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THE DEATH OF “HEY UMP!”: NEW RULES IN PENNSYLVANIA AND NEW JERSEY COULD GET YOU LOCKED UP OR KICKED OUT FOR HECKLING THE UMPIRE

I. THROWING THE FIRST PITCH: SETTING THE STAGE FOR PENNSYLVANIA AND NEW JERSEY’S ATTEMPTS TO PROTECT LITTLE LEAGUE UMPIRES

Every year millions of Americans enroll their children in youth baseball programs or attend youth baseball games.¹ Parents of Little League athletes are well accustomed to concession stand food, seven innings of slow-paced baseball, and yelling at their children to stop picking grass in the outfield.² However, parents must now tolerate increasing numbers of game cancellations, game delays, and heckling-related fights incited by harassment and abuse of Little League umpires.³ Currently, there are youth baseball umpire

1. See *Little League Fast Facts*, LITTLE LEAGUE, <https://www.littleleague.org/little-league-fast-facts/#:~:text=Little%20League%20is%20currently%20headquartered,girls%20play%20Littled%20League%2C%20worldwide> [https://perma.cc/ZX2T-X9AE] (last visited Aug. 29, 2023) (explaining current age and gender demographics of Little League baseball players around world). According to recent data released, around two million children from around the world, ranging from ages four to sixteen are currently registered to play Little League baseball. See *id.* (discussing recent data released detailing Little League participation). In 2023, hundreds of thousands of people attended the Little League World Series games hosted in Williamsport, Pennsylvania with additional spectators tuning in from home to watch the games. See Mark Maroney, *Little League World Series Brings Crowds, Money to Region’s Businesses – But Locals Shouldn’t Shy Away*, WILLIAMSPORT SUN-GAZETTE (Aug. 18, 2023), <https://www.sungazette.com/news/top-news/2023/08/little-league-world-series-brings-crowds-money-to-regions-businesses-but-locals-shouldnt-shy-away/> [https://perma.cc/S24H-8E3Y] (explaining expected fan attendance at 2023 Little League World Series based on attendance seen in recent years).

2. See Chris Schatz, *Life Lessons Learned From Watching Little League Baseball Games*, MEDIUM (July 19, 2019), <https://medium.com/swlh/life-lessons-learned-from-watching-little-league-baseball-games-c8863475415d> [https://perma.cc/A2JA-4UVA] (explaining typical experience of parents watching their children play in Little League baseball games). Parents of Little League athletes expend copious amounts of time and money to support their child’s athletic aspirations, often making it an environment where the parents feel attached to the team and their child’s successes. See *id.* (discussing parents’ involvement and attachment to their child’s Little League experience).

3. See Vanessa Yurkevich, *America Has an Umpire Shortage. Unruly Parents Aren’t Helping*, CNN (May 18, 2023, 9:13 AM), <https://www.cnn.com/2023/05/18/business/umpire-shortage-parent-behavior/index.html> [https://perma.cc/9BQV-ETEC] (explaining parents’ aggression towards umpires has partially caused large exodus of youth baseball umpires, resulting in game delays and cancellations across country).

shortages plaguing Little League, middle school, and high school baseball teams across the nation.⁴ Recently, videos and news reports of parents verbally harassing and physically attacking umpires have surfaced in multiple states.⁵ Although experts argue that the Coronavirus forced many older umpires into an early retirement, umpires across the country have stepped forward to shed light on the detrimental effect that parents' and spectators' aggression towards umpires has on the growth of baseball.⁶ The Pennsylvania legislature and Deptford, New Jersey's Little League ("Deptford Little League") association have proposed vastly different solutions to the umpire shortages currently stunting the growth of youth baseball.⁷ However, both proposed solutions may prove infeasible due to the underlying duty of lawmakers and government agents to protect the free speech rights of sports fans and game attendees.⁸

This Comment discusses the First Amendment free speech issues raised by the potential enactment of the Pennsylvania House of Representatives' House Bill 297 ("H.B. 297") and the legal permissibility of the league rule promulgated by Deptford, New Jersey's

4. *See id.* (emphasizing large uptick in retirement and resignation of umpires for youth sports programs).

5. *See id.* (explaining that violence towards umpires in recent years is motivating factor for resignation for many youth baseball umpires).

6. *See id.* (addressing harmful effects that verbal and physical abuse against umpires and dwindling numbers of individuals willing to continue working as youth baseball umpires). It is reported that approximately 2,000 umpires at Little League levels and 20,000 umpires at high school levels have resigned since 2017, and while not solely to blame, many umpires at varying youth levels cited growing aggression and threat of harm as factors for consideration for many umpires leaving the profession. *See id.* (providing facts and statistics regarding umpire shortage).

7. *See* H.B. 297, Gen. Assemb., Reg. Sess. 2023–24 (Pa. 2023) (proposing ban on harassment of "sports officials"). Pennsylvania's House of Representatives recently proposed a bill aimed at protecting "sports officials," of which umpires are included, by imposing a criminal sentence on individuals who harass any of the individuals specified by the text of H.B. 297. *See id.* (explaining new proposed law and individuals protected); *see also* Jeff Goldman, *N.J. Town's Little League Umpire Abuse Ultimatum Turns Tables on Unruly Fans*, NJ.COM (Apr. 27, 2023, 6:40 AM), <https://www.nj.com/gloucester-county/2023/04/nj-towns-little-league-umpire-abuse-ultimatum-turns-tables-on-unruly-fans.html> [<https://perma.cc/5S7K-DCX6>] (explaining Deptford Little League's new rule that forces parents who openly criticize umpires to umpire three games or be banned from Little League field for season). New Jersey's Deptford Little League took an alternate approach to that of Pennsylvania and enacted a rule in their Little League charter that imposes a season-long ban on parents who criticize or heckle an umpire at a Little League game without following through with the proscribed punishment of refereeing three games. *See id.* (explaining parameters of Deptford Little League's new rule regarding umpire heckling and criticism).

8. For further discussion of the feasibility of the proposed solutions, see *infra* notes 135–262 and accompanying text.

Little League association to combat umpire abuse.⁹ Section II of this Comment explains the basics of the governing First Amendment jurisprudence, provides an overview of the process utilized to challenge a statute or regulation’s permissibility under the Constitution, and assesses current issues of aggression and physical altercations between fans and umpires.¹⁰ Section II also explains the attempts by Pennsylvania’s House of Representatives and Deptford’s Little League association to regulate fan behavior at games and the motivations behind the creation of these speech constraints.¹¹ Section III analyzes H.B. 297 and addresses constitutional issues regarding vagueness and the wide discretion it gives to umpires and law enforcement.¹² Section III also analyzes whether Deptford Little League’s rule is constitutionally permissible by evaluating the government’s role in enforcing and implementing the rule, and whether Deptford Little League’s facilities support a contention that the enforcement of the rule constitutes state action.¹³

II. FREE SPEECH’S WALK-TO-STRIKEOUT RATIO: AN OVERVIEW OF FIRST AMENDMENT JURISPRUDENCE AND PROPOSALS TO COMBAT UMPIRE SHORTAGES

The First Amendment of the United States Constitution provides protections against congressional attempts to limit or restrict the free speech rights of individuals.¹⁴ The First Amendment does not, however, provide individuals with an unconditional right to

9. For further discussion of the new regulations on speech proposed by Pennsylvania’s House of Representatives and Deptford Little League, see *infra* notes 100–117 and accompanying text.

10. For further discussion of constitutional challenges to statutes and regulations, see *infra* notes 19–25 and accompanying text. For further discussion of the conditionality of free speech rights and the state action doctrine, see *infra* notes 26–40 and accompanying text. For further discussion of protected and unprotected speech categories under the First Amendment, see *infra* notes 43–59 and accompanying text. For further discussion of the intricacies of high-value and low-value speech categories, see *infra* notes 60–67 and accompanying text. For further discussion of recent physical altercations and trends of violence towards youth baseball umpires, see *infra* notes 87–99 and accompanying text.

11. For further discussion of H.B. 297 and motivators for its proposal, see *infra* notes 100–110 and accompanying text. For further discussion of the new rule implemented by Deptford Little League, see *infra* notes 111–117 and accompanying text.

12. For further discussion of H.B. 297’s implications on potentially protected categories of speech under the First Amendment, see *infra* notes 135–160 and accompanying text.

13. For further discussion of the constitutional enforceability of Deptford Little League’s rule, see *infra* notes 222–262 and accompanying text.

14. See U.S. CONST. amend. I (“Congress shall make no law . . . prohibiting the free exercise thereof; or abridging the freedom of speech, or of press”).

freedom of all kinds of speech at all times.¹⁵ One notable limitation to an individual's constitutional right to free speech involves the regulations on speech imposed by a private, non-governmental entity.¹⁶ The First Amendment does not apply to individuals or entities whose conduct does not constitute "state action."¹⁷ Additionally, there are notable limits and neutral content-based exceptions to the First Amendment's protection of speech.¹⁸

A. Types of Challenges Utilized to Question the Permissibility of Regulations Placed on Free Speech

If an individual believes a law or government action violates their individual rights and the rules set forth in the United States Constitution, they can bring a constitutional challenge against the statute.¹⁹ Typically, constitutional challenges are achieved by suing a government official or state government for enforcing a statute.²⁰ There are two main types of constitutional challenges: facial and as-applied.²¹

15. See *Manhattan Cmty. Access Corp. v. Halleck*, 139 S. Ct. 1921, 1930 (2019) (holding freedom of speech is not unconditional right). The Supreme Court's holding in *Halleck* specifically pointed out that there is no unconditional guarantee of free speech rights, nor has there ever been an unconditional right to free speech. See *id.* (explaining that there are limitations to free speech rights granted by Constitution).

16. See *id.* (explaining that First Amendment only applies to state actors and government).

17. See *id.* (holding that First Amendment protects against governmental attempts and attempts by private entities considered state actors to limit free speech rights of public). The Supreme Court reasoned that private entities are not bound by the First Amendment's free speech mandate except for when the private entities' conduct resembles state action. See *id.* (explaining circumstances that allow First Amendment free speech claims against private entities). If a private entity in question is not acting as the state or in a manner reserved only for the government, it may "exercise editorial discretion" over speech that they deem permissible and impermissible. See *id.* (discussing limitations of free speech rights granted under First Amendment).

18. See MELVIN I. FRIEDMAN & LOUIS R. FRUMER, *PERSONAL INJURY: ACTIONS, DEFENSES, DAMAGES* § 29.02 (197th ed. 2023) (explaining different categories of speech that are not protected by First Amendment). The First Amendment's categorical exceptions to freedom of speech include language that is obscene, defamatory, or libelous, incites a breach of the peace, threatening in nature, and language that is deemed "fighting words." See *id.* (discussing categories of unprotected speech).

19. See Michael T. Morley, *Constitutional Tolling and Preenforcement Challenges to Private Rights of Action*, 97 NOTRE DAME L. REV. 1825, 1826 (2022) (explaining use of constitutional challenges).

20. See *id.* at 1827 (explaining parties involved in constitutional challenge).

21. See Alex Kreit, *Making Sense of Facial and As-Applied Challenges*, 18 WM. & MARY BILL RTS. J. 657, 657 (2010) (explaining two categories of constitutional challenges).

A facial challenge evaluates the text of the statute to determine whether it can be enforced without violating the Constitution.²² A facial challenge, if successful, nullifies the entire challenged statute.²³ An as-applied challenge is typically brought against a statute that is only unconstitutional due to the circumstances at issue in the plaintiff’s case.²⁴ An as-applied challenge functions only to narrow the applicability of the statute, not to render it altogether invalid, because there are still circumstances where the statute’s enforcement does not violate the Constitution.²⁵

B. Conditionality of First Amendment Free Speech Rights

To deem a regulation on speech as unconstitutional, it must first be ascertained whether the regulations placed on speech were imposed by the government or a state actor.²⁶ The free speech protections guaranteed by the First Amendment only apply to speech regulations imposed by a governmental entity or actor.²⁷ Currently, there are three applicable tests to ascertain whether an actor’s conduct manifests a presumption of state action.²⁸ The symbiotic relationship test from *Burton v. Wilmington Parking Authority*²⁹ evaluates fact-specific circumstances to ascertain whether the “[s]tate has so far insinuated itself into a position of interdependence . . . that it must be recognized as a joint participant” in the conduct of a private entity.³⁰ The entwinement test, derived from *Brentwood Academy v. Tennessee Secondary School Athletic Association*,³¹ evaluates whether a private entity is so entwined with the government that a logical conclusion drawn by the court renders the conduct of the private

22. *See id.* (explaining basis of facial challenges).

23. *See id.* at 660 (explaining outcome of successful facial challenge to statute).

24. *See id.* at 657 (explaining basis and applicability of as-applied challenges).

25. *See id.* at 660 (explaining outcome and approach taken by court upon successful as-applied challenge).

26. *See Amdt1.7.2.4 State Action Doctrine and Free Speech*, CONST. ANNOTATED, https://constitution.congress.gov/browse/essay/amdt1-7-2-4/ALDE_00013541/ [https://web.archive.org/web/20240506031138/https://constitution.congress.gov/browse/essay/amdt1-7-2-4/ALDE_00013541/] (last visited Oct. 9, 2023) [hereinafter *Amdt1.7.2.4*] (explaining state action requirement for free speech violations).

27. *See id.* (explaining that private entities are not governed by free speech guarantees of First Amendment).

28. *See id.* (discussing current tests utilized by courts to determine whether private conduct may be considered state action).

29. *Burton v. Wilmington Parking Auth.*, 365 U.S. 715 (1961).

30. *See id.* at 725 (explaining basis of symbiotic relationship test).

31. *Brentwood Acad. v. Tenn. Secondary Sch. Athletic Ass’n*, 531 U.S. 288 (2001).

actor as public action.³² The designated public forum test derived from *Marsh v. Alabama*³³ considers whether a private entity exercises powers that are reserved for the government.³⁴

The *Burton* test clarifies that conduct of a private business leasing government-owned property constitutes state action.³⁵ In *Burton*, the court determined that the private business was a state actor because the building where the private business was located was upkeep through use of state funds, and the government received economic benefit from the lease agreement.³⁶ In order to prove state action, a court must consider whether the property at issue is public property, whether the property is upkeep through use of state funds, and whether the private entity pays rent to the state or shares in profits derived by the state.³⁷ In a similar sports stadium related case, *Ludtke v. Kuhn*,³⁸ a court found that conduct undertaken by the New York Yankees sufficed the *Burton* state action test because 1) the stadium was built using public funding; 2) New York City and its government provided aid for the upkeep of the stadium; and 3) the city profited off the lease granted to the Yankees.³⁹ Since then, the Supreme Court clarified that a mere contract with the government, or receiving funds from the government alone is not sufficient to establish state action; there must be an additional component.⁴⁰

32. *See id.* at 302–03 (explaining basis for entwinement test utilized by courts when evaluating private entity’s relationship with government to ascertain whether state action occurred).

33. *Marsh v. Ala.*, 326 U.S. 501 (1946).

34. *See id.* at 508–09 (explaining basis of designated public forum test iterated by Supreme Court). Here, the Supreme Court considered holding an election, owning a town, and operating a town as examples of the private entity performing traditional government functions. *See id.* at 505–08 (explaining factors and circumstances of case highlighted by Supreme Court as examples of traditional government functions).

35. *See Burton v. Wilmington Parking Auth.*, 365 U.S. 715, 722–25 (1961) (discussing distinctions Court made and factors considered to determine whether use of government property qualifies as state action).

36. *See id.* (explaining factors evaluated by Supreme Court in finding that private business was state actor).

37. *See id.* (discussing factors evaluated by Court). When a private entity satisfies the criteria evaluated by the Supreme Court in *Burton*, it is seen as a “joint participant” in the activity or regulation at issue. *See id.* (discussing circumstances where private entity may be deemed as government actor).

38. *Ludtke v. Kuhn*, 461 F. Supp. 86 (S.D.N.Y. 1978).

39. *See Nick DeSiato, Silencing the Crowd: Regulating Free Speech in Professional Sports Facilities*, 20 MARQ. SPORTS L. REV. 411, 418 (2010) (discussing *Ludtke* and applying *Burton* factors to case dealing with private baseball teams as facilitators of state action).

40. *See Martin A. Schwartz & Erwin Chemerinsky, Dialogue on State Action*, 16 TOURO L. REV. 775, 784 (2000) (citing *Rendell-Baker v. Kohn*, 457 U.S. 830 (1982)) (explaining that threshold for non-race-based state action cases held to higher threshold).

The *Burton* test is the test most applicable to the rule implemented by Deptford Little League due to factual similarities pertaining to actions undertaken by the city of Wilmington in *Burton* and the town of Deptford, and the similarities between potential benefits reaped by both government entities.⁴¹ Thus, the *Burton* test is the only test applied in this Comment.⁴²

1. *Unprotected Speech: Categories and Circumstances*

The Supreme Court’s jurisprudence regarding the First Amendment has carved out distinct categories of speech that are not protected by the Constitution: “the lewd and obscene, the profane, the libelous, and the insulting or ‘fighting’ words . . . those which, by their very utterance inflict injury or tend to incite an immediate breach of the peace.”⁴³ Typically, obscene speech is narrowly construed and involves lewd pictures or words, lacking “serious literary, artistic, political, or scientific value.”⁴⁴ Conversely, defamatory speech is primarily concerned with speech that causes harm to an individual’s reputation through circulation of false statements of fact.⁴⁵ The falsity of the information provided by the speaker is the basis for the low valuation and constitutional exemption to the speaker’s right to free speech.⁴⁶

Fighting words, inciting speech, and true threats are eerily similar in nature, but remain three distinct categories of unprotected speech.⁴⁷ Speech that qualifies as fighting words involves language used in the “immediate presence of another that would constitute

41. For further discussion of the similarities between the local government in *Burton* and the town of Deptford, see *infra* notes 228–239 and accompanying text.

