

Ag-gag in the Aftermath of Free Speech Claims: How Iowa Rewrote Its Unconstitutional Agricultural Protection Law

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I. INTRODUCTION

The undercover investigation into Iowa Select Farms is disturbing.¹ Recordings show farm workers smashing baby piglets against a concrete floor, young animals being kicked and stomped on, and unanesthetized tail cuttings and castrations.² At another Iowa facility, Sparboe Egg Farms, an undercover investigation revealed hens suffering from burned beaks, open wounds, and filthy living conditions.³ The publicized video led McDonald's to end its relationship with Sparboe.⁴ At a third Iowa farm, pigs were beaten and kicked while a supervisor instructed an undercover investigator: "You gotta beat on the bitch. Make her cry."⁵ As a result, several employees were fired and charged with animal abuse.⁶

While these investigations took place on Iowa farms, similar reports can be found in dozens of states, especially those that depend on animal

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1. See Anne-Marie Dorning, *Iowa Pig Farm Filmed, Accused of Animal Abuse*, ABC NEWS (June 29, 2011, 6:29 AM), <https://abcnews.go.com/Business/iowa-pig-farm-filmed-accused-animal-abuse/story?id=13956009> [<https://perma.cc/VQH3-QM6R>].

2. *Id.*

3. Tiffany Hsu, *McDonald's Cuts Egg Supplier After Undercover Animal Cruelty Video*, L.A. TIMES (Nov. 18, 2011, 2:24 PM), https://latimesblogs.latimes.com/money_co/2011/11/mcdonalds-cuts-egg-supplier-after-undercover-animal-cruelty-video.html [<https://perma.cc/ZB7K-7VWR>].

4. *Id.*

5. Michael Klein, *PETA Goes After Shane Victorino*, PHILA. INQUIRER (Oct. 14, 2008), https://www.inquirer.com/philly/blogs/the-insider/PETA_goes_after_Shane_Victorino.html [<https://perma.cc/JT22-F2ZH>]; *Mother Pigs and Piglets Abused by Hormel Supplier*, PEOPLE FOR THE ETHICAL TREATMENT OF ANIMALS, <https://investigations.peta.org/mother-pigs-piglets-abused-hormel-supplier> [<https://perma.cc/MF2Y-LT63>].

6. Amy Lorentzen, *Charges Filed Against 6 in Iowa Pig Abuse Case*, FOX NEWS (Oct. 22, 2008), https://www.foxnews.com/printer_friendly_wires/2008Oct22/0,4675,AbusedPigs,00.html [<https://perma.cc/U42A-MSU6>].

agriculture.⁷ Generally, these undercover investigations occur only if advocates obtain access as employees.⁸ For example, the Iowa Select Farms investigation was conducted by advocates from Mercy for Animals, who obtained employment with the intent to publicize their secretly recorded video.⁹ Of course, a livestock operation would never knowingly hire an undercover animal advocate, so these investigations inherently require some level of deception or misrepresentation. For good reason, the agricultural industry likely views the publication of animal abuse, poor sanitation, and environmental degradation as a threat to business.

In response to these videos, a host of agricultural protection laws appeared.¹⁰ Commonly referred to as “ag-gag laws,”¹¹ many states have tried to pass statutes that criminalize photographing and filming agricultural operations or even distributing the recordings.¹² Many of these laws also criminalize lying or misrepresentation to obtain access or employment at an agricultural operation.¹³ By 2014, eleven states successfully enacted ag-gag legislation.¹⁴ This Comment will examine the constitutionality of ag-gag, with special focus on Iowa’s recently amended law.

Ag-gag became a concern not only to animal welfare groups but also to journalists and free speech advocates.¹⁵ A wave of First Amendment challenges to ag-gag laws followed their passage, and as of April 2020, ag-gag statutes have been ruled unconstitutional in Idaho, Utah, Wyoming,

7. Richard A. Oppel Jr., *Taping of Farm Cruelty Is Becoming the Crime*, N.Y. TIMES (Apr. 6, 2013), <https://www.nytimes.com/2013/04/07/us/taping-of-farm-cruelty-is-becoming-the-crime.html> [https://perma.cc/Y6AW-M5WH].

