statutes and Regulations:** the Resolution does not address what impact the creation of a new constitutional right would have on the implementation of existing Ohio statutes and regulations that manage wildlife populations, promote wildlife conservation, and govern hunting, fishing, and trapping. This ambiguity is particularly concerning in the context of regulations that have been adopted to promote public safety and to protect pets and nontarget species.
- C. **Uncertain Impact on Citizen Ballot Initiatives:** the Resolution does not address how it would impact citizens’ ability to put forward ballot initiatives pertaining to management of wildlife populations, promotion of wildlife conservation, and governance of hunting, fishing, and trapping within the state.

As discussed further in Section IV, the Resolution appears to infringe on an existing constitutional right that belongs to all Ohioans to bring ballot initiatives on matters that are important to them.

D. **Unclear Impact on Law Enforcement Capabilities and Prosecution of Poachers:** the Resolution does not address what impact elevating hunting, fishing, and trapping to the level of a constitutional right would have on ODNR officials' and other law enforcement officers' ability to prosecute poachers. There is significant concern that poachers charged with wildlife crimes would assert their constitutional right to hunt, fish, and harvest wildlife and argue that the laws they are being prosecuted under are an unconstitutional infringement on that right. Other states have addressed this issue by stating in their constitutional amendment that such constitutional rights are subject to "reasonable rules" or "reasonable regulations." The Resolution contains no such language, which raises serious questions about the ability to prosecute poachers and protect wildlife populations in the state if the Resolution were to be adopted.

E. **Unknown Effect on Ability to Address Property Damage:** the Resolution does not address what impact it would have on existing wildlife control measures, such as those employed by game wardens and Wildlife Services, to protect people and property from damage caused by wildlife.

F. **Unclear Application to Nonresidents:** the Resolution does not address whether it is intended to require the state to offer the same rights and licensing structure to nonresidents as it does to residents.

G. **Uncertain Impact on Other Uses of Land and Water:** the Resolution would establish a new constitutional right, but does not address how this right is intended to relate to other uses of land or water, such as farming, ranching, logging, irrigation, public works, or development. Specifically, would this new constitutional right impede, supersede, or be subject to these other uses? While the Resolution states: "[t]his section shall not be construed to limit the application of any provision of law or of the constitution relating to trespass or property rights," that statement is insufficient to address the issue of how other uses may be impacted.

The language that the Resolution seeks to add to the Constitution is poorly drafted, ambiguous, and raises serious questions regarding important matters of ODNR's authority, existing statutes and regulations, governance issues, law enforcement, and land use. The language in the Resolution should therefore not be enshrined in the Constitution.

II. **The Resolution is Unnecessary and Represents a Solution in Search of a Problem.**

The Resolution is unnecessary and does not address an actual need of Ohioans. Instead, it represents a solution in search of a problem. Notably, the Resolution contains no explanation of why elevating hunting, fishing, and trapping of wildlife to the level of a constitutional right is necessary. The absence

of explanation is not surprising because Ohio residents already have broad access to nearly unlimited hunting, fishing, and trapping opportunities using a wide variety of methods.

Ohioans may hunt a large array of species, including white-tailed deer, wild turkey, American crow, squirrel, grouse, pheasant, quail, chukar, rabbit, red and gray fox, raccoon, skunk, opossum, weasel, coyote, feral swine, groundhog, geese, ducks, coots, mergansers, teal, dove, rail, moorhen, snipe, and woodcock, using many types of equipment, including longbows, crossbows, shotguns, straight-walled cartridge rifles, muzzleloading rifles, muzzleloading shotguns, and handguns. Many methods are also permitted, including baiting, dogs, night vision scopes, electronic callers, and hunting at night. Furthermore, Ohioans enjoy lengthy seasons and permissive bag limits for most species.

Similarly, there are few limitations on trapping in the state. Ohioans may trap red and gray fox, raccoon, skunk, opossum, weasel, mink, muskrat, beaver, river otter, coyote, and feral swine using steel-jaw leghold traps, snares, and body-gripping traps placed on land and in water. There are lengthy seasons and no bag limit restrictions except for river otters. Clearly there is no issue of any undue restriction on hunting and trapping in the state. As such, there is no reason to further elevate the interests of the tiny fraction of Ohioans who hunt and trap.

### III. The Resolution Uses Misleading Language to Make Unpopular and Controversial Methods of Take a Constitutional Right.

