

Opposing Wisconsin's Unconstitutional Hunter Protection Laws: Discussion and Analysis

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Personal Views and Opinions

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Animal Legal Defense Fund

*Protecting the lives and advancing the interests of animals
through the legal system*



Wisconsin Statute § 29.083 *original version*

(a) No person may interfere or attempt to interfere with lawful hunting, fishing or trapping with the intent to prevent the taking of a wild animal by doing any of the following:

1. Harassing a wild animal or by engaging in an activity that tends to harass wild animals.
2. Impeding or obstructing a person who is engaged in lawful hunting, fishing or trapping.
3. Impeding or obstructing a person who is engaged in an activity associated with lawful hunting, fishing or trapping.
4. Disturbing the personal property of a person engaged in lawful hunting, fishing or trapping.
5. Disturbing a lawfully placed hunting blind.

(b) No person may knowingly fail to obey the order of a warden or other law enforcement officer to desist from conduct in violation of par. (a)

§ 29.223(2)(a)–(b)

Wisconsin Statute § 29.083; Subsection (2)(a)(7) of the hunter harassment law, **2016 amendments:**

(2) Prohibitions. (a) No person may interfere or attempt to interfere with lawful hunting, fishing, or trapping with the intent to prevent the taking of a wild animal, or intentionally interfere with or intentionally attempt to interfere with an activity associated with lawful hunting, fishing, or trap-ping, by doing any of the following:

1. Harassing a wild animal or by engaging in an activity that tends to harass wild animals.
2. Impeding or obstructing a person who is engaged in lawful hunting, fishing or trapping.

3. Impeding or obstructing a person who is engaged in an activity associated with lawful hunting, fishing or trapping.
4. Disturbing the personal property of a person engaged in lawful hunting, fishing or trapping.
5. Disturbing a lawfully placed hunting blind or stand.
6. Disturbing lawfully placed bait or other material used to feed or attract a wild animal.
- 7. Engaging in a series of 2 or more acts carried out over time, however short or long, that show a continuity of purpose and that are intended to impede or obstruct a person who is engaged in lawful hunting, fishing, or trapping, or an activity associated with lawful hunting, fishing, or trapping, including any of the following:**
 - a. Maintaining a visual or physical proximity to the person.***
 - b. Approaching or confronting the person.***
 - c. Photographing, videotaping, audiotaping, or through other electronic means, monitoring or recording the activities of the person. This subd. 7.***
 - c. applies regardless of where the act occurs.
 - d. Causing a person to engage in any of the acts described in subd. 7.a. to c.
8. Using a drone, as defined in s. 941.292(1), to conduct any activity pro-hibited under subds. 1. to 7.

***Brown v. Kemp*, 506 F. Supp. 3d 649 (W.D. Wis. Dec. 10, 2020)**

- **Lacked Article III standing to assert pre-enforcement constitutional challenge**
 - Conduct not proscribed by statute (according to DA and law enforcement)
 - As-applied challenge lacked standing, facial challenge fails on the merits
- **Statute was not overbroad**
 - Intent requirement (to impede or obstruct) significantly narrowed the scope of the statute...any incidental restrictions on expressive conduct=minimal and permissible w/in “legitimate sweep” of the statute
- **Statute was not unconstitutionally vague**
 - Intent requirement provides people of ordinary intelligence a reasonable opportunity to understand what conduct statute prohibits
 - Proximity, when read with intent to physically impede, isn’t problematic (even if more subjective)
 - Does not encourage arbitrary or discriminatory enforcement

Brown v. Kemp, 86 F.4th 745 (7th Cir. Nov. 13, 2023)

- **Yes Plaintiffs have alleged standing sufficient for pre-enforcement review**
 - “arguably” affected/proscribed by the challenged statute
 - Plaintiffs’ activities are speech—not “pure conduct”
 - First Amendment protection extends to activities necessary to produce and disseminate speech
 - Ps have established: Risk of enforcement, self-censorship, and well-founded fear of enforcement
 - Ps injuries are redressable by judicial declaration that subsection (2)(a)(7) is unconstitutional, plus injunction against its enforcement
- **Yes statute is unconstitutional vague and overbroad**
 - Overbroad because provisions fail to provide reasonable notice as to what conduct is criminal; fail to provide reasonable constraints on the discretion of enforcement officials; overbroad because a substantial number of the law’s applications are unconstitutional
 - Vague: provisions fail to specify, or offer any guidance about, how far away a person must stay to avoid engaging in unlawful interference; leaves too much room for arbitrary and discriminatory enforcement (including by non-law enforcement/private parties!)

Thank you!

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