A Field of Failed Dreams: Problems Passing Effective Ecoterrorism Legislation

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A FIELD OF FAILED DREAMS: PROBLEMS PASSING EFFECTIVE ECOTERRORISM LEGISLATION

I. Introduction

On January 20, 2006, the United States Department of Justice brought a 65-count indictment against eleven activists for ecoterrorism.1 The activists, whose alleged attacks occurred in five states, are accused of: (1) conspiracy to commit arson; (2) arson; (3) use and possession of a destructive device; and (4) destruction of an energy facility.2 The ecoterrorists’ attacks targeted the Bureau of Land Management’s wild horse facilities, the United States Forest Service’s ranger stations, lumber companies, a ski company, meat processing plants and a high-tension power line.3 To attack these sites, the suspects used “homemade incendiary devices made from milk jugs, petroleum products, and timers to start the fires.”4 Two environmental extremist groups, the Animal Liberation Front (ALF) and the Earth Liberation Front (ELF), both known for sponsoring and encouraging ecoterrorism, claimed responsibility for the attacks.5

The recent indictments for ecoterrorism highlight the growing extremist environmental movement.6 Harvey Beck, a board member of Fur Commission USA, described different types of ecoterrorist attacks, including: (1) razor blades mailed in letters containing threats to the recipients; (2) vandalism, break-in and theft at mink farms; (3) acts of arson against individuals’ homes; and (4) a letter bomb in the United Kingdom which injured the six-

2. See id. (discussing charges as culmination of 4.5 years of ecoterrorism by suspects and groups they represent).
4. See id. (discussing methods of ecoterrorism attacks).
5. See id. (noting that these acts of ecoterrorism are also referred to as domestic terrorism). CNN sources reported that these suspects are part of a larger group of ALF and ELF members, most likely a group of twenty people, who are allegedly responsible for approximately 1200 incidents between 1994 and 2004. See id.
year-old daughter of a pesticide company owner. Beck argued that “[s]ince every living organism has an impact on the Earth, we are all potential targets of ecoterrorism.”8 Everyone is a potential target because extremist environmental groups, such as ALF, ELF and the so-called “Justice Department,” want to free Earth of human interference — interference that any civilian could cause.9 These interferences could potentially include buying products that pollute the environment or harming animals and their habitats.10

One example of ecoterrorism affecting civilians is the outbreak of attacks against Hummer H2s and car dealerships selling these vehicles.11 ELF claimed responsibility for four arson attacks against car dealerships in California.12 The attacks damaged over 100 cars, mostly Hummer H2s, costing approximately 2.5 million dollars in damages.13 These acts harmed not only the car dealerships and their employees in California, but also affected the economic security of all General Motors and AM General employees.14

United States Representative Chris Chocola (R) represented the Second District of Indiana, which includes Mishawaka, the home of AM General.15 Representative Chocola proposed the Stop Terrorism Property Act of 2003 (STOP) which would make an act of ecoterrorism a federal crime.16 STOP would impose fines and prison time for “whoever, in or affecting interstate or foreign commerce, intentionally damages the property of another with the intent to influence the public with regard to conduct the offender

7. See id. (noting injury to humans, animals and property caused by ecoterrorism).
8. See id. (discussing potential impact of ecoterrorism on all people).
9. See id. (describing goals of environmental extremists).
10. See id. (noting types of human activities that damage Earth).
12. See id. (noting ELF’s responsibility for arson attacks).
13. See id. (describing Representative Chocola’s motivation to pass legislation targeting ecoterrorism).
14. See id. (noting repercussions of arson attacks on car dealerships and Hummer H2s for civilians).
15. See id. (stating connection between Representative Chocola and arson attacks on car dealerships in California).
considers harmful to the environment." Representative Chocola's bill was referred to the Subcommittee on Crime, Terrorism, and Homeland Security on October 23, 2003, and it has never reemerged.

Representative Chocola's bill met the same fate as several other attempts to pass federal ecoterrorism legislation. This Comment discusses why most ecoterrorism legislation has not been passed. Part II defines ecoterrorism and describes two major ecoterrorist groups. Part III discusses successful and failed attempts at passing federal ecoterrorism legislation. Part IV compares the different ecoterrorism bills and details the reasons why some attempts for federal ecoterrorism legislation have not been successful. In Part V, the Comment discusses prosecutions of ecoterrorists under the Animal Enterprise Protection Act of 1992 (AEPA). Part VI explores whether the AEPA is the best legislation for ecoterrorism prosecution.


20. For a discussion of unsuccessful congressional attempts to pass federal ecoterrorism legislation, see infra notes 59-77 and accompanying text.

