

ANIMAL LEGAL DEFENSE FUND v. REYNOLDS: HOW AG-GAG LAWS POSE A THREAT TO OUR NATION'S FREE SPEECH

*Alexandra Dolan, Associate Editor, Vol. 31*¹

The United States is a nation known for its guarantees of freedom under the Constitution, explicitly within the First Amendment. So, why are lawmakers creating and upholding laws impinging on activists, whistleblowers, and independent journalists' right to free speech? The real question is, what really goes on in animal facilities, and why are lawmakers shielding the public from this information?

Ag-Gag laws directly target activists and whistleblowers who threaten to expose the harsh realities of animal agricultural facilities.² Ag-Gag laws were initially created in response to the threat that animal rights activists such as the Animal Legal Defense Fund and PETA posed to farmers and agricultural organizations.³ These organizations would send undercover agents to investigate agricultural facilities, where they would secretly record any violations of animal cruelty statutes.⁴ Investigators typically gained access to these farms by securing employment through standard hiring channels.⁵ Once the investigation was complete, the activists would send the videos to law enforcement and the media in order to raise awareness about farm animal abuse.⁶ In an attempt to try to prohibit these covert operations, Ag-Gag laws were created.⁷

¹ Alexandra Dolan is a third-year law student at Widener University Delaware Law School. Alexandra currently serves as an Associate Editor of Widener Law Review. Outside of *WLR*, Alexandra serves as Paw Review Editor of the Student Animal Legal Defense Fund. Before law school, Alexandra graduated from Temple University with a B.A. in Criminal Justice. After graduation, Alexandra plans to take the Pennsylvania Bar Exam and practice law as a transactional or real estate attorney.

² *Animal Legal Def. Fund v. Reynolds*, 89 F. 4th 1071, 1075 (8th Cir. 2024).

³ *Id.*

⁴ *Id.*

⁵ *Animal Legal Def. Fund v. Reynolds*, 297 F. Supp. 3d 901, 908 (S.D. Iowa 2018).

⁶ *Id.*

⁷ *Id.*

These laws were first introduced into legislation between 1990 and 1991 in Kansas, Montana, and North Dakota.⁸ Since their inception, Ag-Gag laws have been contested nationwide, and several states have declared such laws unconstitutional. While many states have chosen to ban Ag-Gag laws, a few have remained unpersuaded in the efforts posed by many animal rights organizations, one of these states being Iowa.⁹ Iowa is notoriously known for the harsh behavior that goes on within its agricultural facilities.¹⁰ Undercover investigators have been able to uncover the heinous acts that occur to animals in these facilities, such as beating pigs with metal rods and mistreating hens and chicks.¹¹ This is just the tip of the iceberg of what goes on in these facilities, and the public was only able to discover this information through the undercover work of whistleblowers.

One of the more recent controversial cases regarding Ag-Gag laws was *The Animal Legal Defense Fund v. Reynolds*. The legal battle between these two parties has been going on for quite some time, the first lawsuit being brought in 2018.¹² The Animal Legal Defense Fund first brought an action against Iowa State to declare one of their state statutes unconstitutional.¹³ The statute in question, Iowa Code § 717A.3A, declares that a person commits agricultural production facility fraud if the person willfully: (a) obtains access to an agricultural production facility by false pretenses, or (b) makes a false statement or representation as part of an application or agreement to be employed at an agricultural production facility, if the person knows the statement to be false, and makes the statement with an intent to commit an act not authorized by the owner of the

⁸ Caitlin A. Ceryes & Christopher D. Heaney, “Ag-Gag” Laws: Evolution, Resurgence, and Public Health Implications, *New Solutions: A Journal of Environmental and Occupational Health Policy*, 664, 666 (2018).

⁹ *Id.*

¹⁰ *Animal Legal Def. Fund*, 297 F. Supp. 3d at 908.

¹¹ *Animal Legal Def. Fund v. Reynolds*, 353 F. Supp. 3d 812, 816 (S.D. Iowa 2019).

¹² *Animal Legal Def. Fund*, 297 F. Supp. 3d at 908.

¹³ *Id.* at 909.

agricultural production facility, knowing that the act is not authorized.¹⁴ The First Amendment does not protect all speech, “but if a law restricts speech that is protectable, the State must justify the law by articulating the problem it is meant to address and demonstrate that the law is properly tailored to address that problem.”¹⁵ Lawmakers justified these laws based on the fact that the state wants to promote facility security, both biosecurity and private property, and harms that coexist with investigative reporting.¹⁶ The Court was not persuaded by these interests and declared the statute unconstitutional.¹⁷ At first, this seemed to be a victory for farm animals across Iowa, but it was short-lived.

After this victory, the Animal Legal Defense Fund continued to fight against Iowa’s statutes that directly target whistleblowers.¹⁸ Once Iowa’s original state statute was struck down, the state attempted to establish a new, very similar, law to get around the Court’s judgment.¹⁹ This statute was also partially struck down by the U.S. District Court for the Southern District of Iowa, yet Iowa refused to give up.²⁰ A more recent statute that Iowa passed, the Iowa Recording Ban, penalizes anyone who, “while trespassing, knowingly places or uses a camera or electronic surveillance device that transmits or records images or data while the device is on the trespassed property.”²¹ The Iowa District Court once again, deemed the statute unconstitutional, based on the fact that the Act only punishes a trespasser exercising a constitutional right, and the Defendants

¹⁴ IOWA CODE § 717A.3A (2012).

