Memorandum

Date: July 19, 2013
Re: ABA Resolution 116 Regarding the AETA

Animal research has played an essential role in virtually every major medical advance of the last century, including advances in antibiotics, blood transfusions, dialysis, organ transplantation, vaccinations, chemotherapy, bypass surgery, and control of disease, pain, and suffering, to the benefit of both human and animal health. Nonetheless, laboratories, researchers, and researchers’ families, have faced threats and violent criminal behavior because of their ethical pursuit of advancing human and animal health.

I. The AETA Should Not be Repealed because it Serves a Vital Role in Protecting the Biomedical Research Community and other Animal Enterprises from Violent and Threatening Conduct

The Animal Enterprise Terrorism Act, 18 U.S.C. § 43 (“AETA”) was enacted on November 27, 2006 to provide the necessary authority to apprehend, prosecute, and convict individuals who threaten or engage in violence directed against animal enterprises or people connected with them. The AETA was not designed to prohibit, and does not prohibit, constitutionally protected speech on any subject. Rather, it was a reasonable response to violent and threatening conduct directed against universities, veterinary colleges, businesses, and individual researchers and their families.

Far from encroaching on First Amendment rights as the report accompanying Resolution 116 contends, Congress expressly provided that the AETA shall not be construed to prohibit “any expressive conduct (including peaceful picketing or other peaceful demonstration) protected from legal prohibition by the First Amendment to the Constitution.” Id. § 43(e)(1) (emphasis added). Rather, the AETA prohibits: 1) intentionally damaging or causing the loss of real or personal property; 2) intentionally placing a person in reasonable fear of death or serious bodily injury; and 3) conspiring or attempting to commit either of these two acts. The statute further requires that such actions be for the purpose of damaging or interfering with the operations of an animal enterprise.

Prior to enactment of the AETA, the FBI estimated that “the ALF/ELF and related groups have committed more than 1,100 criminal acts in the United States since 1976, resulting in damages conservatively estimated at approximately $110 million.”1 In enacting the AETA, Congress responded to a marked increase not in “demonstrations” or “protests,” but in threats, bombings, arson, and vandalism—and not just against “businesses,” but also against universities, other educational institutions, and any organization or individual with even an indirect or tangential relationship to animal research, including individual researchers and their families. (people who worked for companies that did business with research facilities, including banks, etc)

Since enactment of the AETA, the number and severity of illegal actions committed by animal rights extremists has significantly declined. For example, the National Association for Biomedical Research (NABR) observes that only one illegal incident involving research facilities was reported in 2012. Moreover, while there have been relatively few prosecutions under the AETA, the cases that have been prosecuted demonstrate the law is serving its intended purpose – prohibiting violent conduct and property destruction directed against universities, veterinary colleges, farms, ranches and other agricultural operations, businesses, and individual researchers and their families.

II. Repeal of the AETA would Place the Biomedical Research Community in Jeopardy of an Increase in Threatening and Violent Conduct and Require Additional Time and Resources to be Diverted from Life-Saving Research

If the AETA were repealed, the number of harassments, threats of violence, and acts of property destruction against biomedical researchers, their families, universities, research hospitals and other institutions involved in the humane use of animals would likely increase.

In 2005, the year preceding enactment of the AETA, there were a total of 37 documented illegal incidents committed against facilities and individuals involved in research with animals. There were also numerous additional documented attacks against agricultural operations and other animal enterprises that are now protected by the law. By contrast, from 2010 through 2012 there were only two documented illegal incidents committed against animal research enterprises in the United States. A recent report by the Department of Homeland Security estimates that the number of attacks between 2006 and 2010 remained low compared to the period between 2003 and 2005 (pre-AETA). This significant decline in illegal incidents, specifically coinciding with enactment of the AETA, suggests the law serves as a powerful deterrent. Repeal of the law would send a clear message to animal rights extremists and the number of illegal incidents would likely revert back to their pre-AETA levels.

Moreover, as was documented before the enactment of the AETA, attacks against research facilities results in the diversion of funds from life-saving research to pay for facility repairs and security improvements. Universities, in particular, have been forced to divert funds originally designated for research towards protecting targeted researchers by purchasing security systems, hiring security personnel (providing round the clock security, in some cases), and seeking recourse in the courts. In some cases, laboratories have been physically destroyed, research animals stolen, researchers’ cars and homes firebombed, and years of irreplaceable research data permanently lost. More importantly, valuable time that could have been spent finding cures for

3 Id.
4 Id.
diseases and ailments is spent dealing with the adverse affects of such targeting. Months of
harassing and picketing has, in at least 2 cases, resulted in activists kicking it up a notch and
attacking (including firebombing of homes, driving researchers and families including young
children out of their homes).

III. Clarification of the AETA is Unnecessary as the Law Does Not Prohibit First
Amendment Activities and Already Contains Rules of Construction Sufficient to
Ensure First Amendment Rights are Protected

Congress was conscious of the concerns of legitimate advocacy (activist) groups and carefully
drafted the AETA to ensure First Amendment activities were expressly protected. Specifically in
response to legitimate advocacy groups, the bill was amended to include a “rule of construction”
clarifying that “nothing in the bill shall be construed to prohibit any expressive conduct protected
rule of construction was added to the legislation, the ACLU withdrew its opposition – a fact the
ABA report fails to mention.7

The AETA as enacted thus “specifically prohibits a prosecution” for legitimate advocacy by
someone who, for example, “wishes to peacefully protest research on animals.” 152 Cong. Rec.
ed. Sept. 29, 2006) (Sen. Leahy) (“These changes will ensure that legitimate, peaceful conduct is
not chilled by the threat of Federal prosecution, and that prosecution is reserved for the worst
effectively protects the actions of the law-abiding protestor while carefully distinguishing the
criminal activity of extremists.”). The Department of Justice also made clear that it “does not
Prosecute and does not wish to prosecute those who lawfully seek to persuade others.”8

The report requests that the ABA endorse a resolution urging repeal of an act of Congress on
speculation that it will be misapplied contrary to its own terms, namely without regard for its
“rule of construction” that constitutionally-protected activity is not prohibited. This assertion
amounts at best to a fanciful hypothetical and is not supported by the prosecution history of the
law.

