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**UNITED STATES DISTRICT COURT
 EASTERN DISTRICT OF CALIFORNIA
 SACRAMENTO DIVISION**

<p>SAFARI CLUB INTERNATIONAL,</p> <p style="text-align: center;">Plaintiff;</p> <p style="text-align: center;">v.</p> <p>KAMALA D. HARRIS, in her official capacity as Attorney General of California, and CHARLTON H. BONHAM, in his official capacity as Director of the California Department of Fish and Wildlife;</p> <p style="text-align: center;">Defendants.</p>	<p>Case No. 2:14-cv-01856-GEB-AC</p> <p>NOTICE OF MOTION AND MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF BY THE HUMANE SOCIETY OF THE UNITED STATES AND THE FUND FOR ANIMALS</p> <p>Date: January 20, 2015 Time: 9:00 a.m. Judge: Hon. Garland E. Burrell, Jr.</p>
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1 **NOTICE OF MOTION AND MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF**
2 **BY THE HUMANE SOCIETY OF THE UNITED STATES AND THE FUND FOR**
3 **ANIMALS**

4 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

5 **PLEASE TAKE NOTICE** that on January 20, 2015, at 9:00 am, or as soon thereafter as
6 the matter may be heard before the Honorable Garland E. Burrell, Jr., in the United States District
7 Court for the Eastern District of California, Sacramento Division, located at 501 I Street,
8 Sacramento, California, in Courtroom No. 10, The Humane Society of the United States
9 (“HSUS”) and The Fund for Animals (“The Fund”) (together, “*Amici*”) will, and hereby do, move
10 for leave to file the attached proposed *amici curiae* brief in support of Defendants’ Motion to
11 Dismiss.

12 As explained in the Memorandum of Points and Authorities offered in support of this
13 Motion, the Court should grant leave to file the proposed *amicus* brief because *Amici* The
14 Humane Society of the United States and The Fund For Animals have a substantial interest in the
15 litigation and will provide relevant points of legal authority and unique information as to the
16 development and basis for the law at issue that will assist the Court to resolve the pending
17 motion.¹

18 On December 12, 2014, counsel for *Amici* provided notice to the parties of the intent to
19 file this motion. Counsel for Plaintiff states that Plaintiff will not be able to provide its position
20 on the motion until after the motion is filed. Counsel for Defendants states that Defendants do
21 not oppose the motion.

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26 _____
27 ¹ *Amici* are not moving for leave to file any additional pleadings in this case, other than a
28 responsive pleading any opposition to this motion. *Amici* have a specific interest in providing the
Court with relevant points of authority and a unique perspective as it relates to Defendants’
pending motion to dismiss.

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MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT OF MOTION TO FILE AMICUS CURIAE BRIEF

The Humane Society of the United States (“HSUS”) and The Fund for Animals (“The Fund”) (together, “*Amici*”) request leave of this Court to file the attached *amicus curiae* brief in support of Defendants’ Motion to Dismiss. Dkt. No. 15. The following points and authorities are offered in support of the motion.

I. LEGAL STANDARD.

“The district court has broad discretion to appoint *amici curiae*.” *Hoptowit v. Ray*, 682 F.2d 1237, 1260 (9th Cir. 1982), *abrogated on other grounds by Sandin v. Conner*, 515 U.S. 472 (1995). As such “[a]n amicus brief should normally be allowed’ when, among other considerations, ‘the amicus has unique information or perspective that can help the court beyond the help that the lawyers for the parties are able to provide.’” *Re2con, LLC v. Telfer Oil Co.*, No. 2:10-cv-00786-KJM-KJN, 2012 WL 6570902 at *1 (E.D. Cal. Dec. 17, 2012) (quoting *Cnty. Ass’n for Restoration of Env’t (CARE) v. DeRuyter Bros. Dairy*, 54 F. Supp. 2d 974, 975 (E. D. Wash. 1999) (citing *Northern Sec. Co. v. United States*, 191 U.S. 555, 556 (1903))); *In re Roxford Foods Litig.*, 790 F. Supp. 987, 997 (E.D. Cal. 1991) (“[A]n individual seeking to appear as amicus must merely make a showing that his participation is useful to or otherwise desirable to the court.”) (quoting *United States v. Louisiana*, 751 F. Supp. 608, 620 (E.D. La. 1990)). Here *Amici* would fulfill the “classic role” of an *amicus curiae* to “assist[] in a case of general public interest, supplementing the efforts of counsel, and drawing the court’s attention to law that escaped consideration.” *Miller-Whol Co., Inc. v. Comm’r of Labor and Indus. State of Mont.*, 694 F.2d 203, 204 (9th Cir. 1982).

II. IDENTITY AND INTEREST OF AMICI CURIAE.

Proposed *Amicus* HSUS is the nation’s largest animal welfare organization. Protecting the welfare of animals is the core mission of HSUS. That core mission includes preventing animal cruelty and promoting public safety and wildlife conservation. On behalf of its members and constituents, including over 1.4 million members and constituents in California, HSUS has spent

1 considerable time, financial resources, and institutional goodwill promoting wildlife protection
2 and management in the State of California, including ensuring the protection and management of
3 mountain lions specifically. *See* Declaration of John William Yeates in Support of Motion for
4 Leave to File *Amicus Curiae* Brief (“Yeates Decl.”) ¶¶ 7, 11-14.

5 Proposed *Amicus* The Fund has spearheaded significant animal protection advancements
6 for over 45 years by employing national and state advocacy campaigns, rescue operations and
7 operating a network of world-famous animal care facilities. The Fund is devoted to wildlife
8 protection and management, and operates a wildlife center in Southern California that provides
9 year-round medical and rehabilitative care to injured and orphaned wildlife and specializes in
10 native predator species, such as mountain lions.

11 In or around 1985, HSUS joined the Mountain Lion Coalition, a California association of
12 nonprofits dedicated to the protection of mountain lions, and sponsored legislation that would
13 prohibit the hunting of mountain lions in the state. Yeates Decl. ¶ 7. In or around 1989 to 1990,
14 HSUS and The Fund were deeply involved in the campaign to pass Proposition 117—the law at
15 issue in this case—which declares mountain lions as a fully protected species in the state of
16 California and prohibits the hunting, possession, transportation, and importation of mountain
17 lions and parts thereof in the state. Yeates Decl. ¶ 11. Both HSUS and The Fund later played a
18 key role in the successful campaign to defeat a 1996 ballot measure that would have repealed
19 certain provisions of Proposition 117. Yeates Decl. ¶¶ 12-13; *Amici’s* Request for Judicial Notice
20 (“*Amici* RJN”), Exh. A (official California Ballot Pamphlet for Proposition 197, in which the
21 “Argument Against” and “Rebuttal to Argument in Favor,” of the measure were signed by HSUS
22 executives). HSUS was also supportive of subsequent legislative amendments to Proposition 117
23 that allowed certain scientific research activities and responses to public safety threats while
24 leaving intact the mountain lion’s status as a “protected species” that cannot be hunted. Yeates
25 Decl. ¶ 14. The HSUS and The Fund therefore have a significant interest in this case.

26 **III. THE PROPOSED AMICUS CURIAE BRIEF WILL ASSIST THE**
27 **COURT WITH THE DISPOSITION OF THIS CASE.**

1 Although *Amici* support the clear and persuasive arguments of Defendants’ Motion to
2 Dismiss, *Amici* are uniquely positioned to provide legal authority and factual information of
3 assistance to the Court in resolving the motion. *Amici*—organizations with the specific mission to
4 protecting the welfare of animals, promoting public safety, and conserving wildlife—are well-
5 situated to address the legal questions raised by Plaintiffs in the factual context at issue here. In
6 fact, HSUS and The Fund have extensive litigation experience as intervenors and *amici* in cases
7 with similar claims—i.e. cases challenging state and local animal protection laws as
8 unconstitutional.² This experience, and indeed even the rulings in some of these cases, cited in
9 *Amici*’s proposed brief, are likely to assist the Court in its review of the instant claims. Moreover,
10 as described above, both *Amici* were deeply involved in the campaign to pass Proposition 117,
11 and the subsequent campaign to uphold the law against attempted repeal. Yeates Decl. ¶¶ 11-13.

12 _____
13 ² HSUS has participated as an intervenor or *amicus* in a number of cases, many of which have
14 been filed within the State of California and this Circuit regarding the constitutionality of animal
15 protection laws, in support of, but without duplicating, governmental defendants’ efforts. *See,*
16 *e.g., Puppies ‘N Love, et al. v. Phoenix*, Civ. No. 14-00073 (D. Ariz., filed 2014) (HSUS
17 intervened to defend against challenge to Phoenix ordinance requiring pet stores to sell only dogs
18 from animal shelters or other nonprofit animal rescues); *Mayfair House, Inc. v. City of West*
19 *Hollywood*, Civ. No. 13-07112 (C.D. Cal., filed 2013) (HSUS participated as *amicus* to defend
20 against challenge to West Hollywood ordinance prohibition on the sale of animal fur apparel);
21 *Chinatown Neighborhood Association v. Brown, et al.*, Civ. No. 12-03759, (N.D.Cal., filed 2012)
22 (HSUS participated as an intervenor to defend against challenge to California law banning the
23 sale, trade, and possession of shark fins); *Cramer v. Brown, et al.*, Civ. No. 12-03130 (C.D. Cal.,
24 filed 2012) (HSUS intervened to defend against challenge to California’s Proposition 2,
25 mandating that egg laying hens be confined in a larger space); *Wilkins, et al. v. Daniels, et al.*,
26 Civ. No. 12-01010 (S.D. Ohio, filed 2012) (HSUS intervened to defend against challenge to Ohio
27 law restricting ownership of dangerous wild animals); *Nat’l Audubon Soc’y, et al. v. Davis, et al.*,
28 Civ. No. 98-4610 (9th Cir. 2002) (HSUS intervened to defend against challenge to California law
restricting use of certain kinds of traps and poisons); *Asian Am. Rights Comm. v. Brown et al.*,
Civ. No. 12-517723 (Cal. Sup. Ct., San Francisco County, filed 2012) (HSUS intervened to
defend against challenge to California law banning the sale, trade, and possession of shark fins);
JS West Milling Co., Inc. v. California, Civ. No. 10-04225 (Cal. Sup. Ct., Fresno County, filed
2010) (HSUS intervened to defend against a challenge to California’s Proposition 2, mandating
that egg laying hens be confined in a larger space); *Mary Mendibourne, et al. v. John*
McCamman, et al., Civ. No. 46349 (Cal. Sup. Ct., Lassen County, filed 2009) (HSUS participated
as intervenor to defend California initiative banning use of cruel methods of trapping and
poisoning wildlife); *Citizens for Responsible Wildlife Management v. State*, Civ. No. 72186-6
(Sup. Ct. of Wash., filed 2003) (HSUS intervened to defend against challenge to Washington law
restricting use of certain kinds of traps and poisons).

1 Thus, *Amici* are capable of presenting contextual information relevant to the Court’s review.³ By
 2 example, *Amici* believe the legislative history of efforts to amend Proposition 117, not cited in the
 3 parties’ briefs, provide further evidence of the basis for enacting the law in the first instance, and
 4 that basis is clearly relevant in deciding the instant motion. Permitting *amici Amici* to file the
 5 attached proposed brief will provide a fuller view of the matters currently before the Court.

6 In its attached proposed *amici* brief, HSUS and The Fund support the position of the
 7 Defendants, but have endeavored not to duplicate Defendants in the presentation of facts or legal
 8 authority. As *Amici*, the HSUS and The Fund will present a distinct and relevant analysis
 9 supporting Defendants’ Motion, but will not enlarge the issues to be decided by the Court or
 10 create any undue prejudice to Plaintiff. Although there are no specific limitations as to the time
 11 for filing of an *amicus* brief, this Motion is nonetheless timely as it is submitted in advance of
 12 Plaintiffs’ opposition to Defendants’ motion.⁴

13 IV. CONCLUSION.

14 Because of *Amici*’s history and experience with regard to promoting and defending state
 15 and local policy to prevent animal cruelty and promote public safety and wildlife conservation, as
 16 well as its extensive knowledge of the landscape of local, state, and federal wildlife laws and
 17 constitutional challenges thereto, HSUS and The Fund believe that their insight will aid this Court
 18

19 ³ Although constitutional challenges are principally legal in nature, they are not devoid of factual
 20 context. *Pennell v. City of San Jose*, 485 U.S. 1, 10, 108 S.Ct. 849, 99 L.Ed.2d 1 (1988) (“[T]he
 21 constitutionality of statutes ought not be decided except in an actual factual setting that makes
 22 such a decision necessary.”); *Int’l Ass’n of Machinists & Aerospace Workers v. Fed. Election*
 23 *Comm’n*, 678 F.2d 1092, 1097 (D.C. Cir. 1982) *aff’d*, 459 U.S. 983, 103 S.Ct. 335, 74 L.Ed.2d
 24 379 (1982) (“[I]t is undesirable to decide a constitutional issue abstracted from its factual
 25 context.”). In this case, *Amici* assert that the factual allegations in the Plaintiffs’ complaint do not
 establish legally cognizable Equal Protection and Commerce Clause claims, particularly in the
 context of the judicially noticeable legislative history of Proposition 117 and subsequent efforts at
 amendment thereof, and the evolution state and local wildlife protection policy more generally, of
 which *Amici* are uniquely informed.

26 ⁴ Should Plaintiffs desire additional time in order to incorporate arguments responsive to the
 27 *amicus* submission in their opposition to Defendants’ motion, the applicants suggest that this
 28 could be accommodated without prejudice to the parties in the resolution of this matter, as the
 Plaintiff has already requested and received, with the Defendants’ consent, a significant extension
 of the briefing schedule and date of the hearing on the motion.

1 in considering Defendants' Motion to Dismiss. Accordingly, the applicants respectfully request
2 that this Court accept the attached *amicus curiae* brief in support of Defendants in this matter.

3
4 Dated: December 17, 2014

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6 Respectfully submitted,

7
8 By: /s/ Peter A. Brandt

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8 **UNITED STATES DISTRICT COURT**
 9 **EASTERN DISTRICT OF CALIFORNIA**
 10 **SACRAMENTO DIVISION**

11 SAFARI CLUB INTERNATIONAL,

12 Plaintiff;

13 v.

14 KAMALA D. HARRIS, in her official capacity as
 15 Attorney General of California, and CHARLTON
 16 H. BONHAM, in his official capacity as Director
 17 of the California Department of Fish and Wildlife;

18 Defendants.

Case No. 2:14-cv-01856-GEB-AC

**DECLARATION OF JOHN WILLIAM
 YEATES IN SUPPORT OF MOTION
 FOR LEAVE TO FILE AMICUS
 CURIAE BRIEF**

Date: January 20, 2015

Time: 9:00 a.m.

Judge: Hon. Garland E. Burrell, Jr.

19 **DECLARATION OF JOHN WILLIAM YEATES**
 20 **IN SUPPORT OF MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF**

21 1. I am over eighteen years of age and make this statement of my own free will. The
 22 statements here are of my own personal knowledge. The facts set forth are true to the best of my
 23 knowledge and recollection. If called, I could and would testify to these facts in a court of law.

24 2. I have been a resident of California since 1975. I am a retired attorney and an inactive
 25 member of the State Bar of California. I am a current member of The Humane Society of the
 26 United States' ("HSUS") California State Council. I have a Master of Science in Natural
 27 Resources Management and a juris doctorate from the University of Pacific's McGeorge School
 28 of Law. I have an extensive background in biology, natural resources, and wildlife affairs,

1 including working for members of the California Legislature who were actively involved in the
2 state's wildlife, natural resources, and biology laws, working for the California State Senate's
3 Select Committee on Land Use, and working for the California Coastal Commission as a permit
4 analyst and later staff counsel and lobbyist, which required me to work closely with the California
5 Department of Parks and Recreation and Department of Fish and Game (now Fish and Wildlife).
6 As described more fully below, I also spent several years serving as a member of, and in an
7 advisory capacity for, two organizations devoted specifically to the management and protection of
8 California's mountain lion population – the Mountain Lion Coalition and the Mountain Lion
9 Foundation. In this capacity I helped to draft, and was an official sponsor of, Proposition 117,
10 which is the law at issue in this case. My educational and professional background has provided
11 me with a unique and informed perspective on the development of, and rationale for, mountain
12 lion protection and management policy in California.

