

**OHIO'S DANGEROUS WILD ANIMAL ACT OF 2012:  
ENACTMENT, IMPLEMENTATION AND EVALUATION**

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On the drizzly early evening of October 18, 2011, in Zanesville, Ohio, a retired schoolteacher named Sam Kopchak went out to bring his horse Red into the barn. Red was acting skittish, and when Kopchak got to the field, he could see two dozen of his neighbor's horses running in circles. Then Kopchak made out what the horses were running from – a black grizzly bear. As he led Red toward the barn, Kopchak got the creepy feeling of being watched, and turned around to find another creature on the other side of his neighbor's barbed-wire fence: a full grown African lion. He knew enough not to stare at the lion and not to run, and somehow Kopchak got Red put into the barn and got to his own house safely. There he told his 84-year-old mother, Dolores, to call 911.<sup>1</sup>

Kopchak's neighbor was the now infamous Terry Thompson, a Vietnam war veteran and lifelong collector of exotic animals, who had recently emerged from a year in prison on federal gun charges. Heavily in debt and abandoned by his wife, Thompson had used a pair of bolt cutters to cut open the cages of his entire menagerie, setting them free before shooting himself. As the Muskingum County police answered the 911 call, they began to encounter loose wild animals – and with the impending darkness and nearby homes and school, they were under orders to shoot to kill. Deputy Jonathan Merry killed a wolf while walking up the Kopchak driveway. Soon after, the bear that had been chasing the horses charged him, and he shot it too.<sup>2</sup>

Meanwhile Sergeant Steve Blake headed toward the Thompson house, where he found dozens of lions, tigers and bears roaming about. That's when police realized how bad the situation was. They had fielded multiple complaints about Thompson's large menagerie of dangerous wild animals over the years,<sup>3</sup> but had been unable to close it down because Thompson was not breaking any laws. Ohio had no laws regarding private ownership of dangerous wild animals – not even a permit was required. Nor did the federal government have any oversight of the Thompson collection. The U.S. Department of Agriculture requires owners of dangerous

wild animals to obtain a permit and be inspected if they are breeding or exhibiting the animals, but Thompson was doing neither. His menagerie was simply a collection of private pets.

In the end, Muskingum County police were forced to kill 18 Bengal tigers, 17 lions, six black bears, three cougars, two grizzly bears, two wolves, one baboon, and one macaque. The deaths of the Bengal tigers were most tragic because they were members of an endangered species with only 1,400 left in the wild.<sup>4</sup> One monkey was eaten by a tiger, and a wolf was killed after being hit by a car. Three leopards, one grizzly bear, and two monkeys were found caged inside the Thompson home and sent to the Columbus Zoo, but were subsequently returned to Terry Thompson's widow because the zoo had no grounds to keep them.<sup>5</sup>

The "Zanesville Massacre" became international news, dominating headlines for days and putting Ohio in a terrible light.<sup>6</sup> Only six months before, bowing to pressure from animal ownership rights groups, Ohio Gov. John Kasich had allowed an executive order from outgoing Gov. Ted Strickland banning ownership of dangerous wild animals to expire. Although Kasich had appointed a working group to devise new regulations, little had been done. Now Ohio's lawlessness about something as basic as private citizens holding large numbers of dangerous wild animals had been exposed to the world in the worst possible way.

Less than a year after events in Zanesville, Gov. Kasich signed SB 310, the Ohio Dangerous Wild Animal Act. In this paper, I will explore events surrounding this law, including the stages of policy making, the role of agenda setting, and the operation of iron triangles in the state. By working closely with the Humane Society of the United States during passage of this law, I had a front-row seat to policy making on the ground, and through the readings and lectures in Public Affairs 6000, I gained concepts and theories to make sense of these events. Hopefully what follows is an informed and critical analysis of the enactment, implementation, and outcome of the Ohio Dangerous Wild Animal Act.

## **I. Enactment**

In Chapter 3 of his book *American Public Policy: Promise and Performance*, B. Guy Peters discusses the stages model of policy making, which sees public policy as going through five main stages: agenda setting, formulation, legitimation, implementation, and evaluation.<sup>7</sup> Peters' main critique of this model is that it does a better job of describing than explaining, and that it doesn't reflect the degree of conflict at each stage. Peters' critique of the stages model is supported by events surrounding the Ohio Dangerous Wild Animal Act, which was wracked with conflict at every stage of the process. In this section I will examine enactment of the law with special attention to agenda setting, formulation, and legitimation.

### **A. Agenda Setting**

Governments cannot deal with every problem in a society, so officeholders must make choices about what to take up as a subject of policy making. Peters discusses how problems get onto the policy agenda in Chapter 4, outlining five criteria that make a problem more likely to be considered: 1) it affects a lot of people or has intense or visible effects; 2) it parallels or expands on previous issues; 3) it can be linked to a national symbol; 4) it is beyond the private sector and can only be solved by government; 5) there is a policy or technology to solve it.<sup>8</sup> By the time the Ohio Dangerous Wild Animal Act was being considered in 2012, it met all of these criteria.