8. Dorning, *supra* note 1.

9. *Id.*

10. Oppel, *supra* note 7; *What Is Ag-Gag Legislation?*, AM. SOC’Y FOR THE PREVENTION OF CRUELTY TO ANIMALS, <https://www.asPCA.org/animal-protection/public-policy/what-ag-gag-legislation> [https://perma.cc/57SX-9BFP].

11. The term “Ag-gag” was coined by Mark Bittman in a 2011 opinion column for the *New York Times*. Mark Bittman, Opinion, *Who Protects the Animals?*, N.Y. TIMES (Apr. 26, 2011, 9:29 PM), <https://opinionator.blogs.nytimes.com/2011/04/26/who-protects-the-animals/> [https://perma.cc/3T92-DYN2].

12. AM. SOC’Y FOR THE PREVENTION OF CRUELTY TO ANIMALS, *supra* note 10.

13. Jacob Coleman, ALDF v. Otter: *What Does It Mean for Other State’s “Ag-gag” Laws?*, 13 J. FOOD L. & POL’Y 199, 203 (2017).

14. AM. SOC’Y FOR THE PREVENTION OF CRUELTY TO ANIMALS, *supra* note 10.

15. See Esha Bhandari, *Court Rules ‘Ag-Gag’ Law Criminalizing Undercover Reporting Violates the First Amendment*, ACLU (Jan. 22, 2019, 2:00 PM), <https://www.aclu.org/blog/free-speech/freedom-press/court-rules-ag-gag-law-criminalizing-undercover-reporting-violates> [https://perma.cc/WK9Y-V4DZ]; Coleman, *supra* note 13, at 226–27; Simren Verma, *North Carolina’s ‘Ag-gag’ Statute Violates First Amendment, Chills Newsgathering*, REPS. COMM. FOR FREEDOM OF THE PRESS (Sept. 5, 2019), <https://www.rcfp.org/nc-ag-gag-violates-1a/> [https://perma.cc/F9HC-X7MP].

Kansas, and Iowa.¹⁶ Most constitutional challenges to ag-gag fall into two categories: (1) challenges to the criminalization of filming and photographing and (2) challenges to the criminalization of deception or misrepresentation to obtain access or employment. This Comment focuses solely on the latter.

Iowa's first ag-gag law, which criminalized obtaining access or employment at an agricultural operation through misrepresentation, was overturned by a federal district court in January 2019.¹⁷ Less than two months later, the Iowa legislature passed an amended version of the law with two provisions: section (a) criminalizes deceptively obtaining access to an agricultural facility with the intent to cause injury, and section (b) criminalizes deceptively obtaining employment at an agricultural facility with the intent to cause injury.¹⁸ As of January 2021, the new law is being considered in federal court.¹⁹ This Comment surveys recent ag-gag decisions and considers whether Iowa's new statute will survive First Amendment scrutiny.

Part II begins with a brief history of agricultural whistleblowing and the passage of agricultural protection laws in the United States. Part III describes the legal framework courts use when considering free speech challenges to ag-gag and provides the successful examples of Idaho and Utah. Part IV discusses Iowa's unconstitutional law and introduces the redrafted version. Part V applies the framework and principles in Parts III and IV to Iowa's amended statute and considers whether the law will survive First Amendment scrutiny. This Comment argues section (a) of Iowa's ag-gag law is likely unconstitutional because Iowa lacks a compelling state interest in criminalizing lies made to enter farms. Moreover, other criminal trespass and property laws already protect farms without restricting speech. This Comment further argues that section (b) of the law is likely constitutional because of its narrow focus on employment. Finally, Part V considers the ramifications of the Iowa law's revision in the context of other states and industries.

16. AM. SOC'Y FOR THE PREVENTION OF CRUELTY TO ANIMALS, *supra* note 10.

17. *Animal Legal Defense Fund v. Reynolds*, 353 F. Supp. 3d 812, 826–27 (S.D. Iowa 2019).

