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The Great De-Bait: America, Deer Hunting, and the Camouflage of Anti/Pro-Baiting Regulations

COLE DEBLAEY*

Big-game baiting is hunting’s civil war of the soul, a battle of ideas like few the sport has ever seen. Most debates in the hunting community deal with the mechanics of the sport, nuts-and-bolts issues such as season dates, equipment and management strategies of wildlife agencies. This one is different. It questions the heart, soul, and motive of a hunter—and that inflames deep passions. The argument has been waged between brothers in the world’s oldest sport at hunting lodges, wildlife agencies, seats of government, and the ballot box.

This Comment canvases and attempts to demystify the camouflage of pro and anti-baiting regulations across the United States, arguing that these laws possibly need to be amended to return deer hunting to the ideals of sport and conservation that our forefathers intended. A brief history of deer hunting will begin this discussion, showing the pendulum swing of extreme highs and lows of not only the American deer population but also the sport and industry itself. Within this Comment will be an analysis of “the great de-bait” and the ethical, societal, and territorial divide amongst the nation, in an attempt to explain why states cho(o)se to permit baiting or prohibit baiting, or allow a combination of the two decisions. Following this analysis will be an introduction to possible alternative hunting methods, practices, and tactics that states could allow hunters to use instead of baiting, which may possibly limit the biological, ethical, fiscal, and societal concerns associated not only with baiting but the practice of hunting itself. This Comment will conclude with a discussion of the possible economic repercussions to the hunting industry and American economy as a whole if baiting laws were to be amended or if baiting was eliminated in entirety.

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* Juris Doctor candidate, May 2016. This Article is dedicated to my family for their perpetual love, support, and encouragement. I would like to thank my Uncles Tim and Brian for instilling within me the love of conservationism, hunting, and sportsmanship. I would also like to thank the entire Alleman High School coaching staff from the 2005-2009 football seasons for their unconventional motivation and inspiration that has led me to where I am today, as well as Professors Barnum, Chan, Clarke, Reynolds, Taylor, and Walton who have been instrumental in my success in the legal profession.

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I. INTRODUCTION

A. THE SHOTS HEARD ROUND THE NATION

“It is a curious thing that something as private, and at times solitary, as hunting attracts the attention of so many people with different points of view.”¹

The following scenarios depict three various strategies used by the modern day American white-tailed deer hunter. Each scenario may seem very similar to the others, but each carries its own set of legal implications as well as biological, ethical, fiscal, and societal challenges.

1. Scenario One: As the sun sets over a quiet Texas *sendero*² and the opening evening of rifle season comes to a close, an alarm sound breaks the silence. “*Beep! Beep! Beep!*” Hearing the dinner bell, a trophy buck and his many mistresses emerge from the foliage to feast upon corn that has been scattered about by a mechanical feed dispenser. Moments later, a hammer strikes a firing pin, and a single shot rings out from a hundred yards away. The trophy buck has shared in his ‘last supper’ so to speak. The hunter

1. JIM POSEWITZ, *BEYOND FAIR CHASE: THE ETHIC AND TRADITION OF HUNTING* 5 (FalconGuide, 1st ed. 1994).

2. A *sendero* is “[a] winding network of cleared lanes, . . . through woodlands branching from food plots, and/or natural clearings to the outer perimeters of a tract . . .” *Brush Control and Forest Management*, TEX. PARKS AND WILDLIFE, https://www.tpwd.state.tx.us/landwater/land/habitats/post_oak/habitat_management/axe/index.phtml (last visited Jan. 22, 2015).

snaps a few photos with his buddies, telling them of his magnificent hunt and later sends the beautiful beast off to the taxidermist.

2. Scenario Two: In April, a farmer, who is an avid hunter, goes to his local outdoors supply company and purchases seeds that produce crops, also known as “food plots,” commonly used to attract deer. The next day, farmer tills the soil on his farm and plants the blend of non-naturally occurring crops. Months pass and the farmer watches his crops grow into a bountiful harvest. Several nights a week he sits and watches the local deer herd feast on the crop. Knowing the deer have taken kindly to the crop, and visit it frequently, he builds a deer stand that overlooks the food plot. As the opening evening of rifle season comes to a close, and the sun begins to set over a beautiful Wisconsin horizon, a trophy buck and his many mistresses loiter, feeding on what is left of the food plot. Moments later, a hammer strikes a firing pin, and a single shot rings out from a hundred yards away. The trophy buck has shared in his ‘last supper’ so to speak. Hunter snaps a few photos with his buddies, telling them of his magnificent hunt and later sends the beautiful beast off to the taxidermist.

3. Scenario Three: Farmer phones his friend hunter and tells him he will be harvesting his crops of corn and beans this week. Knowing this area will be a wildlife feeding haven post-harvest, hunter sits in a deer stand overlooking the recently harvested ground. As the opening evening of rifle season comes to a close, and the sun begins to set over a beautiful Virginia horizon, a trophy buck and his many mistresses loiter, feeding on the tailings left over from harvesting. Moments later, a hammer strikes a firing pin, and a single shot rings out from a hundred yards away. The trophy buck has shared in his ‘last supper’ so to speak. Hunter snaps a few photos with his buddies, telling them of his magnificent hunt and later sends the beautiful beast off to the taxidermist.

Scenario One is the common practice known today as baiting, in which the hunter uses a concentrated pile of food to attract a white-tailed deer to a particularized location. Scenario Two involves the practice of food plotting, in which a hunter plants a particular crop to attract a white-tailed deer to a particularized location. In Scenario Three, the hunter sits near an area in which food has recently become available to a white-tailed deer as a result of normal agricultural practices such as mowing or harvesting. From a bird’s eye view, one of these real-life scenarios seems different than the others and obscures the lines of what hunting really is in the eyes of both sportsmen and non-sportsmen alike. However, when viewed beneath the surface, hunting regulations, practices like those listed above, and tactics used within those enumerated practices across the United States are more alike than it may appear. The lines of what really is or is not hunting are more blurred than we as Americans would like to think.

This Comment canvases and attempts to demystify the camouflage of pro and anti-baiting regulations across the United States, arguing that these

laws possibly need to be amended to return deer hunting to the ideals of sport and conservation that our forefathers intended. A brief history of deer hunting will begin this discussion, showing the pendulum swing of extreme highs and lows of not only the American deer population, but also the sport and industry itself. Within this Comment will be an analysis of “the great de-bait” and the ethical, societal, and territorial divide amongst the nation, in an attempt to explain why states cho(o)se to permit baiting or prohibit baiting, or allow a combination of the two decisions. Following this analysis will be an introduction to *possible* alternative hunting methods, practices, and tactics that states could allow hunters to use instead of baiting, which may possibly limit the biological, ethical, fiscal, and societal concerns associated not only with baiting, but the practice of hunting itself. This Comment will conclude with a discussion of the possible economic repercussions to the hunting industry and American economy as a whole if baiting laws were to be amended or if baiting was eliminated in its entirety.

II. BACKGROUND

A. HISTORY: THE AMERICAN DEER HUNTER AND THE AMERICAN WHITE-TAILED DEER POPULATION

Historians cannot predict the exact date that human beings began hunting *Odocoileus virginianus*,³ also known as the white-tailed deer (hereinafter “deer”).⁴ However, “archaeologists have found remains of stone weapons and animal bones, including deer, in Germany, dating as far back as 350,000 years ago. Ancient cave paintings showing deer and hunters have been discovered across the world, with some of the oldest in Lascaux, France, dated 18,000 to 30,000 years ago.”⁵ What is known as the early history of deer hunting in the (now) United States is almost as dark as the

3. *Odocoileus virginianus*, is the scientific name for the white-tailed deer. White-tailed deer, the smallest members of the North American deer family, are found from southern Canada to South America. . . . White-tailed deer are herbivores, leisurely grazing on most available plant foods. Their stomachs allow them to digest a varied diet, including leaves, twigs, fruits and nuts, grass, corn, alfalfa, and even lichens and other fungi. Occasionally venturing out in the daylight hours, white-tailed deer are primarily nocturnal or crepuscular, browsing mainly at dawn and dusk.

White-Tailed Deer, NAT'L GEOGRAPHIC, <http://animals.nationalgeographic.com/animals/mammals/white-tailed-deer/> (last visited Jan. 22, 2014).

4. *History of Deer Hunting*, THE BUCK JOURNAL NETWORK, <http://thebuckjournal.com/history-of-deer-hunting/> (last visited Jan. 22, 2015).