13 3. Mountain lions are an iconic predator species native to the Americas. They are a natural
14 part of the California landscape. As reported by the National Park Service, half of California is
15 believed to be prime mountain lion country—from sea level to 10,000 feet in elevation—with a
16 potential population of 5,000 statewide, though the California Department of Fish and Wildlife
17 estimates their number to be around 4,000 and declining at present time. Prior to the early 1970s
18 (from 1907-1963), California mountain lions, like other large predators, were hunted for a bounty,
19 in which a monetary incentive was offered for every kill in an attempt to eradicate the species.
20 Thereafter, the State changed the legal status of the species to “game,” and mountain lions were
21 subjected to regulated trophy hunting.

22 4. Hunting of mountain lions has been viewed by many individuals as inconsistent with the
23 conservation of the species, on grounds that hunting destabilizes local populations of this apex
24 predator. When a dominant mountain lion is removed from its home territory this “void” is filled
25 by younger, more opportunistic mountain lions that are more likely to take private livestock and
26 could be more of a threat to public safety. Methods used to hunting mountain lions have been
27 viewed by many individuals as especially cruel, oftentimes resulting in shooting a lion at point-
28 blank range.

1 5. Because of the mountain lion's importance as a native predator, the State of California has
2 taken several actions to protect its mountain lion population from overharvest and other threats,
3 and to manage its mountain lion population in a way that protects natural lion population structure
4 while maintaining public health and safety.

5 6. Many decades ago, California residents began calling for the State to protect and conserve
6 the mountain lion and preserve its role in the natural environment, both within and outside of
7 California. Acting on these interests, and in response to public opposition to hunting mountain
8 lions, California began restricting activities of Californians who would kill the native keystone
9 predator. The California Legislature passed legislation that Governor Reagan signed into law
10 placing a moratorium on the hunting of mountain lions. Pursuant to this law the mountain lion
11 was classified as a fully protected species. This moratorium was extended two more times until it
12 was due to expire in 1986.

13 7. In or around 1985, I was hired to work for an unincorporated association of organizations
14 known as the Mountain Lion Coalition ("Coalition") to assist in the passage of legislation to
15 extend the moratorium on hunting mountain lions in California. The association of nonprofits
16 that made up the Coalition included HSUS. As part of my employment with the Coalition, I
17 worked closely with Dr. John Grandy, a representative from HSUS. Dr. Grandy is still currently
18 employed by HSUS. The Coalition sponsored Senate Bill 76 ("SB 76"), which would have
19 extended the moratorium on hunting mountain lions. SB 76 was approved by the California
20 Legislature. However, Governor Deukmejian vetoed SB 76, thus allowing the ban on hunting
21 mountain lions to expire.

22 8. In or around 1987, I incorporated and served on the board of directors for the Mountain
23 Lion Foundation ("Foundation"), a nonprofit public-benefit corporation focused on protecting
24 California's mountain lions. The Foundation focused on raising funds for mountain lion
25 education and research, while the Coalition continued to push for legislation to re-instate the
26 moratorium on mountain lion hunting and was prepared to oppose any proposed hunting season
27 on mountain lions.

28

1 9. In or around 1987 and 1988, the California Fish and Game Commission approved hunting
2 seasons for mountain lions. Given the prior history of bounty killing and subsequent protection
3 of the species, the proposed hunt was very controversial. The Coalition successfully challenged
4 each hunting season in California state court, thus preventing mountain lion hunting during 1987
5 and 1988 despite the absence of a moratorium.

6 10. In or around 1989, I helped draft an initiative to return the mountain lion to its fully
7 protected classification and prohibit the hunting of mountain lions in California. This initiative
8 would later become Proposition 117—the law at issue in this case. I was one of the official
9 proponents who filed the initiative with the California Secretary of State, which triggered the
10 requirement to gather the required number of signatures of registered voters to put the initiative
11 measure before the voters for approval.

12 11. A campaign committee was formed to first gather the necessary signatures and then later
13 to help pass the Proposition 117. HSUS and The Fund for Animals (“The Fund”), which in 2005
14 combined as independent but affiliated corporate entities, joined this campaign. Both
15 organizations played a key role in the campaign to pass Proposition 117. HSUS and The Fund
16 donated funding to help with gathering signatures and getting the message out on Proposition
17 117. In addition to Dr. Grandy, both Gretchen Wyler, the vice chairperson of The Fund’s board
18 of directors, and Wayne Pacelle, The Fund’s Executive Director, played a key role in providing
19 volunteers to gather signatures to certify the initiative measure for the ballot, and actively
20 campaigned for the passage of Proposition 117. The proponents of Proposition 117 sought to
21 protect mountain lions from trophy hunting, safeguard the mountain lion population in the face of
22 its shrinking habitat, and stabilize the otherwise self-regulating nature of the apex predator to
23 reduce conflicts between mountain lions and humans or their livestock. California voters
24 approved Proposition 117 in the June 1990 election.

25 12. In early 1995, the California Legislature considered several bills to roll back protections
26 for mountain lions enacted through Proposition 117. *See Tony Perry, Bill Seeks to Remove Some*
27 *Protections for Cougars, available at* [http://articles.latimes.com/1995-01-13/news/mn-](http://articles.latimes.com/1995-01-13/news/mn-19561_1_mountain-lions)
28 [19561_1_mountain-lions](http://articles.latimes.com/1995-01-13/news/mn-19561_1_mountain-lions) (attached hereto as Exhibit A). The bills proposed a legislative

1 referendum seeking voter approval to repeal all or significant portions of Proposition 117,
2 specifically including the ban on hunting of mountain lions. *Id.* At this time, I was the President
3 of the Foundation's board of directors. I went to an HSUS annual meeting in Seattle, Washington
4 in the fall of 1995 to seek financial and staff support to oppose the attempt to undermine
5 Proposition 117. As a result of this meeting, HSUS provided funding and authorized its
6 California Field Director, Nancy Perry, to organize HSUS' substantial membership and volunteer
7 base in California. Meanwhile, the Foundation and other supporters of Proposition 117 formed a
8 separate campaign committee to oppose the attempt to roll back Proposition 117.

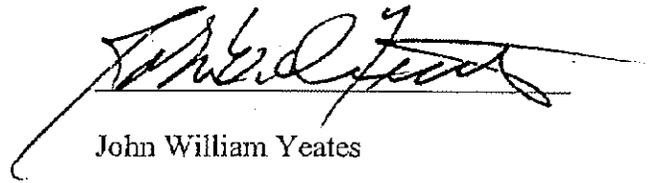
9 13. When the legislative referendum passed, and was prepared for submission to the voters as
10 Proposition 197, HSUS was deeply involved in the campaign to defeat the measure. Through
11 HSUS' extensive efforts we were able to raise over \$800,000 in four months for the campaign. In
12 addition to the campaign committee staff and me, the most active participants in the campaign
13 were HSUS staff members Wayne Pacelle, Gretchen Wyler, and Nancy Perry. Without HSUS'
14 extensive support I do not believe we would have successfully defeated the challenge to
15 Proposition 117 so that mountain lions continue to receive protection from hunting in California.

16 14. After the defeat of Proposition 197 in 1996, HSUS was also involved in subsequent
17 legislative amendments to the statutory scheme established by Proposition 117. HSUS supported
18 legislation in 1999 to clarify the California Department of Fish and Game's authority to take
19 "problem" lions in response to public safety concerns. And in 2012 HSUS supported legislation
20 to create a new statutory section allowing for scientific research projects supporting mountain lion
21 conservation that might otherwise have been prohibited by Proposition 117. Each of these
22 amendments effectively reaffirmed mountain lions' "protected species" status by allowing certain
23 activities relating to mountain lions in the face of arguments that Proposition 117 should be
24 repealed entirely and mountain lion hunting should be allowed.

25
26 Pursuant to 26 U.S.C. § 1746, I declare under penalty of perjury under the laws of the
27 United States of America that the foregoing is true and correct, based on my own personal
28 knowledge, and as to those matters, I believe them to be true.

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Executed this 15th day of December, 2014, in Sacramento, California.



John William Yeates

EXHIBIT A

← Back to Original Article

Bill Seeks to Remove Some Protections for Cougars : Wildlife: Recent attack renews debate on Proposition 117, passed in 1990, which gives mountain lions special status.

January 13, 1995 | TONY PERRY | TIMES STAFF WRITER

SAN DIEGO — A mountain lion's fatal mauling of a hiker at Cuyamaca Rancho State Park in December has rekindled a heated public debate about whether the big cats roaming California should be hunted, managed or left alone.

The debate, pitting animal lovers against hunters and the sentiments of urban residents against those of rural residents, centers on whether a state ballot measure to save the cougars has left the public vulnerable to an increasingly aggressive population of the predators.

"Mountain lions and humans are on a collision course, and current law prevents us from responding," state Sen. Tim Leslie (R-Carnelian Bay) said.

Leslie, along with Assemblyman Jan Goldsmith (R-Poway), has submitted a bill asking the Legislature to put a measure on the ballot that would change Proposition 117, which was passed in 1990.

The new measure would allow Department of Fish and Game officials to manage mountain lions as they do other wild animals to protect people and livestock. It would also permit the Legislature by a majority vote to allow hunting of mountain lions. Under Proposition 117, hunting can only be approved by a four-fifths majority in the Legislature, a virtual impossibility.

A bill by Assemblyman David Knowles (R-Placerville) would go even further: it would ask voters to repeal Proposition 117 and immediately permit hunting.

The bills are vigorously opposed by the Mountain Lion Foundation, major sponsor of Proposition 117.

"They're using scare tactics, and concerns about public safety, to get back to trophy-hunting for the friends from the National Rifle Assn. and hunting groups," foundation Executive Director Mark Palmer said.

The foundation prefers a bill by Assemblyman Dominic Cortese (D-San Jose) that would leave Proposition 117 intact and create a lion-sighting hot line for people who feel threatened. The hot line would allow wildlife officials to issue an immediate permit for hunting any aggressive or dangerous mountain lion.

Proposition 117, endorsed by voters 52% to 48%, gives the mountain lion special protected status exceeding that of wolves, bears, deer and other wild animals. The Fish and Game Department routinely manages the population of other animals by thinning their numbers, relocating them or reducing their food source, but the department has no such flexibility with mountain lions.

Mountain lion bills were submitted in the last session but died in committee. The topic has gained greater political momentum since the Dec. 10 death of Iris Kenna at Cuyamaca Rancho State Park 40 miles east of San Diego, and the mauling death in April of a jogger in the Auburn State Recreation Area 45 miles northeast of Sacramento.

Goldsmith's district includes Cuyamaca Rancho State Park; Leslie and Knowles represent the Auburn area. Cortese has been chairman of the Assembly's Water, Wildlife and Parks Committee.

Along with the two deaths, there have been incidents of aggressive lions stalking people and attacking other animals in recent years. One of the latest incidents occurred two weeks ago in Ventura County, when a mountain lion killed a 75-pound dog that was on its master's porch in Fillmore.

Proposition 117 outlawed sport hunting of mountain lions but allows permits to be issued for the destruction of an individual lion if it is determined to be dangerous to people or livestock. Six mountain lions, including the one that killed the hiker, have been shot and killed in the area of Cuyamaca Rancho State Park in the last 18 months.

As legislators consider whether to endorse any of the bills, the residents of Descanso, a tiny community on the edge of Cuyamaca Rancho State Park in the Cleveland National Forest, remain edgy about the cats in their midst.

Support for Proposition 117 was strongest in urban areas where mountain lions are scarce, and weakest in rural areas where mountain lions are more plentiful.

Gary Abbamonte, owner of Descanso Junction Restaurant, said he has received anonymous hate calls since being quoted in the press demanding that something be done about the mountain lions in the park.

"Mostly it's just attempted intimidation from environmentalists and animal lovers telling me to shut my mouth, which isn't going to happen," he said. "I told one woman that I'd be glad to bring some mountain lions to live in *her* neighborhood."

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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO DIVISION**

SAFARI CLUB INTERNATIONAL,

Plaintiff;

v.

KAMALA D. HARRIS, in her official capacity as
Attorney General of California, and CHARLTON
H. BONHAM, in his official capacity as Director
of the California Department of Fish and Wildlife;

Defendants.

Case No. 2:14-cv-01856-GEB-AC

**[PROPOSED] AMICUS CURIAE BRIEF
OF THE HUMANE SOCIETY OF THE
UNITED STATES AND THE FUND
FOR ANIMALS IN SUPPORT OF
DEFENDANTS' MOTION TO DISMISS**

Date: February 2, 2015
Time: 9:00 a.m.
Judge: Hon. Garland E. Burrell, Jr.

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INTEREST OF AMICI CURIAE

Amici The Humane Society of the United States and The Fund for Animals were integral to the passage of Proposition 117—the mountain lion protection law at issue in this case. They also helped to defeat efforts to repeal the law in 1996. HSUS and The Fund have spent considerable time, financial resources, and institutional goodwill promoting wildlife protection policy in California, including ensuring the protection of mountain lions. Disposition of this case may significantly impact *Amici's* organizational interests, and the interests of their members, in preventing animal cruelty and promoting wildlife conservation, and *Amici* can provide critical and unique legal, practical, and historical perspectives on the issues presented in this case.

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**
2 **IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS**

3 **I. INTRODUCTION**

4 In 1990, California voters enacted Proposition 117, which declares mountain lions a
5 protected species and prohibits taking, injuring, possessing, transporting, importing, or selling any
6 mountain lion or any part thereof. Nearly 25 years after the law was enacted, a national trophy
7 hunting organization has come forward to challenge the law's prohibition on importing mountain
8 lion trophies into the state. Plaintiff Safari Club International claims that this one aspect of
9 Proposition 117 violates the Commerce Clause and Equal Protection Clause based on the theory
10 that the State has no legitimate interest in prohibiting the import of the trophy of an animal killed
11 outside the State. As discussed below, Safari Club misconstrues the State's interests at stake,
12 ignoring the fact that courts have long-recognized States' legitimate interests in preventing harm
13 to animals as a reflection of public mores and an exercise of the state police power.

14 Proposition 117 does not discriminate against interstate commerce and places no
15 extraterritorial restrictions on other activities occurring wholly within other states. Safari Club
16 relies heavily on the assertion that the law has incidentally impacted commercial activity in other
17 states, because some of Safari Club's California members will not hunt mountain lions in other
18 states if they cannot import their trophies to California. But the Commerce Clause is not
19 concerned with an individual's personal interests or incidental burdens to commerce. Rather, it
20 protects against excessive harm to an interstate market as a whole. Safari Club fails to allege that
21 interstate commerce as a whole will be substantially affected by the loss of the small group of
22 California hunters who will no longer hunt for mountain lions in other states. And even if Safari
23 Club had established a substantial burden, their claim would still fail because the import
24 restriction of Proposition 117 serves a legitimate public interest.

25 Safari Club's Equal Protection claim is also unsupportable. Safari Club complains that
26 Proposition 117 unfairly restricts the activity of mountain lion hunters when California law does
27 not place similar restrictions on hunters of other species. But mountain lions are not the only
28 species which cannot be imported under California law, and the legislative findings for

1 Proposition 117, and the official ballot pamphlet arguments, make clear that the State’s decision
2 to focus on protecting mountain lions was grounded in a rational basis, thus satisfying the Equal
3 Protection Clause.

4 In light of the arguments set forth herein and in the Defendants’ Motion, the Court should
5 dismiss all of Safari Club’s claims under Rule 12(b)(6) of the Federal Rules of Civil Procedure.

6 **II. BACKGROUND**

7 **A. Enactment of Proposition 117**

8 California’s Wildlife Protection Act of 1990 was approved by voters as Proposition 117 in
9 the June 5, 1990 election. The requirements and restrictions of Proposition 117 relating to
10 mountain lions were added to the California Fish & Game Code in several sections beginning
11 with Section 4800. *See* Cal. Fish & Game Code §§ 4800-4810 (“Mountain Lion Law”). Under
12 these provisions, the mountain lion was listed as a “specially protected mammal in the state,” and
13 it became a crime to “take, injure, possess, transport, import, or sell any mountain lion or any part
14 thereof.” *Id.* § 4800. The prohibitions in the law do not apply to instances in which the mountain
15 lion, carcass, or parts or products thereof were taken prior to June, 6, 1990, are intended for
16 specific scientific or educational purposes, taken in accordance with California law, or authorized
17 by the Department of Fish and Wildlife under specific circumstances. *Id.* § 4800(b)(2)-(3).

