

Local Legislation to Prevent Cruelty to Animals: Three and a Half Case Studies in Preemption

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Supporting Ban on Cosmetic Testing on Animals

West Hollywood Resolution No. 558 (1989)



Supporting Ban on the Use of the Steel Leghold Trap

West Hollywood Resolution No. 558 (1989)



Regulating Maintenance of Feral Cat Colonies

West Hollywood Municipal Code § 9.48.070
(1997)



Supporting Ban on the Use of Body Gripping Traps

West Hollywood Resolution No. 98-1880
(1998)



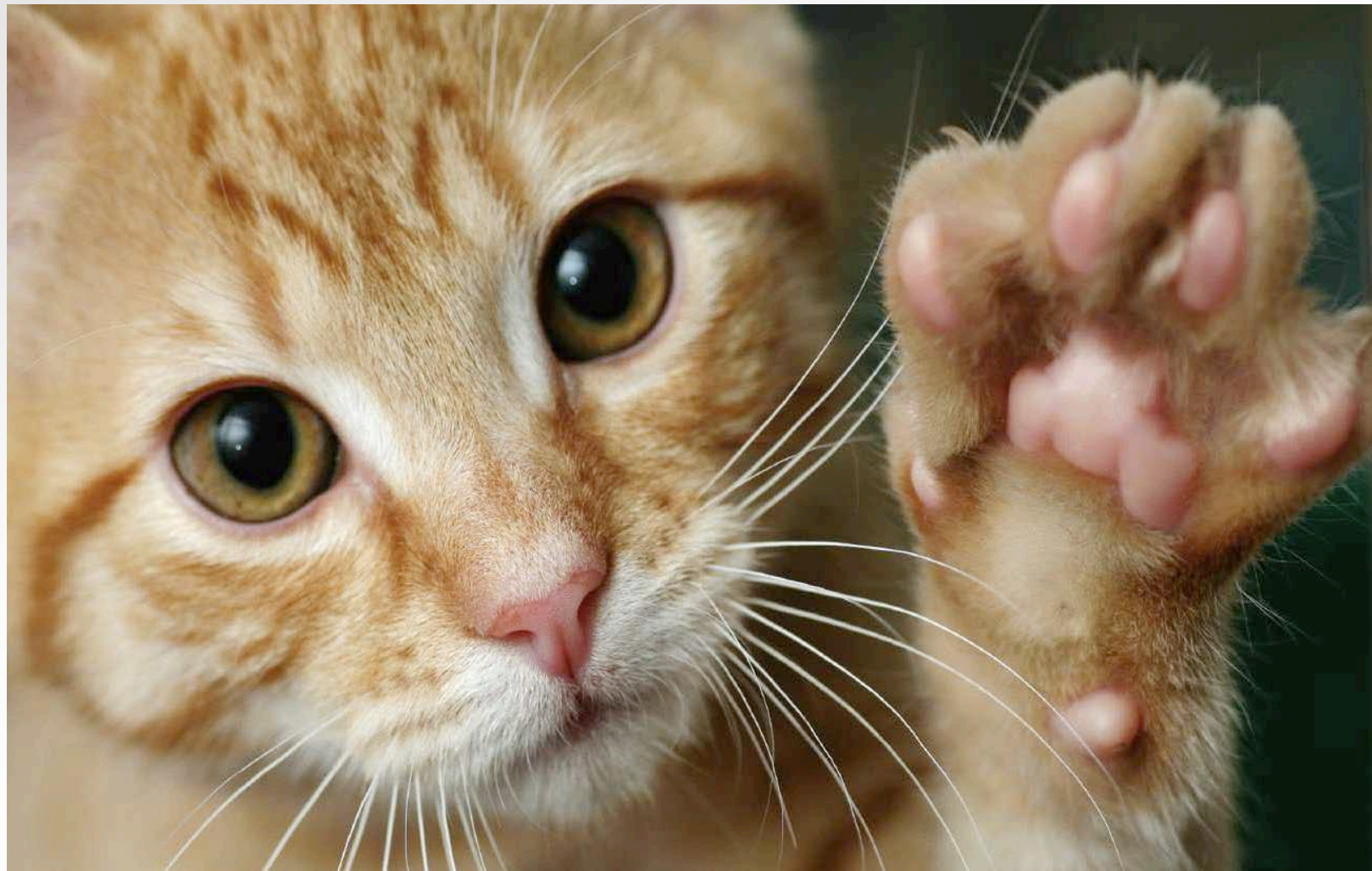
Replacing Code References from “Pet Owner” to “Pet Guardian”