The Resolution seeks to amend the Ohio Constitution to make unpopular and controversial methods of take—such as trapping, baiting, and hounding—a constitutional right. Although trapping, baiting, and hounding are not explicitly identified in the Resolution, the phrasing of Section 22(B) makes it clear that the drafters' intent is to protect such practices. Section 22(B) states: "The people have a right, which includes the right to use traditional methods, to hunt, fish, and harvest wildlife." Not only does use of the word "harvest" encompass trapping, but the phrase "traditional methods" is a euphemism for trapping and other controversial hunting methods. This is evident from a publication issued by the Congressional Sportsmen's Foundation that provides legislators with a roadmap for passing right to hunt and fish legislation. That publication states as follows regarding the meaning and intent of "traditional methods":

'Trapping admittedly faces a lot of controversy in this country. Some practices like trapping can make support harder to get from parties that are otherwise pro-hunting in a general election. By using a phrase like "traditional methods," proponents can give a stronger protection to trapping without actually mentioning trapping. Some non-hunters see hunting as an acceptable and even effective means of conservation, but at the same time view trapping as an inhumane version of hunting. It would be very unfortunate for a right to hunt/fish/manage amendment to fail because of explicitly using the word trapping when "traditional means" offers much of the same protection to trappers regardless. At the

same time, however, “by the use of traditional methods” could also help to protect other methods of hunting that have come under scrutiny, such as the use of dogs or baiting.’

This makes clear that the Resolution’s use of the phrase “traditional methods” is a deliberate attempt to mislead voters on what methods would become constitutional rights in order to insulate unpopular methods of take from regulation. The use of cruel trapping practices such as strangling neck snares, steel-jaw leghold traps, and body-crushing Conibear devices should not be enshrined in the Ohio Constitution. Not only are snares and traps inhumane, but they also pose a serious danger to people’s pets and other nontarget species. This deliberate attempt to mislead voters should not be condoned. At the very least, the language of the Resolution should specifically identify trapping so that voters are able to make informed decisions on issues that impact them.

#### IV. The Resolution Would Severely Limit the Authority of ODNR, the General Assembly, and the Public to Responsibly Manage Wildlife.

The Resolution appears to limit the ability of ODNR, the General Assembly, and the public to manage wildlife populations, promote wildlife conservation, and regulate hunting, fishing, and trapping within the state, which creates very concerning governance issues.

##### A. The Authority of ODNR Would Likely Be Curtailed.

The Resolution appears to co-opt the regulatory authority of the executive branch, as exercised through ODNR, by stating that the constitutional right to hunt, fish, and harvest wildlife “is subject only to the laws prescribed by the General Assembly and rules prescribed by virtue of the authority of the General Assembly to do either of the following: (1) Promote wildlife conservation and management; (2) Preserve the future of hunting and fishing.” While “rules prescribed by virtue of the authority of the General Assembly” may be an attempt to address authority granted to ODNR by statute, the language is unclear and could easily give rise to multiple valid interpretations, including one in which ODNR is deprived of the ability to issue regulations pertaining to management of wildlife populations, promotion of wildlife conservation, and governance of hunting, fishing, and trapping within the state.

This interpretation is supported by the fact that legislative language proposed in the publication issued by the Congressional Sportsmen’s Foundation on right to hunt and fish legislation, as well as the language of similar legislative proposals in other states, all make explicit reference to preserving the power of the state fish and wildlife management authorities to issue regulations to promote wildlife conservation and management, to maintain natural resources in trust for public use, and to preserve the future of hunting and fishing. , The absence of similar language in the Resolution thus points to the intent to strip ODNR and the executive branch of its regulatory authority on these matters, which would cause significant harm to the state’s wildlife populations.

B. The Authority of the General Assembly Would Likely Be Curtailed.

The Resolution also appears to constrain the authority of the General Assembly to address wildlife matters. Specifically, the General Assembly would be limited to passing laws solely to “(1) Promote wildlife conservation and management; (2) Preserve the future of hunting and fishing.” Tying the hands of future legislators to govern on wildlife matters is imprudent and would render the General Assembly incapable of responding to the will of the voters on a range of issues.

C. The Public’s Constitutional Right to Put Forward Ballot Initiatives Would Likely Be Curtailed.

The language of the Resolution appears to preclude the ability of Ohio citizens to put forward ballot initiatives pertaining to the management of wildlife populations, promotion of wildlife conservation, and governance of hunting, fishing, and trapping within the state. Under Article 2, Section 1 of the Ohio Constitution, the powers of constitutional and statutory initiatives and referendum are reserved for the people. This allows citizens to exercise the power to place an issue directly before voters via a statewide ballot for a vote. Yet the language of the Resolution states that the right established therein “is subject only to the laws prescribed by the General Assembly and rules prescribed by virtue of the authority of the General Assembly[.]”

Placing matters of wildlife management and hunting, fishing, and harvesting of wildlife solely in the hands of the General Assembly would infringe on an existing constitutional right that belongs to all Ohioans to bring ballot initiatives on matters that are important to them. The Resolution would elevate the right to hunt, fish, and harvest wildlife above the right to an important form of direct democracy that has been enshrined in the Ohio Constitution since 1912. Removing the ability of Ohioans to bring a ballot initiative on the issues contained in the Resolution is an undemocratic curtailment of a constitutional right that has existed for nearly 110 years, and should not be permitted.

For these reasons, OAA urges the House Energy and Natural Resources Committee to vote against HJR5.