21. For a discussion of the ecoterrorism definition, see infra notes 26-43 and accompanying text.

22. For a discussion of successful and failed attempts at ecoterrorism legislation, see infra 44-77 and accompanying text.

23. For a further discussion comparing attempts at ecoterrorism legislation and examining their potential problems, see infra notes 78-135 and accompanying text.

24. For a discussion of AEPA prosecutions, see infra notes 136-48 and accompanying text.

25. For a discussion of the most effective ecoterrorism legislation, see infra notes 149-74 and accompanying text.
II. What is Ecoterrorism?

Ecoterrorism is defined as “any crime committed in the name of saving nature.”\(^{26}\) The levels of the crime vary from acts of civil disobedience, such as people holding sit-ins and tying themselves to trees and equipment, to more serious crimes, such as arson, burglary and death threats.\(^{27}\) Ecoterrorism uses fear as the primary motivator to change public policy and/or people’s behavior.\(^{28}\) Ecoterrorism began in the 1980s after the publication of Edward Abbey’s book, *The Monkey Wrench Gang*; this book traced the lives of four ecoterrorists who demonstrated their anger at Western development by blowing up a railroad bridge and burning billboards.\(^{29}\)

There are two prominent groups of ecoterrorists: ALF and ELF.\(^{30}\) ALF’s credo states “[t]he Animal Liberation Front (ALF) carries out direct action against animal abuse in the form of rescuing animals and causing financial loss to animal exploiters, usually through the damage and destruction of property.”\(^{31}\) ALF is careful to note, however, that it is a nonviolent organization, and members try to avoid harming any animals, including humans.\(^{32}\) ALF also recognizes that “[b]ecause ALF actions may be against the law, activists work anonymously, either in small groups or individually, and do not have any centralized organization or coordination.”\(^{33}\)


\(^{27}\) See id. (discussing various types of ecoterrorism).

\(^{28}\) See id. (describing purpose of ecoterrorist activities).

\(^{29}\) See id. (arguing that eco-sabotage crimes became more prevalent with publication of Abbey’s book).

\(^{30}\) See FCUSA Testimony, supra note 6 (naming two prevalent ecoterrorism groups).


\(^{32}\) See id. (stating ALF credo).

\(^{33}\) See id. (noting that ALF members carry out direct action in accordance with ALF guidelines). ALF guidelines state:

1. TO liberate animals from places of abuse, i.e. laboratories, factory farms, fur farms, etc [sic], and place them in good homes where they may live out their natural lives, free from suffering.
2. TO inflict economic damage to those who profit from the misery and exploitation of animals.
3. TO reveal the horror and atrocities committed against animals behind locked doors, by performing non-violent direct actions and liberations.
4. TO take all necessary precautions against harming any animal, human and non-human.
5. TO analyze the ramifications of all proposed actions, and never apply generalizations when specific information is available.
Although ALF claims there is no central organization, its website’s contents appear to contradict this statement.\textsuperscript{34} The ALF website contains a plethora of information about how to plan an animal rights event, including tips on fundraising without informing people that they are funding illegal acts.\textsuperscript{35} ALF takes credit for a list of numerous “events” which occurred in the United States; these “events” are acts of ecoterrorism.\textsuperscript{36} One ALF-sponsored event occurred in 1989 at the University of Arizona.\textsuperscript{37} The attack was the “largest liberation of animals in the United States.”\textsuperscript{38} In this liberation, ALF members caused 500 thousand dollars in damages when they freed 1160 mice, 42 rats, 16 rabbits, 9 guinea-pigs and 4 frogs, set fires in two offices and painted ALF slogans in the offices.\textsuperscript{39} The liberation at University of California at Davis in 1987 caused the greatest financial damage.\textsuperscript{40} ALF members burned down the animal diagnostics laboratory that was under construction and damaged twenty university vehicles, resulting in 5.1 million dollars in damages.\textsuperscript{41}

ELF, in contrast, states it is “an underground movement with no leadership, membership or official spokesperson . . . [a]ny individuals who committed arson or any other illegal acts under the ELF name are individuals who choose to do so under the banner of ELF and do so only driven by their personal conscience.”\textsuperscript{42} Although ELF acknowledges recent ELF news coverage, such as recently arrested persons claiming to be ELF members, it does not


\textsuperscript{38} See id. (discussing largest act of ecoterrorism allegedly performed by ALF members).

\textsuperscript{39} See id. (describing damages involved in liberation event at University of Arizona at Tucson on Apr. 2, 1989 at Veterans Administration Hospital).

\textsuperscript{40} See id. (discussing massive damages to University of California at Davis).

