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Did Des Moines pilots harass birds at Saylorville? Judge is asked to rule

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Prosecutors hope to use a rarely enforced federal law to punish two Iowa pilots whose low flying disturbed thousands of resting migratory birds in a case that centers on this question: Is it a crime to harass animals?

In a case drawing attention from bird lovers, two Des Moines men have been charged with violating a federal law that prohibits using aircraft to harass animals. A judge is expected to rule soon on whether the Airborne Hunting Act is constitutional. Attorneys for the two men, Paul Austin and Craig Martin, say it's not.

Among the questions being debated: Are birds capable of feeling harassment? And if harassing birds is a crime, wouldn't Capt. Chesley "Sully" Sullenberger have violated the law when he accidentally struck a flock of geese before famously landing his plane safely on the Hudson River in January 2009?

Both sides agree Austin and Martin were flying low on Nov. 16 as they passed over Saylorville Lake, which is known as a good bird-watching area. Tens of thousands of pelicans, ducks, geese and other birds stop there every fall to rest and feed before continuing south.

A natural resources specialist for the U.S. Army Corps of Engineers, which manages the lake, saw the two planes pass about 20 feet above the water, disrupting thousands of white pelicans and other birds. Once the birds settled on another part of the lake, the planes passed by again, sending them back into flight, prosecutors said.

The resources specialist, Jonathan Wuebker, snapped photographs and eventually cited Austin and Martin for flying "in a careless,

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negligent or reckless manner” over protected land.

Then in February, a grand jury indicted the men on charges of violating the Airborne Hunting Act, which carries up to one year in jail. Prosecutors also aim to seize their small planes — a 1974 Magnus Bowers Fly Baby and a 1946 Aeronca.

Prosecutors say the law applies even though the pilots weren’t hunting because its ban on harassment makes it a crime “to disturb, worry, molest, rally, concentrate, harrass, chase, drive, herd or torment” animals with a plane. Wuebker compared it to using a car to chase deer through a field.

“When it is intentional or blatantly obvious, I would definitely consider that harassment. But that’s not my decision,” he said, noting the trial is scheduled for May 30.

Austin and Martin have asked a judge to dismiss the case, arguing the law is unconstitutionally vague.

In a court filing, defense attorneys said it “seems doubtful” that animals experience the kind of human emotional response necessary to feel harassed. And how can pilots know?

“Flying is what birds do. Who can say if the bird is pleased or annoyed to have taken flight? Indeed, who can say whether the bird’s flight was the result of any cognition and not just impulse?” they asked.



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