#### **Visible effects**

Although private ownership of dangerous wild animals never affected a large number of people, it had intense and visible effects over a long period. Well before the Zanesville Massacre in 2011, Ohio had become known as a haven for people who wanted to buy and sell dangerous wild animals with little oversight. The state is home to a longtime exotic animal auction that takes place three times a year at Mt. Hope in Holmes County. Thousands of people from states across the eastern half of the country attend, competing to buy animals of more than 200 species

with no permit or certificate needed.<sup>9</sup> In 2003, after a full-grown tiger was found in a Harlem apartment, *New York Post* reporter Al Guart enlisted the aid of Ohio animal activist Bill Long to buy a lion cub in Ohio. Although they had arranged to send the cub to Shambala Wildlife Preserve, a big cat sanctuary run by actress Tippi Hedren outside of Los Angeles, the cub was too young and sick to travel. Long arranged to place the cub temporarily at Noah's Lost Ark, an unaccredited sanctuary near Akron; however, when it came time to move the cub to California, Noah's director Ellen Whitehouse refused to give him up. A two-year custody battle ensued, with the courts finally ruling that the cub belonged to Long, who then sent him to Shambala.<sup>10</sup>

In another high-profile court case in 2007, a federal judge revoked the USDA license of Lorenza Pearson of L&L Exotic Animal Farm in Summit County, prohibiting him from breeding, selling or exhibiting any of his 82 lions, tigers, bears or other animals.<sup>11</sup> Pearson had a long history of violations.<sup>12</sup> His 2-year-old son was killed by a tiger in 1983, and his 2-year-old grandson was attacked by a tiger in 1997 but survived. In 2002 the USDA cited Pearson for 953 violations of the Animal Welfare Act, including inadequate medical care and nutrition, dirty conditions and inadequate facilities. Pearson battled authorities for five more years, with 27 big cats confiscated in 2004 and seven bears in 2005. Even after his USDA license was revoked in 2007, Pearson was allowed to keep his animals until his appeal was denied in 2011.<sup>13</sup>

### **Previous issues**

The problem of dangerous wild animal ownership in Ohio also paralleled and expanded on previous issues. Specifically, it became part of an entire package of animal welfare reforms agreed to by the Humane Society of the United States and the Ohio Farm Bureau in the wake of the HSUS's humane farms campaign of 2010. This campaign had its roots in the hardfought California Proposition 2 of 2008, which mandated that certain farm animals have enough room to stand up, lie down, turn around, and spread their limbs.<sup>14</sup> The measure, championed by the

HSUS, won by a landslide despite strong opposition from the agriculture lobby, and in 2009 the HSUS sought to negotiate with the Ohio Farm Bureau regarding a similar measure in Ohio. Rather than talking with the HSUS, however, the Farm Bureau asked the Ohio legislature to put a constitutional amendment on the state ballot creating a Livestock Care Standards Board that would oversee farm animal standards in the state. The measure passed by a landslide,<sup>15</sup> forcing the HSUS to gather more than 550,000 signatures to get a humane farms constitutional amendment of its own on the ballot. To the surprise of the Ohio Farm Bureau, the HSUS successfully gathered these signatures in spring 2010, and rather than allowing the measure to go to a vote, the Farm Bureau finally agreed to negotiate. The outcome was the much-heralded “Buckeye Compromise” that included agreement on not just several farm animal reforms, but passage of legislation to regulate high-volume dog breeding operations (or puppy mills), make cockfighting a felony offense, and ban private ownership of dangerous wild animals.<sup>16</sup>

### **International symbol**

Peters’ third criterion for a problem to get on the policy agenda is that it link to a national symbol. While the Ohio Dangerous Wild Animal Act may not have linked to a national symbol, it did link to an international one: the endangered Bengal tiger. Columbus Zoo director emeritus Jack Hanna was especially heartbroken that police in Zanesville had been forced to kill 18 Bengal tigers, calling it “tragedy-wise, probably the worst thing (I’ve seen) in 45 years of history of working with animals.” But police had no choice, Hanna said, or “we would have had carnage.”<sup>17</sup> Police are not trained equipped to use tranquilizers on wild animals, which in any case requires expertise to hit the animal’s body in the right location and wait for the drug to take effect. During the Zanesville tragedy, a veterinarian from the Columbus Zoo arrived on the scene with a tranquilizer gun, which she tried to use on one of the Bengal tigers. But when the tiger reacted by aggressively charging the veterinarian, police shot and killed the tiger.<sup>18</sup>

Events in Zanesville not only made it clear that dealing with tigers in real life is very different from in the movies, but they also brought out another little-known fact: that there are many more tigers in private possession in the United States than are left in all of the wild.<sup>19</sup> The reason is an exemption in USDA regulations that allows people to have direct contact with tiger cubs from age 8 to 12 weeks. This exemption exists for no other big cat, and the result is tigers are continually bred so the cubs can be used in fair and mall petting and photo booths. Once the tigers get to big to handle, they are sold into private hands or to an illegal canned hunt.<sup>20</sup>

### **Breaking the iron triangle**

Peters' fourth criterion for moving a problem into the policy arena is that it is beyond the private sector and can only be solved by government. As demonstrated above, private ownership of dangerous wild animals had been a problem in Ohio well before events in Zanesville put it in the international spotlight. It wasn't just that the problem was beyond the private sector; rather, the problem *was* the private sector. If any problem ever cried out for government regulation, it was this. Yet time and time again, that regulation was not forthcoming.