18 Some findings in support of Proposition 117 were codified in the Fish and Game Code.
19 These findings declared, *inter alia*: (1) the “[p]rotection, enhancement, and restoration of wildlife
20 habitat and fisheries are vital to maintaining the quality of life in California. As the state’s human
21 population increases, there is an urgent need to protect the rapidly disappearing wildlife habitats
22 that support California’s unique and varied wildlife resources;” (2) “mountain lion[] and other
23 wildlife habitat . . . is disappearing rapidly. Small and often isolated wildlife populations are
24 forced to depend upon these shrinking habitat areas within the heavily urbanizing areas of this
25 state. Corridors of natural habitat must be preserved to maintain the genetic integrity of
26 California's wildlife;” and (3) “[t]his chapter shall be implemented in the most expeditious
27 manner. All state officials shall implement this chapter to the fullest extent of their authority in
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1 order to preserve, maintain, and enhance California's diverse wildlife heritage and the habitats
2 upon which it depends.” Cal. Fish & Game Code § 2780 (a), (d), (e).

3 A significant focus of Proposition 117 was prohibiting mountain lion hunting, and
4 specifically trophy hunting, as is evident from the proponent and opponent arguments included in
5 the official Ballot Pamphlet for Proposition 117, which was circulated to voters by the Secretary
6 of State’s office. *See* Defendants’ Request for Judicial Notice, (“Def. RJN”), Exh. A. The
7 proponent argument printed in the Ballot Pamphlet highlights that “Proposition 117 OUTLAWS
8 THE TROPHY HUNTING OF MOUNTAIN LIONS,” and it cites as reasons for such policy the
9 mountain lion’s cultural value as part of our “natural heritage,” promoting the conservation of the
10 mountain lion as California’s last native large predator species, and the belief that hunting this
11 elusive animal is “cruel and unnecessary.” *Id.* at 5.¹

12 When hunting groups sought to overturn significant portions of Proposition 117 by
13 referendum in 1996, the official Ballot Pamphlet for that measure (Proposition 197) contained
14 arguments over the impact of the measure with respect to sport hunting. *See* Amici’s Request for
15 Judicial Notice, (“Amici RJN”), Exh. A. Proponents of amendments to the Mountain Lion Law
16 argued to voters that the 1996 measure had nothing to do with trophy hunting. *Id.* at 4-5.
17 Opponents met this argument by noting that the amendments would in fact allow hunting to be
18 authorized by the Department of Fish and Game, quoting a Safari Club newsletter telling the
19 group’s members that “sport hunting of mountain lions” “can resume” if voters approved the
20 1996 measure. *Id.*

21 **B. Procedural History**

22 On August 6, 2014, Plaintiff Safari Club filed a Complaint for Declarative and Injunctive
23 Relief (“Complaint”) against Kamala D. Harris, in her official capacity as the Attorney General of
24 California, and Charlton H. Bonham, in his capacity as the Director of the California Department

25 _____
26 ¹ Many newspaper articles describe the policy changes and public discourse leading up to the
27 passage of Proposition 117. These articles show that debate over mountain lion hunting was
28 prevalent in the public realm when Proposition 117 was being considered by voters. *Amici* RJN,
Exh. B-C.

1 of Fish and Wildlife, seeking to set aside and enjoin enforcement of the Mountain Lion Law for
2 violating the Commerce Clause and Equal Protection Clause of the United States Constitution.

3 On October 6, 2014, Defendants filed a Motion to Dismiss the case pursuant to Federal
4 Rule of Civil Procedure 12(b)(6) for failure to satisfy pleading requirements and to state a claim
5 upon which relief can be granted.

6 **III. STANDARD OF REVIEW**

7 Under FRCP 12(b)(6), a court must dismiss a complaint if it fails to state a claim upon
8 which relief can be granted. A complaint should be dismissed as a matter of law for failure to
9 state a claim for either of two reasons: (1) lack of a cognizable legal theory; or (2) insufficient
10 facts under a cognizable legal theory. *Chubb Custom Ins. Co. v. Space Sys. Loral, Inc.*, 710 F.3d
11 946, 956 (9th Cir. 2013); *Akhtar v. Mesa*, 698 F.3d 1202, 1212 (9th Cir. 2012).

12 When ruling on a motion to dismiss, a court must accept all factual allegations stated in a
13 complaint as true, but the court may not assume facts not stated in a complaint. And to survive a
14 motion to dismiss a complaint must contain “enough facts to state a claim to relief that is
15 plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555-56 (2007). The court is not
16 required to accept as true “allegations that are merely conclusory, unwarranted deductions of fact,
17 or unreasonable inferences.” *St. Clare v. Gilead Scis., Inc.* 536 F.3d 1049, 1055 (9th Cir. 2008).

18 Moreover, “the tenet that a court must accept as true all of the allegations contained in a
19 complaint is inapplicable to legal conclusions.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).
20 Similarly, “a complaint [does not] suffice if it tenders naked assertions devoid of further factual
21 enhancement,” *id.* (quotation marks and brackets omitted), and the court should not “assume the
22 truth of legal conclusions merely because they are cast in the form of factual allegations.” *W. Min.*
23 *Council v. Watt*, 643 F.2d 618, 624 (9th Cir. 1981). Further, a complaint should be dismissed
24 without leave to amend where the plaintiffs’ averments are insufficient as a matter of law and the
25 deficiencies in the plaintiffs’ claims cannot be cured by additional pleading. *See Cook, Perkiss &*
26 *Liehe v. N. Cal. Collection Serv.*, 911 F.2d 242, 247 (9th Cir. 1990).

1 **IV. ARGUMENT**

2 **A. The Mountain Lion Law Does Not Violate the Commerce Clause**

3 The Commerce Clause has been interpreted to include an implied limitation on states’
4 authority to adopt legislation that *discriminates against* interstate commerce. *Wyoming v.*
5 *Oklahoma*, 502 U.S. 437, 454 (1992); *NCAA v. Miller*, 10 F.3d 633, 638 (9th Cir. 1993). A law is
6 discriminatory if it causes “differential treatment of in-state and out-of-state economic interests
7 that benefits the former and burdens the latter” and that is motivated by “economic
8 protectionism.” *Oregon Waste Sys., Inc. v. Dept. of Env’tl. Quality of Oregon*, 511 U.S. 93, 99
9 (1994). The restrictions on state law created by the Commerce Clause are “by no means
10 absolute,” and the “states retain authority under their general police powers to regulate matters of
11 legitimate local concern, even though interstate commerce may be affected.” *Maine v. Taylor*,
12 477 U.S. 131, 137-38 (1986); *see also Great Atl. & Pac. Tea Co. v. Cottrell*, 424 U.S. 366, 371
13 (1976) (“ . . . not every exercise of local power is invalid merely because it affects in some way
14 the flow of commerce between the States”). Therefore, there has been no violation of the
15 Commerce Clause where a state law does not regulate extraterritorially, does not intentionally
16 discriminate against interstate commerce, or imposes mere incidental effects on commerce.

17 A state law that “simply effectuates a complete ban on commerce in certain items” is not
18 unconstitutional, as long as it “does not make distinctions based on the origin of the items.” *Pac.*
19 *Northwest Venison Producers*, 20 F.3d at 1011, 1015. In *Pacific Northwest Venison Producers*,
20 the Ninth Circuit upheld state regulations prohibiting, *inter alia*, the importation and possession
21 of certain “deleterious exotic wildlife” against a Commerce Clause challenge. *Id.* Similarly, the
22 Seventh Circuit has upheld a complete ban on the import and sale of horsemeat for purposes of
23 human consumption, *Cavel Int’l, Inc. v. Madigan*, 500 F. 3d 551, 557 (7th Cir. 2007), and the
24 Second Circuit has upheld a complete ban on the import and sale of live wild birds out of concern
25 that many thousands of wild birds were dying as a result of cruel and careless practices during
26 live capture and transport into the state, *Cresenzi Bird Importers*, 658 F. Supp. at 1447, *aff’d* 831
27 F.2d 410 (2d Cir. 1987) (adopting the reasoning stated in the District Court opinion).

28

1 Just because the California’s Mountain Lion Law “flatly prohibit[s] a legally obtained
2 article of commerce from entering the state,” Complaint ¶ 7, does not mean that the ban violates
3 the Commerce Clause, because the law treats all mountain lion trophies exactly the same,
4 regardless of their point of origin. The Mountain Lion Law, and specifically its prohibition on
5 import of trophies from sport hunts, does not directly discriminate against interstate commerce, it
6 merely has some incidental effect on interstate commerce.

7 Where a state law merely has incidental effects on interstate commerce, it must be upheld
8 unless such effects create a “substantial burden” on the interstate market that “clearly exceeds”
9 the putative benefits of the law to the state. *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 143 (1970).
10 As the Ninth Circuit has recently reiterated, “most statutes that impose a substantial burden on
11 interstate commerce do so because they are discriminatory.” *Association des Eleveurs de Canards*
12 *et d’Oies du Quebec v. Harris*, 729 F.3d 937, 947 (9th Cir. 2013) (“*AECOQ*”), *certiorari denied*,
13 574 U.S. -- at *2 (Oct. 14, 2014), *available at* [http://www.supremecourt.gov/](http://www.supremecourt.gov/orders/courtorders/101414_zor.pdf)
14 [orders/courtorders/101414_zor.pdf](http://www.supremecourt.gov/orders/courtorders/101414_zor.pdf). Thus, “[f]or a state statute to run afoul of the *Pike* standard,
15 the statute, *at a minimum, must impose a burden on interstate commerce that is qualitatively or*
16 *quantitatively different from that imposed on intrastate commerce.*” *National Elec. Mfrs. Ass’n v.*
17 *Sorrell*, 272 F.3d 104, 109 (2d Cir. 2001) (emphasis added); *see also Empacadora de Carnes de*
18 *Fresnillo, S.A. DE C.V. v. Curry*, 476 F.3d 326, 336 (5th Cir. 2007) (quoting *Nat’l Solid Waste*
19 *Mgmt. Ass’n v. Pine Belt Reg’l Solid Waste Mgmt. Auth.*, 389 F.3d 491, 502 (5th Cir. 2004)
20 (quotation and citation omitted) (the “incidental burdens” referred to in *Pike* do not include *any*
21 impact a law may have on interstate commerce, but rather those “burdens on interstate commerce
22 that exceed the burdens on intrastate commerce”)).

23 California’s Mountain Lion Law is focused on, and completely eliminates, the market for
24 mountain lions and mountain lion parts *within the State*. It does not specify whether a market
25 may exist in other states or even whether its own residents may hunt mountain lions or otherwise
26 participate in any market for mountain lions or mountain lion parts in other states where it is legal
27 to do so. Thus, the Mountain Lion Law places *a greater* burden on intrastate commerce when
28 compared to its mere incidental effects on interstate commerce.

1 Further, with respect to any incidental effects on interstate commerce “a plaintiff *must*
2 *first show* that the statute imposes a substantial burden *before* the court will determine whether
3 the benefits of the challenged laws are illusory.” *AECOQ*, 729 F.3d 937 at 951-52 (internal
4 quotation omitted and emphasis added) (citing *National Association of Optometrists & Opticians*
5 *v. Harris* (“*NAOO*”), 682 F.3d 1144, 1155 (9th Cir. 2012)); *see also S.D. Myers, Inc. v. City &*
6 *County of San Francisco*, 253 F.3d 461, 467 (9th Cir. 2001) (requiring the plaintiff to provide
7 “specific details as to how the costs of the Ordinance burdened interstate commerce”). But Safari
8 Club’s Complaint fails to show that the import provisions of California’s Mountain Lion Law
9 create a substantial burden to the interstate market for mountain lion hunting. Safari Club asserts
10 that some of its members are Californians that have either successfully hunted mountain lions
11 outside of California in the past or intend to do so in the future and wish to import their sport-
12 hunted mountain lions into California. Complaint at ¶ 15. Safari Club also asserts that some of its
13 other members are “outfitters and guides who would benefit from providing more mountain lion
14 hunts outside of California to California residents (many of whom decide not to purchase such
15 hunts because of the Import Ban).” *Id.* The credibility of these claims is suspect given that the
16 Mountain Lion Law is twenty-five years old and Safari Club is now challenging the law for the
17 first time in the quarter of a century since its passage. Further, the Commerce Clause does not
18 protect individual actors engaged in interstate commerce, it “protects the interstate market, not
19 particular interstate firms, from prohibitive or burdensome regulations.” *Exxon Corp. v.*
20 *Governor of Md.*, 437 U.S. 117, 127-28 (1978).

21 While the disadvantages imposed on California hunters who want to hunt mountain lions
22 in other states may be objectionable to Safari Club, the Complaint simply does not identify any
23 impacts that are constitutionally objectionable under the Commerce Clause. Safari Club’s claim
24 fails, in the first instance, because Safari Club focuses on the purported impact to individual
25 actors engaged in interstate commerce rather than *harm to the relevant interstate market*. Nothing
26 in the Complaint identifies the degree to which interstate commerce relating to mountain lion
27 hunting as a whole will be impacted by the loss of the small number of Californians who would
28 hunt for mountain lions in other states but will not do so if they can’t import the trophy from the

1 hunt for use in California. *See NAOO*, 682 F.3d at 1154 (“[T]here is not a significant burden on
2 interstate commerce merely because a non-discriminatory regulation precludes a preferred, more
3 profitable method of operating in a retail market.”); *see also Cavel Int’l*, 500 F.3d at 558
4 (dismissing a Commerce Clause claim against a state ban on import and sale of horsemeat, where
5 plaintiff—the sole operating horse slaughter facility in the country—failed to allege “what
6 percentage of the horse meat consumed by Europeans it supplies and thus whether its being
7 closed down is likely to have a big effect on the price of horse meat in Europe”). Because Safari
8 Club fails to plausibly allege a substantial burden on the interstate market for mountain lion
9 hunting, its Commerce Clause claim fails under the *Pike* test, and there is no need for a reviewing
10 court to examine the putative benefits of the challenged law. *NAOO*, 682 F.3d at 1155.

11 Even if the Court does examine the rationale for Proposition 117, it is clear that the
12 putative benefits of the Mountain Lion Law represent legitimate state interests. Safari Club claims
13 that the findings set forth in support of the Mountain Lion Law fail to provide any legitimate
14 justification for the prohibition on import of hunting trophies, Complaint at ¶ 21, and that this
15 prohibition “does not in any way enhance or support habitat conservation in California,” *id.*, and
16 “does not serve the purpose of managing the individual animals and the species within
17 California,” *id.* at ¶ 22. However, Safari Club too narrowly construes the State’s interests
18 reflected in the Mountain Lion Law. The codified legislative findings for Proposition 117
19 indicate that the law was enacted out of concern for conservation of mountain lions in general,
20 including the preservation of mountain lion habitats and the genetic integrity of mountain lion
21 populations. *See Cal. Fish & Game Code* § 2780. Further, the official Ballot Pamphlet published
22 by the Secretary of State contains the arguments for and against Proposition 117 that were
23 presented to voters in 1990, and the proponent’s arguments therein assert that the Mountain Lion
24 Law is justified based on the species’ cultural value as part of our “natural heritage,” and the
25 belief that hunting mountain lions is “cruel and unnecessary”. Def. RJN, Exh. A.

26 Under *Pike* “balancing,” the determinative question is whether “the burdens of the statute
27 . . . so outweigh the putative benefits as to make the statute unreasonable or irrational.” *Alaska*
28 *Airlines, Inc. v. City of Long Beach*, 951 F.2d 977, 983 (9th Cir.1991) (per curiam). A statute is

1 only unreasonable or irrational when “the asserted benefits of the statute are in fact illusory or
2 relate to goals that evidence an impermissible favoritism of in-state industry over out-of-state
3 industry.” *Id.* The asserted benefits of the Mountain Lion Law are not illusory or based on
4 impermissible favoritism. They concern issues of significant importance to California, which are
5 traditionally regulated under state police powers. Indeed, California has a long history of
6 prohibiting local trade in, and use of, animal parts and products that violate the state’s ethical
7 norms.² *See* CAL. HEALTH & SAFETY CODE § 25982 (prohibiting the sale of products made from
8 force-feeding birds); CAL. PENAL CODE § 598a (prohibiting the sale of dog and cat pelts); *id.* §
9 598b (prohibiting the sale of the meat of any animal commonly kept as a household pet); *id.* §
10 598d (prohibiting the sale of horse meat); *id.* §653o (prohibiting the import and sale of any part or
11 product of nearly two dozen species of wild animals, including polar bears, leopards, whales,
12 elephants and kangaroos).