18. IOWA CODE § 717A.3B (2020); Donnelle Eller, *Round 2: ACLU of Iowa Says State's New Ag-gag Law Violates Free Speech Protections*, DES MOINES REG. (Apr. 22, 2019, 5:44 PM), <https://www.desmoinesregister.com/story/money/agriculture/2019/04/22/aclu-says-new-iowa-ag-gag-law-unconstitutional-violates-first-amendment-free-speech-protections/3538554002> [<https://perma.cc/8STS-9Y9J>].

19. Donnelle Eller, *Judge Issues Order Preventing Enforcement of Iowa's New 'Ag-gag' Law*, DES MOINES REG. (Dec. 3, 2019, 4:55 PM), <https://www.desmoinesregister.com/story/money/agriculture/2019/12/02/federal-judge-stops-enforcement-iowas-new-ag-gag-law/2591453001/> [<https://perma.cc/V28H-X3EH>]. The court has so far enjoined enforcement of the law. *Id.*

II. HISTORY OF WHISTLEBLOWING AND AGRICULTURAL PROTECTION LAWS

One of America's earliest undercover investigations into animal agriculture was published in 1906 by muckraking journalist Upton Sinclair.²⁰ *The Jungle* told the story of dangerous working conditions and non-existent food safety standards in Chicago's meatpacking industry.²¹ To investigate, Sinclair misrepresented himself as a newly arrived immigrant and worked for seven weeks in a meatpacking plant.²² Public outcry was fierce and led President Teddy Roosevelt to sign into law the Federal Meat Inspection Act and the Pure Food and Drug Act, two of the nation's earliest food safety laws.²³ But *The Jungle* was just the beginning of a long line of journalistic exposés into the meat industry.

By the end of the twentieth century, criticism of industrial agriculture focused on animal welfare. The Animal Legal Defense Fund and People for the Ethical Treatment of Animals were founded in 1979 and 1980, respectively.²⁴ The 1980s saw the release of undercover videos from several prominent research laboratories, documenting horrific animal cruelty and abuse.²⁵ Publication of these videos led to criminal investigations, funding cuts, and strengthening of the federal Animal Welfare Act.²⁶

This era also saw the growth of direct—and often violent—actions by animal welfare advocates. Through the 1980s and 90s, the animal liberation

20. Edwin McDowell, *Sinclair's Jungle with All Muck Restored*, N.Y. TIMES (Aug. 22, 1988), <https://www.nytimes.com/1988/08/22/books/sinclair-s-jungle-with-all-muck-restored.html> [<https://perma.cc/M4H2-PXDX>]; Daniel E. Slotnik, *Upton Sinclair, Whose Muckraking Changed the Meat Industry*, N.Y. TIMES (June 30, 2016), <https://www.nytimes.com/interactive/projects/cp/obituaries/archives/upton-sinclair-meat-industry> [<https://perma.cc/3MAT-S6BB>].

21. McDowell, *supra* note 20; Slotnik, *supra* note 20.

22. David Greenberg, *How Teddy Roosevelt Invented Spin*, ATLANTIC (Jan. 24, 2016), https://www.theatlantic.com/politics/archive/2016/01/how-teddy-roosevelt-invented-spin/426699/?google_editors_picks=true [<https://perma.cc/6XQV-89DP>].

23. The Jungle, THEODORE ROOSEVELT CTR., <https://www.theodorerooseveltcenter.org/Learn-About-TR/TR-Encyclopedia/Reading-and-Writing/The-Jungle> [<https://perma.cc/Q44Y-R2BV>]; *Milestones in U.S. Food and Drug Law History*, U.S. FOOD & DRUG ADMIN., <https://www.fda.gov/about-fda/fdas-evolving-regulatory-powers/milestones-us-food-and-drug-law-history> [<https://perma.cc/QJ4W-XAAB>].

24. *About Us*, ANIMAL LEGAL DEF. FUND, <https://aldf.org/about-us> [<https://perma.cc/39RL-2YZD>]; *All About PETA*, PEOPLE FOR THE ETHICAL TREATMENT OF ANIMALS, <https://www.peta.org/about-peta/learn-about-peta> [<https://perma.cc/L4ZR-HC4E>].