West Hollywood Ordinance No. 02-636
(2002)



Banning Nontherapeutic Animal Declawing

West Hollywood Municipal Code ch. 9.49
(2002)



Regulating Animal Grooming

West Hollywood Municipal Code § 5.18.030
(2004)



Opposing Confinement of Egg-Laying Hens in Battery Cages

West Hollywood Resolution No. 07-3488
(2007)



Restricting Retail Sale of Dogs and Cats from Pet Stores

West Hollywood Municipal Code § 9.50.010
(2010)



Banning Retail Sale of Fur Clothing

West Hollywood Municipal Code ch. 9.51
(2011)



Banning Commercial Display or Performance of Exotic Animals

West Hollywood Municipal Code ch. 9.52
(2013)



Prohibiting Animals from Being Left Unattended in Parked Vehicles

Considered in West Hollywood (2015)



Foie Gras

Association des Eleveurs de Canards et
D'Oies du Quebec v. Harris (C.D. Cal. Jan. 7,
2015) Case No. 2:12-cv-5735-SVW-RZ, 2015
WL 191375



Declawing

California Veterinary Medical Ass'n v. City of
West Hollywood (2007) 152 Cal.App.4th 536



Fur

Mayfair House, Inc. v. City of West Hollywood
(L.A. Sup. Ct. July 2, 2015) Case No.
SC122649



Animals in Parked Vehicles

Considered in West Hollywood (2015)



Lessons Learned

Lesson #1

The Number of Potentially Preemptive Statutes is Large

Federal Law

Federal Law

State Law

Federal Law

State Law

Local Law

An inverted triangle diagram with a light gray background. The triangle is divided into three horizontal sections by two thin black lines. The top section is the largest, the middle section is smaller, and the bottom section is the smallest. Each section contains a label for a level of law.

Federal Law

State Law

Local Law

Foie Gras

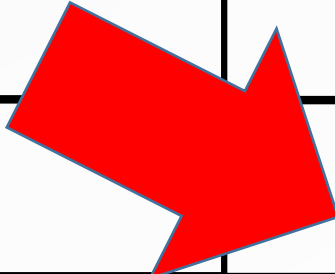
Policy Focus

	food safety	animal cruelty
Federal	X	
State		X

Foie Gras

Policy Focus

	food safety	animal cruelty
Federal	X	
State		X



Fur

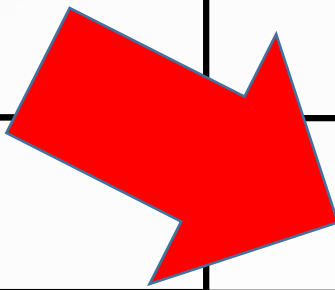
Policy Focus

	wildlife conservation	animal cruelty
State	X	
Local		X

Fur

Policy Focus

	wildlife conservation	animal cruelty
State	X	
Local		X



Lesson #2

Preemption Claims Can Be More Dangerous Than Constitutional Claims

Foie Gras

Motion for Preliminary Injunction

- ☐ Commerce Clause
- ☐ Due Process

Foie Gras

Motion for Preliminary Injunction

 Commerce Clause

 Due Process

Foie Gras

Motion for Preliminary Injunction

☒ Commerce Clause

☒ Due Process

Motion for summary judgment

☐ Preemption

Foie Gras

Motion for Preliminary Injunction

☒ Commerce Clause

☒ Due Process

Motion for summary judgment

☒ Preemption

Fur

Motion to Dismiss (Federal Court)

