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COMMITTEE ON LEGAL ISSUES PERTAINING TO ANIMALS

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S. 2996

Senators Kuhl, Alesi, Larkin,
Maziarz, McGee, Mendez, Rath,
Volker, Wright

An Act to amend the agriculture and markets law, in relation to unlawful tampering with animal activities

This Bill is Disapproved

This bill proposes an amendment to Section 378 of the Agriculture and Markets Law, which already sets forth criminal penalties for certain acts in relation to animal research, including stealing animals, appropriating confidential material and releasing animals exposed to infectious agents, and creates a private right of action for its violation. If enacted, this proposed amendment will vastly expand the acts which are made illegal and vastly expand, beyond animal research, the animal related activities that are shielded by the law. Many of the acts that this bill seeks to criminalize are already crimes under New York State law, primarily in the nature of trespass and property damage. This bill would provide for additional, and very substantial, penalties for these crimes when they are Apolitically motivated,≡ which, according to this bill, renders them terrorist acts. The bill also seeks to criminalize certain acts, if politically motivated, which are not already crimes under New York state law and, further, seeks to criminalize the donation of money to or other support of organizations which commit prohibited acts. Because the bill is both very broad and very vague, it appears that it would criminalize many activities that are protected by the Constitution, including many forms of legitimate protest.

First, this bill would greatly expand the types of Aanimal activities≡ that are to receive special treatment, including limitations on protest and criticism, under the law. In addition to three activities which quite clearly involve animals, i.e., hunting, fishing and trapping, it also includes a number of activities which may, or may not, involve animals, including food production, clothing manufacturing, agriculture, recreation and entertainment. It also, oddly, includes activities which do not appear to be significantly related to animal use, including

camping and traveling. It is unclear under what circumstances such activities would come within the proposed law. Moreover, the definition contains a catchall provision, i.e., Any other services involving the use of animals with no indication as to what is meant by services or, again, what would constitute a sufficient connection to the use of animals.

The bill goes on to define an animal or ecological terrorist organization:

(j) An animal or ecological terrorist organization means any association, organization, entity, coalition, or combination of two or more persons with the primary or incidental purpose of supporting any politically motivated activity through intimidation, coercion, fear, or other means that is intended to obstruct, impede or deter any person from participating in a lawful animal activity, animal facility, research facility, or the lawful activity of mining, foresting, harvesting, gathering or processing natural resources.

Simplified, this section labels as a terrorist organization any two people who, through any means, support politically motivated activity intended to deter someone from participating in any lawful animal activity (as described above) or various activities related to natural resources. This definition is broad enough to encompass organizations such as The Sierra Club and the American Society for the Prevention of Cruelty to Animals. Indeed, it might make this Committee a terrorist organization. Virtually all political and social advocacy is an attempt to obstruct, impede or deter some activity or conduct, such as through education, persuasion or legislative change. Moreover, by using the terms intimidation, coercion and fear to define the proscribed methods, rather than the proscribed intent, the terms become completely subjective. Legislative action may coerce change, people who are the subject of protests are often intimidated by the disapproval of their fellow citizens, and people who are informed that there is opposition to their positions may be fearful of the ramifications. In this context, these words are so subjective as to be meaningless. But even if those words adequately defined methods of seeking change that should render one a terrorist, the bill goes on to include the use of any other means as well.

The limitation that the activity which is sought to be deterred must be lawful does not effectively limit the scope of this definition. Much political advocacy is directed at activities that are lawful, but nevertheless objectionable to the particular advocates, in the hopes of changing the law and/or educating the public or the person involved in the activity.

Moreover, the bill's singling out as terrorism of activity that is politically motivated, does not serve to legitimately focus on terrorist activity. While some terrorists may be politically motivated, that obviously does not make anyone who is politically motivated a terrorist. Indeed, politically motivated activity is at the core of the fundamental freedoms of speech, association and assembly guaranteed by the First Amendment. It is necessary to the successful functioning of a democracy.

It is also troubling that this bill seeks to introduce a definition of terrorism that is not content neutral, but seems to be aimed at setting a lower bar for labeling those in the animal rights or environmental movements as terrorists than is set for those whose political motivation is for a different cause. In this context, it is worth noting that federal criminal law dealing with Aterrorism≡ (see 18 USC § 2331 et seq.) as well as those sections of New York=s penal law setting forth the crime of Aterrorism≡ (§ 490.00 et seq.) do not attempt to label any entity with a targeted ideology as a Aterrorist organization.≡ Instead, these laws define what activities constitute Aterrorism≡ and uniformly identify as a Aterrorist≡ any individual, entity or organization which engages in those activities with the requisite intent, i.e., to intimidate or influence a civilian population or a government. That is the essence of what separates terrorism from other sorts of violent crime.

This bill, on the other hand, seeks to extend the definition of Aterrorism≡ to virtually any politically motivated crime (as well as heretofore non-criminal activities), not where those crimes are targeted at the government or the populace, but where they are targeted at private entities that are the subject of criticism from particular advocacy groups. Of course, crimes that are politically or philosophically motivated are properly considered crimes, and should be prosecuted as such. They are not necessarily terrorism. If terrorist acts were committed in the name of the animal rights or environmental movements, they are already subject to prosecution under existing federal and state laws.

