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LAW & HUMAN DIGNITY

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AG-GAG LAWS: CORPORATE ATTEMPTS TO KEEP CONSUMERS IN THE DARK

WILL POTTER*

The only way we, as consumers, have begun to see behind the closed doors of factory farms is through the work of whistleblowers and undercover investigators. In recent years, the animal agriculture industry has been rocked by a series of exposés that have revealed the true story of our food. These investigations, led by non-profit animal protection organisations, have used photography and video cameras to document egregious acts of animal cruelty, along with standard industry practices. They have garnered international media coverage, prompted historic prosecutions, and most importantly, created a cultural shift in how consumers understand animal agriculture. Rather than condemn these abuses, change their policies, and respond to consumer demand, the agriculture industry has responded by attempting to shoot the messenger. The industry has labelled whistleblowers as “terrorists” and supported new laws to silence them. ‘Ag-gag’ laws — ‘ag’ is for ‘agriculture’, ‘gag’ is ‘to silence’ — are an explicit attempt that began in the United States to outlaw undercover investigations and whistleblowing if they negatively portray the industry. These proposals — introduced in 25 states, passed into law in six, and now spreading internationally, including Australia — eliminate the only meaningful oversight of this massive industry and allow it to continue operating without oversight or accountability. The industry's efforts to restrict information in the United States has become an international model for corporate efforts to keep consumers in the dark.

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I INTRODUCTION

We all know what a farm looks like. It is full of happy cows, happy pigs, and happy chickens. Happy farmers work outside, and little red barns dot the countryside. We all know this, because this is a story we have been told our entire lives.

I grew up in Fort Worth, Texas, and knew this story well. Fort Worth is "Cowtown" — cattle country, and home to the historic Fort Worth Stockyards. I remember my family taking my cousins and me to the brick-covered streets of the former stockyards, now a tourist destination, when we were children. We watched a herd of Longhorns driven through town by cowboys and ran through a maze made from old cow chutes. Growing up, I was surrounded by animal agriculture, and I even had family members who worked on factory farms, yet I had no idea what they looked like in real life.

As children, many of us sang ‘Old MacDonald had a farm’ and played with toy sets full of plastic pink pigs, smiling cows, and shiny green tractors. As adults, most of us have watched commercials with dairy cows mooing in lush green fields, pigs rolling in hay, and hens pecking freely outside of barns; we have seen the same iconic imagery used in product labels and reflected in brand names. This carefully constructed marketing by the agriculture industry taps into a romantic narrative of farming that we have been exposed to repeatedly since before we even knew what “marketing” meant.

The reality of modern farming is much different. The only way we, as consumers, have begun to see behind the closed doors of factory farms is through the work of whistleblowers and undercover investigators. In recent years, the animal agriculture industry has been rocked by a series of exposés that have revealed the true story of our food. These investigations, led by non-profit animal protection organisations, have used photography and video cameras to document egregious acts of animal cruelty, along with standard

industry practices. They have garnered international media coverage, prompted historic prosecutions, and, most importantly, created a cultural shift in how consumers understand animal agriculture.

As the author Jonathan Safran Foer noted: 'Undercover investigations by dedicated non-profit organisations are one of the only meaningful windows the public has into the imperfect day-to-day running of factory farms and industrial slaughterhouses.'¹

In one such investigation in California, the Humane Society of the United States documented cows too sick to even walk — so common that they are called "downers" by the industry — entering the food supply. Workers at the Hallmark/Westland Meat Packing Company were using heavy machinery to push cows into the "kill box" so that they could be slaughtered. Workers were recorded beating and kicking the cows, applying electric shocks, and stabbing them with the blades of a forklift.² The slaughterhouse was the US Department of Agriculture's second-largest supplier, and was named a 'supplier of the year' for 2004–2005.³ These sick animals would have been fed to school children in 36 states as part of the national school lunch program of the United States Department of Agriculture ('USDA').⁴ The exposure of these practices prompted the recall of 143 million pounds of meat,⁵ the largest meat recall in US history.⁶

Other investigations have revealed vicious acts of cruelty. Mercy For Animals has exposed workers throwing pigs across the room and calling it a 'roller coaster ride';⁷ throwing a bowling ball at a pig's head for fun;⁸ and punching cows in the face while another worker

¹ Jonathan Safran Foer, *Eating Animals* (Back Bay Books, 2010) 181.

² Humane Society of the United States, *Rampant Animal Cruelty at California Slaughter Plant* (30 January 2008) <http://www.humanesociety.org/news/news/2008/01/undercover_investigation_013008.html>.

³ Hallmark/Westland Meat Recall: Hearing before a Subcommittee of the Committee on Appropriations United States Senate, Comm. on Appropriations, 110th Cong. 37 (2008) (statement of Sen. Wayne Paccelle, President and CEO of The Humane Society of the United States).

⁴ Joe Roybal, 'California Nightmare', *Beef Magazine* (online), 1 March 2008 <<http://beefmagazine.com/beef-quality/cattle-handling/california-nightmare>>.

⁵ 'USDA recalls 143 million pounds beef', *NBC News* (online), 3 March 2008 <<http://www.nbcnews.com/id/23212514/>>.

⁶ David Brown, 'USDA Orders Largest Meat Recall in US History', *Washington Post* (online), 18 February 2008 <<http://www.washingtonpost.com/wp-dyn/content/article/2008/02/17/AR2008021701530.html>>.

⁷ Mercy For Animals, *Concealed Cruelty – Pork Industry Animal Abuse Exposed* <http://pigabuse.mercyforanimals.org/?_ga=1.214877140.250614545.1480100857>.

⁸ Mercy For Animals, *Undercover Investigations* <<http://www.mercyforanimals.org/investigations>>.

joked about sexually abusing the animals, asking the investigator, '[d]o you want me to fuck her?'⁹ Compassion Over Killing ('COK') has documented workers suffocating birds by standing on their heads,¹⁰ and punching them while they hung in shackles;¹¹ newborn calves, just days old with umbilical cords still hanging from their bodies, being dragged by their necks and slammed on the ground;¹² and workers pushing the herniated intestines of pigs back into their bodies by hand, and then wrapping the open wound with tape.¹³ In one COK investigation, of a Hormel pork supplier, pigs were beaten, shocked, and improperly stunned, all out of view of government inspectors.¹⁴ In another Humane Society investigation, calves were picked up only by their tails, and sprayed with high-pressure water hoses; the plant manager warned workers not to do these things with the US Department of Agriculture inspector present.¹⁵

Undercover investigations have exposed animal abuse so egregious that they have even resulted in criminal prosecutions for animal cruelty against farm animals — a historic legal development. Workers in North Carolina were exposed beating turkeys with metal pipes,¹⁶ and the investigation resulted in the first-ever felony cruelty prosecution related to animals used for food.¹⁷ In Wyoming, workers pleaded guilty to animal cruelty after they were exposed punching piglets and kicking them like soccer balls.¹⁸ Prosecutors have relied on

⁹ YouTube, *Dairy Industry Tries to Cover Up Factory Farm Sex Abuse* (18 February 2014) <<https://www.youtube.com/watch?v=3PlJgBeOmZc>>.