13 Moreover, a state’s goals of promoting the conservation of wildlife and preventing cruel
14 or unnecessary harm to animals, including by regulating in-state activity in order to dissuade its
15 citizens from contributing to the killing or otherwise harming of animals outside of the state, have
16 been long-recognized by courts as legitimate state interests that are routinely regulated under state
17 police powers. *See, e.g., Pac. Northwest Venison Producers*, 20 F.3d at 1011, 1015 (upholding
18 state regulations prohibiting importation and possession of certain foreign “deleterious exotic
19 wildlife” as an exercise of state authority to conserve natural resources); *Cresenzi Bird Importers*,
20 658 F. Supp. at 1447 (upholding a New York ban on the import and sale of wild birds, based on

21
22 ² According to Plaintiff’s Complaint, import of a mountain lion trophy would generate some in-
23 state commerce “through taxidermy, transportation, and related activities.” Complaint at ¶ 7; *see*
24 *also id.* ¶¶ 44, 46. Restricting this commercial activity to reduce the incentive to kill mountain
25 lions is a rational means of effectuating the State’s policy position as to the protection of
26 mountain lions. The Complaint also indicates that an imported mountain trophy serves as a
27 representation of the hunt itself, and hunters would choose to put their trophy on “display . . . in
28 their homes or offices.” *Id.* at ¶ 22. It is surely not irrational to expect that that such display
might encourage other Californians to kill mountain lions for sport or sell their harvested
mountain lion to others in the state, and thereby undermine the objectives of Proposition 117 and
perpetuate an unwanted market in the state. And whether or not such display encourages
additional killing and selling of mountain lions and parts thereof, it is clearly contrary to the
ethical norms underlying Proposition 117.

1 the state’s ethical objection to the manner in which those birds are treated during capture and
2 transport outside the state prior to import); *Viva! Intern. Voice For Animals v. Adidas*
3 *Promotional Retail Operations, Inc.*, 41 Cal.4th 929, 952, 162 P.3d 569, 583 (Cal., 2007)
4 (upholding California’s ban on import of kangaroo pelts and products, based on the state’s desire
5 to protect the species from harm, even though kangaroos are not found in California and were
6 recently taken off of the list of species protected by the federal Endangered Species Act).

7 Finally, Safari Club appears to assert that the Court should consider whether an alternative
8 approach to the prohibition on import of mountain lions would have less impact on commercial
9 activities that a subset of Safari Club’s member wish to engage in. Complaint at ¶ 47 (“The State
10 Defendants have less restrictive means of accomplishing any local interest they might claim is
11 advanced by the Import Ban.”). However, such an inquiry is neither required nor appropriate
12 under the lower scrutiny of an incidental burdens analysis. The Court should not substitute its
13 judgment as to the wisdom or fairness of the State’s policy choices in protecting mountain lions,
14 especially not in the context of a facial challenge to a law enacted 25 years ago being brought by
15 opponents of the law who actively participated in the public debate on the law at the time of its
16 enactment. *NAOO*, 682 F.3d at 1155. (under rational basis review, courts should “not consider
17 any evidence regarding alternative means for the State to achieve its goals.”); *Pac. Northwest*
18 *Venison Producers*, 20 F.3d at 1011, 1016-17 (rejecting plaintiffs’ argument that alternatives to a
19 state ban on import of captive-bred deer would better meet the state’s goal of protecting native
20 herds while having a lesser impact on interstate commerce, because the choice of how to regulate
21 wildlife is quintessentially a legislative determination and, since the proposed alternatives were
22 clearly disputed, it would be inappropriate for the court to substitute its opinion for that of state
23 policymakers).

24 California’s Mountain Lion Law does not discriminate against interstate commerce, and
25 does not place burdens on interstate commerce that are any different than the burdens placed on
26 intrastate commerce, or that are excessive in relation to putative state interests. Instead, the
27 Mountain Lion Law simply effectuates a complete ban on commerce in mountain lions and
28 mountain lion parts *within the state of California* without making distinctions based on their

1 point-of-origin. Because the Mountain Lion Law applies to intrastate activity only, acts in a
2 facially neutral manner, and does not discriminate against out-of-state actors or have a disparate
3 impact on out-of-state as compared to in-state commerce, it should be upheld as a matter of law.

4 **B. The Mountain Lion Law Does Not Violate the Equal Protection Clause.**

5 The Fourteenth Amendment of the U.S. Constitution guarantees equal protection under
6 the law and prevents “official conduct discriminating on the basis of [a protected classification].”
7 *Washington v. Davis*, 426 U.S. 229, 239 (1976). A reviewing court applies “strict scrutiny” to a
8 plaintiff’s Equal Protection claim if the law was *intentionally* designed to discriminate against a
9 protected class of persons, including where there is demonstrated legislative intent to discriminate
10 on the basis of impermissible considerations. *Id.*; *Valeria v. Davis*, 307 F.3d 1036, 1040 (9th Cir.
11 2002) (demonstrable evidence of purposeful racial discrimination required for application of strict
12 scrutiny). Where there is no protected class at issue, or no evidence of intent to discriminate,
13 strict scrutiny does not apply, the constitutionality of the statute is *presumed*, and the statute must
14 be upheld as a matter of law if it is “rationally related to a legitimate state interest.” *Hispanic*
15 *Taco Vendors of Washington v. City of Pasco*, 994 F.2d 676, 680 (9th Cir. 1993); *see also*
16 *Rosenbaum v. City and County of San Francisco*, 484 F.3d 1142, 1157 (9th Cir. 2007).

17 Safari Club concedes that the ordinance does not implicate any constitutionally suspect
18 classes. Complaint at ¶ 29. Safari Club’s challenge must therefore be evaluated under the highly
19 deferential “rational basis” standard. *RUI One Corp. v. City of Berkeley*, 371 F.3d 1137, 1154 (9th
20 Cir. 2004). A state or local law will survive rational basis review if “any reasonably conceivable
21 state of facts . . . could provide a rational basis for the classification.” *Id.* (quoting *FCC v. Beach*
22 *Communications, Inc.*, 508 U.S. 303, 313, 113 S.Ct. 2096, 124 L.Ed.2d 211 (1993)). And “in
23 making this determination, the Court need not determine the actual motive . . . in passing the
24 Ordinance or engage in fact-finding with regard to the rationality of conceivable motives.”
25 *Fortuna Enterprises, L.P. v. City of Los Angeles*, 673 F.Supp.2d 1000, 1013 (C.D. Cal. 2008); *see*
26 *also RUI One*, 371 F.3d at 1155. As set forth below, there are multiple actual and conceivable
27
28

1 rational bases for the prohibition on importing into the state mountain lions and parts thereof.
2 Accordingly, this claim should be dismissed.

3 Safari Club contends that there is no legitimate justification for denying hunters the ability
4 to import, transport, and possess mountain lions and mountain lion parts in California. Complaint
5 at ¶ 52. But this contention ignores the codified legislative findings for Proposition 117, as well
6 as the many arguments in support of the law that were presented to voters, including the
7 proponent arguments that were published by the Secretary of State in the official Ballot Pamphlet
8 for Proposition 117. The codified legislative findings for Proposition 117 indicate that protection,
9 enhancement and restoration of wildlife habitats, specifically including mountain lion habitats, is
10 “vital to maintaining the quality of life in California,” mountain lion habitats are “disappearing
11 rapidly,” and “there is an urgent need to protect the rapidly disappearing wildlife habitats that
12 support California’s unique and varied wildlife resources.” Cal. Fish & Game Code § 2780.
13 Accordingly, Proposition 117 designated mountain lions as a “specially protected mammal” that
14 may not be hunted or imported, transported, or otherwise possessed in the state. Cal. Fish &
15 Game Code § 4800.

16 In addition, the official Ballot Pamphlet for Proposition 117 contained proponent
17 arguments claiming a need to abolish the “cruel and unnecessary” hunting of mountain lions, in
18 which the animal is chased to exhaustion by dogs and then shot at point-blank range. *See* Def.
19 RJN, Exh. A. The Ballot Pamphlet also presented voters with an argument that mountain lions
20 should be protected as California’s “last magnificent predator” and “symbol of [California’s]
21 wilderness heritage,” so that the mountain lion will be “free to live.” *Id.* Restricting the activities
22 of Californians who would kill mountain lions to combat cruelty and prolong the lives of
23 keystone predators, or simply because mountain lions are a species which Californians tend to
24 appreciate and believe it would be unethical to kill, is a legitimate putative state interest. *See*
25 *Cavel*, 500 F.3d at 556-57 (“States have a legitimate interest in prolonging the lives of animals
26 that their population happens to like.” (citing *Hughes v. Oklahoma*, 441 U.S. 322, 337 (1979)));
27 *Cresenzi Bird Importers*, 658 F. Supp. at 1447 (upholding a New York ban on the import and sale
28 of wild birds, because the state “has a legitimate interest in regulating its local market conditions

1 which lead, in a short causal chain, to the unjustifiable and senseless suffering and death of
 2 thousands of captured wild birds . . . [and] in cleansing its markets of commerce which the
 3 Legislature finds to be unethical.”).

4 Safari Club argues that the Mountain Lion Law “denies the group of hunters who wish to
 5 hunt mountain lions outside of California the ability to import into, and transport and possess any
 6 harvested mountain lion within California, while allowing others to engage in the hunting of
 7 numerous other protected and unprotected species without restrictions as to importation,
 8 transportation, and possession within California.” Complaint at ¶ 52. This argument appears to
 9 suggest that Californians should be just as concerned about conservation, animal welfare, and
 10 ethical concerns with respect to trophy hunting of other wildlife species if they have these
 11 concerns with respect to trophy hunting of mountain lions.
 12 However, even if it were true that the arguments against trophy hunting mountain lions could be
 13 applied equally to all other trophy hunted species—a position that *Amici* find hard to believe that
 14 Safari Club would ever ascribe to—that assertion is totally irrelevant here.³

15 It is well established that “a legislature need not strike at all evils at the same time or in
 16 the same way, and that a legislature may implement its program step by step . . . adopting
 17 regulations that only partially ameliorate a perceived evil and deferring complete elimination of
 18 the evil to future regulations.” *Minnesota v. Clover Leaf Creamery*, 449 U.S. 456, 466, 101 S.Ct.
 19 715, 66 L.Ed.2d 659 (1981) (*quoting New Orleans v. Dukes*, 427 U.S. 297, 303, 96 S.Ct. 2513, 49
 20 L.Ed.2d 511 (1976)). Just as the “Equal Protection Clause [did] not deny the State of Minnesota
 21 the authority to ban one type of milk container conceded to cause environmental problems,
 22 merely because another type . . . is permitted to continue in use” in *Clover Leaf*, so too does the
 23 Equal Protection Clause not bar California from banning the importation, transportation, and
 24 possession of harvested mountain lions merely because it allows those actions for other harvested
 25 animals. *Id.*

26
 27
 28 ³ If Safari Club is concerned that California needs additional restrictions on trophy hunting of
 imperiled species, the proper course is to pursue additional legislation in the state legislature.

1 Furthermore, Safari Club is plainly incorrect that California has no basis to treat mountain
2 lion hunters differently than hunters of other animals. Complaint at ¶¶ 51-52. As discussed
3 above, there are legitimate reasons for the State to establish specific protections for mountain
4 lions. Moreover, mountain lion hunters who cannot import their trophies pursuant to the
5 Mountain Lion Law are not at all in a unique position among California hunters. California also
6 prohibits the import for commercial purposes of “the dead body, or any part or product thereof”
7 of other species subject to trophy hunting outside of California, including polar bears, leopards,
8 cheetahs, sable antelope, wolves, zebras and elephants among others. CAL. PENAL CODE § 653o.

9 While Safari Club questions the prudence of the Mountain Lion Law, under rational basis
10 review, the “Equal Protection analysis is not a license for courts to judge the wisdom, fairness, or
11 logic of legislative choices.” *Beach Communications*, 508 U.S. at 313; *Hispanic Taco Vendors*,
12 994 F.2d at 680 (rejecting plaintiffs’ Equal Protection claim where there existed a neutral
13 rationale for the law, grounded in public policy). Moreover, because even a hypothesized rational
14 basis would satisfy this low level of scrutiny, a law may be “based on rational speculation
15 unsupported by evidence or empirical data.” *Heller v. Doe by Doe*, 509 U.S. 312, 320 (1993)
16 (quoting *Beach Communications*, 508 U.S. at 315); *see also Country Classic Dairies v. Milk*
17 *Control Bureau*, 847 F.2d 593, 596 (9th Cir. 1988). Because Californian citizens who want to
18 hunt mountain lions in other states, but who won’t do so if they can’t import their trophy, are not
19 a protected classification, and because several actual and conceivable rational bases exist for
20 promulgating the Mountain Lion Law, Safari Club has failed to present a legally cognizable
21 Equal Protection Clause claim.

22 **C. The Mountain Lion Law Does Not Violate Section 1983.**

23 Section 1983 does not provide independent grounds for relief, only a remedy for other
24 federal constitutional violations. *See Chapman v. Houston Welfare Rights Organization*, 441 U.S.
25 600, 601, 99 S.Ct. 1905, 1908, 60 L.Ed.2d 508 (1979) (“One cannot go into court and claim ‘a
26 violation of § 1983,’ for § 1983 by itself does not protect anyone against anything, but simply
27 provides a remedy”). Because Safari Club asserts no colorable federal constitutional claim, it
28 cannot invoke Section 1983.

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**UNITED STATES DISTRICT COURT
 EASTERN DISTRICT OF CALIFORNIA
 SACRAMENTO DIVISION**

SAFARI CLUB INTERNATIONAL,

Plaintiff;

v.

KAMALA D. HARRIS, in her official capacity as
 Attorney General of California, and CHARLTON
 H. BONHAM, in his official capacity as Director
 of the California Department of Fish and Wildlife;

Defendants.

Case No. 2:14-cv-01856-GEB-AC

**REQUEST FOR JUDICIAL NOTICE
 IN SUPPORT OF AMICUS CURIAE
 BRIEF OF THE HUMANE SOCIETY
 OF THE UNITED STATES AND
 THE FUND FOR ANIMALS;
 DECLARATION OF HALLIE G.
 SEARS**

Date: February 2, 2015
 Time: 9:00 a.m.
 Judge: Hon. Garland E. Burrell, Jr.

REQUEST FOR JUDICIAL NOTICE

Amici The Humane Society of the United States (“HSUS”) and The Fund for Animals (“The Fund”) (together, *Amici*) respectfully request this Court to take judicial notice of the following documents attached as Exhibits A-C. This request is made pursuant to Rule 201 of the Federal Rules of Evidence and the authorities cited below.

Exhibit	Description
A	California Ballot Pamphlet 28-31 (Prop. 197 Amendment of the California Wildlife Protection Act of 1990, Mountain Lions (Mar. 26, 1996)), <i>available at</i> http://repository.uchastings.edu/cgi/viewcontent.cgi?article=2117&context=ca_ballot_props .
B	Bob Schwartz, California Elections/Wildlife Protection Act: Initiative Would Prohibit Cougar Hunt, Buy Habitat, LOS ANGELES TIMES (May 6, 1990), <i>available at</i> http://articles.latimes.com/1990-05-06/news/mn-278_1_wildlife-protection-act .
C	Rich Roberts, The Lion’s Share of Controversy: Prop. 117: The Ballot Initiative Would Prevent Hunting Mountain Lions, and It Incites Emotions from Both Sides of the Issue, LOS ANGELES TIMES (May 29, 1990), <i>available at</i> http://articles.latimes.com/1990-05-29/sports/sp-229_1_female-mountain-lion .

Federal Rule of Evidence 201(b) allows the Court to take judicial notice of any fact “not subject to reasonable dispute that is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot readily be questioned.” Fed. R. Evid. 201(b). On a motion to dismiss, a court may take judicial notice of matters of public record in accordance with Federal Rule of Evidence 201 without converting the motion to dismiss to a motion for summary judgment. *Lee v. City of Los Angeles*, 250 F.3d 688, 688-89 (9th Cir. 2001) (citing *Mack v. South Bay Beer Distributors, Inc.*, 798 F.2d 1279, 1282 (9th Cir. 1986).

Exhibit A to this request for judicial notice is a pamphlet prepared by the California Secretary of State for the voting public analyzing measures that would appear on the ballot in the State’s 1996 primary election, including Proposition 197, a measure that sought to amend the Mountain Lion Prohibition at issue in this litigation. Proposition 197 failed; however, subsequent

1 and less controversial amendments to Proposition 117 were passed by the Legislature. *See*
2 California Fish & Game Code §§ 4800-4810. As part of the legislative history for the Mountain
3 Lion Prohibition, Exhibit A is a proper matter for judicial notice. *See Anderson v. Holder*, 673
4 F.3d 1089, 1094, n.1 (9th Cir.2012) (taking notice of excerpts of a Senate Report); *In re Google*
5 *Inc.*, 2013 WL 5423918, *6 (N.D.Cal. Sept. 26, 2013) (not reported in F. Supp. 2d) (“Proper
6 subjects when ruling on a motion to dismiss include legislative history reports.”) (citing
7 *Anderson*, 673 F.3d at 1094, n.1).