The bill at issue, after defining who is a terrorist, goes on to list the activities which it would prohibit. Though stated much more vaguely than similar sections in the Penal Law, many of the prohibited actions set forth in the bill appear to be targeted at activities that are already prohibited under New York law, including various forms of larceny (Penal Law § 155.00 et seq.), trespass (Penal Law § 140.00 et seq.), burglary (Penal Law § 140.20 et seq.), criminal mischief (Penal Law § 145.00 et seq.), criminal tampering (Penal Law § 145.14 et seq.), reckless endangerment of property (Penal Law § 145.25), and unlawful tampering with animal research (Agriculture and Markets Law § 378). Interestingly, the activities would not fit within the definition of the crime of terrorism (Penal Law § 490 et seq.), which not only requires a specific intent not required here¹, but is limited to Aspecified offenses≡ which are much more narrow in scope (*see* Penal Law § 490.05(3)) than the ones set forth herein. By and large, the activities prohibited by this bill also fall far short of the serious nature (Adangerous to human life≡) of the activities which, if properly motivated, may be deemed to be Adomestic terrorism≡ in the federal law dealing with terrorism.² Indeed, this bill focuses primarily on non-violent crimes, and does

¹A... intended to

(I) intimidate or coerce a civilian population;
(ii) influence the policy of a unit of government by intimidation or coercion; or
(iii) affect the conduct of a unit of government by murder, assassination or kidnapping ...
(Penal Law § 490.05(1)(a)).

not even target either murder or kidnapping, which are probably the two crimes most frequently associated with actual terrorism.

While most of the activities prohibited by the bill are already illegal, section (v) specifically defines activity which is not currently a crime, i.e., entering an animal or research facility to take pictures by photograph, video camera, or other means with the intent to commit criminal activities or defame the facility or its owner.² This provision would criminalize even legal entry into a facility if it is for the purpose of taking photographs or making a video recording to defame the facility or its owner. In light of the fundamental First Amendment interests involved, defamation has always been a civil matter, not a criminal offense. Moreover, this section goes well beyond the proscriptions of civil law and seeks to criminalize the *intent* to defame. This section appears to create a substantial risk that its effect would be to inhibit investigative reporting and whistle-blowing regarding the cruel treatment of animals.

Furthermore, the activities which would be made crimes under this bill include a catch-all provision, which is so broad, and so vague, that it could clearly include legitimate protest activity, i.e., interfering with any lawful animal activity or the lawful use of a natural resource or its byproduct.² Since legitimate protest is, by definition, designed to interfere with the activity it is focused against, the effect of this section would be to criminalize virtually all protest in the area of animal rights and environmental protection. Furthermore, the term byproduct² of

²The term domestic terrorism² means activities that B

(A) involve acts dangerous to human life that are a violation of the criminal laws of the United States or any State;

(B) appear to be intended B

(I) to intimidate or coerce a civilian population;

(ii) to influence the policy of a government by intimidation or coercion; or

(iii) to affect the conduct of a government by mass destruction, assassination or kidnapping; and

8 occur primarily within the territorial jurisdiction of the United States.

(18 USC § 2331)

a Natural resource is undefined and would appear to encompass virtually anything. Moreover, as noted above, the definition of Animal activity is extraordinarily broad.

In addition to criminalizing (or further criminalizing) these activities, the bill seeks to criminalize the provision of material or financial support to encourage, plan, prepare, carry out, publicize, promote or aid any of these activities. This section appears to be targeted at donors and other supporters of animal and environmental protection organizations, though it would also include persons who rent cars or hotel rooms, or provide meals to people who then carry out one of the prohibited activities. First, as noted, many of the activities which are prohibited would normally be assumed to be legal and/or are otherwise clearly protected by the Constitution. Moreover, this section does not require that the donor, or other supporter, intend or even know that the support will be used for these acts. This section would likely have a chilling effect on donors to legitimate organizations performing legitimate activities. Not only would it be difficult for a donor to know whether an activity that an organization is performing fits within the very vague definitions of this bill, but he or she could be held criminally liable even if unaware of the activity. And, the mischief the act would cause if used to prosecute rental car companies, hotels and restaurants, all within the content of the bill, is obvious.

The penalties set forth by this bill are very significant. On the assumption that the bill's reference to a third degree felony is meant to be a Class C felony, this would mean that a court could sentence a person convicted under this section, if they were a first felony offender, to an indeterminate sentence of up to 5 to 15 years in prison. Since the crime is defined separately and with additional elements from the underlying criminal act, that sentence could likely be made to run consecutively to any sentence imposed for an underlying act.

Moreover, the bill takes the extraordinary step of setting up a website for the keeping and public dissemination of a database containing information about persons who have been convicted of these offenses (including donors). The only thing remotely comparable to this proposal is the requirement that sexual predators and child molesters register to advise people in their neighborhood of their presence (*see* Correction Law § 168-a et seq.). There is no comparable provision for numerous other serious crimes, including murder, rape, arson, kidnapping, robbery, or burglary.

In conclusion, this bill does not appear to be sincerely targeted at fighting terrorism. It is certainly unconstitutional in many respects because of its effect on legitimate protest activities. To the extent it seeks to criminalize activities which may legitimately be classified as crimes, it is unnecessary, as it is redundant of other laws, both state and federal. Moreover, it appears to be an attempt to impose a singular definition of terrorism based on the political beliefs of two groups, i.e., the animal protection movement and the environmental movement. This Committee strongly recommends that the bill be opposed.