Why did Ohio take so long to regulate something as common-sense as private ownership of dangerous wild animals? The reason can be found in the concept of the iron triangle, which Peters discusses in Chapter 3.<sup>21</sup> Iron triangles are characterized by a symbiotic relationship among interest groups, legislative committees and subcommittees, and administrative agencies. Interest groups need access to legislators and to administrative agencies that set the rules they live by. Agencies need financial and other support from the legislature, and they use interest groups to get it. Legislators, whether state or federal, want to be re-elected, so they need the donations and endorsements of interest groups.

In Ohio, the major interest group regarding private ownership of dangerous wild animals is the Ohio Association of Animal Owners. OAAO's membership includes every type of animal

use industry: farmers, exotic animal owners, educators and exhibitors, dealers, medical researchers, game ranchers, pet stores, capture/transport specialists, and pet owners. Exotic animal ownership is central to OAAO, which was founded in 1990 to defeat a bill sponsored by Sen. Charles Horn of Dayton that would have banned private ownership of dangerous wild animals. A brochure on OAAO's website describes its "accomplishments" in defeating dozens of animal protection bills in Ohio, including legislation that would have regulated high-volume dog-breeders, increased penalties for animal cruelty, and increased penalties for dogfighting and cockfighting, as well as at least 10 state and local bills that would have banned private ownership of exotic animals. "OAAO does not believe in bargaining away the rights of one group of animal owners in order to safeguard the rights of another," the brochure states. "OAAO members stick together and do their best to encourage other animal interest groups to do the same."<sup>22</sup>

How was the OAAO so successful for so many years in defeating animal welfare legislation in Ohio? First, it encompassed a range of animal use interests, leveraging the power of all sectors to defeat legislation that threatened any one sector. OAAO worked with the Ohio Farm Bureau, for example, to gain favorable regulations on inspections of exotic meats, and the Ohio Farm Bureau has its logo on display at the Mt. Hope exotic animal auction, where auctions are also held for livestock, horses, and produce, as well as a swap meet for farm animals and pets.<sup>23</sup> Second, OAAO worked with sympathetic legislators, many of whom sat on committees where bills regulating use of animals in the state were heard. An example of such a legislator is Rep. Dave Hall (R-Millersburg), chairman of the House Agriculture and Natural Resources Committee. Hall represents District 70, which covers Ashland, Holmes, and Medina counties. This area is home to the Mt. Hope auction as well as the state's largest concentration of high-volume dog breeders and a number of private zoos such as Rolling Ridge Animal Park.



In his legislative capacity, Hall works directly with administrators in two state agencies: the Ohio Department of Natural Resources, and Ohio Department of Agriculture. These agencies were required by the HSUS-Ohio Farm Bureau agreement of June 2010 to “coordinate and take action on wild and dangerous animals including the prohibition of the sale and/or possession of big cats, bears, primates, large constricting and venomous snakes and alligators and crocodiles.” Failure to implement restrictions regarding dangerous wild animals would have allowed the HSUS to bring its humane farms initiative back to the ballot, as the 550,000 signatures it had gathered would remain on file indefinitely.<sup>24</sup> In this way, the humane farms agreement split the alliance that the Ohio Association of Animal Owners had forged with the Ohio Farm Bureau, with the latter group committing to legislation the former had vehemently opposed. In other words, the humane farms agreement acted as a wedge to break open the iron triangle that had until then prevented legislation.

Yet even after the humane farms agreement was signed, there was no action from either the Ohio Department of Natural Resources or Ohio Department of Agriculture. Instead, another death occurred in August 2010 when 24-year-old Brent Kandra was mauled by a bear which he took care of at a private zoo owned by the infamous Sam Mazzola. Known for allowing paying customers to wrestle his bears at bars across northeast Ohio, Mazzola also had a long history of violations of the Animal Welfare Act, leading the USDA to finally revoke his permit to display exotic animals in 2009.<sup>25</sup> Although Mazzola was a convicted felon, he was allowed to keep his animals with no standards for their housing or care. Within a year, Mazzola himself was dead, found bound and asphyxiated in his home after an apparent sex act gone wrong.<sup>26</sup>

Finally, on January 6, 2011, his last day in office, outgoing Gov. Ted Strickland issued an executive order banning the possession, sale, or transfer of dangerous wild animals including big cats, bears, wolves, non-human primates, large and constricting snakes, and crocodilians.