42. For further discussion of the applicability of *Burton* to the local rule promulgated by Deptford Little League, see *infra* notes 228–239 and accompanying text.

43. See *Chaplinsky v. N.H.*, 315 U.S. 568, 572 (1942) (explaining and enumerating categories of speech determined by Supreme Court that are not protected under First Amendment of Constitution).

44. See MICHAEL STOKES PAULSEN, MICHAEL W. MCCONNELL, SAMUEL L. BRAY & WILLIAM BAUDE, *THE CONSTITUTION OF THE UNITED STATES* 895–97 (5th ed. 2023) (explaining what types of speech are considered obscene). Obscene speech is considered low-value speech due to the lack of social benefit derived from its dissemination and the harm resulting from its usage. See *id.* (providing valuation and definition of “obscene speech”).

45. See *id.* (explaining defamatory speech and its limitations). Notably, the Supreme Court iterated varying standards for permissibility of defamatory language that is dependent upon an individual’s status as a “public figure.” See *id.* (discussing unique standards for protection of speech applicable when injured individual is public figure).

46. See *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 340 (1974) (holding that false statements of fact hold no constitutional value).

47. See *Chaplinsky*, 315 U.S. at 572 (emphasizing similarity between all three categories but listing each category as separate unprotected type of speech).

an immediate provocation to fisticuffs.”⁴⁸ Inciting speech, however, is speech that is utilized to advocate for or antagonize an individual to incite lawless action.⁴⁹ These two categories are distinct from true threats, which includes speech that conveys the speaker’s intent to inflict violence on an individual.⁵⁰ Understanding the difference between language categorized as fighting words, inciting speech, and true threats lies in the intent of the speaker and the wide-spread applicability of the doctrine.⁵¹ When utilizing inciting speech, the speaker’s intent lies in convincing someone else to undertake an unlawful action on their behalf.⁵² The intent of a speaker using fighting words is merely to get a reaction out of the listener.⁵³ It is important to note that the Supreme Court has significantly limited the applicability of fighting words.⁵⁴ Conversely, the intent of an individual soliciting a true threat is to communicate the speaker’s

48. See STOKES PAULSEN ET AL., *supra* note 44, at 895–97 (defining “fighting words”). Notably, a defining characteristic of speech designated as fighting words is whether the words are uttered to the listener “face to face.” See *Chaplinsky*, 315 U.S. at 573 (holding that fighting words must be uttered in face-to-face environment).

49. See *Brandenburg v. Ohio*, 395 U.S. 444, 447 (1969) (holding “constitutional guarantees of free speech . . . do not permit a State to forbid or proscribe advocacy . . . except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action”). Inciting speech is unprotected by the First Amendment. See *id.* at 447–48 (explaining that inciting speech is not protected under individual’s free speech rights granted by Constitution).

50. See *Va. v. Black*, 538 U.S. 343, 359 (2003) (holding “[t]rue threats’ encompass those statements where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals”). The Supreme Court previously noted that there is no requirement that the speaker must act or intend to act on the threat. See *id.* at 360 (discussing application of true threats doctrine). Rather, for speech to be considered unprotected under the true threat standard, the receiving individual must reasonably fear that violence may occur or the individual will act on the threat. See *id.* (suggesting that reasonable fear of violence is applicable parameter for determining whether speech is true threat).

51. See STOKES PAULSEN ET AL., *supra* note 44, at 895–97 (explaining difference in intent of speaker between fighting words and inciting speech categories).

52. See *Amdt1.7.5.4 Incitement Current Doctrine*, CONST. ANNOTATED, https://constitution.congress.gov/browse/essay/amdt1-7-5-4/ALDE_00013805/#:~:text=First%20Amendment%3A,for%20a%20redress%20of%20grievances. [https://web.archive.org/web/20240506042327/https://constitution.congress.gov/browse/essay/amdt1-7-5-4/ALDE_00013805/] (last visited Aug. 31, 2023) (discussing required intent of speaker when using inciting speech).

53. See *Amdt1.7.5.5 Fighting Words*, CONST. ANNOTATED, https://constitution.congress.gov/browse/essay/amdt1-7-5-5/ALDE_00013806/ [https://web.archive.org/web/20240506042725/https://constitution.congress.gov/browse/essay/amdt1-7-5-5/ALDE_00013806/] (last visited Aug. 31, 2023) (explaining importance of intent when analyzing whether speaker is using fighting words).

54. See STOKES PAULSEN ET AL., *supra* note 44, at 895–97 (explaining limited applicability of fighting words doctrine and Supreme Court’s hesitation to classify speech under this category).

serious intention to cause actual bodily harm or violence towards the listener.⁵⁵

2. *Protected Speech and Speech Valuation: Cheering Speech*

Another form of speech, which is protected by the First Amendment but raises questions as to the permissibility of the content, is “cheering speech.”⁵⁶ Cheering speech is speech centered around athletics and occurs at sporting events; heckling is a prime example.⁵⁷ Cheering speech, more specifically heckling, toes the line of strict categories of protected and unprotected speech under the First Amendment because of an individual’s regular usage of profanity, satire, and insults when utilizing this type of speech.⁵⁸ Additionally, the recipients of cheering speech are typically individuals who have no awareness that other individuals are attempting to communicate with them; common victims of cheering speech are athletes, coaches, and umpires.⁵⁹

Evaluating whether cheering speech falls into a low-value speech category is increasingly difficult because speaking about sports likely imparts some beneficial knowledge into society, akin to political or protesting speech.⁶⁰ Although one could argue that heckling has little to no value to society, like obscene or threatening words, heckling speech alerts listeners to a viewpoint and knowledge about the game that may not be available elsewhere.⁶¹ Further, censorship of an individual based on the content of their speech is unconstitutional unless the implicated restriction on speech prohibits everyone from

55. *See Black*, 538 U.S. at 359 (explaining that speaker’s motivation in proffering true threat is to communicate intent to inflict bodily harm on targeted individual).

56. *See* Howard M. Wasserman, *Fans, Free Expression, and the Wide World of Sports*, 67 UNIV. PITT. L. REV. 525, 529 (2006) (explaining that cheering speech is synonymous with political speech when analyzing whether it is protected by First Amendment). Issues pertaining to the content of cheering speech are evaluated on case-by-case bases, but there is a general presumption that cheering speech commonly used by fans does not borrow from unprotected categories of speech. *See id.* at 547 (explaining that language used in stands is typically loud and objectionable, but constitutionally protected in content).

57. *See id.* at 527 (defining cheering speech and providing examples of utilization).

58. *See id.* at 566–67 (explaining that heckling’s nature and delivery often raises questions about protected status of that specific type of cheering speech).

59. *See id.* at 527 (discussing unsuspecting usual targets of heckling and other forms of cheering speech).

60. *See id.* at 528 (comparing cheering speech to political speech, claiming that both impart knowledge of adverse viewpoints).

61. *See id.* (explaining justifications of viewing cheering speech as high-value speech).

speaking on the matter at issue.⁶² However, cheering speech, and by extension heckling speech, seemingly intersects with the unprotected speech category of true threats due to the type of language occasionally utilized by hecklers.⁶³

Speech not protected under the First Amendment commonly falls into the category of low-value speech, the use of which produces little tangible benefit to society.⁶⁴ The valuation of speech determines which level of scrutiny a court will apply in evaluating whether regulations on speech are permissible under the Constitution.⁶⁵ Regulations placed on high-value speech are subject to the highest level of scrutiny to ensure that the right to free speech is adequately protected.⁶⁶ Additionally, any threats of censorship against individuals circulating high-value speech, which is protected by the Constitution, are evaluated to generally favor a presumption of free speech protection.⁶⁷

3. *Permissible and Impermissible Free Speech Limitations*

While there are numerous ways to restrict free speech that violate the provisions of the First Amendment, there is one distinct method

62. *See id.* (explaining that fan engagement through speech “builds a culture on ‘all areas of human learning and knowledge’”). Speech that is beneficial and imparts knowledge on an audience is typically categorized as high-value speech, of which abridgement is constitutionally impermissible. *See* Genevieve Lakier, *The Invention of Low-Value Speech*, 128 HARV. L. REV. 2166, 2210–15 (2015) (defining high-value speech).

63. *See* Wasserman, *supra* note 56, at 566 (explaining hecklers sometimes use rhetorical language and profanity in their speech, which on its face may raise questions regarding whether hecklers’ speech is protected by First Amendment).

64. *See* Jeffrey M. Shaman, *The Theory of Low-Value Speech*, 48 SMU L. REV. 297, 299 (1995) (defining low-value speech and providing examples of speech to demonstrate small benefit to society). Low-value speech is defined by the *Chaplinsky v. New Hampshire* court as “utterances . . . [that] are of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality.” *See id.* at 302 (citing *Chaplinsky v. New Hampshire* 315 U.S. 568, 572 (1942)) (defining low-value speech generally).

65. *See* Lakier, *supra* note 62, at 2210–15 (explaining valuation of speech and application of strict scrutiny test to determine constitutionality of restriction on free speech rights). The censorship of high-value speech is frowned upon by the courts because of the benefit such speech provides to society. *See id.* (discussing court’s approach to adjudicating regulations on high-value speech). For a statutorily imposed restriction on high-value speech to be upheld, it must pass a strict scrutiny test to ensure that it does not unduly burden an individual’s right to free speech. *See id.* (explaining test employed by court to ascertain whether regulations on high-value speech are too censoring).

66. *See id.* (explaining importance and policy considerations for requiring strict scrutiny review for high-value speech).

67. *See id.* (explaining general presumption of courts favoring free speech protection as policy consideration contributing to requirement of strict scrutiny evaluation for laws restricting high-value speech).

of speech regulation usable by government or quasi-government actors that does not violate the First Amendment.⁶⁸ Time, place, and manner regulations fall under this category of permissible speech regulations, which allow the government and government actors to limit content-neutral speech in specific circumstances.⁶⁹ These regulations are permissible when they are found to be content and viewpoint neutral, are “narrowly tailored” to the government’s interests, and provide alternate routes for participants to express their concerns.⁷⁰

Distinctly different from time, place, and manner regulations, content-based regulations of speech violate the First Amendment and are impermissible limitations on free speech rights.⁷¹ Virtually any restriction on speech that curtails a specific viewpoint will be struck down by a court, whether the regulation promotes favoritism or discrimination towards a specific view, due to dangerous future implications that stem from over-regulation of speech.⁷² Since courts typically evaluate all speech-related regulations imposed by the government under a standard of strict scrutiny, precedent mandates that only necessary restrictions on speech are permissible, provided there is no indicia of censorship on the basis of viewpoint or topic of speech.⁷³ Often, statutes that impose content-based regulations

68. See STOKES PAULSEN ET AL., *supra* note 44, at 921–22 (explaining time, place, and manner regulations that allow curtailing of speech in specific and well-defined instances).

69. See DeSiato, *supra* note 39, at 422 (explaining circumstances in which time, place, and manner regulations are permissible). Notably, time, place, and manner regulations are enforceable by government entities in public forums, including traditional and designated public forums. See *id.* (discussing individuals and forums permitted to enforce time, place, and manner regulations).

70. See *id.* at 422–23 (explaining test utilized by courts to determine whether time, place, manner regulations are permissible).

71. See Shaman, *supra* note 64, at 330 (“[R]egulations of high-value speech that focus on the content of speech are especially suspect and presumptively unconstitutional.”).

72. See *id.* (explaining that presumptively only content-neutral regulations that are narrowly tailored to achieve specific goals will be upheld as permissible speech regulations).

73. See *Reed v. Town of Gilbert*, 576 U.S. 155, 169 (2015) (“[A] speech regulation targeted at specific subject matter is content based even if it does not discriminate among viewpoints within that subject matter.”). The Supreme Court reasoned that the prohibition of dissemination of opinions based on viewpoint or topic are impermissible regulations due to the unconstitutional content-based restrictions it places on speakers. See *id.* (discussing permissibility of speech restrictions that burden First Amendment freedoms).

also promote issues of vagueness, overbreadth, or unfettered discretion.⁷⁴

4. *Procedural Issues Stemming from the Text of a Statute Can Render the Statute Unconstitutional*

Statutes that suffer from issues of vagueness, overbreadth, or unfettered discretion present First Amendment procedural issues and raise questions as to the respective statute's constitutionality.⁷⁵ The concepts of vagueness and overbreadth of statutes are facially very similar, however, the differing results from the enforcement of vague statutes and overly broad statutes distinguish the categories.⁷⁶ Statutes that present issues of vagueness typically result in a speaker's inability to ascertain what types of speech are permitted or prohibited.⁷⁷ A statute that is deemed as "vague" is usually held to be unconstitutional because of the implications that a vague statute has on an individual's due process rights: how can a person be said to have "due process of law" if the statute upon which they were convicted cannot be understood by a reasonable person of average intelligence?⁷⁸

Overbreadth, on the other hand, is characterized by the over-regulation of speech by a government entity.⁷⁹ A statute deemed overly broad typically boasts issues of unnecessarily restricting speech beyond what is needed to achieve the intended purpose of the regulation.⁸⁰ A statute that suffers from over-inclusive regulation on an individual's freedom of speech may have a "chilling" effect

74. See STOKES PAULSEN ET AL., *supra* note 44, at 895–97 (noting interlocking underlying issues prevalent between findings that speech is unprotected and attempted enforcement of impermissible restrictions on speech).

75. See *id.* (explaining that restrictions on free speech rights raise questions and are often evaluated with high levels of scrutiny by court).

76. See *id.* (noting similarities and "package deal" tendencies of vagueness and overbreadth but offering definitions and examples to distinguish).

77. See *id.* (defining "vagueness" and its implications).

78. See Philip A. Dynia, *Vagueness*, FREE SPEECH CTR. (Feb. 18, 2024), [https://www.mtsu.edu/first-amendment/article/1027/vagueness#:~:text=the%20Associated%20Press\)-,A%20law%20that%20defines%20a%20crime%20in%20vague%20terms%20is,chilling%20effect%20on%20protected%20rights](https://www.mtsu.edu/first-amendment/article/1027/vagueness#:~:text=the%20Associated%20Press)-,A%20law%20that%20defines%20a%20crime%20in%20vague%20terms%20is,chilling%20effect%20on%20protected%20rights) [https://perma.cc/7LXV-GYPC] (explaining due process rights of accused violators are complicated when statute is vague).

79. See Richard Parker, *Overbreadth*, FREE SPEECH CTR. (Feb. 18, 2024), <https://www.mtsu.edu/first-amendment/article/1005/overbreadth#:~:text=Overbreadth%20is%20closely%20related%20to,in%20assigning%20meaning%20to%20language> [https://perma.cc/946R-8Z6T] (explaining typical manifestations associated with overly broad statutes).

80. See STOKES PAULSEN ET AL., *supra* note 44, at 895–97 (explaining and defining "overbreadth").

on the individual’s willingness to speak.⁸¹ Thus, allowing overly broad statutes that impose regulations on free speech may encourage the public to withhold thoughts or concerns in fear of criminal punishment.⁸²

If not addressed properly, overbreadth issues may fester into issues of unfettered discretion, which only feeds government censorship power.⁸³ If a rule is overly broad, individuals will likely be uncertain as to what is prohibited, which provides the government with unchecked power when interpreting what behavior or types of speech are permissible.⁸⁴ Limitations on speech that are overly broad and allow the government unchecked discretion to censor individuals as they see fit are blatantly unconstitutional.⁸⁵ Viewpoint-based discrimination, a possible implication of overly broad statutes, is a type of impermissible limitation on speech often arising out of issues of discretion.⁸⁶

C. Baseball’s History of Heckling and Current Issues

Free speech and the First Amendment have been pillars for fan engagement in sports for decades.⁸⁷ Cheering speech is regarded as heavily protected by the First Amendment because of the societal value it holds and the ways in which it is disseminated.⁸⁸ However,

81. See Parker, *supra* note 79 (discussing frustrations that arise from enforcing overly broad statutes).

82. See *id.* (explaining implications and negative effects of overly broad statutes limiting speech that are imposed upon public by states).

83. See STOKES PAULSEN ET AL., *supra* note 44, at 895–97 (explaining close connection between overbreadth and unfettered discretion). If left unchecked, an overly broad statute will grant the government powers of enforcement that are impermissible under the Constitution. See *id.* (discussing consequences of enacting overly broad statutes).

84. See Parker, *supra* note 79 (explaining silencing effects of sweeping restrictions on speech and government’s ability to wield uncertainty into power to further restrict speech).

85. See STOKES PAULSEN ET AL., *supra* note 44, at 895–97 (explaining that statutes which provide unchecked discretion to lawmakers due to broad language in statute text violate First Amendment).

86. See *id.* (explaining that viewpoint-based discrimination and censorship violates free speech rights granted by First Amendment). For further discussion of issues relating to abuse of discretion and H.B. 297, see *infra* notes 163–202 and accompanying text.

87. See Wasserman, *supra* note 56, at 528 (explaining interwovenness of First Amendment free speech rights for fans and fan engagement).