¹⁰ Compassion Over Killing, *Tyson Exposed: A Tradition of Torture* <<http://cok.net/inv/Tyson/>>.

¹¹ Compassion Over Killing, *Ag-Gag Alert: North Carolina Chicken Slaughterhouse Horrors* <<http://cok.net/inv/mountaire/>>.

¹² Compassion Over Killing, *Quannah Cattle Company Animal Cruelty Investigation* <<http://cok.net/inv/quannah/>>.

¹³ Compassion Over Killing, *Iowa Investigation: Hawkeye Sow Centers (Hormel Supplier)* <<http://cok.net/inv/iowa-pigs/>>.

¹⁴ Compassion Over Killing, *Hormel Investigation* <<http://cok.net/inv/hormel/>>.

¹⁵ YouTube, *HSUS Investigation of Catelli Bros. Calf Slaughter Plant* (27 January 2014) <<https://www.youtube.com/watch?v=7suPjXRwVTk&feature=youtu.be>>.

¹⁶ Cindy Galli, 'Butterball Farm Worker Guilty of Animal Cruelty', *ABC News* (online), 28 August 2012 <<http://abcnews.go.com/Blotter/butterball-farm-worker-guilty-animal-cruelty/story?id=17098746>>.

¹⁷ Nathan Runkle, 'Making History: Butterball Case Marks First-Ever Felony Conviction for Cruelty to Factory-Farmed Birds' on *Mercy For Animals*, 29 August 2012 <<http://www.mercyforanimals.org/making-history-butterball-conviction-marks-first-ever-felony-conviction-for-cruelty-to-factory-farme>>.

¹⁸ Snejana Farberov, 'Nine Arrested for Animal Cruelty at Wyoming Pig Farm Where Workers Were Caught on Video Brutally Punching Sows and Flipping Piglets in the Air', *Daily Mail* (online), 27 December 2012 <<http://www.dailymail.co.uk/news/article-2253325/Nine-arrested-animal-cruelty-Wyoming-pig-farm-workers-caught-video-brutally-punching-sows-flipping-piglets-air.html>>; Becky Orr, '9 Cited in Abuse at Wheatland Pig Farm', *Wyoming News* (online), 25 December 2012 <http://www.wyomingnews.com/news/cited-in-abuse-at-wheatland-pig-farm/article_0b5c46de-fff2-53e3-bf23-7fed030b70de.html>.

the detailed footage of undercover investigators to build their legal cases and punish the workers caught on camera.

These whistleblowers have not only exposed horrific, aberrant behaviour, but perhaps most damning of all is that they have also shown the public what the industry considers completely normal and humane, or ‘standard industry practices’¹⁹ — cutting off the tails of piglets, the testicles and horns of bulls, and the beaks of chickens without anaesthesia;²⁰ tossing male chicks into trash cans to be gassed, electrocuted, or ground alive, because the males hold no value for the egg industry;²¹ confining sows in ‘gestation crates’ and ‘sow stalls’ — metal pens that are used to keep female pigs tightly confined during pregnancy, and for most of their adult lives;²² separating baby cows from their mothers after birth, and chaining them in veal crates where they cannot even turn around, so that their flesh remains soft;²³ stacking hens in battery cages — wire cages that are the dominant form of restricting egg-laying hens, internationally — so tightly that each bird is given less space than a standard sheet of paper,²⁴ its neck and wings are immobilised in the corroded cage wire, it is surrounded by mummified corpses, and covered in the faeces of birds stacked above it.²⁵

For the animal agriculture industry, all of this is business as usual.

And the industry has publicly defended all of it. In some cases of extreme cruelty, farm owners have attempted to distance themselves from their own workers, and say they were unaware of their daily abuses. In other cases, some have even claimed the cruelty was only

¹⁹ David J Wolfson, *Beyond the Law: Agribusiness and the Systemic Abuse of Animals* (1996) Animal Legal & Historical Center <<https://www.animallaw.info/article/beyond-law-agribusiness-and-systemic-abuse-animals>>.

²⁰ Paul Solotaroff, ‘Animal Cruelty is the Price We Pay for Cheap Meat’, *Rolling Stone* (online), 10 December 2013 <<http://www.rollingstone.com/feature/belly-beast-meat-factory-farms-animal-activists>>.

²¹ Maryn McKenna, ‘By 2020, Male Chicks May Avoid Death by Grinder’, *National Geographic* (online), 13 June 2016 <<http://www.nationalgeographic.com/people-and-culture/food/the-plate/2016/06/by-2020-male-chicks-could-avoid-death-by-grinder/>>.

²² National Hog Farmer, *Getting the Right Message on Sow Gestation Stalls* (3 July 2012) <<http://www.nationalhogfarmer.com/animal-well-being/getting-right-message-sow-gestation-stalls>>.

²³ Mercy For Animals, *Ohio Veal Investigation* <<http://veal.mercyforanimals.org/>>.

²⁴ Humane Society of the United States, *Animal Suffering, Filth, and Hen Corpses at Kreider Egg Farms* (12 April 2012) <http://www.humanesociety.org/news/press_releases/2012/04/investigation_kreider_farms_041212.html?credit=web_id158983203>.

²⁵ Compassion Over Killing, above n 13.

possible because of "coaching" and "staging" by animal advocates — claims that have never been proven.²⁶

Overwhelmingly, though, every time a new investigation is released, corporations and industry associations respond by simultaneously defending the practices and proclaiming their love for their animals. In Canada, for example, Mercy For Animals exposed workers at Puratone pig farm holding piglets by their feet and slamming them onto the concrete floor to kill them.²⁷ The Animal Care and Review Panel responded by saying that what investigators exposed are widely accepted practices within the industry.

