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The Right to Arm Bears: Activists' Protests Against Hunting

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I. INTRODUCTION: HAUNTING THE HUNTERS

Examples exist throughout history of individuals who pursued their ideals actively, even when their behavior violated certain laws or policies they believed unjust.¹ Students conducted sit-ins to protest American involvement in the Vietnam War.² Martin Luther King, Jr. marched in the streets to protest treatment of black Americans.³ Environmental activists opposing logging old-growth trees blocked loggers' access to the forests.⁴ Gregory Lee Johnson burned an American flag to protest the policies of the Reagan Administration and of several United States corporations.⁵ More recently, Francelle Dorman, a part-time waitress in Niantic, Connecticut, approached

1. Protest and civil disobedience have taken place for at least 2,400 years. G. WOODSTOCK, *CIVIL DISOBEDIENCE* 3 (1966). Recent incidents of international protest and their subsequent suppression include Chinese students' democratic protest against Communist oppression in Tiananmen Square, which resulted in the massacre of the protesters. *See Chinese Execute 3 in Public Display for Protest Role*, N.Y. Times, June 22, 1989, at 1, col. 5; Doerner, *The Face of Repression*, TIME, July 3, 1989, at 27. Iran called for the execution of author Salman Rushdie, solely because of the perceived offensiveness of his novel, *The Satanic Verses*. *See* Smith, *The New Satans*, TIME, Mar. 6, 1989, at 36-38. In these instances, neither China nor Iran exhibited any regard for the freedom of speech that is the cornerstone of our society.

2. *See* L. FEUER, *THE CONFLICT OF GENERATIONS: THE CHARACTER AND SIGNIFICANCE OF STUDENT MOVEMENTS* (1969); *PROTEST! STUDENT ACTIVISM IN AMERICA* (J. Foster & D. Long eds. 1969).

3. *See* B. TAYLOR, *PARTING THE WATERS: AMERICA IN THE KING YEARS, 1954-1963* (1988).

4. *State v. Hund*, 76 Or. App. 89, 708 P.2d 621 (Ct. App. 1985), *rev. denied*, 300 Or. 477 (1986); *see also State v. Heath*, 75 Or. App. 425, 706 P.2d 598 (Ct. App. 1985).

5. *Texas v. Johnson*, 409 U.S. 397 (1989).

several armed hunters and asked them not to kill wildlife.⁶

Ms. Dorman's brief words with the hunters subjected her to arrest under section 53a-183a of the Connecticut Penal Code (the "Connecticut Act").⁷ The Connecticut Act declares that no person shall "interfere" or "harass" another person engaged in the lawful taking of wildlife or "acts in preparation" thereof.⁸ Hunter harassment laws like the Connecticut Act represent the latest effort to squelch a growing animal rights movement⁹ that has stopped cosmetic companies from testing their products on animals¹⁰ and per-

6. *Dorman v. Satti*, 678 F. Supp. 375 (D. Conn.), *aff'd*, 862 F.2d 432 (2d Cir. 1988), *cert. denied*, 490 U.S. 1099 (1989).

7. CONN. GEN. STAT. ANN. § 53a-183a (West 1990).

8. *Id.*

9. See Allen, *The Rights of Nonhuman Animals and World Public Order: A Global Assessment*, 28 N.Y.L. SCH. L. REV. 377, 378 (1983); Goodkin, *The Evolution of Animal Rights*, 18 COLUM. HUM. RTS. L. REV. 259 (1987); see also P. SINGER, *ANIMAL LIBERATION* (1990) (articulating a comprehensive philosophy embracing the rights of animals).

Compared with the plight of animals in experimentation and factory farming, blood sports arguably might seem less cruel because they do not involve as many "victims," and the animals' suffering usually does not last as long as in the other forms of abuse. See Dukes, *The Improved Standards for Laboratory Animals Act: Will It Ensure that the Policy of the Animal Welfare Act Becomes a Reality?*, 31 ST. LOUIS U.L.J. 519 (1987); Hoch, *Business Ethics, Law, and the Corporate Use of Laboratory Animals*, 21 AKRON L. REV. 201 (1987); Masonis, *The Improved Standards for Laboratory Animals Act and the Proposed Regulations: A Glimmer of Hope in the Battle Against Abusive Animal Research*, 16 ENVTL. AFF. 149 (1988); McDonald, *Creating a Private Cause of Action Against Abusive Animal Research*, 134 U. PA. L. REV. 399 (1986); Subar, *Out from Under the Microscope: A Case for Laboratory Animal Rights*, 2 DET. C.L. REV. 511 (1987); see also Frank, *Factory Farming: An Imminent Clash Between Animal Rights Activists and Agribusiness*, 7 ENVTL. AFF. 423 (1979); McCarthy & Bennett, *Statutory Protection for Farm Animals*, 3 PACE ENVTL. L. REV. 229 (1986); Wise, *Of Farm Animals and Justice*, 3 PACE ENVTL. L. REV. 191 (1986). See generally J. MASON & P. SINGER, *ANIMAL FACTORIES* (1980) (documenting the history of government policy and corporate profiteering involving the farming industry in this country and the disastrous effect of these forces on the treatment of farm animals).

Nevertheless, the anti-hunting movement attracts thousands of activists and other sympathizers like Francelle Dorman. Priscilla Feral, president of the Connecticut-based Friends of Animals, a multi-issue animal rights organization, explained: "We are fighting a war against the perverse minds who seek to maim and murder sentient animals in their homes—the parks and public lands that belong to all of us. We believe it is our right, nay, our duty, to protect all animals." Peterson, *For Animal Rights Groups, Hunters Become the Hunted*, *Detroit News*, Dec. 3, 1989, at 3A, col. 1, 12A, col. 1.

The proliferation of organizations formed solely or primarily for coordinating anti-hunting activities shows the momentum that the anti-hunting movement has gained. Among these organizations are Animal Rights Front, New Haven, Connecticut; Committee to Abolish Sport Hunting ("CASH"), White Plains, New York; Fund for Animals, New York, New York; Hunt Saboteurs, Anaheim, California; and abroad, Hunt Saboteurs Ass'n, Kent, United Kingdom.

10. See White, *Confronting Animal Rights Activism*, *L.A. Times*, Dec. 3, 1989, at D1, col. 1 (discussing animal rights advocates' major victories against cosmetic industry giants, including Avon, Revlon, and Christian Dior, all of which have stopped testing the safety of their new products on live animals); Feder, *Beyond White Rats and Rabbits*, *N.Y. Times*, Feb.

suaded people not to buy fur coats.¹¹ A relatively small portion of our population¹²—those who hunt *nonhuman* animals—has had remarkable success in persuading a majority of state legislatures to enact “hunter harassment statutes.”¹³ Although the text of these statutes varies somewhat from state to state, their thrust is the same: to outlaw the legitimate protests of those who seek to protect animals from hunters.¹⁴

Police arrested Ms. Dorman on January 30, 1986, for violating

28, 1988, sec. 3, at 1, col. 1 (describing new techniques in product testing that companies are exploring and using in place of testing on animals).

11. See La Ganga, *Furriers: Protests Have Hurt Sales for Some Retailers*, L.A. Times, Dec. 3, 1989, at D1, col. 1; McCombs, *Fur Guilt: Trapped Between Luxury and That Uneasy Feeling*, Wash. Post, Nov. 30, 1989, at B1, col. 1; Hochswender, *As Image of Furs Suffers, So Do Revenues*, N.Y. Times, Mar. 14, 1989, at A1, col. 2.

12. Almost 16 million Americans—approximately 7% of the population—purchased hunting licenses in 1989. Satchell, *The American Hunter Under Fire*, U.S. NEWS & WORLD REP., Feb. 5, 1990, at 30.

13. These statutes commonly are referred to as “hunter harassment statutes.” See B. Conner, *Hunter Harassment: Plaguing Our American Heritage*, OUTDOOR LIFE, Oct. 1990, at 83; E. Wolfson, *Saboteurs Thwart Bighorn Sheep Hunters*, E MAG., Mar./Apr. 1991, at 43. Many states have passed “hunter harassment” laws. See, e.g., ARIZ. REV. STAT. ANN. § 17-316 (1989); CAL. FISH & GAME CODE § 2009 (West 1991); COLO. REV. STAT. § 33-6-116.5 (1990); CONN. GEN. STAT. ANN. § 53a-183a (West 1990); DEL. CODE ANN. tit. 7, § 731 (Supp. 1986); FLA. STAT. § 372.705 (1990); GA. CODE ANN. §§ 45-1201 to 45-1203 (1986); IDAHO CODE § 36-1510 (Supp. 1987); ILL. ANN. STAT. ch. 61, ¶¶ 301-304 (Smith-Hurd Supp. 1987); IND. CODE § 14-2-11-2 (1990); KAN. STAT. ANN. § 32-1014 (1989); KY. REV. STAT. ANN. § 150.710 (Michie/Bobbs-Merrill 1990); LA. REV. STAT. ANN. § 56:648.1 to .3 (West 1987); ME. REV. STAT. ANN. tit. 12, §§ 7541-7542 (Supp. 1987); MD. NAT. RES. CODE ANN. § 10-422 (Supp. 1987); MICH. STAT. § 300.262 (1989); MINN. STAT. ANN. § 97A.037 (West 1989); MO. ANN. STAT. § 578.152 (Vernon 1988); MONT. CODE ANN. § 87-3-141 to -144 (1987); NEV. REV. STAT. § 503.015 (1990); N.H. REV. STAT. ANN. § 207:57 (1989); N.Y. ENVTL. CONSERV. LAW § 11-0110 (McKinney Supp. 1988); N.C. GEN. STAT. § 113-295 (1987); N.D. CENT. CODE § 20.1-01-31 (Supp. 1987); OKLA. STAT. ANN. tit. 29 § 5-212 (West 1989); OR. REV. STAT. § 496.994 (1987); 34 PA. CONS. STAT. § 2162 (1987); R.I. GEN. LAWS § 20-13-16 (Supp. 1987); S.D. CODIFIED LAWS ANN. § 41-1-8 to -10 (1989); TENN. CODE ANN. § 70-4-301 to -303 (1989); TEX. PARKS & WILD. CODE ANN. § 62.0125 (Vernon Supp. 1988); UTAH CODE ANN. § 23-20-29 (Supp. 1987); VT. STAT. ANN. tit. 10, § 4708 (1989); WASH. REV. CODE § 77.16.340 (1988); W. VA. CODE § 20-2-2a (Supp. 1987); WIS. STAT. ANN. § 29.223 (West 1989).