5. *Id.*

eyes of the beast itself. Deer were an integral part of Native Americans' lives as they relied on the majestic animal as a staple of their diet, and used the entire animal for crafting items such as blankets, tools, and weapons.⁶ The American deer hunter was born when early American colonists were taught by Native Americans to hunt effectively and how to use every part of the deer efficiently for survival and trade.⁷ Deer hunting took its first pitfall with the introduction of deer hides into the fur trade.⁸ It is estimated that Native Americans and Americans were killing five million deer a year to supply the ever-growing fur trade, driving deer herds to staggeringly low figures.⁹ With the turn of the nineteenth century and a decline in the fur trade came increased deer populations and re-introduction of deer into areas they had not been seen in years.¹⁰ The rise to triumph of the population did not last long, however, as rampant market hunting took place in the late nineteenth century.¹¹ It is estimated the deer population hit an all time low of 500,000.¹² Deer began to completely disappear in areas all across the nation.¹³

However, deer hunting received its saving grace in 1900 with enactment of "[t]he Lacy Act, the first federal wildlife law."¹⁴ Lacy prohibited the interstate trafficking of venison and other wild game, and the exploitation of whitetails began to slow.¹⁵ Establishment of the Lacy Act and the coming of the twentieth century led to increased research on how to effectively manage and control deer populations.¹⁶ Regulation of hunting and deer hunting alike began to take form in 1908 when forty-one states established departments of conservation.¹⁷ Establishment of state conservation departments brought implementation of new ideas like "antlerless only" hunting seasons and setting deer hunting season lengths.¹⁸ Drastic shifts in the market economy like the Great Depression, resulted in an American desire to leave the urban sprawl, thus returning deer to their natural habitats.¹⁹ Deer

6. *The History of Whitetail Deer*, HUNTING NET, http://www.huntingnet.com/staticpages/staticpage_detail.aspx?id=36 (last visited Jan. 22, 2015).

7. *Id.*

8. *Id.*

9. *Id.*

10. *Id.*

11. *The History of Whitetail Deer*, *supra* note 6.

12. *Id.*

13. *Id.*

14. *Id.*

15. *Id.*

16. *The History of Whitetail Deer*, *supra* note 6.

17. *Id.*

18. *Id.*

19. *Id.*

populations continued to flourish throughout the late twentieth century leading to today's over-rampant North American deer population that is estimated to total between twenty to twenty-five million animals.²⁰ A prime example of the drastic shifts in the American deer population as well as the regulation of huntable days would be that of Missouri.²¹ “[I]n 1937, Missouri had a three-day deer season where 108 deer were harvested.”²² In 2009, it was reported that hunters harvested over 295,000 deer.²³ Further, “[a]s of 2011, sportsmen were capable of hunting Missouri deer for 123 days, a 4,000% increase from 1937.”²⁴ Similarly, in Kansas, more than 100,000 deer are harvested annually, despite the fact that deer hunting was outlawed for nearly thirty years, in attempt to bring the population back from near extinction.²⁵

As of 2011, it is estimated that nearly ten million out of the total 13.7 million American hunters are deer hunters,²⁶ and that hunters contribute over 1.6 billion dollars annually to conservation.²⁷ Survival of the tradition of hunting is not only essential to the management and protection of the American deer population, but is also vital to the success of the American economy at large.²⁸ In contemporary times, conservation efforts of the past seem outshined as “[b]urgeoning numbers of deer ravage shrubs, fruit trees and crops, causing hundreds of millions of dollars in damages annually in the Midwest, Northeast and Southeast” and “[d]eer-auto collisions are on the rise in many states.”²⁹

Modern hunting tactics and techniques are not the same ones that our forefathers, or legends such as Teddy Roosevelt³⁰ and Fred Bear³¹ used in

20. *Id.*

21. Katie Spidalieri, Note, *Looking Beyond the Bang for More Bucks: A Legislative Gift to Fund Wildlife Conservation on its 75th Anniversary*, 60 CLEV. ST. L. REV. 769, 779-80 (2012).

22. *Id.*

23. *Id.*

24. *Id.*

25. *Id.*

26. Scott Olmsted, *10 Million Deer Hunters Roll Out for the Rut*, AMERICAN HUNTER, <http://www.americanhunter.org/articles/ten-million-deer-hunters-to-hunt-rut> (last visited Jan. 22, 2015); *Hunting in America: An Economic Force for Conservation*, NAT'L SHOOTING SPORTS FOUND. (Oct. 26, 2010), http://www.nssf.org/PDF/research/HuntingInAmerica_EconomicForceForConservation.pdf.

27. *Hunting in America: An Economic Force for Conservation*, *supra* note 26.

28. *Id.*

29. *The History of Whitetail Deer*, *supra* note 6.

30. Theodore Roosevelt is known as the “Conservationist President,” and a vision of the old school “American hunter.”

He wears ridiculous buckskin outfits, relishes his '76 Winchester with delicate Victorian engravings of elk and bear. He owns a rigid morality and decorum. He pummels a desperado for manhandling a fallen woman. He's always on the side of

their respective time frames. Most hunters have dropped primitive hunting methods and now hunt deer over “bait,” “food plots,” and the result of “normal agricultural practices.” Just recently, beginning primarily in the 1980s, hunters and non-hunters have struggled to grasp the complex biological, economic, ethical, and societal concerns associated with these various controversial hunting techniques.³²

B. WHAT IS BAITING?

The easiest way to discuss baiting is to begin by defining it. “Bait” or “baiting” are not defined in a legal dictionary, which is odd because legal repercussions follow from violations associated with these terms.³³ However, the lack of a uniform definition makes sense, as each state is to define their own hunting terms and set its own regulations.³⁴ As a general consensus, states agree that “bait” is any ingestible substance placed by a person used to attract, entice, or lure deer to a certain location.³⁵ For example, in Illinois, bait “means any material, whether liquid or solid, including food, salt, minerals, and other products, except pure water, that can be ingested, placed, or scattered in such a manner as to attract or lure white-tailed

the common man, later called “a traitor to his class.” His constituency were the bears. His district, the cold mountains and the vault of the sky. His dudedom was ferocious. . . . Free like the mountain man, mastering the harshest of environments, the most pitiless and grand landscapes.

R.L. WILSON, THEODORE ROOSEVELT: HUNTER CONSERVATIONIST, Foreword, (2010).

31. Born in 1902, many consider Fred Bear the “Father of Bowhunting.”

Bear’s legend has only grown with time due to his unmatched skills in the field, as well as his role in creating one of the leading bowhunting companies in the world. Bear became a pioneer in the archery world, earning patents for tools like the Razorhead broadhead, the modern shooting glove, fiberglass bow backings and the bow quiver, tools that are used by bowhunters around the world. No bowhunter has ever influenced the sport as much as Bear did, and it’s likely no hunter ever will.

Why Fred Bear is the Greatest Bowhunter of all Time, BOWHUNTER (Sept. 12, 2013), <http://www.bowhunter.com/featured/why-fred-bear-is-the-greatest-bowhunter-of-all-time/>.

32. See, e.g., ALA. DEP’T OF CONSERVATION AND NATURAL RES., ALABAMA BAITING COMM. REPORT (2011), <http://www.actws.org/Resources/Documents/Alabama%20Baiting%20Committee%20Report%20-%20December%202011.pdf>.

33. BLACK’S LAW DICTIONARY (10th ed. 2014); BALLENTINE’S LAW DICTIONARY (3d ed. 1969).

34. Toby Roth & Stephen S. Boynton, *Some Reflections on the Development of National Wildlife Law and Policy and the Consumptive Use of Renewable Wildlife Resources*, 77 MARQ. L. REV. 71, 73 (1993).

35. 520 ILL. COMP. STAT. 5/2.26 (2013); MINN. STAT. ANN. § 97B.328 (2012).

deer.”³⁶ States like Minnesota list specific items that are and are not bait and focus on whether the item is capable of ingestion: “[B]ait’ includes grains, fruits, vegetables, nuts, hay, or other food that is capable of attracting or enticing deer Liquid scents, salt, and minerals are not bait if they do not contain liquid or solid food ingredients.”³⁷ Other states such as Virginia are very vague in their definition of bait, possibly opening up the floodgates for hunter abuse and discretionary decision making by law enforcement officials: “[A]ny food, grain, or other consumable substance that could serve as a lure or attractant.”³⁸

III. A NATION DIVIDED: THE HEART OF “THE GREAT DE-BAIT”

Big-game baiting is hunting’s civil war of the soul, a battle of ideas like few the sport has ever seen. Most debates in the hunting community deal with the mechanics of the sport, nuts-and-bolts issues such as season dates, equipment, and management strategies of wildlife agencies. This one is different. It questions the heart, soul, and motive of a hunter—and that inflames deep passions. The argument has been waged between brothers in the world’s oldest sport at hunting lodges, wildlife agencies, seats of government, and the ballot box.³⁹

The heart of “the great de-bait” lies in the fact that pro/anti-baiting laws as applied to deer are not uniform across the United States. Some states prohibit all forms of baiting,⁴⁰ some have an “anything goes” methodology,⁴¹ some laws and their applications leave the hunter feeling confused or underprivileged as compared to his private land owning brethren,⁴² and some states even permit baiting in one zone and prohibit it in another.⁴³ Unlike federally regulated migratory birds and other game species, federal

36. 520 ILL. COMP. STAT. 5/2.26 (2013).

