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THE DISMANTLING OF PRIVACY IN AGRICULTURAL OPERATIONS

[Agriculture \(/full-blog/category/Agriculture\)](#)

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In recent years it has become commonplace on social media to see videos of animal cruelty and abuse. Sometimes these videos are of dogs and cats found at puppy-mills or abused before being taken to a shelter, and other times they are of the agriculture industry itself, showing slaughterhouses killing the animals many of us eat for food.^[i] Utah's Agricultural Operation Interference statute, or "ag-gag law" as it is often called, is intended to deter animal activists from being able to take such videos.^[ii] The act criminalizes both the secret filming of these videos and the lying done by activists to infiltrate the agriculture operations.^[iii]

Utah's legislature enacted the law in order to protect its agricultural industry,^[iv] by stopping animal activists and journalists who would take agricultural jobs in order to perform undercover investigations.^[v] Agriculture industry proponents claim these videos are edited "to exaggerate so-called abuses" and thus can be extremely harmful to the state's industry.^[vi] Consequently, multiple farming states currently have Ag-Gag laws,^[vii] penalizing what activists say is their protected First Amendment right to free speech.

However, a few weeks ago, a federal district judge in Utah struck down this law, agreeing with activist Plaintiffs that it violated their First Amendment right to free speech.^[viii] This was the second time that a state's Ag-Gag law has been held unconstitutional, thus creating a stronger precedent for other states to follow suit.^[ix]

Though the Utah case was groundbreaking and filed first in July 2013 by the Animal Legal Defense Fund, the group quickly filed a similar suit in Idaho.^[x] That second suit was decided in their favor in August 2015 when a federal judge declared Idaho's Ag-Gag law unconstitutional under the First Amendment and the Fourteenth Amendment's Equal Protection Clause.^[xi] The plaintiffs claimed that the law was meant to target animal rights groups like them. They filed their first suit after Utah activist Amy Meyers was arrested while filming a cow's treatment from the sidewalk outside a plant.^[xii]

Ms. Meyers was the first person to be prosecuted under an Ag-Gag law.^[xiii] Although the charges against her were dropped, an attorney for PETA argued the case and a judge rejected Utah's attempt to get the case dismissed.^[xiv] This allowed animal rights groups to use her case as their opportunity to attack the law as unconstitutional.



The Utah judge, Judge Robert Shelby, held the law violated Plaintiffs' First Amendment rights.^[xv] Utah defended the ban by arguing that it "was intended to ensure the safety of animals and farm workers from disease or injury."^[xvi] Additionally, Senator Hinkins stated after the ruling that the law was meant to protect private property rights.^[xvii] However, because Ms. Meyers was in a public area when she was arrested, it is clear that the law reached far beyond these stated purposes. While Utah's defense sounds like a respectable objective, Judge Shelby remarked that the state provided no support for its position or the breadth of the act.^[xviii] The Judge explained that Utah has many avenues of addressing its perceived threat to the agricultural industry that don't involve "[s]uppressing broad swaths of protected speech without justification."^[xix]

Moreover, Judge Shelby noted in his opinion a comment by bill-sponsor Representative Mathis which possibly highlighted the bill's alternative and true purpose, wherein Rep. Mathis stated "the ban was a response to 'a trend nationally of some propaganda groups ... with a stated objective of undoing animal agriculture in the United States.'"^[xx] Senator Hinkins similar statement that the ban "targeted 'vegetarian people that [are] trying to kill the animal industry'" was also noted. ^[xxi]

Though Senator Hinkins stated after the ruling that the statute will be rewritten following review of the judge's ruling, the Plaintiffs seem confident in their victory and predict further victories in the future.^[xxii]

"These unconstitutional laws will fall like dominoes," Stephen Wells, executive director of one of the plaintiffs, The Animal Legal Defense Fund, said in a statement. "Ag-gag laws are flagrant attempts to hide animal cruelty from the American people, and they unfairly target activists trying to serve the public's interest."^[xxiii]

[i] See generally *In a Major Win for Animals, Federal Judge Declares Utah 'Ag-Gag' Law Unconstitutional*, People for the Ethical Treatment of Animals (July 12, 2017), <https://www.peta.org/blog/victory-peta-aldf-challenge-utahs-ag-gag-law/> (<https://www.peta.org/blog/victory-peta-aldf-challenge-utahs-ag-gag-law/>).