14. Most of the hunter harassment laws are based on model legislation drafted by the Wildlife Legislation Fund of America, a pro-hunting lobby based in Washington, D.C. Glass, *Protect Hunters from Harassment*, USA Today, Aug. 6, 1990, at A11, col. 1. Jim Glass, president of the pro-hunting group, wrote:

Hunting is perfectly legal in the U.S.A. Harassing hunters is not. It's pretty simple. . . . Virtually all of the protection laws are based on model legislation developed by The Wildlife Legislative Fund of America. The legislation was drafted with the intention of preventing harassment, while fully recognizing first amendment rights. There's a time and place for animal rightists to attempt to effect societal change. The woods, during hunting season, is neither.

Id. at A11, col. 2.

the Connecticut Act.¹⁵ The Connecticut legislature had enacted the statute in 1985 in response to lobbying efforts by the Sportsman's Alliance, a hunters' interest group.¹⁶ The Connecticut statute imposes criminal penalties—\$500 or up to 90 days in jail—for “interfering” with or “harassing” anyone “engaged in the lawful taking of wildlife or acts in preparation for such taking.”¹⁷ Although Dorman did not make any physical contact whatsoever with the hunters, they accused her of harassing them by distracting them from going about their killing.¹⁸

Prosecutors dropped charges against Ms. Dorman on April 3, 1986, stating only that she had been arrested “prematurely.”¹⁹ Because the dismissal left the constitutionality of the statute unresolved, Ms. Dorman filed a declaratory action in the United States District Court for the District of Connecticut, which declared the Connecticut Act unconstitutional.²⁰ The United States Court of Appeals for the Second Circuit affirmed in *Dorman v. Satti*,²¹ an opinion validating the first amendment rights of anti-hunting activists. *Dorman* thus established an important proposition: hunter harassment statutes are *not* content-neutral restrictions on conduct.²² Rather, they are impermissible attempts to regulate the expression only of those *opposed* to hunting.²³ In spite of this ruling, however, statutes like the Connecticut Act remain in effect in a majority of the states.²⁴

This Comment argues that hunter harassment statutes violate anti-hunting protesters' first amendment right to speak out against hunting. Section II begins by introducing the anti-hunting movement and its strategies. It also presents the hunters' side of the hunting debate, and their response to anti-hunting protests. Section III exam-

15. CONN. GEN. STAT. ANN. § 53a-183a (West 1990). The text of the statute reads:

(a) No person shall: (1) Interfere with the lawful taking of wildlife by another person, or acts in preparation, or acts in preparation for such taking, with intent to prevent such taking; or (2) harass another person who is engaged in the lawful taking of wildlife or acts in preparation for such taking.

(b) Any person who violates any provision of this section shall be guilty of a class C misdemeanor.

16. *Dorman v. Satti*, 862 F.2d 432 (2d Cir. 1988), *cert. denied*, 490 U.S. 1099 (1989).

17. CONN. GEN. STAT. ANN. §§ 53a-183a, 53a-28, 53a-36(3) (West 1990).

18. *Dorman v. Satti*, 678 F. Supp. 375, 378 (D. Conn.), *aff'd*, 862 F.2d 432 (2d Cir. 1988), *cert. denied*, 490 U.S. 1099 (1989).

19. *Id.*

20. *Id.* at 383.

21. *Dorman v. Satti*, 862 F.2d 432 (2d Cir. 1988), *cert. denied*, 490 U.S. 1099 (1989).

22. *Id.* at 437.

23. *Id.*

24. *See supra* note 13.

ines the constitutionality of hunter harassment statutes, hunters' most recent attempt to silence anti-hunting protesters. Section III uses the Connecticut Act and the Second Circuit's decision in *Dorman v. Satti* to illustrate how hunter harassment statutes violate anti-hunting activists' first amendment right to freedom of speech. First amendment precedent on content-based regulations, content-neutral time, place, and manner restrictions, and doctrines of overbreadth and vagueness illustrate the constitutional infirmity of the Connecticut Act and similar hunter harassment statutes. Section IV concludes that restrictions on the hunting debate contradict the fundamental societal value of open and robust exchange of ideas. Section IV urges the United States Supreme Court to pronounce hunter harassment statutes unconstitutional upon its next opportunity.

II. THE HUNTING DEBATE

A. *The Strategies and Impact of Anti-Hunting Protesters*

Hunters kill approximately 200 million animals per year.²⁵ Hunters also leave behind many wounded and crippled animals.²⁶ Natural predators keep their prey strong by killing only the weakest members; hunters seek out and destroy the strongest and most fit.²⁷

25. Hunters' 200 million annual victims include deer, bears, moose, rabbits, ducks, geese, squirrels, and other wildlife, as well as dogs, cats, cows, occasional hikers, and a few fellow hunters. Satchell, *supra* note 12, at 30, 33.

26. For every animal a hunter kills and recovers, estimates show that at least two wounded animals die slowly and painfully from blood loss, infection, or starvation; those who do not die often suffer from disabling injuries. I. NEWKIRK, *SAVE THE ANIMALS!* 94 (1990).

27. Natural predators of the species that the hunters themselves wish to kill are often killed through either the annual massacre called "game management" or the \$30 million tax-funded "predator control" program. Millions of animals—both target and non-target—are killed each year via federally subsidized hunting activities and other programs necessary to maintain hunting. I. NEWKIRK, *supra* note 26, at 95.

A leading animal-rights philosopher criticizes the government's role in the maintenance of this "sport":

A . . . reply may be given to those hunters and controllers of what are misleadingly called "wildlife refuges" who claim that to prevent overpopulation by deer, seals, or whatever the animal in question may be, hunters must periodically be allowed to "harvest" the excess population—this allegedly being in the interests of the animals themselves. The use of the term "harvest"—often found in the publications of the hunter's organizations—gives the lie to the claim that this slaughter is motivated by concern for the animals. The term indicates that the hunter thinks of deer or seals as if they were corn or coal, objects of interest only in so far as they serve human interests. This attitude, which is shared to a large extent by the U.S. Fish and Wildlife Service, overlooks the vital fact that deer and other hunted animals are capable of feeling pleasure and pain. They are therefore not means to our ends, but beings with interests of their own. If it is true that in special circumstances their population grows to such an extent that they damage their own environment and the prospects of their own survival,

Increasing numbers of activists protest hunting.²⁸ They believe that hunting is cruel to animals, bad for the ecosystem, and morally wrong.²⁹

Anti-hunting activists protest by direct action in the field, covert or overt, to save animals from hunters.³⁰ They encourage neighbors,

or that of other animals who share their habitat, then it may be right for humans to take some supervisory action; but obviously if we consider the interests of the animals, this action will not be to let hunters kill some animals, inevitably wounding others in the process, but rather to reduce the fertility of the animals. . . . The trouble is that the authorities responsible for wildlife have a "harvest" mentality, and are not interested in finding techniques of population control which would reduce the number of animals to be "harvested" by hunters.

P. SINGER, *supra* note 9, at 234.

28. Hunting protests are not confined to the United States. In 1964, the Hunt Saboteurs Association was formed in England and has since attracted animal rights activists, offering them a direct, albeit non-violent, approach towards eliminating animal suffering. P. WINDEATT, *'They Clearly Now See the Link': Militant Voices*, in *IN DEFENSE OF ANIMALS* 185 (Singer ed. 1985). With the growth of the animal rights movement in the last few years, the Hunt Saboteurs' membership has increased. As of 1986, the Hunt Saboteurs Association had a membership of 5,000 established local groups and a working relationship with the larger League Against Cruel Sports, which has led the parliamentary campaign to outlaw hunting with hounds. *Id.* Although they are not in the headlines as much as they were in the early to mid-1970's because their activities have become much more accepted in the media's eyes, they remain out in the field throughout the foxhunting season. *Id.* Lin Murray, an active member of the Hunt Saboteurs Association, stated in an interview with Peter Singer:

There's been a really big upsurge of people who want to go out lately. It used to be the same old people, but loads of new people are coming in. There are three new groups in London alone, and a couple of new groups in Essex, which is my area. . . . In Essex we are sabotaging up to four hunts a week, with groups going out mid-week.

Id. Thus, the strategies of anti-hunting activists, both in the United States and abroad, vary widely, with different degrees of success. The activists' direct protests in the fields and the statutes prohibiting them from doing so, however, constitute the most dramatic confrontations of the debate and implicate fundamental first amendment principles.

29. Furthermore, anti-hunting activists also contend that hunting—particularly bow hunting—is cruel, where as many as half the animals shot are not recovered and die slowly over several days. See Pascelle, *Bow Hunting: A Most Primitive Sport*, *ANIMALS' AGENDA*, May 1990, at 15-18.

30. See C. COHEN, *CIVIL DISOBEDIENCE: CONSCIENCE, TACTICS, AND THE LAW* 52 (1971) (discussing the distinctions between direct and indirect action as it relates to incidents of civil disobedience). One anti-hunting activist, himself an ex-hunter, recommends an effective method of direct protest against hunting:

Buy a hunting license, shotgun, shells and a blaze orange hunting cap and vest. Take the hunter-safety course. Select a hunting area and organize from three to a hundred people or more . . . all licensed hunt saboteurs! Map out a strategy and routes to cover as much acreage as possible. Be sure that shotguns are well-oiled and that the group has walkie-talkies, binoculars and compasses. Walk through the woods occasionally firing into dirt banks. The noise and the aroma of the gunpowder and oil will cause wildlife to be wary and hole up. This will reduce the number of animals killed by hunters. Also, grab up hunting permits offered in lotteries.