37. MINN. STAT. ANN. § 97B.328 (2012).

38. *Definitions*, VA. DEP’T OF GAME AND INLAND FISHERIES, <http://www.dgif.virginia.gov/hunting/regulations/definitions.asp> (last visited Jan. 22, 2015).

39. Bob Marshall, *Sowing Bitter Seed*, FIELD & STREAM, July 1999, at 44.

40. See ILL. ADMIN. CODE tit. 17, § 635.40 (2014).

41. See *Hunting Means and Methods*, TEX. PARKS AND WILDLIFE, <https://tpwd.texas.gov/regulations/outdoor-annual/hunting/general-regulations/means-and-methods> (last visited Jan. 22, 2015).

42. See *Hunting Regulations 2015-2016*, FLA. FISH AND WILDLIFE CONSERVATION COMM’N 21, http://www.eregulations.com/wp-content/uploads/2015/05/15FLHD_LR.pdf (last visited Feb. 14, 2016).

43. See *Wisconsin Deer Baiting and Wildlife Feeding Regulations*, WIS. DEP’T OF NATURAL RES., <http://dnr.wi.gov/files/PDF/pubs/wm/WM0456.pdf> (last visited Jan. 22, 2015).

law does not have jurisdiction over the hunting of deer and the tactics employed statewide.⁴⁴ No matter which way a state leans and their reasoning it must be recognized that, “[u]nder the Tenth Amendment to the Constitution, those powers not specifically reserved by the federal government are ‘reserved to the states,’ and under that authority, states have developed their particular wildlife laws and regulations.”⁴⁵ State law and wildlife codes are ultimately the controlling authority on prohibited and permitted activities within that state, but the enforcement of these laws are left to the individual state’s conservation and wildlife departments.⁴⁶

It is often difficult to determine the exact time when a state began prohibiting or permitting baiting because the definition of what is or is not baiting has shifted over time with the introduction of new hunting products and new hunting techniques, along with biological, economic, ethical, and societal concerns.⁴⁷ According to a 2011 Alabama Committee Report, “[n]ationally, hunting white-tailed deer over bait is prohibited in 26 states or parts thereof [and] some form of hunting deer over bait is allowed in 22 states or parts thereof.”⁴⁸ Within “the last ten years, several states have prohibited or strictly regulated the hunting of deer over bait.”⁴⁹ States such as “Connecticut, Illinois, Michigan, New Hampshire, Vermont, Wisconsin, and Wyoming have all moved in this direction.”⁵⁰ In the Western region of the United States, “Washington, Oregon, and Utah are the only Western states that allow bait to be used for hunting deer”⁵¹ That being said, baiting while hunting deer “is prohibited in Alaska, Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico and Wyoming.”⁵² In the southeast, baiting is prohibited in Alabama, Georgia’s northern deer zone, Mississippi, the Upstate of South Carolina, Virginia, and Tennessee.”⁵³ Since the 2011 report, the South Carolina General Assembly removed the ban from baiting downstate, therefore baiting is now legal on private lands

44. *Hunting*, U.S. FISH AND WILDLIFE SERV., <http://www.fws.gov/hunting/> (last visited Jan. 5, 2015).

45. Roth & Boynton, *supra* note 34, at 73.

46. See 520 ILL. COMP. STAT. (2014).

47. ALA. DEP’T OF CONSERVATION AND NATURAL RES., *supra* note 32, at 3.

48. *Id.*

49. *Id.*

50. *Id.*

51. Rich Landers, *No Such Thing as Unanimous Approval of Hunting Regulations*, THE SPOKESMAN-REVIEW (Sept. 18, 2014), <http://www.spokesman.com/outdoors/stories/2014/sep/18/rich-landers-column-no-such-thing-as-unanimous/>.

52. *Id.*

53. ALA. DEP’T OF CONSERVATION AND NATURAL RES., *supra* note 32, at 3.

anywhere within the state.⁵⁴ However, the ban on baiting and hunting over bait is still instituted on all state Wildlife Management Areas (public land).⁵⁵ Similarly, New Hampshire House Bill 258-FN of the 2013 Session sought the “prohibiti[on] of taking deer from baited areas.”⁵⁶ However, the bill was shutdown and heavily regulated baiting laws are still intact,⁵⁷ such as requiring permits to bait specific areas, specific dates for when baiting is permitted, and requiring the baiter to produce descriptions of their bait sites and how they can be located by law enforcement officials.⁵⁸ Ultimately, it is up to the state legislatures to determine how definitions and the practices surrounding baiting evolve.

The “great de-bait” leaves a hunter wondering why deer baiting is prohibited, permitted, or prohibited in part and permitted in part in his or her state, as opposed to other states in the nation. For most states, the decision reflects the traditions and previous generational practices of the state, or shifts with regards to growing notions of economic or ethical concerns, or the like.⁵⁹ For example, both the baiting and feeding of deer was once legal statewide in Wisconsin.⁶⁰ “Feeding deer was a strong tradition near many of the mom-and-pop Northwoods resorts and restaurants to delight customers who could watch deer out the windows as both patrons and whitetails dined.”⁶¹ In the mid to late 1980s, hunters saw the success that mom-and-pop restaurants had in drawing deer to their establishments by the use of feed, so they applied it to their hunting tactics, and the Wisconsin baiting craze broke loose.⁶² However, baiting and feeding laws shifted in 2002, when the Department of Natural Resources “implemented a statewide ban on baiting and feeding deer,” after the discovery of Chronic Wasting Disease (CWD).⁶³ The next year,

[I]awmakers lifted the baiting ban in much of the state, but required that feeding and baiting bans continue in counties where a positive case of CWD

54. *A Retrospective on Hunting Deer Over Bait in South Carolina - Can Baiting Negatively Affect Hunter Success and Deer Harvest Rates?*, S.C. DEP’T OF NAT. RESOURCES I, <https://www.dnr.sc.gov/wildlife/deer/pdf/baitinglaws.pdf> (last visited Jan. 22, 2015).

55. *Id.*

56. H.B. 258-FN, Reg. Sess. (N.H. 2013).

57. *Id.*

58. *General Hunting Regulations*, N.H. FISH AND GAME DEP’T, <http://www.eregulations.com/newhampshire/hunting/general-hunting-regulations/> (last visited Jan. 22, 2015).

59. See Jason Fleener, *The Great De-Bait*, WIS. NAT. RESOURCES MAG., Feb. 2009.

60. *Id.*

61. *Id.*

62. See *id.*

63. *Id.*

or bovine tuberculosis (TB) was found in a wild or captive animal, plus adjacent counties within a 10-mile radius of a confirmed positive case.⁶⁴

Further, from 2004 to 2005, a law that had originally allowed hunters to use ten gallons of bait per hunting site was lowered to a two-gallon limit in counties where baiting for and feeding of deer was still permitted.⁶⁵ Currently, the prohibition of baiting and feeding deer still stands in twenty-six counties in Wisconsin.⁶⁶

Additionally, states that originally permitted baiting have put an outright ban on baiting due to the negative implications of the hunting practice.⁶⁷ The problems commonly associated with baiting such as “littering, bad public perceptions, and competition and territorialism between hunters” heavily influenced the Minnesota State Legislature’s decision to put a statewide ban on baiting in 1991.⁶⁸ Michigan’s current policy, reaffirmed in April of 2014, seeks to be a compromise between the interests of those who are for baiting and those who seek the prohibition of baiting, and interweaves the ever-important interests and concerns of the various state agricultural industries.⁶⁹ Further, pressure by the non-hunting public and anti-hunting activists through the political process and lobbying have led to an outright ban on baiting or a warning to the legislature that citizens are unhappy with baiting practices in their states.⁷⁰ “When given a chance, the nonhunting public has shown its opinion of baiting, voting the practice out in four of six states. Baiting was banned in California, Washington, Oregon and Colorado.”⁷¹ Although it was upheld in Idaho and Michigan, the tides are rising as public support of baiting in Idaho and Michigan decreases.⁷² And further, some states are just blatant about their reasoning for permitting baiting, like Texas, where it is noted that baiting allows for a more enjoyable and efficient hunting experience.⁷³ Pro-baiting hunters and the Texas

64. Fleener, *supra* note 59.

65. *Id.*

66. *Id.*

67. JOHN OZOGA, WHITETAIL INTRIGUE: SCIENTIFIC INSIGHTS FOR WHITE-TAILED DEER HUNTERS 187 (Patrick Durkin ed., 2000).

68. *Id.*

69. James DeDecker, *Deer Baiting a Double-Edged Sword for Michigan Farmers*, MICH. ST. U. (Nov. 12, 2014), http://msue.anr.msu.edu/news/impacts_of_deer_baiting_to_michigan_agriculture.