\textsuperscript{41} See id. (describing damages caused by ALF members in liberation of laboratory animals).

have a tally sheet of its accomplishments or most impressive "events," as ALF does.\(^{43}\)

### III. FEDERAL LEGISLATIVE EFFORTS

#### A. Animal Enterprise Protection Act of 1992: One Successful Statute

The AEPA section 43 addresses animal enterprise terrorism.\(^{44}\) The AEPA increases penalties on a person who "intentionally causes physical disruption to the functioning of an animal enterprise by intentionally stealing, damaging, or causing the loss of, any property (including animals or records) used by the animal enterprise, and thereby causes economic damage exceeding $25,000 to that enterprise, or conspires to do so."\(^{45}\) The AEPA defines "animal enterprise" as "(A) a commercial or academic enterprise that uses animals for food or fiber production, agriculture, research, or testing; (B) a zoo, aquarium, circus, rodeo, or lawful competitive animal event; or (C) any fair or similar event intended to advance agricultural arts and sciences."\(^{46}\) The AEPA's punishments do not apply to lawful disturbances arising from information learned about an animal enterprise.\(^{47}\)

Congress amended the AEPA's penalty section from the original provision passed in 1992.\(^{48}\) Under the original law, a person violating this statute "shall be fined under this title or imprisoned not more than one year, or both . . . whoever . . . causes serious bodily injury to an individual shall be fined under this title or imprisoned not more than 10 years, or both."\(^{49}\) The legislature has since revised the statute to include more specific penalties.\(^{50}\) The penalties are differentiated into four classifications: (1) economic damage; (2) major economic damage; (3) serious bodily injury; and (4) death.\(^{51}\) A person causing economic damages not in excess of 10 thousand dollars to the animal enterprise faces a fine or impris-

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43. See id. (showing ELF website not listing major accomplishments of ELF).
45. See id. § 43(a) (describing offenses for which increased penalties will apply).
46. See id. § 43(d)(1) (defining animal enterprise).
47. See id. § 43(d)(2) (defining scope of physical disruption).
48. See generally id. § 43 (exhibiting final version of AEPA).
50. See id. § 43(b) (describing penalties more specifically).
51. See id. (dividing penalties into classifications based on damages).
onment of not more than six months, or both.\textsuperscript{52} For damages exceeding 10 thousand dollars, a person shall be fined or imprisoned no more than three years, or both.\textsuperscript{53} The penalty increases to fines, twenty years imprisonment or both when serious bodily injury is caused to another person.\textsuperscript{54} If a person engaging in animal enterprise terrorism causes the death of another person, the penalty increases to fines and imprisonment for life or any other term of years.\textsuperscript{55}

The AEPA additionally calls for restitution to the injured party.\textsuperscript{56} Restitution can include the reasonable cost of redoing experiments disturbed or interrupted by animal enterprise terrorism.\textsuperscript{57} The injured party also may receive restitution for loss of food or farm income related to the offense, as well as any other type of economic damage incurred due to the animal enterprise terrorism.\textsuperscript{58}

B. Failed Legislative Attempts: Stop Terrorism of Property Act of 2003 and the Ecoterrorism Prevention Act of 2004

\textit{1. Stop Terrorism of Property Act of 2003}

STOP’s primary purpose was to “create the Federal crime of eco-terrorism.”\textsuperscript{59} Representative Chris Chocola introduced STOP in the United States House of Representatives on October 16, 2003.\textsuperscript{60} STOP defined ecoterrorism as “[w]henever, in or affecting interstate or foreign commerce, intentionally damages the property of another with the intent to influence the public with regard to conduct the offender considers harmful to the environment.”\textsuperscript{61} Similar to the AEPA, STOP outlined penalties for certain results of

\textsuperscript{52} See id. § 43(b)(1) (describing penalties for economic damages).

\textsuperscript{53} See id. § 43(b)(2) (discussing penalties for major economic damages).

\textsuperscript{54} See 18 U.S.C. § 43(b)(3) (noting penalties for causing serious bodily injury to another during animal enterprise terrorism).

\textsuperscript{55} See id. § 43(b)(4) (discussing penalties for killing someone during act of animal enterprise terrorism).

\textsuperscript{56} See id. § 43(c)(4) (noting potential right of injured party to receive restitution).

\textsuperscript{57} See id. § 43(c)(1) (describing restitution given for botched experimentation caused by animal terrorism offense).

\textsuperscript{58} See id. § 43(c)(2)-(3) (discussing further damages available as restitution).


\textsuperscript{61} See H.R. 3307 (intending to make ecoterrorism criminal under U.S. law).
ecoterrorism. The House referred STOP to the Subcommittee on Crime, Terrorism and Homeland Security on October 22, 2005. This was the last official action taken on STOP, and it never became law.