Current owners would be grandfathered in, and institutions accredited by the Association of Zoos and Aquariums or Global Federation of Animal Sanctuaries would be exempt, as would circuses, school mascots, veterinary hospitals, research facilities, and wildlife rehabilitation centers.<sup>27</sup>

Strickland's order put the Ohio Department of Natural Resources in charge of regulation and enforcement, which became yet another source of delay. As Gov. John Kasich took office in 2011, ODNR legal counsel Bill Damschroder said the agency did not have the legal authority to do what the order required. While ODNR enforces laws regarding native species such as black bears, Damschroder argued that without further legislation, it could not oversee non-native species such as lions, tigers, chimpanzees or anacondas. For this reason, Kasich declined to renew Strickland's executive order, which expired in March, 90 days after being issued.<sup>28</sup> Instead Kasich set up a working group of stakeholders from 10 organizations to hash out legislative recommendations.<sup>29</sup> The group began meeting in June 2011, but had not gotten far when the Zanesville Massacre occurred in October. During the meeting of October 31, 2011, Kasich called in with no uncertain orders: by November 30 they were to produce recommendations to ban private ownership of dangerous wild animals, require fees and permits for existing owners to keep their animals, and stop the sale of such animals at auction.<sup>30</sup>

### **Policy**

On November 24, 2011, the working group released a report with recommendations for legislation regarding dangerous wild animals in Ohio. Its recommendations largely followed Gov. Strickland's executive order that had banned private ownership of dangerous wild animals with exemptions for accredited zoos and sanctuaries, circuses, schools, research facilities, and licensed rehabilitators. However, there were some differences. First, the task force recommended that legislation cover a few additional species such as giraffes and elephants. Second, it recommended the state establish standards for housing and care of these species that

current owners would be required to meet if they wanted to obtain a permit to keep their animals. Finally, and perhaps most significant, it transferred implementation and enforcement of these standards from the Ohio Department of Natural Resources to the Ohio Department of Agriculture.<sup>31</sup> This put Ohio's regulations regarding dangerous wild animals in line with its regulations regarding farm animals, as the Ohio Department of Agriculture had just spent a year working with the Ohio Farm Bureau and Ohio Livestock Care Standards Board to devise standards of housing and care for farm animals based on the humane farms agreement of 2010.

On March 8, 2012, Sen. Troy Balderson (R-Zanesville) introduced Senate Bill 310 to establish requirements governing the possession of dangerous wild animals and restricted snakes. SB310 largely followed the recommendations of the working group, with some new additions. The legislation established three classifications of exotic animals:<sup>32</sup>

- Dangerous wild animals, which included hyenas, wolves, lions, tigers, jaguars, leopards, cheetahs, lynxes, cougars, caracals, servals, bears, elephants, rhinoceroses, hippopotamuses, cape buffaloes, African wild dogs, Komodo dragons, alligators, crocodiles, caimans, gharials, and any non-human primates besides those in the restricted primates category.
- Restricted primates, which included golden lion, black-faced lion, golden-rumped lion, cotton-top, emperor, saddle-backed, black-mantled, and Geoffroy's tamarins; pygmy, white-tufted-ear, silvery, and black-pencilled marmosets; squirrel monkeys; southern and northern night monkeys; dusky titi and masked titi monkeys; muriquis; Goeldi's monkeys; brown, white-faced, weeping, and white-fronted capuchins; white-faced, black-bearded, white-nose bearded, and monk sakis; bald and black uakaris; black-handed, white-bellied, brown-headed, and black spider monkeys; common woolly monkeys; and red, black, and mantled howler monkeys.

- Restricted snakes, which included certain constricting snakes such as green and yellow anacondas, reticulated pythons, Burmese and Indian pythons, North African and South Africa rock pythons, Amethystine pythons, and boa constrictors; and all species of venomous snakes from the atractaspididae, elapidae, viperidae, boomslang, and twig families.

The director of the Ohio Department of Agriculture would be tasked with establishing standards for the housing and care of each species listed under dangerous wild animals, and owners would have to comply with these standards in order to obtain a permit from the state. Owners of restricted primates would have to meet certain caging standards specified in the bill itself as well as comply with the federal Animal Welfare Act in order to obtain a permit. Owners of restricted snakes would have to comply with standards of housing and care specified by the Zoological Association of America. Current owners would have until January 1, 2014, to comply with these standards and obtain a permit; otherwise their animals could be confiscated. Private citizens could no longer breed, sell, or acquire new dangerous wild animals or non-human primates; however, they could continue to breed, buy, and sell restricted snakes.<sup>33</sup>

## **B. Formulation and Legitimation**

In the stages model of policy making, agenda setting is followed by formulation, legitimation, implementation, and evaluation. In reality, however, these stages have a great deal of overlap. By the time the Sen. Balderson introduced the Ohio Dangerous Wild Animal Act in March 2012, it had already gone through a great deal of formulation and legitimation. Its first formulation came with Gov. Strickland's executive order of 2011, and it was formulated again by the working group appointed by Gov. Kasich. Its legitimation was rooted in the humane farms agreement of 2010, which had the support of the Ohio Farm Bureau and Humane Society of the United States, while the working group brought in the expertise and support of the American Zoological

Association, Zoological Association of America, Ohio Veterinary Medical Association, Ohio Prosecuting Attorneys Association, and U.S. Department of Agriculture.