25. Michael Hill, Note, *United States v. Fullmer and the Animal Enterprise Terrorism Act: "True Threats" to Advocacy*, 61 CASE W. RES. L. REV. 981, 984–85 (2011); Robert Reinhold, *Fate of Monkeys, Deformed for Science, Causes Human Hurt After 6 Years*, N.Y. TIMES (May 23, 1987), <https://www.nytimes.com/1987/05/23/us/fate-of-monkeys-deformed-for-science-causes-human-hurt-after-6-years.html> [<https://perma.cc/5D6W-SRH5>].

26. Hill, *supra* note 25, at 985.

movement released thousands of animals from farms and laboratories, freeing many from inhumane conditions.²⁷ However, organizations like the Animal Liberation Front have also been responsible for thousands of incidents of arson and property destruction.²⁸ Molotov cocktails, napalm, and improvised bombs have all been used by liberation groups to destroy private and government property associated with animal exploitation.²⁹ Thus, the Federal Bureau of Investigation has come to view such organizations as serious domestic terror threats.³⁰

In response to these concerns, Congress passed the Animal Enterprise Protection Act (“AETA”) of 1992.³¹ The law criminalized “physical disruption to the functioning of an animal enterprise.”³² While the goal was to protect agricultural facilities and laboratories from domestic terrorism,³³ it was criticized for equating violent firebombing with releasing abused animals.³⁴ Under the Act, both are classified as terrorism.³⁵

The revised version of the law, the AETA of 2006, did little to resolve these concerns. The new statute expanded protections for businesses, broadly criminalizing *any* interference with animal enterprises causing more than \$10,000 in damages.³⁶ Mere “economic harm” could fall within the statute’s scope, leading some to argue that the law could be used to prosecute

27. *Eco-Violence: The Record*, S. POVERTY L. CTR., <https://www.splcenter.org/fighting-hate/intelligence-report/2015/eco-violence-record> [<https://perma.cc/NU45-4TJD>].

28. *Id.* The Animal Liberation is a disjointed, fluid, direct-action organization with member cells around the world. Daniel Schorn, *Interview with ALF Cell Member*, 60 MINUTES (Nov. 11, 2005), <https://www.cbsnews.com/news/interview-with-alf-cell-member/> [<https://perma.cc/3P3P-3T4J>]. The organization has been the subject of terrorist investigations across the globe. *Id.*

29. S. POVERTY L. CTR., *supra* note 27.

30. *Animal Rights: Activism vs. Criminality: Hearing Before the S. Comm. on the Judiciary*, 108th Cong. 2–4 (2004) (statement of John E. Lewis, Deputy Assistant Dir., Fed. Bureau of Investigation), <https://www.govinfo.gov/content/pkg/CHRG-108shrg98179/pdf/CHRG-108shrg98179.pdf> [<https://perma.cc/WR7E-Y65E>].

31. Hill, *supra* note 25, at 991.

32. *Id.* at 991 & n.59; Animal Enterprise Protection Act of 1992, Pub. L. No. 102-346, § 43, 106 Stat. 928, 928 (amended 2006).

33. Michael Hill, Comment, *The Animal Enterprise Terrorism Act: The Need for a Whistleblower Exception*, 61 CASE W. RES. L. REV. 649, 651 (2010).

34. See Justin F. Marceau, *Ag Gag Past, Present, and Future*, 38 SEATTLE U. L. REV. 1317, 1321–22 (2011).

35. *Id.* In 2014, two activists who released 2,000 minks from a fur farm were charged under the act. Jason Meisner, *Lawyer Plans Constitutional Challenge in Mink Farm Sabotage Case*, CHI. TRIB. (July 29, 2014, 12:30 PM), <https://www.chicagotribune.com/news/breaking/chi-activists-plead-not-guilty-in-mink-farm-case-20140729-story.html> [<https://perma.cc/KQE2-39XD>].

