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Idaho gag law hides horrors of ag industry

State violates free speech rights by selectively banning documentation of animal cruelty at factory farms

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by **Lauren Carasik** @LCarasik

Last week the New York–based Center for Constitutional Rights (CCR) filed a friend of the court brief in a lawsuit opposing an Idaho [law](#) that prohibits investigations and whistleblowing in the agricultural industry. The “ag-gag” bill, which was signed into law on Feb. 28, prohibits video and audio recording of farm conditions and criminalizes undercover news gathering at agricultural production facilities. Critics contend that the law will insulate industrialized farming practices from scrutiny. On March 17 a coalition of advocacy groups, including the American Civil Liberties Union of Idaho and environmental, animal rights and workers rights organizations, filed [a constitutional challenge](#) to the law.

As noted in the [CCR brief](#), the law violates the First Amendment by impermissibly restraining speech based on its content — factory farming — and viewpoint, which targets those critical of the practice, evincing political animus. In addition, the prohibition against misrepresentation is selective. An investigator who misrepresents past employment while applying for a job with the intent of documenting unlawful animal abuse is breaking the law, but an applicant who fabricates past employment in order to get a job for other reasons is not. Someone who falsifies credentials with the objective of exonerating rather than excoriating the industry does not violate the law.

The impetus for the Idaho bill was the release in 2012 of graphic and disturbing [footage](#) by a national animal rights organization, Mercy for Animals, that depicted workers at a [Bettencourt Dairies](#) facility, the largest dairy operation in the state, abusing cows. The agribusiness industry has close ties to Idaho’s elected officials. One-third of the state senators, one fifth of representatives and

the governor have received donations from agribusiness. But Idaho is not alone in gagging speech related to agricultural production. While none have been signed into law, at least 15 ag-gag laws were introduced in 11 states last year.

The proliferation of ag-gag bills is linked to the American Legislative Exchange Council, a conservative pro-business powerhouse that first proposed [model legislation](#) in 2003 to shield agribusiness from scrutiny. But these laws have been met with popular resistance in several states. Opponents argue that the ag-gag bills are part of a more expansive legislative effort to suppress the activities of animal rights advocates; one example is the Animal Enterprise Terrorism Act, a federal law that criminalizes interference with an animal enterprise. The act also faces ongoing legal [challenges by CCR](#) and other advocates.

In addition to criminalizing investigations, in some states such as [Nebraska](#) and [Missouri](#) the proposed statutes contain provisions requiring investigators to turn over evidence of abuse to law enforcement within 24 or 48 hours. This requirement ostensibly protects animal welfare by requiring prompt disclosure and intervention. But the intent seems to preclude reporters from gathering long-term surveillance and documentation to expose inhumane practices and undercut the defense that abusive practices are aberrational.

Industrialized farming

More than [9 billion animals are slaughtered](#) for food each year in the United States. Despite the staggering number, there is little regulatory oversight for the dairy industry. The 1966 [U.S. Animal Welfare Act](#), which regulates the treatment of animals in research, exhibition and transport, does not apply to animals raised for food. The [Humane Methods of Slaughter Act](#) requires that the animal be rendered insensible to pain before slaughter, but covers only the brief period when animals are in the slaughterhouse, and excludes various religious practices. A law [governing the transportation of animals](#) mandates a break every 28 hours, but contains several loopholes. Both federal statutes exempt poultry, which constitutes up to 95 percent of the animals slaughtered in the U.S. In

addition, [most states' cruelty laws](#) exempt customary farming practices regardless of the amount of suffering they cause to farm animals.

The law's advocates say small, bucolic family farms and hard-working farmers, who are committed to the welfare of their animals, are being unfairly maligned by animal rights activists. But the antiquated wholesome image of stoic rural farmers belies the harsh reality ushered in by industrialized farming. According to the nonprofit American Society for the Prevention of Cruelty to Animals (ASPCA), [99 percent of animals raised for food live on factory farms](#), defined as large industrial operations rearing large numbers of animals for consumption.

Critics argue that the ag-gag bills are intended to hide illegal industry abuses and shield the brutality of [standard industry practices](#) such as mutilations, [throwing male chicks](#) in egg-laying factories alive into grinders and dispatching undersize piglets by swinging them or smashing their skulls against a hard surface. Undercover investigations have prompted outcry and reforms. In 2012, McDonald's succumbed to public pressure and agreed to phase out cramped [gestation crates for pigs](#) in its supply chain. Other companies have followed suit, supplementing complete [bans in nine states](#).

Ag-gag law supporters say the disclosures, which are often based on manipulated footage, are intended to [inflame public outrage](#), and are not aimed at reform but at completely ending the practice of industrial farming. Some activists would certainly support that outcome. But even dedicated carnivores can be concerned about minimizing the suffering of sentient creatures that experience distress, terror and pain.

Laws that protect abusive industrial practices deprive citizens of the right to know about, debate and influence the treatment of the animals in their food supply chain.

Many of the practices exposed by investigations also reveal the health hazards of squalid industrial practices. The [Centers for Disease Control and Prevention](#) estimates that foodborne illness sickens 48 million people in the U.S.

each year, killing at least 3,000 people. In 2008, investigators caught a major school lunchmeat supplier in California [abusing “downer” cows](#) that were too sick to even walk, resulting in the largest meat recall in U.S. history.

The whistleblower prohibitions apply to those exposing dangerous working conditions. In addition to occupational hazards, mechanized slaughtering practices can lead to both traumatic and repetitive strain injuries in workers. The dairy industry often [employs both documented and undocumented immigrants](#) in low-wage positions, making them even more vulnerable to retaliation for reporting abuses.

Agribusiness has reason to fear transparency and public discourse. [According to a study](#) sponsored by the ASPCA in 2012, 94 percent of Americans believe food should be safe for consumption and that farms should be treated in a way that minimizes suffering from birth to slaughter. Some 71 percent of Americans support undercover investigations into industrial practices that undermine these goals. The ag-gag laws impede full information and debate necessary for market corrections and are therefore [bad for business](#).

As the sweeping Idaho law makes clear, agribusiness would prefer not to defend against haunting videos of cruelty and suffering, but to prevent their production and dissemination. Laws that protect industrial practices by chilling investigations and discourse about gruesome practices that affect animals, workers and the nation’s health are unconstitutional. They deprive citizens of the right to know about, debate and influence the treatment of the animals in their food supply chain.

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The views expressed in this article are the author’s own and do not necessarily reflect Al Jazeera America’s editorial policy.