70. Marshall, *supra* note 39, at 46.

71. *Id.*

72. *See id.*

73. *See id.*

legislature “argue baiting is a valid way for the average hunter to see more wildlife” so that “[p]eople who invest in wildlife get an enjoyable show.”⁷⁴

Another approach used to address the desire for and criticisms of baiting laws has been one like that of Pennsylvania, a sort of “trial and error” or “baptism by fire” so to speak.⁷⁵ In 2006, the Pennsylvania Game Commission (PGC) permitted baiting in five special management counties throughout the State to fill the desire of pro-baiting activists, evaluate public perception, and to conduct research on hunter success and deer harvest rates.⁷⁶ Research and surveys suggested that in the five special management counties, less than forty percent of hunters were hunting with bait.⁷⁷ “After the folks at the PGC concluded that the success rates of hunters who used bait were essentially the same as those who didn’t, they recommended that baiting here be discontinued, which it was.”⁷⁸ Despite the research, which concluded in 2010, as of 2015 the PGC is once again allowing hunters to use bait in the five enumerated special management counties.⁷⁹ Baiting is once again being allowed to try to slow down the ever-growing rampant deer population in Pennsylvania which is killing motorists daily, and wreaking havoc on suburban neighborhoods and State ecological systems.⁸⁰ However, liberal approaches to control the burgeoning deer population appears to be met with very conservative wildlife laws:

[B]ait is limited to shelled corn and protein pellet supplements; approved feeders shall be limited to sealed, waterproof, automatic, mechanical feeders that are set to distribute bait up to a maximum of three times per day, during legal hunting hours only; the feeder must be visibly tagged or labeled with the landowner’s permit number or full name and address; bait accumulations at any one bait site shall not exceed five gallons; no other game may be harvested over bait than deer; a report of any deer harvested at or near a bait station shall be submitted by the hunter.⁸¹

74. Marshall, *supra* note 39, at 48.

75. See Tom Tatum, *Outdoors: The great bait debate*, DAILY LOC. NEWS (Sept. 29, 2014, 8:32 PM), <http://www.dailylocal.com/sports/20140929/outdoors-the-great-bait-debate>.

76. *Id.*

77. *Id.*

78. *Id.*

79. *Id.*

80. See Tatum, *supra* note 75.

81. Tatum, *supra* note 75. This list is representative, not exhaustive, of the PGC’s attempt to both please those in favor and opposed to baiting in the Commonwealth. *Id.*

It will be interesting to see if the baiting practices will be repealed, like in 2010, due to lack of hunter interest in using bait, or will continue until the PGC feels the deer population is at a fiscally and biologically sustainable level.⁸²

Lines become even more blurred when each individual state defines what baiting is, and the prohibited and permitted parameters surrounding it. For example, in Texas, exemplified by **Scenario One** above, where baiting deer is legal, the only restriction placed on the practice of baiting is that it is only permitted on private property.⁸³ This would give an appearance of an “anything goes” methodology and would allow the hunter to sit any distance from any type of attractant, liquid or solid, be it spread, piled up, or dropped from any type of feeding device.⁸⁴ Any type of feeding device means the Texas Parks and Wildlife Department permits automated, mechanical feeding devices, which allow the hunter to set and maintain a strict feeding schedule, pinpointing the exact time he or she knows the deer will answer the “beep” of the dinner bell.⁸⁵ Opponents of “Texas styled hunting” do not call it hunting, but rather “harvesting” or “target practice,” and liken these practices to shooting fish (deer) in a barrel.⁸⁶ Non-baiting hunters and anti-hunting activists joke that “most whitetail hunters don’t even bother to get to their stands until about 30 minutes before the feeder is set to go off. (Some say that in Texas, the deer themselves don’t get out of bed until they hear the feeders go off!)”⁸⁷ For generations of hunters who have hunted in this particular fashion, baiting and this style of hunting makes sense both logically and ethically.⁸⁸ Here, one could say hunter opinions typically match the long traditions of the Lone Star State, where “baiting isn’t just accepted, it’s expected.”⁸⁹

Wisconsin does not take an “anything goes” approach, rather it is an example of a state where deer baiting is permitted in some counties, but is heavily regulated.⁹⁰ Unlike Texas, a hunter in Wisconsin may not hunt over bait that “is contained in or deposited by a feeder that is designed to deposit

82. *See id.*

83. *Hunting Means and Methods*, TEX. PARKS AND WILDLIFE, <http://www.tpwd.state.tx.us/regulations/outdoor-annual/hunting/general-regulations/means-and-methods> (last visited Jan. 22, 2015).

84. *See id.*

85. *Id.*

86. Marshall, *supra* note 39, at 48.

87. Frank Sargeant, *Deer Hunting Regulations Under Review—Longer Seasons, Baiting Possible*, THE HUNTSVILLE TIMES (Mar. 31, 2011, 5:17 PM), http://www.al.com/sports/index.ssf/2011/03/deer_hunting_regulations_under.html.

88. Marshall, *supra* note 39, at 48.

89. *Id.* at 44, 48.

90. *See* WIS. ADMIN. CODE NR § 10.07 (2014).

or replenish feed automatically, mechanically, or by gravity.”⁹¹ Similarly, in Texas where there is not a limit to the quantity of bait permitted, the permitted amount of bait used is regulated in Wisconsin where no hunter “may place, use, or hunt over more than 2 gallons of bait or feed at any feeding site.”⁹² Also, the Wisconsin Department of Natural Resources (DNR) regulates the permitted placement of bait where no hunter “may place, use, or hunt deer over . . . more than 2 gallons of bait on each contiguous area of land under the same ownership that is less than 40 acres in size, or for each full 40 acres that make up a contiguous area of land under the same ownership.”⁹³ Further regulation of placement notes, no hunter “may place, use, or hunt deer over . . . any feeding site that is located within 100 yards of any other feeding site located on the same contiguous area of land under the same ownership.”⁹⁴ It also appears that the Wisconsin DNR combines bait placement with citizen safety when no hunter “may place, use, or hunt deer over any feeding site that is located within 50 yards of any trail, road, or campsite used by the public, or within 100 yards of a roadway, having a posted speed limit of 45 miles per hour or more.”⁹⁵ Unlike Texas, where baiting may take place year round, Wisconsin regulates the timing of deer baiting where a hunter “may start to place bait for deer hunting 24 hours prior to the first deer hunting season, which is the archery [hunting] season.”⁹⁶

Another example of a state where baiting is permitted, but is strictly regulated is Wisconsin’s brother to the east, Michigan.⁹⁷ Michigan similarly regulates the timing, content, and placement of bait and its permitted parameters.⁹⁸ Like Wisconsin, Michigan prohibits baiting in specific counties, specifically “Alpena, Alcona, Clinton, Ingham, Montmorency, Oscoda, and Shiawassee counties.”⁹⁹ However, throughout the rest of the state of Michigan, a hunter may place bait between September 15th and January 1st, as long as the bait volume per hunting site does not exceed two gallons.¹⁰⁰ Unlike Wisconsin, Michigan has a provision regarding the size of bait-dispersed areas where “[b]ait dispersal must be over a minimum 10-foot by

91. *Wisconsin Deer Baiting and Wildlife Feeding Regulations*, *supra* note 43.

92. *Id.*

93. *Id.*

94. *Id.*

95. *See id.*

96. *Wisconsin Deer Baiting and Wildlife Feeding Regulations*, *supra* note 43.

97. *Baiting and Feeding Prohibitions for Deer and Elk*, MICH. DEP’T OF NAT. RESOURCES, http://www.michigan.gov/documents/dnr/hunting_and_trapping_digest_461177_7.pdf (last visited Jan. 22, 2015).

98. *Id.*

99. *Id.* at 61.

