GREEN IS THE NEW RED

Analysis of the Animal Enterprise Terrorism Act

Using "terrorism" rhetoric to chill free speech and protect corporate profits

By WILL POTTER

The Animal Enterprise Terrorism Act pushed by animal industry groups, corporations, and the politicians that represent them ostensibly targets underground, illegal actions committed in the name of animal rights. It's been in the works, in various forms, since the passage of the Animal Enterprise Protection Act in 1992: proponents say AEPA didn't go far enough, and they need this sweeping legislation to crack down on illegal actions by underground groups like the Animal Liberation Front.

But underground activists won't lose much sleep over this legislation. Their actions are already illegal (and they know it). The government has already labeled them the "number one domestic terrorist threat." And yet they continue to demonstrate that heavy-handed police tactics will not deter them.

Legal, aboveground activists have been the ones most concerned about this vague and overly broad legislation. And as we'll see, it's not just animal rights activists that should worry.

You can download the final version of AETA that the president signed on November 13th, 2006, and the AEPA, and follow along with me as we see exactly how this "Green Scare" legislation operates.

WHAT WOULD QUALIFY AS "TERRORISM"?

Let's start at the very top, with the offense section of the legislation, and take it apart in chunks.

> (a) OFFENSE.—Whoever travels in interstate or foreign commerce, or uses or causes to be used the mail or any facility of interstate or foreign commerce—
>
> (1) for the purpose of damaging or interfering with the operations of an animal enterprise; and

Hold up, we already have a problem. AEPA, as amended in 2002, said you must have the

"purpose of causing physical disruption to the functioning of an animal enterprise."

It's a minor tweak. Blink and you might miss it. But there's arguably a significant difference between "physical disruption to the functioning" of a corporation, which implies rattling a business to its core, to a looser standard of "damaging or interfering" with its operations. The change subtly widens AETA's potential scope.

So, the government must prove that someone has the purpose of "damaging or interfering with" an animal enterprise, and the government must also show that

> (2) in connection with such purpose—

the individual does one of a few things:

> (A) intentionally damages or causes the loss of any real or personal property…
> (B) intentionally places a person in reasonable fear…
> (C) conspires or attempts to do so

We'll take a look at these one by one. But first, it's important to note that right off the bat this is a drastic expansion of the original law. After the "purpose" clause just mentioned, AEPA simply said it targeted anyone who "intentionally damages or causes the loss of any property (including animals or records) used by the animal enterprise, or conspires to do so." That's it.

Now, to be clear, that language—explicitly wrapping up activity like stealing animals from a fur farm or vandalizing offices—doesn't fit most reasonable people's concept of "terrorism." It's vague and overly broad. In comparison to AETA, though, it seems straightforward.

VANDALISM=TERRORISM?

Let's go through the three clauses that spell out ways activists can be targeted by AETA. The first says the law targets anyone who

> (A) intentionally damages or causes the loss of any real or personal property (including animals or records) used by an animal enterprise, or any real or personal property of a person or entity having a connection to, relationship with, or transactions with an animal enterprise;

Here we start to see one of the most sought-after expansions of the law: it not only targets activity against an "animal enterprise" (a term defined so broadly that it includes any business that "uses or sells animals or animal products") but it also targets activity against any person or business with any connection to an "animal enterprise."

Proponents of the law say this change was desperately needed to go after so-called "tertiary targeting" where activists don't just target a specific business or organization,

they target anyone doing business with them. That's not a novel concept. Anti-apartheid activists, for instance, did the same thing with their divestment campaigns. Applying similar strategies to "animal enterprises," though, could be labeled "terrorism."

When supporters of AETA talk about the importance of expanding the law to include "tertiary targeting," they usually mention it in the context of Stop Huntingdon Animal Cruelty. SHAC activists managed to cripple Huntingdon Life Sciences by targeting the businesses that do business with HLS. Supporters say that this "tertiary targeting" is a "loophole" in the original legislation.

