

2009

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Repository Citation

Zick, Timothy, "Free Speech and the Furrier" (2009). *Popular Media*. 141.

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MONDAY, NOVEMBER 09, 2009

Free Speech and the Furrier

A judge in Portland, Oregon has cited Oregon's elder abuse law as authority for restricting the ability of protesters to approach a 75-year-old furrier. The animal-rights activists, some of whom apparently shouted profanities at the businessman as he walked to his shop and his car, have been ordered to stay 50 feet from the furrier and 15 feet from his store. This is another example of the phenomenon of imposing [buffers and bubbles](#) around places and persons in public speech contexts. As is increasingly the case in public speech (and other) contexts, there is some [video](#) of the public protests. In the linked-to video, the furrier and a companion appear to be smiling at certain points as the activists follow them, shouting slogans and profanities (which are "beeped" out of the video). The protesters claim that other videos show the furrier making threatening gestures and physically assaulting some in their group. The furrier apparently has video evidence of his own.

The use of the Oregon Elder Abuse Act in this context may be problematic. The Act appears to have been intended to prohibit various forms of physical and financial abuse of the elderly. But it [includes](#) in its definition of "abuse" the "[u]se of derogatory or inappropriate names, phrases or profanity, ridicule, harassment, coercion, threats, cursing, intimidation or inappropriate sexual comments or conduct of such a nature as to threaten significant physical or emotional harm to the elderly person . . ." Surely the sensibilities of the elderly are entitled to no greater protection than those of women, aliens, or homosexuals in the public square. To the extent the definition of abuse goes beyond unprotected categories of speech, it is an illegitimate basis for either a restraining order or a civil action by the furrier.

The Elder Abuse Act incorporates a general criminal prohibition on "[menacing](#)," which is defined as intentionally placing another, by words or conduct, in fear of imminent serious physical injury. If the protesters aggressively followed and harassed the furrier, they may have violated this prohibition. Even so, the scope of the court's restraining order seems questionable. If the purpose is to protect the furrier from being placed in fear of imminent serious physical injury, a 50-foot protective bubble would seem to sweep more broadly than necessary. The protesters have no right to threaten the physical safety of the furrier. But as in other public speech contexts, the intended audience has no right to be shielded from even crude and offensive messages.

Posted by Tim Zick on November 9, 2009 at 01:27 PM in [First Amendment](#) | [Permalink](#)