![Attorneys for Animals logo]

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June 3, 2019

Representative Gary Howell
Chair, Natural Resources Committee
Michigan House of Representatives

Via email to Amy Rostkowycz, Committee Clerk, arostkowycz@house.mi.gov

Re: Opposition to HB 4340, House Natural Resources Committee Meeting, May 21, 2019

Dear Rep. Howell and Committee Members:

Thank you for the opportunity to provide information to the committee. Attorneys for Animals, Inc. (AFA) is a Michigan non-profit and 501(c)(3) organization of legal professionals and animal advocates. The organization's Board of Directors voted to oppose HB 4340.

This bill expands the Hunter Harassment law to make it a crime to photograph, videotape, audiotape, or otherwise record an individual who is lawfully taking an animal or fish with the intent to harass that individual.[i]

Our opposition is based on the following:

It is unnecessary: the current statute specifies 8 actions that violate the law, including a catch-all provision that makes it illegal to "Engage[s] in any other act or behavior for the purpose of violating this section." [ii] There is no need to add a 9th category.

It raises First Amendment Concerns: The United States Supreme Court has ruled that First Amendment protections extend to photography and recordings.[iii] Further, because it would regulate the content of speech, it would be analyzed using strict scrutiny.[iv] The treatment of wildlife is a matter of public interest, as is the activity of hunting. Yet this bill essentially "takes sides" and regulates the activity of people based upon their point of view. The bill language requiring "intent to harass" does not save it, because the existence of the prohibition on recording hunting activities would chill all such expressions.[v]

It could discourage the reporting of illegal hunting, which the state has an interest in preventing, and for which it relies on citizen monitoring: The Michigan DNR has significant law enforcement responsibility and encourages and relies on reports by private individuals. It increasingly relies on the use of technology: in 2017, the department began taking reports by text, a development

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highlighted in its Law Enforcement Division 2018 Annual Programs Report[vi] where the following appears prominently highlighted as a sidebar, "In 2017 the RAP [Report All Poaching] hotline began accepting text messages in addition to telephone calls and an online form. This smart use of technology makes it more convenient for citizens to report violations." This encourages the person reporting to send images and videos of the behavior in question along with the text. As noted above, the bill's language chills protected behavior. If this bill becomes law, citizens may think twice about reporting suspected poaching or other illegal behavior. This is a good example of unintended consequences.

Testimony at May 21, 2019 Committee Hearing[vii]: Proponents of the bill who testified, while giving examples of what they considered to be hunter harassment under the current law, were unable to provide first-hand examples of behavior involving recording of hunting activities. Other witnesses mentioned the amendment of the hunter harassment law in Wisconsin to prohibit recording and connecting it to an organization operating in that state, as justification for enacting a similar provision in Michigan. There was no testimony that this group operates in Michigan. As mentioned above, [and note (v) below] there is a case pending that challenges the Wisconsin law on First Amendment grounds and Plaintiffs include a professor of digital media and a journalist.

In short, there was no compelling justification provided of the need to amend MCL 324.40112.

Attorneys for Animals asks that this bill not be reported from Committee.

Very Truly Yours,

Beatrice M. Friedlander, JD
President

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[i] HB 4340 page 2, lines 19-21
[ii] MCL 324.40112 (2)(h)
[iii] Kaplan v. California, 413 U.S. 115, 119 (1973) ("First Amendment standards . . . [apply] to moving pictures, to photographs, and to words in books")
[iv] All content-based restrictions, whether or not they also discriminate based on viewpoint, receive strict scrutiny and are presumptively invalid, R.A.V. v. City of St. Paul, 505 U.S. 377, 382 (1992). *See also*, ETW Corp. v. Jireh Pub., Inc., 332 F.3d 915, 924 (6th Cir. 2003) ("The protection of the First Amendment is not limited to written or spoken words, but includes . . . photographs.")
[v] See for example, a 2017 case challenging a similar law in Wisconsin that likewise prohibited photographing or recording of hunters. The plaintiffs allege they want to provide information about wildlife issues in that state, but are unable to do so under threat of criminal prosecution, Brown et al vs Kemp et al, US District Court for the Western District of WI, Case No. 3:17-cv-00549-wmc, see Complaint at https://www.courthousenews.com/wp-content/uploads/2017/07/WI-Hunting-Law-COMPLAINT.pdf. Motions for summary judgment by both plaintiffs and defendants have been filed and are awaiting a decision.
[vi] The 2018 MDNR Law Enforcement Annual Report, https://www.michigan.gov/documents/dnr/law_division-annual_report_638555_7.pdf (page 9 of 28) describes the poaching hotline as follows: "One of LED's [Law Enforcement Division's] most effective enforcement tools is the Report All Poaching (RAP) hotline. It enhances the LED's partnership with the public by enabling citizens to report fish, game or other natural resource law violations

while protecting the personal information of the caller. RAP also provides monetary awards for information leading to the arrest and conviction of violators. RAP dispatchers are highly trained professionals who staff the hotline 24 hours a day, 365 days a year. RAP's ability to quickly and accurately relay information to conservation officers has resulted in numerous apprehensions and prosecutions."

[vii] *See* report on hearing at: https://www.mlive.com/public-interest/2019/05/hunters-would-be-protected-from-cell-phone-harassment-under-house-bill.html

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