- ☐ Equal Protection
- ☐ Due Process
- ☐ Preemption

Fur

Motion to Dismiss (Federal Court)

☒ Equal Protection

☒ Due Process

☐ Preemption

Fur

Motion to Dismiss (Federal Court)

☒ Equal Protection

☒ Due Process

☐ Preemption

Demurrer (State Court)

☐ Preemption

Fur

Motion to Dismiss (Federal Court)

- ☒ Equal Protection
- ☒ Due Process
- ☐ Preemption

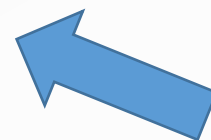
Demurrer (State Court)

- ☒ Preemption

Lesson #3

Preemption Law Is Baroque

Vehicle Code



Penal Code

humane taking of fur
bearing animals



certain animal
products may be
sold



sale, possession,
and propagation
of wild animals



trade in fur



maintenance of
animals



Does the Local Ordinance Do Any of the Following?

- Duplicate State Law?
- Contradict State Law?
- Enter Into an Area Expressly Occupied by State Law?
- Enter Into an Area Impliedly Occupied by State Law?

- Enter Into an Area Impliedly Occupied by State Law?
 - Is the Subject Matter Fully and Completely Covered by State Law as to Clearly Indicate that It Has Become Exclusively a Matter of State Concern?

- Enter Into an Area Impliedly Occupied by State Law?
 - Has the Subject Matter Been Partially Covered by General Law Couched in Such Terms as to Indicate Clearly that a Paramount State Concern Will Not Tolerate Further or Additional Local Action?

- Enter Into an Area Impliedly Occupied by State Law?
 - Has the Subject Matter Been Partially Covered by State Law, and the Subject Is of Such a Nature that the Adverse Effect of a Local Ordinance on the Transient Citizens of the State Outweighs the Possible Benefit to the Locality?