2. Ecoterrorism Prevention Act of 2004 (Prevention Act)

The Ecoterrorism Prevention Act of 2004 intended to amend the AEPA to include terrorist acts aimed at plant enterprises. To do this, the Prevention Act employed several different techniques. First, the Prevention Act would insert “animal or plant” everywhere “animal” appears in the AEPA, changing the title to the Animal or Plant Enterprise Act, as well as making other technical language changes designed to include plants. Second, the Prevention Act would define “animal or plant enterprise” as:

(A) a commercial or academic enterprise that uses animals or plants for food or fiber production, agriculture, breeding, processing, research, or testing, or any commercial retail, wholesale or distribution enterprise that uses, purchases, or offers for sale a product that constitutes animal or plant material;
(B) a zoo, aquarium, circus, rodeo or other entity that exhibits or uses animals or plants for educational or entertainment purposes;
(C) any fair or similar event intended to advance agricultural arts and sciences; or
(D) a facility managed or occupied by an association, federation, foundation, council, or other group or entity of food or fiber producers, processors, or agricultural or biomedical arts and sciences, or the offices or facilities of

62. See id. (listing penalties for ecoterrorism acts). If death results from an ecoterrorism act, punishment under H.R. 3907 is any term of years or life imprisonment and fines. See id. An offender causing serious bodily injury would receive a punishment of no more than ten years imprisonment and fines, and an offender in any other situation would receive no more than five years imprisonment or fines, or both. See id.
64. See id. (showing that STOP never passed Congress to become law).
66. See id. (discussing how to amend AEPA).
67. See id. (describing amendments to AEPA to include plant protection).
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any other enterprise or event described in subparagraph (A), (B), or (C).68

Third, the Prevention Act would add penalties for using explosives or arson to destroy property belonging to an animal or plant enterprise.69 Fourth, the Prevention Act would create the National Ecoterrorism Incident Clearinghouse (NEIC), under direction of the FBI director, to gather information about ecoterrorist activities against animal or plant enterprises.70 The NEIC would address crimes "committed against or directed at any commercial activity because of the perceived impact or effect of such commercial activity on the environment."71 Finally, the Prevention Act would provide for educational grants to increase security at colleges and universities.72

Representative George Nethercutt (R-WA) sponsored the Prevention Act and introduced it in Congress on May 20, 2004.73 On that date, Congress referred the Prevention Act to three committees: (1) the House Committee on Science; (2) the House Committee on the Judiciary and (3) the House Committee on Ways and Means.74 On June 1, 2004, the House Committee on Science referred it to the Subcommittee on Research.75 The last action on the Prevention Act was taken on June 28, 2004, when the House Committee on the Judiciary referred it to the Subcommittee on Crime, Terrorism, and Homeland Security.76 The Prevention Act never became law.77

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68. See id. (defining animal or plant enterprise for purposes of Prevention Act).
69. See id. (creating penalties for destruction of animal or plant enterprises by arson or explosives).
70. See H.R. 4454 (establishing NEIC to deal with ecoterrorism crimes).
71. See id. (discussing crimes NEIC will investigate).
72. See id. (establishing framework for educational grants under Prevention Act).
74. See id. (documenting congressional actions on Prevention Act).
75. See id. (showing House Committee on Science’s actions regarding Prevention Act).
76. See id. (noting action by House Committee on Judiciary was last congressional action regarding Prevention Act).
IV. Why Not Pass STOP and the Prevention Act?

A. Differences Between the AEPA, STOP and the Prevention Act

The AEPA only punishes attacks against animal enterprises, not plant enterprises, except for attacks on “any fair or similar event intended to advance agricultural arts and sciences.”\(^78\) This provision does not include commercial companies that handle plant enterprises, such as chemical testing on plants.\(^79\) The AEPA does not cover companies, such as AM General, that produce merchandise that causes harm to the environment via gas emissions.\(^80\) Similarly, the AEPA does not apply to actions taken against logging companies because these actions are not a “fair or similar event intended to advance agricultural arts and sciences.”\(^81\) The AEPA punishes the actual attack, and it does not require a reason or purpose behind the attack for the attack to be illegal.\(^82\)

In contrast, STOP focuses on punishing offenders who intend their attacks to “influence the public” about a practice they find “harmful to the environment.”\(^83\) STOP differs from the AEPA in two major respects.\(^84\) First, STOP protects both animal and plant enterprises, including logging companies, through its broader definition of an ecoterrorist act.\(^85\) Second, STOP protects companies that manufacture products that are potentially dangerous to the environment.\(^86\) Considering sponsor Representative Chocola’s intent in proposing STOP, this protection comes as no surprise.\(^87\) Representative Chocola’s district is home to AM General’s Hummer manufacturing plants which employ many of his constituents.\(^88\) STOP was created to punish an offender who acts against AM General and