8 Exhibits B and C to this request for judicial notice are newspaper articles discussing the
9 policy changes and public discourse leading up to the passage of Proposition 117. Proposed
10 *Amici* rely on these published articles to establish that various bases and purposes for Propositions
11 117 were presented to the public, including arguments specifically relating to mountain lion
12 hunting. The Court “may take judicial notice of publications introduced to ‘indicate what was in
13 the public realm at the time, not whether the contents of those articles were in fact true.’” *Von*
14 *Saher v. Norton Simon Museum of Art*, 592 F. 3d 954, 960 (9th Cir. 2010) (quoting *Premier*
15 *Growth Fund v. Alliance Capital Mgmt.*, 435 F.3d 396, 401 n.15 (3d Cir. 2006)).

16 For the foregoing reasons, Exhibits A-C may be properly considered by the Court in
17 ruling on Defendants’ Motion to Dismiss.

18
19 Dated: December 17, 2014

Respectfully submitted,

21 By: /s/ Peter A. Brandt

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28

DECLARATION OF HALLIE G. SEARS

I, Hallie G. Sears, declare as follows:

1. I am an attorney employed by The Humane Society of the United States, and I serve as counsel to that organization and The Fund for Animals in the above-captioned matter.
2. Except as otherwise stated, I have personal knowledge of the facts set forth in this declaration, and if called upon as a witness I could testify competently as to those facts.
3. A true and correct copy of California Ballot Pamphlet 28-31 (Prop. 197 Amendment of the California Wildlife Protection Act of 1990, Mountain Lions (Mar. 26, 1996)), *available at* http://librarysource.uchastings.edu/ballot_pdf/1996p.pdf, is attached as **Exhibit A**.
4. A true and correct copy of Bob Schwartz, California Elections/Wildlife Protection Act: Initiative Would Prohibit Cougar Hunt, Buy Habitat, LOS ANGELES TIMES (May 6, 1990), *available at* http://articles.latimes.com/1990-05-06/news/mn-278_1_wildlife-protection-act, is attached as **Exhibit B**.
5. A true and correct copy of Rich Roberts, The Lion’s Share of Controversy: Prop. 117: The Ballot Initiative Would Prevent Hunting Mountain Lions, and It Incites Emotions from Both Sides of the Issue, LOS ANGELES TIMES (May 29, 1990), *available at* http://articles.latimes.com/1990-05-29/sports/sp-229_1_female-mountain-lion., is attached as **Exhibit C**.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on December 17, 2014 in Washington DC.

By: /s/ Hallie G. Sears

Hallie G. Sears

EXHIBIT A

University of California, Hastings College of the Law
UC Hastings Scholarship Repository

Propositions

California Ballot Propositions and Ballot Initiatives

1996

Amendment of the California Wildlife Protection Act of 1990 (Proposition 117). Mountain Lions.

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Recommended Citation

Amendment of the California Wildlife Protection Act of 1990 (Proposition 117). Mountain Lions. California Proposition 197 (1996). http://repository.uchastings.edu/ca_ballot_props/1118

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**Amendment of the California Wildlife
Protection Act of 1990 (Proposition 117).
Mountain Lions. Legislative Initiative Amendment.**

Official Title and Summary Prepared by the Attorney General

**AMENDMENT OF THE CALIFORNIA WILDLIFE
PROTECTION ACT OF 1990 (PROPOSITION 117).
MOUNTAIN LIONS. LEGISLATIVE INITIATIVE AMENDMENT.**

- Repeals mountain lion's status as specially protected mammal. Requires Fish and Game Commission to manage mountain lions as it manages mammals that are not rare, endangered, threatened.
- Requires Fish and Game Department implement mountain lion management plan that promotes health, safety, livestock, property protection; identifies priority zones where mountain lion removal has not alleviated threats.
- Authorizes taking of mountain lions in priority zones, consistent with plan. Permits governmental agencies, landowners to take mountain lions imminently threatening public health, safety, or livestock.
- Allows legislative amendments.

**Summary of Legislative Analyst's
Estimate of Net State and Local Government Fiscal Impact:**

- Reallocates funds in the Habitat Conservation Fund of up to \$250,000 annually for 1996-97, 1997-98, and 1998-99, and up to \$100,000 annually thereafter until July 1, 2020, to prepare and implement a mountain lion management plan.
- Potential additional state costs of up to \$250,000 annually to administer public safety and public information programs related to mountain lions.

Final Votes Cast by the Legislature on SB 28 (Proposition 197)

Assembly: Ayes 44 Senate: Ayes 26
 Noes 30 Noes 8

Analysis by the Legislative Analyst**Background**

In 1990, the California voters approved Proposition 117, the California Wildlife Protection Act of 1990. The act designated mountain lions as a specially protected mammal, and generally prohibited their taking (that is, hunting or killing), injury, possession, or sale. However, Proposition 117 allows the killing of a mountain lion if it (1) is perceived to be an imminent threat to public health or safety, (2) damages livestock or other property, or (3) is attacking people. In 1994, for example, 131 mountain lions were killed because they threatened public safety or damaged property or livestock.

Proposition 117 generally permits the Legislature to amend its provisions relating to mountain lions with a four-fifths vote of the members of both houses, but only if the amendments are consistent with the purposes of the act.

Proposition 117 also created the Habitat Conservation Fund (HCF). This fund is generally used to support the acquisition of lands for the protection of mountain lions, deer, rare, endangered, and threatened animals and plant life, wetlands, and park purposes. Proposition 117 required that the HCF receive \$30 million a year. This funding comes from the state's General Fund and various environmental funds.

The state Fish and Game Commission is generally responsible for regulating the protection and use of wildlife species which are not rare, threatened, or endangered, in order to achieve a variety of goals. The commission does this by regulating the hunting, capturing, and killing of wildlife, including establishing hunting seasons; promoting public education; and protecting and enhancing habitat. The commission's policies are implemented by the Department of Fish and Game.

Proposition 117 prohibits the commission or the Department of Fish and Game from adopting regulations that conflict with its provisions.

Proposal

This measure amends Proposition 117's provisions related to mountain lions. Specifically, the measure does the following:

- Changes the vote requirement—from four-fifths to majority vote—for the Legislature to amend or repeal provisions of law concerning mountain lions, and eliminates the requirement that such changes be consistent with the purposes of Proposition 117.
- Eliminates the designation of the mountain lion as a specially protected mammal in California, and requires the Fish and Game Commission to regulate mountain lions in the same manner as it regulates other mammals which are not rare, endangered, or threatened.
- Requires the Department of Fish and Game to prepare a mountain lion management plan for the commission's approval and to implement the adopted plan. As part of the plan, the department must identify priority zones where the removal of individual mountain lions has not alleviated threats to public safety, livestock, domestic animals, other property, and other wildlife species. The measure authorizes the department to regulate, hunt, or kill mountain lions in priority zones if it has a plan for that zone. In addition, such actions must be consistent with the plan and maintain a viable mountain lion population in the zone.
- Authorizes the Department of Fish and Game to designate persons and government entities to remove or kill mountain lions that are perceived to be an imminent threat to public health or safety or livestock.

Fiscal Effect

The measure reallocates existing funds in the HCF from land acquisition to the Department of Fish and Game to prepare and implement the mountain lion management plan. The reallocation would be up to \$250,000 annually for 1996–97, 1997–98, and 1998–99, and up to \$100,000 annually thereafter until July 1, 2020. The exact amount would depend on legislative action.

In addition, the measure declares the Legislature's intent that up to \$250,000 be appropriated annually from sources other than the HCF for public safety and public information programs related to mountain lions.

For the text of Proposition 197 see page 59

197

**Amendment of the California Wildlife Protection Act of 1990 (Proposition 117).
Mountain Lions. Legislative Initiative Amendment.**

Argument in Favor of Proposition 197

California's wildlife should be protected by experts at the Department of Fish and Game, and not be a political pawn of special interest groups. Proposition 197 does just that. It returns control of the mountain lion to the experts.

In 1990, control of the mountain lion was removed from wildlife experts. That was a mistake. As usual, politicians in charge have done nothing to fix the problem. This predator has outgrown its habitat; deer and elk herds, as well as Big Horn sheep, have been over-killed by lions; livestock have been killed, costing consumers millions of dollars; pets have become common prey for hungry lions in populated areas; and, we now have confirmed deaths of people killed by mountain lions near populated areas.

California's mountain lion population has grown to dangerous levels in recent years, and Fish and Game experts across the state agree a lack of management is the principal reason. The California lion is *not* an endangered species—its population has actually doubled in recent years. Proposition 197 allows the Department of Fish and Game to create and adopt a plan keeping the proper environmental balance and insuring the safety of people in residential and recreational areas.

Proposition 197 is supported by a broad coalition of wildlife experts, Fish and Game officials, agricultural leaders, and law enforcement who want to preserve the delicate balance of nature.

In recent years the lion population has grown so fast they have outgrown their food supply. Desperate for food, lions are being forced out of their natural habitat into existing residential and commercial developments where children and pets are in severe danger. A rural school district won't let children leave the school bus alone; parents in some towns were advised not to allow small

children to go outside alone; and a lion had to be killed after attacking police officers in the parking lot of a popular San Bernardino mall.

Proposition 197 allows the Department of Fish and Game to do what it does best—manage the state's lion population to preserve the delicate balance between man and nature. This wildlife protection measure is intended to protect not only the mountain lion, but also the people, livestock, and pets from inhumane slaughter.

Please vote yes on Proposition 197. Vote to protect the public from dangerous predators; vote to allow wildlife experts do their job; and vote to restore common sense to wildlife management.

JACK PARNELL
Former Director, California Department of Fish and Game

DONALD NEAL
Wildlife Habitat Ecologist

When a mountain lion killed a young mother of two children while she was jogging near her home, I knew it was time we had to bring some common sense wildlife management to this problem. As her State Senator, it would be horrible for her death to be in vain.

People tried to make political gain out of the mountain lion, instead of relying on the experts to manage these animals. That's why I received overwhelming bi-partisan support in the Legislature for Proposition 197—giving the experts at Fish and Game the responsibility of taking care of California's wildlife so we can all live together safely.

STATE SENATOR TIM LESLIE
Author of Proposition 197

Rebuttal to Argument in Favor of Proposition 197

This is a gun lobby attempt to manipulate the horrible death of a mother to fool voters into legalizing the trophy hunting of mountain lions.

They claim wildlife officials need to manage lions. We agree. The fact is, after this horrible attack, we supported legislation to force the Department of Fish and Game to protect the public. The measure toughened law enforcement officials' power to kill lions on the spot whenever the public is threatened. Gun lobby backers of Proposition 197 opposed it because *it preserved the 1990 voter-approved ban on sport hunting mountain lions.*

Proponents' arguments are as phony as Proposition 197 is dishonest. The "special interests" they refer to, are the voters. Voters stopped sport hunting of lions in 1990, not "special interests." The voters *didn't* stop state bureaucrats from controlling lions. Senator Tim Leslie, author of 197, and his gun lobby backers, don't want to make it easier to kill lions that threaten the public unless *they* can kill them for the fun of it.

Don't be fooled.

Making it easier to kill mountain lions that threaten the public *or* spending nearly \$3 million for a management plan for lions doesn't require voter approval. Only the voters can change the 1990 ban on trophy hunting. That's why Proposition 197 is on the ballot. But the gun lobby isn't honest enough to say that. We support managing lions. But they shouldn't be shot just to be stuck on the wall in the den.

It's fraud. Vote no.

PATRICIA FORKAN
Executive Vice President, Humane Society of the United States

JILL DAMPIER
California Park Rangers Association

BERNADETTE M. ERTL
Chair, Sierra Club California

**Amendment of the California Wildlife
Protection Act of 1990 (Proposition 117).
Mountain Lions. Legislative Initiative Amendment.**

197

Argument Against Proposition 197

PROPOSITION 197 IS A FRAUD.

Proposition 197 legalizes trophy hunting of mountain lions, while the words "sport or trophy hunting" are cleverly omitted from the measure. IN 1990 THE VOTERS PASSED A BAN ON THE TROPHY HUNTING OF MOUNTAIN LIONS.

Proposition 197 backers know that if voters understand that this measure legalizes the sport hunting of mountain lions, it will lose. So, the National Rifle Association (NRA), the Gun Owners of California, and the Safari Club International carefully crafted a measure that never mentions legalizing sport hunting.

Nevertheless, the Safari Club's recent November newsletter told its members the real story:

"Sport hunting can resume. Under Section 1801, the department [of Fish and Game] can propose and the Fish and Game Commission can adopt regulations to allow the sport hunting of mountain lions."

Proposition 197 proponents want you to think this measure has something to do with keeping mountain lions out of urban areas. It doesn't. If these 13 words were written into Proposition 197, we could support it:

"Nothing in this measure legalizes the sport or trophy hunting of mountain lions."

We support Fish and Game doing what it should have done five years ago: prepare a mountain lion management plan, identifying those regions that have mountain lion problems, and take steps to address those problems.

Proposition 197 backers opposed legislation that would create a management plan, clarify existing law about when a mountain lion can be killed, and CONTINUE THE BAN ON SPORT HUNTING OF MOUNTAIN LIONS FIRST SIGNED INTO LAW IN 1972 BY GOVERNOR RONALD REAGAN.

Top bureaucrats in the Department of Fish and Game

and the NRA are playing a game of "chicken" with the public. The bureaucrats are dragging their feet in enforcing existing law that requires them to kill mountain lions "perceived to be an imminent threat" to any person, until they get the nearly \$3 million they say they need to do their job. The NRA, the Gun Owners, and Safari Club oppose any clarification of law or additional funds for management unless sport or trophy hunting is legalized. That's political blackmail.

OPPOSE PROPOSITION 197.

Hunting mountain lions for sport is cruel and unnecessary. A pack of radio collared hounds is set on the trail of the big cat until the exhausted lion seeks refuge in a tree. The trophy hunter (who often is called in from out-of-state after paying huge fees to the houndsmen) then drives in to blast the lion off the limb at point blank range. When nursing mothers are shot, the kittens starve. Often, the head is severed from the carcass and becomes the "trophy"—stuffed and put on a wall.

THIS IS NOT SPORT; IT IS SLAUGHTER!

Send the Legislature a clear message: We don't want trophy hunting of lions legalized! We want mountain lions managed like any other wildlife resource.

Proposition 197 cleverly legalizes sport hunting of mountain lions.

JOIN WITH THE SIERRA CLUB—

VOTE NO ON PROPOSITION 197.

DON'T BE FOOLED BY THE GUN OWNERS' LOBBYISTS.

HENRY MELLO

State Senator, Watsonville

MAURICE H. GETTY

President, California Park Rangers Association

WAYNE PACELE

Vice President of Government Affairs

Humane Society of the U.S.

Rebuttal to Argument Against Proposition 197

The opposition is wrong! Proposition 197 has *nothing* to do with trophy hunting. *It is about restoring common sense to wildlife management.*

Current law prohibits the Department of Fish and Game from doing its job of managing California's wildlife and controlling the mountain lion population explosion. Proposition 197 requires experts at the Department adopt a sensible approach to wildlife management.

Nature is a precious resource, but because the lion population has recently doubled, the delicate balance has been shattered. Look at some alarming incidents recently reported by the media:

Two small children woke up one morning without a mother because a lion ate her;

A lion preying upon neighborhood pets was found with parts of five different puppies in its stomach;

Some schools have had to cancel recess because lions were found to be lurking around the playground.

It is time to let the experts at Fish and Game do their job—they must be allowed to manage the lion. These are

not bloodthirsty hunters. These are experts concerned about preserving and protecting California's precious environmental balance.

Wildlife experts and biologists are responsible for managing *all* species. The mountain lion is preventing them from doing their job. They must manage the lion population to save the thousands of deer, elk, and endangered bighorn sheep being eaten each year.

The Department of Fish and Game and wildlife experts agree—We need Proposition 197 to restore common sense to wildlife management. Cast your vote for the environment. Vote yes on Proposition 197.

