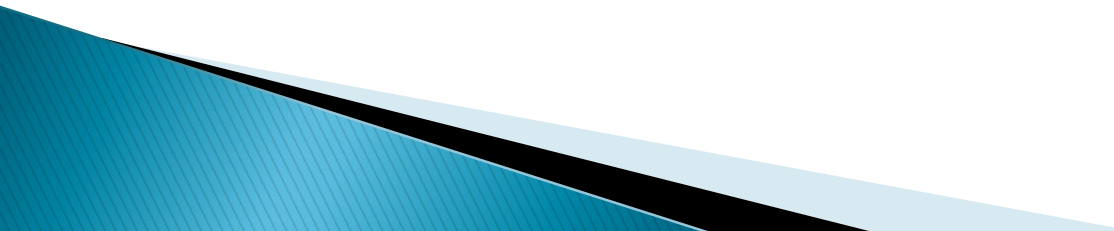


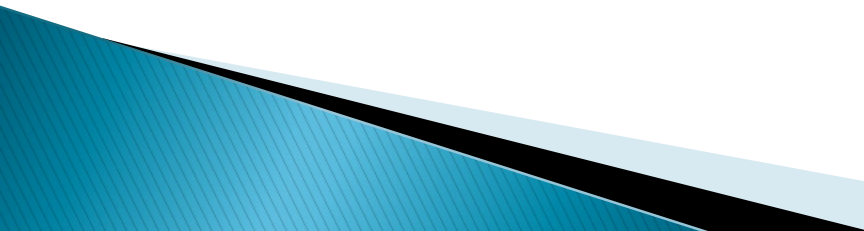
Opening the Barn Door: Court Decisions Striking Down Ag-Gag Laws

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Introduction

- ▶ This presentation covers the history of “ag gag” legislation (state laws criminalizing undercover investigation and whistleblowing of animal cruelty on factory farms), examines the current status of such laws, and explores recent court decisions striking down the Idaho and Utah Ag Gag laws as violations of the First Amendment right to free speech.
 - ▶ The chilling effect of Ag Gag Laws as well as similar Data Trespass Laws will be uncovered as we engage in case studies to reveal the underlying purpose of such laws, which is to conceal the truth and keep hidden from the horrors of the meat and dairy industries.
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What are Ag Gag Laws?

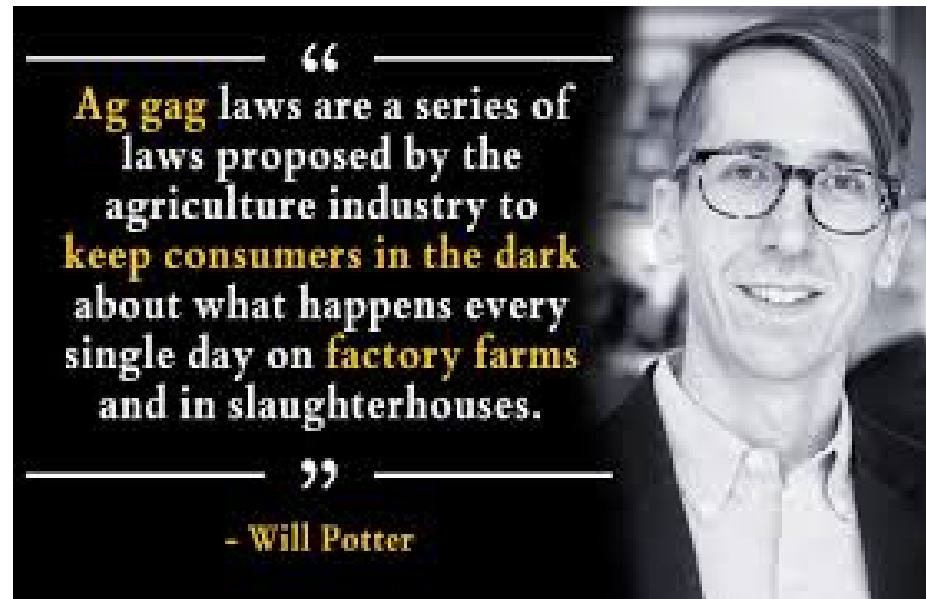
- ▶ The term “ag-gag,” coined by NY Times writer Mark Bittman, “refers to any law that punishes undercover investigators, employees, or other onlookers for recording images or sounds at an industrialized farming operation and subsequently distributing those recordings to the public” (Prygoski, 2015).
 - ▶ Ag-gag laws are in effect “enhanced criminal trespass statutes” designed to “protect” industrial agriculture operations (factory farms) from “interference” by whistleblowers who record evidence of animal cruelty and abuse, food safety violations, environmental harm, and worker safety violations (Sternberg, 2015, pp. 626-627).
 - ▶ The goal of ag-gag laws is to silence whistleblowers from revealing animal cruelty and abuse on factory farms by making it a crime to investigate, record, video, or photograph the activities on a factory farm (“What is Ag-Gag Legislation?,” n.d.).
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Evolution of Ag-Gag Laws