The headline of *The Vancouver Sun* said it all: 'Body slamming piglets to death humane, pork experts say.'²⁸

II CULTURAL SHIFT IN ANIMAL WELFARE

When consumers are confronted with this disconnect between animal agriculture's fiction and the animals' reality, they are outraged and demand change. In the United States, new legal standards are being developed to eliminate the most restrictive confinement on factory farms. Often these proposals are initiated by consumers gathering thousands of signatures in ballot initiatives so that the issue will be considered for a state-wide vote. In 2008, California passed a sweeping measure to ban veal crates, gestation crates, and battery cages: the proposal passed with a greater margin of approval than any other citizen-led proposal in the state's history.²⁹ To date, five states have banned or restricted battery cages, eight states have banned veal crates, and nine states have agreed to phase out gestation crates.

The latest initiative, in Massachusetts, was a proposal called Question 3 to prohibit the in-state sale of eggs, veal, or pork if they come from farms that use battery cages, veal crates,

²⁶ Scott Logan, Kelsey Anderson and KBOI Web Staff, 'Senator: Video of Cow Abuse Staged, Advocacy Group Considers Lawsuit', *Idaho News* (online), 17 March 2014 <<http://kboi2.com/news/local/senator-video-of-cow-abuse-staged-advocacy-group-considers-lawsuit>>.

²⁷ Mercy For Animals, *Crated Cruelty: Canada's Pork Industry Animal Abuse Exposed* <<http://pigcruelty.mercyforanimals.org/>>.

²⁸ 'Body Slamming Piglets to Death Humane, Pork Experts Say (with Graphic Video)', *Vancouver Sun* (online), 12 December 2012 <<http://web.archive.org/web/20121221235454/http://www.vancouversun.com/business/Body+slamming+piglets+death+humane+pork+experts+with+graphic+video/7677326/story.html>>.

²⁹ Farm Sanctuary, *State Legislation* <<http://www.farmsanctuary.org/get-involved/federal-legislation/state-legislation/>>.

or gestation crates.³⁰ The proposal won the support of a staggering 78 per cent of voters. The overwhelming success of the initiative left the animal agriculture industry deflated. 'I think there are some in the egg industry that have lost the will to fight anything that [the Humane Society] puts forward,' said Ken Klippen, spokesman for the National Association of Egg Farmers.³¹ 'They don't want to fight anymore.'³²

New research has shown that these values are widely shared by voters, and more would like the government to take action and eliminate cruel farming practices. According to a Michigan State University study, if given the opportunity, 70 per cent of voters nationally would support outlawing gestation crates.³³ This type of enormous consumer support has led to some of the biggest corporations changing their own practices, in advance of legislative changes. McDonald's, for example, recently announced a switch to cage-free eggs by 2025.³⁴

In short, we are witnessing a massive shift in legal standards, and the cultural values they reflect, surrounding farm animals. Many factors have contributed to this social change, but the dominant influence of undercover investigations has been undeniable. As the *Journal of Agricultural Economics* explained in the first study of its kind, when animal welfare issues are reported in the news, consumers respond by cutting back on the amount of meat they eat.³⁵ In other words, when people are able to see abuse, they do not want to take part in it.

³⁰ Massachusetts Attorney General, *An Act to Prevent Cruelty to Farm Animals* (29 July 2016) <<https://web.archive.org/web/20170318114110/http://www.mass.gov/ago/docs/government/2015-petitions/15-11.pdf>>.

³¹ Chase Purdy, 'How the Vegan Movement Broke Out of Its Echo Chamber and Finally Started Disrupting Things' on *Quartz* (13 November 2016) <<http://qz.com/829956/how-the-vegan-movement-broke-out-of-its-echo-chamber-and-finally-started-disrupting-things/>>.

³² *Ibid.*

³³ Glynn T Tonsor, Department of Agriculture, Food, and Resource Economics, *Consumer Demand for Animal Welfare Practices: Gestation Crate/Stall Use* (17 December 2008) Michigan State University <https://www.agmanager.info/sites/default/files/2008_MPPC_AnimalWelfareDiscussion.pdf>.

³⁴ Lisa Baertlein, 'Big Food Investors to Meet on Cage-Free Eggs, Humane Sourcing', *Reuters* (online), 24 September 2015 <<http://www.reuters.com/article/us-usa-funds-food-idUSKCN0R012V20150924>>.

³⁵ Glynn T Tonsor, Nicole Olynk and Christopher Wolf, *Media Coverage of Animal Handling and Welfare: Influence on Meat Demand* (July 2009) AgEcon Search: Research in Agricultural & Applied Economics <http://ageconsearch.tind.io/record/49338/files/AAEA_2009_TonsorOlynkWolf_7.15.09_.pdf?version=1>.

III 'WE DON'T NEED THESE ACTIVISTS TO POLICE US'

Rather than condemn these abuses, change their policies, and respond to consumer demand, the agriculture industry has responded by attempting to shoot the messenger. The industry has labelled whistleblowers as "terrorists" and supported new laws to silence them. 'Ag-gag' laws — 'ag' is for 'agriculture', 'gag' is 'to silence' — are an explicit attempt to outlaw undercover investigations and whistleblowing if they negatively portray the industry. These proposals — introduced in 25 states, passed into law in six,³⁶ and now spreading internationally — eliminate the only meaningful oversight of this massive industry and allow it to continue operating without oversight or accountability.

In California, for example, an investigation by Compassion Over Killing of Central Valley Meat Co revealed such extreme cruelty that the government actually shut down the slaughterhouse. This type of intervention by the US Department of Agriculture is extraordinarily rare. The footage was so shocking that McDonald's, Costco, and In-N-Out Burger quickly cut ties with the supplier.³⁷

The animal agriculture industry, not surprisingly, was outraged. The industry pressured members of Congress to take action, and a few days after the plant was shuttered, three US Representatives from California sent a letter to the USDA calling for the immediate reopening of the slaughterhouse.³⁸ US Representatives Devin Nunes, Kevin McCarthy, and Jeff Denham said that its closure was hurting the economy, and the government needed 'to intervene against the onslaught of attacks that are occurring at the behest of radical groups'.³⁹ In a blog post, Representative Nunes compared the non-violent undercover filming to arson and described it as 'economic terrorism'.⁴⁰ As a result, the slaughterhouse reopened.

³⁶ American Society for the Prevention of Cruelty to Animals, *What is Ag-Gag Legislation?* <<https://www.asPCA.org/fight-cruelty/advocacy-center/ag-gag-whistleblower-suppression-legislation/ag-gag-bills-state-level>>.

³⁷ Christine Hauser, 'Work at Slaughterhouse Is Halted After Graphic Undercover Videos' on *The Lede, The New York Times* (22 August 2012) <http://thelede.blogs.nytimes.com/2012/08/22/work-at-slaughterhouse-is-halted-after-graphic-undercover-videos/?_r=0>.