Dommer, *The Anatomy of Hunt Sabotage*, *ANIMALS' VOICE MAG.*, Aug. 1990, at 70.

especially farmers and ranchers who own large tracts of land, to post "No Hunting" signs every one hundred yards.³¹ Some activists apply for hunting licenses themselves,³² or register nursing home residents for free senior-citizen hunting licenses,³³ in order to reduce the limited number of licenses actually available to the hunters. Other forms of protest include activists' spreading deer repellent, sprinkling chopped garlic cloves in water or lemon juice on trails to throw dogs off animal scents, and leaving locks of human hair along trails to scare off deer.³⁴ Also, activists enter the woods before the hunting season and play loud radios or recordings of wolf howls, and walk with their dogs on leashes, to teach young animals not yet experienced in being hunted to scatter.³⁵

Anti-hunting activists circulate petitions and write to local sponsors of hunts and the appropriate authorities urging them to cancel the events, both for human and nonhuman animals' safety.³⁶ They write letters to the editors of local newspapers, alert local talk shows about the debate, and post anti-hunting fliers in parks and other community areas. They urge their municipalities to pass ordinances banning the use of weapons within their limits, in the interest of public safety.³⁷ They urge their congressional representatives—often via letter-writing campaigns—to introduce bills prohibiting hunting and trapping on national wildlife refuges and public lands.³⁸ With the help of sympathetic attorneys in organizations like the Animal Legal Defense Fund,³⁹ activists also file lawsuits to ban certain hunting in particular areas.⁴⁰ Additionally, they ask state governments to appoint *non*hunters to state fish and game departments and wildlife committees.⁴¹

More recently, anti-hunting activists have organized demonstrations to communicate their message to hunters as well as the public. They design demonstrations with dramatic appeal to pierce the insen-

31. See R. BAKER, *THE AMERICAN HUNTING MYTH* 58 (1985).

32. See Dommer, *supra* note 30, at 70.

33. I. NEWKIRK, *supra* note 26, at 96.

34. *Id.*

35. *Id.*

36. *Id.*

37. See R. BAKER, *supra* note 31, at 58-59.

38. *Id.* at 58.

39. The Animal Legal Defense Fund ("ALDF"), formed in 1980, is a nationwide network of over 300 attorneys dedicated to protecting and promoting animal rights, funded almost entirely by individual, tax-deductible contributions. See Hentoff, *Lawyers for Animals*, Wash. Post, Apr. 28, 1990, at C1, col. 1.

40. See Satchell, *supra* note 12, at 35.

41. See *id.* at 34.

sitivity that society has conditioned individuals to accept.⁴² They protest at the entrances of wildlife refuges and other hunting sites, carrying signs and chanting. Protests at hunting sites are an especially effective method of communication because of their dramatic media potential.⁴³ The activists' direct protests in the fields and the statutes prohibiting them from doing so, however, constitute the most dramatic confrontations of the debate and implicate fundamental first amendment principles.

B. *The Hunters' Response to Anti-Hunting Protests*

Hunters hunt for pleasure, relaxation, and sport. They defend themselves from anti-hunting activists' claims that they are cruel to animals by asserting that they are among the nation's great conservationists.⁴⁴ They boast their \$517 million contribution, generated by hunting and fishing licenses, to state wildlife programs in 1989.⁴⁵ Additionally, they argue that without hunters to thin the herds, animals would be too numerous for their habitat and thus face starvation.⁴⁶

Anti-hunting activists counter that hunters' arguments are disingenuous and misleading.⁴⁷ Hunters' large contributions to state wild-

42. Anti-hunting advocate Ron Baker wrote:

Those who love Nature and detest the slaughter of wildlife in North America and elsewhere must be prepared for a long and at times bitter and frustrating struggle. It is customary for a society to establish a set of cultural traditions and actively oppose attempts to modify and improve them. Throughout history, unethical institutions have usually been reformed by a slow evolutionary process. Reform movements have been, almost without exception, the products of a very few enlightened individuals.

R. BAKER, *supra* note 31, at 247.

43. Doris Dixon, director of the Fund for Animals' 20,000-member Michigan branch, stated: "An awful lot of people would like to [protest at hunting sites]. It seems that's about the only way we can draw any public attention to what's going on." Peterson, *supra* note 9, at 12A, col. 1.

44. See Kasowski, *Showdown on the Hunting Ground*, OUTDOOR AMERICA, Winter 1986, at 8-11, 33-34; Tapply, *In Defense of Outdoorsmen*, NEWSWEEK, Apr. 10, 1989, at 10-11. But see R. BAKER, *supra* note 31, at 32; Dommer, *Who Pays the Tab for Wildlife Conservation?*, ANIMALS' VOICE MAG., Feb.-Mar. 1991, at 48.

45. *New Twist in Animal Rights: Hunter Is the Prey*, N.Y. Times, Nov. 23, 1990, at A22, col. 3. Although hunting and fishing licenses generate millions of dollars in yearly revenues, there is another side to the story. See M. FOX, INHUMANE SOCIETY 114-16 (1990). For those fees, hunting is permitted in 60% of United States wildlife refuges, and 45% of hunters are allowed to kill on public taxpayer-supported lands. I. NEWKIRK, *supra* note 26, at 95. Additionally, the United States Fish and Wildlife Service programs, which benefit hunters, receive up to 90% of their funding from general tax revenues—not hunting fees. *Id.*

46. By reducing natural populations artificially every year, hunters actually stimulate breeding. Baker, *Of Cowards and Conservation*, ANIMALS' VOICE MAG., Feb.-Mar. 1991, at 30, 35.

47. *Id.*

life programs do little more than ensure that wildlife and conservation policies are designed to the hunters' advantage.⁴⁸ Hunter-dominated boards and offices work to benefit a handful of game animals, rather than the thousands of other species under the states' care.⁴⁹

Hunters, a mere seven percent of the population,⁵⁰ feel threatened by the force of the anti-hunting message and want to protect their privilege of hunting.⁵¹ Like the activists, the hunters engage the media and traditional public relations methods to garner widespread support for their hobby. For example, to secure favorable media for hunting, the United Bowhunters of New Jersey periodically holds press conferences at hunting sites with venison barbecues for reporters.⁵² In another public relations effort, the United Bowhunters gave away nearly a thousand pounds of venison to feed the homeless last year.⁵³

The November 1990 issue of *Bowhunter* magazine warned hunters not to wear face paint and camouflage in public because it brings to mind paramilitary groups, violent movies, and armed "kooks" in camouflage clothing.⁵⁴ Consequently, when bowhunting season opened in Maryland in September 1990, hunters wore suits and ties in front of the television cameras and news photographers.⁵⁵ They set up information booths with educational pamphlets and served doughnuts and coffee.⁵⁶

Despite the public-relations efforts, Hunters' most powerful response to anti-hunting protesters to date has been the recent and swift passage of hunter harassment statutes throughout the country.⁵⁷ These statutes make it a crime to speak out against hunting.⁵⁸ Hunters, through organized lobbying efforts, have silenced anti-hunting activists in thirty-seven states.

III. THE FIRST AMENDMENT RIGHTS OF ANTI-HUNTING PROTESTERS

The first amendment seemingly protects lawful protest activities

48. *Id.*

49. See R. BAKER, *supra* note 31; see also *supra* note 27.

50. Almost 16 million Americans purchased hunting licenses in 1989. Satchell, *supra* note 12, at 30.

51. See *New Twist in Animal Rights: Hunter is the Prey*, *supra* note 45, at A22, col. 2.

52. *Id.* at A22, col. 3.

53. *Id.*

54. *Id.* (quoting BOWHUNTER, Nov. 1990, at 89).

55. *Id.*

56. *Id.*

57. See *supra* note 13.

58. *Id.*

of anti-hunting groups in its provision that "Congress shall make no law . . . abridging the freedom of speech."⁵⁹ Despite this protection, thirty-seven states have mandated restrictions on the conduct and speech of anti-hunting protesters to enable hunters to engage in the recreational taking of wildlife.⁶⁰ Not surprisingly, the National Rifle Association vigorously supports such legislation.⁶¹ Hunter harassment statutes effectively abridge freedom of speech and present a dangerous license for jurisdictions that desire to squelch the vigor of the hunting debate.

A. *A History of Protest in First Amendment Doctrine*

The Connecticut Act challenged in *Dorman v. Satti* and hunter harassment statutes currently in place in a majority of states attempt to eliminate effective anti-hunting protest. A historical review of protests and the first amendment establishes that the first amendment's guarantee of free speech substantially protects protesters.

The United States Supreme Court has expanded the first amendment right to protest since the early 1900's when it considered protests arising from labor disputes.⁶² Initially, because violence and employer coercion often resulted from labor union pickets and pamphlet distributions, the Court considered pickets "unlawful conspiracies."⁶³ The first amendment's assurance of free speech did not protect the *conduct* of union employees.⁶⁴

The Court acknowledged first amendment protection of *peaceful* protests in *Thornhill v. Alabama*.⁶⁵ Mr. Thornhill participated in a

59. U.S. CONST. amend. I. The prohibition has been interpreted to apply to state governments through the fourteenth amendment as well. See *DeJonge v. Oregon*, 299 U.S. 353, 364 (1937) (due process clause of the fourteenth amendment of the federal constitution safeguards the freedoms of speech and press); *Gitlow v. New York*, 268 U.S. 652, 666 (1925) (freedom of speech and of press are personal rights and liberties protected by the fourteenth amendment from impairment by the states).

60. See *supra* note 13.

61. See *Dorman v. Satti*, 678 F. Supp. 375, 377 n.1 (D. Conn. 1988).

62. See *American Steel Foundries v. Tri-City Cent. Traders Council*, 257 U.S. 184 (1921) (labor union "picket" considered "sinister"); cf. *Duplex Printing Press Co. v. Deering*, 254 U.S. 443 (1921) (labor union boycott considered damaging to the general public).