humane taking of fur
bearing animals



sale, possession,
and propagation
of wild animals



certain animal
products may be
sold ✓



maintenance of
animals

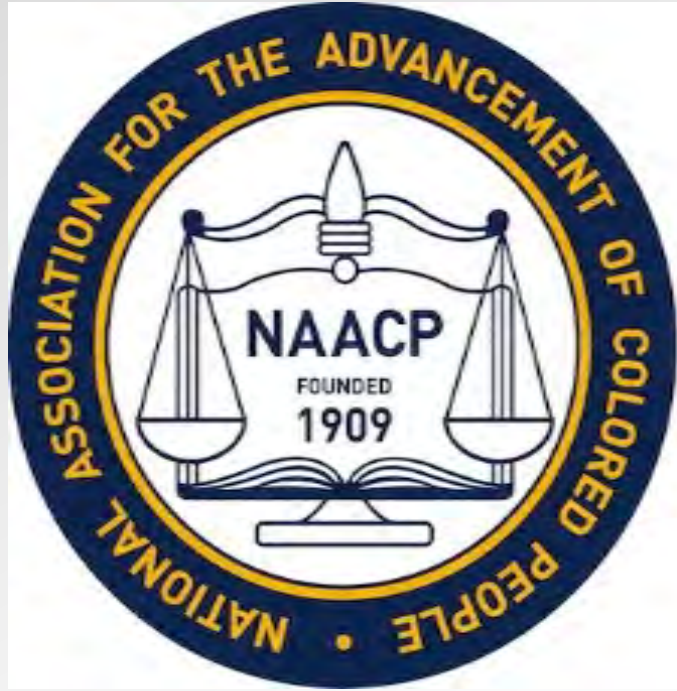


trade in fur



Lesson #4

Non-Profits Are Natural Allies



WWW.NAACP.ORG

NAACP



ACLU

AMERICAN CIVIL LIBERTIES UNION

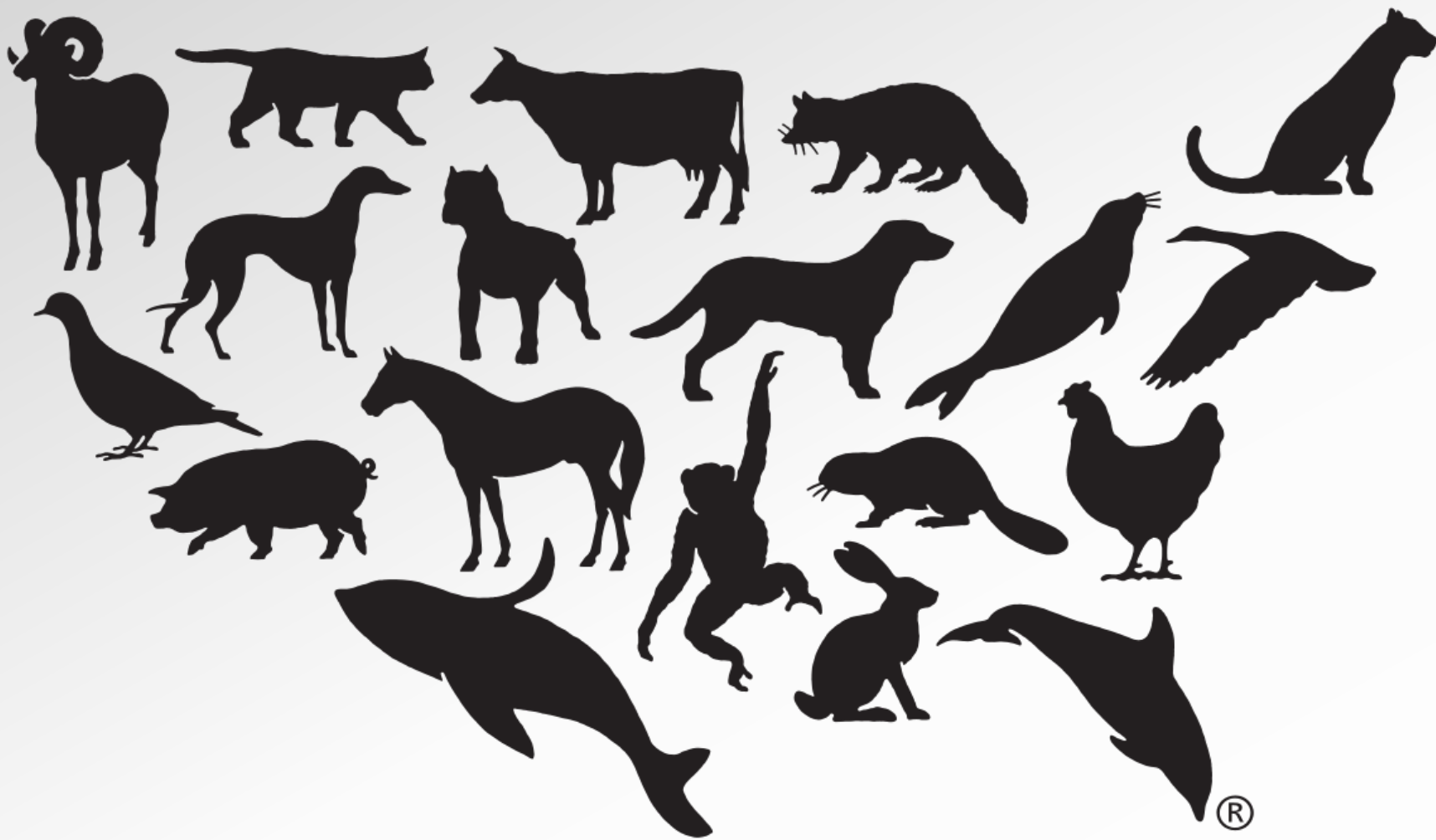


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Animal Legal