³⁸ Letter from Devin Nunes, Kevin McCarthy and Jeff Denham to Thomas J Vilsack, Secretary of the United States Department of Agriculture (23 August 2012) <http://nunes.house.gov/uploadedfiles/usda_letter.pdf>.

³⁹ *Ibid.*

⁴⁰ Devin Nunes, 'Eco-extremists Strike Again' on *Devin Nunes* (23 August 2012) <<http://devinnunes.blogspot.com/2012/08/eco-extremists-strike-again.html>>.

The message of animal agriculture trade groups has been, '[w]e don't need these activists to police us. We can do it ourselves.'⁴¹ Animal advocates should not be allowed to document animal welfare abuses, they say. That should be left to the government and law enforcement. Most Americans would be shocked to learn, though, that in the United States not one single law protects farm animals during their lives. Not one.

The *Animal Welfare Act*, the nation's flagship legislation to prosecute animal cruelty, does not apply to food.⁴² There are some laws that protect farm animals at the point of slaughter, such as the *Humane Methods of Slaughter Act*,⁴³ but even those only apply at the time of death. They also specifically exempt poultry, which constitute about 90–95 per cent of the animals killed. On top of all this, about 25 states have exemptions for whatever the animal agriculture industry decides are 'customary practices'. If the industry decides it is 'customary' to keep pigs in gestation crates, cut off pieces of them without anaesthesia, and stack them on top of each other in battery cages, then, by definition under the law, it cannot be considered cruelty.

Simply put, between 8 and 9 billion animals are raised and killed for food every year in the United States by an industry that is not effectively monitored by any level of government. As Mark Bittman wrote for *The New York Times*, '[v]ideotaping at factory farms wouldn't be necessary if the industry were properly regulated. But it isn't.'⁴⁴ With ag-gag laws, the animal agriculture industry is fighting to keep it that way. The industry's efforts to restrict information in the United States has become an international model for corporate efforts to keep consumers in the dark.

⁴¹ Emily Meredith, 'Who "Ag Gag" Laws Truly Protect — Part III' on *Meatingplace* (2 December 2013) <<http://www.meatingplace.com/Industry/Blogs/Details/39779>>.

⁴² *Animal Welfare Act of 1966*, 7 USC § 2131 (1966); Animal and Plant Health Inspection Service, United States Department of Agriculture, *Animal Welfare Act* (14 June 2017) <https://www.aphis.usda.gov/aphis/ourfocus/animalwelfare/sa_awa/ct_awa_program_information/>.

⁴³ *Humane Slaughter Act of 1958*, 7 USC § 1901 (1958).

⁴⁴ Mark Bittman, 'Who Protects the Animals?', on *Opinionator*, *The New York Times* (26 April 2011) <<http://opinionator.blogs.nytimes.com/2011/04/26/who-protects-the-animals/>>.

IV ROOTS OF AG-GAG

To truly understand this modern legislation, we need to step back and examine its historical roots and the current political climate after the September 11 terrorist attacks. Ag-gag and the war on whistleblowers has been building for decades.

The rhetoric of 'eco-terrorism' — a word created by industry groups in 1985 — took new meaning after 9/11.⁴⁵ What began as a public relations campaign against activist groups worked its way into the top levels of government. Animal rights and environmental activists became the FBI's 'number one domestic terrorism threat'.⁴⁶ Even in the most militant activist tactics, such as breaking into laboratories or fur farms, or setting logging equipment on fire, no one has been injured. Yet an animal rights activist has even been listed on the FBI's website, alongside Osama bin Laden.⁴⁷

Meanwhile, right-wing groups who have a history of bloodshed are repeatedly left out of FBI and Homeland Security listings and not labelled as "terrorists".⁴⁸ According to the FBI, in the three years after the September 11 terrorist attacks, every act of domestic terrorism except for one was the work of animal rights and environmental activists.⁴⁹ Those incidents physically harmed no one. Yet in that same time period, there were 283 injuries and 71 deaths by right-wing groups, primarily targeting people because of their ethnicity or sexual orientation.⁵⁰

The FBI's disparate treatment of these groups sends a clear message to the public. If you occupy government land with high-powered weapons, you will get a slap on the wrist; if you protest corporations non-violently for animal protection or environmental reasons, you are a terrorist. As a Congressional report warned in 2012, 'the crimes committed

⁴⁵ For a detailed history, see Will Potter, *Green is the New Red: An Insider's Account of a Social Movement Under Siege* (City Lights Books, 2011).

⁴⁶ Henry Schuster, 'Domestic Terror: Who's Dost dangerous?', *CNN* (online), 24 August 2005 <<http://www.cnn.com/2005/US/08/24/schuster.column/>>.

⁴⁷ Vivian Ho, 'Daniel Andreas San Diego Listed on FBI's Most Wanted' on *SFGATE* (13 December 2013) <<http://www.sfgate.com/crime/article/Daniel-Andreas-San-Diego-listed-on-FBI-s-most-5062632.php>>.

⁴⁸ Justin Rood, CQ Homeland Security, *Animal Rights groups and Ecology Militants Make DHS Terrorist List, Right-Wing Vigilantes Omitted* (25 March 2005) <http://www.cq.com/public/20050325_homeland.html>.

⁴⁹ Federal Bureau of Investigation, US Department of Justice, *Terrorism* (2002–2005).

⁵⁰ Arie Perliger, *Challengers from the Sidelines: Understanding America's Violent Far-Right* (November 2012) Combating Terrorism Center at West Point <<https://www.ctc.usma.edu/wp-content/uploads/2013/01/ChallengersFromtheSidelines.pdf>>.

by animal rights extremists and eco-terrorists cannot be compared to clearly violent attacks...'.⁵¹

New FBI agents are being trained to follow these misplaced priorities. In documents obtained through the *Freedom of Information Act* — the US open records law — the FBI's training materials on 'eco-terrorism' are not about violence.⁵² The FBI lists lawful First Amendment activity and low-level criminal activity (such as nonviolent civil disobedience) as examples of domestic terrorism by animal advocates. The FBI is particularly focused on information gathering and distribution by these groups, including the use of open records requests and the use of media in a 'public relations war'.⁵³

Prior to ag-gag, corporations attempted a variety of tactics to criminalise the animal protection movement. They attempted to use the *Racketeer Influenced Corruption Organization Act* ('RICO') — the law was intended to be used for the mafia — against the animal rights movement.⁵⁴ They have sought restraining orders and injunctions to stop protests, and they have introduced a variety of state and federal legislation to target their opposition. By far the most significant development in this effort was the passage of federal legislation that created the crime of 'animal enterprise terrorism'.