100. *Id.*

10-foot area.”¹⁰¹ In Wisconsin, automatic, mechanical, and gravity-based feeders are prohibited, but in Michigan, “[b]ait must be scattered directly on the ground. It can be scattered by any means, including mechanical spin-cast feeders, provided that the spin-cast feeder does not distribute more than the maximum volume allowed.”¹⁰²

It is not irrational to think that some hunters do not use bait for fear of violating baiting laws or do in fact violate baiting laws because they are unsure of the application of state baiting laws. For example, in Wisconsin, the history of baiting is not very well documented, and the low usage of baiting was most likely attributed to the fact that baiting was perceived as being illegal.¹⁰³ For the hunters of Wisconsin, “[g]rowing awareness that baiting was legal in the late 1980s and early 1990s is believed to have resulted in a sudden increase in baiting.”¹⁰⁴ “A survey of Wisconsin deer hunters following the 1992 hunting season revealed that 75% of hunters who baited had been hunting with bait for less than 5 years ([it should be noted that] 84% had hunted deer for more than 6 years).”¹⁰⁵ Also, in Idaho, where it is illegal to hunt over bait, if a hunter is walking in the woods and stumbles upon a salt block, the hunter is faced with the ethical dilemma of deciding whether the block was placed there as wildlife bait or for livestock.¹⁰⁶ That being said, “[t]he intent of the law is to prohibit hunting if the salt was placed to attract wildlife and if that salt has influenced or enticed wildlife on a path that allows the hunter the advantage.”¹⁰⁷ Since there is not a legal distance that a hunter must sit from this salt block, if a hunter believes it was placed for livestock purposes, the hunter may sit near the block, ultimately looking suspicious if an Idaho Fish and Game officer were to view this event.¹⁰⁸

Further, some laws just seem illogical like in a 2009 press release, where comments by a spokesperson for the Indiana Department of Natural Resources left hunters scratching their head: “‘Basically, if you place corn, apples, salt or mineral blocks or anything that isn’t grown in the area and hunt there, it’s illegal.’ ‘Hunting from an apple tree is legal, but placing apples under your tree stand would place you in conflict with current Indi-

101. *Id.*

102. *Baiting and Feeding Prohibitions for Deer and Elk, supra* note 97, at 61.

103. Keith Warnke & Chris Jacques, *Baiting and Feeding of Deer in Wisconsin – Update 2008*, WIS. DEP’T OF NAT. RESOURCES, at 2, <http://dnr.wi.gov/topic/hunt/documents/baitfeed.pdf> (last visited Jan. 22, 2015).

104. *Id.*

105. *Id.*

106. *What to do About a Salt Block on Public Land*, IDAHO FISH AND GAME (Oct. 10, 2012, 4:58 PM), <https://fishandgame.idaho.gov/content/question/what-do-about-salt-block-public-land>.

107. *Id.*

108. *See id.*

ana Law.”¹⁰⁹ It may have just been easier for the lieutenant to reaffirm the title of his press release, “Baiting deer is Still Illegal,” than attempt to explain the application of the anti-baiting law.¹¹⁰ Whether a hunter places apples under their stand, or hunts from a stand in an apple tree that drops apples, the moral of the story is that apples are still being hunted over and they are a tasty snack to the attracted deer. Similarly, hunters in Florida may also scratch their heads and feel left out when they read that taking game on baited lands is prohibited, but resident game may be hunted in proximity of year-round game-feeding stations on private lands, “provided the feeding station has been maintained with feed for at least six months prior to taking [resident] game.”¹¹¹ That being said, Florida hunters who use bait most undoubtedly have their calendars marked and do their due diligence in making sure their feeders are continuously loaded for six months before the start of their first day of deer hunting that season.¹¹²

IV. BIOLOGICAL, ECONOMIC, ETHICAL, AND SOCIETAL CONCERNS COMMONLY ASSOCIATED WITH BAITING

The heart of “the great de-bait” lies in the complex biological, economic, ethical, and societal concerns commonly associated with baiting. States vary to great extents on biological concerns associated with deer baiting, specifically regarding disease transmission, deer behavior patterns, and population management. One of the biggest arguments against permitting baiting for deer is that “[b]aiting alters the risk factors associated with disease transmission by increasing frequency of direct contact between deer.”¹¹³ In 1994, a disease called Bovine Tuberculosis (TB) was discovered in Michigan.¹¹⁴ Scientists in Michigan believe TB “is directly related

109. Press Release, *Baiting Deer is Still Illegal*, IND. DEP’T OF NAT. RESOURCES (Oct. 20, 2008).

110. *Id.*

111. *Hunting Regulations: General Information*, FLA. FISH AND WILDLIFE CONSERVATION COMM’N, <http://myfwc.com/hunting/regulations/general-information/> (last visited Jan. 22, 2015).

112. *Id.*

113. ALA. DEP’T OF CONSERVATION AND NAT. RESOURCES, *supra* note 32, at 4.

114. *Bovine Tuberculosis*, MICH. DEP’T OF NAT. RESOURCES, <http://www.michigan.gov/dnr/0,1607,7-153-10319-99064--,00.html> (last visited Jan. 22, 2015).

Tuberculosis (TB) is a serious disease caused when bacteria attack the respiratory system. Bovine TB is spread primarily through the exchange of respiratory secretions between infected and uninfected animals. This transmission usually happens when animals are in close contact with each other. Thus, animal density plays a major factor in the transmission of *M. Bovis*. Bacteria released into the air through coughing and sneez-

to supplemental feeding/baiting and the increased focal densities these practices create.”¹¹⁵ The effect of baiting deer has a spillover effect into other industries as well as dairy, and beef producers in Michigan estimate that TB has caused them a loss of over \$121 million dollars between 1998-2008.¹¹⁶ It is estimated if nearby states like Wisconsin were to be inflicted with TB it would result in the dairy and beef industry losing their status as a “TB free state” and would cost near \$1.9 million dollars in annual testing costs.¹¹⁷ Like Wisconsin, state wildlife agencies across the country are spending millions of dollars to monitor transmissions of diseases like TB that have been linked to feeding sites and baiting of deer.¹¹⁸

A similar disease called Chronic Wasting Disease (CWD) has “emerged as the most significant disease threat that North America’s deer . . . populations have ever faced.”¹¹⁹ Although the exact mode of CWD transmission has not been proven, “evidence supports the possibility that the disease is spread through direct animal-to-animal contact or as a result of indirect exposure to prions in the environment (e.g., in contaminated feed and water sources).”¹²⁰ States like Missouri, where baiting is illegal, fear the economic impact that would result from a deer population being wiped out by CWD:

ing can spread the disease to uninfected animals. Research suggests that bovine TB can also be contracted from ingesting contaminated feed.

Id.

115. ALA. DEP’T OF CONSERVATION AND NAT. RESOURCES, *supra* note 32, at 4.

116. *Bovine Tuberculosis*, *supra* note 114.

117. *Id.*

118. See *generally Chronic Wasting Disease (CWD)*, VA. DEP’T OF GAME AND INLAND FISHERIES, <http://www.dgif.virginia.gov/wildlife/diseases/cwd/> (last visited Jan. 22, 2015).

119. *Id.*

CWD belongs to a family of diseases known as transmissible spongiform encephalopathies (TSE’s). CWD causes a characteristic spongy degeneration in the brains of infected animals, resulting in emaciation, abnormal behavior, loss of bodily functions, and ultimately death. As of July 2015, CWD has been found in Alberta, Colorado, Illinois, Iowa, Kansas, Maryland, Michigan, Minnesota, Missouri, Montana, Nebraska, New Mexico, New York, North Dakota, Ohio, Pennsylvania, Oklahoma, Saskatchewan, South Dakota, Texas, Utah, Virginia, West Virginia, Wisconsin, and Wyoming.

Id.

120. *About CWD*, DEP’T OF HEALTH AND HUMAN SERV., CTR. FOR DISEASE CONTROL AND PREVENTION, <http://www.cdc.gov/prions/cwd/transmission.html> (last updated Feb. 10, 2015).

Missouri offers some of the best deer hunting in the country, and deer hunting is an important part of many Missourians' lives and family traditions. Infectious diseases such as CWD could reduce hunting and wildlife-watching opportunities for Missouri's nearly 520,000 deer hunters and almost two million wildlife watchers. Deer hunting is also an important economic driver in Missouri and gives a \$1 billion annual boost to state and local economies. Lower deer numbers from infectious diseases such as CWD could hurt 12,000 Missouri jobs and many businesses that rely on deer hunting as a significant source of revenue, such as meat processors, taxidermists, hotels, restaurants, sporting goods stores, and others. CWD also threatens the investments of thousands of private landowners who manage their land for deer and deer hunting, and who rely on deer and deer hunting to maintain property values.¹²¹

Missouri and similar states attempt to combat the spread of CWD nationally but also internally, by not only prohibiting baiting, but by limiting deer carcass importation and exportation.¹²² For example, in Virginia, where both deer feeding and baiting are prohibited, only seven cases of CWD have been reported in the state's history. It is said that "[t]o prevent the spread of CWD into new areas, Virginia's carcass transportation movement regulation prohibits the importation or possession of whole deer carcasses or specified high-risk part of carcasses originating from any enclosure intended to confine deer . . . from any area designated . . . as a carcass-restriction zone."¹²³ The link between baiting and deer disease seems even more evident as "[a] hair loss syndrome has been detected in artificially fed deer in West Virginia and other southeastern states" and a

121. Joe Jerek, *MDC Reports 11 New Cases of CWD in Missouri Deer*, MO. DEP'T OF CONSERVATION (Mar. 10, 2015), <http://mdc.mo.gov/newsroom/mdc-reports-11-new-cases-cwd-missouri-deer>.