63. See *Gompers v. Buck Stove & Range Co.*, 221 U.S. 418, 439 (1911) (labor union boycott involving picketing and distribution of printed materials held to be a restriction of trade); see also *Hitchman Coal & Coke Co. v. Mitchell*, 245 U.S. 229 (1917) (coercion of employer through a strike held to be unlawful).

64. *Gompers*, 221 U.S. at 439. "[T]he agreement to act in concert when the signal is published, gives the words 'Unfair,' 'We don't patronize,' or similar expressions, a force not inhering in the words themselves, and therefore exceeding any possible right of speech which a single individual might have." *Id.*

65. 310 U.S. 88 (1940).

picket near his former employer's place of business⁶⁶ and was convicted of violating an Alabama statute that forbade loitering or picketing "about premises or [a] place of business."⁶⁷ On appeal, Mr. Thornhill argued that the statute deprived him of his first amendment rights of assembly, speech, and petition for redress.⁶⁸ Because the statute denied Mr. Thornhill and other protesters access to the most effective means of educating the community about their views, the Court held the statute unconstitutional.⁶⁹ The Court emphasized that freedom of speech gives individuals the right to discuss public and social issues⁷⁰ in order for society to develop according to its changing needs.⁷¹ Freedom of speech, it held, could be restricted only if it threatened substantial harm to individuals, their property, or privacy.⁷² In so holding, *Thornhill* elevated the conduct associated with "dissemination of information" to the status of a protected first amendment freedom.⁷³

Nine years later, the Court expanded the character of the public protest protected under the first amendment. In *Terminiello v. Chicago*,⁷⁴ Mr. Terminiello made a controversial public speech resulting in an angry protest that required local police control.⁷⁵ The trial court held Mr. Terminiello responsible for inciting the crowd and

66. *Id.* at 90. In *Thornhill*, six or eight striking labor union employees formed a picket line and approached nonunion employees peacefully to persuade them not to go to work for Brown Wood Preserving Co. *Id.* at 92, 94.

67. *Id.* at 91 (citing ALA. CODE § 3448 (1923)). The Supreme Court subsequently held the statute "invalid on its face." *Id.* at 101.

68. *Id.* at 92-93.

69. *Id.* at 99-101.

70. *Id.* at 101-02; see also *United States v. Grace*, 461 U.S. 171 (1983) (protest signs and pamphlet distribution in front of the United States Supreme Court is a protected exercise of first amendment rights); *New York Times v. Sullivan*, 376 U.S. 254 (1964) (without evidence of actual malice, a newspaper article containing defamatory remarks about a public official is a protected exercise of free speech debate on public issue); *Jamison v. Texas*, 318 U.S. 413 (1943) (holding that distribution of Jehovah's Witnesses' pamphlets containing commercial advertising is a protected exercise of first amendment rights despite violation of local advertising ordinance); *Schneider v. State*, 308 U.S. 147 (1939) (distribution of literature about various political and religious issues in public places and at individual residences in four different municipalities is a protected expression of ideas); *Lovell v. City of Griffin*, 303 U.S. 444 (1938) (distribution of Jehovah's Witnesses' materials, without the prior permission of city officials, is a protected exercise of first amendment rights); *DeJonge v. Oregon*, 299 U.S. 353 (1937) (public meeting held under the auspices of the Communist Party is a protected exercise of the first amendment right to assembly).

71. *Thornhill*, 310 U.S. at 102.

72. *Id.* at 104-05.

73. *Id.* at 102-03; cf. Note, *Labor Law—Determination of Secondary Boycott Violations in Common Situs Picketing During Area Standards Disputes*, 59 TEMP. L.Q. 1071 (1986) (dissemination of information can be enjoined if it is a secondary boycott).

74. 337 U.S. 1 (1949).

75. *Id.* at 2-3. Mr. Terminiello delivered a speech containing biased political and racial

convicted him of disturbing the peace.⁷⁶ On appeal, the Court reversed his conviction, holding that speech does not lose its protected status merely because it induces the public to unrest and dispute.⁷⁷ Because Mr. Terminiello had the right to express his opinions in a public forum,⁷⁸ the Court found that he could not be convicted of a disturbance that resulted merely because others opposed his opinions.⁷⁹ The Court determined that without evidence of a clear and present danger to the public,⁸⁰ the right of expression in a public forum cannot be limited or extinguished by censorship.⁸¹

Similarly, the civil rights protests of the 1960's precipitated emotionally charged speech and conduct, highly offensive and disturbing to observers. In *Cox v. Louisiana*,⁸² Reverend Cox, a civil rights leader, led a demonstration involving approximately two thousand black students.⁸³ This demonstration was the students' attempt to show their disapproval of segregation and the arrest of other black students who had picketed stores with segregated lunch counters.⁸⁴ The students assembled and marched from the state capitol building to the courthouse, where they sang, heard speeches, and recited the Lord's Prayer and Pledge of Allegiance.⁸⁵ Reverend Cox's speech

content before a meeting of the Christian Veterans of America. To protest the defendant's views, an angry crowd of about a thousand people gathered outside the meeting. *Id.* at 3.

76. *Id.* at 2. A Chicago city ordinance prohibited anyone from causing any "disturbance," "riot," or other "breach of the peace." *Id.* at 2 n.1 (citing Chicago, Ill. Code § 193-1 (1939)). The Court held the ordinance unconstitutional as applied to Mr. Terminiello. *Id.* at 5.

77. *Id.* at 4. The Court held:

[A] function of free speech under our system of government is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger. Speech is often provocative and challenging. It may strike at prejudices and preconceptions and have profound unsettling effects as it presses for acceptance of an idea. That is why freedom of speech . . . is nevertheless protected against censorship or punishment, unless shown likely to produce a clear and present danger of a serious substantive evil that rises far above public inconvenience, annoyance, or unrest.

Id.

78. The traditional "public forum" includes streets and parks that "have immemorially been held in trust for the use of the public . . . for purposes of assembly, communicating thoughts between citizens, and discussing public questions." *Hague v. Committee for Indus. Org.*, 307 U.S. 496, 515 (1939).

79. *Terminiello*, 337 U.S. at 5.

80. *Id.*; see also *Thornhill v. Alabama*, 310 U.S. 88, 105 (1940).

81. *Terminiello*, 337 U.S. at 4; see also *Kunz v. New York*, 340 U.S. 290 (1951) (holding revocation of a permit to hold public worship meetings ridiculing other religions to be an unlawful denial of first amendment rights).

82. 379 U.S. 536 (1965).

83. *Id.* at 539.

84. *Id.* at 538-39.

85. *Id.* at 539-41.

resulted in loud cheering and crying by some of the protestors.⁸⁶ This behavior agitated white observers, who began "muttering," "grumbling," and "jeering."⁸⁷ Police arrested Reverend Cox, who was later convicted for disturbing the peace by inciting the crowd to respond negatively to his speech.⁸⁸ On appeal, the Court reversed Reverend Cox's conviction and determined that his conduct was a valid exercise of his rights of free speech and assembly.⁸⁹ Relying on *Terminiello*, the Court held that Reverend Cox did not forfeit his right to express his views merely because of their aggravating nature.⁹⁰

As issues of public concern have become increasingly controversial and the competition for media attention more fierce, protesters have resorted to more dramatic, and sometimes unorthodox, means of protest.⁹¹ Since *Roe v. Wade*,⁹² for instance, anti-abortion protesters' tactics have included widespread demonstrations at abortion clinics, sometimes involving criminal trespass.⁹³ Recently, protesters outside the Mississippi Women's Medical Clinic stood in front of the clinic driveway, carrying signs depicting gruesome pictures of aborted fetuses, distributing anti-abortion literature, and giving unsolicited counseling to women as they entered the clinic.⁹⁴ The clinic sought an injunction to prevent protesters from entering within a 500-foot radius of the clinic and to prohibit protesters' usage of emotionally charged terms such as "kill," "murder," and "butcher."⁹⁵ The Court of Appeals for the Fifth Circuit denied the injunction, refusing to limit the place and manner of protesters' displays of public expression

86. *Id.* at 546.

87. *Id.* at 550.

88. *Id.*

89. *Id.* at 552.

90. *Id.* (quoting *Terminiello v. Chicago*, 337 U.S. 1, 4-5 (1949)).

91. For protesters lacking the financial means to reach a wide audience, the potential for media access offered by sensational protest tactics makes this type of conduct appealing. Consider, for example, the high degree of media attention attracted by flag burning. Toner, *Spirit of 89: The Uproar over What America Owes Its First Allegiance to*, N.Y. Times, July 2, 1989, at E1, col. 1; Greenhouse, *Justices, 5-4 Back Protesters' Right to Burn the Flag*, N.Y. Times, June 22, 1989, at A1, col. 5; cf. Pemberton, *The Right of Access to Mass Media*, in *THE RIGHTS OF AMERICANS* 276 (N. Dorsen ed. 1970). Mr. Pemberton suggests that the media attention attracted by outrageous protest tactics may obscure the protestors' message and, in the end, "provide no real solution to the problem of access to the media." *Id.* at 281.

92. 410 U.S. 113 (1973).

93. See *Frisby v. Schultz*, 487 U.S. 474 (1988); Note, "Justified" Nuclear and Abortion Clinic Protest: A Kantian Theory of Jurisprudence, 21 NEW. ENG. L. REV. 725 (1986). Anti-abortion protesters' tactics have included proposing legislation, constitutional amendments, picketing abortion clinics, and harassing women entering abortion clinics. See also Monaghan, *Sidewalk Counseling: A First Amendment Right*, 31 CATH. LAW. 50 (1987); *America's Abortion Dilemma*, NEWSWEEK, Jan. 14, 1985, at 20, 23-24.