- ▶ 1) **Ecoterrorism Laws (1990s)**: Kansas, Montana, and North Dakota passed the first ag-gag laws, labeled “ecoterrorism” laws aimed to “deter animal rights activists from trespassing and causing physical property damage” in the face of “increased protest and activism that sometimes caused damage” to industrialized farming operations (Prygoski, 2015). These laws also contained provisions criminalizing recording on factory farms;
- ▶ 2) **Green Scare Era (2000 - 2015)**: The passage of the federal Animal Enterprise Terrorism Act and ALEC’s model legislation (“Animal and Ecological Terrorism Act,” which would make an undercover investigation or recording of an animal or research center an act of “terrorism”), combined with the release of recordings showing horrible incidences of animal cruelty and food safety violations fueled a new wave of ag-gag laws starting in 2011.

Evolution of Ag-Gag Laws

- ▶ 3) **A New Breed of Ag-Gag Laws (2015 – 2017):** Ag-gag laws passed in North Carolina (2015), Wyoming (2015), and Arkansas (2017) are a new breed of ag-gag laws that extend their reach to suppress whistleblowing beyond the agricultural industry into other industries and impose civil liability on whistleblowers.



Societal Benefits of Undercover Investigations

- ▶ The important societal benefits of undercover investigations and journalism exposing evidence of animal and human suffering and environmental harm first came to light in 1905 in Upton Sinclair's *The Jungle*, an expose of Chicago's meatpacking plants.
- ▶ While writing *The Jungle*, Sinclair spent months undercover in the meatpacking plants and lived with the immigrant workers to witness firsthand the horrible conditions the workers and animals endured.
- ▶ Sinclair described the horrors of the “wage slaves” working the “disassembly line” in the filthy, contaminated meat-processing plants where workers routinely lost fingers and limbs and ended up drowning in steaming lard vats (“Upton Sinclair's *The Jungle*: Muckraking the “Meat-Packing Industry,” 2008).

Societal Benefits of Undercover Investigations

- ▶ As Sinclair disgustedly witnessed pigs go through the killing gangs and onward down the disassembly line, he spoke for the pigs who had been pulled into this “pork-making by machinery” process:
- ▶ *Even “the most matter-of fact person could not help thinking of the hogs; they were so innocent, they came so very trustingly; and they were so human in their protests – and so perfectly within their rights! They had done nothing to deserve it; and it was adding insult to injury, as the thing was done here, swinging them up in this cold-blooded, impersonal way, without the homage of a tear. ... It was like some horrible crime committed in a dungeon, all unseen and unheeded, buried out of sight and of memory” (Sinclair, 1905).*

Societal Benefits of Undercover Investigations

- ▶ Sinclair's portrayal of the "abusive labor practices, animal cruelty, and unsanitary conditions" in the meatpacking industry "paved the way for the passage of federal legislation aimed at reforming and regulating slaughterhouses and the meatpacking industry" (Sternberg, 2015, p. 626).
- ▶ Following the release of *The Jungle*, the public was in an uproar after reading of the horrors of the meatpacking industry and how commonplace it was for the meat to be contaminated, diseased, doctored with chemicals, and mislabeled.
- ▶ President Theodore Roosevelt appointed a special commission to conduct an investigation and the commission's report confirmed the revolting conditions of the meatpacking plants, leading to the passage of the Meat Inspection Act and The Pure Food and Drug Act in 1906 ("Upton Sinclair's *The Jungle*: Muckraking the "Meat-Packing Industry," 2008).

