

Dear MoFed Members & Associates,

The HSUS (Humane Society of the United States) has filed with the Secretary of State a ballot measure titled "Puppy Mill Cruelty Prevention Act" against dog breeders to be presented on the November 2010 ballot for a vote of the people of the state of Missouri. It applies to breeders with 10 or more intact female dogs, limits the number of breeding female dogs to 50 per kennel, limits breeding to no more than twice in any eighteen-month period, requires daily exercise, veterinary care for any injury or illness, and requires controlled temperatures not to exceed 85 degrees or fall below 45 degrees. Facility and pen size requirements far exceed that which legal, licensed breeders currently must have to be in compliance with state and federal laws, and many of the requirements are virtually cost prohibitive when allowing only 50 breeding dogs maximum for generating income.

MoFed filed a lawsuit Tuesday, January 5, 2010, against the Secretary of State and State Auditor on behalf of all breeders in the state of Missouri. We have hired the Stinson Law Firm of St. Louis to represent us before the Circuit Court of Cole County (Jefferson City). Since MoFed could not be directly named in the suit and since it had to be an individual who is a registered voter and resident of the state of Missouri, MoFed President Karen Strange is named as the Plaintiff in the challenge to the ballot measure. The firm we have hired has been highly recommended as specialists in fighting ballot measures, and we're very encouraged with their expertise and reputation as specialists in handling such challenges. The purpose of our lawsuit is to hopefully prevent it from being placed on the ballot in November to be voted on by the people of Missouri.

MoFed has formed a PAC (Political Action Committee) to fight the proposed ballot measure and to pay expenses for the legal challenge. Please help us to keep this ballot initiative from becoming a reality! Donations may be made to: MOFED PAC, P.O. Box 14, El Dorado Springs, MO. 64744. Thank you!

Below is a summary of the counts the law firm has filed against the ballot measure. Under the listed counts are some of the direct points used in the lawsuit. The actual ballot measure language for which animal rights activists will be gathering signatures follows the legal challenge explanations.

SUMMARY OF LAWSUIT FILED BY MOFED AGAINST SECRETARY OF STATE AND STATE AUDITOR

Count I – This count alleges the summary statements prepared by Secretary Carnahan are insufficient and unfair and lists the reasons why it is so. The basis for this claim is that the summary statement does not fairly and without prejudice summarize the purpose of the measure.

The use of the term “puppy mill” or “puppy mill cruelty” is inherently prejudicial and misleading. “Puppy mill” is a derogatory term for dog breeders and is likely to incite prejudice in favor of the measure. While these terms appear in the Initiative Petitions, creative drafting on the part of the proponents does not alleviate Defendant Carnahan of her duty to write a fair and impartial summary statement.

10 intact dogs are considered "large scale" in one section, but 50 dogs is "large scale" in another, creating a difference in the definition of "large scale" breeder.

The use of the term “puppies” in the second bullet point is inherently prejudicial. The portion of the Initiative Petitions summarized in the second bullet point uses the term “offspring.” The use of “puppies” will prejudice voters in favor of the Initiative Petitions. It is a term that invokes sympathy and its use is unnecessary.

Count II – This count alleges the fiscal notes prepared by Auditor Montee are insufficient and unfair for the reasons listed.

Count III – This count alleges the fiscal note summaries prepared by Auditor Montee are insufficient and unfair.

Both counts II and III allege that Auditor Montee failed to consider the costs related to passage of the ballot measure in relation to lost revenues from breeders as well as additional costs involved in enacting the measure should it pass.

Count IV – This count alleges that the form of the initiative petitions are contrary to statute in that the petitions do not disclose all the sections that will be repealed or amended by the proposals.

Requiring exercise periods for small breeds in winter and large breeds in summer will require breeders to be in direct violation of Chapter 578.005 animal neglect and cruelty.

Count V – This is a technical administrative law claim. It essentially alleges that Auditor Montee didn't follow the correct procedure in preparing the fiscal notes.

Count VI – This is a civil rights (freedom of speech and equal protection) claim. This count alleges that your freedom of speech and equal protection rights were violated by Secretary Carnahan and Auditor Montee by not providing any public notice of their receipt of the initiatives (thus triggering certain deadlines (that we subsequently missed)) and by failing to include our cost submission but including costs submissions by proponents of the measure.

Below is the ballot measure presented by HSUS. The HSUS, ASPCA, Missouri Alliance for Animal Legislation and the Humane Society of Missouri have formed a PAC (Political Action Committee) to promote passage of the "Puppy Mill Cruelty Prevention Act" and to organize and to gather signatures in order for the measure to be placed on the ballot for the November 2010 election. Keep in mind this will NOT go through the legislative process but will instead go directly to a vote of the people should our lawsuit not be successful and should they gather the necessary signatures in a timely manner.

Missouri Ballot Issue "Puppy Mill Cruelty Prevention Act" for November 2, 2010

Be it enacted by the people of the State of Missouri:

Section A. One new section is enacted, to be known as section 273.345, to read as follows:

273.345 1. This section shall be known and may be cited as the "Puppy Mill Cruelty Prevention Act".

