

May 12, 2014

Animal Law Section Meeting

Idaho State Bar

In attendance: Rick Freeman, Heather Cunningham, Susan Brooks, Eileen DeShazo, Sunrise Ayers, Joe Larson, Sue Fegelein, Chris Green, Evan Roth, Linda Pall, Justin Marceau, Shannon Dearing, Mike Weki, Kenneth McClure, Adam Karp

- I. Minutes: March minutes available on the website, voted and approved March minutes
- II. Membership: Added some non-lawyer members at Lobby Day, still need more attorney members. If you know any attorneys interested in a particular topic, please invite them to attend one meeting/CLE for free.
- III. Budget: Don't have the most recent numbers from Mahmood, but still in the red. Attendance at Family Law CLE was less than 20 people. Probably can't continue to hold large CLE's unless we can increase attendance b/c not covering the costs of flying in speakers and paying the Bar costs of the CLE. Need to put together our annual report, due mid-May, going over a summary of the budget for this year and projections for next year.
 - a. Suggestion: reduce the annual bar membership fee to, for example, \$10. How do our section fees and CLE fees compare to others? They are comparable, we are on par with what other sections are doing. But there are sections that charge \$15. Not sure if a fee of \$25 is discouraging people from joining? But worth trying?
- IV. Family Law CLE: Less than 20 people, but the speakers were very strong. Judge Minder actually invited the speaker to come speak to the judges. The CLE will be available via video.
- V. CLE
 - a. Chris Green, ALDF, Legislative Program: ALDF has criminal justice, litigation, and legislative programs. Ag gag laws are one of the top legislative issues for animal groups. The purpose is to curtail undercover investigations that could cause embarrassment for agricultural producers. Negative press attention from these investigations has been shown to have an impact on consumer demand. Chris currently owns and operates a farm in Illinois and his perspective is that bad apples can give everyone in agriculture a bad name and embarrass the industry as a whole. Last year all 11 ag gag bills were stopped. This year, ag gag bills have been introduced in several more states, but only Idaho's bill passed. Within a few weeks of passage, ALDF, ACLU and several other groups brought a legal challenge against the law. The first of these bills were passed in the early 90's and were sort of symbolic, aggravated trespassing bills. Then in 2002, ALEC drafted animal enterprise terrorism model legislation that made it a crime to take actions that impacted the business of agriculture. This model bill included a provision making it a crime to enter a facility to take video or photos with an intent to take criminal actions or to defame. That was cut out of the Animal Terrorism Act, but ALEC decided to try and do something with it at the state level. Some laws make it criminal to video or photograph even by long term employees (Idaho, Utah) and other states outlaw obtaining

employment by false pretenses. Other states require turning in documentation of animal abuse to law enforcement within 12 hours. Only 8 states have ag gag laws (Arkansas not included b/c its law was gutted). In 2011, these bills started being introduced again, 20 years after the first 3 bills were passed. There was a back lash against these b/c it reduced transparency. In 2012, 10 more bills were introduced, of those, 3 passed. Iowa's law says a person is guilty of a crime for obtaining employment under false pretenses, making a false statement to gain employment, or making a false statement with intent to take an action not authorized by the owner. Utah's bill outlaws taking videos or photos without the owner's consent, plus the provisions included in Iowa's law restricting access. Missouri passed a quick recording law: video/photo of farm animal abuse must be submitted to law enforcement within 24 hours. The problem with these quick reporting bills is that you will only catch the lower level employees, if you want to show a pattern of abuse and complicity of management, the investigation will take more than 24 hours. Cannot build a case to implicate the higher level people involved, they just fire the 5 or 6 low income workers caught on tape. In California, HSUS did an investigation at Hallmark slaughterhouse, they were there for a week, recorded hours and hours of blatantly illegal activity. They took the footage to USDA and USDA said they didn't really see any violations. So HSUS had to go back for a second and third week, took additional footage to the USDA, they still didn't take any action. HSUS released the tapes to the media and finally USDA took action and it resulted in the largest beef recall in history. USDA ended up shutting down the entire operation.

- b. Idaho's law: "Interference with Agricultural Production"
 - i. Idaho law includes a provision that allows a facility to seek civil damages if they are shut down or lose business
 - ii. Makes it a crime to obtain records or employment by misrepresentation or with intent to cause economic injury (could include notifying law enforcement that a law is being broken); entering an agricultural facility and taking audio or video recordings, intentionally causing damage to the facility. Agricultural production includes not only agricultural production, but processing, packaging, restaurants, etc.
 - iii. ALDF filed suit in Utah and Idaho

VI. Litigation Strategy

- a. Standing Question: In both Utah and Idaho, they have plaintiffs who are suffering injury, even though they haven't been prosecuted yet, they have had to change their behavior, have had protected activities be chilled. Journalists and groups have said they are no longer able to do what they would have done.
- b. Article VI Supremacy Clause challenge, the state laws are pre-empted, obstacle pre-emption. There is not a direct conflict between state and federal statutes, but state laws impede federal objectives. Idaho law impedes the federal objective of having transparency in the workplace and protecting whistle blowers.

- c. Equal Protection: Different sort of review when the law is predicated on some type of animus, dislike for a politically unpopular group – results in a heightened scrutiny. Legislating based on the dislike of a political group.
 - i. Legislation designed to limit content or viewpoint is presumptively unconstitutional.
 - ii. In Idaho, Senator Jim Packard's (Patrick's?) quotes alone will satisfy the animus question. The animus on the record includes consistent language describing animal activists as combatants, marauders, enemies, unethical. Shows a desire to target these groups because they don't want to be tried in the court of public opinion.
 - iii. There is no reason to differentiate between whistle blowers in other industries and the agricultural industry.
 - d. First Amendment.
 - i. These laws are predicated on conduct. Conduct can be speech. When you are limiting certain conduct, the first amendment is implicated, because what follows will be political speech. Limitations on conduct that will impact speech downstream are unconstitutional.
- VII. In July – will hear from the attorney from Mercy for Animals. Heather also invited Farmer's Bureau, they are changing legislative reps, so will come at some point in the future.