

Committee: Senate Committee on Homeland Security and Government Affairs

Date: 5/12/09

Time (EST): 10:00 AM

Place: Dirksen Senate Office Building, Rm. 342

Exchange between Sen. Susan Collins (R-ME) and Cass Sunstein, nominee to be administrator, Office of Information and Regulatory Affairs. ([Link to video](#))

Collins: Mr. Sunstein, I want to get right to the controversial issues that I raised in my opening statement before exploring other issues with you.

In a 2007 speech, you said and I quote, “We ought to ban hunting.” Now, that was just one speech, but then doing a search through some of your documents and legal articles, we also found a statement, saying, “We might ban hunting all together, at least if its sole purpose is human recreation.”

First, let me say that you certainly have the right to have any view on hunting that you wish. My concern as someone who represents a state where hunting and fishing and the outdoors are very much part of our heritage, that you not take steps if you are confirmed to try to influence regulations such a way, that it would affect decisions that individuals make in conformance with state and local laws, on whether or not to hunt.

Can you give me assurances that if you are confirmed that will you not seek to implement your personal view that hunting should be banned?

Sunstein: Yes, Senator, I can pledge that to you in the strongest possible terms. The only thing I’d add is that the law is authoritative, first. Second, I’m a strong believer in the Second Amendment to the United States Constitution. My record as saying that the Second Amendment protects the right to hunt – that reflects my own personal point of view.

The statement you quoted is a provocation, an off-hand remark, in a speech that was on another topic.

And not only would I not want to ban hunting if that were my personal view, it actually is not my personal view. Hunters are among the strongest environmentalists and conservationists in the United States, and it would be preposterous for anyone in a position like mine to take steps to affect their rights or their interests.

Collins: Thank you for that strong statement. Similarly, I read a primer that you wrote on the rights of animals when you were at Chicago, and you seem to be suggesting that animals that should have greater legal rights in the court system. Now, I will tell you in

reading this fascinating treatise, I cannot always tell when you're throwing out an idea for the purpose of exploring all the ramifications and all the possibilities versus where you are actually advocating for a position. So perhaps I'll ask you right now. Why don't you help me with the issue of legal rights of animals.

Sunstein: Thank you for that. As OIRA administrator, as opposed to an academic suggesting possible ideas for consideration, the question would be what does, for example, what does the Endangered Species Act say, or what does the Animal Welfare Act say, not does what a law review article say. So I would follow the law.

In terms of my own academic writings, the suggestion, which was meant as a suggestion for contemplation, was that under state law that prevents cruelty to animals, it might be that the enforcement by criminal prosecutors could be supplemented by suits by private people protecting animals from violations of existing state law, very much like under the Endangered Species Act, where people, rather than elephants, initiate lawsuits.

The idea was actually very conventional and a little boring, but maybe my rhetoric made it seem less so. It was just about ensuring enforcement of existing state anti-cruelty law, and I know you yourself have been a pioneer, actually, in the domain of animal welfare.

So the idea here was a suggestion about state anti-cruelty law, and it would not be legitimate for the head of the office of information and regulatory affairs, to play any role in a federal system of rethinking state anti-cruelty law.

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