

Much Ado About Nothing: Kentuckians' Right to Hunt, Fish, and Harvest Wildlife

Posted on January 13, 2016 by Legal News Editor • Posted in [The KLJ Blog](#) • Tagged [animal rights](#), [constitutional amendment](#), [fish and wildlife](#), [Graham Marks](#), [Kentucky Constitution](#) •

Graham Marks, *KLJ Senior Staff Editor*^[1]

On November 6, 2012, Kentuckians decisively approved an amendment to their state constitution,^[2] which became §255A of the Kentucky Constitution.^[3] The amendment purports to give Kentuckians the right to “hunt, fish, and harvest wildlife.”^[4] Supporters of the amendment, including the NRA, claimed the change would stop “well-funded ‘animal rights’ extremist groups...[from] erod[ing] our sporting heritage.”^[5] Other groups asserted that the amendment is “merely window dressing.”^[6] A legal analysis shows that § 255A of the Kentucky Constitution is a toothless amendment.

The “rights” granted by § 255A of the Kentucky Constitution are so extensively qualified that the provision is meaningless. The text states, “The citizens of Kentucky have the personal right to hunt, fish, and harvest wildlife ... subject only to statutes enacted by the Legislature, and to administrative regulations adopted ... to promote wildlife conservation....”^[7] In effect, this text indicates that Kentuckians have the right to hunt and fish unless the legislature or an agency says otherwise. What a right! Further, § 255A states, “This section shall not be construed to modify any provision of law relating to trespass, property rights, or the regulation of commercial activities.”^[8] Therefore, all hunters and fishermen are confined to the same land on which they hunted and fished prior to the amendment. Thus, the amendment can hardly claim to expand the rights of Kentucky sportsmen.

Kentucky’s amendment also fails to protect sportsmen from the anticipated^[9] incursions of “animal rights extremists.” Arguably the chief benefit of enshrining a right in a constitution is that the right can only be abrogated by constitutional amendment. For example, when the United States instituted prohibition with the 18th Amendment, prohibition was the law until it was struck down by the 21st Amendment. In contrast, the rights “guaranteed” by § 255A can be altered by any statute or regulation, so long as the statute or regulation in question promotes wildlife conservation and management.^[10] This simple modification process is a sensible approach to the situation. Wildlife populations constantly fluctuate due to disease and habitat loss, among other factors. To require constitutional amendments to, for example, set new limits on hunting due to forest fires would be a burden. Nevertheless, § 255A hardly “enshrines” rights as firmly as its constitutional designation might lead one to believe.

Kentuckians approved an amendment to the state constitution which purported to protect their rights to “hunt, fish, and harvest wildlife.”^[11] However, the amendment failed to grant Kentuckians any rights they did not already possess, and any rights guaranteed by the amendment may be abridged by ordinary legislation or administrative regulations. Regardless of whether the amendment was an attempt by the NRA to gain political influence,^[12] or a well-intentioned preemptive strike supporting the Second Amendment, the end result is identical. Kentuckians can hunt and fish, at least until they can’t.

^[1] J.D. expected May 2016.

^[2] See Gene Kang, *Ky. Voters overwhelmingly approve hunting and fishing amendment*, WHAS 11 (November 7, 2012), <http://www.whas11.com/news/election/Ky-voters-overwhelmingly-approve-hunting-and-fishing-amendment-177752171.html> (stating that the amendment passed with 84.7% of the vote).

^[3] John Cheves, *Kentucky voters to consider amending constitution to protect hunting rights*, Lexington Herald-Leader (Oct. 23, 2012), http://www.kentucky.com/2012/10/13/2370812_kentucky-voters-to-consider-amending.html?rh=1.

^[4] Ky. Const. § 255A.

^[5] *Kentucky: Important Right to Hunt and Fish Amendment Needs Your Vote on November 6*, NRA-ILA (October 12, 2012),

<http://www.nra.org/legislation/state-legislation/2012/10/kentucky-important-right-to-hunt-and-fish-amendment-needs-your-vote-on-november-6.aspx>.

^[6] Cheves, *supra* note 2.

^[7] Ky. Const. § 255A

^[8] *Id.*

^[9] See John Cheves, *Constitutional amendment to protect hunting and fishing passes easily*, Lexington Herald-Leader (November 6, 2012),

http://www.kentucky.com/2012/11/06/2398379_constitutional-amendment-to-protect.html?rh=1 (quoting Representative Leslie Combs stating “At present, nobody is lobbying against hunting and fishing in Kentucky or legally challenging it. But somebody in the future might have, such as an animal-rights group. Now they can’t.”).

^[10] Ky. Const. § 255A.

^[11] Cheves, *supra* note 8.

^[12] *See* Cheves, *supra* note 2.

← Money for Nothing and Your Facts for Free: An Exploration of Political Spending and a Proposal for Combatting Big Money Interests

Weighing the Risks: Can Parents Choose Not to Vaccinate? →

Search ...



FOLLOW KLJ



CONTACT

» Kentucky Law Journal
University of Kentucky
College of Law
Lexington, KY 40506-0048

(859) 257-4747

editors@kentuckylawjournal.org