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79. See id. (discussing qualifications for animal enterprise).
80. See id. (determining what would not qualify as animal enterprise under AEPA).
81. See id. (finding logging companies do not fall under animal enterprise definition).
82. See id. (failing to require specific reasons for causing damage for AEPA to be applicable).
84. See id. (noting distinct aspects of STOP).
85. See id. (discussing crimes enumerated under STOP).
86. See id. (defining ecoterrorism).
88. See id. (describing Representative Chocola’s constituency).
other similar companies. As will be discussed below, however, the broad definition of ecoterrorism used in order to encompass AM General raises potential First Amendment issues because the definition relies on the offender’s intent.

The Prevention Act literally takes a page from the AEPA as it amends the AEPA to include plant enterprises. The Prevention Act avoids the potential constitutional pitfall of STOP by amending an already passed piece of legislation. The Prevention Act, unlike STOP, does not punish crimes against companies, such as Hummer manufacturer AM General, that create products that negatively impact the environment, but it should be noted that the Prevention Act never explicitly states its intent to protect such companies.

B. STOP’s First Amendment Issues

As mentioned above, STOP has potential First Amendment problems because it punishes an offender who intentionally harms another’s property “with the intent to influence the public with regard to conduct the offender considers harmful to the environment . . . .” The phrase “intent to influence the public” demonstrates that an element of expression is involved in an ecoterrorism act. Under STOP, a person could not be punished for burning down a car dealership because he or she thinks cars are inferior to bicycles; however, a person who believes people should ride bicycles instead of driving cars because cars are bad for the environment could be punished under STOP if he or she burned down the car dealership to express that belief and to persuade the public that he or she is correct. STOP requires that the offender sought to influence the public regarding a company or industry’s environmental impact.

89. See id. (discussing STOP’s purpose and intent).
90. For a discussion of STOP and the First Amendment, see infra notes 94-124 and accompanying text.
92. For a discussion of constitutional issues and STOP, see infra notes 94-124 and accompanying text.
93. See H.R. 4454 (defining criminal acts against animal and plant enterprises).
95. See id. (noting intent required for STOP violation).
96. See id. (applying STOP’s definition of ecoterrorism).
97. See id. (discussing STOP’s intent requirement).
STOP, if passed, might have encountered a First Amendment challenge based on the United States Supreme Court’s decision in Wisconsin v. Mitchell (Mitchell). In Mitchell, the Court found no First Amendment violation when enhancing the sentence for an offender who chose his victim based on the victim’s race. The defendant, a young black man, encouraged his friends to assault a young white boy. The group attacked the boy, who was consequently knocked unconscious and was in a coma for four days. Mitchell was convicted of aggravated battery, which has a maximum sentence of two years; however, the jury found Mitchell purposefully chose the victim based on his race, so the maximum sentence was increased to seven years under a Wisconsin enhancement provision. The provision increases the offense’s penalty when the offender “[i]ntentionally selects the person against whom the crime . . . is committed . . . because of the race, religion, color, disability, sexual orientation, national origin or ancestry of that person.” Mitchell challenged the penalty enhancement provision as a violation of his First Amendment right to freedom of speech.

The Mitchell Court held the defendant’s motive may be taken into consideration by a sentencing judge, which is essentially what the penalty enhancement provision did. Because the defendant’s racial animus was related to the crime (as opposed to being a general or abstract belief of the defendant), the Court decided the state court validly applied the enhancement provision. The Mitchell Court found that punishing the defendant’s motive or reason was valid, noting it was similar to anti-discrimination laws in which the offender is punished for his or her motive, that is, the

99. See id. at 479 (stating case’s holding).
100. See id. at 479-80 (discussing facts leading to case).
101. See id. at 480 (describing group’s attack on victim).
102. See id. at 480-81 (discussing defendant’s sentencing).
103. See Mitchell, 508 U.S. at 480 (quoting Wis. Stat. § 939.645(1)(b)) (explaining increased length of defendant’s sentence). The penalty enhancement statute provides that the defendant has (1) committed a certain type of offense and (2) committed the crime based on the “race, religion, color, disability, national origin or ancestry” of the victim. Id. at n.1.
104. See id. at 481 (noting defendant’s challenge to penalty enhancement statute).
105. See id. at 485 (finding that defendant’s motive is factored into sentencing).
106. See id. at 485-86 (stating that defendant’s abstract beliefs are not admissible for sentencing, but evidence of racial animus was admissible when relating to crime).
discrimination. Just as anti-discrimination statutes do not violate the First Amendment, the Court held the penalty enhancement statutes do not violate the First Amendment.