122. *Id.*

123. *Hunting and Trapping in Virginia July 2014 – June 2015*, VA. DEP'T OF GAME AND INLAND FISHERIES, <http://www.dgif.virginia.gov/hunting/regulations/2014-2015-virginia-hunting-and-trapping-regulations-digest.pdf> (last visited Nov. 9, 2014). American states included in the carcass restriction zone include, "Colorado, Illinois, Iowa, Kansas, Michigan, Minnesota, Missouri, Montana, Nebraska, New Mexico, New York, North Dakota, Ohio, Oklahoma, Pennsylvania, South Dakota, Texas, Utah, Wisconsin, Wyoming," Allegheny county in Maryland, and "Hampshire, Hardy, and Morgan counties" in West Virginia. *Id.*

“[b]acterial infection of the muzzle has been detected among artificially fed deer populations in Alabama, Louisiana, and North Carolina. Neither of these deer health issues has been found in nearby unfed populations.”¹²⁴

Experts and researchers implicate baiting and feeding of deer negatively impacts deer behavior patterns and surrounding ecosystems. The Virginia Department of Game and Inland Fisheries notes “[s]upplemental feeding significantly alters the natural home ranges and distribution of deer on the landscape” and “[f]eeding deer can artificially increase deer numbers above the habitat’s natural carrying capacity, which can lead to increased habitat damage, crop damage, and private property damage”¹²⁵ Researchers are holding that artificially high deer populations supported by supplemental feeding and baiting are threatening long-term forest sustainability.¹²⁶ Findings suggest the damage may be irreparable, even after reducing deer numbers in those affected areas.¹²⁷ Specific forestry concerns include: “failure of regeneration, resulting in unsustainable forest management, increased regeneration costs, reduced tree growth rates and productivity, altered forest tree composition, altered composition of understory plant communities, [and] altered composition of animal communities”¹²⁸

A large part of what puts the debate in “the great de-bait” is American deer hunters and the general public struggle to decide whether hunting over a baited area is ethical. Is sitting near a pile of food and blasting a deer as it enjoys a strategically placed tasty treat truly ethical? Given the nature of a nation divided, if a poll was taken between three people, no matter whether hunters or non-hunters or a combination of both, asking whether they believed hunting over bait is ethical, it would seem one individual would say “yes,” another would say “no,” and the remaining person would ultimately

124. ALA. DEP’T OF CONSERVATION AND NAT. RESOURCES, *supra* note 32.

125. *Hunting and Trapping in Virginia*, *supra* note 123.

126. Warnke & Jacques, *supra* note 103, at 6.

127. *See id.* In 2005 Tremblay described both the current and future state of ecological impacts of an over-abundance of deer as result of feeding and baiting practices:

By foraging selectively, deer affect the growth and survival of many herb, shrub, and tree species, modifying patterns of relative abundance and vegetation dynamics. Cascading effects on other species extend to insects, birds, and other mammals. In forests, sustained overbrowsing reduces plant cover and diversity, alters nutrient and carbon cycling, and redirects succession to shift future overstory composition. Many of these simplified alternative states appear to be stable and difficult to reverse.

Id. at 7 (emphasis in original).

128. *Id.*

have a very tough time deciding and would say “maybe.”¹²⁹ Within the nation divided, the hunting community also remains divided as shown in a recent poll by *Outdoor Life Magazine* taken in 2013 in which, sixty percent of voters stated “I hunt over bait, or I would if it was legal in my state” and thirty-nine percent chose “I do not hunt over bait, and I wouldn’t even if it was legal in my state.”¹³⁰

Similarly, “[a] majority of hunters and nonhunters nationwide oppose hunting over bait because they think it is unfair and violates the principle of ‘fair chase’ hunting.”¹³¹ “Fair chase, as defined by the Boone and Crockett Club, is the ethical, sportsmanlike, and lawful pursuit and taking of any free-ranging wild, native North American big game animal in a manner that does not give the hunter an improper advantage over such animals.”¹³² From this definition, it would appear that baiting is not fair chase hunting because it gives the hunter an “improper” advantage over the white-tailed deer, allowing for greater deer concentrations, predictable behavior patterns, and closer range shots to name a few.¹³³ However, improper in this definition would appear to be an analysis of both subjectivity and objectivity.¹³⁴ Subjectively, if a hunter does not feel that baiting is improper, in their eyes, baiting is fair chasing hunting.¹³⁵ In fact, in a 2012 poll, *Field and Stream Magazine* concluded that forty-eight percent of Americans feel that

129. *Poll: What's Your Take on Hunting Whitetails Over Bait?*, OUTDOOR LIFE, <http://www.outdoorlife.com/blogs/big-buck-zone/2013/07/poll-whats-your-take-whitetails-over-bait> (last visited Jan. 22, 2015).

130. *Id.*

131. *A Study Report on the Effects of Removing the Prohibition Against Hunting Over Bait in Virginia*, COMMONWEALTH OF VA. DEP’T OF GAME AND INLAND FISHERIES, <http://www.dgif.virginia.gov/hunting/study-report-hunting-over-bait.pdf> (last visited Jan. 22, 2015).

132. *Fair Chase Statement*, BOONE AND CROCKETT CLUB, http://www.boone-crockett.org/huntingEthics/ethics_fairchase.asp?area=huntingEthics (last visited Jan. 22, 2015). The Boone and Crockett Club has been in existence for 127 years. It is the “[o]ldest wildlife conservation organization in North America – founding in 1887 by Theodore Roosevelt and George Bird Grinnell.” The Boone and Crockett Club “[p]ioneered and established the principles of responsible, ethical, and sustainable use hunting known as Fair Chase.” Further, the Club is the “[c]hampion of the earliest science-based wildlife management efforts and legislation, including the National Wildlife Refuge System Act, and the creation of the Cooperative Fish and Wildlife Research Units” and the Club “[c]reated the first big game scoring and data collection system to objectively measure and evaluate species and population health and habitat quality to improve state and federal wildlife policies and management.” *125-year Snapshot: Boone and Crockett Club 1887-2012*, BOONE AND CROCKETT CLUB, http://www.boone-crockett.org/about/about_overview.asp?area=about (last visited Feb. 14, 2016).

133. *Id.*

134. *Id.*

135. *Id.*

hunting over bait is indeed fair chase hunting.¹³⁶ One could infer that the results ended up this way as the United States is nearly even in the amount of states which prohibit or permit baiting practices.¹³⁷ This definition of fair chase hunting hypothetically allows for a slippery slope effect, as any ingestible item, hunting device, or product could be seen as an improper advantage.¹³⁸ Under an analysis of objectivity, the question must be asked of whether a “reasonable person” in that hunter’s exact same situation would feel fair chase hunting is taking place and the hunter does not have an improper advantage of the animal.¹³⁹ Once again, unless the situation involves a radical baiting process, completely different from those used by American deer hunters, at least forty-eight percent of the American deer hunting population would most likely agree that the situation is deemed fair chase hunting.¹⁴⁰

Although public support of legal hunting has remained near seventy-five percent since 1995, the ethical and biological issues surrounding baiting of deer and fair chase fuels the fires of ever-growing anti-hunting and animal welfare groups.¹⁴¹ Many non-hunters and anti-hunting groups attempting to persuade the American public in their favor, continue to outcry that “killing deer (or other wildlife) over bait demonstrates that hunting is all about killing and has nothing to do with fair chase, conservation, or wildlife management.”¹⁴² However, a recent telephone survey, covering all fifty states, conducted by the National Shooting Sports Foundation showed these arguments fall short with the majority of Americans.¹⁴³ When respondents were asked “specifically about hunting as a source of food or as a wildlife management tool, public support soared to more than 80 percent. ‘Support dropped off markedly, however, when . . . asked about hunting for

136. Dave Hurteau, *Poll: Is Hunting Deer Over Bait Fair Chase?*, FIELD & STREAM, <http://www.fieldandstream.com/blogs/whitetail-365/2012/02/poll-baiting-deer-fair-chase> (last visited Jan. 22, 2015).

137. *See id.*

138. *See Fair Chase Statement*, *supra* note 132.

139. *Id.*

140. *Id.*

141. Ben Moyer, *Hunting: Number of Hunters is Dropping, but not Public Support for Those who Hunt*, PITTSBURGH POST-GAZETTE (June 30, 2007, 11:00 PM), <http://www.post-gazette.com/sports/hunting-fishing/2007/06/30/Hunting-Number-of-hunters-is-dropping-but-not-public-support-for-those-who-hunt/stories/200706300154>; John Hayes, *National Survey Shows Continued Support for Hunting and Shooting Sports*, PITTSBURGH POST-GAZETTE (Dec. 11, 2011, 3:00 PM), <http://www.post-gazette.com/sports/hunting-fishing/2011/12/11/National-survey-shows-continued-support-for-hunting-and-shooting-sports/stories/201112110233>.

