

Animal Enterprise Terrorism Act Summary Analysis

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The Animal Enterprise Terrorism Act (“AETA” or the “Act”) prosecutes activists as “terrorists” for exercising their First Amendment right of free speech and assembly, and should be repealed. There are many concerns with this Act, including constitutional infirmities on its face and as applied. Some of those concerns include the following:

AETA is criminalizing protected speech. This is apparent in the first indictment under the Act in March, 2009. Four individuals exercising their First Amendment right to free speech and assembly are being prosecuted for allegedly protesting, chanting, conducting Internet research, and posting information on flyers involving animal experimenters (U.S. v. Buddenberg, et al). Under established precedents of NAACP v. Claiborne Hardware and Brandenburg v. Ohio, these activities are constitutionally protected. These individuals’ rights are being infringed upon based on the content of their speech. Approximately one and a half years after the indictment, the federal district court judge in U.S. v. Buddenberg dismissed the case because the indictment was deficient of any facts supporting the prosecution.

The issues and cases surrounding AETA (and its immediate predecessor law, the Animal Enterprise Protection Act) are the modern-day Brandenburg v. Ohio, a landmark decision which staunchly protects First Amendment rights of free speech.

AETA is punishing academic freedom. Scott DeMuth, a Sociology scholar at the University of Minnesota, was indicted in November, 2009 after he apparently refused to divulge the sources of his academic research which the federal government is seeking to obtain in connection with an investigation.

AETA encourages self-censorship. Since AETA is overly broad, it sweeps up protected free speech activity. This produces a chilling effect since individuals may not desire to risk being arrested and labeled a “terrorist” for speaking out, even if they are later exonerated.

AETA is overly vague and violates due process under the Fifth and Fourteenth Amendments. Undefined terms such as “damaging” or “interfering with” an animal enterprise do not provide fair notice of what is prohibited. Criminal statutes must clearly delineate what is prohibited (See, e.g., Grayned v. City of Rockford and Connally v. Gen. Constr. Co.). This Act does not.

AETA makes innocent individuals exercising their free speech rights strictly liable for the illegal acts of third parties, even in the absence of any conspiracy or temporal imminence. The constitutional threshold for liability for third party illegal acts as articulated in Brandenburg v. Ohio is steering people to “imminent lawless action.” The Act, however, lowers the bar and criminalizes those same individuals for any unlawful reaction by the public, government or any business. For example, if an activist posts a demonstration on a website, and someone vandalizes the demonstration site several weeks or months later, the activist who posted the demonstration is strictly liable under AETA. Similarly, if the government reacts to the internet posting by raiding the demonstration site believing that the site’s owner is engaged in unlawful activity and the government is found to have done so illegally, the activist who posted the demonstration is strictly liable under AETA.

AETA conflates offenses with protected free speech activity. What constitutes an offense under the Act seems to be the same elements that constitute protected free speech activity. An otherwise lawful picket could easily be deemed to be “interfering” with a business. Despite the Act’s declared exemption for “lawful boycotts,” the Act does not exempt profit loss from prosecution arising from such boycotts. Instead, the Act would penalize any boycott that accomplishes its legitimate purpose including the loss of profits. Under the Act, any profit loss of over \$1 million penalizes a successful

boycotter for up to 20 years. The Act's collateral consequence has been to provide sentencing enhancements for successful First Amendment activity.

AETA is a content based prohibition on speech targeting an ideology, and does not fit under any established speech exceptions, including the "vituperative" exception under Virginia v. Black.

AETA is unconstitutionally viewpoint discriminatory. Under AETA, an activist who engages in speech that may be disagreeable but an animal enterprise owner may deem to be threatening or harassing, may be prosecuted. In contrast, the owner of an animal enterprise who engages in identical behavior that an activist may deem threatening or harassing may not be prosecuted under AETA. This constitutes viewpoint discrimination under RAV v. City of St. Paul.

AETA criminalizes speech by providing uneven rules of debate that apply not just to animal activists, but to anyone, due to its overbroad wording. The First Amendment should protect speech we don't like, just as it protects speech we do like. As Justice Scalia reasoned in his majority opinion in R.A.V. v. City of St. Paul, one side of a debate should not be required to play by Marquis of Queensbury rules while the other side may do as it pleases.

AETA also takes the unprecedented step of providing special protections for animal enterprises as if they were a protected class. These animal enterprises have not shown a history of discrimination nor do they lack a voice in the political process. Yet, innocent individuals are losing their voice in the political process because of AETA.

"Animal enterprise" is defined so broadly as to encompass virtually every U.S. retail business that uses or sells animals for profit or entertainment, e.g. luncheonettes (sell eggs), department stores (sell wool sweaters) and drugstores (sell premarin). Conversely, an animal enterprise need not be engaging in lawful activities or even be a legitimate enterprise to be protected.

AETA encroaches on state sovereignty in areas traditionally reserved to the states. Despite the rule of construction that AETA does not preempt state laws, AETA nonetheless converts common law crimes, such as vandalism, criminal trespass and harassment which are local in nature into federal crimes. The Act's seeming jurisdiction over these crimes is not supported under, for example, U.S. v. Morrison, because it dilutes the constitutional demarcation between what is local and national.

AETA over federalizes state laws. Since state laws already sufficiently cover the offenses under AETA, AETA is irrelevant. AETA otherwise makes a federal case out of offenses that are largely merely state violations or misdemeanors in nature. Two individuals who had released mink from a mink farm in Utah were indicted under AETA in March, 2009. That case consists of acts that are local in nature and are already covered by state law.

AETA's penalty enhancements potentially violate the ruling in U.S. v. Booker. Booker rendered any penalty enhancement based on the judge's, rather than the jury's, fact finding of the extent of the offense as unconstitutional under the Sixth Amendment. By commingling penalty enhancements and the extent of the offense in the penalty provisions, AETA invites a judge to step into the jury's role in violation of the Sixth Amendment in determining sentencing enhancements.

Sentencing penalties under the Act are excessively harsh and far exceed those for otherwise violent or monetary crimes under the 2005 federal sentencing guidelines that were in place just before AETA's passage. Compare 20 years for profit loss under AETA to 4.5 years for sexual assault, 3 years for manslaughter and 4 months for embezzlement or larceny.

AETA's "Rules of Construction" do not necessarily save the statute from its constitutional infirmities. Since what constitutes First Amendment activity will largely be fact driven, the Rules provide only vague guidance while trying to provide some comfort that there is still a First Amendment.