The only group opposed to the legislation was the Ohio Association of Animal Owners, whose president, Polly Britton, argued that the Ohio Farm Bureau never had the authority to include private ownership of wild animals in the humane farms agreement in the first place.<sup>34</sup> OAAO remained adamantly opposed to regulations on private ownership of dangerous wild animals throughout the process. Dozens of its members testified against SB 310 in legislative hearings in both the House and Senate, it tried to weaken standards during the implementation process, and it filed a lawsuit in federal court to overturn the law as unconstitutional.

After SB 310 was introduced, formulation of the bill continued through testimony during hearings before the Senate Agriculture, Environment, and Natural Resources Committee chaired by Sen. Cliff Hite (R-Findlay), and the House Agriculture and Natural Resources Committee chaired by Rep. Dave Hall (R-Millersburg). These hearings were attended by hundreds of people from both in and out of state. Of those, 135 people testified, 77 in front of the Senate, 18 in front of the House, and 40 in front of both. Many of these witnesses represented stakeholder organizations such as zoos and wildlife facilities, while others, mostly private owners, represented themselves. By far most witnesses, 89, were opposed to the legislation, while 38 supported it, and four testified as interested parties.<sup>35</sup>

Opponents brought up five main arguments against the legislation:

- Private ownership of wild animals and snakes was not a safety issue as injuries and deaths from exotic animals were less than from other animal such as dogs, and affected only direct caretakers, not the general public (52% of opponent testimony).
- “Extreme animal rights activists” were behind the legislation (48%).
- Private ownership is good for educational programing and conservation efforts (42%).

- The proposed law infringes on the rights of exotic pet owners (40%).
- The proposed law would hurt businesses and/or the economy in the state (35%).

Proponents, including representatives from four of Ohio's five AZA-accredited zoos, stressed three main arguments in favor of the legislation:

- The proposed law was needed because of public safety concerns, citing the examples of Zanesville, Pearson, and Mazzola among others (74% of proponent testimony).
- The proposed law was needed because of animal welfare concerns (53%).
- The proposed law was needed because of public health concerns (33%).<sup>36</sup>

Although opponents showed up to legislative hearings in large numbers, throughout the proceedings they expressed the feeling that legislators had already made up their mind and were determined to pass the bill. However, opponents did succeed in getting some parts of the bill relaxed. For example, regarding dangerous wild animals, serval cat hybrids called Savannah cats became exempt, and a "rescue facility" permit was added, allowing a non-accredited facility to possess unwanted, abandoned or orphaned animals so long as it provided lifetime care and did not sell or barter them. Regarding restricted primates, all caging requirements were removed, leaving only the requirement that owners comply with the federal Animal Welfare Act in order to obtain a permit.<sup>37</sup> Regarding restricted snakes, several provisions were relaxed, including an exemption for all constricting snakes less than 12 feet long, and allowing primary and secondary students to come into direct physical contact with restricted snakes exhibited at a school.<sup>38</sup>

One important attempt to weaken the bill did not succeed. During hearings in the House Agriculture and Natural Resources Committee, Cyndi Huntsman, owner a private zoo in Massillon called Stump Hill Farm,<sup>39</sup> worked with legislators in an attempt to insert a blanket exemption for any facility that had a USDA license. Such an exemption does have precedent, as most other state laws that regulate ownership of dangerous wild animals do exempt USDA-

licensed facilities. This exemption did not take place in Ohio, however, because Gov. Kasich told members of the House committee he would not sign the bill if they inserted it.<sup>40</sup> As apparent from the previous history of exotic animal ownership in Ohio, the USDA is agonizingly slow in issuing citations for violations of the Animal Welfare Act, and even slower in revoking permits for repeated violations. Even after racking up 953 violations of the Animal Welfare Act in 2002, Lorenza Pearson had been allowed to keep his USDA license for five more years. Had a blanket exemption for USDA licensed facilities been granted in Ohio's law, the state could have done nothing about such a facility until after the federal government decided to act.

SB 310 made its way through the Ohio legislature very quickly compared to most other bills. Despite the broad interest and large number of witnesses, hearings in the Senate Agriculture, Environment, and Natural Resources Committee lasted for only three weeks, with the full Senate passing the bill 30-1 on April 25, 2012. Hearings in the House Agriculture and Natural Resources Committee lasted barely two weeks, with the full House passing the bill 89-9 on May 22, 2012, and reconciling amendments with the Senate on the same day.<sup>41</sup> Gov. Kasich signed the legislation on June 6, 2012, in a ceremony headlined by Columbus Zoo Director Emeritus Jack Hanna and attended by key state legislators and administrators.<sup>42</sup>

## **II. Implementation**

Once a bill is signed into law, it must be implemented. This is the fourth stage of policy making as outlined by B. Guy Peters in Chapter 3 *American Public Policy: Promise and Performance*.<sup>43</sup> For the Ohio Dangerous Wild Animal Act, implementation took place under the auspices of the Ohio Department of Agriculture, which was tasked with creating standards for housing and care of wide variety of dangerous wild animals. ODA also had to establish a system of permits for current owners of dangerous wild animals, restricted primates, and restricted snakes, as well as enforce the requirement to obtain permits for owners across the state. Because

ownership of these animals had never been tracked in Ohio, no one was sure how many there were in the state. Meanwhile, the Ohio Association of Animal Owners led a court challenge by seven exotic animal owners to overturn the law on the grounds that it violated their First, Fourth, Fifth and 14th Amendment rights.