94. See Note, *supra* note 93, at 791.

95. *Id.* at 790.

merely because of the unsettling effect of those displays on clinic patients.⁹⁶

Once again, in 1989 and 1990, the Court reiterated the first amendment protection guaranteed to public protesters for speech on matters of public concern by reversing convictions under two flag desecration statutes.⁹⁷ In *Texas v. Johnson*,⁹⁸ the Court vindicated Gregory Lee Johnson's right to publicly burn the national flag as an effective and valid means of protesting the Reagan Administration's policies.⁹⁹ More important, in *United States v. Eichman*¹⁰⁰ the Court not only reversed Eichman's conviction under the federal flag desecration statute,¹⁰¹ but emphasized that regardless of majoritarian opposition to the protester's expression, the first amendment protected the speaker's right to engage in symbolic speech.¹⁰²

Thus, the evolution of free speech protection for protests from *Thornhill* to *Eichman* illustrates the substantial protection afforded to protesters by the first amendment's assurance of free speech. Statutes specifically prohibiting protesters from expressing their views against employment practices, racial discrimination, abortion, governmental policies, or war involvement would not pass constitutional muster under first amendment doctrine. It is astonishing, in light of this jurisprudence, that states have enacted statutes to prohibit protesters from expressing their views against hunting.

B. *The Connecticut Hunter Harassment Act: A Model*

Section 53a-183a of the Connecticut Penal Code reads:

Harassment of hunters, trappers and fishermen: Class C Misdemeanor

(a) No person shall: (1) Interfere with the lawful taking of wildlife by another person, or acts in preparation for such taking,

96. *Id.* at 792. *But see Frisby*, 487 U.S. at 477, 483-85 (1988) (upholding, under the right of privacy, a city ordinance prohibiting protesters from picketing outside the private home of a physician who performed abortions while acknowledging anti-abortion protesters' rights to march alone or in groups throughout neighborhoods); *Bering v. SHARE*, 106 Wash. 2d 212, 721 P.2d 918 (1986), *cert. dismissed*, 479 U.S. 1050 (1987) (holding that anti-abortion protesters who obstructed sidewalks, engaged in face-to-face coercive counseling, distributed anti-abortion literature, and screamed at women who refused to take the literature had abused their right to freedom of speech).

97. *Texas v. Johnson*, 491 U.S. 397 (1989); *United States v. Eichman*, 110 S. Ct. 2404 (1990).

98. 491 U.S. 397 (1989).

99. *Id.* at 408-10.

100. 110 S. Ct. 2404 (1990).

101. Flag Protection Act of 1989, Pub. L. No. 101-131, 103 Stat. 777 (amending 18 U.S.C. § 700).

102. *Eichman*, 110 S. Ct. at 2409.

with intent to prevent such taking; or (2) harass another person who is engaged in the lawful taking of wildlife or acts in preparation for such taking.

(b) Any person who violates any provision of this section shall be guilty of a class C misdemeanor.¹⁰³

The Connecticut Legislature enacted the Connecticut Act to deter active opposition to hunting.¹⁰⁴ The Connecticut Act prohibits any interference with hunting or acts in preparation for hunting, and it prohibits harassment of a person hunting or preparing to hunt. Because the Connecticut Act makes no attempt to define "interfere," "harass," and "acts in preparation for," these terms could be interpreted to proscribe a myriad of speech and conduct in contexts only remotely related to hunting. The State Senate voted down a proposed amendment to the Connecticut Act designed to clarify the "harassment" subsection and to reduce the penalty of \$500 or up to ninety days in jail to an infraction with a fine of up to \$99.¹⁰⁵ In addition to its ambiguity and severe penalty, the Connecticut Act cuts off anti-hunting protesters' access to their most forceful medium of communication, demonstrations at hunting grounds.

Thirty-seven states have enacted legislation similar to the Connecticut Act.¹⁰⁶ Not surprising, the National Rifle Association has lobbied staunchly and silently to support hunter harassment stat-

103. CONN. GEN. STAT. ANN. § 53a-183a (West Supp. 1990). Violation of this statute, a class C misdemeanor, subjects an offender to a fine and/or imprisonment for up to three months. *Id.* §§ 53a-28, 53a-36(3).

104. *Dorman v. Satti*, 678 F. Supp. 375, 377 (D. Conn.), *aff'd*, 862 F.2d 432 (2d Cir. 1988), *cert. denied*, 490 U.S. 1099 (1989). One of the Hunter Harassment Act's supporters stated during floor debate: "[W]e need to have some sort of deterrent. . . . [T]here have been some instances where hunters' lives have been threatened by individuals clearly because of the emotional type of objection that there is to . . . taking of animals' lives." *Id.* at 377 n.2 (citing 28 CONN. S. PROC., 1985 Sess., pt. 10, at 3328-29) (statement of Sen. Benson). Another of the bill's supporters argued that "hunters are picked on often. . . . [They] should have the right to hunt in lands that are made available to them." *Id.* (citing CONN. S. PROC., 1985 Sess., pt. 10, at 3332) (statement of Sen. Eaton).

An advocate of the bill explained during the debate that "the people who are involved in this business of harassment are very apparent in their harassment . . . and they do it [purposely and] habitually and repeatedly." *Id.* at 377 n.2 (citing 28 CONN. S. PROC., 1985 Sess., pt. 10, at 3325-34) (statement of Sen. Gunther). Senator Benson, pushing for the bill, further noted "that examples of hunter 'harassment' would include ' . . . intentionally blaring a radio when someone intended to go out and pursue game,' giving 'verbal abuse to someone who was preparing to go out into some public property perhaps to take game,' and 'spreading human hair around the facility [so that] game would be deterred.'" *Id.* at 377 (citing 28 CONN. S. PROC., 1985 Sess., pt. 10, at 3327) (statement of Sen. Benson).

105. *Dorman*, 678 F. Supp. at 377 (citing 28 CONN. S. PROC., 1985 Sess., pt. 10, at 3325-34).

106. *See supra* note 13.

utes.¹⁰⁷ The effect of every hunter harassment statute is the same: suppression of the free speech rights of anti-hunting activists.

Thus far, wherever hunter harassment statutes have been challenged, courts have held the laws unconstitutional. For example, the New Hampshire Supreme Court ruled in a 1986 advisory opinion that a proposed bill prohibiting harassment of hunters, trappers, and fishermen was facially unconstitutional,¹⁰⁸ in violation of the right of free speech guaranteed by the New Hampshire Constitution.¹⁰⁹ Likewise, in *Dorman v. Satti*,¹¹⁰ the Court of Appeals for the Second Circuit struck down the Connecticut Act on free speech grounds.

C. *Dorman v. Satti: When Activists Take Their Case into the Field*

Ducks, geese, and other waterfowl visit a marshland each fall and winter in a state forest in Niantic, Connecticut.¹¹¹ For several years, hunters also have been among the visitors. Francelle Dorman, who lives next to the forest, observed hunters dragging dead birds along the road, leaving blood on the snow.¹¹² Although not an animal rights activist, Ms. Dorman was fond of Canadian geese and other wildlife, whose appearance she welcomed each season and whose numbers she saw diminish each year.¹¹³ One winter day late in the hunting season, she walked out to the marsh to talk to the hunters. She told the hunters that they mutilated more waterfowl than they killed and abandoned them to lingering deaths.¹¹⁴ She spoke to them about "the violence and cruelty of hunting, of the beauty of the waterfowl and of their right to live peacefully and without harm."¹¹⁵ When

107. See *Dorman*, 678 F. Supp. at 377 n.1.

108. Opinion of the Justices, 128 N.H. 46, 509 A.2d 749 (1986).

109. N.H. CONST., pt. I, art. XXII.

110. 678 F. Supp. at 375.

111. *Dorman v. Satti*, 862 F.2d 432, 434 (2d Cir. 1988), cert. denied, 490 U.S. 1099 (1989).

112. Bass, *Law Shielding Hunters Put to the Test*, N.Y. Times, Apr. 13, 1986, at 11C, col. 1.

113. In her affidavit, Ms. Dorman states that she is "morally opposed to the hunting and senseless killing of harmless and defenseless animals, including all waterfowl." *Dorman*, 678 F. Supp. at 377-78.

114. Bass, *supra* note 111, at 11C, col. 1.

115. *Dorman v. Satti*, 678 F. Supp. 375 (D. Conn.), *aff'd*, 862 F.2d 431 (2d Cir. 1988), cert. denied, 490 U.S. 1099 (1989). As Ms. Dorman recounted,

I said to [the hunters], 'Why is it you can't admit that you get a thrill out of killing' but they didn't say too much. . . . They were kind of disgusted with my views.

. . . .
 . . . Then I said to them, 'You wound and mutilate more than you kill, and leave the geese to die a terrible death.' One of the hunters had a beautiful dog and I asked him, 'Suppose someone shot your dog? Wouldn't you be outraged?'
 . . .

Ms. Dorman continued speaking her mind, the hunters told her she was breaking the law, and if she did not stop, they would have her arrested.¹¹⁶ Ms. Dorman refused to leave the marsh, and the hunters summoned a police officer.¹¹⁷ The officer twisted Ms. Dorman's hands behind her back and arrested her for violating the Connecticut Act.¹¹⁸ Although the prosecution ultimately dismissed the charges against Ms. Dorman,¹¹⁹ she sought a declaration of the Connecticut Act's constitutionality in the United States District Court for the District of Connecticut.¹²⁰

The District Court declared the Connecticut Act unconstitutionally overbroad,¹²¹ and the United States Court of Appeals for the Second Circuit affirmed in *Dorman v. Satti*,¹²² an opinion providing momentum for the free speech rights of anti-hunting protesters. The United States Supreme Court refused to hear the case.¹²³ Without the Supreme Court's pronouncement, the Second Circuit's analysis provides a useful framework for evaluating the constitutionality of hunter harassment statutes.

....

... Basically, I tried to reason with them. I didn't yell or raise my voice.

We had a few strong words but no cursing.