142. *A Retrospective on Hunting Deer Over Bait in South Carolina - Can Baiting Negatively Affect Hunter Success and Deer Harvest Rates?*, *supra* note 54.

143. Moyer, *supra* note 141; Hayes, *supra* note 141.

sport or trophy collection.”¹⁴⁴ The researchers hypothesize that public support for hunting for food or wildlife management will continue to rise steadily as “Americans seem to be acquiring a more realistic view of hunting and wildlife management, possibly due to increases in populations of deer . . . in urban areas.”¹⁴⁵ That being said, research ratifies the ideals of many scientists, researchers, and hunters that the tradition of hunting will forever remain an important, if not the most important “tool with respect to deer management.”¹⁴⁶

Ultimately, an outside analysis of the world of hunting and baiting practices leaves the hunter or non-hunter pondering questions such as these: “What difference could bait really make? What is really one more advantage over the deer? How far is too far?”¹⁴⁷ As each day passes and new hunting products are introduced, the pushing of the proverbial “ethical envelope” continues.¹⁴⁸ Anyone watching a hunting program on television or strolling through their local sporting goods store is bombarded with advertisements and promotions from the market’s latest products, which allow the hunter to dominate the deer in almost every aspect.¹⁴⁹ In today’s ever-growing and evolving world of hunting technologies such as infrared rifle scopes, drones, scent eliminating clothing, and temperature controlled huts to withstand the elements Mother Nature pumps out, the deer do not stand a chance.¹⁵⁰ It is arguable that the only defenses the deer have left are their natural instincts and poor aim by a hunter who has a marksmanship record like me.¹⁵¹ In sum, the decision as to what is or is not ethical lies within the eyes of the hunter viewing the animal through his scope, as he and he alone decides whether to pull the trigger. We as society viewing the situation as a whole can ask ourselves what really is one more advantage? What does a concentrated pile of corn really matter in the grand scheme of today’s advantages over the American whitetail?

Baiting was a necessity in the tactics of the early American hunter, where killing was essential to sustaining the hunter’s life and livelihood. In the mind of the early American provider, baiting would have been a no brainer, less work to achieve the ultimate purpose of survival. Today, in very rare circumstances and minute circles are humans hunting to sustain

144. Moyer, *supra* note 141.

145. *Id.*

146. *A Retrospective on Hunting Deer Over Bait in South Carolina - Can Baiting Negatively Affect Hunter Success and Deer Harvest Rates?*, *supra* note 54.

147. Jeff Bernard, *Hunting Gadgets Push Ethical Envelope*, USA TODAY (Mar. 4, 2005, 4:07 PM), http://usatoday30.usatoday.com/tech/products/gear/2005-03-04-hunting-gadgets_x.htm.

148. *See id.*

149. *See id.*

150. *See id.*

151. *See id.*

life; hunting is now sport and meat on the dinner table is the cherry on top of the cake filled with fond family memories and experiencing God's creation first hand. It does not appear that "the great de-bait" will cease anytime soon. The decision on whether or not to bait is rooted deep in ethics, scientific research, and familial and geographic traditions. It is very odd that baiting deer in America is a highly punishable offense in one geographic location, and is a highly praised and even expected practice in another geographic location. As both hunting technologies and baiting practices evolve, so will the controversies and backlashes against it. With research hinting at baiting leading to explosive population growth, changing behavioral patterns, greater likelihood of disease transmission, and increased state fiscal responsibilities, it would appear that the best solution for each state would be to remove baiting from the grab bag of tactics of the American hunter and to search for greater alternatives.

V. BAITING PROHIBITED STATES AND THEIR TAKE ON THE "GREAT DE-BAIT": IS THIS THE MORE APPROPRIATE STANDARD?

Although baiting may be prohibited in whole or in part in a certain state, the state most likely does not leave the hunter hanging without the ability to have an advantage over the deer on his property like his baiting brethren.¹⁵² States like Illinois and Minnesota who prohibit the practice of baiting deer allow the hunter to hunt over "food plots" and hunt deer over ground that has feed on it as a result of regular agricultural planting and harvesting activities.¹⁵³ A "food plot" as defined by the United States Department of Agriculture is "an annual or perennial planting of grain, cover crops, grass, forbs, legumes, or a mixture thereof, to provide food for a variety of wildlife on rural land."¹⁵⁴ Simply put, a food plot is a crop a hunter uses to attract, feed, and hold deer on his or her property, be it a naturally or non-naturally occurring crop.¹⁵⁵ Good examples of a food plot crop used by hunters would be corn, beans, radishes, turnips, rapeseed, and alfalfa.¹⁵⁶ Through the use of a food plot, a hunter can attempt to grow bigger, and most likely healthier deer and provide the nourishment deer need and crave

152. See ILL. ADMIN. CODE tit. 17, § 635.40 (2014); *2014 Hunting and Trapping Regulations Handbook*, MINN. DEP'T OF NAT. RESOURCES (2014) http://files.dnr.state.mn.us/rlp/regulations/hunting/2014/full_regs.pdf#view=fit&pagemode=bookmarks.

153. *Id.*

154. *Wildlife Food Plots*, U.S. DEP'T OF AGRIC. (June 2009), http://www.nrcs.usda.gov/Internet/FSE_DOCUMENTS/nrcs141p2_035572.pdf.

155. *See id.*

156. *Id.*

in certain time periods of the year.¹⁵⁷ That being said, the hunter can use that crop to attract the animal to a general location on his or her farm, which sounds very similar to that of one who uses a bait pile to lure in animals.¹⁵⁸

Similar language by a state where baiting is prohibited would be that of Minnesota where “[a]gricultural crops from normal or accepted farming, forest management, wildlife food plantings, orchard management, or other similar land management activities” are excluded from its definition of bait and baiting.¹⁵⁹ The Minnesota Department of Natural Resources (MDNR) states these exclusions do not apply to “agricultural crops that have been reintroduced and concentrated where a person is hunting.”¹⁶⁰ Therefore, if a “person has an abundance of an agricultural crop and intends to use it as ‘green manure’ or fertilizer” they “may reintroduce the agricultural crop to the field by spreading it out over a previously planted field.”¹⁶¹ However, “[i]f the landowner piles or concentrates the agricultural crop where they hunt deer, it would be considered bait.”¹⁶² That being said, the MDNR has wised up to hunter misconduct and is aware that some hunters try to circumvent the system and “just so happen” to have grain concentrated in areas greater than others.¹⁶³

A good example of a state statute specifically prohibiting baiting but allowing for food plotting and hunting in areas as a result of normal agricultural processes is Illinois Administrative Code 635.40.¹⁶⁴ The Code states “[i]t shall be illegal to make available food, salt, mineral blocks or other products for ingestion by wild deer or other wildlife in areas where wild deer are present.”¹⁶⁵ However, exempted from this section of the Code are “standing crops planted and left standing as food plots for wildlife[] [and] grain or other feed scattered or distributed solely as a result of normal agricultural, gardening, or soil stabilization practices.”¹⁶⁶ As a result, the hunter cannot concentrate piles of feed on his farm like his baiting brethren to attract the deer, but he can plant the same crop that the baiter would use in his bait pile to attract the deer.

Another interesting point about this Code is that the Illinois Legislature removed “pure water” from its definition of “bait.”¹⁶⁷ This allows hunters to create artificial watering holes and allows the hunter to place his

157. *See id.*

158. *See id.*

159. *2014 Hunting and Trapping Regulations Handbook, supra note 152.*

160. *See id.*

161. *Id.*

162. *Id.* at 73.

163. *See id.*

164. ILL. ADMIN. CODE tit. 17, § 635.40 (2014).

165. *Id.*

166. *Id.*

167. H.R. 1003, 98th Leg., Reg. Sess. (Ill. 2013).

or her stand near said artificial watering hole, as long as the water is pure and free of supplementation or alteration by the hunter.¹⁶⁸ It is not too far of a stretch to liken this scenario to that of a bait pile placed by a hunter or to call it “baiting,” as here the hunter is using one of life’s essential elements to his advantage to draw deer to another pinpoint location on his farm.¹⁶⁹

From an aerial view the question becomes, whether there is really any difference between placing a bait pile and food plotting or hunting over areas where food has been dispersed as result of regular agricultural practices? Does it seem logical that because the item ingested is grown on the land as opposed to being placed by the hunter that it should be legal to hunt over it? Or because the grain is scattered over a large area as a result of harvesting as opposed to being concentrated in piles it should be legal rather than illegal? The answer may not make sense in the mind of a competent human being, but beneath the surface, a logical answer most likely lies within the topics previously discussed of biological, economic, ethical, and societal concerns of each state and its citizens.¹⁷⁰

As to biological concerns, research suggests that food plotting and scattering of feed due to normal agricultural processes does not concentrate deer to the extent that baiting does, thus reducing deer to deer contact and the likelihood of further spreading biologically and fiscally devastating diseases such as CWD and TB noted above.¹⁷¹ Since food plots are much larger than baited areas, there is “much less concern about disease transmission because deer are not forced to repeatedly feed, urinate, and defecate at the exact same spot as they do with a bait ‘pile.’”¹⁷²

Because food plotting allows for food to be spread over a larger geographical area and is only available for a more limited time, as opposed to bait piles that are continuously replaced, issues such as over-browsing, habitat destruction, and adverse affects on non-target species are less likely to occur.¹⁷³

Food plotting could also help to eliminate some issues within the hunting community. The gripe is that baiting privatizes deer herds and makes hunting no longer about the sport or making fond memories, but rather makes hunting about who is the master-baiter.¹⁷⁴ Baiting leaves many hunters feeling they must bait in order to compete with surrounding landowners

168. *See id.*

169. *Id.*

170. *See supra* pages 17-24.