36. 18 U.S.C. § 43.

whistleblowers.³⁷ Even as the law was first conceived in 1992, the House Judiciary Committee argued the scope of the law would chill whistleblowing and criminalize legitimate undercover investigations.³⁸

Although the drafters of the AETA did not directly intend to criminalize whistleblowing,³⁹ the 1990s saw the rise of explicit attempts to stifle undercover investigations. The Fourth Circuit's decision in *Food Lion Inc., v. Capital Cities/ABC, Inc.* was one of the most prominent of these early cases.⁴⁰

A. Food Lion v. Capital Cities/ABC

In 1992, American Broadcasting Companies' ("ABC") television program *PrimeTime Live* began an undercover investigation into the South Carolina-based grocery chain Food Lion after a whistleblower reported unsanitary and fraudulent practices.⁴¹ After getting jobs using fake resumes, reporters filmed "repackaging and redating fish that had passed the expiration date, grinding expired beef with fresh beef, and applying barbeque sauce to chicken past its expiration date in order to mask the smell and sell it as fresh in the gourmet food section."⁴² After ABC broadcast its investigation, Food Lion sued ABC for trespass, breach of duty of loyalty, fraud, and unfair trade practices.⁴³

The trial court found ABC liable on all claims, but the Fourth Circuit reversed the fraud verdict and affirmed the trespass verdict under alternate reasoning.⁴⁴ The Fourth Circuit reversed the fraud verdict because the reporters' misrepresentations did not cause any injury.⁴⁵ While the trial court concluded that the reporters were trespassers because Food Lion's consent was based on falsified resumes, the Fourth Circuit rejected this.⁴⁶ The court of appeals refused to turn resume fraud into trespass, instead holding that resume misrepresentation to obtain entry does not violate "the interest

37. Hill, *supra* note 33, at 656; Letter from Caroline Fredrickson, Dir. of the Washington Legis. Off., ACLU, to Hon. F. James Sensenbrenner, Jr., Chairman, House Judiciary Comm. & Hon. John Conyers, Jr., Ranking Member, House Judiciary Comm. (Oct. 30, 2006), <https://www.aclu.org/letter/aclu-letter-house-representatives-regarding-animal-enterprise-terrorism-act> [<https://perma.cc/7QWF-M7PZ>].

38. Hill, *supra* note 33, at 653–54.

39. *See id.* at 655.

40. *Food Lion, Inc. v. Cap. Cities/ABC, Inc.*, 194 F.3d 505 (4th Cir. 1999).

41. *Id.* at 510.

42. *Id.* at 511.

43. *Id.* at 510.

44. *Id.*

45. *Id.* at 513.

46. *Id.* at 518.

underlying the tort of trespass—the ownership and peaceable possession of land.”⁴⁷ However, the Fourth Circuit eventually affirmed the trespass verdict based on a separate violation of South Carolina’s employment laws.⁴⁸ Nevertheless, *Food Lion* is significant for journalistic investigations because of the holding that the reporters’ misrepresentations did not support a claim of trespass or fraud.

B. Ag-gag Laws

Around the same time as *Food Lion*, the nation’s first wave of ag-gag laws were adopted in Kansas, Montana, and North Dakota.⁴⁹ Kansas passed the Farm Animal and Field Crop and Research Facilities Protection Act in 1990, which criminalized “enter[ing] an animal facility to take pictures by photograph, video camera or by any other means” with the intent to damage the animal enterprise.⁵⁰ Unlike some ag-gag laws, however, the Kansas law also targeted property destruction and trespass at animal facilities.⁵¹ Thus, the law was not solely meant to stifle undercover filming. Instead, it turned otherwise criminal offenses, like trespass, property destruction, and vandalism, into new crimes when committed against an agricultural facility. Many states, including Iowa, have similar agricultural protection laws with harsher punishments for criminal acts when committed against agriculture.⁵²

