

## Sunday hunting ban headed to court

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A newly-formed hunters' group claims the ban on Sunday hunting is unconstitutional.

The debate over Sunday hunting in Pennsylvania has been going on for years. Currently hunting on The Lord's Day here is extremely limited. Crows, foxes and coyotes are the only game on the menu.

The state Game Commission has no control over the matter. It's in the hands of the state Legislature. And through the years, every single attempt to either flat-out make Sunday like every other day of the week as far as hunting goes or to give authority over Sunday hunting to the Game Commission has died on the vine.

No measure has ever been voted down by state lawmakers. They've just never gotten that far, instead dying on the road to a vote. The same arguments come up time and again.

**Pro Sunday hunting:** It will get more kids out; provide a day afield for hunters who work six days a week; allow everyone who works five days a week to double their weekend hunting time.

**Anti Sunday hunting:** People should be in church not hunting; landowners, birdwatchers, bike, riders, etc. want one day a week when they can be in the woods and not have to worry about hunters; it's tradition to not hunt on Sundays here.

One issue that has not been raised is whether Pennsylvania's ban on general Sunday hunting is unconstitutional. That is are hunters having their rights suppressed one day a week possibly due to religious bias?

A new Lititz-based group has formed to press that very issue. Hunters United for Sunday Hunting - HUSH - is planning to sue the state government in an attempt to force the issue on Sunday hunting once and for all.

"For the last 20 years, hunters have tried to get the Legislature to deal with this and the Legislature has repeatedly dropped the ball," said HUSH director Kathy Davis. "So now we're going to the courts."

Joining Davis in guiding HUSH is Don Heckman, a former longtime director of the Pennsylvania Chapter of the National Wild Turkey Federation. Davis, 47, was in the U.S. Marine Corps from 1988-92 and currently serves as legislative director for the Pennsylvania chapter of Quality Deer Management Association.

She describes herself as a "full-time sportsmen's advocate," having been instrumental in drafting the legislation that allows an adult hunter to transfer an antlerless deer tag to a mentored youth hunter.

She's had Sunday hunting in her sights for a long time." It just makes no sense to have this one thing that we can do every other day of the week be illegal on Sundays," she said.

Whether or not it makes sense is an open-ended question that can be - and has been - debated ad nauseum. But is the Sunday hunting ban unconstitutional?

"We think it is, and we think we can win a court challenge," Davis said.

Before we dive into that issue, let's look at HUSH's motivations. According to Davis, HUSH is a non-profit organization "founded and funded by hunters," the group's website states.

Neither she nor Heckman receives any pay for directing the organization.

"We're doing it on a voluntary basis," Davis said.

HUSH operates under the belief that Sunday hunting would help stem the loss of hunters by giving kids and families more time afield. However, HUSH is not advocating for any specific form of Sunday hunting at this time.

Rather the organization fundamentally believes the ban is illegal and shouldn't exist. And HUSH simply wants the Game Commission to have sovereignty over the issue to employ as it sees fit in its various wildlife management programs.

So the group is soliciting donations from hunters and sportsmen's groups across Pennsylvania to help fund its planned lawsuit against the state. The legal bill is expected to be considerable, Davis said. Estimates for a Constitutional challenge range from \$70,000-\$150,000.

As of last week, HUSH had raised about \$8,000 for its efforts. What if they don't raise enough?

"We're not focusing on that right now," Davis said. "We're moving ahead as if we will."

So what about this Constitutional challenge? Davis said HUSH has had Constitutional scholars review Pennsylvania's Sunday hunting law as well as pertinent legal cases in

various courts, and those analysts have indicated the law is likely to be struck down if challenged in court.

In an oversimplified comparison, Davis explained, "Would you say the press has freedom - except on Sunday? Or how about 'You have the right to bear arms - except on Sunday?'"

Davis didn't want to reveal too much about HUSH's legal strategy - including naming the group's attorney last week - but she said part of HUSH's case is rooted in the famous 2008 case of District of Columbia vs. Heller. In that case, the U.S. Supreme Court ultimately ruled that the Second Amendment to the U.S. Constitution protects an individual's right to possess a firearm for traditionally lawful purposes, such as self-defense within the home and hunting.

HUSH plans to argue that finding means hunting itself is a right protected under the Constitution. Trevor Burrus, a legal associate with the Cato Institute in Washington D.C., isn't sure about that assertion, but he believes there is merit in making the argument in court.

"There definitely is a Constitutional claim that can be made," he said.

Cato Institute is a public policy research organization that focuses on individual liberty and limited government among other issues. It was one of the key players in the Heller case, having organized the six plaintiffs that originally filed suit against the District of Columbia over its ban on handgun ownership.

According to Burrus, the Heller ruling doesn't state outright that hunting is a protected right.

"The Heller decision makes enough of a mention of hunting that questions have to be asked about how far out protections under the Second Amendment should reach," he said.

Incidentally voters in Idaho, Kentucky and Nebraska in November are slated to answer ballot questions on whether to amend each state's constitution to make hunting and fishing protected rights. Pennsylvania's attempt to secure a similar amendment - House Bill 575 - is languishing in the House.

Burrus said he believes the Heller decision would extend some protections for the right to hunt. But not the same level as the right to keep and bear arms.

"I believe a ban on hunting, such as a ban on Sunday hunting, would have to at least pass the rational-basis test," he said. "That is it couldn't be banned for a totally irrational reason."

Unfortunately, Burrus said states historically have been given "a great deal of latitude in managing their own wildlife populations." Since Sunday hunting actually isn't banned in Pennsylvania - remember coyotes foxes and crows can be hunted - he suspects the

threshold would be pretty high for proving that not allowing the hunting of deer, bear, turkeys, etc. is a violation of someone's Constitutional rights.

"I would give it a less than 50-50 chance," he said. "It would help their case if state officials cannot effectively articulate a reason why hunting those animals on Sunday should not be allowed."

State Rep. Bryan Cutler of Peach Bottom who sits on the House Game and Fisheries Committee sees the fact that some Sunday hunting is allowed in Pennsylvania as a real problem for HUSH's case.

"You can hunt on Sundays in Pennsylvania," he said. "It's just not the species they want to hunt."

Cutler said he views HUSH's planned lawsuit as a "waste of resources on both sides of the issue," he said. "We should all be striving for more opportunities and access for hunters, but I have talked to enough farmers who will post their properties against hunting if Sunday hunting is allowed that the net effect will be, I believe, a loss of hunting opportunity in Pennsylvania."

Backing away from the fight, however, is not an option for HUSH at this point.

"Pennsylvania recruits only 68 hunters for every one hundred it loses," the group's website states. "With the number of hunters in Pennsylvania decreasing, it is important to keep hunting traditions alive by allowing more time for young hunters to get out in the field."