Bass, *supra* note 111, at 11C, col. 1. The hunters characterized the exchange differently. Roger Hurley, one of the hunters with whom Ms. Dorman spoke, states: "[S]he laid into us about hunting and killing wildlife. She made it clear that she was going to stay there and not let us hunt. She was relentless." *Id.* at 11C, col. 1. "We were very polite to her and took turns talking to her, but we weren't out there to talk. . . . We wanted to hunt." *Id.* at 11C, col. 1.

116. *Dorman v. Satti*, 862 F.2d 432, 434 (2d Cir. 1988), *cert. denied*, 490 U.S. 1099 (1989).

117. *Id.*

118. *Id.*

119. Ms. Dorman agreed initially to "rehabilitation" in lieu of pleading guilty because she had no money to hire a lawyer. Then she met William Manetti, President of the New Haven, Connecticut-based Animal Rights Front, who introduced her to an attorney willing to take her case, James Auwood. See Bass, *supra* note 111, at 11C, col. 1. Mr. Mannetti summarized his concerns with the Connecticut Act:

[The law] says that the moment the hunter leaves the door, the wildlife belongs to him. If he feels anyone is trying in any way to interfere with the taking of his game, then he can call the police. . . . Our fear is that this is the beginning of a roaring wave of singling out special-interest groups and giving them legal privileges that the rest of us don't have. These groups with the most political clout will get these privileges, and that's pretty scary.

Id. When Mr. Auwood took Ms. Dorman's case, he identified the Connecticut Act's ambiguity in its use of the word "interference." He stated: "If I refuse to sell you bullets, or if I'm driving a car with someone who is going hunting and we get into an accident, I could be arrested under this law. . . . It's ridiculous." *Id.*

120. *Dorman v. Satti*, 678 F. Supp. 375 (D. Conn.), 862 F.2d 432 (2d Cir. 1988), *cert. denied*, 490 U.S. 1099 (1989).

121. *Id.* at 383.

122. 862 F.2d 432, 434 (2d Cir. 1988), *cert. denied*, 490 U.S. 1099 (1989).

123. *Satti v. Dorman*, 490 U.S. 1099 (1989) (denying certiorari).

1. CONTENT-NEUTRAL AND CONTENT-BASED RESTRICTIONS

A majority of the Supreme Court never has interpreted the constitutional guarantee of free speech as absolute.¹²⁴ The closest the Court has come to vindicating an absolutist approach to free speech is in its treatment of restrictions that regulate speech because of its content.¹²⁵ Such "content-based" restrictions threaten first amendment values because they limit expression of a particular viewpoint and skew the "marketplace of ideas."¹²⁶ Because of their danger to free speech, the Court subjects content-based restrictions to heightened scrutiny.¹²⁷ If a state wishes to regulate speech based on its content, it must show that the regulation serves a compelling state interest and is drawn narrowly to achieve that interest.¹²⁸

The Court has developed a different doctrinal approach for regulations it identifies as "content-neutral," or regulation on the non-communicative aspect of speech.¹²⁹ A restriction is content-neutral if it applies impartially to all viewpoints.¹³⁰ Content-neutral regulations

124. The Supreme Court has stated that "The First Amendment does not guarantee the right to communicate one's views at all times and places or in any manner that may be desired." *Heffron v. International Soc'y for Krishna Consciousness, Inc.*, 452 U.S. 640, 647 (1981). *But see* *Konigsberg v. State Bar of Cal.*, 366 U.S. 36, 61 (1961) (Black, J., dissenting) (arguing that constitutional guarantee of free speech is absolute).

125. *See* M. REDISH, *FREEDOM OF EXPRESSION: A CRITICAL ANALYSIS* 87-126 (1984); *see also* L. TRIBE, *AMERICAN CONSTITUTIONAL LAW* §§ 12-2, 12-3, at 789-804 (2d ed. 1988) (delineating two categories of governmental restrictions on speech).

126. *Terminiello v. Chicago*, 337 U.S. 1 (1949); *see also* Stone, *Content Regulation and the First Amendment*, 25 WM. & MARY L. REV. 189, 198-223 (1983) (arguing that even modest content-based restrictions skew public debate).

127. *See, e.g., Texas v. Johnson*, 491 U.S. 397 (1989); *cf. United States v. O'Brien*, 391 U.S. 367 (1968).

128. *Johnson*, 491 U.S. 397; *cf. O'Brien*, 391 U.S. 367.

129. *See O'Brien*, 391 U.S. 367; *see also* L. TRIBE, *supra* note 125, § 12-2, at 791-94.

130. *See Heffron v. International Soc'y for Krishna Consciousness, Inc.*, 452 U.S. 640, 649 (1981). Content-neutral restrictions limit expression without regard to the content of the message conveyed. Laws that prohibit noisy speeches near a hospital, ban billboards in residential communities, or restrict the distribution of leaflets in public places are examples of content-neutral restrictions. Content-based restrictions, on the other hand, limit expression because of the specific message conveyed. Laws that prohibit seditious libel, ban the publication of confidential information, or restrict speeches that may trigger a hostile audience response are examples of this type of restriction. Content-based restrictions are especially problematic under the first amendment, as laws that restrict only some messages and not others are especially likely to distort the substantive content of public debate and to mutilate the thought processes of the community. Hunter harassment statutes are a primary example of content-based restrictions because they arbitrarily limit the hunting debate by silencing the anti-hunting voices. Thus, unlike content-neutral restrictions, which are generally subject to a form of ad hoc balancing, content-based laws are presumptively invalid. For a more thorough discussion of the content-based/content-neutral distinction, *see* Stone, *Content Neutral Restrictions*, 54 U. CHI. L. REV. 46 (1987) [hereinafter Stone, *Content Neutral Restrictions*]; Stone, *Content Regulation and the First Amendment*, 25 WM. & MARY L. REV. 189, 198-233 (1983).

require lower scrutiny than content-based restrictions and are more easily justified.¹³¹ Unlike content-based regulations, which are presumptively invalid, content-neutral regulations are subject to a form of ad hoc balancing.¹³²

Government frequently seeks to categorize restrictions on speech as content neutral, referring to some danger beyond the speech itself, or calling the restriction a "time, place, or manner" regulation.¹³³ If the state wishes instead to regulate the time, place, or manner of expression in a content-neutral way, then it may do so as long as the restrictions are narrowly tailored to serve a significant state interest and leave open alternative channels of communication.¹³⁴ For example, if the state wants to restrict the time, place, or manner of expression in a public place, it may do so if it does not regulate based on the content of speech, and applies its regulations even-handedly to all speech.

In *Dorman v. Satti*,¹³⁵ the State attempted to defend the Connecticut Act as a valid, content-neutral regulation. The State argued that although the Connecticut Act might have had some incidental effect on speech, it primarily regulated conduct on public hunting lands.¹³⁶ The Second Circuit, however, rejected this justification, stating that the Connecticut Act's prohibition of "interference" and "harassment" regulated a substantial amount of speech, as well as conduct incident to speech, and thus could not be upheld as a content-neutral time, place, or manner regulation.¹³⁷

Despite the Second Circuit's recognition that the Connecticut Act regulated speech on the basis of content, proponents of hunter harassment laws and numerous state legislatures disagree.¹³⁸ They continue to characterize hunter harassment laws as time, place, and

131. See *O'Brien*, 391 U.S. 367.

132. *Id.*; see also L. TRIBE, *supra* note 125, § 12-2, at 791-94.

133. See L. TRIBE, *supra* note 125, § 12-3, at 794; see also *Tinker v. Des Moines School Dist.*, 393 U.S. 503 (1969) (rejecting government's attempt to characterize a restriction forbidding the wearing of armbands in school to protest the Vietnam war as a "place" regulation, referring to the danger of school disruption); *O'Brien*, 391 U.S. 367.

134. See Stone, *Content Neutral Restrictions*, *supra* note 130.

135. 862 F.2d 432 (2d Cir. 1988), *cert. denied*, 490 U.S. 1099 (1989).

136. *Dorman v. Satti*, 678 F. Supp. 375 (D. Conn.), *aff'd*, 862 F.2d 432 (2d. Cir. 1988), *cert. denied*, 490 U.S. 1099 (1989). Safety concerns alone might justify a conduct regulation. *Id.* at 379. The State argued that the Connecticut Act simply regulated conduct that prevented hunters from hunting. But anti-hunting protesters are far more likely to use speech to dissuade armed hunters from hunting rather than physical conduct. The Connecticut Act thus proscribes speech, eroding the speech/conduct distinction attempted by the State.

137. *Dorman*, 862 F.2d at 437.

138. See *supra* note 13.

manner restrictions, incidental to speech.¹³⁹ The Supreme Court has upheld time, place, and manner restrictions if (a) they are content-neutral, (b) they are narrowly tailored to serve a significant governmental interest, and (c) ample alternative means of communication are available.¹⁴⁰

Hunter harassment statutes, like the Connecticut Act, do not meet any of these tests. As the Second Circuit stated, the Connecticut Act regulated speech as well as conduct, and regulated that speech on the basis of viewpoint.¹⁴¹ Ms. Dorman's conduct and expression consisted of walking and talking.¹⁴² Insofar as her conduct—following the hunters through the woods—was incidental to her speech, and she undertook it only to permit her speech to the hunters, punishment of that conduct has both the purpose and effect of punishing the “fact of communication.”¹⁴³ Indeed, had Ms. Dorman been espousing the glories of the hunt, or following the hunter while carrying a weapon with which to kill deer, she would not have been arrested even if she had “distracted” the hunters with her conversation and “interfered” with the hunt by making too much noise as she walked. Thus, Ms. Dorman's arrest, based upon the facts construed most favorably to the State, is an exercise of police power that the Constitution forbids, because it “effectively empower[s] a majority to silence dissidents simply as a matter of personal predilections.”¹⁴⁴

Most of the state hunter harassment laws are not narrowly tailored,¹⁴⁵ as their sweeping language reaches a wide range of activities not confined to any particular time, place, or manner.¹⁴⁶ Proponents

139. *Dorman*, 678 F. Supp. at 379.