Social Benefits of Undercover Investigations

- ▶ President Roosevelt called investigative journalists such as Sinclair “muckrakers” who “uncovered the dark side of society, noting “there is filth on the floor and it must be scraped up with a muck-rake” (“Upton Sinclair’s The Jungle: Muckraking the “Meat-Packing Industry,” 2008).
- ▶ While President Roosevelt and Congress took concrete action back in 1906 to reform the slaughterhouses and the meatpacking industry in response to the expose by Sinclair (an early whistleblower), in today’s world (more than a century later), legislatures have been taking the opposite approach and punishing the whistleblower to “protect” the industry from “interference” by modern-day Upton Sinclairs.
- ▶ The powerful animal agriculture industry itself has fueled “legislative efforts to criminalize investigations,” resulting in punishing the whistleblower rather than the wrongdoer (“Upton Sinclair’s The Jungle: Muckraking the “Meat-Packing Industry,” 2008).

The Birth of the Ag-Gag Laws

You see, Senator, people are coming onto factory farms, shooting video of horrific animal abuse, and sharing it with the public.

And I assume you want us to pass legislation outlawing this horrific animal abuse?

Oh, good heavens, no! We simply want to make it illegal to show this animal abuse to the public.

Okay. So about my re-election fund...



Idaho's Ag-Gag Law: Fueled by Dairy

- ▶ Idaho's ag-gag law (the Agricultural Security Act) shows the power of the dairy industry (and the agricultural industry in general) to push through legislation to shut down animal rights activists and the negative publicity brought on by the shocking footage revealed following undercover investigations.
- ▶ In 2012, Mercy for Animals conducted an undercover investigation of Bettencourt Dairies' Dry Creek facility in Hansen, Idaho, resulting in video footage of employees "beating, kicking, stomping on, and dragging dairy cows" – so shocking that the video quickly made headline news and prompted prosecutors to bring charges against three of the employees for animal cruelty ("Ag-Gag Across America: Corporate-Backed Attacks on Activists and Whistleblowers," 2017).

Idaho's Ag-Gag Law: Fueled by Dairy

- ▶ The Idaho Dairywomen's Association went on the offensive, drafting legislation (called the "Interference with Agricultural Production" law) to prevent undercover investigations and the resulting negative publicity.
- ▶ The Interference with Agricultural Production law turned undercover investigations into the crime of "interference with agricultural production," "punishable by a fine of up to \$5,000 and up to one year in prison" ("Ag-Gag Across America," 2017). "Interference with agricultural production" included causing physical damage, obtaining employment by misrepresentation, and recording agricultural operations without consent].
- ▶ The Idaho Dairywomen's Association and other agricultural organizations pressured the legislature to pass this so-called "security measure" against "radical groups engaging in *farm terrorism*" ("Ag-Gag Across America," 2017).

Challenge to Idaho's Ag-Gag Law: *ALDF v. Otter*

- ▶ In 2014, the Animal Legal Defense Fund (ALDF), along with other animal rights organizations, challenged the constitutionality of the Idaho ag-gag law in U.S. District Court.
- ▶ In *ALDF v. Otter* (2014), Judge B. Lynn Winmill ruled in favor of the ALDF, striking down the Idaho ag-gag law as a violation of the First Amendment right to free speech and Equal Protection Clause. Judge Winmill's decision made it clear that the ag-gag law could not pass muster under the Constitution "because it was motivated in substantial part by animus towards animal welfare groups, and because it impinges on free speech, a fundamental right."

ALDF v. Otter. District Court Ruling Highlights

- ▶ The court noted the animus towards animal welfare groups evident during the debate over the ag-gag law by state legislators, who referred to undercover investigators as “farm terrorists” who “use the media and sensationalism to attempt to steal the integrity of the producer and their reputations” and “extremist groups” who “implement vigilante tactics to deploy self-appointed so-called investigators who masquerade as employees to infiltrate farms in the hope of discovering and recording what they believe to be animal abuse.”
- ▶ The court noted the infringement the ag-gag law would have on First Amendment principles, given that its effect would be to “suppress speech by undercover investigators and whistleblowers concerning important matters of “great public importance,” such as “the safety of the public food supply, the safety of agricultural workers, the treatment and health of farm animals, and the impact of business activities on the environment.”