171. *See Warnke & Jacques, supra* note 103.

172. *A Retrospective on Hunting Deer Over Bait in South Carolina - Can Baiting Negatively Affect Hunter Success and Deer Harvest Rates?*, *supra* note 54, at 8.

173. *Id.*

174. *See Warnke & Jacques, supra* note 103, at 7.

just to see a deer.¹⁷⁵ In a survey in Wisconsin, where baiting is legal in some parts, many hunters told researchers that they would prefer not to bait, but if they did not, they would not be able to harvest a deer.¹⁷⁶ It does not take a rocket scientist to figure out that the better the quality of bait, or the greater the quantity, the more likely one is to see or hold deer on their hunting property.¹⁷⁷ Many think food plotting creates similar issues and causes issues in the hunting community just like that of baiting. Like baiting, a variety of plots and a greater number of plots could lead to an increase of deer on the property, maybe even rising to the level of privatization.¹⁷⁸ If an adjoining landowner does not have the same quantity or quality of food throughout the year, it is likely the deer will remain on the property more suited to the deer's appetite.¹⁷⁹ However, because the food plot is there twenty-four-seven or until it is completely consumed, and not continuously replaced, the deer will come and go as they please and feed on it just as they would with any other normally planted natural food source.¹⁸⁰ This allows for less negative impact on deer behavior as the animals feed at will, rather than when the dinner bell goes off or when the bait pile is replaced.¹⁸¹ That being said, it appears the master plotter is similar to the master baiter, but food plots seem to be more "fair" to the hunters "competing" over the deer herds.¹⁸²

Food plotting may be more accepted by American society and may eliminate many of the ethical and fair chase concerns of those attributed to baiting. As noted previously, in a *Field and Stream Magazine* survey, forty-eight percent of voters felt that baiting deer was fair chase hunting.¹⁸³ In a follow-up survey, seventy-one percent of participants voted that hunting over even a small food plot, also known as a "hunting plot" or "kill plot," was indeed fair chase hunting.¹⁸⁴ That being said, it would appear that food plotting is more generally accepted than hunting over a bait pile. But once again, do results from a survey such as this one make sense logically? It is hard to fathom that there is an ethical difference between a concentrated pile of corn and a micro food plot consisting of standing corn, as the goal of each is to draw in the deer to a specific location in order to produce a lethal

175. *Id.*

176. *Id.*

177. *See id.* at 4.

178. Scott Bestul, *Why Whitetail Food Plots Work Better Than Bait*, FIELD & STREAM (Jan. 19, 2012), <http://www.fieldandstream.com/blogs/whitetail-365/2012/01/why-food-plots-are-better-bait-deer-hunting>.

179. *Id.*

180. *Id.*

181. *Id.*

182. *See id.*

183. Hurteau, *supra* note 136.

184. *Id.*

outcome.¹⁸⁵ It is safe to assume the American public may think a planted food source is less unfair than an automated feeder, or a concentrated pile of food continuously replaced by a hunter.¹⁸⁶ That being said, food plotting, as opposed to baiting, could continue to affirm American support for the sport of hunting, ensuring its existence for coming generations.¹⁸⁷

VI. CONSIDERATIONS WHEN REMOVING OR AMENDING BAITING LAWS: THE EFFECT ON THE HUNTING INDUSTRY, THE AMERICAN ECONOMY AS A WHOLE, AND INDIVIDUAL STATE ECONOMIES

Today, in the ever-growing, multi-billion dollar hunting industry, it is safe to assume that if a state's baiting or food plotting laws were changed, radical economic shifts would likely occur.¹⁸⁸ The vitality of the American hunter cannot be matched as it is estimated that hunting supports more than six hundred and eighty thousand jobs annually in the United States,¹⁸⁹ and in 2011 "[h]unters spent a total of \$38.3 billion . . . that had a total economic multiplier effect of \$86.9 billion across the U.S. economy."¹⁹⁰ As deer hunters comprise nearly half of the American hunting population, the economic impact resulting from a ban on baiting could be catastrophic, not only to an individual state but also to the American economy as a whole.¹⁹¹ It is safe to assume that a drop in license sales, land sales and leases, and public outcry would ensue in states like Texas, where hunting is not only highly practiced, but "expected."¹⁹² Because each individual hunter nationwide spends nearly two thousand dollars a year in hunting expenses, imagine the wave of economic change if millions of deer hunters chose to stop hunting due to an outright ban on their ability to bait deer.¹⁹³ In states like Michigan, it is estimated that deer season draws nearly three quarters of a million hunters statewide, nationally, and internationally, who contribute an estimated \$2.3 billion dollars to the state economy.¹⁹⁴ Further, in Michigan,

185. *See id.*

186. *See id.*

187. *See id.*

188. *See Hunting in America: An Economic Force for Conservation*, *supra* note 26, at 6.

189. *Id.*

190. *Id.*

191. Olmsted, *supra* note 26.

192. *See Marshall*, *supra* note 39, at 48.

193. *See id.*; *Hunting in America: An Economic Force for Conservation*, *supra* note 26, at 3.

194. Joe St. Henry, *Deer Hunting Season Means Big Bucks for the Economy*, THE DET. NEWS (Nov. 12, 2014, 6:16 PM), <http://www.detroitnews.com/story/business/2014/11/12/deer-hunting-season-michigan-economy/18937407/>.

where an outright ban on baiting is sought due to the outbreak of CWD and TB, economists estimate deer bait sales bring in nearly fifty million dollars in revenue annually within the state.¹⁹⁵ Because baits used are normally agricultural products, an outright ban jeopardizes the livelihood not only of the hunter seeking meat for his table, but also of the American producer.¹⁹⁶ Using Michigan as an example once again, the deer bait market may seem more attractive to the local farmer, as it allows for a greater dollar amount per bushel of corn than in the traditional market. Currently, corn is “selling at \$5-\$8 per 50-pound bag. This translates into \$6-\$9.60 per bushel, a range significantly exceeding the current market price.”¹⁹⁷ There is a strong argument here that baiting jeopardizes a farmer’s livelihood, however all is lost, as farmers could go back to selling corn to traditional markets like he or she would have done before the baiting craze took place.¹⁹⁸ That being said, the removal of the ability to bait has potentially catastrophic results to the hunting industry as well the American economy.¹⁹⁹ The question becomes whether or not maintaining the status quo is worth the price of greater biological concerns, increased hunter disputes, lowered public opinion of hunting, and larger fiscal challenges.²⁰⁰

VII. CONCLUSIONS AND THE FUTURE OF “THE GREAT DE-BAIT”

In summation, as a wise individual once said, “Opinions are like assholes, everybody’s got one and everyone thinks everyone else’s stinks.” Whether one describes hunting and its related activities as a “sacred ritual and one of the greatest goods known to modern man” or “a cruel blood sport,” the fact of the matter is that hunting is alive and well in modern day society.²⁰¹ Although today’s hunting practices of baiting, food plotting, or hunting near areas where feed has been scattered due to normal agricultural processes may not be those of which our forefathers intended, it is important the tradition of deer hunting be passed on to further generations. Each new generation will decide what hunting practices will be permitted, based on longstanding state and familial traditions, scientific research, societal and economic impacts, and ethical concerns. As each hunting season

195. Stacey Henson, *Farmers, Hunters Protest Deer-Baiting Ban*, THE SAGINAW NEWS (Oct. 28, 2008, 9:12 AM), http://www.mlive.com/news/saginaw/index.ssf/2008/10/farmers_hunters_protest_deerba.html.

196. *Id.*

197. DeDecker, *supra* note 69.

198. *See id.*

199. *See id.*

200. *See id.*

201. Bradford J. Roegge, *Survival of the Fittest: Hunters or Activists? First Amendment Challenges to Hunter Harassment Laws*, 72 U. DET. MERCY L. REV. 437, 445 (1995).

passes, and “the great de-bait” evolves, the issues, questions, comments, and concerns surrounding it will continue to be food for thought, both literally and figuratively.