The Mitchell Court rejected the defendant's claim that penalty enhancements had a chilling effect on speech. The defendant argued that people would be more apprehensive to express their beliefs because later, if found guilty of criminal activity, their sentences could be enhanced based on those beliefs. The Court rejected the argument, finding it an "attenuated and unlikely" form of chilling expression that did not violate the defendant's First Amendment rights.

A First Amendment challenge to STOP could be upheld because STOP appears to be a viewpoint-based regulation. STOP differs from the penalty enhancement statute in Mitchell; STOP not only punishes the offender's animus towards the victim, but also, it punishes the offender's intent to persuade the public opinion. For example, if a person damaged the property of another, even if the person did so with the intent to influence the public, that person could not be prosecuted under STOP if he or she was acting because the owner of the property was environmentally friendly. STOP is only applicable when a person damaging property does so to influence the public about conduct that person finds "harmful to the environment;" it does not apply to damage caused in order to influence the public about environmentally friendly conduct. Under STOP, therefore, the government is regulating expression based on the speaker's viewpoint.

The government could assert the Supreme Court has found not all conduct in which a person intends to express an idea can be

107. See id. at 487 (comparing penalty enhancement statutes to anti-discrimination statutes).
108. See Mitchell, 508 U.S. at 490 (discussing anti-discrimination laws).
109. See id. at 488 (describing potential chilling effect of penalty enhancement statutes).
110. See id. at 488-89 (discussing defendant's chilling speech argument).
111. See id. (noting unlikelihood that speech will be chilled).
113. See id. (defining ecoterrorism partially as intent to influence public).
114. See id. (showing STOP as viewpoint-based statute because it punishes those who attempt to influence public about conduct harmful to environment).
115. See id. (discussing STOP's application).
116. See id. (noting STOP only applies to property damage made with intent to influence public about conduct harmful to environment).
classified as “speech.”117 For example, killing a person who works for an environmentally unfriendly company is not permissible speech.118 A permissible form of speech would be to protest outside the company.119 Under STOP, if a person protested outside the company and caused damage to the property, but not serious bodily injury or death, that person would be fined or imprisoned for not more than five years, or both, depending on the case.120 But if the person protested the environmentally friendly conduct of the company, the person could not be prosecuted under STOP.121 The sentence for the property damage would be increased not because of what the person attacked, but because of why the person attacked it.122

The “intent to influence the public with regard to conduct the offender considers harmful to the environment” creates a serious First Amendment problem.123 If STOP were passed and subsequently challenged under the First Amendment, it is likely that STOP would not have survived the challenge because it includes some areas of protected speech and is a viewpoint-based statute.124

C. The Prevention Act and the First Amendment

The Prevention Act raises potential First Amendment concerns because it arguably chills legitimate speech.125 Groups, such as New York’s Animal Welfare Advocacy, find the Prevention Act to be overbroad.126 Problems arise because the broad phrasing could encompass “legitimate political speech,” such as picketing or pro-


118. See id. (citing Roberts v. United States Jaycees, 468 U.S. 609, 628 (1984)) (noting physical assault is not considered speech for First Amendment purposes).

119. See id. (discussing limits of First Amendment expressive conduct).


121. See id. (describing what conduct is punishable under STOP).

122. See id. (noting importance of reason for property damage because of inclusion of intent language).

123. See id. (creating ecoterrorism as viewpoint-based statute).

124. See id. (creating First Amendment problems through ecoterrorism definition).


126. See id. (discussing animal advocacy groups’ reactions to Prevention Act).
testing.\textsuperscript{127} One particularly problematic section of the bill establishes "[f]ederal criminal penalties and civil remedies for certain violent, threatening, obstructive, and destructive conduct that is intended to injure, intimidate, or interfere with plant or animal enterprises, and for other purposes."\textsuperscript{128} Animal advocacy groups argue this phrase could encompass picketing, which some people may find obstructive or threatening conduct that interferes with plant or animal enterprises.\textsuperscript{129}

Concerns that the Prevention Act would threaten free speech are important; however, an examination of the Prevention Act's text demonstrates the broad opening statement is not indicative of the bill's content.\textsuperscript{130} The Prevention Act namely attempts to amend the AEPA, and none of the proposed amendments would expand the AEPA unconstitutionally.\textsuperscript{131} The primary amendments both increase penalties and expand the AEPA to include plant enterprises.\textsuperscript{132} Although the Prevention Act's opening statement sets forth broad goals for the Act, the text is more specific and is not overbroad in articulating the punishable offenses.\textsuperscript{133} The Prevention Act does not create a penalty for peaceful protestors engaging in obstructive conduct that intimidates an animal or plant enterprise employee.\textsuperscript{134} Concerns about the Prevention Act's overbreadth are overblown because the Act's text clearly and specifically defines what are punishable offenses.\textsuperscript{135}

V. AEPA Prosecutions

There have been relatively few prosecutions under the AEPA.\textsuperscript{136} The first successful AEPA prosecution since the AEPA was

\textsuperscript{127} See id. (noting potential problems with Prevention Act).