The *Animal Enterprise Protection Act* is a federal law passed in 1992,⁵⁵ at the request of animal industries, in order to crack down on illegal, underground actions by groups like the Animal Liberation Front. Years later, the law was used to prosecute the SHAC 7,⁵⁶ who were members of an international campaign to stop the notorious animal testing lab, Huntingdon Life Sciences, which had been exposed multiple times by undercover investigators. The SHAC 7 were never accused of participating in underground activity, though. They spoke and wrote about it and published news of both legal and illegal protest activity on their website. According to prosecutors, this web publishing created a political climate that

⁵¹ Will Potter, 'Congressional Report on Domestic Terrorism Addresses the "Green Scare," Cites Green Is the New Red' on *Green Is the New Red* (2 October 2012) <<http://www.greenisthenewred.com/blog/domestic-terrorist-threat-congressional-report/6418/>>.

⁵² Freedom of Information Act, 5 USC § 552 (1967).

⁵³ Will Potter, 'Newly Released FBI "Domestic Terrorism" Training on Anarchists, Environmentalists, Show COINTELPRO Tactics' on *Green Is the New Red* (29 May 2012) <<http://www.greenisthenewred.com/blog/fbi-domestic-terrorism-training-anarchists-eco/6199/>>.

⁵⁴ Racketeer Influenced and Corrupt Organizations Act, 18 USC §§ 1961–1968 (1970) ('RICO').

⁵⁵ Animal Enterprise Protection Act of 1992, 18 USC § 43 (1992).

⁵⁶ 'SHAC 7' on *Green is the New Red* <<http://www.greenisthenewred.com/blog/tag/shac-7/>>.

encouraged illegal acts and amounted to a conspiracy to commit animal enterprise terrorism. They were sentenced to between one and six years in prison.

The *Animal Enterprise Terrorism Act* ('AETA'),⁵⁷ passed in 2006, expanded that law even further. There are three ways to be prosecuted under the AETA: damaging or causing the loss of any property (which is later defined as including the loss of profits), instilling a reasonable fear, and conspiracy. This vague, overly broad language is especially troubling in light of the political climate I have described. How can we possibly describe 'reasonable fear' when industries are campaigning to make the unreasonable reasonable?

When I testified before Congress against the AETA in 2006, the primary concerns I raised were that the law would have a chilling effect on lawful protest activity and that the vague language of the law could be used to wrap up non-violent undercover investigators and whistleblowers. Members of Congress angrily dismissed these concerns, saying the law was tailored to illegal, underground groups. Whistleblowers and lawful protesters would never be affected. They said the law would only be used against people who do things like burn buildings.

It turns out that these statements were completely untrue. The FBI Joint Terrorism Task Force has kept files on activists who expose animal welfare abuses on factory farms and recommended prosecuting them as terrorists, according to a document uncovered through the *Freedom of Information Act*.⁵⁸ The 2003 FBI file details the work of several animal rights activists who used undercover investigations to document repeated animal welfare violations. The FBI special agent who authored the report said they 'illegally entered buildings owned by [redacted] Farm ... and videotaped conditions of animals'.⁵⁹

V AG-GAG

When I began reporting on the criminalisation of dissent 15 years ago, I never thought this latest development would have been possible. At that time, legislative efforts by corporations were focused on labelling underground groups such as the Animal Liberation

⁵⁷ Animal Enterprise Terrorism Act of 1992, 18 USC § 34 (1992) ('AETA').

⁵⁸ Will Potter, 'FBI Says Activists Who Investigate Factory Farms Can Be Prosecuted as Terrorists' on *Green Is the New Red* (20 December 2011) <<http://www.greenisthenewred.com/blog/fbi-undercover-investigators-animal-enterprise-terrorism-act/5440/>>; *Freedom of Information Act*, 5 USC § 552 (1967).

⁵⁹ Potter, above n 56.

Front as terrorists and also criminalising their above-ground supporters. The possibility of legislation to explicitly target anyone who lawfully photographs or videotapes factory farms seemed politically untenable.

Laws with provisions similar to ag-gag have existed since the early 1990s. In Montana, North Dakota, and Kansas, 'agricultural interference' laws include outright bans on photography and video recording. Each includes similar language against those who '[e]nter an animal facility and use or attempt to use a camera, video recorder, or any other video or audio recording equipment'.⁶⁰ These laws remained on the books and set a legal precedent, but they were not enforced. Undercover investigations were simply not as common as they are today.

This first wave of legislation passed in a very different cultural and technological climate. Undercover investigations and whistleblowing were quite different: costly, and their distribution was limited to either physically mailing video tapes or relying on media outlets to air the investigation. Today, the availability of inexpensive pinhole cameras, intuitive video editing programs, cheap web hosting, and free social media tools allows global distribution. An organisation can carry out an investigation for very little money, post it on YouTube for free, and distribute the video primarily through social media channels such as Facebook, and quickly reach millions of people.

This democratisation of technology has made the tactic of undercover investigation accessible to more organisations and the products of those investigations accessible to countless more consumers. The rise of anti-whistleblower laws needs to be understood in this social context. The threat of sunlight has been amplified exponentially.

There is a clearly-seen correlation between the increasing frequency and media attention paid to factory farm whistleblowing and the introduction of ag-gag legislation. In Idaho, for instance, Mercy For Animals exposed workers punching and kicking cows and sexually abusing them at Bettencourt Dairies.⁶¹ In response, the state's billion-dollar dairy industry

⁶⁰ Mont Code Ann § 81-30-103; ND Cent Code § 12.1-21.1; Kan Stat Ann § 47-18-27.

⁶¹ Paresh Dave, 'Graphic Cow Abuse Video Released as Idaho Advances 'Ag-Gag' Bill', *Los Angeles Times* (online), 18 February 2014 <<http://articles.latimes.com/2014/feb/18/nation/la-na-nn-cow-abuse-video-idaho-ag-gag-bill-20140218>>.

drafted SB1337, which prohibits 'audio or video recording' on an agricultural facility.⁶² It also makes it illegal to 'obtain records' without the farm owner's consent.⁶³ Similarly, in Kentucky, the Humane Society exposed horrific abuse against pigs at Iron Maiden Hog Farm. National media described so-called "piglet smoothies",⁶⁴ in which sick and dead piglets were ground up and fed back to their living mothers. The next month, ag-gag language criminalising photography was included in what was previously a piece of animal welfare legislation.⁶⁵

There are three main types of modern ag-gag laws that have been debated in the United States. The first incarnation of ag-gag explicitly criminalised photography and video.⁶⁶ Proposals included language against anyone who 'records an image or sound' from a factory farm and also anyone who 'uploads, downloads, transfers or otherwise sends recorded images of, or sound from, the agricultural operations over the internet in any medium.'⁶⁷ This did not sit well with the public. Just as banning books piques the curiosity of readers, attempting to ban photography has backfired by prompting consumers to wonder what, exactly, is being hidden.