What they casually fail to mention, though, is that six activists from SHAC were convicted under the original legislation, and are now sitting in federal prison. Did their "terrorist" campaign involve anthrax? Pipe bombs? A plot to hijack an airplane? Nope. They ran a website. They posted news about the campaign—legal actions like protests and illegal actions like stealing animals from labs—and unabashedly supported all of it. They were never charged with breaking windows or gluing locks or sneaking animals out of labs: they merely supported actions like that on their website.

Even if you think this is "terrorism," which most people probably would not, then it has already been targeted under the original law. This new clause broadens the scope of legislation that is already overly broad.

SCARE-MONGERING EXPANDS THE SCOPE OF THE LEGISLATION

The second part of the offense section targets anyone who

> (B) intentionally places a person in reasonable fear of the death of, or serious bodily injury to that person, a member of the immediate family (as defined in section 115) of that person, or a spouse or intimate partner of that person by a course of conduct involving threats, acts of vandalism, property damage, criminal trespass, harassment, or intimidation

The biggest problem here is the use of amorphous term "reasonable fear." The word "eco-terrorism" is batted around recklessly by industry groups, in a scare-mongering campaign that has included full-page ads in major newspapers and even stooping so low as to call a children's movie "soft-core eco-terrorism for kids." They are doing everything they can to *create* this fear through scare-mongering: that's the point. In light of this political climate, it's impossible to discuss "reasonable fear," because industry groups are throwing all their weight into making the unreasonable seem reasonable—into making the public afraid of non-violent activists, so they can push a political agenda.

Here's a very likely scenario: A group of activists holds a loud protest outside an executive's home or office on a daily basis, as part of a national campaign. Activists yell and chant as people enter the building. Some wear masks or bandanas (which are increasingly common at protests, because activists fear being "blacklisted"). There have

also been illegal actions like "vandalism" and "property damage" in the name of the same cause (which has been the case in every social movement, ever).

Activists clearly intend to "interfere with" the operations of animal enterprise. Toss in the climate of fear that industry groups have created, plus the raucous nature of the protest and the fact that it's part of a coordinated campaign, and suddenly this First Amendment activity becomes "terrorism" under the law (through a "course of conduct" involving harassment, intimidation, vandalism… whatever they can get to stick).

Another scenario: Coordinated undercover investigations of factory farms and other facilities have become increasingly common in the animal rights movement. These investigations take various forms, but they frequently involve sneaking into the facility ("criminal trespass"), perhaps breaking locks or doors to do so ("property damage"), filming the animals' living conditions, and sometimes taking a few animals out of the facility. The objective here, activists argue, is not to harm anyone, but to reduce harm. It's not to cause suffering, but to alleviate suffering. Still, considering that the FBI has labeled such actions as the "number one domestic terrorist threat", could a business owner argue that they instill a "reasonable fear" and amount to "terrorism" under AETA? Through scare-mongering, the unreasonable becomes reasonable.

PENALTIES FOR NON-VIOLENT CIVIL DISOBEDIENCE IN A "TERRORISM" BILL?

The penalties section of AETA is like a Christmas list for industry groups, making the penalties in AEPA look tame by comparison. AEPA spelled out that an individual who causes less than $10,000 in economic damage could be imprisoned up to six months, and someone who causes more than $10,000 in economic damage could be imprisoned up to three years.

Earlier versions of AETA, though, started out with penalties for non-violent civil disobedience, and worked their way up.

> (1) for an offense involving *exclusively a non-violent physical obstruction* of an animal enterprise or a business having a connection to, or relationship with, an animal enterprise, that *may result in loss of profits but does not result in bodily injury or death or property damage or loss*–
>
> (A) not more than $10,000 and the length of imprisonment shall be not more than 6 months, or both, for the first offense; and
>
> (B) not more than $25,000 and the length of imprisonment shall be not more than 18 months, or both, for a subsequent offense; [emphasis added]

That's right: "non-violent physical obstruction," also known as civil disobedience, could earn an activist 18 months in prison, plus fines, in a *terrorism* bill. This was one of the biggest concerns I raised when I testified before the House Judiciary Committee on the legislation. In the final version, the phrase "*exclusively a non-violent physical*

obstruction" was removed. But the first segment of the sentencing section still spells out penalties of

> (2) a fine under this title or imprisonment not more than 1 year, or both, if the offense *does not instill in another the reasonable fear of serious bodily injury or death* and—
> (A) the offense results in *no economic damage or bodily injury*; or
> (B) the offense results in economic damage that does not exceed $10,000; [emphasis added]

Remember, we're looking at a terrorism bill here, one that industry groups say is needed to combat "violent" animal rights "extremists," and we're only dealing with non-violent crimes that don't even "instill" a "reasonable fear."