88. See *id.* at 528, 533–34 (discussing opinion-based value and knowledge provided by dissemination of cheering speech and role of grandstands in ensuring cheering speech is protected speech under First Amendment). Typically, cheering speech is utilized in the grandstands at baseball fields by fans, of which team allegiance and opinion on players may vary. See *id.* (discussing typical forum of cheering speech). Arguments in favor of freedom of speech generally recognize a right to hear all opinions due to possible knowledge buried within. See Joseph

heckling is a highly contested form of cheering speech which many private actors have attempted to prohibit on the grounds of safety and “family friendly environment” concerns.⁸⁹ Many sports fans report using heckling as a way to engage with the game and feel as though their contributions impact its outcome.⁹⁰ Heckling is defined as “interrupt[ing] by shouting annoying or rude comments or questions” with no true purpose besides engaging with other fans and the game.⁹¹ Although traditionally found in professional sports, heckling practices have more recently migrated to the realm of college and youth sports.⁹²

While heckling is a widely known form of cheering speech in the context of sports games, the implications of allowing hecklers to shout derogatory or rude comments at players, coaches, and umpires have recently come to light.⁹³ Across the United States, reports have

Blocher, *Categoricalism and Balancing in First and Second Amendment Analysis*, 84 N.Y.U. L. REV. 375, 381 (2009) (explaining how to rectify differences in First Amendment jurisprudence canons, noting opinion of balancers as generally accepted). Accordingly, since the grandstands of a ballpark generally constitute a traditional public forum, any limitation on speech on the basis of the content is impermissible. See Wasserman, *supra* note 56, at 533–34 (explaining inability of government to limit constitutionally protected speech in areas deemed public forums, like grandstands in ballparks).

89. See Wasserman, *supra* note 56, at 537 (providing examples of cases and instances where professional sports facilities infringed on free speech rights of fans by attempting to prohibit usage of profanity to provide “family friendly” environment for children attending games).

90. See Malaki Lingg, *Heckling From the Audience: Hateful or Helpful?*, PAISANO (Sept. 6, 2022), <https://paisano-online.com/30534/sports/heckling-from-the-audience-hateful-or-helpful/#:~:text=Heckling%20seems%20to%20give%20fans,of%20what's%20acceptable%20to%20say> [<https://perma.cc/5Q3W-53QY>] (explaining that fans turn to heckling to feel more engaged and in control of game outcome).

91. See *Heckle*, BRITANNICA DICTIONARY, <https://www.britannica.com/dictionary/heckle> [<https://perma.cc/MQ7Q-MB92>] (last visited Aug. 6, 2023) (defining “heckle” as used in context of sports); see also Lingg, *supra* note 90 (explaining that heckling usually has no real purpose outside of annoying individuals and allowing fans to feel engaged with game).

92. See John Dias, *Youth Sports Leaders Alarmed at Uptick of Parents Being Aggressive Towards Officials During Games*, CBS NEWS (Aug. 14, 2023, 6:41 AM), <https://www.cbsnews.com/newyork/news/youth-sports-leaders-alarmed-uptick-parents-aggressive-toward-referees-umpires/> [<https://perma.cc/6WGZ-G4LH>] (explaining increasingly large uptick in parent and spectator violence stemming from comments originally made by parents in stands at youth sports games); see also Tyler Andrews, *Sports-Betting-Related Harassment an Issue NC Universities Must Tackle*, N.C. SHARP (Oct. 25, 2023), <https://www.ncsharp.com/news/betting-related-harassment-college-athletes/> [<https://web.archive.org/web/20240506042907/https://www.ncsharp.com/news/betting-related-harassment-college-athletes/>] (explaining uptick in heckling and aggressive fan behavior towards players and referees on college sport level because of sports betting legalization).

93. See Wasserman, *supra* note 56, at 566–67 (discussing type of language used by hecklers that could be misconstrued due to delivery and stylistic preferences of speaker). Heckling, while a customary act for many spectators of baseball games at every level, has demonstrated its ability to raise tensions at Little League games to a point of physical violence between parents and umpires due to snarky remarks

surfaced revealing that youth baseball umpires are regularly being physically harmed and verbally berated for their officiating skills by parents and spectators.⁹⁴ With youth sports being a lower caliber form of baseball, many umpires are volunteers who willingly choose to umpire Little League games in their free time.⁹⁵ Retaining current Little League umpires and hiring new umpires has proven difficult as of late, leading to an umpire shortage that is effecting youth baseball programs across the United States.⁹⁶

Recently, large numbers of Little League umpires have reportedly quit or retired, in part due to verbal and physical abuse by parents and spectators.⁹⁷ Nationwide issues involving the delay and cancellation of youth baseball games have been exacerbated since programs have re-opened following the government’s decision to lift the Coronavirus social distancing restrictions.⁹⁸ Although some states previously enacted laws that criminalize the assault of umpires, other states, including Pennsylvania, have expanded or are looking to expand existing criminal penalties to individuals who verbally harass sports officials.⁹⁹

about an umpire’s capability to adequately perform their jobs. *See* Yurkevich, *supra* note 3 (emphasizing increases in violence towards umpires for merely performing their job duties).

94. *See* Yurkevich, *supra* note 3 (explaining recent rise in violence rates against umpires due to parent and spectator outrage over bad calls at Little League games).

95. *See* *Volunteer Opportunities with Local Leagues*, LITTLE LEAGUE, <https://www.littleleague.org/volunteer/volunteer-opportunities/> [<https://perma.cc/W882-2UCS>] (last visited Aug. 29, 2023) (explaining that many umpires officiating Little League games are volunteers). While many Little League umpires are unpaid volunteers, umpires in Pennsylvania are compensated for the job of umpiring Little League baseball games. *See* Alicia Vitarelli, *‘Extreme’ Need for More Youth Sports Referees, Umpires in Pennsylvania*, 6 ABC ACTION NEWS (June 20, 2023), <https://6abc.com/pa-youth-sports-umpire-referee-shortage-piaa-pennsylvania-interscholastic-athletic-association-baseball-games/13403750/> [<https://perma.cc/R64U-GACZ>] (explaining that Pennsylvania Little League umpires get paid for their time).

96. *See* Yurkevich, *supra* note 3 (discussing current umpire shortage across United States and inability of leagues to find individuals willing to umpire Little League games partially because of fear of violence and harm at hands of parents and spectators).

97. *See id.* (explaining violence against umpires as motivating factor in large numbers of umpire retirement and resignations in last few years).

98. *See id.* (discussing umpire shortage following Coronavirus pandemic and exacerbation of umpire harassment issues recently have led to game cancellations and delays for Little League teams across country).

99. *See* ALA. CODE § 13A-11-144 (2023) (explaining law enacted in Alabama in 2013 that makes harassment of sports officials, punishable crime); *see also* H.B. 297, Gen. Assemb., Reg. Sess. 2023–24 (Pa. 2023) (explaining proposed provisions of Pennsylvania’s attempt to criminalize harassment of sports officials). Alabama is one of a few states that has already existing prohibitions on umpire harassment. *See generally* ALA. CODE § 13A-11-144 (2023) (explaining criminal punishments imposed

1. *Pennsylvania House of Representatives' Attempt to Combat Umpire Shortages*

Pennsylvania is one of many states currently facing a shortage of youth baseball umpires.¹⁰⁰ Veteran umpires of youth baseball leagues across the state of Pennsylvania reported working more games than ever before in the last year; this phenomenon occurred as a result of umpires quitting and retiring, and an inability to find individuals willing to fill the vacant roles for fear of being harmed by parents and spectators.¹⁰¹ A recent survey conducted of sports officials across Pennsylvania uncovered that nearly half of the sports officials that participated felt unsafe when performing their job-related duties due to the actions of spectators, parents, and coaches.¹⁰² In response to this data, Pennsylvania House Representative Anita Kulik proposed a legislative solution to combat the umpire shortage and protect umpires from abuse by parents and fans during the 2023-2024 regular session.¹⁰³

Representative Kulik's bill, H.B. 297, if enacted, would create a new criminal offense for the harassment of a sports official, using existing guidelines for criminal harassment established by Section 2709 of Pennsylvania's criminal code.¹⁰⁴ Under the applicable provisions of current harassment law, if enacted, H.B. 297 would criminalize the following acts when conducted against a sports official:

on individuals by state of Alabama and related law enforcement if individual harasses umpire). Pennsylvania's proposed law to prohibit the harassment of sports officials, H.B. 297, closely mirrors Alabama's enacted law in punishment structure and scope of conduct. *Compare id.* (explaining legal ramifications of violations of law prohibiting harassment of sports officials) *with* Pa. H.B. 297 (explaining proposed punishment structure for individuals who harass sports officials).

100. *See* Vitarelli, *supra* note 95 (explaining current nation-wide umpire shortage is drastically affecting Pennsylvania).

101. *See* Memorandum from Anita Astorino Kulik on Harassment of a Sports Official to the Pa. H.R. (Jan. 26, 2023) (on file with Pa. H.R.) [hereinafter *Memo. from Anita Astorino Kulik*] (explaining issues associated with current umpire shortage in Pennsylvania).

102. *See id.* (explaining data gathered by surveyors that indicates umpires' feelings of danger when acting in scope of their job due to actions of spectators and coaches).

103. *See id.* (explaining motivations behind proposing new law to criminalize harassment of sports officials).

104. *See generally* Pa. H.B. 297 (explaining details of punishment of offense and acts that would be criminalized if bill was enacted into law).

[W]ith the intent to harass, annoy or alarm another, the person:

(1) strikes, shoves, kicks or otherwise subjects the other person

to physical contact, or attempts or threatens to do the same;

(2) follows the other person in or about a public place or places;

(3) engages in a course of conduct or repeatedly commits acts

which serve no legitimate purpose;

(4) communicates to or about such other person any lewd, lascivious, threatening, or obscene words, language, drawings or caricatures.¹⁰⁵

The definition of “sports official” provided in H.B. 297 is noticeably broader than just umpires as it includes public school personnel and coaches among the list of individuals protected from harassment via threat of criminal punishment.¹⁰⁶ When addressing the applicability of this new provision, the Pennsylvania House of Representatives defined the term “sports official” to mean “a person at a sporting event who enforces the rules of the event, such as an umpire or referee, or a person who supervises the participants, such as a coach.”¹⁰⁷

A feature unique to H.B. 297 is that an individual may be found guilty and charged with a misdemeanor in two instances: if the sports official was harassed as a result of “official acts” or if an individual was harassed merely because of their status as a sports official.¹⁰⁸ If an

105. *See id.* (prompting reader to look at harassment provisions that are applicable to individuals who harass sports officials under new proposed bill); *see also* 18 PA. CONS. STAT. § 2709(a) (2023) (explaining applicable provisions of existing harassment code that would apply to individuals accused of harassing sports official).

106. *See* Pa. H.B. 297 (explaining types of individuals which fall under “sports official” threshold and are granted protection under H.B. 297). A “sports official” is defined as:

A person at a sporting event who enforces the rules of the event, such as an umpire or referee, or a person who supervises the participants, such as a coach. The term includes a trainer, team attendant, game manager, athletic director, assistant athletic director, president, dean, headmaster, principal, and assistant principal of a school, college, or university.

See id. (discussing types of individuals offered protection against harassment under H.B. 297).

107. *See id.* (defining who qualifies as “sports official” under H.B. 297). H.B. 297 also noted that team trainers, attendants, game managers, athletic directors, school presidents and principals (or equivalent thereof), and assistant principals at K-12 schools, colleges, and universities qualify as “sports officials” and individuals protected by the pending bill upon enactment. *See id.* (discussing expansive category of individuals who qualify as sports officials).

108. *See id.* (“A person who violates [the harassment statute] . . . where the victim is a sports official who was harassed as result of official acts or status as a sports official, is guilty of harassment of a sports official.”).

individual violates the statute, assuming it is enacted, they would be charged with a third-degree misdemeanor.¹⁰⁹ H.B. 297 was referred to the Pennsylvania House of Representatives' judiciary committee in March 2023, but there is no indication showing that a vote to pass the legislation has been scheduled.¹¹⁰

2. *Deptford Little League's Non-Legislative Measures for Controlling Umpire Abuse*

Like Pennsylvania, New Jersey is also currently suffering from a widespread umpire shortage.¹¹¹ Upon witnessing umpires quit refereeing Little League games early into the 2023 season after verbal altercations with parents and spectators, Deptford Little League instituted a new rule to prevent any further verbal or physical altercations between umpires and spectators.¹¹² While not imposing a criminal punishment upon violators, Deptford Little League's rule generally provides that spectators who interfere with the game and confront umpires regarding legitimacy or accuracy of calls during a game must umpire three youth baseball games themselves before the disruptive spectator is permitted to attend a Deptford Little League game again.¹¹³ However, if the spectator who criticized or harassed the umpire agrees to officiate three Little League games, the spectator will be permitted back on the premises upon completion of the third game.¹¹⁴ As opposed to inflicting criminal punishment to

109. *See id.* (explaining grading of offense for violators). In Pennsylvania, a person found guilty of a third-degree misdemeanor may be subject to a maximum fine of \$5,000 or a maximum imprisonment time of three months. *See* 30 PA. CONS. STAT. § 923(a)(5) (2023) (explaining criminal penalties for misdemeanors of third degree).

110. *See generally* *Bill Information: Regular Session 2023-2024 House Bill 297*, PA. GEN. ASSEMBLY, <https://www.legis.state.pa.us/cfdocs/billInfo/billInfo.cfm?year=2023&kind=0&body=H&type=B&bn=0297> [https://perma.cc/GFP7-A2A4] (last visited Aug. 6, 2023) (explaining most recent activity for H.B. 297 was referral to judiciary committee in March 2023).

111. *See* Yurkevich, *supra* note 3 (explaining that New Jersey is currently suffering from shortage of umpires). The author partially attributes the current shortages in umpires and referees in youth sports games across the nation to recent acts of violence against umpires while acting within the scope of their job duties. *See id.* (explaining contributing causes to umpire shortages in various states).

112. *See* Goldman, *supra* note 7 (explaining motivation behind enacting new rule limiting parent interaction and communication with umpires).

113. *See* Steve Gardner, *New Jersey Little League Offers Unique Solution to Unruly Parents in Stands*, USA TODAY (Apr. 25, 2023, 12:22 PM), <https://www.usatoday.com/story/sports/2023/04/25/new-jersey-little-league-forces-those-who-argue-umps-don-mask/11734568002/> [https://perma.cc/9XMP-7H3X] (explaining general details of Deptford Little League's newly implemented rule).

114. *See* Goldman, *supra* note 7 (explaining consequences imposed on individuals who violate new rule and redemption opportunities). Notably, the ban from the Little League facility was only set to occur for the rest of the season, it was not an

curb spectators’ unnecessary aggression towards umpires, Deptford Little League’s rule places the spectator in the shoes of the umpire as a teaching moment to discourage the spectator from further heckling or harassing other Little League umpires.¹¹⁵ Deptford Little League’s overarching goal in creating this new rule for parents and spectators is to enhance protections of umpires through a lesson in morality.¹¹⁶ This rule was formally announced and took effect in early 2023.¹¹⁷

III. SWING AND A MISS: WHY THE PROPOSED REGULATIONS WOULD VIOLATE THE FIRST AMENDMENT

While proposing different penalties for umpire harassment, the regulations under review by this Comment would likely implicate the First Amendment rights of sports fans and spectators on the grounds of infringing on their expressions of constitutionally protected speech.¹¹⁸ Due to the nature of cheering speech and heckling, the degree of volatility of the speech utilized by spectators may warrant a determination that some speech used in their expressions falls into the constitutionally unprotected category of true threats.¹¹⁹

indefinite ban from the facility. *See id.* (discussing longevity of punishment imposed on spectators who violate new Deptford Little League rule).

115. *See* Gardner, *supra* note 113 (explaining deterrence and morality element embedded into new rule imposed on parents and spectators of Deptford Little League games).

116. *See id.* (emphasizing that primary goal of new rule is to prevent violence against umpires). The new Deptford Little League rule is meant to deter individuals from committing acts of violence against umpires by demonstrating the hardships of umpires and appealing to a prospective rule violator’s sense of humanity. *See id.* (discussing motivation and psychological elements considered behind enactment of Deptford Little League rule).

117. *See* Zachary Rogers, *Parents Who Argue with Little League Umpires to Judge Games Themselves or Face Suspension, New NJ Rule Says*, WWMT News (Apr. 26, 2023, 3:19 PM), <https://wwmt.com/news/nation-world/parents-who-argue-with-umpires-will-have-to-ref-games-themselves-says-nj-little-leagues-newest-rule-new-jersey-deptford-township-don-bozzuffi> [<https://perma.cc/3MZ5-QYWE>] (discussing implementation of rule and its effectiveness as of April 2023).

118. *See* Wasserman, *supra* note 56, at 537 (discussing previous attempts at curbing constitutionally protected speech at sports fields in grandstands to further public policy failed because of nature of forum and types of restrictions placed on speech). For further discussion of the free speech rights of fans implicated by H.B. 297 and the Deptford Little League local rule, see *infra* notes 135–250 and accompanying text.

119. *See* STOKES PAULSEN ET AL., *supra* note 44, at 895–97 (defining inciting language, true threats, and fighting words). Heckling is typically utilized by sports fans to annoy and taunt umpires, coaches, and players of either team. *See* Wasserman, *supra* note 56, at 567 (discussing cheering speech and usage of heckling by fans to taunt and target players and decision-making individuals). While hecklers do not traditionally utilize language that would lead to an assumption that their speech would constitute unprotected speech, more recently physical altercations and

Finding spectator language unprotected under the First Amendment, because the language utilized constituted a true threat, may render the regulations imposed on speech valid and enforceable under the Constitution.¹²⁰

In the instance that the true threats doctrine does not apply to spectator speech and expression, the regulations at issue may be deemed a violation of spectators' First Amendment rights.¹²¹ This is because it is unlikely that the spectators' speech would fall under another unprotected category of speech due to the strict circumstances upon which the other unprotected categories are invoked.¹²² The statute and rule under review by this Comment likely do not qualify as constitutionally unprotected under the categories regarding fighting words and inciting, obscene, or defamatory speech.¹²³ The exclusion of an analysis under obscenity is justified because profane language, which is customary to harassment and heckling, does not fall under the umbrella of obscene speech.¹²⁴

threats have been uttered by spectators attempting to heckle umpires at youth baseball games. *See id.* (discussing traditional conduct utilized to express fans' discontent with umpires); *see also* Yurkevich, *supra* note 3 (explaining recent explosion of physical violence following verbal threats aimed at umpires officiating Little League baseball games across country).