In response to that growing opposition, the industry tried a new tactic. The second iteration of ag-gag bills criminalised those who misrepresent themselves on job applications in order to carry out an investigation. Iowa's ag-gag law, for example, describes 'agriculture production facility fraud' as making a false representation in order to obtain employment and 'commit an act not authorised by the owner' (read: filming animal abuse).⁶⁸ Some of this language is so broad that if someone applies for a job at a farm and is also a member of an animal protection group, that could be a criminal offence.

The third type of ag-gag law is the most innovative. These 'mandatory reporting' bills require investigators to turn over any footage of animal abuse to police within 24 or 48 hours. It is a particularly savvy, and deceptive, proposal. Publicly, the industry says that

⁶² SB, 1337, 62 Legislature, 2nd Sess (Idaho, 2014).

⁶³ Ibid.

⁶⁴ Eliza Barclay, 'Piglet Smoothie' Fed to Sows to Prevent Disease; Activists Outraged' on *NPR* (20 February 2014) <<http://www.npr.org/blogs/thesalt/2014/02/20/280183550/piglet-smoothie-fed-to-sows-to-prevent-disease-activists-outraged>>.

⁶⁵ Ky Stat Rev Ann § 258.505, 258.119.

⁶⁶ Matthew Shea, 'Punishing Animal Rights Activists for Animal Abuse: Rapid Reporting and the New Wave of Ag-Gag Laws' (2015) 48 *Columbia Journal of Law and Social Problems* 337.

⁶⁷ SB 16, 89th Gen Assemb, Reg Sess (Ark 2013); HB, 683, Gen Assemb, (Pa 2013).

⁶⁸ HB 589, 84th Gen Assemb (Iowa, 2012).

they had no idea extreme cruelty was taking place on their farms and that they want to stop it. Using the "see something, say something" mantra of the domestic 'War on Terrorism', they say that investigators should be required to notify police immediately — and that they should not be allowed to send the footage to journalists.

The true intention of this proposal is to stop investigators from documenting patterns of abuse. In any investigation of criminal activity, whether it is organised crime or drug cartels, investigators never stop with just one example. They continue investigating in order to build a case that demonstrates repeat offences and systems of behaviour. With this style of ag-gag law, the agriculture industry is attempting to shift the blame on to individual workers, rather than allow whistleblowers to reveal cruel practices used regularly within the entire industry.

It is troubling enough that these proposals criminalise whistleblowers and their sources, but we also need to remember the identity of typical factory farm workers. These are already among the most disenfranchised populations in the country. The people who work on factory farms are not there because of a passion for the job. They work there because they do not have other options. They are predominantly immigrants and non-native English speakers. In many cases they are undocumented and also do not have easy access to (or money for) attorneys. To tell these workers, whose livelihood and family depend on their job on the farm, that they have to turn over all evidence of abuse to their employer so quickly is a disproportionate burden on an already-marginalised community.

In my research comparing all of these proposals, I have found that some contain identical language. For example, Iowa's HB 589 and Minnesota's HB HF 1369 both include the exact same wording against anyone who 'obtains access to an agricultural production facility by false pretences', or 'makes a false statement or misrepresentation as part of an application for employment at an agricultural production facility'.⁶⁹ Either politicians are just equally brilliant in understanding how legislation should be phrased, or they are working secretly, behind closed doors to share their information nationally, even copying and pasting the text verbatim.

⁶⁹ HB 589, 84th Gen Assemb (Iowa, 2012); HR 1369, 87th Sess (Minn, 2011).

The most recent ag-gag law, passed in early 2016 in North Carolina, marked a sweeping expansion of the scope of this legislation. The bill was introduced on the same day that a fifth Butterball employee pled guilty to criminal cruelty to animals — charges that would not be possible without the undercover investigations that bills like this aim to criminalise.⁷⁰ North Carolina's SB 648,⁷¹ the '*Commerce Protection Act*', does not include any "terrorism" language, as others have in the past, and it does not mention animal agriculture at all.

Instead, it says: 'It is unlawful for any person to willfully make false statements or representations or to fail to disclose requested information as part of an employment application' if the purpose is 'to create or produce a record that reproduces an image or sound occurring within the employer's facility, including a photographic, video, or audio' or 'to capture or remove data, paper, records, or any other documents ...'⁷² It goes on to say that '[a]ny recording... shall be turned over to local law enforcement within 24 hours.'⁷³

As *The New York Times* noted in an editorial against the measure: "The law originally singled out factory-farm exposés, but after it twice failed to pass in the face of resistance from animal-rights activists, lawmakers succeeded in pushing through a version that covered everyone equally."⁷⁴

VI GLOBAL SPREAD

Social movements have no national boundaries. They never have, but online tools have facilitated much more collaboration internationally, including the sharing of strategies being developed by social movements in other countries. In Australia, for example, the animal protection movement has been a global influence. People like Patty Mark pioneered a tactic called 'open rescues', where activists enter the sites of animal abuse, document their findings through photography and video, and then rescue some of the animals who are in dire need of care.⁷⁵ They do all of this without covering their faces or attempting to conceal

⁷⁰ Vandhana Bala, 'Breaking News: Yet Another Butterball Turkey Employee Convicted of Cruelty to Animals' on *Mercy For Animals* (4 April 2013) <<http://www.mercyforanimals.org/breaking-news-yet-another-butterball-turkey-employee-convicted-of-cruelty-to-animals>>.

⁷¹ HR 648, Gen Assemb (N.C, 2013).

⁷² Ibid.

⁷³ Ibid.

⁷⁴ Editorial, 'No More Exposés in North Carolina', *The New York Times* (New York), 1 February 2016.

⁷⁵ YouTube, *Patty Mark – President of Animal Liberation Victoria* (21 June 2010) <<https://www.youtube.com/watch?v=49G4luRsOmo>>.

their identities. As Mark and Animal Liberation Victoria gained international attention, they shaped how American groups thought about their own tactics.⁷⁶ Open rescues began appearing in the United States in the late 1990s and early 2000s,⁷⁷ and those rescues evolved into long-term undercover investigations.

Ideas may not be confined by borders, but neither are corporations. As animal advocacy efforts have spread internationally, so too has the backlash against them. Under neoliberalism and global capitalism, corporations traverse borders freely in pursuit of profits, and with them they bring repressive tactics, frequently backed by governments, to silence those who threaten those profits. After ag-gag took root in the United States, it grew into a model for the animal agriculture industry to silence animal advocates globally.