TERRENCE M. EAGAN

Former Undersecretary, California Resources Agency

WAYNE LONG

Former Chairman, California Resource Conservation Commission

STEVEN J. ARROYO

Father of Mountain Lion Attack Victim

190.2. (a) The penalty for a defendant who is found guilty of murder in the first degree shall be is death or confinement imprisonment in the state prison for a term of life without the possibility of parole in any case in which if one or more of the following special circumstances has been found under Section 190.4; to be true:

- (1) The murder was intentional and carried out for financial gain.
- (2) The defendant was previously convicted previously of murder in the first degree or second degree. For the purpose of this paragraph, an offense committed in another jurisdiction, which if committed in California would be punishable as first or second degree murder, shall be deemed murder in the first or second degree.
- (3) The defendant has, in this proceeding, has been convicted of more than one offense of murder in the first or second degree.
- (4) The murder was committed by means of a destructive device, bomb, or explosive planted, hidden, or concealed in any place, area, dwelling, building, or structure, and the defendant knew, or reasonably should have known, that his or her act or acts would create a great risk of death to a human being one or more human beings.
- (5) The murder was committed for the purpose of avoiding or preventing a lawful arrest or to perfect, or attempt, or perfecting or attempting to perfect, an escape from lawful custody.
- (6) The murder was committed by means of a destructive device, bomb, or explosive that the defendant mailed or delivered, attempted to mail or deliver, or caused to be mailed or delivered, and the defendant knew, or reasonably should have known, that his or her act or acts would create a great risk of death to a human being one or more human beings.
- (7) The victim was a peace officer, as defined in Section 830.1, 830.2, 830.3, 830.31, 830.32, 830.33, 830.34, 830.35, 830.36, 830.37, 830.4, 830.5, 830.6, 830.10, 830.11, or 830.12, who, while engaged in the course of the performance of his or her duties, was intentionally killed, and the defendant knew, or reasonably should have known, that the victim was a peace officer engaged in the performance of his or her duties; or the victim was a peace officer, as defined in the above enumerated above-enumerated sections of the Penal Code, or a former peace officer under any of such those sections, and was intentionally killed in retaliation for the performance of his or her official duties.
- (8) The victim was a federal law enforcement officer or agent; who, while engaged in the course of the performance of his or her duties, was intentionally killed, and the defendant knew, or reasonably should have known, that the victim was a federal law enforcement officer or agent; engaged in the performance of his or her duties; or the victim was a federal law enforcement officer or agent, and was intentionally killed in retaliation for the performance of his or her official duties.
- (9) The victim was a firefighter, as defined in Section 245.1, who, while gaged in the course of the performance of his or her duties, was intentionally led, and the defendant knew, or reasonably should have known, that the victim was a firefighter engaged in the performance of his or her duties.
- (10) The victim was a witness to a crime who was intentionally killed for the purpose of preventing his or her testimony in any criminal or juvenile proceeding, and the killing was not committed during the commission; or attempted commission, of the crime to which he or she was a witness; or the victim was a witness to a crime and was intentionally killed in retaliation for his or her testimony in any criminal or juvenile proceeding. As used in this paragraph, "juvenile proceeding" means a proceeding brought pursuant to Section 602 or 707 of the Welfare and Institutions Code.
- (11) The victim was a prosecutor or assistant prosecutor or a former prosecutor or assistant prosecutor of any local or state prosecutor's office in this state or any other state, or of a federal prosecutor's office, and the murder was intentionally carried out in retaliation for, or to prevent the performance of, the victim's official duties.
- (12) The victim was a judge or former judge of any court of record in the local, state, or federal system in the State of California, or in this or any other state of the United States, and the murder was intentionally carried out in retaliation for, or to prevent the performance of, the victim's official duties.
- (13) The victim was an elected or appointed official or former official of the federal government, or of a any local or state government of California, or of any local or state government of any other state in the United States this or any other state, and the killing was intentionally carried out in retaliation for, or to prevent the performance of, the victim's official duties.
- (14) The murder was especially heinous, atrocious, or cruel, manifesting exceptional depravity. As utilized used in this section, the phrase especially "especially heinous, atrocious, or cruel, manifesting exceptional depravity" means a conscienceless, or pitiless crime which that is unnecessarily torturous to the victim.

(15) The defendant intentionally killed the victim while lying in wait.

(16) The victim was intentionally killed because of his or her race, color, religion, nationality, or country of origin.

(17) The murder was committed while the defendant was engaged in, or was an accomplice in, the commission of, attempted commission of, or the immediate flight after committing, or attempting to commit, the following felonies:

- (i) Robbery in violation of Section 211 or 212.5.
- (ii) Kidnapping in violation of Section 207 or, 209, or 209.5.
- (iii) Rape in violation of Section 261.
- (iv) Sodomy in violation of Section 286.
- (v) The performance of a lewd or lascivious act upon the person of a child under the age of 14 years in violation of Section 288.
- (vi) Oral copulation in violation of Section 288a.
- (vii) Burglary in the first or second degree in violation of Section 460.
- (viii) Arson in violation of subdivision (b) of Section 451.
- (ix) Train wrecking in violation of Section 219.
- (x) Mayhem in violation of Section 203.
- (xi) Rape by instrument in violation of Section 289.
- (xii) Carjacking, as defined in Section 215.
- (xiii) The murder was intentional and involved the infliction of torture.
- (xiv) The defendant intentionally killed the victim by the administration of poison.

(20) The victim was a juror in any court of record in the local, state, or federal system in this or any other state, and the murder was intentionally carried out in retaliation for, or to prevent the performance of, the victim's official duties.

(21) The murder was intentional and perpetrated by means of discharging a firearm from a motor vehicle, intentionally at another person or persons outside the vehicle with the intent to inflict death. For purposes of this paragraph, "motor vehicle" means any vehicle as defined in Section 415 of the Vehicle Code.

(b) Unless an intent to kill is specifically required under subdivision (a) for a special circumstance enumerated therein, an actual killer, as to whom such the special circumstance has been found to be true under Section 190.4, need not have had any intent to kill at the time of the commission of the offense which is the basis of the special circumstance in order to suffer death or confinement in the state prison for a term of life without the possibility of parole.

(c) Every person, not the actual killer, who, with the intent to kill, aids, abets, counsels, commands, induces, solicits, requests, or assists any actor in the commission of murder in the first degree shall suffer be punished by death or confinement imprisonment in the state prison for a term of life without the possibility of parole, in any case in which if one or more of the special circumstances enumerated in subdivision (a) of this section has been found to be true under Section 190.4.

(d) Notwithstanding subdivision (c), every person, not the actual killer, who, with reckless indifference to human life and as a major participant, aids, abets, counsels, commands, induces, solicits, requests, or assists in the commission of a felony enumerated in paragraph (17) of subdivision (a); which felony results in the death of some person or persons, and who is found guilty of murder in the first degree therefor, shall suffer be punished by death or confinement imprisonment in the state prison for life without the possibility of parole, in any case in which if a special circumstance enumerated in paragraph (17) of subdivision (a) of this section has been found to be true under Section 190.4.

The penalty shall be determined as provided in this section and Sections 190.1, 190.2, 190.3, 190.4, and 190.5.

SEC. 3. This act affects an initiative statute, and shall become effective only when submitted to, and approved by, the voters pursuant to subdivision (c) of Section 10 of Article II of the California Constitution.

SEC. 4. Section 2 of this bill incorporates amendments to Section 190.2 of the Penal Code proposed by both this bill and SB 32. It shall only become operative if (1) both this bill and SB 32 are submitted to and approved by the voters pursuant to subdivision (c) of Section 10 of Article II of the California Constitution and become effective on the same date, (2) each bill amends Section 190.2 of the Penal Code, and (3) this bill receives more affirmative votes from the voters than SB 32, in which case Section 1 of this bill shall not become operative.

Proposition 197: Text of Proposed Law

This law proposed by Senate Bill 28 (Statutes of 1995, Chapter 779) is submitted to the people in accordance with the provisions of Article II, Section 10 of the Constitution.

This proposed law amends and adds sections to the Fish and Game Code, and adds a section of an initiative; therefore, existing provisions proposed to be deleted are printed in ~~strikeout type~~ and new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED LAW

SECTION 1. The Legislature finds and declares, as follows:

(a) It is appropriate for the Legislature and the Department of Fish and Game to act prudently to address the needs of our changing society. California's complex and ever-changing population requires that the department and the Legislature respond to emergencies and exigencies to safeguard the health and safety of the people of the state and to balance the needs of the people with the necessity to

preserve the wildlife and its habitat for the enjoyment of the people.

(b) The wildlife species known as the mountain lion is the only specially protected mammal in the State of California; the mountain lion species is neither threatened nor endangered in the State of California; and the management of mountain lions by the Department of Fish and Game is prohibited by the passage of Proposition 117 by the voters in June, 1990.

(c) The presence of mountain lions pose a threat to people, pets, and livestock, as evidenced by the dramatic increase in the number of life-threatening and life-taking confrontations between mountain lions and people, including at least two confirmed deaths from mountain lion attacks in the past 12 months.

(d) The increase in mountain lion sightings and incidents in residential areas has caused great concern for the safety and well-being of rural and suburban residents, including small children.

(e) Wildlife authorities have determined that sightings and incidents involving mountain lions and people will continue to increase.

(f) The escalating loss of life and cost of injury to people, pets, and livestock caused by mountain lions has resulted, and will continue to result, in increased expenditures by public safety agencies.

(g) Proposition 117 mandates the expenditure of nine hundred million taxpayer dollars at a rate of thirty million dollars per year for thirty years, none of which is used to protect people or manage mountain lions.

(h) In order to maintain a healthy population and to minimize confrontations with humans and livestock, it is necessary to prepare and implement scientifically sound management plans.

SEC. 2. Section 2786 of the Fish and Game Code is amended to read:

2786. Except as otherwise expressly provided in paragraph (3) of subdivision (a) of Section 2787, the money in the Habitat Conservation Fund, which is hereby created, shall be used for the following purposes:

(a) The acquisition of habitat, including native oak woodlands, necessary to protect deer and mountain lions.

(b) The acquisition of habitat to protect rare, endangered, threatened, or fully protected species.

(c) The acquisition of habitat to further implement the Habitat Conservation Program pursuant to Article 2 (commencing with Section 2721) excepting Section 2722 and subdivision (a) of Section 2723, and Sections 2724 and 2729.

(d) The acquisition, enhancement, or restoration of wetlands.

(e) The acquisition, restoration, or enhancement of aquatic habitat for spawning and rearing of anadromous salmonids and trout resources.

(f) The acquisition, restoration, or enhancement of riparian habitat.

(g) *The preparation and implementation of a mountain lion management plan pursuant to Section 4800.*

SEC. 3. Section 2787 of the Fish and Game Code is amended to read:

2787. Notwithstanding Section 13340 of the Government Code, the money in the fund is continuously appropriated, without regard to fiscal years, as follows:

(a) To the Department of Parks and Recreation, four million five hundred thousand dollars (\$4,500,000) annually for allocation as follows:

(1) One million five hundred thousand dollars (\$1,500,000) for projects that are located in the Santa Lucia Mountain Range in Monterey County for expenditure by the Department of Parks and Recreation and for grants to the Monterey Peninsula Regional Park District.

(2) One million dollars (\$1,000,000) for acquisitions in, and adjacent to, units of the state park system.

(3) Two million dollars (\$2,000,000) for 50 percent matching grants to local agencies for projects meeting the purposes specified in Section 2786 and, additionally, for the acquisition of wildlife corridors and urban trails, nature interpretation programs, and other programs which bring urban residents into park and wildlife areas. The grants made pursuant to this subdivision are subject to the conditions of subdivision (d) of Section 5910, and Sections 5917 and 5919, of the Public Resources Code, as nearly as may be practicable.

(b) To the State Coastal Conservancy, four million dollars (\$4,000,000) annually.

(c) To the Santa Monica Mountains Conservancy, five million dollars (\$5,000,000) annually for the next 10 fiscal years, commencing with the 1990-91 fiscal year. The money shall be used for the purposes specified in Section 2786 for wildlife habitat, and for related open-space projects, within the Santa Monica Mountains Zone, the Rim of the Valley Corridor, and the Santa Clarita Woodlands. Of the total amount appropriated pursuant to this subdivision, not less than a total of ten million dollars (\$10,000,000) shall be spent within the Santa Susana Mountains and the Simi Hills, and not less than a total of ten million dollars (\$10,000,000) shall be spent within the Santa Clarita Woodlands. These funds shall be expended in accordance with Division 23 (commencing with Section 33000) of the Public Resources Code during the operative period of this section as specified in subdivision (f) and in Section 2797. The Legislature may, by statute, extend the period for expenditure of the funds provided by this paragraph subdivision.

(d) To the California Tahoe Conservancy, five hundred thousand dollars (\$500,000) annually.

(e) *To the department to pay the costs of preparing and implementing the mountain lion management plan pursuant to Section 4800, a sum not to exceed two hundred fifty thousand dollars (\$250,000) for each of the 1996-97, 1997-98, and 1998-99 fiscal years, and a sum not to exceed one hundred thousand dollars (\$100,000) for each fiscal year thereafter. It is also the intent of the Legislature that an amount not to exceed two hundred fifty thousand dollars (\$250,000) be appropriated annually from a source or sources other than the fund for public safety and public information programs related to mountain lions.*

(f) To the board, the balance of the fund.

(g) *This section (g) The amendments to this section, as approved by the voters at the March 26, 1996, primary election, shall become operative on July 1, 1996, and,*

as of March 27, 1996. This section shall remain in effect until July 1, 2020, and as of that date is repealed, unless a later enacted statute, which becomes effective on or before July 1, 2020, deletes or extends that date.

SEC. 4. Section 4800 of the Fish and Game Code is amended to read:

4800. (a) *The commission shall regulate the mountain lion (genus Felis) is a specially protected mammal pursuant to Chapter 2 (commencing with Section 200) of Division 1, and the department shall carry out the regulations of the commission and manage those mammals in the same manner as it carries out other regulations of the commission and manages other mammals that are not rare, endangered, or threatened species under the laws of this state.*

(b) *Pursuant to subdivision (a), the department shall prepare, submit to the commission for approval, and implement a mountain lion management plan that promotes health and safety protection and protection for livestock, domestic animals, other property, and other wildlife species and that implements Section 1801. The plan shall identify zones based on the department's estimates of mountain lion densities developed from the best information available to the department. The department shall designate the zones that are priority zones where the removal of individual mountain lions to protect public safety, livestock, domestic animals, other property, and other wildlife species has not alleviated threats. In designating priority zones, the department may consider, based on the best information available to the department, where the mountain lion population is depleting other wildlife species or where the mountain lion population may cause any of the following: (1) the extinction of threatened or endangered species; (2) mountain lion depredation of livestock and domestic animals; or (3) a threat to public health and safety. The taking of a mountain lion that is attacking an individual member of a wildlife species other than threatened or endangered species shall not be authorized based on that act alone. Except as otherwise provided in this chapter, the department shall not manage, regulate, or take mountain lions in a priority zone, as provided in this section or Section 4801, unless there is a plan for that zone and the department makes a finding that managing, regulating, or taking mountain lions is consistent with the plan for that zone and maintains a viable mountain lion population in that zone.*

(c) *It is unlawful to take, injure, possess, transport, import, or sell any mountain lion or any part or product thereof, except as specifically provided in this chapter or, in Chapter 2 (commencing with Section 2116) of Division 3, or as prescribed in regulations of the commission. This chapter does not prohibit the sale or possession of any mountain lion or any part or product thereof, when the owner can demonstrate that the mountain lion, or part or product thereof, was in the person's possession on June 6, 1990.*

(d) *Any violation of this section is a misdemeanor punishable by imprisonment in the county jail for not more than one year, or a fine of not more than ten thousand dollars (\$10,000), or by both that fine and imprisonment. An individual is not guilty of a violation of this section if it is demonstrated that, in taking or injuring a mountain lion, the individual was acting in self-defense or defense of others.*

(e) *Section 219 does not apply to this chapter. Neither the commission nor the department shall adopt any regulation that conflicts with or supersedes any of the provisions of this chapter.*

(f) *In the case of conflict between this chapter and the California Endangered Species Act, Chapter 1.5 (commencing with Section 2050) of Division 3, the California Endangered Species Act shall prevail.*

SEC. 5. Section 4801 of the Fish and Game Code is amended to read:

4801. The department may remove or take ~~any mountain lion~~, or authorize its designee, including, but not limited to, an appropriate ~~local governmental agency with public safety responsibility to remove or take any mountain lion, that is, an appropriate governmental agency with wildlife management responsibility, or an owner of land, to remove or take, one or more mountain lions that are perceived to be an imminent threat to public health or safety or livestock anywhere in the state except within the state park system. Within the state park system, the department may remove or take, or authorize an appropriate governmental agency with public safety responsibility or an appropriate governmental agency with wildlife management responsibility to remove or take, one or more mountain lions that are perceived to be an imminent threat to public health or safety only with the concurrence of the Department of Parks and Recreation.~~

SEC. 6. Section 4801.5 is added to the Fish and Game Code, to read:

4801.5. *Prior to submittal to, and approval by, the commission of the plan required pursuant to subdivision (b) of Section 4800, the department may remove or take any mountain lion, or authorize an appropriate local agency with public safety responsibility to remove or take any mountain lion, that is perceived to be an imminent threat to public health or safety.*

SEC. 7. Section 4806 of the Fish and Game Code is amended to read:

4806. *Any person who has captured, injured, or killed a mountain lion within a priority zone identified in a mountain lion management plan under Section 4800 or who has been issued a permit pursuant to Section 4803 or 4805 shall report, by telephone within 24 hours, the capturing, injuring, or killing of any mountain lion to an office of the department or, if telephoning is not practicable, in writing within five days after the capturing, injuring, or killing of the mountain lion. At the time of making the report of the capturing, injuring, or killing, the person authorized to take the mountain lion under a mountain lion management plan approved pursuant to Section 4800 shall make the remains of the mountain lion available for inspection to department personnel upon their request pursuant to regulations adopted by the commission and the holder of the permit under Section 4803 or 4805 shall make arrangements to turn over the mountain lion or the entire carcass of the mountain lion which has been recovered to a representative of the department and shall do so in a timely manner.*

SEC. 8. Section 8 of the California Wildlife Protection Act of 1990, as added by Proposition 117, an initiative measure approved by the electors at the June 5,

1990, primary election, is amended to read:

Sec. 8. Except for amendments of subdivisions (c) and (f) (g) of Section 2787 and subdivision (d) of Section 2796 of the Fish and Game Code to extend the operative effect of those sections and amendments of Section 3950.1 and Chapter 10 (commencing with Section 4800) of Part 3 of Division 4 of the Fish and Game Code, which may be enacted by statute enacted by the Legislature, this act shall be amended only by a statute approved by a vote of four-fifths of the members of both houses of the Legislature. *Except for amendments of Section 3950.1 and*

Chapter 10 (commencing with Section 4800) of Part 3 of Division 4 of the Fish and Game Code, Any amendment of this act shall be consistent with, and further the purposes of, this act, except the Legislature shall not reallocate the funds allocated by Sections 2787 and 2788 of the Fish and Game Code, change the expenditure requirements of Section 2791 of the Fish and Game Code, or change the transfers of funds required by Sections 2795 and 2796 of the Fish and Game Code.

Proposition 198: Text of Proposed Law

This initiative measure is submitted to the people in accordance with the provisions of Article II, Section 8 of the Constitution.

This initiative measure amends and adds sections to the Elections Code; therefore, existing provisions proposed to be deleted are printed in ~~strikeout type~~ and new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED LAW

SECTION 1. This act shall be known and may be cited as the "Open Primary Act."

SEC. 2. Section 2001 is added to the Elections Code, to read:

2001. *All persons entitled to vote, including those not affiliated with any political party, shall have the right to vote, except as otherwise provided by law, at any election in which they are qualified to vote, for any candidate regardless of the candidate's political affiliation.*

SEC. 3. Section 2151 of the Elections Code is amended to read:

2151. At the time of registering and of transferring registration, each elector may declare the name of the political party with which he or she intends to affiliate at the ensuing primary election. The name of that political party shall be stated in the affidavit of registration and the index.

The voter registration card shall inform the affiant that any elector may decline to state a political affiliation, ~~but no person shall be entitled to vote the ballot of any political party and that all properly registered voters may vote for their choice at any primary election unless he or she has stated the name of the party with which he or she intends to affiliate for any candidate for each office regardless of political affiliation and without a declaration of political faith or allegiance.~~ The voter registration card shall include a listing of all qualified political parties.

No

Notwithstanding any provision to the contrary, no person shall be permitted to vote the ballot of any party or for any delegates to the convention of any party for any elective political party central or district committee member other than the party designated in his or her registration, except as provided by Section 2152.

SEC. 4. Section 13102 of the Elections Code is amended to read:

13102. (a) All voting shall be by ballot. There shall be provided, at each polling place, at each election at which public officers are to be voted for, ~~but one form of ballot for all candidates for public office, except that, for partisan primary elections, one form of ballot shall be provided for each qualified political party as well as one form of nonpartisan ballot listing all candidates for public office, in accordance with subdivision (b).~~

(b) ~~At partisan such primary elections, each voter not registered as intending to affiliate with any one of the political parties participating in the election shall be furnished only a nonpartisan an official primary ballot. The nonpartisan official primary ballot shall contain only the names of all candidates for nonpartisan and partisan offices and measures to be voted for at the primary election. Each voter registered as intending to affiliate with a political party participating in the election shall be furnished only a ballot of the political party with which he or she is registered and the nonpartisan ballot, both of which shall be printed together as one ballot in the form prescribed by Section 13207.~~

SEC. 5. Section 13203 of the Elections Code is amended to read:

13203. Across the top of the ballot shall be printed in heavy-faced gothic capital type not smaller than 30-point, the words "OFFICIAL BALLOT." However, if the ballot is no wider than a single column, the words "OFFICIAL BALLOT" may be as small as 24-point. Beneath this heading, in the case of a ~~partisan an~~ *official primary election*, shall be printed in 18-point boldfaced gothic capital type the ~~official party designation~~ or the words "~~NONPARTISAN~~ "OFFICIAL PRIMARY BALLOT" ~~as applicable.~~ Beneath the heading line or lines, there shall be printed, in boldface type as large as the width of the ballot makes possible, the number of the congressional, Senate, and Assembly district, the name of the county in which the ballot is to be voted, and the date of the election.

SEC. 6. Section 13206 of the Elections Code is amended to read:

13206. (a) On the ~~partisan~~ *ballot* used in a direct primary election, immediately below the instructions to voters, there shall be a box one-half inch high enclosed by a heavy-ruled line the same as the borderline. This box shall be as long as there are columns for the ~~partisan~~ *ballot* and shall be set directly above these columns. Within the box shall be printed in 24-point boldfaced gothic capital type the words "Partisan Offices."

(b) The same style of box described in subdivision (a) shall also appear over the columns of the nonpartisan part of the ballot and within the box in the same style and point size of type shall be printed "Nonpartisan Offices."

(c) *This section shall not apply to ballots for elective political party central or district committee members prepared in accordance with Section 13300.*

SEC. 7. Section 13230 of the Elections Code is amended to read:

13230. (a) If the county elections official determines that, due to the number of candidates and measures that must be printed on the ballot, the ballot will be larger than may be conveniently handled, the county elections official may provide that a ~~nonpartisan ballot for nonpartisan offices and measures~~ shall be given to each ~~partisan~~ *partisan* voter, together with his or her ~~partisan official primary ballot, and that the material appearing under the heading "Nonpartisan Offices" on partisan ballots, as well as the heading itself, shall be omitted from the partisan ballots.~~

(b) ~~If the Notwithstanding Section 13300, the county elections official so provides, shall provide that the procedure prescribed for the handling and canvassing of ballots shall be modified to the extent necessary to permit the use of two ballots by partisan voters. The county elections official may, in this case, order the second ballot to be printed on paper of a different tint, and assign to those ballots numbers higher than those assigned to the ballots containing partisan offices for nonpartisan offices and measures.~~

SEC. 8. Section 13300 of the Elections Code is amended to read:

13300. (a) By at least 29 days before the primary election, each county elections official shall prepare ~~separate identical~~ *separate* sample ballots for each ~~political party and a separate sample nonpartisan ballot, placing voter, provided however, that in the case of ballots involving elective political party central or district committee members, each county elections official shall prepare separate ballots for the sole use of persons registered with that party, as provided for in Section 2151. On the official identical primary ballots, each county elections official shall place thereon in each case in the order provided in Chapter 2 (commencing with Section 13100), and under the appropriate title of each office, the names and party affiliations of all candidates organized randomly as provided in Section 13112 and not grouped by political party, for whom nomination papers have been duly filed with him or her or have been certified to him or her by the Secretary of State to be voted for in his or her county at the primary election.~~

(b) The sample ~~ballot~~ *ballots* shall be identical to the official ballots, except as otherwise provided by law. The sample ballots shall be printed on paper of a different texture from the paper to be used for the official ballot.

(c) ~~One Except as provided in Section 13230, one sample official primary ballot of the party to which the voter belongs, as evidenced by his or her registration, shall be mailed to each voter entitled to vote at the primary not more than 40 nor less than 10 days before the election. A nonpartisan sample ballot shall be so mailed to each voter who is not registered as intending to affiliate with any of the parties participating in the primary election.~~

SEC. 9. Section 13301 of the Elections Code is amended to read:

13301. (a) At the time the county elections official prepares sample ballots for ~~each political party~~ at the presidential primary, he or she shall also prepare a list with the name of candidates for delegates for each political party. The names of the candidates for delegates of any political party shall be arranged upon the list of candidates for delegates of that party in parallel columns under their preference for President. The order of groups on the list shall be alphabetically according to the names of the persons they prefer appear upon the ballot. Each column shall be headed in boldface 10-point, gothic type as follows: "The following delegates are pledged to _____." (The blank being filled in with the name of that candidate for presidential nominee for whom the members of the group have expressed a preference.) The names of the candidates for delegates shall be printed in eight-point, roman capital type.

(b) Copies of the list of candidates for delegates of each party shall be submitted by the county elections official to the chairman of the county central committee of that party, and the county elections official shall post a copy of each list in a conspicuous place in his or her office.

SEC. 10. Section 13302 of the Elections Code is amended to read:

13302. The county elections official shall forthwith submit the sample ~~official primary ballot of each political party~~ to the chairperson of the county central committee of ~~that each political party~~, and shall mail a copy to each candidate for whom nomination papers have been filed in his or her office or whose name has been certified to him or her by the Secretary of State, to the post office address as given in the nomination paper or certification. The county elections official shall post a copy of ~~each the~~ *each* sample ballot in a conspicuous place in his or her office.

SEC. 11. (a) No provision of this act may be changed except by a vote of the people.

(b) The Legislature shall amend or delete other provisions of law not encompassed by this act which conflict with the provisions herein in order to bring them into conformity with this act.

SEC. 12. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

EXHIBIT B

← Back to Original Article

CALIFORNIA ELECTIONS / WILDLIFE PROTECTION ACT : Initiative Would Prohibit Cougar Hunt, Buy Habitat

May 06, 1990 | BOB SCHWARTZ | TIMES STAFF WRITER

SACRAMENTO — Not in 18 years has a sport hunter legally shot and killed a California mountain lion—a secretive, nocturnal predator that inhabits terrain as disparate as the eastern desert, the Sierra Nevada's snowy slopes and the coastal oak woodlands of Los Angeles and Orange counties.

In 1987, the state Department of Fish and Game tried to reintroduce limited hunting of the animals, whose population statewide was estimated to have grown to about 5,100. But the plan has been repeatedly blocked by mountain lion advocates in court, with judges ruling that the state's environmental impact studies were inadequate.

This June, California voters will decide the issue for themselves: Proposition 117, or the California Wildlife Protection Act of 1990, would declare mountain lions to be a specially protected animal and prohibit sport hunting of the big cats—also called cougars, pumas or panthers—once and for all.

But the so-called mountain lion initiative is not strictly a battle between hunters and non-hunters.

The proposal has a second, perhaps more far-reaching component: It would mandate spending \$900 million over the next 30 years to acquire and restore wildlife habitat, with equal amounts to be spent in Southern and Northern California.

Roughly a third of the money would be spent for mountain lion and deer habitat, leaving the rest for the purchase of rare and endangered species habitat, wetlands, and riparian and aquatic habitat.

"We wanted to focus not only on mountain lion hunting, but the broader issue as well," said J. William Yeates, a Sacramento attorney and board member of the Mountain Lion Preservation Foundation, one of the groups that drafted the initiative. "And the real issue in California is loss of habitat."

The law would guarantee \$50 million over the next 10 years for the Santa Monica Mountains Conservancy, some of which must be spent in the Santa Susana Mountains and Santa Clarita Woodlands. Other amounts are guaranteed for Monterey County, the California Tahoe Conservancy and the State Coastal Conservancy.

The state Wildlife Conservation Board would receive the bulk of the annual \$30 million—\$16 million in each of the first 10 years of the program, \$21 million a year thereafter.

Conservation groups such as the Wilderness Society, Defenders of Wildlife, the Sierra Club and the Planning and Conservation League have endorsed the initiative. Recreation-oriented conservation groups—such as the California Wildlife Federation, the California Waterfowl Assn. and Ducks Unlimited Inc.—oppose the measure, as do hunting and ranching groups and many state wildlife biologists.

Not even the initiative's opponents dispute that habitat destruction is the single greatest threat to California wildlife. And a local population of mountain lions, each of whose home ranges may be more than 100 square miles, needs large chunks of undisturbed habitat to thrive.

But opponents say Proposition 117 locks the state into a rigid habitat acquisition formula that favors the mountain lion and deer—both non-endangered species—at the expense of species that truly need protection.

"There isn't a wildlife biologist who opposes (the purchase of) habitat," said Richard Weaver, a retired state wildlife biologist and chairman of the umbrella opposition campaign, Californians for Fair Spending on Wildlife Protection. But Proposition 117, he said, "will raid existing programs for endangered and rare wildlife species for an animal that is neither endangered nor rare. . . . I think we need to identify our most critical needs."

The initiative would not create any new funding sources. About half of the annual \$30 million would come from an unallocated tobacco tax fund established by Proposition 99 two years ago that is currently earmarked for local health programs. Initiative opponents criticize the proposed diversion of this money, but proponents answer that 90% of the unallocated fund will still be available for health programs, and that spending 10% on wildlife habitat is consistent with Proposition 99's intent.

"Proposition 99 was created in this office," said Gerald Meral, director of the Planning and Conservation League and manager of the pro-117 campaign, the California Wildlife Protection Committee. "We served on it, and we were part of a major effort to pass it. Our opponents don't represent the health community."

The remainder of the \$30 million will come out of existing environmental funds, such as the state's environmental license plate fund and tax check-off fund for rare and endangered species, and any future state bond issues that include money for wildlife habitat—such as the Forests Forever and Big Green initiatives being proposed for the November ballot.

Some state environmental funds are already being used for habitat acquisition and would count toward the initiative's annual requirement. Meral, in fact, says that Gov. George Deukmejian's proposed 1990-91 budget earmarks enough money for habitat acquisition and would be unchanged if the initiative passes. Opponents, however, say that might not be true in future years.

"The department is concerned that (the initiative is) too restrictive, and we couldn't be responsive to dynamic and changing needs," said Terry M. Mansfield, Fish and Game Department wildlife manager.

While they disagree on the best use of environmental funds, wildlife biologists on both sides of the issue generally agree that limited hunting would pose no threat to the state's mountain lion population. The animals, which can weigh up to 150 pounds at maturity, are legally hunted in 11 Western states and British Columbia and are still thriving.

But initiative proponents say that the mountain lion, as California's last big predator, deserves special protection.

"There's something about mountain lions that goes to the hearts and minds of so many people," said Sharon Negri, director of the Mountain Lion Preservation Foundation. "People are surprised to hear there are mountain lions in the hills in and around some of our largest urban areas . . . and they just like to know they're there, something not packaged, bottled and canned, but something wild and free."

Hunters view the animal with less romanticism. And some ranchers see cougars as serial killers, capable of slaughtering more calves, sheep or goats in a single night than they could possibly eat in weeks.

The initiative would restrict, but not ban, so-called depredation kills--the hunting of cougars that pose a danger to human life or livestock.

But cougar hunting for sport, in which dogs track the animal until it is treed, is strictly a slaughter-for-trophy and should be banned on moral and ethical grounds, initiative backers say.

"Chasing down a lion with a bunch of hounds and blasting it off a tree is pretty punk stuff," Yeates said.

Statements like that, initiative opponents say, demonstrate the pro-117 camp's anti-hunting bias and lack of knowledge. State game regulations require that a hunted animal's meat be used and not wasted. It is true, they say, that the only effective way to hunt the highly elusive cougars is with well-trained dogs, but that success is by no means guaranteed.

"They make it sound as horrendous as possible," Weaver said. "Only about one time in 20 is it even possible that the mountain lion could be shot."