120. *See* STOKES PAULSEN ET AL., *supra* note 44, at 895–97 (explaining true threats as unprotected speech under Constitution).

121. *See id.* (explaining that without permissible justification for restricting free speech rights, regulations on speech of individuals by government entities violate First Amendment).

122. *See id.* (defining inciting language, true threats, and fighting words).

123. *See id.* (explaining what types of speech are considered fighting words and inciting, obscene, and defamatory speech); *see also* H.B. 297, Gen. Assemb., Reg. Sess. 2023–24 (Pa. 2023) (explaining that obscene language is grounds for misdemeanor charge under proposed bill). While H.B. 297 pinpoints obscene language as prohibited, it is customary in heckling culture not to include such language. *See id.* (providing provisions of H.B. 297 and current Pennsylvania criminal harassment statute); *see also* Lingg, *supra* note 90 (explaining typical behavior of fans engaging in heckling and widely accepted customs of hecklers). Heckling is usually grounded in sarcasm and satirical humor that relates to the game or specific players. *See id.* (discussing typical substance and execution of heckling speech). Defamatory speech may be a route for analysis only if the language used by the heckler would reasonably inflict reputational harm, and the umpire would not fall into the category of a “public figure.” *See* STOKES PAULSEN ET AL., *supra* note 44, at 895–97 (explaining defamatory speech and essential elements needed to allow restriction on speech rights).

124. *See* STOKES PAULSEN ET AL., *supra* note 44, at 895–97 (explaining limitations on what is defined as “obscene” language).

A. Under H.B. 297, Heckling the Umpire Could Be a Criminal Offense

H.B. 297 functions as an amendment to the currently enacted harassment law in Pennsylvania.¹²⁵ If passed, H.B. 297 would criminalize the harassment of “sports officials,” a category that encompasses a large array of individuals not limited to just umpires.¹²⁶ The foreseen implications on free speech for sports fans and hecklers alike lie in the vague “intent to annoy” phrasing regarding the mens rea element of the offense when expanding the current Pennsylvania criminal harassment statute protections to sports officials.¹²⁷ However, limitations on the protected status of hecklers’ and sports fans’ speech towards umpires will depend on the actual nature of the language used and the degree of discretion umpires receive under H.B. 297.¹²⁸

1. *The Federal Government Can Permissibly Create Liability for Harassment*

While the government cannot impose liability on individuals based on the content or viewpoint of speech, it is within the rights of state governments to create liability for conduct viewed as dangerous to the health and safety of their citizens.¹²⁹ In Pennsylvania, the legislative branch enacted a law imposing criminal liability for harassment, which includes verbal and cyber harassment, to further

125. See Pa. H.B. 297 (explaining proposed rule would act as amendment to existing harassment law and create criminal punishments for umpire harassment).

126. See *id.* (defining who qualifies as “sports official” under H.B. 297). H.B. 297 also noted that team trainers, attendants, game managers, athletic directors, school presidents and principals (or equivalent thereof), and assistant principals at K–12 schools, colleges, and universities also qualify as “sports officials” and individuals protected by the pending bill upon enactment. See *id.* (discussing expansive category of individuals who qualify as sports officials).

127. For further discussion of the vagueness of H.B. 297, see *infra* notes 135–160 and accompanying text.

128. For further discussion of the applicability of the nature of the speech, specifically true threats and crime-related speech rights, see *infra* notes 203–221 and accompanying text. For further discussion of constitutional issues presented by the high level of discretion provided to umpires, see *infra* notes 135–160 and accompanying text.

129. See *Criminal Law: 2.1 Federalism*, UNIV. MINN. LIBR. (2012), <https://open.lib.umn.edu/criminallaw/chapter/1-1-federalism/> [<https://perma.cc/JT9E-X68M>] (last visited May 3, 2024) [hereinafter *Federalism*] (explaining rights of States to impose criminal liability for actions that endanger their citizens). The author clarified further that the rights of states to enact criminal laws is a part of the police power granted to the individual states by the Tenth Amendment of the U.S. Constitution. See *id.* (discussing expansive state police power conferred by United States Constitution).

the safety of Pennsylvania citizens.¹³⁰ H.B. 297 extends the current Pennsylvania criminal harassment statute to offer additional protections to sports officials due to their job status and when those officials are completing tasks required by their job.¹³¹ If enacted, H.B. 297 may turn some forms of constitutionally protected speech utilized by fans into a form of crime-related speech that is unprotected.¹³² Enacting a statute criminally punishing harassment is considered safe for a government to enact as it relates to the health and safety of citizens.¹³³ However, the unique challenges brought forth by the possible enactment of H.B. 297 relate to procedural issues in the enforcement of the statute and discretion granted to umpires and coaches in policing spectator language.¹³⁴

2. *Issues Related to Protected and Unprotected Speech Categories Implicated by H.B. 297*

In addressing possible issues and concerns regarding the speech rights of sports fans implicated by the enactment of H.B. 297, it is important to first emphasize the broad protections the proposed bill grants to sports officials.¹³⁵ If passed, H.B. 297 would grant protection to “sports officials” when acting in their positions and completing tasks associated with their status as “sports officials.”¹³⁶

130. See 18 PA. CONS. STAT. § 2709(a) (2023) (explaining conduct that permits criminal liability for harassment in Pennsylvania). Criminal liability imposed via the legislative branch is typically in lieu of initiatives within the states’ police power, meaning that statutes imposing criminal liability seek to prohibit certain conduct because it may endanger or harm other citizens. See *Federalism*, *supra* note 129 (explaining police power rights granted to states via Constitution).

131. See Pa. H.B. 297 (discussing proposed provisions granting broader protections to sports officials).

132. See Benjamin Means, *Criminal Speech and the First Amendment*, 86 MARQ. L. REV. 501, 507 (2002) (citing *Giboney v. Empire Storage & Ice Co.*, 336 U.S. 490 (1949)) (explaining Supreme Court’s holding in *Giboney v. Empire Storage & Ice Co.* regarding criminal speech). The author notes that speech-related criminal conduct is not protected by the First Amendment merely because the criminal act is the speech itself. See *id.* (explaining not all speech is protected equally under Constitution). Rather, the legislature has a right to restrict speech if it forms a basis for criminal liability by facilitating the crime or making a possible victim fear a criminal act will follow the speech. See *id.* (discussing ability of state legislature to regulate speech uttered to facilitate or further completion of crime without violating First Amendment).

133. See *Federalism*, *supra* note 129 (explaining ability of states to criminalize conduct to protect citizens).

134. For further discussion of the procedural issues presented by the enforcement of H.B. 297, see *infra* notes 163–195 and accompanying text.

135. See Pa. H.B. 297 (explaining that proposed protections would provide grounds for liability for more than harassment due to job-related tasks).

136. See *id.* (explaining when protections granted to sports officials by H.B. 297 would apply).

The bill would also protect officials outside of completing job-related tasks simply because of their status as a sports official.¹³⁷ This proposed statute seemingly provides heightened, exceedingly broad protections to a large class of individuals simply because of their choice of employment.¹³⁸

A glaring issue regarding the possible enactment of H.B. 297 is the criminalization and categorization of specific types of cheering speech.¹³⁹ While not all cheering speech used by fans is constitutionally protected, the broad application of H.B. 297 may criminalize traditionally protected speech because “cheering” fans often possess no legitimate purpose apart from their “intent to annoy” an umpire or coach.¹⁴⁰ The nature of speech and intent of the speaker when heckling an umpire are the key factors to analyze for the statute at issue: when assessing the permissibility and protection of a fan’s speech, the issue primarily lies in the nature and status of protection for the speech under the Constitution.¹⁴¹

When analyzing the nature of most heckling speech, it is clear that the First Amendment doctrines pertaining to obscenity, fighting words, and inciting speech would likely not apply.¹⁴² However,

137. *See id.* (explaining grounds for protection and liability of sports officials as two-fold: protections due to job-related tasks and protections due to job title and status).

138. *See id.* (discussing who qualifies as “sports official” according to language of proposed bill). According to the definition, if enacted, H.B. 297 would deem an “umpire or referee, or a person who supervises the participants, such as a coach . . . trainer, team attendant, game manager, athletic director, assistant athletic director, president, dean, headmaster, principal and assistant principal of a school, college or university,” as a sports official for purposes of providing additional protections against harassment. *See id.* (explaining specific categories of individuals protected under proposed statute).

139. For further discussion of the issues arising from the criminalization of cheering speech, see *infra* notes 203–221 and accompanying text.

140. *See* Pa. H.B. 297 (explaining that proposed bill would act as amendment to current criminal harassment statute); *see also* 18 PA. CONS. STAT. § 2709(a) (2023) (explaining that conduct must be carried out with “intent to harass, annoy or alarm another”). The provisions of the current criminal harassment statute in effect in Pennsylvania merely mandate that, undertaken with the intent to annoy, alarm, or harass the affected individual, the conduct must be more than a one-time thing, the individual’s conduct must serve no legitimate purpose or the speech must be threatening or obscene. *See* 18 PA. CONS. STAT. § 2709(a) (2023) (explaining factors to consider and statutory basis for criminal liability for harassment in Pennsylvania).

141. *See* 18 PA. CONS. STAT. § 2709(a) (2023) (explaining intent necessary to impose liability for harassment). The nature of speech is important to determine whether H.B. 297 would impose an unconstitutional limitation on protected speech. For further discussion of speech valuation and unconstitutional limitations on fan speech, see *infra* notes 203–221 and accompanying text.

142. *See* STOKES PAULSEN ET AL., *supra* note 44, at 895–97 (explaining each doctrine and their applicability). Because obscenity is already criminalized under existing Pennsylvania harassment law, no further analysis as to heckler usage of obscene language is necessary. *See* 18 PA. CONS. STAT. § 2709(a) (2023) (explaining that repeated acts and speech that invoke obscene language or pictures with intent to

just because those types of unprotected speech are excluded from the analysis does not mean they are atypical to harassing speech as an entire category.¹⁴³ Rather, the doctrine regarding true threats is central to the issues that lay the foundation for the proposal of H.B. 297.¹⁴⁴

annoy, harass, or threaten are criminally punishable). The fighting words doctrine would also not be applicable because fighting words carry a presumption that, after spoken, the speaker's comments would result in immediate "fisticuffs." See *Chaplinsky v. N.H.*, 315 U.S. 568, 572 (1942) (explaining that fighting words doctrine renders personally abusive epithets which, when addressed to ordinary citizen, are inherently likely to provoke violent reaction, unprotected by Constitution). Additionally, the fighting words doctrine likely would not apply to H.B. 297 because conduct categorized as criminal harassment must be undertaken more than a singular time; fighting words likely need not be repeated due to an immediate provocation after utterance. See *Commonwealth v. Schnabel*, 344 A.2d 896, 898 (Pa. Super. Ct. 1975) (holding that singular isolated act is insufficient to prove course of conduct necessary for liability under Pennsylvania's criminal harassment law); see also *Chaplinsky*, 315 U.S. at 572 (explaining that fighting words is applied only when speech promotes immediate outbreak of violence). Additionally, fighting words must be targeted at someone, whereas harassing or annoying conduct does not require the defendant to specifically interact with and target a specific individual to impose liability. See *STOKES PAULSEN ET AL.*, *supra* note 44, at 895–97 (explaining that fighting words must be target towards and uttered upon interaction with intended victim); *Commonwealth v. Collins*, 286 A.3d 767, 774 (Pa. Super. Ct. 2022) (explaining that 18 PA. CONS. STAT. § 2709(a) (3) does not require offender to communicate specifically with or interact with intended victim to be held liable). Inciting speech would likely not apply to the analysis of H.B. 297 because inciting speech is not categorized as speech that "serves no legitimate purpose." See *Brandenburg v. Ohio*, 395 U.S. 444, 447 (1969) (explaining that inciting speech is uttered to "produc[e] imminent lawless action"); see also 18 PA. CONS. STAT. § 2709(a) (2023) (explaining that repeated conduct must serve no legitimate purpose to impose liability). For analysis purposes it is assumed that language used by hecklers at youth baseball games is not promoting violent acts against the umpire to other spectators, nor instructing someone else to take lawless action against a sports official. See, e.g., *Wasserman*, *supra* note 56, at 529 (explaining that heckling's roots lie in satirical remarks meant to annoy, not promote violence, and of which often raises questions regarding protected status of heckling cheering speech).

143. See Eugene Volokh, *Freedom of Speech and Workplace Harassment*, 39 UCLA L. REV. 1791, 1816–18 (1992) (explaining permissibility of government imposing restrictions on harmful speech). Harassment law is a permissible regulation of harmful speech by the government because the government has a right to limit the usage of unprotected, injurious speech. See *id.* (explaining government's ability to regulate speech facilitating criminal behavior). Per the nature of fighting words, obscene speech, and true threats as unprotected, statutes regulating such speech is permissible without infringing on First Amendment rights. See *STOKES PAULSEN ET AL.*, *supra* note 44, at 895–97 (explaining unprotected nature of fighting words, true threats, and obscene speech, and permissible regulations without violating Constitution).

144. See *Va. v. Black*, 538 U.S. 343, 359 (2003) (defining true threats); see also Memo. from Anita Astorino Kulik, *supra* note 101 (explaining rationale and motivations behind proposing H.B. 297). True threats are categorized as statements uttered by individuals that reflect an intent to commit violence against someone else. See *Black*, 538 U.S. at 359–60 (clarifying that in assessing language to decide whether it is true threat, there is no requirement that speaker intend to commit act; it only matters that violence was threatened and receiver reasonably feared harm). In her memorandum of support for H.B. 297, Representative Kulik noted that

The memorandum of support submitted by Representative Kulik regarding H.B. 297 stated that violence and verbal abuse against umpires was a primary motivator in creating the proposed rule.¹⁴⁵ Given the widespread shortage of umpires and the high turnover rates for umpire positions, it is fair to assume that many umpires experience a reasonable apprehension or fear of physical violence when heckled and seemingly threatened.¹⁴⁶ A prime example of this type of conduct occurred in Mississippi at a youth baseball game in 2022.¹⁴⁷ The umpire injured at the Mississippi youth baseball game recalled volunteering to referee the game in place of a sick colleague.¹⁴⁸ The umpire stated that verbal abuse from parents during the game eventually led to one mother being ejected and the same mother later approaching the fill-in umpire after the game and punching the umpire in the face for ejecting her.¹⁴⁹ This is not an isolated incident; stories like the one from the Mississippi umpire have occurred in many states across the country.¹⁵⁰

upticks in physical and verbal abuse towards umpires was a motivating factor for proposing legislation. See Memo. from Anita Astorino Kulik, *supra* note 101 (discussing increase in abuse towards umpires as motivating factor for proposed legislation).

145. See Memo. from Anita Astorino Kulik, *supra* note 101 (explaining reasoning behind introduction of legislature to protect umpires and other vulnerable sports-affiliated individuals).

146. See Yurkevich, *supra* note 3 (explaining that recent upticks in physical and verbal abuse of umpires have partially caused many youth baseball umpires to quit their jobs over concerns of their safety). The high levels of resignations and inability to find individuals willing to umpire youth sports after dealing with threats and abuse from parents speaks to umpires' fears of being the next tragic news headline. See *id.* (discussing fears of many individuals resigning from youth baseball umpire positions).

147. See Melissa Payne & Debra Worley, *Umpire Recovering After Being Punched in the Face at Kids' Softball Game*, ACTION NEWS 5 (Apr. 12, 2022, 10:54 AM), <https://www.actionnews5.com/2022/04/12/umpire-recovering-after-being-punched-face-kids-softball-game/> [<https://perma.cc/JL83-9RAK>] (explaining events that took place at youth softball game and led to umpire being punched in face by unruly parent previously ejected from game).

148. See *id.* (discussing factual background leading to her participation in refereeing game).

149. See *id.* (stating facts surrounding physical abuse of umpire in Mississippi by angered parent). After the altercation with the parent, the battered umpire expressed her wish that the Mississippi legislature would reconsider their decision to desert legislation that would make assaulting an umpire a felony. See *id.* (discussing legislative action and support of criminalization of umpire harassment). In contrast to current Mississippi law, Pennsylvania does currently have a law in place that imposes heightened criminal punishment for the assault and battery of an umpire. See Memo. from Anita Astorino Kulik, *supra* note 101 (discussing currently enacted law that provides criminal liability for assault of umpires).

150. See, e.g., Amanda Lee Meyers, *Dad Arrested for Punching Umpire, a Disabled Veteran, at Son's Baseball Game*, USA TODAY (May 8, 2023, 5:25 PM), <https://www.usatoday.com/story/news/nation/2023/05/08/florida-dad-punished-umpire-arrest/70196059007/> [<https://perma.cc/8HJV-DBFT>] (explaining that recently in Florida unruly parent punched unsuspecting volunteer umpire in face after umpire gave unruly parent's son warning for unsportsmanlike conduct); see also Matthew

Prior to the injury suffered by the Mississippi youth baseball umpire, the Mississippi state legislature introduced a bill with the same motivations as H.B. 297, which aimed at protecting umpires from abuse incurred by merely performing routine job duties, that ultimately was not enacted into law.¹⁵¹ Unlike Mississippi, the state of Alabama enacted a law in 2001 that criminally punishes both the harassment and assault of a sports official.¹⁵² In comparison to H.B. 297, Alabama's law criminalizing the harassment and assault of a sports official is exponentially more limited in scope.¹⁵³ Currently, only "a person at a sports event who enforces the rules of the event, such as an umpire or referee, or a person who supervises the participants, such as a coach" is considered a sports official for criminal liability purposes.¹⁵⁴ H.B. 297's wide-reaching scope for liability regarding harassment of a sports official and issues distinguishing

Stanmyre, *N.J. Youth Baseball Umpire Violently Attacked by Coach, Needed Surgery for Broken Jaw*, NJ.COM (June 14, 2022, 5:43 PM), <https://www.nj.com/news/2022/06/nj-youth-baseball-umpire-violently-attacked-by-coach-needed-surgery-for-broken-jaw.html> [<https://perma.cc/4Q6Y-LV9Y>] (explaining recent altercation between upset youth baseball coach and umpire in New Jersey resulted in coach punching umpire and breaking umpire's jaw); Katherine Phillips, *Fight Breaks Out Between Parents and Umpire After Baseball Playoff Game*, YOURCENTRALVALLEY.COM (May 17, 2022, 11:11 PM), <https://www.yourcentralvalley.com/news/local-news/fight-breaks-out-between-parents-and-umpire-after-baseball-playoff-game/> [<https://perma.cc/3Z7H-4PYY>] (explaining recent fight that broke out between parents and umpire after high school baseball playoff game in California).