In 2011, at about the same time modern ag-gag laws emerged in the United States, undercover investigations of animal abuse started being classified as “terrorism” throughout Europe. EUROPOL, the European police agency, published a report on terrorism threats meant as a warning for law enforcement agencies. The report included the 2005 bombing of the London subway, for example, and the 2004 bombing of the Madrid train system. The report also included a section on animal rights activists and a warning about activists with cameras. ‘ARE (animal rights extremists) activists also use disinformation methods in order to discredit their targets and weaken their public acceptance,’ the report says.⁷⁸ ‘Images of sick and abused animals are embedded in video footage and made public’.⁷⁹

In Finland, an animal rights group called Oikeutta eläimille (Justice for Animals) did exactly that and faced harsh penalties. The group published photographs and video footage from 30 pig factory farms.⁸⁰ The two-month investigation documented injured and dying pigs and led to a national outcry by the public and members of Parliament. Instead of

⁷⁶ ‘Opening Doors and Eyes to Animal Suffering’ on *Satya* (March 2004) <<http://www.satyamag.com/mar04/mark.html>>.

⁷⁷ Mark Hawthorne, ‘Inside an Open Rescue: Putting a Human Face on Animal Liberation’ on *Satya* (June/July 2005) <<http://www.satyamag.com/jun05/hawthorne.html>>.

⁷⁸ Europol, *TE-SAT 2011 EU Terrorism Situation and Trend Report* (2011) <https://www.europol.europa.eu/sites/default/files/publications/te-sat2011_0.pdf>.

⁷⁹ *Ibid.*

⁸⁰ Sikatehaat, *Sikalat 2009* (2009) <<https://www.sikatehaat.fi/sikalat-2009>>.

prosecuting those responsible for the animal abuse, law enforcement prosecuted the whistleblowers.⁸¹

In Austria, activist Martin Balluch and his group VGT, the Association Against Animal Factories, has criticised the Austrian People's Party for fighting against animal welfare legislation. Balluch says it is because 26 per cent of the party has ties to animal agriculture,⁸² (much like in the United States, where the sponsors of 'ag-gag' bills have close ties to the industry as well). To prove the point, VGT created a web page with a list of politicians. When visitors click on a name of a politician, they are shown photographs of animals at the farms they own.⁸³ In response, the Austrian Farmers' Association or the ÖVP, created an advertising campaign with a figure dressed in black with a ski mask covering his face. Much like advertisements that have long been used in the United States, it warned of 'farm families terrorised'.

In Australia, this globalised model of resistance and repression is illustrated full-circle: open rescue tactics began here and then expanded to the United States where they evolved into undercover investigations; the investigations were effective, and the industry responded by introducing laws to criminalise them; now, ag-gag laws have been exported back to Australia.

Ag-gag supporters in Australia have copied the entire playbook of the US agriculture industry. The Victoria Farmer's Federation says existing laws have not been able to stop activists from covertly filming farms and sometimes rescuing animals in need of medical treatment. Katrina Hodgkinson, the former New South Wales Primary Industries Minister, said those filmmakers are 'akin to terrorists'.⁸⁴ Farmers even offered a AUD10 000 reward to anyone who could help convict an animal activist.⁸⁵ The pig industry

⁸¹ Mikko Alane, 'No Justice for Animals', *Huffington Post* (online), 22 November 2011

<http://www.huffingtonpost.com/mikko-alanne/pig-animal-justice_b_972672.html>.

⁸² Martin Balluch, 'Tierindustrielobby Innerhalb Der Övp: Tierfabriken Hoher Övp-Funktionärinnen Aufgedeckt' on *Martin Balluch Blog* (24 September 2013) <<http://www.martinballuch.com/?p=3174>>.

⁸³ VGT, *Tierquälerische Tierfabriken hoher ÖVP-FunktionärInnen* (19 September 2013)

<<http://www.vgt.at/filme/fotos/recherchen/20130919OeVP-Tierhaltung/index.php>>.

⁸⁴ 'Animal Rights Activists 'Akin to Terrorists', Says NSW Minister Katrina Hodgkinson', *ABC News* (online), 18 July 2013 <<http://www.abc.net.au/news/2013-07-18/animal-rights-activists-27terrorists272c-says-nsw-minister/4828556>>.

⁸⁵ Simon Thomsen, 'Australian Farmers Have a \$10,000 Bounty Out on Animal Rights Activists over Farm Raids', *Business Insider* (online), 11 December 2013 <<http://www.businessinsider.com.au/australian-farmers-have-a-10000-bounty-out-on-animal-rights-activists-over-farm-raids-2013-12>>.

has paid for television advertisements that say animal activists with cameras ‘terrorise pigs at night’.⁸⁶

The industry in Australia is openly, explicitly modelling Australian proposals after US legislation. They are promoting similar ag-gag laws in hopes of obtaining the same protections that US corporations now have. A Western Australian Senator named Chris Back has been formulating ag-gag legislation to stop websites like AussiePigs.com that publicise undercover footage.⁸⁷ Western Australian Labor Senator Glenn Sterle has called for legislation with mandatory reporting provisions, identical to US ag-gag laws.

These efforts have not been successful in Australia, in large part because of media campaigns and public education efforts by groups like Voiceless, the Animal Protection Institute. Politicians have been wary of embracing legislation that explicitly criminalises truthful information and are exploring other options to arrive at the same result. The federal and New South Wales governments held private meetings with animal industry groups to discuss ways of discrediting animal protection groups, such as changing the laws surrounding evidence gathering so that it is easier to prosecute those who document animal abuse.⁸⁸ Rather than address the cruelty that animal rights activists have consistently exposed, politicians are using tax dollars to discuss how these groups might be stripped of their charitable status.

Animal protection groups in Australia, just like those in the United States and globally, say they will not be deterred. ‘What we witness inside animal agriculture is beyond comprehension,’ says Patty Mark of Animal Liberation Victoria.⁸⁹ ‘The public would not believe us, if we were not able to bring out the video and photographs of the extreme torture, humiliation, deprivation, terror and pain the animals suffer endlessly in their incarceration ... Ag-gag laws won’t stop us.’⁹⁰

⁸⁶ John Stewart, ‘Animal Rights Battle’, *ABC News* (online), 5 November 2013
<<http://www.abc.net.au/news/2013-11-05/animal-rights-battle/5072026>>.

⁸⁷ See, eg, Australian Pig Farming: The Inside Story <aussiepigs.com>.

