First-of-its-kind ‘right to farm’ law now part of North Dakota Constitution; new animal cruelty law now being considered in wake of defeat of November ballot measure

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Most recent state ballot initiatives have not been welcomed by traditional production agriculture and its legislative supporters.

Among the results have been new laws (in Arizona, California and Florida) banning the use of crates for gestation housing for sows. Other initiatives have prohibited the processing of horses for food, instituted regulations on dog breeding, and restricted hunting.

In all, the Humane Society of the United States has a 72 percent success rate on 42 ballot initiatives since 1990. But North Dakotans bucked that trend in 2012, rejecting a HSUS initiative while also approving a first-of-its-kind constitutional right for farmers to conduct “modern agriculture” operations.

The HSUS-backed proposal, Measure 5, was defeated soundly. It would have created a Class C felony penalty for malicious cruelty to a dog, cat or horse. It included exemptions for agricultural workers, veterinarians, scientific researchers, and hunters.

The HSUS introduced Measure 5 after the North Dakota legislature failed to pass an animal welfare bill in 2011. Supporters of the measure, such as the organization North Dakotans to Stop Animal Cruelty, noted that the state is one of only three in which extreme animal cruelty is a misdemeanor instead of a felony. With the measure defeated, these groups will have to seek a change in the law through the legislative process.

While both sides agreed that the state’s anti-cruelty laws need to be strengthened and that they don’t want to see animals abused, opponents of Measure 5 argued that its language was too vague. They asked whether, for example, the use of a shock collar on a dog could be construed as illegal. Another concern was that the Measure 5 language classified horses not as livestock, but as companion animals along with cats and dogs.

“Voters were also concerned that an outside group was trying to dictate state law,” notes Sen. Tim Flakoll, chair of the Senate Agriculture Committee.

According to North Dakota Rep. Wes Belter, a coalition of farmers, veterinarian and animal-shelter groups united to form North Dakota Animal Stewards, which opposed the measure “because they felt a legislative solution was a better response to [concerns about] animal welfare.” The group also noted that 94 percent of the funds supporting Measure 5 came from outside the state.

Hearings have been held on a legislative response to strengthen anti-cruelty laws in North Dakota, with input from key stakeholder groups such as veterinarians and agriculture producers.

Measure 3, approved by voters by a 2-to-1 margin, bars laws limiting farmers’ right to “employ agricultural technology, modern livestock production and ranching practices.” North Dakota is the first state to put such a guarantee
for “modern” farming practices in its constitution. Opponents of Measure 3 argued that it was too broad and could pre-empt local laws, such as those dealing with zoning and water drainage.

“Farmers are now protected in the Constitution from groups who have been attacking them on safe and scientifically sound farming practices,” Belter says.

“It will stop bans on the use of genetically modified [GMO] seeds or the use of sow gestation crates and cages for egg-laying hens. It would prevent statutes like the one that California voters defeated this year requiring the labeling of any food made from plants or animals with genetic material changed in specific ways.”

Flakoll expects legal challenges over interpretation of the measure, but says voters’ overwhelming approval of the right-to-farm amendment sends a strong message.

“North Dakotans recognized that agriculture is the backbone of our economy and our No. 1 industry,” he adds, “and we need to provide reasonable protections to our producers.”

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