One explanation for this sentencing provision is that it could be intended to target acts of "conspiracy." (For instance, if a group of activists conspired to vandalize a cosmetic testing facility but their plot was foiled, and resulted in no economic damage or "reasonable fear").

But disturbingly, on the floor of the House on the day AETA passed—just hours after a ceremony breaking ground for the new MLK memorial—Representative Bobby Scott, a Democrat from Virginia, acknowledged that this "terrorism" law could still target non-violent civil disobedience. "… there are some who conscientiously believe that it is their duty to peacefully protest the operation of animal enterprises to the extent of engaging in civil disobedience," he said. "If a group's intention were to stage a sit-in or liedown or to block traffic to a targeted facility, they certainly run the risk of arrest for whatever traffic, trespass or other laws they may be breaking…

"To violate the provision of the bill, one must travel or otherwise engage in interstate activity with the intent to cause damage or loss to an animal enterprise. While the losses of profits, lab experiments or other intangible losses are included, it must be proved that such losses were specifically intended for the law to be applied."

In other words, those "who conscientiously believe that it is their duty to peacefully protest" through civil disobedience could be labeled terrorists. But only if they *intended* to make a difference.

The penalties go up from here, predictably, and you can take a look for yourself. What's most important to note is not the specific amount of years in prison, but the fact that the penalties revolve around money. They operate in terms of corporate property and profits. That's what this bill is about. It's not about stopping "violence," because violence hasn't taken place. It's about classifying "non-violent physical obstruction," crimes that do not "instill in another the reasonable fear of serious bodily injury," and property crimes as "terrorism," in order to demonize and silence dissent.

FIRST AMENDMENT "PROTECTIONS" ARE WINDOW DRESSING

Lawmakers have attempted to silence pesky activists who have spoken up for their First Amendment rights by paying lip service to their concerns. Namely, they tacked a note onto AETA that says the definition of "economic damage":

> (A) does not include 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

This is no safeguard. For instance, undercover investigators and whistleblowers may cause financial loss for a company beyond the losses related to "lawful" third party reactions. Companies may argue that salaries for undercover investigators, increased internal security, and extensive employee background checks are added costs of doing business because of activists.

The other First Amendment "protection" in the bill is even more absurd.

> (e) RULES OF CONSTRUCTION.—Nothing in this section shall be construed—
> (1) to prohibit any expressive conduct (including peaceful picketing or other peaceful demonstration) protected from legal prohibition by the First Amendment to the Constitution;

The fact that lawmakers note the legislation doesn't prohibit conduct "protected from legal prohibition by the First Amendment" shows that they realize it is vague and overly broad. That truth is that *no* bill could blatantly prohibit First Amendment conduct or it would get tossed out immediately. This clause is a red herring to distract from the content of the bill, and the politics behind it, and ease public fears. But simply proclaiming "this legislation is Constitutional!" doesn't make it so.

MUCH BIGGER CONCERNS REMAIN

We've walked through the specifics of the bill, step by step, but that can only take us so far. Laws don't exist in a vacuum: they have to be put in the broader post-9/11 political context in which we all live.

AETA chills free speech. Even if we buy the rhetoric of industry groups and lawmakers that this legislation won't directly target First Amendment activity, the damage is still done. This legislation will impact all animal activists, even if they never enter the courtroom. It will add to the chilling effect that already exists because of "eco-terrorism" rhetoric by corporations, lawmakers and law enforcement.

Through my interviews with grassroots animal rights activists, national organizations, and their attorneys, I have heard widespread fears that the word "terrorist" could one day be turned against them, even though they use legal tactics. This legislation will add to this fear and distrust, and will force Americans to decide if speaking up for animals is really

worth the risk of being labeled a "terrorist," either in the media or the courtroom. That's not a choice anyone should have to make.

