



October 30, 2006

The Honorable F. James Sensenbrenner, Jr.  
Chairman, House Judiciary Committee  
2449 Rayburn House Office Building  
Washington, DC 20515-4909

The Honorable John Conyers, Jr.  
Ranking Member, House Judiciary Committee  
2426 Rayburn House Office Building  
Washington, DC 20515-2214

AMERICAN CIVIL  
LIBERTIES UNION  
WASHINGTON  
LEGISLATIVE OFFICE  
915 15<sup>th</sup> STREET, NW, 6<sup>th</sup> FL  
WASHINGTON, DC 20005-2313  
T/202.544.1681  
F/202.546.0738  
[WWW.ACLU.ORG](http://WWW.ACLU.ORG)

Caroline Fredrickson  
DIRECTOR

NATIONAL OFFICE  
125 BROAD STREET, 18<sup>th</sup> FL.  
NEW YORK, NY 10004-2400  
T/212.549.2500

OFFICERS AND DIRECTORS  
NADINE STROSSEN  
PRESIDENT

ANTHONY D. ROMERO  
EXECUTIVE DIRECTOR

KENNETH B. CLARK  
CHAIR, NATIONAL  
ADVISORY COUNCIL

RICHARD ZACKS  
TREASURER

**Re: ACLU Urges Needed Minor Changes to AETA, But Does Not Oppose Bill (S. 3880, the “Animal Enterprise Terrorism Act”)**

Dear Chairman Sensenbrenner and Ranking Member Conyers:

On behalf of the ACLU, a non-partisan organization with hundreds of thousands of activists and members and 53 affiliates nation-wide, we urge you to make some necessary minor amendments to the “Animal Enterprise Terrorism Act” (AETA), S. 3880 which has passed the Senate and may be coming up for a vote in the House. The ACLU does not oppose this bill, but believes that these minor changes are necessary to make the bill less likely to chill or threaten freedom of speech.

The bill expands 18 U.S.C. §43, targeting animal rights activists, to include economic damage and threats of death and serious bodily injury to persons associated with animal enterprises. While the ACLU does not condone violence or threats, we are concerned when a law singles out a specific group that engages in expressive activity. Many improvements have been made to the bill, but the minor amendments we suggest will clarify portions of the bill and make it less likely that it will be used to pursue legitimate expression.

**Define “Real or Personal Property” as “Tangible” Property to Avoid Lost Profits or Good Will Forming the Basis for the Offense**

Legitimate expressive activity may result in economic damage.<sup>1</sup> Boycotts, for example, were an important tool in the civil rights movement. Care must therefore be taken in penalizing economic damage to avoid infringing upon legitimate activity.

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<sup>1</sup> See *NAACP v. Claiborne Hardware Company*, 458 U.S. 886 (1982).

S. 3880 criminalizes conduct that “intentionally damages or causes the loss of any real or personal property.” The bill does not, however, define “real or personal property.” The question arises as to whether this language would require the actual loss of tangible property, or whether it would criminalize legitimate activity that caused an enterprise to lose intangible property like future profits or business good will.<sup>2</sup>

To avoid these problems and avoid having loss of intangible property forming the basis for a prosecution, we suggest the following amendment:

Insert the following new section in section 43(d) and remove current subsection (3)(B), renumbering appropriately.

*(3) the term “intentionally damages or causes the loss of any real or personal property” –*

- (A) means intentionally damaging or causing the loss of any tangible property; but*
- (B) does not include damage or loss resulting from a boycott, protest, demonstration, investigation, whistleblowing, reporting of animal mistreatment, or any public, governmental, or business reaction to the disclosure of information concerning animal enterprises.*

### **Define “Animal Enterprise” to Only Include Lawful Activities**

Some animal enterprises exist for the purpose of using animals unlawfully, for example, criminal dog fighting and cockfighting. These types of activities should be investigated and exposed. Under the bill, an activist who rescued a rooster before it could be put in a cockfight could be charged as a terrorist under the AETA. To avoid this outcome, the definition of “animal enterprise” should be altered to make it clear that interference with unlawful activities does not trigger the statute.

### **Clarify that Section 43(b)(1)(A) Only Applies to Conspiracies or Attempts.**

The bill imposes a sentence of up to one year and a fine for offenses that caused no reasonable fear of bodily harm, no actual bodily injury or any economic damages. Since reasonable fear of bodily harm, actual bodily

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<sup>2</sup> The bill does exempt from the definition of “economic damage” “any lawful economic disruption (including a lawful boycott) that results from lawful public, governmental, or business reaction to the disclosure of information about an animal enterprise.” No such exemption exists, however, regarding the undefined term “real or personal property.” Because the phrase “economic damage” appears only in the penalty provisions of the bill, the exemption for “lawful economic disruption” may not function as an exemption from the bill’s broad prohibition on “the loss of any real or personal property.”

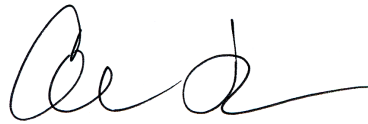
injury or economic damages are all elements of crimes associated with more severe penalties under the bill, we assume the first penalty provision under the bill is meant to address conspiracies or attempts. However, this should be clarified. To avoid the chilling effect on those individuals considering actions that would cause no harm, either physical or economic, nor instill any fear of harm we suggest the following amendment to section 43(b)(1)(A):

*(A) an offense under subsection (a)(2)(C) results in no economic damage or bodily injury.*

### **Conclusion**

Hubert H. Humphrey once said “Freedom is hammered out on the anvil of discussion, dissent and debate.” When Congress singles out a group on one side of a debate for criminal penalties, it must be careful to avoid silencing the discussion, dissent and debate that is so fundamental to our freedom. These minor changes should help focus the law and avoid penalizing legitimate dissent.

Sincerely,



Caroline Fredrickson  
Director, Washington Legislative Office



Marvin J. Johnson  
Legislative Counsel

cc: Rep. Robert C. Scott