### **A. Standards and Permits**

The Ohio Dangerous Wild Animal Act did not specify any standards for housing and care of dangerous wild animals; rather, it delegated the creation of these standards to the director of the Ohio Department of Agriculture. In turn, ODA Director David Daniels appointed an ad-hoc committee of more than 20 professionals from the Zoological Association of America, U.S. Department of Agriculture, Global Federation of Animal Sanctuaries, and regulators from other states.<sup>44</sup> The committee met for months to hammer out separate standards for the care and well-being of big cats, bears, hyenas, wolves, rhinoceroses, elephants, hippopotamuses, cape buffaloes, African wild dogs, Komodo dragons, alligators, crocodiles, caimans, gharials, and nonhuman primates not included in the restricted primate category.<sup>45</sup> These standards governed sanitation, health care, feeding, caging, housing, and fencing for each species, taking into account best management practices, public safety, biosecurity, prevention of disease, animal morbidity and mortality, generally accepted veterinary practices, and standards of the Association of Zoos and Aquariums, Zoological Association of America, Animal Welfare Act, and American Veterinary Medical Association.<sup>46</sup>

Peters notes that the stages model of policy making does not account for conflict that occurs at every stage in the policy making process, and that criticism certainly applies to the Ohio Dangerous Wild Animal Act. Even during the implementation stage after the law was passed, there was no shortage of conflict. For example, when the Ohio Department of Agriculture submitted its completed standards on housing and care of dangerous wild animals for approval



by the Joint Committee on Agency Rule Review, the Ohio Association of Animal Owners along with eight private owners showed up to testify in opposition. Ohio law mandates that any new regulations be approved by JCARR, a joint committee consisting of Republican and Democratic legislators from both the Senate and House. Normally, JCARR hearings are a routine procedure in which regulations are approved with little comment. But at the JCARR meeting on January 14, 2013, the opposition succeeded in raising so many questions about the regulations for dangerous wild animal housing and care that the committee sent the standards back to ODA to be revised and resubmitted.<sup>47</sup> One particular dispute was over the standard for housing of hyenas. As submitted this standard followed guidelines from the Association for Zoos and Aquariums, which mandates enclosures for large canids be 5,000 square feet for two animals.<sup>48</sup> Private owners attacked this as impossible to meet and demanded the requirement be reduced to the standard of the Zoological Association of America, which mandates only 200 square feet.<sup>49</sup>

ODA revised the hyena housing standard accordingly as well as several other standards, and resubmitted the package to the Joint Committee on Agency Rule Review on February 4, 2013. Yet again the OAAO and a series of private owners testified in opposition. Because the Dangerous Wild Animal Act gave ODA only 90 days to put standards of housing and care in place, JCARR stopped short of asking ODA to revise and resubmit the standards a third time. Instead, ODA agreed to give owners more time to build their cages.<sup>50</sup>

## **B. Court Challenges**

While opposition to the Dangerous Wild Animal Act in the JCARR hearings may have been strong, it was dwarfed by opposition to the law in the courts. On November 12, 2012, the OAAO led seven private owners in filing a lawsuit in U.S. District Court against the state of Ohio on the grounds that the law was an unconstitutional violation of their First, Fourth, Fifth and 14th Amendment rights. The allegations of violations were as follows:<sup>51</sup>

- First Amendment, freedom of association. The plaintiffs argued the law forced them to join the American Zoological Association or Zoological Association of America in order to stay in business.
- Fourth Amendment, freedom from unreasonable searches and seizures. The plaintiffs objected to the ability of ODA to inspect their private property without a warrant.
- Fifth Amendment, rules for eminent domain and right to due process. The plaintiffs claimed the law allowed ODA to deprive them of their property – meaning their animals – without due process.
- Fourteenth Amendment, due process and equal protection clauses. The plaintiffs argued they were not receiving equal protection under the law since AZA and ZAA facilities were exempt.