151. See Payne & Worley, *supra* note 147 (discussing attempts by Mississippi legislature to combat violence against umpires). In her interview, the injured youth baseball umpire called on the Mississippi legislature to reconsider the bill previously proposed that would criminally punish individuals who physically harmed umpires whilst performing their job duties. See *id.* (explaining statements made by injured youth baseball umpire about previous bill introduced by Mississippi legislature). However, as opposed to general criminal charges suggested in H.B. 297, the law proposed by the Mississippi legislature, if enacted, would make assaulting an umpire criminally punishable as a felony offense. See *id.* (explaining possible criminal punishment imposed on violators by proposed Mississippi bill).

152. See Chad Berry, *Bill Aims to Protect Officials*, TUSCALOOSANEWS.COM (Dec. 29, 2001, 10:00 PM), <https://www.tuscaloosaneews.com/story/news/2001/12/30/bill-aims-to-protect-officials/27816381007/> [<https://perma.cc/6PN8-QNSY>] (discussing law proposed and later enacted by Alabama legislature to combat umpire abuse).

153. See H.B. 297, Gen. Assemb., Reg. Sess. 2023–24 (Pa. 2023) (discussing wide-encompassing sports official category for proposed law); see also ALA. CODE § 13A-11-144 (2023) (explaining narrow applicability for sports official category under enacted Alabama law). Pennsylvania's proposed legislative solution to combat umpire abuse includes protections for sports officials, which encompasses umpires, coaches, and at least four other categories of individuals not directly enforcing the rules of play for sports games. See Pa. H.B. 297 (explaining all categories of individuals that are considered sports official). Unlike Pennsylvania, Alabama's enacted law prohibiting the harassment and assault of sports officials only designates two types of individuals as sports officials: sports referees or umpires, and coaches. See ALA. CODE § 13A-11-144 (2023) (discussing sports official definition under enacted law).

154. See ALA. CODE § 13A-11-144 (2023) (explaining definition of sports official for criminal liability purposes under Alabama code).

between heckling that represents a true threat, and mere low-value speech utilized by fans to voice their frustrations are the crux of the concerns raised by H.B. 297’s proposal.¹⁵⁵

A bulk of speech used at sports games to target and heckle umpires may mildly insult the umpire or annoy them, but not pose a risk of violence.¹⁵⁶ There is a clear distinction between jabs like “you need to get your eyes checked,” and “meet me outside the stadium so I can teach you a lesson.”¹⁵⁷ Notably, the Supreme Court does not endorse the limitation of hateful, offensive, or rude speech unless it incites a fear of violence.¹⁵⁸ The nature of H.B. 297 and the language used may promote issues of statutory vagueness, thus toeing the line of unconstitutional regulations on spectators’ expressive speech.¹⁵⁹ H.B. 297’s creation of criminal liability for repeated acts which “serve no purpose” but which indicate an “intent to annoy” poses a serious threat to sports fan engagement because the effect of the law’s enactment could be the promotion of content-based regulations on speech.¹⁶⁰ This Comment argues that the proposed provisions of

155. See Pa. H.B. 297 (discussing large number of individuals protected via criminal punishment due to sports official designation under H.B. 297). For further discussion of the valuation of cheering speech, see *infra* notes 203–221 and accompanying text.

156. See Linton Weeks, *Hey! You! The Unstoppable Rise of Heckling*, NPR (May 27, 2012, 2:15 PM), <https://www.npr.org/2012/05/25/153689959/hey-you-the-unstoppable-rise-of-heckling> [<https://perma.cc/5J2P-KE9Y>] (explaining speech and conduct of hecklers in varying environments, including sports games). Hecklers often see their verbal onslaught of mildly offensive or humor-based comments towards the receiving individual as merely a verbal communication of a differing opinion than that of the receiver, not an act likely to lead to violence between the speaker and receiver. See *id.* (addressing how hecklers may personally view their actions). Psychiatric researcher Pamela Rutledge clarified that many hecklers see their verbal interjections as a type of nonviolent “disruption or a challenge to power.” See *id.* (discussing act of heckling through lens of heckler and motivating psychological factors behind hecklers’ verbal oppositions).

157. See, e.g., *Watts v. U.S.*, 394 U.S. 705, 708 (1969) (explaining that utterance of mere “political hyperbole” intended as joke are protected by First Amendment and not deemed true threats); see also *Va. v. Black*, 538 U.S. 343, 359 (2003) (explaining that true threats express serious intentions of speaker to commit acts of violence against specific person or persons).

158. See *Matal v. Tam*, 582 U.S. 218, 244, 247 (2017) (implying that unless speech at issue contains properties of unprotected speech including incitement or fighting words, any regulation of hateful, rude, or offensive speech is impermissible and unconstitutional).

159. See Emily M. Snoddon, *Clarifying Vagueness: Rethinking the Supreme Court’s Vagueness Doctrine*, 86 UNIV. CHI. L. REV. 2301, 2302 (2019) (explaining current doctrinal test for statutory vagueness). Currently, a statute may be held in violation of the Constitution if the statute “fails to give ‘a person of ordinary intelligence fair notice of what is prohibited’ (the ‘fair notice’ prong) or . . . is ‘so standardless that it authorizes or encourages seriously discriminatory enforcement.’” See *id.* (discussing current test for unconstitutional vagueness of statute).

160. See Kristi Nickodem & Kristina Wilson, *Responding to First Amendment Audits: Content-Based vs. Viewpoint-Based Restrictions*, COATES’ CANONS NC LOCAL GOV’T L.

H.B. 297 would satisfy the second prong of the vagueness test in an as-applied challenge due to the unfettered discretion provided to sports officials, not merely umpires, in curtailing fan speech.¹⁶¹ This broad grant of authority to silence and control the content of spectator speech to individuals like school principals, athletic trainers, and other individuals not making game-altering decisions may render the statute a violation of the Constitution.¹⁶²

3. *The Language of H.B. 297 May Give Too Much Discretion to Sports Officials and Promote Enforcement Issues*

Heckling is a form of fan engagement with a sports game that is intended to annoy and frustrate umpires, players, and coaches.¹⁶³ Heckling typically serves no legitimate purpose, other than to annoy or agitate the targeted individuals.¹⁶⁴ As currently proposed, H.B. 297 may raise procedural issues regarding free speech because it contains characteristics emulating statutory overbreadth, vagueness, and issues regarding enforcement of the statute.¹⁶⁵ Notably, the provisions of H.B. 297 conflict with most of the main ideas that encapsulate the purpose of procedural First Amendment protections

(Nov. 18, 2022), <https://canons.sog.unc.edu/2022/11/responding-to-first-amendment-audits-content-based-vs-viewpoint-based-restrictions/> [https://perma.cc/J6LS-DLQE] (explaining as-applied viewpoint-based regulations on free speech). While not facially presenting issues regarding censorship of individuals based on viewpoint or belief, H.B. 297 likely promotes viewpoint-based censorship in practice due to the discretion given to sports officials and law enforcement in ascertaining whether a heckler's speech meets the criteria necessary to impose liability for criminal harassment. *See id.* (explaining concept of "as-applied" challenges). For further discussion of the censorship power granted to sports officials under the proposed provisions of H.B. 297, see *infra* notes 203–221 and accompanying text.

161. For further discussion of H.B. 297's vague grants of authority and issues pertaining to individual discretion of umpires and other specified individuals, see *infra* notes 163–202 and accompanying text.

162. For further discussion of the censorship power granted to sports officials under the proposed provisions of H.B. 297, see *infra* notes 203–221 and accompanying text.

163. *See Heckle*, *supra* note 91 (defining "heckle" as conduct by fans aimed at annoying individuals and engaging in sports game).

164. *See generally Weeks*, *supra* note 156 (explaining rationale and mindset of hecklers when engaging in heckling and providing possible alternative purposes to individuals utilizing heckling at politically oriented forums and events).

165. *See H.B. 297*, Gen. Assemb., Reg. Sess. 2023–24 (Pa. 2023) (explaining proposed parameters for criminal liability for harassment of sports official). Specifically, the terminology of "annoy" and "with no legitimate purpose" cause issues in determining where to commence line-drawing because it allows for subjectivity to factor into creation of criminal liability for the offense. *See STOKES PAULSEN ET AL.*, *supra* note 44, at 895–97 (providing examples and implications of overly broad or vague laws). For further discussion of issues on overbreadth, vagueness, and selective enforcement raised by Pa. H.B. 297, see *infra* notes 166–202 and accompanying text.

by possibly allowing arbitrary and discriminatory applications of the law and ignoring the chilling effects that vague statutes have on free speech.¹⁶⁶

The concerning language incorporated into H.B. 297’s provisions are the phrases “annoy” and “with no legitimate purpose.”¹⁶⁷ Previously, the Supreme Court frowned upon the usage of the “annoy” terminology in statutes that place regulations on speech because of the subjectivity and discretion given to the receiver of the speech.¹⁶⁸ The presence of “annoy” as a proscribed mens rea in H.B. 297 may allow the receiver a level of discretion that the Supreme Court previously warned against because Pennsylvania courts allow parties to utilize circumstantial evidence to prove intent in criminal proceedings.¹⁶⁹ In previous rulings, the “circumstantial evidence” hook was used to hold a defendant liable for harassment when the conduct was repeated, served no legitimate purpose, and had the effect of “seriously annoying” the receiver.¹⁷⁰ The issue with this circumstantial evidence standard is that it holds that a person “of sound mind may be and is ordinarily held to know and to intend the natural, probable and expectable consequences of his voluntary conduct,” however, annoyance is a subjective standard that differs from individual to individual.¹⁷¹ Thus, this standard allows criminal liability to be imposed based on a receiver’s subjective reaction which

166. See *Kolender v. Lawson*, 461 U.S. 352, 357–58 (1983) (outlining procedural considerations relevant to analyzing whether vague statute infringes upon “framework of ordered liberty”). The Court specifically outlined their fears regarding discretion by citing to *Smith v. Goguen* and iterating that “[w]here the legislature fails to provide such minimal guidelines, a criminal statute may permit ‘a standardless sweep [that] allows policemen, prosecutors, and juries to pursue their personal predilections.’” See *id.* (citing *Smith v. Goguen*, 415 U.S. 566, 575 (1974)) (explaining that statutes which do not provide adequate enforcement guidelines allow individuals in placements of authority to choose how and if they enforce statutes).

167. See Pa. H.B. 297 (citing provisions regarding harassment conduct from 18 PA. CONS. STAT. § 2709(a)).

168. See *Coates v. City Cincinnati*, 402 U.S. 611, 614 (1971) (explaining that “conduct that annoys some people does not annoy others” and ordinance prohibiting annoying conduct was too vague to be upheld).

169. See Pa. H.B. 297 (citing 18 PA. CONS. STAT. § 2709(a)) (explaining that “intent to annoy” is proscribed mens rea that creates liability for criminal harassment of sports official); see also *Commonwealth v. Caye*, 348 A.2d 136, 137 (Pa. 1975) (explaining that criminal intent of offender can be proved using circumstantial evidence even though evidence may permit finding of intent subjective to result of conduct).

170. See *Commonwealth v. Small*, 44 Pa. D. & C.3d 211, 215 (Pa. Ct. Com. Pl. 1986) (finding that “repeated acts of distraction with [flash]light were seriously annoying to” non-union miner, and that conduct served no legitimate purpose other than to discourage crossing picket line to go to work, which was insufficient to alleviate liability for harassment).

171. See *id.* at 217 (explaining basis for usage of reasonable person standard when imposing criminal liability).

is likely no different than creating criminal liability for engaging in conduct that is annoying to other people.¹⁷²

When analyzing the threat that criminalizing subjective factors poses to sports fans, it is important to emphasize the stressful and sensitive nature of the jobs of umpires and other sports officials.¹⁷³ Umpires and referees face a particular set of challenges, expectations, and stressors over the course of their jobs, including interacting with and enduring critiques from sports fans and members of the public.¹⁷⁴ As currently written, the “intent to annoy” phrasing referenced in H.B. 297 likely gives umpires, principals, coaches, and trainers an overwhelming and overly broad grant of authority to impose criminal punishment on a fan because they disagreed with the fan’s viewpoint.¹⁷⁵ For example, by permitting the inference of an intent to annoy based on circumstantial evidence, H.B. 297 may permit an umpire to hold a fan who repeatedly makes comments that convey disagreement with the umpire’s calls liable for criminal harassment, while allowing the umpire to refrain from

172. See *Caye*, 348 A.2d at 137 (providing framework for acceptance of circumstantial evidence to infer intent); see also *Small*, 44 Pa. D. & C.3d at 217 (demonstrating how circumstantial evidence may function in practice); Peter Hertel-Storm, *Introduction. Subjectivity and Emotion in the Individual and the Group*, 54 DANISH Y.B. PHIL. 3, 8–10 (2021) (explaining that individual’s response to external stimuli reflects their individual beliefs and emotions regarding conduct); *Coates*, 402 U.S. at 614 (explaining that allowing liability as result of person’s subjective understanding of conduct was impermissible because it promoted discriminatory application of law).

173. See *Umpires, Referees, and Other Sports Officials*, U.S. BUREAU LAB. STATS. (Sept. 6, 2023), <https://www.bls.gov/ooh/entertainment-and-sports/umpires-referees-and-other-sports-officials.htm> [<https://web.archive.org/web/20240506043143/https://www.bls.gov/ooh/entertainment-and-sports/umpires-referees-and-other-sports-officials.htm>] (emphasizing that sports officials’ jobs are high stress by nature, in part due to atypical work environment).

174. See Sam Knef, *Longtime MLB Umpire from Northern Kentucky Reflects on Storied Career*, SPECTRUM NEWS 1 (Mar. 2, 2022, 7:45 AM), <https://spectrumnews1.com/ky/louisville/sports/2022/02/23/nky-mlb-umpire> [<https://perma.cc/UFG6-9MST>] (explaining that job of umpire comes with unique and time sensitive game-related stressors as well as external stressors like fans). While the umpire that spoke about his experience in the MLB as an umpire may have experience at a higher level of play and scrutiny compared to a youth baseball umpire, the stressors of needing to have “good reactions, good vision, knowledge of the rules” and dealing with the public are all similar in nature to that of a youth baseball umpire. See *id.* (indicating that umpire interviewed was MLB umpire); see, e.g., Sean Fitz-Gerald, *Rays Are Certainly Not Happy with Umpire Marty Foster’s Strike Call*, NAT’L POST (Apr. 9, 2013), <https://nationalpost.com/sports/baseball/mlb/rays-are-certainly-not-happy-with-umpire-marty-fosters-strike-call> [<https://perma.cc/SXW8-XRJQ>] (explaining public and player commentary disagreeing with umpire’s decision regarding pitch called as being within strike zone).

175. See H.B. 297, Gen. Assemb., Reg. Sess. 2023–24 (Pa. 2023) (providing context on conduct that would qualify as criminal harassment of sports official); see also *Small*, 44 Pa. D. & C.3d at 217 (explaining and applying circumstantial evidence doctrine to allow reaction of receiver to serve as circumstantial evidence inferring intent).

imposing criminal liability on another individual who undertakes similar actions but instead repeatedly comments that the umpire is fantastic.¹⁷⁶ This discretion not only promotes censorship of speech based on viewpoint, but allows criminal liability on the basis of the emotional impact a person’s speech has on the umpire.¹⁷⁷

Even if one attempted to justify H.B. 297’s implications on speech as a time, place, or manner type of regulation, the proposed law would not fit the necessary criteria of such an exception to a government’s inability to regulate constitutionally protected speech because of the as-applied viewpoint discrimination and censorship effects.¹⁷⁸ As previously outlined, the discriminatory application issues pertaining to umpire discretion of “annoying” communications will vary from person to person as heckling conduct or speech that may annoy one umpire may not annoy a different umpire.¹⁷⁹ This same principle also feeds concerns that speech will be “chilled” and censored because of the umpires’ ability to effect the arrest and criminal charge of individuals who express differing viewpoints or criticize the umpires’ calls.¹⁸⁰ Thus, the not-so-extreme result from enacting a bill like H.B. 297 would be spectators, fans, and parents refraining from criticizing referees or heckling, as a form of fan engagement, due to fear of criminal charges.¹⁸¹

While there is no statutory definition provided for “no legitimate purpose,” Pennsylvania courts and state courts of neighboring

176. See Hertel-Storm, *supra* note 172, at 8–10 (explaining how emotions are subjective manifestations of individuals beliefs regarding conduct); see also *Caye*, 348 A.2d at 137 (permitting criminal intent to be inferred by circumstantial evidence); *Small*, 44 Pa. D. & C.3d at 217 (clarifying how circumstantial evidence presented to infer intent for criminal liability may be receiver’s emotional reaction).

177. See Nickodem & Wilson, *supra* note 160 (explaining viewpoint-based regulations on speech and how unfettered discretion left to individuals via vague statutes presents opportunities for censorship to occur).

178. See DeSiato, *supra* note 39, at 438 (explaining circumstances in which time, place, and manner regulations are permissible and noting that such regulations may not be viewpoint-based); see also Nickodem & Wilson, *supra* note 160 (explaining process of and burdens of proof regarding as-applied challenges to statutes which promote viewpoint discrimination).