By banning hunting, Weaver and other initiative opponents say, the state is robbed of a tool that it could use in effectively managing lion populations.

"The field data suggest that . . . the good habitat is full of lions and they're moving out into more marginal habitat," said state wildlife manager Mansfield. "Something's going on when they show up in a back yard in Yorba Linda, in the garlic fields of Coalinga."

In 1986, two children were mauled by cougars in Ronald W. Caspers Wilderness Park in Orange County--the first documented attacks on humans in California in several decades. Earlier this year in the same general area, a male lion establishing his territory is believed to have killed two lion cubs.

Some biologists theorize that overly dense populations increase the animals' competition for food and territory, pushing them into more frequent encounters with humans, pets and livestock. Those encounters often lead to legal depredation kills--which have increased markedly in recent years--of the unknowing, wayward animals.

"It's hard to argue that's good for their lives," Mansfield said. "In theory, some amount of sport hunting could be good for the overall health of the animal."

But initiative proponents, citing research that suggests that attempts to manage lion populations are futile, say the animals don't need any help from Fish and Game.

"They regulate their own numbers," Negri said. That's all part of the evolutionary process."

Mountain Lion Ranges Proposition 117 on the June ballot would protect the range of California's mountain lion by purchasing threatened territory. This map indicates the areas where the big cat is now found, including areas that are threatened by urban encroachment. Source: Mountain Lion Preservation Foundation

EXHIBIT C

← Back to Original Article

The Lion's Share of Controversy : Prop. 117: The ballot initiative would prevent hunting mountain lions, and it incites emotions from both sides of the issue.

May 29, 1990 | RICH ROBERTS | TIMES STAFF WRITER

The hunter finds a track and sets his dogs on the scent. Sometimes, after an all-day run, they tree their prey.

"Then," reads a two-year-old, full-page ad of the Mountain Lion Preservation Foundation, "from point-blank range, you fire away, blowing the animal to bloody lint."

And that, allowing for the emotional language of those who don't approve, is how mountain lions are hunted.

The method may not be pretty but, to those philosophically opposed to all hunting, any way of killing creatures by men is ugly.

Conversely, Walter E. (Howdy) Howard, Ph.D., professor emeritus of wildlife biology at UC Davis, suggests that the standard method of hunting lions--a sure, short-range, clean kill--is more humane than other forms of hunting and certainly more humane than what man is doing to mountain lions in his misguided attempts to protect them. Mountain lions, Howard says, are being loved to death.

"It's not endangered, it's not threatened," he said. "It's a bloody pest."

Those views are further polarized by state Proposition 117, the Wildlife Protection Act of 1990--the so-called "mountain lion initiative"--on the June 5 ballot.

Actually, the initiative is less about mountain lions than real estate. Prop. 117 presents no biological data on mountain lions but states that "corridors of natural habitat must be preserved to maintain the genetic integrity of California's wildlife."

Under Prop. 117, the state Fish and Game Code would be amended to prevent the hunting of mountain lions forevermore.

The initiative would create the Habitat Conservation Fund to spend \$30 million a year for 30 years to buy and reserve wildlife habitat. One-third is earmarked for mountain lions and deer--a lion's principal prey--and two-thirds would go to assist unspecified rare, threatened and endangered species, which do not include lions and deer.

In California, the mountain lion was a bounty animal as recently as 1963, then was designated a game mammal for regulated hunting until '72 and subsequently a "specially protected mammal" during a hunting moratorium that expired in '86.

Then the Fish and Game Commission again designated it a game mammal but lost proposed hunts to animal-rights groups in court in '87 and '88. Prop. 117 would restore the mountain lion's status as "specially protected."

Half of the annual \$30 million would be spent in Southern California, the other half in northern California. Opponents point out that a female mountain lion needs 50 or 60 square miles of range, a male 100 or more--in whole parcels, not small chunks connected by corridors. They ask, where can anyone buy land like that, especially in Southern California, and then persuade lions to live there?

That's why opponents claim Prop. 117 is nothing less than a pork-barrel piece for certain legislators and a land grab for private interests to acquire property in the Santa Monica Mountains and elsewhere. Prop. 117, opponents say, is riding the crest of environmental fever and using the mountain lion as an emotional focus to carry it to victory.

Wildlife biologists say the mountain lion needs no protection and, conservationists say, the \$30 million will be stripped from more important existing programs.

Edna Maita, senior consultant for the Assembly Committee on Water, Parks and Wildlife, suggested that Prop. 117 is a "shortcut" to achieve a *de facto* endangered listing for mountain lions, without establishing scientific support.

Even Gerald Meral, director of the Planning and Conservation League that sponsored the measure, says: "The mountain lion's not an endangered species. It is not threatened by extinction from hunting. We would never argue that."

But Meral listed \$400,000 from the Endangered Species Tax Checkoff fund, along with proposed siphons from salmon, steelhead and the kangaroo rat programs, in a letter to Pete Bontadelli, director of the Department of Fish and Game, suggesting where the \$30 million would come from.

"No existing environmental program would in any way be diminished by the passage of Proposition 117," Meral wrote in a cover letter to reassure conservationists. "Director Pete Bontadelli has agreed that the funding analysis in this letter is accurate."

But Bontadelli's chief aide, Ted Thomas, said: "That doesn't mean we're agreeing there is no impact. We still don't know what direction the thing would go."

Maita said Prop. 117 "provides for a major reallocation of money for habitat acquisition. What happens to programs that are currently funded out of there? (For) the Department of Fish and Game . . . the potential is for (a loss of) \$10-\$12 million."

Prop. 117 began life as Assembly Bill 860, introduced a year ago by Richard Katz (D-Panorama City). Interviewed in his capitol office recently, he didn't remember the number.

Questioning an aide, he referred to "the mountain lion bill."

Katz said: "I thought I could get a bill passed that would ban the sport hunting of mountain lions. The amendments I was forced to take in the Water Committee rendered the bill so useless that I didn't feel there was much left for what we were trying to accomplish."

The bill sits moribund in the Assembly Ways and Means Committee.

"For all intents and purposes it's dead," Katz said. "When it became apparent I could not get a bill out of the assembly that would accomplish the goal, we dropped the bill and went to the initiative."

That's when the \$30 million-a-year add-ons came in.

With a volunteer force blitzing shopping malls all over the state, the initiative secured almost 700,000 signatures, nearly double the 372,000 needed to qualify for the ballot.

It may have helped that the petitions bore a blown-up likeness of a mountain lion.

Meral, in his tiny, cluttered office near the capitol, smiled and said: "Suppose we had a picture of an eagle. Would you say that was misleading? We had to put something on there.

"We call it the wildlife initiative. The title is the Wildlife Protection Act. That's exactly what it is. This is not set up to stop hunting. This is to stop hunting mountain lions. It's a cruel and unfair and unsporting method of hunting. (The Planning and Conservation League is) a pro-hunting organization."

Terry Mansfield, assistant wildlife division chief for the DFG, told of Meral's comment, said: "Pro-hunters? Well, that's an interesting twist. *Whoa!*

"This is a sensationalized, emotional issue. (At) the signature-gathering sessions, it was typically a table set up with a couple of individuals who have no technical background or knowledge . . . (and) they have a big picture of a domesticated lion, and they say, 'Please sign here if you want to save the lions. They're killing 'em.' "

Early on, opponents were ready to throw in the towel. Since hunters make up only about 1.2% of the state's population, they didn't see much hope for support from non-hunters--and certainly not anti-hunters, such as those represented by the Mountain Lion Preservation Foundation.

Sharon Negri, the latter group's executive director, said: "The majority of hunters are absolutely opposed to shooting a top-of-the-food-chain predator like the mountain lion. The California mountain lion may not be endangered, but we feel they are *in danger*. We've tripled in population. The lion needs a lot of space to survive. We don't want to wait until it's on the brink of extinction."

Some of the groups backing Prop. 117 *are* opposed to hunting, but most hunters wouldn't think mountain lions are worth the trouble. "Lions aren't easy to hunt," says Howard. "To hunt lions effectively, you need dogs. This makes human predation very humane. It's pretty hard to miss. You nearly always get a clean kill of a lion in a tree. With deer and other animals, you don't."

Howard, who maintains a small but busy office in a basement at UC Davis, has written extensively and lectured internationally on the dangers of overprotecting species. Left to themselves, Howard says, lions become overpopulated and, when normal prey, such as deer, is exhausted, turn to domestic animals or to cannibalizing their young.

"Is that preferable to chase, tree and quick shot?" Howard asks.

The DFG estimates there are at least 5,100 mountain lions in California--the only area among 11 Western states and two Canadian provinces where they can't be hunted.

The sides agree that the exact numbers don't really matter.

Meral said: "We don't know how many lions there are out there. But the point is that unless we do something to protect habitat, there aren't going to be any deer or mountain lions."

Howard says that Meral and his allies miss the point: There are *too many* mountain lions.

"The best evidence that they've exceeded their habitat is the frequency with which lions are seen today in California," he said. "These are secretive animals. We shouldn't see them. Most hunters never see mountain lions. The last decade, they've been seeing them in their headlights and in broad daylight."

There has been a large increase in mountain lion sightings in the Eastern Sierra this spring.

Meral said: "What it indicates to me is that there are now people in California where there weren't people before, so they're seeing a lot of mountain lions. Is that evidence that there are more mountain lions or more people?"

There may be other reasons, such as diminishing deer herds and the four-year drought, mountain lions leave their customary cover to kill sheep or domestic

12/16/2014 The Lion's Share of Controversy : Prop. 117: The ballot initiative would prevent hunting mountain lions, and it incites emotions from both sides of the issue. ... animals, but Howard believes that the signals are clear when a creature at the top of a food chain alters its behavior. "Evolution has demanded that they have a regulatory mortality factor," Howard said. "That's the balance of nature. Any species that doesn't is in trouble. Look at human beings."

Regulatory mortality factor? Translation: hunting.

And if hunting seems cruel, Howard added: "People are far more humane to their prey than any natural predators. People prey under regulations."

A concern of the DFG and pro-hunting groups is that Prop. 117 would launch a sequence of hunting bans--today mountain lions, tomorrow deer, etc.--that would remove wildlife management from their hands.

Meral said: "We sent them a letter saying, 'We hereby promise we'll never do that,' and so did all the other (pro-117) groups."

Katz said the DFG, National Rifle Assn. and other pro-hunting groups are trying to make it a hunting issue.

"I'm not opposed to all hunting, (although) it's not something I do," he said. "It's not a hunting issue. It's a mountain lion issue."

Either way, an observer might wonder if the numbers are worth all the concern.

From 1907 until '63, a bounty hunter could collect from \$5 to \$75 for a mountain lion pelt.

"We averaged 223 lions a year," Mansfield said.

In the last two seasons that lions were legally hunted in California--'70-71 and '71-72--the DFG issued 4,953 permits; 118 lions were killed.

Seventy two were killed last year on 169 special depredation permits issued by the DFG when the lions intruded on man's domain. That was up from 64 lions on 148 permits in '88 and 47-114 in '87, and well up from the few in the early '70s when hunting was allowed.

Depredation permits would still be allowed under Prop. 117, but although most are handled by experts with trained dogs, the success rate is only a little better than 40%.

Hunters say hunting mountain lions is sport, but even that is not the primary concern most opponents have about Prop. 117.

Paul Beier, a University of California wildlife biologist who has been doing mountain lion research for the DFG in Orange County, said: "Our problem here is they're paving the hills and they're running out of space. The way we'll wipe 'em out is by fragmenting their habitat. They need room--not two or three square miles here and there."

Richard A. (Dick) Weaver of Loomis, Calif., last year retired after 40 years as a wildlife biologist with the DFG. His career was devoted to research--most of it in the field--of the mountain lion and desert bighorn sheep.

Weaver heads the Californians for Fair Spending on Wildlife Protection committee to defeat Prop. 117. He minces no words.

"You never saw such a mass of ignorance as those people (who) don't know--and don't want to know," Weaver said, speaking of proposition proponents. "It scares me because they have a very good chance of winning."

"Losing mountain lion hunting doesn't make a hell of a lot of difference in how many mountain lions are going to be out there at any given time, the quotas would be so small. But what I worry about is losing an opportunity to hunt *by referendum*. Is that a first domino? Would we lose all the other things we cherish--quail hunting, duck hunting, deer hunting?"

"I've always said that biology wouldn't have a damn thing to do with the status of mountain lions. Emotion was going to rule."

THE ATTEMPT TO PROTECT MOUNTAIN LIONS

Prop. 117, the California Wildlife Protection Act, proposes to create the Habitat Conservation Fund to spend \$30 million a year for 30 years to acquire and reserve wildlife habitat and to ban the hunting of mountain lions.

WHERE THE MONEY WOULD COME FROM

(Estimated annual diversions)

1. Unallocated account, tobacco tax fund: \$18,000,000.
2. Tahoe Conservancy tobacco tax funds: \$500,000.
3. Natural Areas Office: \$600,000 from environmental license plate fund (ELPF).
4. Salmon and steelhead program: \$1,000,000 (ELPF).
5. Fish and wildlife improvement on federal lands: \$100,000 (ELPF).
6. Kangaroo Rat Preserve: \$500,000 (ELPF).
7. Dept. of Water Resources allocations from ELPF: Trinity River restoration, \$750,000 minimum; Sacramento River riparian restoration, \$750,000.

9. Dept. of Fish and Game tobacco tax funds for stream restoration studies: \$117,000; non-game fisheries, \$300,000 minimum.

10. DFG tobacco tax funds for anadromous fisheries: \$1,500,000.

11. Wildlife Conservation Board: \$1,658,000.

12. Coastal conservancy fish and wildlife enhancement fund: \$150,000.

13. Endangered species tax checkoff fund: \$400,000.

SOURCE--California Wildlife Protection Committee (Project of Planning and Conservation League)

NOTE--A legislative analyst has determined that the Legislature could transfer \$12 million or more from general fund, instead of existing environmental funds.

WHERE THE MONEY WOULD GO

(Designated annual expenditures)

1. \$5,000,000 for 10 years to Santa Monica Mountains conservancy.

2. \$4,500,000 to Dept. of Recreation and Parks.

3. \$4,000,000 to state coastal conservancy.

4. \$500,000 to California Tahoe conservancy.

5. Balance to Wildlife Conservation Board.

SOURCE--California Wildlife Protection Act of 1990 (proposed).

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**UNITED STATES DISTRICT COURT
 EASTERN DISTRICT OF CALIFORNIA
 SACRAMENTO DIVISION**

SAFARI CLUB INTERNATIONAL,

Plaintiff;

v.

KAMALA D. HARRIS, in her official capacity as
 Attorney General of California, and CHARLTON
 H. BONHAM, in his official capacity as Director
 of the California Department of Fish and Wildlife;

Defendants.

Case No. 2:14-cv-01856-GEB-AC

**[PROPOSED] ORDER GRANTING
 THE HUMANE SOCIETY
 OF THE UNITED STATES' AND
 THE FUND FOR ANIMALS' MOTION
 FOR LEAVE TO FILE *AMICUS*
CURIAE BRIEF**

Date: January 20, 2015
 Time: 9:00 a.m.
 Judge: Hon. Garland E. Burrell, Jr.

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ORDER

This matter is before the Court on The Humane Society of the United States’ and The Fund for Animals’ Motion for Leave to File *Amicus Curiae* Brief in support of Defendants’ Motion to Dismiss. Having reviewed all submissions, the Court finds good cause in support thereof.

Accordingly, the Motion is GRANTED.

IT IS HEREBY ORDERED that The Humane Society of the United States’ and The Fund for Animals may file the proposed *Amicus Curiae* brief attached to its Motion.

DATED: _____, 2014

Honorable Garland E. Burrell, Jr.
Senior United States District Judge

CERTIFICATE OF SERVICE

Case Name: **Safari Club International v.**

No. **2:14-cv-01856-GEB-AC**

Kamala D. Harris, et al.

I hereby certify that on December 17, 2014, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

MOTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF BY THE HUMANE SOCIETY OF THE UNITED STATES AND THE FUND FOR ANIMALS

REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF *AMICUS CURIAE* BRIEF OF THE HUMANE SOCIETY OF THE UNITED STATES AND THE FUND FOR ANIMALS; DECLARATION OF HALLIE G. SEARS

[PROPOSED] ORDER GRANTING THE HUMANE SOCIETY OF THE UNITED STATES' AND THE FUND FOR ANIMALS' MOTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF

I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on December 17, 2014, at Washington, DC.

Peter A Brandt

Declarant

/s/ Peter A. Brandt

Signature