IV. The Report to the House of Delegates Contains Numerous Omissions and
Inaccuracies Resulting in Erroneous Conclusions

The report accompanying Resolution 116 contains numerous glaring omissions and inaccuracies
about the textual interpretation of the law, its prosecution history and the rules of construction,

7 American Civil Liberties Union (ACLU) letter to Hon. James Sensenbrenner, Chairman, House Judiciary
Committee and Hon. John Conyers, Ranking Member, House Judiciary Committee, Re: ACLU Urges Needed
Minor Changes to AETA But Does Not Oppose Bill (S. 3880, the “Animal Enterprise Terrorism Act,”) October 30,
2006.

8 Animal Enterprise Terrorism Act: Hearing on H.R. 4239 Before the Subcomm. on Crime, Terrorism, and
General Brent McIntosh), available at:
http://commdocs.house.gov/committees/judiciary/hju27742.000/hju27742_0f.htm.
among others. These errors and omissions raise serious concerns about the objectivity of the report and its erroneous conclusion that the AETA is unconstitutional.

The report’s conclusion that the AETA in unconstitutional is premised upon the same “technical, nonsensical reading of the AETA” that the first court to evaluate the law’s constitutionality found unconvincing. *U.S. v. Buddenberg*, Slip Copy, 2009 WL 3485937 at 12 (N.D. Cal. 2009). As the most recent court to consider the AETA explained, “[r]ead straightforwardly, the AETA criminalizes: 1) intentionally damaging or causing the loss of real or personal property; 2) intentionally placing a person in reasonable fear of death or serious bodily injury; and 3) conspiring or attempting to commit either of these two acts. And this is how both the AETA and its predecessor AEPA have been enforced.” *Blum v. Holder*, Memorandum to Order Dismissing Case at 16, Case No. 1:11-cv-12229, March 18, 2013.

For example, the first individuals sentenced under the AETA were Alex Jason Hall and William James Viehl. The two men were sentenced for damaging a Utah mink farm and releasing animals. Another individual charged and sentenced under the AETA was Walter Bond who pleaded guilty to setting fire to and destroying a Denver-area store that sold sheepskin products, and two businesses in Utah. Several additional individuals have been convicted for releasing animals from agricultural operations. The report accompanying Resolution 116 dismissively references these successful prosecutions in only a single footnote insisting that state laws render the AETA “redundant.” Report to the ABA House of Delegates at 6.

The report also dismisses the AETA’s rules of construction with merely a conclusory statement that “its inclusion is superfluous.” The report omits the fact that the rules of construction were added after the bill’s initial introduction for the express purpose of ensuring that legitimate, peaceful conduct is not chilled by the threat of Federal prosecution. In fact, the *Blum* court found the plaintiffs did not have standing because the court determined that the AETA did not prohibit any First Amendment activity and that is all the plaintiffs stated they intended to engage in. *Blum v. Holder*, Memorandum to Order Dismissing Case, Case No. 1:11-cv-12229, March 18, 2013. Specifically, addressing the rules of construction the court reasoned, “[t]he AETA’s rules of construction dispel any remaining doubt about the plain meaning of the statutory offense. Rather than exempting otherwise prohibited conduct, as Plaintiffs propose, the rules provide that any ambiguities be resolved in favor of granting full First Amendment rights.” *Id.* at 17.

Furthermore, inclusion of the rules of construction was not “superfluous.” The AETA’s rules of construction states: “[n]othing in [the AETA] shall be construed to prohibit any expressive conduct (including peaceful picketing or other peaceful demonstration) protected from legal prohibition by the First Amendment.” 18 U.S.C. § 43(e)(1) (emphasis added). The Act thus cannot reach constitutionally protected expression, because it expressly states that it does not do so. There is no reason to ignore this limiting provision. See *United States v. Bird*, 124 F.3d 667, 683 & n.17 (5th Cir. 1997) (rejecting overbreadth challenge in part because statute contained savings clause worded identically to the AETA’s).

Every court that has considered the AETA or the law’s predecessor has determined that the law is constitutional. For example, when six individuals challenged their convictions under the
AETA’s predecessor on the grounds that the law violated the First Amendment, the Third Circuit Court of Appeals reasoned the law included “an exception that exempts legal protest activity from proscribed conduct” and affirmed the convictions holding that the law is constitutional. *U.S. v. Fullmer*, 584 F.3d 132 (3d Cir. 2009) (emphasis in original).

V. Conclusion

The ABA should not adopt Resolution 116 because the AETA is constitutional and serves a vital role in protecting the biomedical research community, agriculture and other animal-related interests from violent and threatening conduct. In addition, clarification of the AETA is unnecessary as the law does not prohibit First Amendment activities and already contains rules of construction sufficient to ensure First Amendment rights are protected. Each court that has reviewed the AETA has carefully considered and dismissed arguments suggesting the law infringes upon First Amendment Rights. The AETA was carefully drafted and those courts that have reviewed the law agree the appropriate balance was achieved in enacting this important law.