140. *City Council of Los Angeles v. Taxpayers for Vincent*, 466 U.S. 789 (1986); *United States v. Grace*, 461 U.S. 171 (1983). For examples of content-neutral time, place, and manner restrictions the Court has upheld, see *Clark v. Community for Creative Non-Violence*, 468 U.S. 288 (1984) (National Park Service regulation prohibiting people from sleeping in the park); *Heffron v. International Soc'y for Krishna Consciousness*, 452 U.S. 640 (1983) (rule allowing solicitors at a state fair to sell or distribute merchandise only from a duly licensed location); *Grayned v. City of Rockford*, 408 U.S. 104 (1972) (local ordinance forbidding disturbing noises near a school in session); and *Cox v. New Hampshire*, 312 U.S. 569 (1941) (local ordinance forbidding street parades without a license).

141. *Dorman*, 862 F.2d at 437.

142. *Dorman*, 678 F. Supp. at 377-78.

143. *Cohen v. California*, 403 U.S. 15, 18 (1971).

144. *Erznoznik v. City of Jacksonville*, 422 U.S. 205, 210 (1975) (quoting *Cohen*, 403 U.S. at 21).

145. *But see* ILL. ANN. STAT. ch. 61, § 301, § 1.b (Smith-Hurd Supp. 1989) (limiting regulations on protesters' conduct during hunters' preparatory acts to those “which occur on lands or waters upon which the affected person has the right or privilege to take such wildlife”).

146. *See infra* Section III.C.2. (discussing the overly broad language of hunter harassment statutes).

of hunter harassment laws may argue that anti-hunting protesters have alternative means of communication, yet such alternatives hardly allow free speech when they are not the speakers' most effective forum for speech.¹⁴⁷ Demonstrations at hunting sites generate media attention and reach a broad audience, making them the most effective fora to advance the hunting debate.

In *Hague v. Committee for Industrial Organization*,¹⁴⁸ Justice Roberts recognized that the right to communicate in the streets and parks "is not absolute, but relative, and must be exercised in subordination to the general comfort and convenience."¹⁴⁹ The competing interests between first amendment freedom of speech and the need to maintain public order create tension.¹⁵⁰ On the one hand, preservation of order by use of licensing systems or permits can inhibit speech. On the other hand, if the government may not regulate the use of its streets and parks, danger of disorder exists.

*Police Department of Chicago v. Mosley*¹⁵¹ illustrates a contemporary time, place, and manner analysis that seeks to balance these competing interests. Earl Mosley picketed a Chicago high school for seven months to protest racial discrimination.¹⁵² In response, the city council passed an ordinance prohibiting all but peaceful labor picketing near the school.¹⁵³ Addressing Mosley's suit challenging the constitutionality of the ordinance, the Supreme Court held that the ordinance violated the equal protection clause of the fourteenth amendment because it distinguished labor picketing from other types

147. See *Thornhill v. Alabama*, 310 U.S. 88 (1940) (striking down a statute that denied protesters access to the most effective means of communicating their message to the community).

148. 307 U.S. 496 (1939). The plurality opinion in *Hague* has been regarded as the Court's authoritative ruling. M. NIMMER, *NIMMER ON FREEDOM OF SPEECH* § 4.01, at 4-4 (1984).

149. 307 U.S. at 516 (Roberts, J., concurring). *Hague* generated two disparate lines of cases. See M. NIMMER, *supra* note 148, § 4.09, at 4-70.

150. The tension between freedom of speech and maintenance of order has been described as:

The rights of the speaker to communicate, and of the public to know, [which] coalesce to demand stringent judicial protection for the use of the local forum. At the very least, the parks and streets of the local community cannot be excluded from the marketplace of ideas

On the other hand, there is no question that government has vital interests in maintaining order in the local forum. Law enforcement officials cannot be expected to stand idly by in the face of a threat to life and property, even though expression may be involved.

J. BARRON & C. DIENES, *HANDBOOK OF FREE SPEECH AND FREE PRESS* 64 (1979).

151. 408 U.S. 92 (1972).

152. *Id.* at 93.

153. *Id.*

of picketing,¹⁵⁴ and that violated freedom of speech under the first amendment because it failed the time, place, and manner test.¹⁵⁵ Noting that time, place, and manner restrictions on picketing are permissible to protect important governmental interests,¹⁵⁶ the Court held this ordinance unconstitutional because it prohibited picketing based on the content of the message.¹⁵⁷ The ordinance "describe[d] permissible picketing in terms of its subject matter,"¹⁵⁸ and "government may not grant use of a forum to people whose views it finds acceptable, but deny use to those wishing to express less favored or more controversial views."¹⁵⁹ Thus, *Mosley* teaches that a state may not disguise content control in a time, place, and manner restriction.¹⁶⁰ The Second Circuit identified the same problem in the Connecticut Act in *Dorman v. Satti*, and it is one reason why the court held the Connecticut Act unconstitutional.¹⁶¹

2. VAGUENESS AND OVERBREADTH

"[A] penal statute . . . must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties."¹⁶² Courts use two approaches to determine whether a penal statute is unconstitutionally vague. One approach utilizes the due process requirement that "persons of ordinary intelligence and experience be afforded a reasonable opportunity to know what is prohibited, so that they may govern their behavior accordingly."¹⁶³ The second approach allows a court to declare a stat-

154. *Id.* at 94-95. The equal protection clause of the fourteenth amendment forbids the states from denying any person the equal protection of the law. U.S. CONST. amend. XIV, § 1.

155. *Mosley*, 408 U.S. at 94.

156. *Id.* at 98.

157. *Id.* at 99.

158. *Id.* at 95.

159. *Id.* at 96.

160. *Id.* The Court stated that "the essence of . . . forbidden censorship is content control." *Id.*

161. *Dorman v. Satti*, 862 F.2d 432, 437 (2d Cir. 1988), *cert. denied*, 490 U.S. 1099 (1989).

162. *Connally v. General Construction Co.*, 269 U.S. 385, 391 (1926). In *Connally*, the Court stated that "a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law." *Id.*; *see also* *Hynes v. Mayor of Oradell*, 425 U.S. 610, 620 (1976); *United States v. Mazurie*, 419 U.S. 544, 553 (1975); *Smith v. Goguen*, 415 U.S. 566, 572 n.8 (1974); *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972); *Bouie v. City of Columbia*, 378 U.S. 347, 350-51 (1964); *United States v. Harriss*, 347 U.S. 612, 617 (1954); *Winters v. New York*, 333 U.S. 507, 515-16 (1948); and *Lanzetta v. New Jersey*, 306 U.S. 451, 453 (1939). *See generally* Note, *The Void-for-Vagueness Doctrine in the Supreme Court*, 109 U. PA. L. REV. 67 (1960).

163. *Bowers v. State*, 283 Md. 115, 118, 389 A.2d 341, 345 (1978); *see also* *Grayned v. City of Rockford*, 408 U.S. at 108 (1972).

ute unconstitutional on vagueness grounds "if it fails to provide legally fixed standards and adequate guidelines for police, judicial officers, triers of fact and others whose obligation it is to enforce, apply and administer the penal laws."¹⁶⁴

The Second Circuit held unconstitutionally vague and overbroad¹⁶⁵ the Connecticut Act's provisions that no person shall "interfere with" or "harass" persons engaged in hunting or "acts in preparation" for hunting.¹⁶⁶ It rejected the State's argument that the Connecticut Act could be saved by a limiting construction by the Connecticut Supreme Court. The Second Circuit relied on *Houston v. Hill*,¹⁶⁷ where the Supreme Court refused to allow a limiting construction in order to save an overbroad Houston, Texas ordinance.¹⁶⁸ The words "interfere," "harass" and "acts in preparation of" did not allow a limiting construction, according to the Second Circuit, because "[t]hey can mean anything."¹⁶⁹ Most states' hunter harassment statutes contain the same ambiguous terms.¹⁷⁰

a. Vagueness

A hunter harassment statute is void for vagueness unless it is "sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties."¹⁷¹ The Connecticut Act could be read to prohibit any speech in the presence of a hunter if the hunter believed that the speech interfered with his

164. *Bowers*, 283 Md. at 118, 389 A.2d at 345. The Court in *Grayned* stated that "[a] vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an *ad hoc* and subjective basis, with the attendant dangers of arbitrary and discriminatory application." 408 U.S. at 108-09; see also *Papachristou v. City of Jacksonville*, 405 U.S. 156, 170 (1972).

165. *Dorman v. Satti*, 862 F.2d 432 (2d Cir. 1988), cert. denied, 490 U.S. 1099 (1989).

166. CONN. GEN. STAT. ANN. § 53a-183a (West 1990).

167. 482 U.S. 451 (1987).

168. *Dorman*, 862 F.2d at 435 (citing *Houston v. Hill*, 482 U.S. 451 (1987)). In *Hill*, the Supreme Court struck down a municipal ordinance making it unlawful to "interrupt" a police officer on duty. *Hill*, 482 U.S. at 455. The Court found the ordinance unconstitutionally overbroad under the first amendment. *Id.* at 461. The ordinance provided: "It shall be unlawful for any person to assault, strike or in any manner oppose, molest, abuse or interrupt any policeman in the execution of his duty, or any person summoned to aid in making an arrest." HOUSTON, TEX., MUN. CODE § 34-11(a) (1984). Due to Texas pre-emption statutes, the Court determined that "the enforceable portion of the ordinance makes it 'unlawful for any person to . . . in any manner oppose, molest, abuse or interrupt any policeman in the execution of his duty' and thereby prohibits verbal interruptions of police officers." *Hill*, 482 U.S. at 461.

169. *Dorman*, 862 F.2d at 436.

170. See, e.g., MD. NAT. RES. CODE ANN. § 10-422 (Supp. 1987); LA. REV. STAT. ANN. § 56:648.1. to .3 (West 1987); cf. N.C. GEN. STAT. § 113-295 (1987) (drawing more narrow restrictions upon protesters' conduct).