47. *Id.* (citing *Desnick v. Am. Broad. Cos.*, 44 F.3d 1345, 1352 (7th Cir. 1995)). In *Desnick*, ABC’s *PrimeTime Live* conducted an undercover investigation into a midwestern eye center. *Desnick*, 44 F.3d at 1348. The center sued ABC for trespass, but the Seventh Circuit reasoned “the entry was not invasive in the sense of infringing the kind of interest of the plaintiffs that the law of trespass protects; it was not an interference with the ownership or possession of land.” *Id.* at 1353. The issue of whether misrepresentation to obtain employment interferes with property rights is still relevant in contemporary ag-gag decisions. See *Animal Legal Def. Fund v. Wasden*, 878 F.3d 1184, 1196, 1205–06, 1211 (9th Cir. 2018); *Animal Legal Def. Fund v. Herbert*, 263 F. Supp. 3d 1193, 1204–06 (D. Utah 2017).

48. *Food Lion*, 194 F.3d at 519.

49. See AM. SOC’Y FOR THE PREVENTION OF CRUELTY TO ANIMALS, *supra* note 10.

50. KAN. STAT. ANN. § 47-1827 (1990); *id.* § 457-1825 to -1830.

51. *Id.* § 47-1827.

52. IOWA CODE §§ 716.7A, 717, 717A (2020) (establishing criminal offenses related to agricultural facilities); see, e.g., IDAHO CODE §§ 18-7038 to -7043 (2020) (prohibiting the killing of livestock, interfering with agricultural research, and breaching biosecurity); 18 PA. CONS. STAT. § 3503(b.2) (2020) (creating a specific designation for agricultural trespassers). Like the Animal Enterprise Protection Act, many of these laws deter destructive acts by direct-action animal advocacy groups. Moreover, many states have passed so called “veggie libel” laws, which protect agricultural interests from inaccurate or dishonest public statements to a greater extent than normal defamation laws. For an overview of veggie libel laws, see Nicole E. Negowetti,

Other ag-gag laws may specifically target filming and photographing, distribution of those recordings, or obtaining facility access through deception.⁵³

The second wave of ag-gag legislation began around 2012, this time targeting undercover investigations.⁵⁴ By 2017, eleven states had adopted some form of ag-gag statute,⁵⁵ and many more state legislatures considered doing so.⁵⁶ Iowa led the way in 2012, quickly followed by Utah.⁵⁷ The Utah law provides that

- (2) A person is guilty of agricultural operation interference if the person
 - (a) without consent from the owner of the agricultural operation, or the owner's agent, knowingly or intentionally records an image of, or sound from, the agricultural operation by leaving a recording device on the agricultural operation;
 - (b) obtains access to an agricultural operation under false pretenses;
 - (c)
 - (i) applies for employment at an agricultural operation with the intent to record an image of, or sound from, the agricultural operation;
 - (ii) knows, at the time that the person accepts employment at the agricultural operation, that the owner of the agricultural

Opening the Barnyard Door: Transparency and the Resurgence of Ag-gag & Veggie Libel Laws, 38 SEATTLE U. L. REV. 1345 (2015) and Megan W. Semple, Note, *Veggie Libel Meets Free Speech: A Constitutional Analysis of Agricultural Disparagement Laws*, 15 VA. ENV'T. L.J. 403 (1995).

53. AM. SOC'Y FOR THE PREVENTION OF CRUELTY TO ANIMALS, *supra* note 10.

54. Marceau, *supra* note 34, at 1335; *see also* AM. SOC'Y FOR THE PREVENTION OF CRUELTY TO ANIMALS, *supra* note 10.

55. Ag-gag was enacted in Alabama, Arkansas, Idaho, Iowa, Kansas, Missouri, Montana, North Carolina, North Dakota, Utah, and Wyoming. ALA. CODE § 13A-11-150 (2020); ARK. CODE ANN. § 16-118-113 (2020); IDAHO CODE § 18-7042 (2020); IOWA CODE § 717A.3B (2020); KAN. STAT. ANN. § 47-1825 (2020); MO. REV. STAT. § 578.013 (2020); MONT. CODE ANN. § 81-30-101 to -105 (2020); N.C. GEN. STAT. § 99A-2 (2020); N.D. CENT. CODE § 12.1-21.1-01 to -05 (2020); UTAH CODE ANN. § 76-6-112 (West 2020); WYO. STAT. ANN. § 6-3-414 (2020). Though several of these laws have been struck down in federal court, many remain on the books as of 2020. For a brief description of each of these laws and their passage, *see* AM. SOC'Y FOR THE PREVENTION OF CRUELTY TO ANIMALS, *supra* note 10.