179. See Hertel-Storm, *supra* note 172, at 8–10 (explaining how person’s reaction to external stimuli is unique to their experiences and perception of conduct and events).

180. See *Kolender v. Lawson*, 461 U.S. 352, 357–58 (1983) (explaining that vague statutes which grant broad discretion to certain individuals may promote censorship and prevent individuals from speaking due to fear of criminal punishment).

181. See H.B. 297, Gen. Assemb., Reg. Sess. 2023–24 (Pa. 2023) (providing elements for criminal conduct that liability for harassment of sports official); see also *Small*, 44 Pa. D. & C.3d at 217 (explaining circumstantial evidence doctrine which allows reaction of receiver to serve as circumstantial evidence inferring intent); Hertel-Storm, *supra* note 172, at 8–10 (explaining how emotional reactions may differ); Nickodem & Wilson, *supra* note 160 (explaining and providing examples of as-applied viewpoint discriminatory statutes).

jurisdictions that enacted similar harassment liability schemes have defined the phrase to require that conduct in question is lawful in purpose and accomplished by lawful means.¹⁸² Under this definition, conduct which lacks a reason to communicate with someone, other than to “hound,” frustrate, or “threaten,” has “no legitimate purpose.”¹⁸³ Using such broad language to justify liability for criminal harassment infringes on historically protected categories of speech and a speaker’s right to free speech.¹⁸⁴

Per their job duties, umpires have discretion regarding spectator ejections; if an umpire becomes annoyed with profane language used or spectator critiques of calls, umpires have authority to eject an unruly or offensive spectator.¹⁸⁵ By definition, it is likely that using profanity in an attempt to hound and criticize an umpire would satisfy the “serves no legitimate purpose” element required to incur criminal liability under H.B. 297.¹⁸⁶ However, ejections of parents and fans by umpires based on usage of profanity is a violation of the speaker’s rights due to the protected nature of profane speech.¹⁸⁷ While admittedly profane, offensive, or rude speech is

182. See *Small*, 44 Pa. D. & C.3d at 216 (explaining that Pennsylvania courts have determined “legitimate purpose” to mean “not only a lawful purpose but lawful means of accomplishing [the purpose]”).

183. See *People v. Williams*, 3 N.Y.S.3d 286, 286 (N.Y. Crim. Ct. 2014) (interpreting and providing means to “no legitimate purpose”). New York has an eerily similar criminal harassment statute as Pennsylvania. See N.Y. PENAL LAW § 240.26 (McKinney 2023) (explaining grounds for finding individual liable for criminal harassment in New York); see also 18 PA. CONS. STAT. § 2709(a) (2023) (clarifying conduct that creates liability for criminal harassment in Pennsylvania). New York courts have interpreted the phrase “no legitimate purpose,” a common phrase between both New York and Pennsylvania criminal harassment statutes, to mean “the absence of a reason or justification to engage someone, other than to hound, frighten, intimidate or threaten.” See *Williams*, 3 N.Y.S.3d at 286 (explaining New York’s interpretation of conduct rising to level of “no legitimate purpose”).

184. See *Matal v. Tam*, 582 U.S. 218, 245–46 (2017) (holding that profane or offensive speech may not be proscribed merely because it portrays an offensive message).

185. See, e.g., Kyle Newport, *Home Plate Umpire Ejects Fan from Giants-Phillies Game for Heckling Him*, BLEACHER REP. (Aug. 3, 2016), <https://bleacherreport.com/articles/2655635-home-plate-umpire-ejects-fan-from-giants-phillies-game-for-heckling-him> [<https://perma.cc/49BV-8WVF>] (explaining incident where umpire ejected fan due to fan’s profane and slur-ridden attack on umpire after unfavorable call).

186. See Pa. H.B. 297 (citing provisions regarding harassment conduct from 18 PA. CONS. STAT. § 2709(a)); see also *Williams*, 3 N.Y.S.3d at 290 (explaining “no legitimate purpose” definition, which is shared phrase and is consistently applied in caselaw across New York and Pennsylvania).

187. See *Matal*, 582 U.S. at 245–47 (holding that even offensive or profane speech is technically protected by Constitution).

not a high-value category, this does not justify the censorship of people who utilize profane or rude speech.¹⁸⁸

The possibility of imposing criminal liability against spectators for repeatedly using profanity to “engage in conduct which serves no legitimate purpose” against umpires during their job tasks under H.B. 297’s proposed provisions creates unique issues involving First Amendment jurisprudence.¹⁸⁹ The issues arise because the permissibility of fan ejection for profane comments would likely be grounded in the generalized contention that children should not be forcibly subjected to profane speech.¹⁹⁰ Regulations on profane language in major league ballparks and other professional sports venues, constructed to further similar public policy concerns, were previously struck down because of procedural issues in enforcement.¹⁹¹ The constitutional protection of profane speech does not allow a government to curtail such speech on the basis of viewpoint.¹⁹²

Limiting speech only to allow “non-profane” or “non-critiquing” speech would, in essence, constitute a regulation based on viewpoint.¹⁹³ Although a restriction like this may be praised for public policy purposes and followed by spectators due to the setting of most youth baseball games, it is likely a non-permissible restriction on speech imposed on individuals by the government.¹⁹⁴ Similar to the issues deriving from the “annoy” language used, the “serves no legitimate purpose” language, in practice, may allow for discriminatory application of liability based on subjective factors like an umpire’s internal reaction to a fan’s conduct or message: an umpires’ intrinsic feelings about external stimuli, if given power to selectively effectuate

188. See generally Shaman, *supra* note 64, at 302–304 (explaining low-value speech and limited protections available to such speech). But see *Matal*, 582 U.S. at 244, 247 (clarifying that speech at issue is technically protected speech even though it offends and implying that it will continue to be protected notwithstanding presence of other properties rendering speech unprotected).

189. See Pa. H.B. 297 (proposing extra protections for sports officials that grants umpires more authority); see also *Kolender v. Lawson*, 461 U.S. 352, 357–58 (1983) (explaining that vague statutes and discretion granted to enforcing individuals violates principals at heart of “ordered liberty”).

190. See Wasserman, *supra* note 56, at 537 (explaining public policy interest behind limiting profanity around children at sports games).

191. See *id.* (discussing examples of instances where professional sports facilities were found in violation of free speech principles by attempting to prohibit usage of profanity in grandstands sections).

192. See *id.* (explaining that government cannot curtail profane speech because regulation based on nature of speech may give rise to conclusion that such regulations are viewpoint-based).

193. See *id.* (explaining impermissibility of viewpoint-based speech regulations imposed by government entity).

194. See STOKES PAULSEN ET AL., *supra* note 44, at 895–97 (stating speech regulations imposed by government must not discriminate based on viewpoint).

the enforcement of criminal statutes, may permit them to censor fans' speech based on viewpoint.¹⁹⁵

In summary, H.B. 297, if passed, would likely allow and promote selective enforcement due to the subjectivity and vagueness regarding what conduct crosses the line into illegal and impermissible behavior that permits liability.¹⁹⁶ While Pennsylvania courts have defended the enforceability of the current criminal harassment statute, the additional specific heightened protections for sports officials adds factors not previously considered by the courts.¹⁹⁷ When evaluating the subjectivity of H.B. 297's language in an as-applied challenge, it is clear that repeated instances of heckling an umpire with the intent to annoy or frustrate the umpire would likely qualify for criminal liability.¹⁹⁸ Stated differently, the language of H.B. 297 presents issues relating to the opportunity it grants umpires and coaches to engage in content-based censorship opportunities.¹⁹⁹

195. See Hertel-Storm, *supra* note 172, at 8–10 (explaining that individual's response to external stimuli reflects their emotions regarding conduct). In applying the research provided by the author, it is likely that a heckler may view their conduct as serving a purpose of engaging with the game, or in the context of youth baseball, supporting their child after an "unfair" call. See, e.g., *id.* (discussing heckler's internal motivations and views regarding their conduct). This same conduct may be viewed as having no purpose or being inane by the umpire. See, e.g., *id.* (emphasizing subjectivity relating to conduct of hecklers). Allowing the umpire to impose liability on a fan for repeatedly engaging in that course of conduct would act synonymously with an as-applied viewpoint discriminatory regulation of speech. See, e.g., *id.* (explaining emotional response by umpire to conduct of fan may lead to inconsistencies in refereeing games based on viewpoint and content of message); see also DeSiato, *supra* note 39, at 438 (clarifying that regulations placed on speech may not be viewpoint-based as such regulations violate constitutional rights of fans).

196. For further discussion of procedural issues related to freedom of speech that would result from the enactment of H.B. 297, see *supra* notes 163–195 and accompanying text.

197. See *Commonwealth v. Hendrickson*, 724 A.2d 315, 316 (Pa. 1999) (holding that Pennsylvania's criminal harassment statute is not unconstitutionally vague in defendant's conduct-oriented harassment case). However, the Superior Court decision preceding the Pennsylvania Supreme Court's ruling identified that the criminal harassment statute is not overly broad on its face or as applied to issues of "conduct," but alluded that there may be some existing vagueness as to application of speech. See *id.* at 317 (explaining precedential history underlying *Hendrickson* and applicability of Pennsylvania Supreme Court's holding). H.B. 297 introduces additional protections for sports officials because of the uptick in umpire abuse and resignations, however, the current standards fail to address factors of public involvement or critique, and employment location in public areas where expression is permitted as a part of the "job" of an umpire. See Knef, *supra* note 174 (explaining unique responsibilities and publicity as part of job of umpire).

198. See Nickodem & Wilson, *supra* note 160 (providing overview on as-applied challenges of viewpoint discriminatory statutes and clarifying that state actor limitation on speech due to viewpoint is violation of U.S. Constitution).

199. See *Kolender v. Lawson*, 461 U.S. 352, 357–58 (1983) (discussing that discriminatory application of laws and chilling of speech occurs when statute is overly broad and provides individuals and enforcers with too much discretion).

The subjectivity of the language used in H.B. 297 coupled with the high stress situations that umpires face, even at youth baseball games, creates a vehicle for abuse of discretion for sport officials as the provisions of H.B. 297 would allow umpires to hold fans criminally liable for heckling.²⁰⁰ As discussed previously, the procedural issues stemming from broad grants of discretion to umpires undermine the fundamental principles of free speech.²⁰¹ While the purpose behind the proposal of H.B. 297 is likely beneficial to a lot of individuals, the overly broad protections granted to and the likelihood of abuse of discretion by sports officials raise ethical issues in enforcement of criminal liability.²⁰²

B. Heckling Speech Valuation Issues and Strict Scrutiny Review

When considering the level of scrutiny used in evaluating a law that, either facially or as-applied, places limitations on free speech, it is important to understand the value of the speech.²⁰³ Pennsylvania legislators and some constitutional scholars delineated their belief that harassing speech is a low-value speech category worthy of criminal punishment due to the harm imparted on a victim of the speech, and lack of knowledge and social benefit derived from the speech.²⁰⁴ Per this assessment, it is likely that laws limiting harassing speech will be subject to lower levels of scrutiny than other speech categories.²⁰⁵ However, H.B. 297 does not merely limit harassing speech, rather it possibly implicates cheering speech, which is questionable in terms of value.²⁰⁶ Some scholars argue that heckling provides listeners

200. See H.B. 297, Gen. Assemb., Reg. Sess. 2023–24 (Pa. 2023) (providing language of proposed protections for sports officials); see also *Coates v. City Cincinnati*, 402 U.S. 611, 614 (1971) (clarifying that liability imposed due to person’s subjective understanding of another person’s conduct is impermissible because it allows for discriminatory applications of law).

201. See *Kolender*, 461 U.S. at 357–58 (stating that unconstitutionally vague laws infringe on principles central to America’s “framework of ordered liberty”).

202. See Memo. from Anita Astorino Kulik, *supra* note 101 (explaining that motivating factors behind introduction of H.B. 297 were recent upticks in physical and verbal abuse of umpires and umpire resignations).

203. See Lakier, *supra* note 62, at 2210–15 (explaining that speech valuation coincides with level of scrutiny applied upon judicial review of statute).

204. See Pa. H.B. 297 (discussing provisions which create criminal liability for harassing speech); Shaman, *supra* note 64, at 304 (explaining that low-value speech provides small tangible benefit to society).

205. See Lakier, *supra* note 62, at 2210–15 (clarifying that regulations on high-value speech are subject to highest level of scrutiny because of large tangible benefit to society and implying that low-value speech is not entitled to same heightened protections and evaluation).

206. See Pa. H.B. 297 (explaining proposed language for amendment to current Pennsylvania criminal harassment statute and emphasizing heightened protections provided to sports officials); see also *Coates v. City Cincinnati*, 402 U.S. 611, 614

with valuable information about sports, which would make cheering speech, specifically heckling, a high-value speech category subject to heightened protection.²⁰⁷ Thus, if cheering speech is deemed high-value, regulations placed on that type of speech by a government entity would be subject to the highest level of scrutiny.²⁰⁸ However, language used by heckling spectators that incites a reasonable fear of violence constitutes a true threat and is considered low-value speech.²⁰⁹ Accordingly, states may restrict speech invoking true threats, in accordance with their police powers, in order to ensure health and safety.²¹⁰

The issues regarding subjectivity and a lack of clear line-drawing regarding what conduct is grounds for criminal liability under H.B. 297, promotes issues with valuation.²¹¹ The broad discretion granted to umpires in deciding whether fan conduct qualifies for criminal liability under H.B. 297 directly translates to issues regarding how to value the fan's speech.²¹² Per the Supreme Court, speech that is hateful or offensive should not be limited unless the individual receiving the speech fears physical violence.²¹³ Additionally, the

(1971) (holding that subjectivity and discretion in creating liability provided via statute promotes unconstitutional restrictions of speech/conduct); Wasserman, *supra* note 56, at 529 (explaining that value of cheering speech, specifically heckling, is unknown, but that cheering speech generally does not borrow from unprotected categories of speech).

207. See Wasserman, *supra* note 56, at 528 (discussing possible value that cheering speech imparts on listeners).

208. See Lakier, *supra* note 62, at 2210–15 (explaining that laws limiting and restricting use of high-value speech are subject to highest scrutiny upon judicial review).

209. See, e.g., Steven Sanchez, *Umpires 'Harassed' and 'Threatened' at Taunton Little League Refuse to Work Any More Games*, TAUNTON DAILY GAZETTE (June 9, 2023, 4:09 PM), <https://www.tauntongazette.com/story/sports/youth/2023/06/08/taunton-ma-west-little-league-umpires-threatened-harassed-parents-coaches-wont-work-games/70303869007/> [<https://perma.cc/8CPL-J8SE>] (providing example of situation where group of parents ventured outside of typical cheering speech by threatening violence against Little League umpires after game in parking lot).

210. See STOKES PAULSEN ET AL., *supra* note 44, at 895–97 (explaining that regulation of unprotected speech is allowed without violating Constitution because of dangerous content of speech).

211. See Wasserman, *supra* note 56, at 529 (explaining that cheering speech is category that remains unknown as to value); see also *Kolender v. Lawson*, 461 U.S. 352, 357–58 (1983) (discussing that enforcement of vague and overly broad laws promotes censorship). *But see* Yurkevich, *supra* note 3 (explaining that lack of ability for umpires to hold verbally abusive fans accountable for comments is contributing to dwindling numbers of individuals willing to work as youth baseball umpires).

212. See Lakier, *supra* note 62, at 2210–15 (implying that valuation of speech is necessary to determine extent of protections granted by court).

213. See *Matal v. Tam*, 582 U.S. 218, 244, 247 (2017) (holding that general statements or trademarks using offensive or hateful language are protected by First Amendment notwithstanding other properties of message that would render it unprotected). From the Court's opinions in *Matal*, *Brandenburg*, and *Chaplinsky*, it is implied that language which offends or insults an individual or group of individuals

Supreme Court previously addressed regulations on speech based on emotional responses of the receiver and clarified that restricting speech based on emotional response was the equivalent to content and viewpoint discriminatory regulations.²¹⁴ This iteration by the Court provides support for findings that emotional-centric limitations on offensive speech, if not placing an individual in fear of violence, violate the First Amendment.²¹⁵

The issue contemplated by the enactment of H.B. 297 is whether the government would really be the individual engaging in the content-based regulation of speech.²¹⁶ Likely, if subject to any form of scrutiny or challenge after enacted, an individual would have a hard time proving that the government was the actor restricting speech in an unconstitutional way.²¹⁷ Instead, it would be an issue of the individual umpires restricting the free speech of others.²¹⁸ Thus, unless an individual can prove that the speech is restricted by the government, of high-value, and that liability is based on causing annoyance and fear of physical harm, the government will likely not be held liable for the direct content-based restriction on speech; rather, the government would only be liable for authoring a vague or overly

is protected so long as it does not incite imminent lawlessness, immediate fisticuffs, or fall into another unprotected category of speech. *See id.* (holding that offensive comments or trademarks are constitutionally protected); *see also* *Chaplinsky v. N.H.*, 315 U.S. 568, 572 (1942) (explaining that speech which results in immediate fisticuffs is unprotected); *Brandenburg v. Ohio*, 395 U.S. 444, 447 (1969) (holding that speech or advocacy that offends is generally protected unless it “is directed to inciting or producing imminent lawless action and is likely to incite or produce such action”).

214. *See* *Coates v. City Cincinnati*, 402 U.S. 611, 614 (1971) (explaining that laws which allow for limitation on speech based on subjective factors violate Constitution).

215. *See id.* (explaining that regulations placed on speech due to subjective factors may violate Constitution); *see also* *Matal*, 582 U.S. at 244, 247 (explaining limitations on ability to regulate protected speech that is offensive or rude).