171. See *supra* note 162.

hunting or harassed him.¹⁷² The Act's undefined terminology does not meet the due process requirement that "persons of ordinary intelligence and experience be afforded a reasonable opportunity to know what is prohibited, so that they may govern their behavior accordingly."¹⁷³ A conversation in a supermarket checkout line denouncing hunting could constitute a violation of the law under the language of the Act depending on the content of the speech and the listener's reaction.

A hunter harassment statute also may be void for vagueness because it fails "to provide legally fixed standards and adequate guidelines for police, judicial officers, triers of fact and others whose obligation it is to enforce, apply and administer penal laws."¹⁷⁴ Ms. Dorman was the victim of a police arrest. Because the statute lacked adequate guidelines, prosecutors later determined her arrest to be "premature."¹⁷⁵ Police and prosecutors could interpret a whole range of activities as violating the Connecticut Act, or hunter harassment statutes using similar language.

b. Overbreadth

Most hunter harassment laws are unconstitutionally overbroad in addition to being void for vagueness.¹⁷⁶ A law is overbroad if it does not aim specifically at "evils within the allowable area of [governmental] control, but . . . sweeps within its ambit other activities"

172. *Dorman v. Satti*, 862 F.2d 432 (2d Cir. 1988), *cert. denied*, 490 U.S. 1099 (1989).

173. *Bowers v. State*, 283 Md. 115, 118, 389 A.2d 341, 345 (1978); *see also Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972).

In determining the facial constitutionality of statutes that have not been limited by judicial construction, the Court has utilized the dictionary definition of words in the statute. *See Gooding v. Wilson*, 405 U.S. 518, 525 (1972) (relying upon WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY (1961)). If a court used the dictionary definition of the words within the Connecticut Act to delimit protesters' conduct, "interfere" would mean "to come in collision; to be in opposition; to run at crosspurposes . . . to enter into or take part in the concerns of others." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1118 (1976). "Harass" would mean "to worry . . . to tire out, as with physical or mental effort; . . . to vex, trouble, or annoy continually or chronically." *Id.* at 1031. Acts of "interfering" and "harassing" are prohibited not only when directed toward an individual in the act of taking wildlife, but also when they affect an individual engaged in any "acts in preparation" for such taking. "Preparation," as used in this context, is defined as "[t]he action or process of getting ready for some occasion, test, or duty . . . a preliminary measure or plan." *Id.* at 1790.

174. *Bowers*, 283 Md. at 118, 389 A.2d at 345. The Court in *Grayned* stated that "[a] vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an *ad hoc* and subjective basis, with the attendant dangers of arbitrary and discriminatory application." 408 U.S. at 108-09; *see also Papachristou v. City of Jacksonville*, 405 U.S. 156, 170 (1972).

175. *Dorman*, 678 F. Supp. at 378.

176. *See, e.g., Shelton v. Tucker*, 364 U.S. 479 (1960) (holding a restriction unconstitutionally overbroad despite its unambiguous requirements).

that are constitutionally protected.¹⁷⁷ Certainly the government is entitled to control conduct on public hunting lands. Hunter harassment statutes like the Connecticut Act, however, reach far beyond regulating conduct on hunting grounds. Their broad sweep criminalizes a substantial amount of constitutionally protected activities, including: playing a radio, playing a tape recording of anti-hunting sentiments, speaking with a voice amplifier, hiking with noisy equipment, singing, praying, picnicking, passing out leaflets, bird watching, photographing wildlife, reading aloud, and silently standing vigil.

In addition to being overbroad and vague, hunter harassment laws are superfluous. A hunter, whether on state or federal public land, is already protected from misconduct at demonstrations, as any other citizen would be protected. Violators of laws against trespass, vandalism, public nuisance, reckless endangerment, general harassment, and disturbing the peace are subject to arrest.

IV. CONCLUSION

Kindness to animals has been said to be a mark of civilized societies.¹⁷⁸ Only in the past few years have the ethics of that philosophy been extended to all animals, not just house cats and warm puppies.¹⁷⁹ We are now in the stage of social protest, where civil disobedience, demonstrations, and lobbying raise public awareness of the rights of nonhuman animals, of which hunting is but one area of concern.¹⁸⁰ The activist seeks to raise consciousness of the hunting issue and to appeal to a sense of justice in others. This is best accomplished through public demonstrations and subsequent reports in the mass media, which increase political pressure on decisionmakers.

177. *Thornhill v. Alabama*, 310 U.S. 88, 90 (1940).

178. "The test of a nation and its moral progress can be judged by the way its animals are treated." Mohandas Karamchand Gandhi, *quoted in* THE EXTENDED CIRCLE: A COMMONPLACE BOOK OF ANIMAL RIGHTS 91 (Wynne-Tyson ed. 1989).

179. See Allen, *supra* note 9; Goodkin, *supra* note 9; see also P. SINGER, *supra* note 9 (widely credited with first articulating a comprehensive philosophy that embraces the rights of animals).

180. Questioning the very need for hunting, one commentator wrote:

In examining hunting . . . we must ask and answer two basic questions: Are such activities necessary and, do they promote the concept of "being dignity"? The answer to the first is obvious: hunting and trapping are both relics of earlier ages when humans depended on hunted meat for food, and trapped skins for clothing. The answer to the second question is equally obvious: a system that promotes the unnecessary and agonizing slaughter of countless millions of powerless sentient beings cannot promote the concept of "being dignity" as we have defined it, i.e., the right to a share in the values of respect, well-being, and affection.

Allen, *supra* note 9, at 389 (citations omitted).

For some, killing animals with steel-tipped arrows is a sport; they call these animals "game." For these individuals, killing is a great way to spend a crisp fall afternoon in one of the wildlife areas around the country. For others, hunting—the stalking and killing of animals for recreation—is cruel under any circumstances, but particularly when hunters use bows and arrows, because half the animals hit with arrows are not killed, but die slowly of wounds and infections.¹⁸¹ Yet at this time, licensed hunting is legal in this country. Ironically, many forms of speech opposing hunting are illegal in two-thirds of the country, and Congress is considering legislation to proscribe protest against hunting on federal lands.¹⁸² Hunter harassment laws allow police to arrest a person for quietly asking a hunter not to kill a deer.

In Connecticut, police arrested Francelle Dorman on state forest property, open to the public, for talking to goose hunters and attempting to dissuade them from killing the waterfowl.¹⁸³ Although the Second Circuit declared the Connecticut Act unconstitutional, hunter harassment laws in other states remain intact.¹⁸⁴ Recently, two separate groups of animal rights advocates were arrested and prosecuted in Maryland for talking politely to hunters and rustling the leaves beneath their feet as they walked.¹⁸⁵

The first amendment protects speech. A state may prohibit speech for its content only when the state's interest is compelling. As the Second Circuit held in *Dorman v. Satti*, no compelling interest supports the state's desire to protect hunters from speech they would rather not hear.¹⁸⁶ Just as the Connecticut Act failed under constitutional scrutiny, so should similar hunter harassment laws in other states. Further, Congress should not compound the states' errors by enacting a federal content-based counterpart.

181. The crossbows currently used by hunters pack an average 1,500 pounds of pressure. According to the Texas Wildlife Commission, bowhunters report a 50% or higher wounding rate. Hunters shoot 21 arrows for each deer killed. Shot placement is random, and it is hard to hit vital organs; experienced bowhunters injure *more* deer than novice bowhunters, who most often miss completely. See Pascelle, *supra* note 29, at 15-18.

182. For a compilation of the state hunter harassment laws, see *supra* note 13. Congress is currently considering a federal hunter harassment counterpart. See H.R. 3768, 101st Cong., 1st Sess. (1989).

183. *Dorman v. Satti*, 678 F. Supp. 375 (D. Conn.), *aff'd*, 862 F.2d 432 (2d Cir. 1988), *cert. denied*, 490 U.S. 1099 (1989).

184. See *supra* note 13.

185. Heidi Prescott, a 28 year-old from Gaithersburg, Maryland, refused on principle to pay her \$500 fine and was handcuffed, strip-searched, and sent to jail for 15 days. Due to Maryland's overly broad and vague hunter harassment statute, Prescott may be one of very few people in United States history jailed for trying to *prevent* violence. Jennings, 'Harassing' Hunters Lands Activist in Jail; Animals Rights Backer Says She Was Exercising Freedom to Speak, Wash. Post, July 26, 1990, at D1, col. 1.

186. *Dorman v. Satti*, 862 F.2d 432, 437 (2d Cir. 1988), *cert. denied*, 490 U.S. 1099 (1989).

To argue that content-based restrictions cannot withstand constitutional scrutiny, however, does not mean that the state is powerless to protect the hunter's interest in harassment-free hunting. It simply means that the state is limited in its approach. Anti-hunting activists have the right to attempt to persuade hunters that killing wildlife is wrong. Their most effective forum is the hunting site. This is the forum in which the activist can have the greatest effect, both on the hunter and on the hunting debate, by linking speech about animal rights to the place where they are killed. At the same time, however, one must acknowledge that safety concerns and the hunter's privilege under state law to hunt wildlife may necessitate some regulation of the nonhunter at that forum. For this reason, this Comment has not argued that the state may *never* regulate or restrict animal rights activists' conduct. Instead, it urges states to adopt regulations that seek to accommodate *all* of these competing interests, rather than just some of them.

Narrowly drawn time, place, and manner restrictions, coupled with vigorous prosecution of acts of vandalism and protest that become physically violent, would accommodate the competing interests. In drafting statutes, states should leave ample room both for on- and off-site protest. A state, for example, could limit the activist at the site to silent sign-carrying protest. This would ensure the protester's safety while protecting the hunter's interest in not having the animals scared away. Off-site regulation, however, should be much less restricted because it implicates neither the safety interest nor the concern in scaring away the kill. Unless the states make genuine efforts to allow ample means of effective communication, persons like Francelle Dorman must continue to press their free speech interests. The Supreme Court should accept its next opportunity to define clearly the particular situations where content-based restrictions may be permissible to protect hunters and give ample breathing space to speech on matters of public concern. Until then, the hunting debate remains critically injured in over three-fourths of the country.

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