2. The purpose of this act is to prohibit the cruel and inhumane treatment of dogs in puppy mills by requiring large-scale dog breeding operations to provide each dog under their care with basic food and water, adequate shelter from the elements, necessary veterinary care, adequate space to turn around and stretch his or her limbs, and regular exercise.

3. Notwithstanding any other provision of law, any person having custody or ownership of more than ten female covered dogs for the purpose of breeding those animals and selling any offspring for use as a pet shall provide each covered dog:

(1) Sufficient food and clean water.

(2) Necessary veterinary care.

(3) Sufficient housing, including protection from the elements.

(4) Sufficient space to turn and stretch freely, lie down, and fully extend his or her limbs.

(5) Regular exercise, and

(6) Adequate rest between breeding cycles

4. Notwithstanding any other provision of law, no person may have custody of more than fifty covered dogs for the purpose of breeding those animals and selling any offspring for use as a pet.

(5) For purposes of this section, and notwithstanding the provisions of section 273.325, the following terms have the following meanings:

(1) “Covered dog” means any individual of the species of the domestic dog, *Canis lupus familiaris*, or resultant hybrids that is over the age of six months and has intact sexual organs.

(2) “Sufficient food and clean water” means access to appropriate nutritious food at least once a day sufficient to maintain good health, and continuous access to potable water that is not frozen, and is free of debris, feces, algae, and other contaminants.

(3) “Necessary veterinary care” means, at minimum, examination at least once yearly by a licensed veterinarian; prompt treatment of any illness or injury by a licensed veterinarian; and, where needed, humane euthanasia by a licensed veterinarian using lawful techniques deemed “Acceptable” by the American Veterinary Medical Association.

(4) “Sufficient housing, including protection from the elements” means constant and unfettered access to an indoor enclosure that has a solid floor; is not stacked or otherwise placed on top of or below another animal’s enclosure; is cleaned of waste at least once a day while the dog is outside the enclosure; and does not fall below 45 degrees Fahrenheit, or rise above 85 degrees Fahrenheit.

(5) Sufficient space to turn and stretch freely, lie down, and fully extend his or her limbs” means having (1) sufficient indoor space for each dog to turn in a complete circle without any impediment (including a tether); (2) enough indoor space for each dog to lie down and fully extend his or her limbs and stretch freely without touching the side of an enclosure or another dog; (3) at least one foot of headroom above the head of the tallest dog in the enclosure; and (4) at least 12 square feet of indoor floor space per each dog up to 25 inches long; at least 20 square feet of indoor floor space per each dog between 25 and 35 inches long; and at least 30 square feet of indoor floor space per each dog for dogs 35 inches and longer (with the length of the dog measured from the tip of the nose to the base of the tail).

(6) “Regular exercise” means constant and unfettered access to an outdoor exercise area that is composed of a solid ground level surface with adequate drainage, provides some protection against sun, wind, rain, and snow, and provides each dog at least twice the square footage of the indoor floor space provided to that dog.

(7) “Adequate rest between breeding cycles” means at minimum, ensuring that dogs are not bred to produce more than two litters in any 18 month period.

(8) “Person” means any individual, firm, partnership, joint venture, association, limited liability company, corporation, estate, trust, receiver, or syndicate.

(9) “Pet” means any domesticated animal normally maintained in or near the household of the owner thereof.

(10) “Retail pet store” means a person or retail establishment open to the public where dogs are bought, sold, exchanged, or offered for retail sale directly to the public to be kept as pets, but that does not engage in any breeding of dogs for the purpose of selling any offspring for use as a pet.

6. A person is guilty of the crime of puppy mill cruelty when he or she knowingly violates any provision of this section. The crime of puppy mill cruelty is a class C misdemeanor, unless the defendant has previously pled guilty to or been found guilty of a violation of this section, in which case each such violation is a class A misdemeanor. Each violation of this section shall constitute a separate offense. If any violation of this section meets the definition of animal abuse in section 578.012, the defendant may be charged and penalized under that section instead.

7. The provisions of this section are in addition to, and not in lieu of, any other state and federal laws protecting animal welfare. This section shall not be construed to limit any state law or regulation protecting the welfare of animals, nor shall anything in this section prevent a local governing body from adopting and enforcing its own animal welfare laws and regulations in

addition to this section. This section shall not be construed to place any numerical limits on the number of dogs a person may own or control when such dogs are not used for breeding those animals and selling any offspring for use as a pet. This section shall not apply to a dog during examination, testing, recuperation, or other individual treatment for veterinary purposes during lawful scientific research; during transportations, during cleaning of a dog's enclosure, during supervised outdoor exercise, or during any emergency that places a dog's life in imminent danger. This section shall not apply to any retail pet store; animal shelter as defined on section 273.325; hobby or show breeders who have custody of no more than ten covered dogs for the purpose of breeding those dogs and selling any offspring for use as a pet; or dog trainer who does not breed and sell any dogs for use as a pet. Nothing in this section shall be construed to limit hunting or the ability to breed, raise, or sell hunting dogs.

8. If any of this section, or the application thereof to any person or circumstances, is held invalid or unconstitutional, that invalidity or unconstitutionality shall not affect other provisions or applications of this section that can be given effect without the invalid or unconstitutional provisions or application, and to this end the provisions of this section are severable.

9. The provision herewith shall become operative one year after the passage of this act.