

Concord Monitor editorial

# Court should stomp on park's Bigfoot ban

By [Monitor staff](#)

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The Bigfoot lawsuit, which the state Supreme Court will hear tomorrow, may not go down in legal history as one of the great New Hampshire cases, like *Hawkins v. McGee*, the suit for damages over a botched skin graft that left a man with a hairy palm; *Wooley v. Maynard*, the 1974 U.S. Supreme Court case that found that a family could tape over the state's "Live Free or Die" motto on their license plate because the statement conflicted with their beliefs; or *Chaplinsky v. New Hampshire*, the case that found that First Amendment protections do not apply to "fighting words." But the Bigfoot case, otherwise known as *Jonathan Doyle v. George Bald*, is important because the state abused its power and deserves to lose.

In 2009, Doyle, a self-described performance artist, sculptor and filmmaker, bought a Bigfoot suit from a costume shop, climbed Mount Monadnock with his then-girlfriend, donned the costume at the summit, and jumped around and beat his chest while being filmed. He then interviewed and filmed hikers about how they felt upon seeing the normally elusive star of cryptozoology on the mountain.

Doyle, as a performance artist is wont to do, sought and received publicity for his stunt and brief video. It included a front-page story in the *Keene Sentinel* that announced his intention to make a sequel. Though a ranger watched his initial antics and never mentioned the need for a permit and no one complained about the stunt, when Doyle returned with five friends, including several who donned costumes for the sequel, he was confronted by the manager of the state park and told to leave because he lacked a special-use permit.

The parks division of the Department of Resources and Economic Development, whose commissioner is George Bald, requires that permits, which cost \$100, must be requested 30 days in advance and require the posting of a \$2 million bond. Permits are required for off-season use of a park and events like a large fundraising hike, a gathering that lays claim to a park facility for a lengthy period of time, a commercial purpose, or an event that involves the sale of alcohol.

In its defense of Doyle, the New Hampshire chapter of the ACLU argues that the ordinance is unconstitutionally vague and allows the park system's director to apply it arbitrarily - in Doyle's case, to abridge his free speech rights. We agree.

Historically, the special permit rule has been applied arbitrarily or often not at all, and fees waived at the park director's discretion. Doyle's small-scale, amateur movie-making is free expression protected by the First Amendment. And while a special-use permit is defensible if a Hollywood movie crew descends on a state park, Doyle's little group of six was smaller than many groups that regularly climb Monadnock.

Today, practically every digital camera can record video, and no doubt hundreds of people have filmed themselves clowning around in state parks without incident. But parks department officials, it seems,

liked neither Doyle's idea nor the publicity that it generated, so they put at stop to it. But they have no place determining what speech is or is not appropriate.

A permit system that costs \$100, takes at least 30 days and requires the posting of a bond at an out-of-pocket cost estimated at \$350 places a huge hurdle in front of an individual or small group that wants to use a state park as the backdrop to make a statement. It functions as a prior restraint of speech, and the high court should say so emphatically. State agencies, and state parks, must not be run as fiefdoms whose officials make and waive the rules as they see fit.

The court should side with Bigfoot on this one.