216. *See* H.B. 297, Gen. Assemb., Reg. Sess. 2023–24 (Pa. 2023) (explaining amendments to criminal harassment statute to provide more protections for sports officials); *see also* *Nickodem & Wilson*, *supra* note 160 (providing overview on facial and as-applied challenges of laws suspected to infringe on constitutional rights of individuals).

217. *See* *Nickodem & Wilson*, *supra* note 160 (explaining facial challenges). The pure language of H.B. 297’s provisions do not promote a conclusion that the government is limiting protected speech based on viewpoint or other unconstitutional grounds. *See id.* (discussing factors considered when evaluating facial challenge to law).

218. *See id.* (explaining as-applied challenges). The effects of H.B. 297’s enactment would likely promote a limitation of protected speech based on viewpoint in practice because of the level of discretion given to sports officials in enforcing the provisions of the proposed statute. *See id.* (explaining how outcomes of enactment of legislation factor into as-applied challenges); *see also* Pa. H.B. 297 (discussing discretion and roles granted to umpires).

broad law.²¹⁹ With no valuation provided for cheering speech, the likelihood of a strict scrutiny test being applied to H.B. 297's proposed provisions is low.²²⁰ However, the only factor that may be pejorative to a definite conclusion of cheering speech being entitled to a higher threshold of protection, is H.B. 297's inherent dependency on an emotional response of the sports officials as means to prove intent for liability.²²¹

C. Ascertaining the Legal Permissibility of Deptford Little League's Umpire "Heckler's Veto"

The new rule implemented by Deptford Little League provides that an individual who criticizes or harasses an umpire claiming that they could "do a better job" faces a ban from the Deptford Little League fields for the season.²²² Unlike H.B. 297 proposed by the Pennsylvania House of Representatives, Deptford Little League's rule does not impose criminal liability on violators.²²³ Instead, when enforced against a violator, Deptford Little League's rule merely prohibits the unruly spectator from entering the Deptford Little League's baseball stadium(s) and field areas while games are in play.²²⁴

The rule implemented by Deptford Little League over the summer of 2023 to combat unruly spectator behavior attaches strings to the exercise of free speech and likely promotes censorship of

219. See Nickodem & Wilson, *supra* note 160 (distinguishing facial challenges and as-applied challenges in practice).

220. See Lakier, *supra* note 62, at 2210–15 (explaining that strict scrutiny is reserved only for challenges to speech of highest value and benefit to society).

221. See *Coates v. City Cincinnati*, 402 U.S. 611, 614 (1971) (providing that discrimination in application of law due to subjectivity is violation of speaker's constitutional rights). Even without a confirmed valuation of cheering speech, the presence of vague statutory provisions and broad discretion granted to individuals in ascertaining liability may prompt a court to apply strict scrutiny review to ensure a speaker's constitutional free speech rights are protected. See *Shaman*, *supra* note 64, at 304 (explaining that restrictions of speech based on viewpoint that are not narrowly tailored to achieve specific goals will likely not be upheld in court upon review unless speech is deemed unprotected).

222. See Goldman, *supra* note 7 (discussing specific limitations and requirements of new rule implemented by Deptford Little League). Notably, the author indicates that negative feedback given to the umpires by fans and spectators regarding satisfactory job performance may be punished via the new Deptford Little League rule. See *id.* (discussing applicability of new Deptford Little League rule).

223. See *id.* (implying by omission of criminal punishment as enforcement mechanism proscribed by Deptford Little League, that parents will not face criminal punishment for violation of local rule).

224. See *id.* (explaining that parents and spectators who violate rule will be forced to umpire three games for league to regain admittance to Deptford ball parks).

spectators.²²⁵ The rule functions by punishing spectator input on the basis of viewpoint, but excusing the comments only if the spectator works as a Little League umpire for three games.²²⁶ To determine whether this local rule unconstitutionally burdens free speech, it must be ascertained whether the rule is a product of state action, and whether the little league fields are a public forum.²²⁷

1. *Assessing Whether Deptford Little League’s Rule Constitutes State Action Under Burton*

For a regulation on speech to be a violation of the Constitution, it must first be established that the regulation is a product of state action.²²⁸ Although the Supreme Court has previously outlined at least three instances where a private actor’s regulations may be seen as state action, *Burton* is the case most applicable to the Deptford, New Jersey Little League.²²⁹ One of the major considerations of the court in both *Burton* and *Ludtke* was the generation of profits based on sales of tickets or other goods sold by the respective entities.²³⁰ In the case of Deptford Little League, youth baseball games are usually free and open to the public, and do not generate a revenue that is able to be split with the state.²³¹ However, the Supreme Court has previously upheld First Amendment infringements upon private entities where such private actors and the government have a sufficiently close relationship.²³²

225. See Gardner, *supra* note 113 (discussing functionality of rule and its provisions). The rule implemented by Deptford Little League appears only to punish individuals who speak out against an umpire’s refereeing decision, lending to the proposition that it censors speakers only of a certain viewpoint via an umpire’s discretion. For further discussion of viewpoint discrimination issues presented by Deptford Little League’s new rule, see *infra* notes 251–262 and accompanying text.

226. See Gardner, *supra* note 113 (explaining consequences of spectators challenging umpire’s calls under new rule).

227. For further discussion of whether the rule constitutes state action, see *infra* notes 228–239 and accompanying text. For further discussion of whether Deptford Little League’s fields are a public forum, see *infra* notes 240–250 and accompanying text.

228. See *Amdt1.7.2.4*, *supra* note 26 (discussing state action requirement for violation of free speech rights).

229. See generally *Burton v. Wilmington Parking Auth.*, 365 U.S. 715, 721–24 (1961) (discussing facts of case and applicability to other cases where government property is leased and operated by private entities).

230. See DeSiato, *supra* note 39, at 418–419 (citing *Ludtke v. Kuhn*, 461 F. Supp. 86 (S.D.N.Y. 1978)) (discussing main factor discussed by courts in both *Burton* and *Ludtke* cases).

231. See Schatz, *supra* note 2 (explaining typical experience of parent or spectator of youth baseball game and stating there is typically no entry fee or profitable revenue except for concessions stand snacks).

232. See *Pub. Utils. Comm’n v. Pollak*, 343 U.S. 451, 462 (1952) (discussing sufficiently close relationship test for state action which is specific to First Amendment infractions).

Deptford Little League likely satisfies the other considerations iterated by the Supreme Court in *Burton* because the Little League fields are upkept by New Jersey using state funds, and the fields were built using public funds.²³³ Thus, whether or not Deptford Little League's conduct constitutes state action depends on whether the field reservation and rental agreement between New Jersey and the Little League association are sufficient to establish a close relationship between the state of New Jersey and Deptford's Little League association.²³⁴ If the Deptford Little League pays the state to use the publicly-owned youth baseball fields, the state would then generate a profit, and the conduct of Deptford's Little League association would likely qualify as state action.²³⁵ However, if the Little League association does not pay to rent the fields, there is likely no mutual benefit to the State that is sufficient to hold the State liable as a joint participant in the conduct of the Deptford Little League association.²³⁶

Since there is a fee associated with reserving municipally owned sports complexes in the Deptford area, it is likely that the field rental agreement is approved subject to payment of a fee for field use and upkeep.²³⁷ Additionally, the Deptford Little League fields are a

233. See *Locations*, DEPTFORD LITTLE LEAGUE, <https://sports.bluesombrero.com/Default.aspx?tabid=794608&mid=817736&templateid=0&ctl=viewallfieldstatus> [<https://perma.cc/Y6HR-HM3E>] (last visited Oct. 9, 2023) (discussing municipal field availability); *Youth Sports*, DEPTFORD TOWNSHIP, <https://www.deptford-nj.org/parks-recreation/youth> [<https://perma.cc/C5VS-EX6A>] (last visited Mar. 25, 2024) (acknowledging township ownership of little league fields); see also *Understanding Your League's Finances*, LITTLE LEAGUE, <https://www.littleleague.org/university/articles/understanding-your-leagues-finances/#:~:text=The%20fields%20and%20facilities%20are,to%20operate%20on%20the%20property> [<https://perma.cc/7AW2-9H7S>] (last visited Oct. 9, 2023) (explaining that most little league teams use government owned property, which is upkept by government and use is arranged via lease agreements).

234. See *Pollak*, 343 U.S. at 462 (discussing sufficiently close relationship test and explaining that near monopoly over scarce resources is factor for consideration); see also *Burton*, 365 U.S. at 722–24 (explaining that lease agreements between private entity and state actor are sufficient to create state action and are factor to consider).

235. See *Burton*, 365 U.S. at 722–24 (explaining that state profiting off lease agreement with private entity is large factor considered by court when ascertaining whether conduct is state action).

236. See *id.* (explaining that lack of lease or economic benefit to government via action of private entity leads to conclusion that there is not mutually beneficial relationship sufficient to establish state action).

237. See, e.g., *Field, Event and Facility Use Application*, W. DEPTFORD, https://www.westdeptford.com/residents/recreation/field_and_facility_use_application.php [<https://perma.cc/AH5A-464R>] (last visited Oct. 9, 2023) (explaining that field rentals and reservations are subject to rental fees which vary depending on length of rental); see also, e.g., *Facility, Parks, and Field Reservation and Use Policy*, BOROUGH HADDONFIELD, <https://cms5.revize.com/revize/haddonfield/Reservation%20Policy%20-%20adopted%2010-03-2022.pdf> [<https://perma.cc/QDD6-MTDL>] (last visited Oct. 9, 2023) (explaining process of field rentals for Borough of Haddonfield and that use of facilities is subject to successful payment of rental fees). Although

public good that is likely rented out and monopolized in part by the Little League association, creating a close and interdependent relationship between the State and the Little League association.²³⁸ Thus, through the payment of the rental agreement, a mutual benefit is conferred onto the government in the form of profits derived from the field rental agreement, making Deptford Little League’s conduct during the term of the field lease qualify as state action.²³⁹

2. *Evaluating Whether the Municipally Owned Fields Utilized by Deptford Little League are a Public Forum*

Since Deptford’s Little League association likely satisfies the requirements of the state action doctrine, the next point of analysis is to consider whether the municipally-owned youth baseball fields are public forums.²⁴⁰ In order for a regulation on speech to be deemed a violation of the Constitution, the regulation must be imposed by a state actor and must also censor speech within a public forum.²⁴¹ When evaluating the type of forum at issue, it is important to evaluate the traditional nature of the forum, and the accessibility and use of the forum.²⁴²

no information was provided on Deptford Township’s facility use applications and rental fees, neighboring districts that also operate Little League teams posted their facility use agreements. See *Field, Event and Facility Use Application*, *supra* note 237 (discussing field rental process); *Facility, Parks, and Field Reservation and Use Policy*, *supra* note 237 (explaining terms of use for recreational and youth baseball fields).

238. See *Understanding Your League’s Finances*, *supra* note 233 (explaining that Little League seasons last months in duration and contracts likely allow for Little League association/teams to have access to fields during duration of season); see also *Pollak*, 343 U.S. at 462 (discussing role of near monopolization of traditional public services as grounds to establish relationship between private entity and state as sufficient to constitute state action).

239. See *Burton*, 365 U.S. at 722–24 (discussing factors Supreme Court evaluated to determine whether private conduct rose to level of state action); see also *Understanding Your League’s Finances*, *supra* note 233 (explaining that most Little League associations run for townships pay rent to use municipal fields and rely on municipality to undertake regular upkeep of the fields); *Facility, Parks, and Field Reservation and Use Policy*, *supra* note 237 (discussing rental fee as part of application to rent or use youth baseball fields and other recreational centers).

240. For further discussion of whether Deptford Little League’s conduct qualifies as state action, see *supra* notes 228–239 and accompanying text. For further discussion of Deptford Little League’s fields as a designated public forum, see *infra* notes 241–250 and accompanying text.

241. See *Amdt1.7.2.4*, *supra* note 26 (explaining that state action is required to find that restriction on speech imposed is violation of Constitution).

242. See *Perry Educ. Ass’n v. Perry Local Educators’ Ass’n*, 460 U.S. 37, 45–46 (1983) (explaining different types of forums). The Supreme Court’s holding in *Perry Educ. Ass’n v. Perry Local Educators’ Ass’n* establishes that the traditional nature of public forums is a major consideration when determining what level of constitutional protection speech on the premises may have. See *id.* (discussing importance of traditional nature of forum at issue).

While public parks are considered traditional public forums for expression, the spectator section of a youth baseball field likely qualifies as a designated public forum for expression, akin to a grandstand section of a Major League Baseball (MLB) stadium.²⁴³ While the property is owned by the government and held open for the general public to enjoy, not all sections of the youth baseball fields are traditionally forums for expression.²⁴⁴ Instead, it is likely that only the bleachers or spectators' seating section is a forum for expression.²⁴⁵ Since the government provides a separate area for cheering and spectator expression of speech, the grandstand area functions as a designated public forum.²⁴⁶

Even though the grandstands are areas reserved for public expression, the government may still engage in some form of content discrimination of speech.²⁴⁷ However, this content discrimination may not manifest public censorship via a viewpoint discriminatory regulation.²⁴⁸ While the government is given deference as to what speech is considered "off-topic" or outside of the scope of constitutional protection, the bleachers are an area designated for the expression of spectator speech related to the conduct of the game.²⁴⁹ Thus, a state actor may not engage in censorship that prohibits or punishes specific viewpoints relating to the conduct of the game within the designated forum.²⁵⁰

243. *See id.* (explaining that recreational public parks are traditional public fora); *see also* Wasserman, *supra* note 56, at 532 (applying designated public forum analysis to grandstands at MLB stadium). In the same way that the government makes the property widely available to speakers of a specific class, sports spectators, in a major league stadium, the government designates and makes the bleachers area of youth baseball fields widely available. *See id.* (providing support for conclusion that grandstand areas of major league and youth baseball parks are similar in function and accessibility to public).

244. *See* Wasserman, *supra* note 56, at 532–33 (explaining that field area and other areas of baseball stadium are not designated areas for fan speech).

245. *See id.* (discussing areas of sports stadiums designated as forums for public expression).

246. *See id.* (explaining that government designates and allows access to grandstand area of ballpark to promote expression and speech by fans).

247. *See* DeSiato, *supra* note 39, at 438 (explaining that time, place, and manner regulations which limit content of speech are permissible).

248. *See id.* (clarifying that time, place, and manner speech regulations cannot engage in viewpoint discrimination).

249. *See* Wasserman, *supra* note 56, at 535 (explaining that cheering speech focuses on sport itself and all tangentially related topics or game conduct and that game related speech may not be considered "off limits" or susceptible to censorship).

250. *See id.* (explaining that viewpoint-based discrimination is unacceptable within designated forum of ballpark, grandstand area).

3. *Evaluating Whether Deptford Little League’s Rule Proscribes Unconstitutional Regulations on Speech*

Since both the state action doctrine and public forum analysis are satisfied, the question presented is whether Deptford Little League’s local rule is a constitutional content-based regulation, or an unconstitutional viewpoint-based regulation on speech.²⁵¹ Deptford Little League’s rule imposes a restriction on the speech of fans within the designated public forum area of the youth baseball fields that punishes speech that challenges or questions the umpire’s calls.²⁵² As this restriction places a burden on one viewpoint of speech iterated by fans in a public forum setting, it facially satisfies criteria for unconstitutional regulations on free speech due to viewpoint discrimination and would likely be subject to strict scrutiny review.²⁵³ As previously stated, content-based regulations are permissible in public forums, but only to the extent that speech is not limited based upon the viewpoint of the speaker.²⁵⁴ The Deptford Little League rule, similar to H.B. 297, boasts issues of viewpoint discrimination and consistency of enforcement.²⁵⁵

Currently the only language specifically pinpointed as a violation of Little League rules is language that implies a disagreement with an umpire’s call or language that attempts to tarnish an umpire’s credibility in adequately performing his or her job duties.²⁵⁶ Although the rule is motivated by a desire to combat umpire harassment, this rule blatantly discriminates against one viewpoint and type of conduct, while possibly allowing the same conduct when conveying a more friendly viewpoint.²⁵⁷ To return to an example previously used

251. See DeSiato, *supra* note 39, at 438 (explaining that time, place, and manner regulations are permissible so long as restrictions do not promote viewpoint-based censorship of individuals).

252. See Gardner, *supra* note 113 (explaining that consequences imposed on spectators by rule are only enforced if spectator challenges umpire’s calls).

253. See STOKES PAULSEN ET AL., *supra* note 44, at 895–97 (explaining that restrictions on free speech rights imposed by viewpoint-based speech regulations are often evaluated with high levels of scrutiny by courts).

254. See *id.* (clarifying that neutral content-based time, place, and manner regulations are permissible but viewpoint-based speech regulations are not).

255. For further discussion of H.B. 297 and the issues of viewpoint discrimination and selective enforcement that arise from its implementation, see *supra* notes 173–202 and accompanying text.

256. See Goldman, *supra* note 7 (explaining that Deptford Little League’s new rule only punishes spectators who convey that they could referee game better than umpire).