Defense Fund



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OF THE UNITED STATES

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gv

WOMEN
AGAINST
GUN
VIOLENCE



League of Women Voters[®]
of California

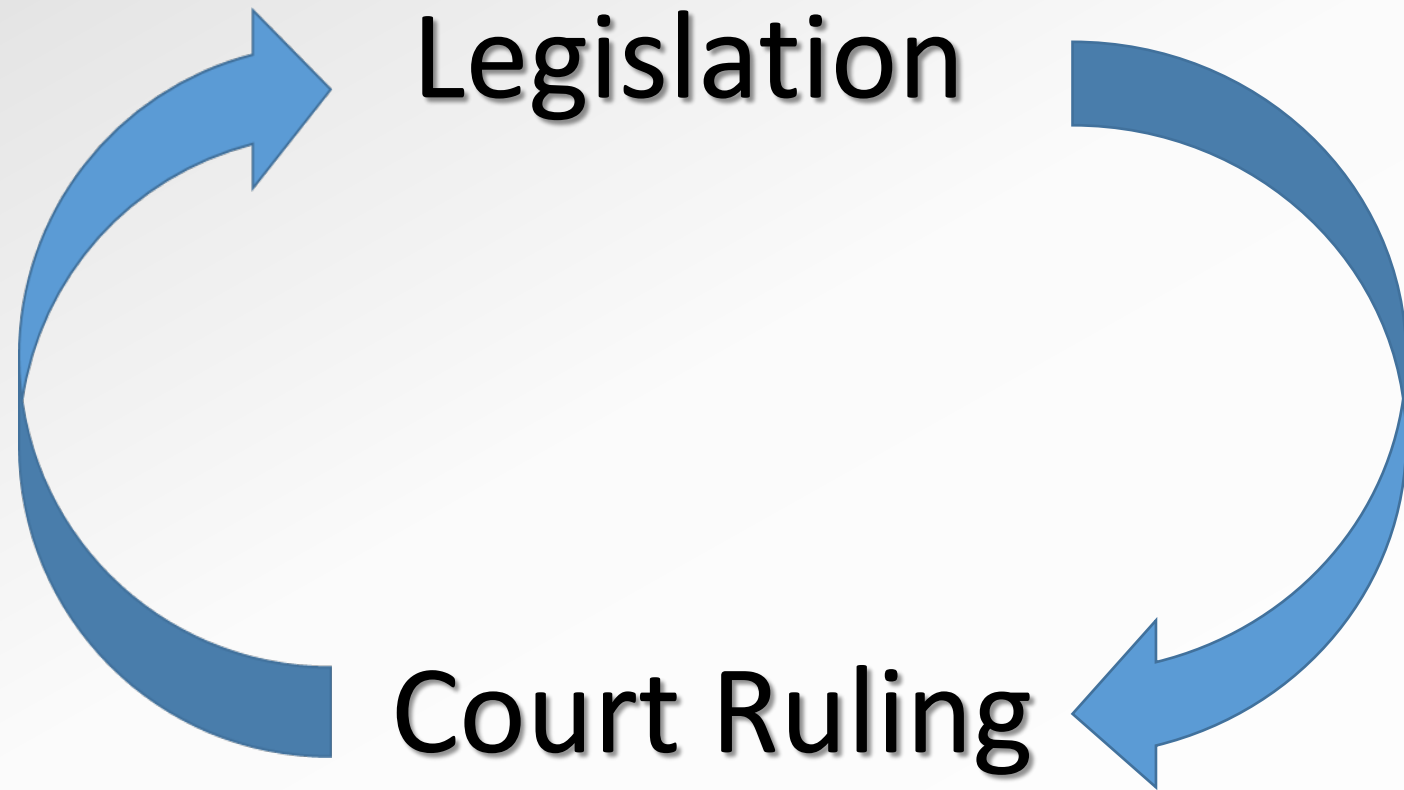
Lesson #5

The Relationship Between Legislative Process and Court Rulings Is Organic

Legislation



Court Ruling





“He was a whistleblower but I was the only one who could hear it.”