On December 20, 2012, U.S. District Judge George C. Smith issued a 46-page ruling in favor of the state. The Ohio Dangerous Wild Animal Act is constitutional, he said, because the state had “a legitimate government purpose behind the enactment of this act — to protect animal welfare and public safety from threats posed by certain dangerous wild animals.” Animal owners “failed to prove that defendants have violated their due process rights,” the judge ruled.<sup>52</sup>

Profoundly disappointed in the court loss, the owners decided to appeal the case to the 6th U.S. Circuit Court of Appeals in Cincinnati. There they again argued that the law violated their First Amendment rights by forcing them to join the AZA or ZAA, and their Fifth Amendment property rights by allowing the state to take their animals without due process. In particular, the plaintiffs objected to the requirement that dangerous wild animals be microchipped because this entailed putting the animals under anesthesia. Cyndi Huntsman, owner of Stump Hill Farm in Massillon with 34 dangerous wild animals, testified that a dozen of her animals were too old and fragile to be sedated, so that the microchip requirement amounted

to a death sentence. However again, the three-judge panel found that the plaintiffs' arguments lacked any constitutional merit. First, the Dangerous Wild Animal Law did not require owners to join AZA or ZAA, but only to meet state standards for housing and care from which AZA- and ZAA-accredited facilities were exempt because they had already met their own standards. Second, the law did not deprive owners of their animals without due process, as they were given 90 days to meet housing and care requirements. The microchip requirement, the court found, was similar to a requirement to put license plates on cars or handrails in apartment buildings.<sup>53</sup>

### **III. Evaluation**

The last stage of the policy making process as outlined by B. Guy Peters is evaluation. For the Ohio Dangerous Wild Animal Act, evaluation is ongoing; however, the law has been on the books long enough now to produce some results. At the time the law went into full effect on January 1, 2014, 150 private owners and zoos had registered 888 animals, including 338 primates, 86 tigers, 80 bears, 79 alligators, 54 lions, 35 cheetahs, 25 rhinos, 15 elephants, six crocodiles and three hippos, according to the Ohio Department of Agriculture. However, registration was only the first step before owners were required to apply for a permit to keep dangerous wild animals or restricted snakes. At that time ODA had only five complete applications and 25 incomplete applications for permits.<sup>54</sup>

Although no one really knows how many people have possession of dangerous wild animals or restricted snakes in Ohio, these numbers were woefully short of all estimates. Tim Harrison, director of the exotic animal rescue organization Outreach for Animals, estimated that 1,000 to 1,500 lions, tigers, leopards and cougars and about 1,000 bears were in private hands in Ohio. Ninety percent of private owners did not register, he said.<sup>55</sup> Director Daniels of ODA said the agency knew a lot of people had "chosen not to register with us and are skirting the law." If scofflaws were located, he said, their animals would be taken, but the department would also be

flexible with owners making an honest effort to comply with the law.<sup>56</sup> By late May 2014, the number of permits issued by ODA had increased to 53 with an additional 21 applications.<sup>57</sup>

One reason fewer owners than anticipated may have registered is that several chose to relocate their dangerous wild animals to facilities out of state. With the help of Bobbi Brink, director of Lions, Tigers & Bears Sanctuary near San Diego, Rescue One, an exotic animal facility outside of Columbus, sent 11 tigers, six lions, five cougars and a black bear to accredited sanctuaries in North Carolina, Mississippi, Nevada, Texas and Brink's facility in California. Brink worked with Global Federation of Animal Sanctuaries to raise \$60,000 to cover costs and personally drove more than 8,000 miles to take the animals to their new homes. Denise Flores, owner of Tiger Paw Exotic Rescue Center in Ashland, sent her eight tigers to accredited big cat sanctuaries in Minnesota and Oregon. Six bears from Paws & Claws Animal Sanctuary in Prospect went to an accredited facility in Arizona.<sup>58</sup> In one heart-rending story, a 45-year-old chimpanzee named Clyde who had spent most of his life locked in a cage in a Dayton garage went to Center for Great Apes, an accredited sanctuary in Florida. When he first arrived he could barely walk, but now Clyde has largely regained his health and even has a girlfriend.<sup>59</sup> Yet while these owners worked to relocate their animals to accredited facilities, it is unknown how many may have quietly transported animals to unaccredited facilities out of state.

Finally, the Ohio Department of Agriculture has started to deal with scofflaws who continue to keep dangerous wild animals and restricted snakes in the state without registering them or obtaining the required permit. In March 2013 ODA opened a \$2.9 million 20,000-square-foot holding facility for animals it planned to seize. By January 2014, the facility had been temporary home to 28 dangerous wild animals, including 24 alligators, three bears, and a cougar, all of whom were surrendered voluntarily and subsequently transferred out of state.<sup>60</sup> Although ODA had not denied a permit or seized any animals by June 2014, rumors ran rampant

among exotic animal owners that the agency would take animals by force and kill them. This, along with the expense of upgrading caging and facilities, kept many from applying for permits.