***AETA puts all activists at risk.** Animal rights activists have been among the first victims of this terrorist scaremongering, but if it continues they will not be the last. Changes in the Supreme Court seem to have revitalized the anti-abortion movement, which, unlike the animal rights movement, has a documented history of bloodshed. Some anti-abortion organizations, like the Thomas More Society, have already raised concerns that this legislation could become a model for labeling other activists as terrorists. The word terrorism should not be batted around against the enemy of the hour, to push a partisan political agenda. Public fears of terrorism since the tragedy of September 11th should not be exploited for political points.

***AETA puts the general public at risk.** Targeting property crimes and other non-violent activity as "terrorism" wastes valuable law enforcement resources. According to *Congressional Quarterly*, the Department of Homeland Security does not list right-wing terrorists on a list of national security threats. Those groups have been responsible for the Oklahoma City bombing, the Olympic Park bombing in Atlanta, violence against doctors, and admittedly creating weapons of mass destruction, but animal rights activists still top the domestic terrorist list.

With the threat of another terrorist attack constantly looming, scarce anti-terrorism resources should be used to combat true threats to national security, not protect corporate interests.

***AETA is not about the crime, it's about the politics behind the crime.** All of the actions targeted by this legislation (with the exception of First Amendment activity) are already crimes. The problem that law enforcement agents have encountered is not that there's a shortage of statutes available, but that they just can't catch underground activists. This legislation won't solve that. It will, however, stray into the dangerous territory of prosecuting intent. This bill is not about crimes (or First Amendment activity) but about the beliefs of the individuals, and the social movements, behind them. Conservative lawmakers who opposed hate crimes legislation because it mandated disproportionate sentences based on ideology should logically oppose AETA on the same grounds.

***AETA is a solution in search of a problem**. You probably have noted that I have not focused on the clauses of this legislation dealing with significant bodily injury or death caused by activists. Those provisions are each problematic, but they are also, in some ways, non-issues. It's unlikely that even illegal, underground activists like the Animal Liberation Front would be impacted. Their actions, such as releasing mink from fur farms, spray-painting buildings, and even arson, have not claimed a single human life.

It's clear that the government already has sweeping powers to harass and prosecute the animal rights and environmental movements. The SHAC 7 were convicted under AEPA, the original law, for running a website. And environmental activists have been rounded

up as part of "Operation Backfire" and charged with serious property crimes, including arson. It's simply dishonest for business groups and Department of Justice officials to say their "hands are tied" in light of this massive government repression.

CONCLUSION

Industry groups have pushed this legislation for years, and they finally got it in the final hours of a Republican-controlled Congress. But just as AEPA only briefly sated their appetites, this legislation will only control their hunger for so long. The objective of animal industry groups, corporations, and the politicians that represent them is not to merely prevent vandalism and theft: it is to neutralize a threat to their profits and their power. To silence dissent. This legislation must be rejected in its entirety because if it is not, industry groups will push for even more, and other post-9/11 political opportunists will follow the trail they have blazed.

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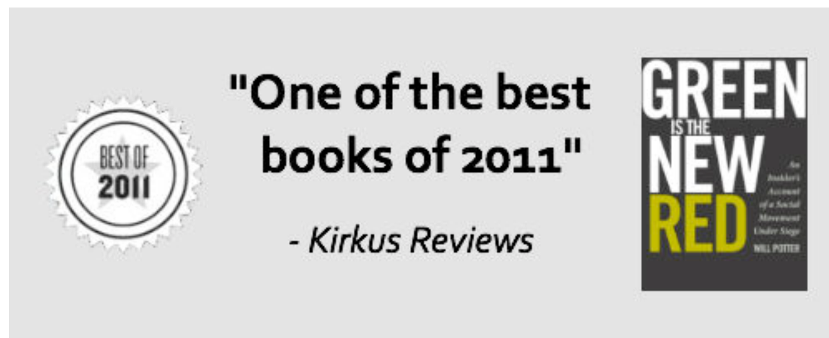

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