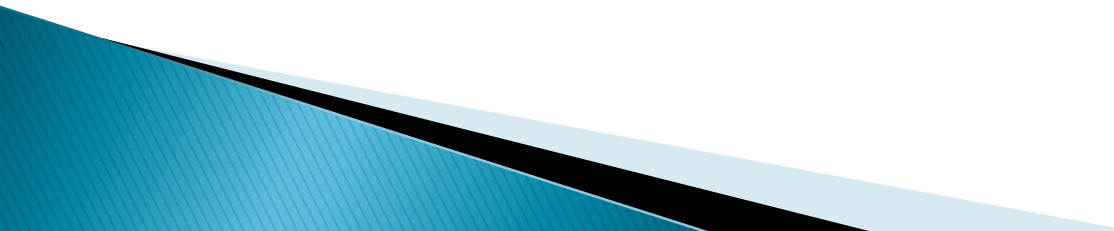
ALDF v. Otter: District Court Ruling Highlights

- ▶ The court explained that laws are **content-based** “if either the underlying purpose of the regulation is to suppress particular ideas or if the regulation, by its very terms, singles out particular content for differential treatment.”
- ▶ The ag-gag law is content-based given that it “targets undercover investigators who intend to publish videos they make through the press and seeks to suppress speech critical of animal agricultural practices.” The underlying purpose of the ag-gag law is “*to silence animal activists*” and “suppress speech critical of animal-agriculture practices.”
- ▶ As a content-based restriction, the ag-gag law must pass the **strict scrutiny test**, under which “restrictions are generally unconstitutional unless they are narrowly tailored to a compelling state interest.”

ALDF v. Otter: District Court Ruling Highlights

- ▶ The State asserted the property and privacy interests of agricultural production as the compelling state interest, but this did not fly – the court noted that “food production is a heavily regulated industry,” given the public interest in “the safety of the food supply, worker safety, and the humane treatment of animals” and therefore, should not be exempt from public scrutiny.
- ▶ Pointing to the important matters of public concern relating to animal agriculture and food production, the court emphasized that “Speech on matters of public concern is at the heart of the First Amendment protection.”

ALDF v. Otter: District Court Ruling Highlights

- ▶ The court held that the Idaho ag-gag law violates the Equal Protection Clause of the Fourteenth Amendment in that it “discriminates on its face by classifying between whistleblowers in the agricultural industry and whistleblowers in other industries.”
 - ▶ The ag-gag law ran afoul of the Equal Protection Clause in that it “was animated by an improper animus toward animal welfare groups and other undercover investigators in the agricultural industry and the law furthers no other legitimate or rational purpose.”
 - ▶ The court granted Mercy for Animal’s Motion for Summary Judgment.
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Challenge to Idaho Ag-Gag Law: Court of Appeals

- ▶ The AG for Idaho, Wasden, appealed the District Court's decision to the 9th Circuit Court of Appeals, which affirmed all but one component of the District Court ruling striking down the ag-gag law.
- ▶ The appeals court upheld the ag-gag provision making it a crime to use misrepresentation to obtain records or obtain employment at an agricultural facility *with intent to "inflict harm"* (harm meaning actual economic damages – not just damage to reputation or emotional distress) (Bird, 2018).
- ▶ Other than this one provision, the 9th Circuit decision was a powerful win for animal rights activists and is the first federal circuit court ruling "upholding the right to record on factory farms" as protected First Amendment free speech (Bird, 2018).

Challenge to Utah's Ag-Gag Law: *ALDF v. Herbert*

- ▶ Utah's Ag-Gag law, like the Idaho law, criminalized whistleblowing in agricultural facilities by making it a crime to misrepresent oneself to gain employment in such a facility or to record footage in an agricultural facility.
- ▶ ALDF challenged Utah's Ag-Gag law after Amy Meyer was charged with violating the law for filming workers use a bulldozer to move a sick cow at a slaughterhouse. Meyer was on public property while filming, so her conduct did not fall within the prohibited conduct of the ag-gag law, but she was still charged with its violation. Charges were dropped following the public outrage over her arrest and the footage she made public.
- ▶ The District Court ruled in Meyer's and the ALDF's favor, granting their motion for summary judgment, striking down the Utah ag-gag law as an unconstitutional infringement of free speech under the First Amendment.

