

WISCONSIN HUNTING STATUTE MAY VIOLATE THE FIRST AMENDMENT

By: Jack Greiner on October 29, 2021 on graydon.law

In 2016, the Wisconsin Legislature effectively codified this [familiar admonition from Elmer Fudd](#). The amendment to the hunter protection law prohibits individuals from “maintaining a visual or physical proximity” to hunters on state land as well as “photographing, videotaping, audiotaping, or through other electronic means, monitoring or recording” them.

Several plaintiffs, including an animal rights activist, sued to invalidate the amendment, arguing that it was impermissibly vague. The trial court dismissed the case, concluding that the plaintiffs lacked standing. The case is now on appeal and the [Seventh Circuit recently heard oral arguments](#). The standing argument apparently relies on the state’s contention that it’s unlikely anyone is really going to try to enforce the statute. That is belied by the fact that in 2018 state police detained one of the plaintiffs — Joseph Brown — and confiscated all his camera equipment and footage. The local district attorney then waited seven months before returning Brown’s property and advising him that there would be no prosecution.

I have several observations. First, do hunters really need protection? They are, after all, the ones with the guns. Second, the statute clearly impedes what should be a First Amendment right. Filming activity on public property is generally acceptable. And if hunters are ignoring limits on kills or otherwise abusing animals, the public has a right to know. Finally, the statute really is vague. What is a “visual proximity” exactly? People have a right to know what activity is actually prohibited. This statute does a pretty lousy job in that respect. Here’s hoping the Seventh Circuit strikes it down.