56. Marceau, *supra* note 34, at 1333; AM. SOC'Y FOR THE PREVENTION OF CRUELTY TO ANIMALS, *supra* note 10.

57. Marceau, *supra* note 34, at 1335.

operation prohibits the employee from recording an image of, or sound from, the agricultural operation; and

(iii) while employed at, and while present on, the agricultural operation, records an image of, or sound from, the agricultural operation⁵⁸

The Utah example shows that ag-gag laws can target either unpermitted recordings of an agricultural facility, obtaining access through misrepresentation, or both. Misrepresentation provisions effectively prohibit undercover investigations because most of these operations rely on obtaining access by misrepresenting one’s intentions or identity.⁵⁹ Most videos publicized by animal welfare organizations are the result of employment-based investigations, with advocates secretly recording as they work.⁶⁰ While both types of ag-gag restrictions have been subject to First Amendment challenges, this Comment focuses solely on misrepresentation provisions.

C. The Purpose of Ag-gag

With violent actions by groups like the Animal Liberation Front in mind, the passage of state and federal agricultural protection laws is understandable. Ensuring a plentiful, safe, and affordable food supply is one of the most important roles of government.⁶¹ Thus, states have an interest in protecting the property and privacy rights of farmers. Indeed, Iowa lawmakers argued that the 2012 ag-gag law was meant to protect biosecurity and private property.⁶² Supporters of other ag-gag laws reason that they are essential to prevent bioterrorism, hypothesizing about scenarios where extremists might maliciously obtain employment to spread infectious disease and harm herds of animals.⁶³ For example, state Senator Rozenbloom said, “Those of us in

58. UTAH CODE ANN. § 76-6-112 (West 2020).

59. Marceau, *supra* note 34, at 1335–36.

60. See Dorning, *supra* note 1; AM. SOC’Y FOR THE PREVENTION OF CRUELTY TO ANIMALS, *supra* note 10.

61. See Hill, *supra* note 33, at 652.

62. Animal Legal Def. Fund v. Reynolds, 353 F. Supp. 3d 812, 817 (S.D. Iowa 2019).

63. See *id.*; *Production Facility Trespass: Hearing on SF 519 Before the Iowa H. Comm. on the Judiciary*, 88th Gen. Assembly, at 3:58:40 (Mar. 12, 2019) [hereinafter *Production Facility Trespass*] (statement of Bruce Bearinger, Rep., Iowa H. of Reps.) <https://www.legis.iowa.gov/dashboard?view=video&chamber=H&clip=h20190312022717298&dt=2019-03-12&offset=5460&bill=SF%20519&status=i> [https://perma.cc/KPL8-9XAY] (“It’s an unfortunate bill, but in this era of high risk of bio terrorism and the extreme need for biosecurity and extremism, it’s an important bill to protect our agricultural entities across the state

animal agriculture lose sleep over certain foreign animal diseases that could devastate our farms and bring Iowa to its knees, or maybe put Iowa flat on its back.”⁶⁴ Coincidentally, Rozenbloom owns a pig facility that has since been accused of animal abuse and neglect after an undercover investigation.⁶⁵