Key First Amendment Principles

- ▶ The following First Amendment principles come to the forefront in court decisions striking down ag-gag laws:
- ▶ Lies and misrepresentations are protected speech under the First Amendment, as held by the U.S. Supreme Court in *United States v. Alvarez* (2012), in which the Court struck down the Stolen Valor Act (which made it a crime to lie about being awarded a military medal).
- ▶ Video recordings of animal cruelty released to the press are forms of protected “speech” under the First Amendment; and
- ▶ Whistleblowing on matters of public concern, such as animal cruelty, food safety violations, worker safety violations, environmental violations, has played an essential role in reforming corporate and government conduct since the days of Upton Sinclair and *The Jungle*.

Tally of Ag-Gag Laws Struck Down as of Oct. 2018

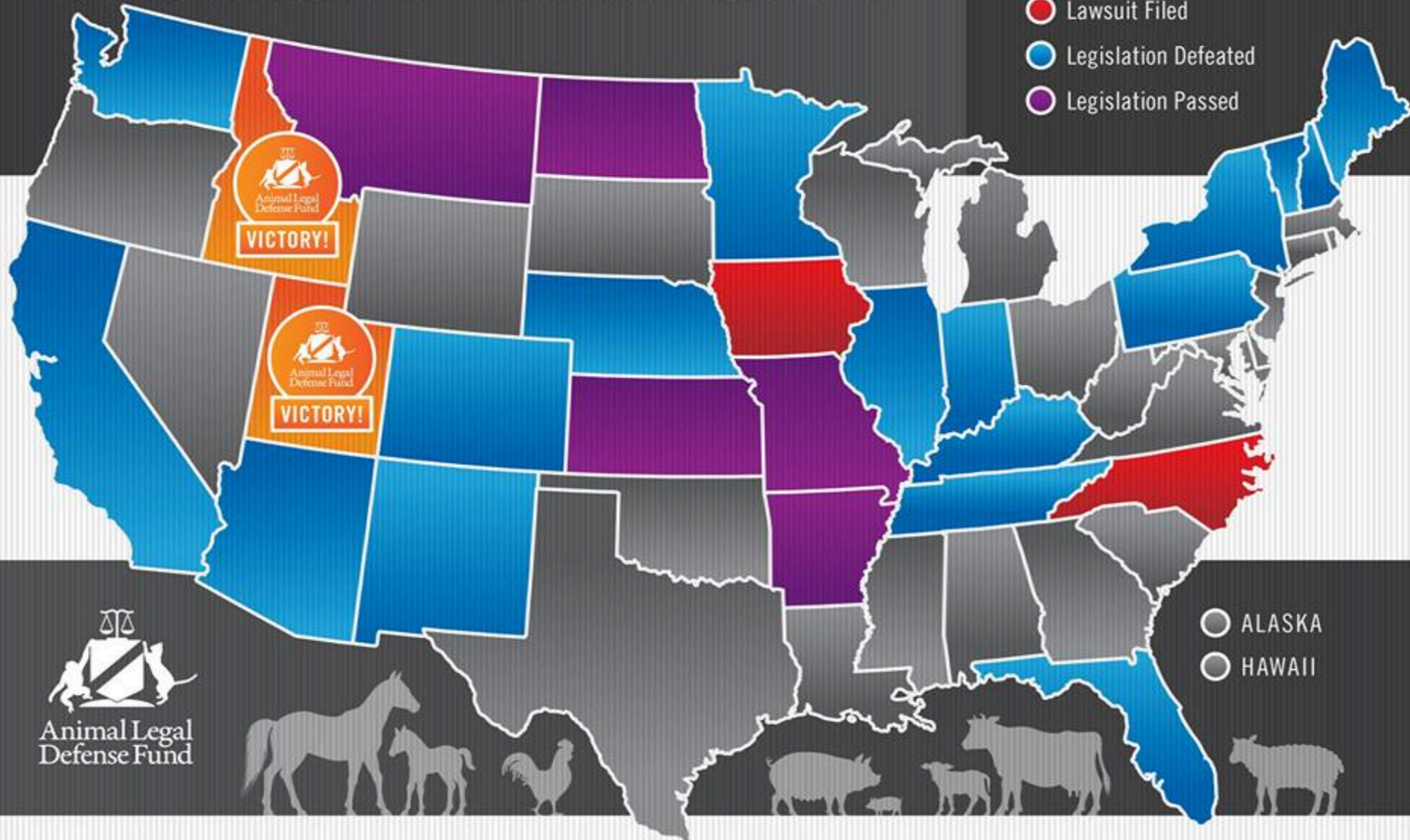
- ▶ Idaho Ag-Gag Law Struck down by U.S. District Court (August, 2015); affirmed by U.S. Court of Appeals for Ninth Circuit (January, 2018)
- ▶ Utah Ag-Gag Law struck down by U.S. District Court (July, 2017)
- ▶ Wyoming “Data Trespass” Law struck down by U.S. Court of Appeals for Tenth Circuit (September, 2017). The Data Trespass Law is modeled after ag-gag laws, but focuses on silencing environmental rights activists by making it a crime to gather data from public lands (such as BLM land) to collect data of environmental pollution if the person crosses private land to get to the public land (Mogerman, 2017).
- ▶ Pending Ag-Gag Challenges: A federal district court denied Iowa’s motion to dismiss a challenge to the ag-gag law in February, 2017 and a federal court of appeals revived a challenge to N.C.’s ag-gag law in February, 2018 (reversing a district court ruling dismissing the case).