[ii] Ben Winslow & Lauren Steinbrecher, *Federal judge strikes down Utah's 'Ag-Gag' law*, KSTU-Fox13 (July 7, 2017), <http://fox13now.com/2017/07/07/federal-judge-strikes-down-utahs-ag-gag-law/> (<http://fox13now.com/2017/07/07/federal-judge-strikes-down-utahs-ag-gag-law/>).

[iii] Dan Murphy, *Meat of the Matter: Ag Gag's Gone – For Good?*, Drovers (July 12, 2017), <http://www.cattlenetwork.com/meat-matter-ag-gag%E2%80%99s-gone-%E2%80%94-good> (<http://www.cattlenetwork.com/meat-matter-ag-gag%E2%80%99s-gone-%E2%80%94-good>). See also Utah Code § 76-6-112 (2012), <https://le.utah.gov/xcode/Title76/Chapter6/76-6-S112.html> (<https://le.utah.gov/xcode/Title76/Chapter6/76-6-S112.html>).

[iv] Winslow, *supra* note ii.

[v] *Utah 'Ag-Gag' Law Declared Unconstitutional*, Animal League Defense Fund (July 7, 2017), <http://aldf.org/press-room/press-releases/utah-ag-gag-law-declared-unconstitutional/> (<http://aldf.org/press-room/press-releases/utah-ag-gag-law-declared-unconstitutional/>).

[vi] Murphy, *supra* note iii.

[vii] Jill Ettinger, *In Major Animal Rights Victory, Utah Federal Judges Calls 'Ag-Gag' Laws Unconstitutional*, Organic Authority, Inc. (July 11, 2017), <http://www.organicauthority.com/in-animal-rights-victory-utah-federal-judge-calls-ag-gag-laws-unconstitutional/> (<http://www.organicauthority.com/in-animal-rights-victory-utah-federal-judge-calls-ag-gag-laws-unconstitutional/>).

[viii] Dan Flynn, *Utah's 'ag-gag' law is second to be found unconstitutional*, Food Safety News (July 8, 2017), <http://www.foodsafetynews.com/2017/07/utahs-ag-gag-law-is-second-to-be-found-unconstitutional/#.WZ8tEtPyvEZ> (<http://www.foodsafetynews.com/2017/07/utahs-ag-gag-law-is-second-to-be-found-unconstitutional/#.WZ8tEtPyvEZ>).

[ix] Animal League Defense Fund, *supra* note v.

[x] *Id.*

[xi] Bill Chappell, *Judge Overturns Utah's 'Ag-Gag' Ban On Undercover Filming At Farms*, NPR (July 8, 2017), <http://www.npr.org/sections/thetwo-way/2017/07/08/536186914/judge-overturns-utahs-ag-gag-ban-on-undercover-filming-at-farms> (<http://www.npr.org/sections/thetwo-way/2017/07/08/536186914/judge-overturns-utahs-ag-gag-ban-on-undercover-filming-at-farms>).

[xii] Murphy, *supra* note iii. *See also* Animal League Defense Fund, *supra* note v.

[xiii] Animal League Defense Fund, *supra* note v.

[xiv] People for the Ethical Treatment of Animals, *supra* note i.

[xv] *Id.*

[xvi] Chappell, *supra* note xi.

[xvii] Winslow, *supra* note ii.

[xviii] Flynn, *supra* note viii.

[xix] Chappell, *supra* note xi. *See also* *Animal Legal Defense Fund v. Herbert*, No. 2:13-cv-00679-RJS, 2017 WL 2912423 (D. Utah July 7, 2017).

[xx] *Id.* *See also* *Animal Legal Defense Fund v. Herbert*, No. 2:13-cv-00679-RJS, 2017 WL 2912423 (D. Utah July 7, 2017).

[xxi] *Id.* *See also* *Animal Legal Defense Fund v. Herbert*, No. 2:13-cv-00679-RJS, 2017 WL 2912423 (D. Utah July 7, 2017).

[xxii] Winslow, *supra* note ii.

[xxiii] Ettinger, *supra* note vii; Animal League Defense Fund, *supra* note v.

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