⁸⁸ Voiceless, *Joyce, NSW Gov Plan to Challenge Animal Charities Revealed* (8 December 2016)
<<https://www.voiceless.org.au/content/joyce-nsw-gov-plan-challenge-animal-charities-revealed>>.

⁸⁹ Will Potter, ‘Attack on Factory Farm Whistleblowers Goes Global’ on *The Dodo* (16 February 2014)
<<https://www.thedodo.com/attack-on-factory-farm-whistle-432282967.html>>.

⁹⁰ *Ibid.*

VII BACKLASH

These attempts to keep consumers in the dark have resulted in a massive public backlash. Every time one of these bills is introduced, it has allowed for an opportunity to discuss what the industry is trying to hide.

The first use of an ag-gag law, much like the first use of the Animal Enterprise Terrorism Act, was for clearly constitutionally-protected activity. In Utah, a young woman named Amy Meyer saw a sick cow being pushed by a bulldozer outside of Dale Smith Meatpacking Company. She did what any of us would in the age of iPhones and YouTube: she filmed it. She was standing on a public street. I found out about the case, and broke the story on my website. Within 24 hours it had created such an uproar that prosecutors dropped all charges.⁹¹

In another case, a young woman named Taylor Radig worked at Quanah Cattle Co in Kersey, Colorado, and covertly filmed calves — some so young they still had umbilical cords attached — being kicked, thrown, and slammed onto trucks. Video footage was released by Compassion Over Killing, and two days later criminal charges were filed against three men shown abusing the animals. Later, Radig was asked to visit the sheriff's office to provide a formal statement. After she confirmed that she had witnessed and recorded the abuse, she was told by police that she, the whistleblower, was being charged with animal cruelty.⁹² Much like Amy Meyer's case, as the public was so outraged that someone who tried to stop animal cruelty was being charged with cruelty herself, prosecutors later dropped the charges.⁹³

The most significant impact of ag-gag laws is that they have brought together a wide range of groups that typically do not engage in dialogue. It has helped build multi-issue coalitions that never existed before — groups including Amnesty International, People for the Ethical

⁹¹ Will Potter, 'First "Ag-Gag" Prosecution: Utah Woman Filmed a Slaughterhouse from the Public Street' on *Green Is the New Red* (29 April 2013) <<http://www.greenisthenewred.com/blog/first-ag-gag-arrest-utah-amy-meyer/6948/>>.

⁹² John B Cooke, 'Press Release: Animal Abuse Investigation; Quanah Cattle Company' on *Green Is the New Red* (22 November 2013) <<http://www.greenisthenewred.com/blog/wp-content/Images/2013.11.22-quanah-press-release-prosecution.pdf>>.

⁹³ Will Potter, 'BREAKING: Charges Dropped Against Investigator Who Filmed Animal Cruelty' on *Green Is the New Red* (11 January 2014) <<http://www.greenisthenewred.com/blog/taylor-radig-charges-dropped/7492/>>.

Treatment of Animals, labour unions, the American Civil Liberties Union, the Sierra Club, Human Rights Watch, and many others. In ag-gag, they see a common enemy.

The message of this coalition has been that if we allow this to take place, if we allow factory farms to silence their critics, other whistleblowers will be next. It does not matter what you think about animal rights activists or if you are a vegetarian. If we allow this industry to gag their critics, other corporations will follow their lead.

Amnesty International said in a statement: ‘What at first might appear to be exclusively an animal abuse issue is, on closer inspection, clearly also a freedom of expression issue, a workers’ rights issue, an environmental issue and a public health issue’.⁹⁴ As Amnesty International put it, ‘... sunshine — in our case, the proverbial candle — really is the best disinfectant. We have no hope of stopping abuses if we can’t even bring them to light.’⁹⁵

At least one US court has agreed and struck down an ag-gag law as unconstitutional in a historic ruling. I was a plaintiff in the first legal challenges filed against these laws. In Idaho, the Animal Legal Defense Fund led the legal effort, arguing that ag-gag is an unconstitutional attempt by the agriculture industry to silence journalists, animal advocates, and whistleblowers who expose cruel farming practices. A wide-range of organisations supported the lawsuit by filing amicus briefs. The basis of the constitutional challenge was that ag-gag laws single out one group of people based on what they believe. Video footage that is favourable to the industry would not be subject to prosecution: it is only critical reporting that is at risk.

A US District Court agreed, and struck down the law. Judge Lynn Winmill said in the ruling that ag-gag ‘gives agricultural facility owners veto power, allowing owners to decide what can and cannot be recorded, effectively turning them into state-backed censors able to silence unfavourable speech about their facilities’.⁹⁶

In addition to violating the First Amendment, by criminalising newsgathering and distribution, ag-gag is also a violation of the Equal Protection Clause of the US Constitution

⁹⁴ Vienna Colucci, ‘Amnesty Makes It 60’ on *Amnesty International USA* (24 May 2013) <<http://blog.amnestyusa.org/us/amnesty-makes-it-60/>>.

⁹⁵ *Ibid.*

⁹⁶ *Animal Legal Defense Fund, et al v C L Butch Otter and Lawrence Wasden*, 44 F Supp 3d 1009 (D Idaho, 2014).

as Winmill said 'because it was motivated in substantial part by animus towards animal welfare groups'.⁹⁷ Also, '[m]any legislators made their intent crystal clear by comparing animal rights activists to terrorists ...'⁹⁸

The ruling is a strongly-worded defence of the First Amendment and investigators, and a harsh attack on attempts by corporations to carve out special protections under the law, solely to protect their profits. It is a landmark victory that spells trouble for the agriculture industry's attempts in other states, such as Utah where the Animal Legal Defense Fund is challenging the ag-gag law.

There are plenty of legal battles to come, but consumers and the courts have weighed in against ag-gag, and the industry has taken notice. The widespread backlash against ag-gag has been so strong that even the industry itself is starting to question the wisdom of this legislation. A survey by Pork Network News of its readership found that 73 per cent of industry respondents said ag-gag laws are not helping them.⁹⁹

All of this is a testament to the power of public education. The animal agriculture industry is threatened by consumers seeing what happens behind closed doors, and law enforcement and lobbyists are threatened by the public seeing these repressive measures. In both cases, when people find out about what is happening, they are outraged and demand change.

Animal cruelty cannot withstand public scrutiny, and neither can the attempts to silence those who expose it.

⁹⁷ Ibid

⁹⁸ Ibid.

⁹⁹ Angela Bowman, 'Can "Ag Gag" Laws Stop Undercover Activists?' on *Cattle Network* (22 March 2013) <<http://www.cattlenetwork.com/news/industry/can-%E2%80%9Cag-gag%E2%80%9D-laws-stop-undercover-activists>>.

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