\textsuperscript{129} See id. (discussing potential overbreadth of Prevention Act).


\textsuperscript{131} See id. (discussing amendments to AEPA).

\textsuperscript{132} See id. (describing general AEPA amendments).

\textsuperscript{133} See id. (noting specific nature of proposed amendments).

\textsuperscript{134} See id. (noting absence of applicability of Prevention Act to permissible speech).

\textsuperscript{135} See H.R. 4454 (noting specific definitions of crimes under Prevention Act).

\textsuperscript{136} See Radical Animal Rights Group Convicted of Inciting Violence and Stalking, ANTI-DEFAMATION LEAGUE, Mar. 9, 2006, available at http://www.adl.org/learn/extremism_in_the_news/Other_Extremism/shac_convicted.htm?LEARN_Cat=Ex-
signed into law in 1992 occurred when Peter Daniel Young and Justin Clayton Samuel were indicted by a federal grand jury in 1998 for violations of the AEPA. Samuel was charged with conspiracy to violate the AEPA for his role in releasing thousands of mink, causing damages exceeding 10 thousand dollars. Samuel, after being apprehended in Belgium in 1999, was extradited to the United States. Samuel then pled guilty, and he was sentenced to two years incarceration and restitution in the amount of 360 thousand dollars. Officials apprehended Young in March 2005 in San Jose, California, and a federal court sentenced him to two years in prison for his role in the attacks.

The other successful AEPA prosecution convicted six ecoterrorists in New Jersey of inciting violence on March 2, 2006. All six defendants were found guilty of conspiracy to violate the AEPA, and their sentences could range between three to seven years incarceration and 250 thousand dollars in fines. The defendants were members of Stop Huntingdon Animal Cruelty (SHAC), an ecoterrorist organization which targets Huntingdon Life Sciences (HLS), a company that performs animal testing to ascertain the safety of drugs and chemicals. In this case, the SHAC members incited violence against persons and companies that conducted business with HLS. Attacking those who are economically connected to the offending company is called third party targeting. In this

[137] See id. (discussing first successful AEPA prosecution).
[139] See id. (describing charges against Samuel).
[140] See Anti-Defamation League, supra note 136 (discussing Samuel's capture).
[141] See id. (noting Samuel's punishment).
[142] See id. (noting Young's capture and punishment).
[143] See id. (discussing SHAC defendants' convictions).
[144] See id. (noting defendants' punishments).
[146] See id. (describing defendants' ecoterrorist acts).
case, the defendants posted personal information of employees who worked for companies affiliated with HLS on the Internet, including their home addresses, home phone numbers and even where their children (if any) went to school.\textsuperscript{148}

VI. IS THE AEPA THE BEST?

The most recent AEPA prosecution raises the question: is the AEPA the best tool for managing ecoterrorism?\textsuperscript{149} Since its initial passage, Congress amended the AEPA to increase penalties, as well as to expand the categories of offenses.\textsuperscript{150} The AEPA, however, does not discuss third party ecoterrorism.\textsuperscript{151} The AEPA is restricted by its lack of methods to punish third party ecoterrorism, and accordingly, the AEPA cannot protect targeted third parties from ecoterrorists.\textsuperscript{152}

Providing protection from third party targeting is important because it has been an increasing trend in ecoterrorism since 1999.\textsuperscript{153} SHAC is the ecoterrorist group most successful in using third party targeting, but others, such as ALF, also use this method.\textsuperscript{154} SHAC's actions move beyond letter-writing campaigns and legal protests — SHAC terrorizes the employees of companies that do business with HLS.\textsuperscript{155} In one case, SHAC sent a hearse to an employee's home to pick up her "corpse," despite the fact that she was very much alive, albeit frightened by the situation; in another case, SHAC distributed "wanted for murder" posters featuring an employee in that employee's neighborhood.\textsuperscript{156} These incidents are threatening, and they have a severe impact on the targeted employees.\textsuperscript{157} Some third party targeting is economically damaging, such as sending black faxes to fax machines to waste ink and cause the machines to break and illegally entering offices and