¹⁵ *Animal Legal Def. Fund*, 353 F. Supp. 3d at 821.

¹⁶ *Id.* at 817.

¹⁷ *Id.* at 827.

¹⁸ *Ag-Gag Timeline*, ANIMAL LEGAL DEF. FUND, <https://aldf.org/article/ag-gag-timeline/> (last visited July 29, 2024).

¹⁹ *Id.*

²⁰ *Id.*

²¹ IOWA CODE § 727.8A (2021).

had not produced any convincing justifications for this burden, but, once again, Iowa did not surrender.²²

The case was then moved to the United States Court of Appeals for the Eighth Circuit. It was in this Court that the statute was upheld and deemed constitutional, directly going against the Iowa District Court's decision.²³ The Court of Appeals held that "while false or deceptive speech is not per se unprotected, a state nevertheless may constitutionally prohibit intentionally false speech undertaken to accomplish legally cognizable harm."²⁴ The Iowa law was declared constitutional by the Eighth Circuit essentially because it was designed in order to prevent the intent to inflict cognizable harm, conduct, rather than what actually is being said, speech.²⁵

Many local Iowa news stations and government personnel support Ag-Gag laws and were happy to hear about the upholding of Iowa's statute.²⁶ The Iowa Attorney General made a statement regarding the case, claiming that "[t]oday's Court rulings are a landmark victory for Iowa farmers and property owners."²⁷ Not only are Iowa farmers the backbone of our state, but they provide critical food and fuel that propel the rest of the country forward."²⁸ Ag-Gag laws are claimed to be a type of protection for their farmers.²⁹ Iowa lawmakers claim that farmers control much of the country's food supply; therefore, they do not deserve to fight against trespassers and

²² *Animal Legal Def. Fund v. Reynolds*, 630 F. Supp. 3d 1105, 1121 (S.D. Iowa 2022).

²³ *Animal Legal Def. Fund*, 89 F. 4th at 1071.

²⁴ John M. Simpson, *United States: Animal Rights Challenge To Iowa Ag Gag Law Fails in Eighth Circuit*, MONDAQ BUS. BRIEFING (Jan. 11, 2024).

²⁵ Simpson, *supra* note 18.

²⁶ An array of online news sources, including Farm Journal's "*Pork*", published articles reporting on the recent upholding of Iowa's ag-gag statute. Local personnel, including Iowa Attorney General, Briana Bird, and Iowa Governor, Kim Reynolds, spoke out in support of Iowa farmers across the state claiming to continue to uphold the "security and safety of our farmers and their land." Jennifer Shike, *Federal Court Upholds Iowa "Ag Gag Laws: A Win for the Country, Gov. Reynolds Says*, FARM J. (Jan. 9, 2024), <https://www.porkbusiness.com/news/ag-policy/federal-court-upholds-iowa-ag-gag-laws-win-country-gov-reynolds-says>.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

hidden recording devices that would likely threaten their livelihood.³⁰ Although Ag-Gag laws do act as beneficial to some, they certainly do more harm than good to the First Amendment of the Constitution and farm animals nationwide.

Many believe that Ag-Gag laws will not affect them personally because they do not engage in the activities that the laws are designed to suppress,³¹ but this is not true. If Ag-Gag laws can pass First Amendment scrutiny, what is there to stop lawmakers from prohibiting any kind of undercover work? It may start with animal factories, but what does it end with? The aftermath of Ag-Gag laws could potentially interfere with other employment-based investigations that take place in nursing homes, prisons, corporate offices, and even hospitals.³² Essentially, they are silencing our country's journalists and activists, who play a huge role in the persuasion of lawmaker changes. Technically, based on this reasoning, the American people have free speech, as long as we do not use it to exploit big-name factory companies that provide most of the country's meat and dairy products. This flawed logic is the basis for Ag-Gag laws.

Aside from the First Amendment implications, Ag-Gag laws directly affect our farm animals by silencing their only protectors. Why is it that animals rank close to the top in the hierarchy of abuse, yet near the bottom in the hierarchy of protection? The answer is money. The agricultural industry is a billion-dollar enterprise, and whistleblowers may jeopardize its ongoing success. Whistleblowers are our only hope for gaining media attention to the abuse these animals face daily. Animals deserve to be afforded similar protections, and upholding Ag-Gag laws only takes away from this.

³⁰ Shike, *supra* note 26.

³¹ Avery Topel, *Ag-gag in the Aftermath of Free Speech Claims: How Iowa Rewrote Its Unconstitutional Agricultural Protection Law*, 53 ARIZ. STATE L. J. 270, 296-97 (2021).

³² Topel, *supra* note 31.

The legal ramifications of Ag-Gag laws and the threat that they pose to the First Amendment are not worth the protection of farmers alone. The public deserves to know what goes on behind the scenes within these facilities and how farm animals are really being treated. This is a direct hindrance to our nation's free speech and investigative journalism. Therefore, after weighing the pros and cons of Ag-Gag laws, public policy weighs in favor of not imposing this type of burden on our nation's free speech.