257. See *id.* (discussing protection of umpires against violence at hands of unruly spectators and parents as primary purpose behind implementing new Little League rule); see also Gardner, *supra* note 113 (explaining provisions of new rule and indicating that punishment may only result when umpire perceives spectator behavior as insulting or questioning umpire’s ability to perform their job duties).

in this Comment, this rule allows an umpire to punish the repeated yelling of critical phrases because of the message of the speaker, while granting the umpire discretion to permit the same conduct of repeated yelling when the speaker conveys a message that the umpire is great at their job.²⁵⁸

Additionally, although profane language used by spectators within the grandstands at the youth baseball fields may be seen as inappropriate to use around children, it is still granted constitutional protections.²⁵⁹ While vulgar, expletive, or inappropriate speech may be considered low-value, offensive, or rude, the speech is likely protected if the speech does not incite violence or an imminent fear of violence in the receiver.²⁶⁰ Similar to how raising the middle finger as a form of protest, without any further action, is considered constitutionally protected speech, the use of expletive language or hand signals, without further escalation of action, is considered constitutionally protected.²⁶¹ Thus, the local Deptford Little League rule, placed into effect to combat umpire abuse, would likely be subject to strict scrutiny and deemed a violation of the Constitution due to impermissible restrictions it places on spectators' right to free speech.²⁶²

4. *Major League Baseball's Approach to Regulating Rowdy Fan Behavior as Inspiration For a Viable Alternative to Deptford Little League's Current Rule*

While not directly at issue in this Comment, the approach currently taken by MLB teams and stadiums to prevent and punish fans that harass and assault umpires, players, and coaches may prove

258. For further discussion of viewpoint-based discrimination and examples pertaining to viewpoint-based discrimination and discretion granted to umpires, see *supra* notes 176–177 and accompanying text.

259. See *Matal v. Tam*, 582 U.S. 218, 244–45 (2017) (explaining that profane and offensive speech is granted constitutional protection); see also Wasserman, *supra* note 56, at 537 (explaining that professional sports facilities previously attempted to limit speech by prohibiting usage of profanity to provide “family friendly” environment for children attending games but these attempts were deemed unconstitutional).

260. See *Matal*, 582 U.S. at 244 (suggesting that regulation of rude or offensive speech is unconstitutional without presence of other properties rendering speech unprotected).

261. See *id.* at 244, 247 (suggesting that properties of unprotected speech are required to restrict offensive or profane speech); see also *Freeman v. State*, 805 S.E.2d 845, 850 (Ga. 2017) (explaining that mere act of raising middle finger does not constitute fighting words or true threat because it does not effectuate feeling of impending violence and thus regulation of this conduct violates Constitution).

262. See Aaron Pinsonault, *Free Speech, Strict Scrutiny and a Better Way to Handle Speech Restrictions*, 29 WM. & MARY BILL RTS. J. 245, 251–252 (2020) (discussing strict scrutiny review and constitutionally impermissible limitations on free speech rights).

instructive to formulating a solution for the abuse suffered by youth baseball umpires.²⁶³ Currently, many MLB stadiums are either privately owned and operated, or partially privately owned and partially government subsidized, making an already circumstantial and fact dependent state action analysis of stadiums even more fact-oriented.²⁶⁴ For clarity purposes, this Comment will not address the state action status of MLB stadiums, rather it will evaluate the parameters and mechanisms of how these stadiums regulate unruly fan conduct.²⁶⁵

Notably, there is a large disparity in capital and human resources available to MLB teams and local Little League or high school baseball teams.²⁶⁶ MLB stadiums have numerous individuals working in fan relations and security positions each game to ensure that players, coaches, umpires, and other fans are unharmed by disorderly individuals within the stadium.²⁶⁷ Typically, high school baseball games may only have one or two individuals affiliated with the school or a local police department working to ensure the safety of crowds, and Little League baseball games may not have any security detail present to diffuse tense situations between coaches, umpires, and

of individuals). For further discussion of levels of scrutiny and constitutional protection of fan speech, see *supra* notes 228–261 and accompanying text.

263. For further discussion of the measures taken by MLB stadiums to control fans harassing umpires, players, and coaches, see *infra* notes 270–277 and accompanying text.

264. See DeSiato, *supra* note 39, at 437–438 (explaining difficulties of applying state action doctrine to MLB stadiums).

265. For further discussion of the steps taken by MLB stadiums to regulate and punish unruly fan behavior, see *infra* notes 270–274 and accompanying text.

266. For further discussion of financial and human resources disparities between MLB stadiums, high school baseball programs, and youth baseball programs, see *infra* notes 267–269 and accompanying text.

267. See Scott Berinato, *Major League Baseball's Team Approach to Security*, CSO (Oct. 1, 2005), <https://www.csoonline.com/article/516742/physical-security-major-league-baseball-s-team-approach-to-security.html> [<https://perma.cc/9N-CR-L8US>] (discussing rule passed by MLB commissioner in 2005 requiring more security officers present in stadiums to ensure fan safety); see also Ayana Archie, *Employees at Dodger Stadium Threaten to Strike Days Before the MLB All-Star Game*, NPR (July 13, 2022, 3:19 AM), <https://www.npr.org/2022/07/13/1111240652/employees-at-dodger-stadium-threaten-to-strike-days-before-the-mlb-all-star-game> [<https://perma.cc/W4L5-HFK9>] (discussing amount of individuals employed in fan service related jobs at Dodger Stadium). As of 2005, MLB stadiums were required by the MLB Commissioner to have five security guards with a police-service background on staff and at least one of the security guards present at games to ensure fan safety. See Berinato, *supra* note 267 (explaining safety measures adopted by MLB Commissioner's office to ensure fan, player, and staff safety). Although not indicative of all MLB stadiums, the Dodgers also employ around 1,500 fan-service oriented workers which serve as a precautionary measure to ensure ballpark safety and satisfaction. See Archie, *supra* note 267 (explaining number of fan-service related employees at Dodger Stadium).

spectators.²⁶⁸ In recognizing this key difference, youth baseball programs and high school programs may benefit from the less aggressive fan-management measures adopted by MLB teams and stadiums.²⁶⁹

All MLB stadiums ask fans to adhere to a guest code of conduct which delineates specific behaviors the ballpark will not tolerate in relation to fan conduct.²⁷⁰ Citizen's Bank Park, a partially government funded stadium and home to the Philadelphia Phillies, specifically asks fans not to use "foul or abusive language or gestures," "interfer[e] with other guests' ability to enjoy the game," nor "throw[] objects onto the field or within the ballpark," among other things in its guest code of conduct.²⁷¹ In relation to the completion

268. See *School Athletic Event Security*, NAT'L SCH. SAFETY & SEC. SERVS., <https://schoolsecurity.org/resource/school-athletic-event-security/#:~:text=Events%20with%20larger%20crowds%20should,may%20be%20attending%20the%20event> [<https://perma.cc/NY8T-6T2U>] (last visited Jan. 19, 2024) (discussing safety measures suggested to schools for use in athletic events); see also *Safety Officer: Local League Role*, LITTLE LEAGUE, <https://www.littleleague.org/university/articles/safety-officer-local-league-role/> [<https://perma.cc/HA32-QG5U>] (last visited Jan. 19, 2024) (explaining safety officer role mandated by each local league to ensure education on player and overall league safety). Most grade-school level sports competitions are encouraged to have adequate adult supervision and staffing, but the adequacy of the supervision largely depends on the anticipated attendance at the sporting event. See *School Athletic Event Security*, *supra* note 238 (explaining encouraged safety precautions for schools to undertake for sporting events). In their suggestions for event security, the National School Safety and Security Services promotes the use of law enforcement officers as security details for larger events but is unclear as to whether police officers should be present for smaller events to promote fan safety. See *id.* (discussing suggestions of law enforcement as security for larger school-related sports events). Little League Baseball does not specifically mandate security officers to be present at local Little League games, rather it just mandates that each local league have a designated Safety Officer to develop and implement a safety plan. See *Safety Officer: Local League Role*, *supra* note 238 (discussing that each local league must have safety officer and explaining role duties).

269. For further discussion of how Little League teams and other youth baseball teams may benefit from adopting conduct regulations similar to Major League Baseball Stadiums' guest code of conduct, see *infra* notes 275–277 and accompanying text.

270. See Scott Lauber, *MLB to Implement Code of Conduct for Fans at Ballparks in 2018*, ESPN (Aug. 22, 2017, 3:00 PM), https://www.espn.com/mlb/story/_/id/20419845/mlb-implement-code-conduct-fans-ballparks-2018 [<https://perma.cc/P7Q7-9UZM>] (explaining that in 2017, MLB announced universal code of conduct set for implementation during 2018 season). Although a universal league fan code of conduct was adopted in 2018, each stadium still has its own specific fan codes of conduct based on the universal standard mandated by MLB. See, e.g., *Guest Code of Conduct*, PHILLIES.COM, <https://www.mlb.com/phillies/ballpark/information/code-of-conduct> [<https://perma.cc/KE5W-VPZS>] (last visited Feb. 4, 2024) [hereinafter *Phillies Guest Code of Conduct*] (explaining fan behavior prohibited inside Citizens Bank Park and consequences of code violation); *Fan Code of Conduct*, L.A. DODGERS, <https://www.mlb.com/dodgers/ballpark/information/code-of-conduct> [<https://perma.cc/K8AZ-QEGF>] (last visited Feb. 4, 2024) [hereinafter *Dodgers Guest Code of Conduct*] (explaining behaviors prohibited by fans within Dodger Stadium and surrounding property and actions resulting from code violations).

271. See Eugénie L. Birch, Cara Griffin & Chau Lam, *Ballparks as Urban Anchors*, 2013 PENN INST. FOR URB. RSCH. 1, 13 (discussing Citizen's Bank Park's financing and

of aforementioned prohibited acts, Citizen’s Bank Park specifically iterates that violators of the code of conduct may be ejected or arrested if necessary, and that repeat offenders may lose ticket privileges.²⁷² Dodger Stadium, a fully privately funded stadium and home to the Los Angeles Dodgers, prohibits fans from using “foul/abusive language and obscene gestures,” and asks that all fans “do not disrupt other fans with disrespectful, unruly, or hostile actions or behavior.”²⁷³ Similar to Citizen’s Bank Park, a failure to follow the fan code of conduct for Dodger Stadium is grounds for ejection from the stadium, revocation of tickets, and possible arrest.²⁷⁴

The main difference between the stadium guest code of conduct proffered by Citizen’s Bank Park and Dodger Stadium, and the local rule implemented by Deptford Little League lies in the neutrality of the implemented rules.²⁷⁵ The code of conduct for both stadiums is neutral, whereas the rule implemented by Deptford Little League punishes conduct if undertaken under one specific viewpoint: that the umpire is “wrong” and the heckler can do a better job.²⁷⁶ If Deptford were to implement a neutral code of conduct or rule that mimicked the code adopted by Citizen’s Bank Park or Dodger Stadium, it may help to control spectator behavior and rationalize ejection or barring individuals from entry, but also remain permissible under the Constitution as an implementation of a time, place, or manner regulation.²⁷⁷

clarifying that it was partially funded via tax dollars); *Phillies Guest Code of Conduct*, *supra* note 270 (explaining fan behaviors prohibited within Citizen’s Bank Park).

272. See *Phillies Guest Code of Conduct*, *supra* note 270 (discussing adverse actions taken against fans who violate Citizen’s Bank Park’s Guest Code of Conduct).

273. See *Dodger Stadium History*, DODGERS, <https://www.mlb.com/dodgers/ball-park/information/history> [<https://perma.cc/3XJP-BJ4F>] (last visited Feb. 4, 2024) (explaining that Dodger Stadium was first fully privately funded baseball stadium); *Dodgers Guest Code of Conduct*, *supra* note 270 (explaining behaviors and conduct prohibited on Dodger Stadium property).

274. See *Dodgers Guest Code of Conduct*, *supra* note 270 (explaining consequences and possible adverse actions undertaken when spectators violate Fan Code of Conduct).

275. See Lauber, *supra* note 270 (explaining neutrality and universal application of MLB fan code of conduct adopted by major league stadiums in 2018). For further discussion of neutrality issues that arise as a result of Deptford Little League’s newly implemented league rule, see *supra* notes 251–262 and accompanying text.

276. See generally Lauber, *supra* note 270 (explaining general fan behaviors and conduct prohibited in certain MLB stadiums); see also *Phillies Guest Code of Conduct*, *supra* note 270 (explaining conduct generally prohibited in Citizen’s Bank Park); Goldman, *supra* note 7 (explaining that new Deptford Little League rule implemented punishments only for fans who convey to umpires that they could referee game better than current umpires).

277. See generally Lauber, *supra* note 270 (discussing neutral fan code of conduct aimed at protecting players, umpires, and coaches from harmful and offensive speech of spectators). Publicly and privately funded stadiums and teams have the power to encourage and persuade spectators and eventgoers to adhere to

IV. FROM THE MOUND TO THE STANDS: CONFRONTING THE
CHALLENGE OF UMPIRE SAFETY AND SPECTATORS'
FREE SPEECH RIGHTS IN FUTURE LEGISLATION

A more efficient balance must be struck between protecting the free speech rights of spectators and sports fans, and protecting the physical and mental health of umpires.²⁷⁸ While H.B. 297's proposed amendments to the current Pennsylvania criminal harassment statute and Deptford Little League's implemented rule both prioritize providing extra protections to umpires across Pennsylvania and New Jersey, the respective provisions fail to provide adequate safeguards for fans' First Amendment rights due to broad discretion granted to umpires in imposing punishments on fans for speech.²⁷⁹ The result of this discretion is criminal punishment for speech based on the speaker's viewpoint, or non-criminal, corrective punishment imposed based on the speaker's viewpoint; both outcomes result in unconstitutional burdens on free speech rights.²⁸⁰

Assigning criminal charges for "harassing speech," as H.B. 297 does, presents issues regarding the statute's constitutionality due to overbreadth.²⁸¹ Regulations that are aimed at controlling spectator conduct by imposing punishments for expressing specific viewpoints present similar issues of unfettered discretion, which renders the regulation unconstitutional if undertaken by a state actor.²⁸² Deptford

certain neutral behavior guidelines without violating the Constitution so long as the discouragement of certain behaviors and related consequences are not imposed based on the viewpoint of a speaker's message. *See* Wasserman, *supra* note 56, at 547 (explaining power to influence fan behavior granted to stadium controllers). However, publicly and privately funded stadiums and teams cannot legally compel cooperation or constructively express stadium or team sponsored messages through silencing spectators or eventgoers who disagree with the encouraged policies. *See id.* (explaining action taken by stadiums that could violate fans' constitutional rights).

278. *See* Memo. From Anita Astorino Kulik, *supra* note 101 (discussing current issues arising from umpire abuse in Pennsylvania); *see also* Wasserman, *supra* note 56, at 537 (explaining issues that arise from infringing on fans' freedom of speech rights in government owned ball parks).

279. *See* H.B. 297, Gen. Assemb., Reg. Sess. 2023–24 (Pa. 2023) (discussing provisions of proposed Pennsylvania legislation that would criminalize harassment of sports officials, which includes umpires); Gardner, *supra* note 113 (explaining new Deptford Little League rule that aims to punish spectators who speak out against umpire play calls); *see also* Kolender v. Lawson, 461 U.S. 352, 357–58 (1983) (explaining that when law fails to provide neutrally enforceable guidelines, officers are permitted via statute to "pursue their personal predilections").

280. *See* STOKES PAULSEN ET AL., *supra* note 44, at 895–97 (explaining that viewpoint-based regulations on free speech rights are violation of Constitution).

281. For further discussion of overbreadth issues presented by H.B. 297, *see supra* notes 165–174 and accompanying text.

282. *See* STOKES PAULSEN ET AL., *supra* note 44, at 895–97 (discussing connections between viewpoint-based speech restrictions that violate Constitution and large amounts of discretion granted by statute).

Little League’s rule serves as an example of viewpoint-based censorship issues arising from grants of broad discretion.²⁸³ If state legislatures have an interest in providing umpires with extra protections against harassment and harmful speech, to ensure baseball’s longevity and growth for future generations, lawmakers and local rule makers should come together to ascertain how to strike a more eloquent balance between discouraging harmful conduct without infringing on spectators’ First Amendment right to free speech.²⁸⁴ The approach to regulating fan speech adopted by modern MLB ballparks may serve as a good example for lawmakers and Little League associations to follow, to ensure that spectators are respectful of umpires and are still able to express themselves and voice their concerns.²⁸⁵

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283. For further discussion of the unfettered discretion granted to Deptford Little League umpires, see *supra* notes 251–262 and accompanying text.

284. See Memo. From Anita Astorino Kulik, *supra* note 101 (discussing legislators’ desire to enact protections for sports officials against harassment by spectators); see also Gardner, *supra* note 113 (explaining Deptford Little League association’s motivations in enacting rule); Wasserman, *supra* note 56, at 537–38 (explaining presumptive position that fans are entitled to free speech in ball park settings when in grandstands area); see generally Yurkevich, *supra* note 3 (explaining that umpire abuse by spectators is currently hindering operations and growth of youth baseball and, if continued, this trend may permanently hinder baseball’s growth).

285. See Wasserman, *supra* note 56, at 537–38 (providing examples of initiatives undertaken because of courts striking down overly regulatory speech restrictions imposed on fans by ballparks that are owned and paid for by governments). A possible issue with employing the methods currently used by major league ballparks is the presence of hired security detail to enforce the rules set by the park. See *id.* (explaining enforcement methods for speech related regulations). Since Little League teams usually do not have the budget to hire security details, it begs the question of whether the policies would be selectively enforced or enforced via coaches or local law enforcement. See *Understanding Your League’s Finances*, *supra* note 233 (explaining budgetary constraints and considerations imposed on townships operating Little League teams).

* J.D. Candidate, May 2025, Villanova University Charles Widger School of Law; B.S.B.A., Team & Project Management, Bryant University. I have heard it said that “law school takes a village,” and this Comment is dedicated to mine. Mom-mom, thank you for sharing your wisdom and for encouraging me to be a better person; a lot of who I am was shaped by you. Mom and Dad, thank you for your unwavering support in everything I do and for believing in me at times when I did not believe in myself; without you, I would not have made it this far. Alexa and Drew, thank you for being my biggest advocates and my shoulders to lean on when life gets heavy. Poppy, thank you for encouraging me to be curious and for always answering my phone calls to reassure me that everything will be okay. John David, thank you for being the calm amidst chaos and my voice of reason when I need it most. Lauren, Kelly, Victoria, Alexa, Phoebe, and Meghan, thank you for being my cheerleaders, my confidants, and my support system throughout my law school journey.