\textsuperscript{148} See Anti-Defamation League, supra note 136 (describing details of SHAC's third party ecoterrorist attacks).
\textsuperscript{149} See Animal Rights, supra note 147 (discussing AEPA's effectiveness).
\textsuperscript{151} See id. (showing no discussion of or penalty for third party targeting).
\textsuperscript{152} See Animal Rights, supra note 147 (discussing AEPA and third party ecoterrorism).
\textsuperscript{153} See id. (noting trends in ecoterrorism).
\textsuperscript{154} See id. (describing ecoterrorist groups' methods for third party targeting).
\textsuperscript{155} See id. (discussing SHAC's third party ecoterrorist attacks).
\textsuperscript{156} See id. (describing particular third party targeting).
\textsuperscript{157} See Animal Rights, supra note 147 (noting personal impact on targeted employees).
stealing documents. More violent incidents include pipe bombings.

The AEPA needs to defend against these attacks if it wants to protect these victims. To do this, the AEPA should be amended to include penalties for third party targeting. The Animal Enterprise Terrorism Act (AETA), a bill proposing to amend the AEPA, is pending in the House of Representatives and the Senate. The AETA would create more categories of offenses, such as three levels of economic damages, significant bodily injury or threats, serious bodily injury, death and conspiracy and attempt. The AETA would also expand what constitutes an offense under the AEPA to include traveling interstate or using or causing the mail system or other facilities of interstate/foreign commerce

(1) for the purpose of damaging or disrupting an animal enterprise; and

(2) in connection with such purpose:
   (A) intentionally damages, disrupts or causes the loss of any property (including animals or records) used by the animal enterprise, or any property of a person or entity having a connection to, relationship with, or transactions with the animal enterprise;
   (B) intentionally places a person in a reasonable fear of death of, or serious bodily injury to that person, a member of the immediate family . . . of that person, or a spouse or intimate partner of that person by a course of conduct involving threats, acts of vandalism,

158. See id. (describing economic damages caused by third party ecoterrorism).
159. See id. (showing more violent acts taken by ecoterrorists against third parties).
160. See id. (noting increase in third party targeting).
161. See id. (discussing need for reforms to protect against third party ecoterrorism).
property damage, trespass, harassment, or intimidation; or
(C) conspires to do so[]164

The AETA would greatly increase the AEPA’s scope and capacity to handle third party targeting.165 As the AEPA’s scope and power would increase, it would become a more effective tool for prosecutors.166

Unfortunately, ecoterrorism legislation has not had an easy past with Congress.167 Although small amendments to the AEPA have been passed, those amendments were only designed to raise the already established penalties for ecoterrorism and to further organize categories of offenses.168 Major amendments, such as the Prevention Act, and new pieces of ecoterrorism legislation, like STOP, have been buried in congressional committees.169 The AETA was read twice in the Senate and referred to the Judiciary Committee on October 27, 2005.170 The AETA was introduced in the House of Representatives on November 5, 2004 and was sent to the House Committee on the Judiciary, where subcommittee hearings were held in May 2006.171 No further actions have been taken in either house of Congress.172 If the past is any indication of the


166. See Animal Rights, supra note 147 (noting need for more effective ecoterrorism legislation).

167. For a discussion of failed federal legislative efforts, see supra notes 59-77 and accompanying text.

168. See Animal Rights, supra note 147 (discussing amendments to AEPA).

169. For a further discussion of failed federal legislative efforts, see supra notes 59-77 and accompanying text.


172. See id. (showing no further action on bill); see also S. 1926[109]: Animal Enterprise Terrorism Act, Bill Status (noting no further action on AETA).
future, the AETA will remain buried in committee. This is unfortunate because the potential targets of ecoterrorism need the AEPA to be effective, and the AEPA needs this reform in order to be effective.

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173. For a further discussion of failed federal legislative efforts, see supra notes 59-77 and accompanying text.
174. See Animal Rights, supra note 147 (noting need for more effective ecoterrorism legislation).
THE ENVIRONMENTAL HEARING BOARD REVIEW

The Villanova Environmental Law Journal is proud to reintroduce the Environmental Hearing Board Review. The Review will provide Casenotes and Comments reflecting upon decisions of the Pennsylvania Environmental Hearing Board and areas of the law pertinent to practitioners before the Board. The Review seeks to contribute to the practice of and to promote the scholarship of environmental law in Pennsylvania.

Consisting of five appointed judges, the Environmental Hearing Board is a statutorily created agency with state-wide trial court jurisdiction over certain environmental cases and appellate jurisdiction over actions of the Department of Environmental Protection. Appeals from the Board are taken to the Commonwealth Court of Pennsylvania.