Nine months after the Ohio Dangerous Wild Animal Law went into full effect, the Ohio Department of Agriculture began to crack down on scofflaws who had not obtained the required permits. In October 2014, ODA sent a letter to Kenny Hetrick, owner of Tiger Ridge Exotics near Toledo, giving him 10 days to voluntarily surrender his six tigers, two lions, leopard, bear, liger and bobcat, or have the animals seized and face prosecution. Although Hetrick had registered his animals, he had not applied for permits, and he had ignored multiple notices from ODA as well as refused entry to an ODA inspector.<sup>61</sup> As word of the ultimatum from ODA spread, however, \$6,000 in donations poured into Tiger Ridge from across the country, and Hetrick filed the permit application and set out to upgrade his facility. By November 23, the 10-day ultimatum period had expired, and while ODA said nothing about their order had changed, as of early December the agency still had not taken any action against Hetrick.<sup>62</sup>

Has the Ohio Dangerous Wild Animal Law been a success? My answer is a qualified yes. On the positive side, several dozen lions, tigers, bears, and alligators have been relocated from substandard conditions in Ohio to accredited sanctuaries across the country. Certainly life for these animals is a huge improvement. In addition, the rampant breeding and sale of exotic animals in Ohio has stopped, and the state is no longer a magnet for unscrupulous owners like Terry Thompson, Lorenza Pearson and Sam Mazzola, who each kept dozens of exotic animals in horrible conditions and racked up hundreds of violations of the Animal Welfare Act. Chances of another Zanesville Massacre are slim to none, and chances of another caretaker being killed or mauled are greatly reduced. But even with this good news, the state still faces a large problem of unregistered and unpermitted animals, and will have to decide soon whether to use force against these owners, or continue trying to work with them to come into compliance.

## ENDNOTES

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<http://www.gq.com/news-politics/newsmakers/201203/terry-thompson-ohio-zoo-massacre-chris-heath-gq-february-2012>

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<sup>8</sup> <sup>8</sup> Peters, B. Guy, *American Public Policy: Promise and Performance*, Sage Books, pp. 75-81.

<sup>9</sup> See Mid-Ohio Alternative Animal and Bird Sale, <http://www.mthopeauction.com/sale/mid-ohio-alternative-animal-and-bird-sale/2014/03/28>. This sale continues even after passage of the Ohio Dangerous Wild Animal Act, without the species covered by the law. See footage at

<http://video.humanesociety.org/press/video.php?bctid=1236027784001&channel=973092901001>

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<sup>13</sup> Humane Society of the United States, "Ohio's Fatal Attractions: An overview of captive wildlife issues in Ohio," April 4, 2011, updated March 20, 2012.

<sup>14</sup> "California Proposition 2, Standards for Confining Farm Animals (2008)," Ballotpedia.

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- <sup>35</sup> Becker, Paul J., "The Debate over the Ohio Dangerous Wild Animal Act," paper presented at the annual meeting of the North Central Sociological Association, Cincinnati, OH, 2014.
- <sup>36</sup> Analysis from Becker, Paul J., "The Debate over the Ohio Dangerous Wild Animal Act," paper presented at the annual meeting of the North Central Sociological Association, Cincinnati, OH, 2014.
- <sup>37</sup> Some monkey species were exempt from the permitting requirement altogether, thanks to a last-minute House floor amendment by Rep. Tracy Maxwell Heard (D-Columbus), whose family had owned these species when she was a child. Certain marmosets, capuchins, squirrel monkeys, or lemurs need only be registered with the state, but obtaining a permit is not required.
- <sup>38</sup> These exemptions came about largely due to lobbying by another special interest group, U.S. Association of Reptile Keepers, which had not been involved until after the law was introduced. USARK had gotten its start by defeating legislation that would have banned private ownership of exotic animals in North Carolina, and hoped to do the same in Ohio. Although they obtained some changes, they did not stop the legislation from passing.
- <sup>39</sup> Stump Hill Farm stayed in business by breeding and selling exotic animals all over the country, including tiger cubs each year for more than 40 years to the Massillon High School Football Team Booster Club for use as a mascot. No one has provided any accounting of where all those cubs have ended up. Some were returned to Stump Hill, and four are at an unaccredited facility called Tiger Ridge Exotics near Toledo, which in summer of 2014 the Ohio Department of Agriculture threatened to shut down. Stump Hill declaws all its big cat cubs before sale, which is expressly against the standards of both the U.S. Department of Agriculture and the American Veterinary Medical Association. ODA has not so far taken any action against Stump Hill Farm, even though the farm has not obtained the required state license or implemented required standards for housing or care of its animals.

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- <sup>46</sup> Ohio Legislative Services Commission, Final Analysis, Sub S.B. 310, 129th General Assembly, Regular Session, 2011-2012, pp. 28-29. <http://www.lsc.state.oh.us/analyses129/12-sb310-129.pdf>
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- <sup>49</sup> Zoological Association of America, Animal Care and Enclosure Standards, 2014, p. 19. [http://www.zaa.org/images/pages/misc/ZAA\\_Accreditation\\_Standards\\_2014.pdf](http://www.zaa.org/images/pages/misc/ZAA_Accreditation_Standards_2014.pdf)
- <sup>50</sup> Meeting Minutes, Joint Committee on Agency Rule Review, February 4, 2013. <http://www.jcarr.state.oh.us/assets/gen/minutes-february-4-2013-203>
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