AG-GAG LAWS ACROSS THE COUNTRY

CORPORATE-BACKED ATTACKS ON ACTIVISTS & WHISTLEBLOWERS

MAP KEY

- Struck Down: Unconstitutional
- Lawsuit Filed
- Legislation Defeated
- Legislation Passed



Animal Legal Defense Fund



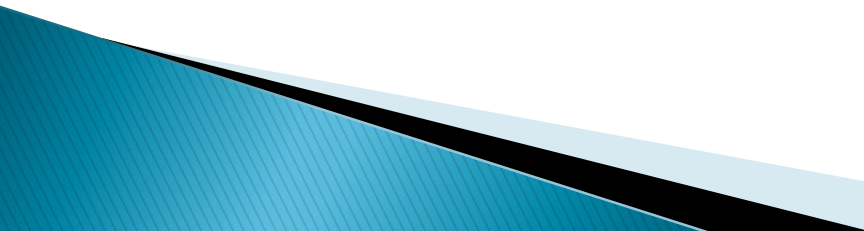
THE ANIMAL LEGAL DEFENSE FUND IS LEADING THE FIGHT AGAINST AG-GAG LAWS

ALDF.ORG/AG-GAG

Documentaries on Factory Farms and Ag-Gag Laws

- ▶ *What the Health* (2017)
 - ▶ *Cowspiracy* (2014)
 - ▶ *Speciesism: The Movie* (2012)
 - ▶ *Food Inc.* (2008)
 - ▶ *Forks over Knives* (2011)
 - ▶ *Vegucated* (2011)
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Books Relating to Ag-Gag Laws and Factory Farms

- ▶ *Esther the Wonder Pig: Changing the World One Heart at a Time* by Steve Jenkins and Derek Walter (2016)
 - ▶ *Green is the New Red: An Insider's Account of a Social Movement under Seige* by Will Potter (2011)
 - ▶ *Mercy for Animals: One Man's Quest to Inspire Compassion and Improve the Lives of Farm Animals* by Nathan Runkle (2017)
 - ▶ *Project Animal Farm: An Accidental Journey into the Secret World of Farming and the Truth about our Food* by Sonia Faruqi (2015)
 - ▶ *Understanding Animal Law* by Adam Karp (2016)
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- ▶ *Animal Legal Defense Fund v. Herbert*, 263 F. Supp. 3d 1193 (2017)
- ▶ *Animal Legal Defense Fund v. Otter*, 118 F. Supp. 3d 1195 (2015)
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- ▶ *United States v. Alvarez*, 567 U.S. 709 (2012)
- ▶ Upton Sinclair's *The Jungle*: Muckraking the "Meat-Packing Industry." (2008). Retrieved from <http://www.crf-usa.org/bill-of-rights-in-action/bria-24-1-b-upton-sinclairs-the-jungle-muckraking-the-meat-packing-industry.html>
- ▶ What is Ag-Gag Legislation? (n.d.). Retrieved from <https://www.aspca.org/animal-protection/public-policy/what-ag-gag-legislation>

**If slaughter houses
had glass walls
everyone would be
a vegetarian**

-Paul McCartney