Critics of ag-gag claim that the laws are instead meant to punish investigators and prevent publication of actual farm conditions.⁶⁶ When debating Iowa’s 2019 ag-gag bill on the house floor, a state representative declared, “This bill gives the middle finger to free speech, consumer protection, food safety, and animal welfare.”⁶⁷ Along with animal welfare groups, the American Civil Liberties Union, Amnesty International, and organizations of journalists oppose ag-gag, arguing the laws chill free speech.⁶⁸ Opponents of ag-gag can point to statements by bill sponsors that these laws are specifically meant “to crack down on activists who deliberately cast agricultural operations in a negative light.”⁶⁹ In Iowa, a supportive legislator frankly stated his goal was “stopping these groups . . . trying to give the agriculture industry a bad name.”⁷⁰

of Iowa.”); *Agriculture Facility Trespass: Hearing on SF 519 Before the Iowa S.*, 88th Gen. Assembly, at 11:59:35 (Mar. 12, 2019) [hereinafter *Agriculture Facility Trespass*] (statement of Ken Rozenboom, Sen., Iowa S.) <https://www.legis.iowa.gov/dashboard?view=video&chamber=S&clip=s20190312090629454&dt=2019-03-12&offset=8945&bill=SF%20519&status=i> [<https://perma.cc/ZJ5S-P7P6>].

64. *Agriculture Facility Trespass*, *supra* note 63, at 11:59:35 (statement of Ken Rozenboom, Sen., Iowa S.).

65. Donnelle Eller, *Animal Rights Group Claims Animal Neglect at Farm of Iowa Senator Who Backed Ag-gag Law*, DES MOINES REG. (Jan. 24, 2020, 9:46 AM), <https://www.desmoinesregister.com/story/money/agriculture/2020/01/24/animal-rights-group-claims-neglect-pigs-iowa-farm-ag-gag-supporter/4545787002/> [<https://perma.cc/LU6M-DG4A>].

66. *Anti-Whistleblower Ag-gag Bills Hide Factory Farming Abuses from the Public*, HUMANE SOC’Y OF THE U.S., humanesociety.org/resources/anti-whistleblower-ag-gag-bills-hide-factory-farming-abuses-public [<https://perma.cc/7ACL-EXQB>]; AM. SOC’Y FOR THE PREVENTION OF CRUELTY TO ANIMALS, *supra* note 10.

67. *Production Facility Trespass*, *supra* note 63, at 3:59:24 (statement of Liz Bennet, Rep., Iowa H. of Reps.).

68. ACLU ET AL., STATEMENT OF OPPOSITION TO PROPOSED “AG-GAG” LAWS FROM BROAD SPECTRUM OF INTEREST GROUPS, <https://www.humanesociety.org/sites/default/files/docs/statement-opposition-ag-gag.pdf> [<https://perma.cc/7GHQ-JYCS>]; Press Release, ACLU, Victory in Lawsuit Against Iowa’s “Ag Gag” Law (Jan. 9, 2019), <https://www.aclu.org/press-releases/victory-lawsuit-against-iowas-ag-gag-law> [<https://perma.cc/N6FP-RNT8>]; Animal Legal Defense Fund v. Wasden, REPS. COMM. FOR FREEDOM OF THE PRESS, <https://www.rcfp.org/briefs-comments/animal-legal-defense-fund-v-wasden-0/> [<https://perma.cc/EC82-GQ2A>].

69. Lewis Bollard, *Ag-gag: The Unconstitutionality of Laws Restricting Undercover Investigations on Farms*, 42 ENV’T. L. REP. 10960, 10965 (2012).

70. Mike Wiser, *Iowa May Be First To Ban Secret Video on Farms*, SIOUX CITY J. (May 22, 2011), https://siouxcityjournal.com/news/state-and-regional/iowa/article_7710d785-77b4-5183-9b05-edd788c9e33b.html [<https://perma.cc/9QJE-XCZP>].

While some radical animal rights groups have resorted to extremism, whistleblowing by peaceful groups has undoubtedly led to improvements in animal welfare and food safety.⁷¹ Moreover, undercover investigations protect the very interests that agricultural protection laws allegedly safeguard—the health and safety of animals and employees.⁷² The safety of crops, animals, and property may be important interests; but criminalizing undercover investigations meant to protect the welfare of animals and employees does not safeguard those interests.⁷³ Rather, the injuries caused by undercover investigations are economic, related to consumers changing their purchases.⁷⁴ As federal courts have reasoned in Iowa, Utah, and Idaho, the policy justifications for ag-gag are tenuous.⁷⁵

III. FREE SPEECH CHALLENGES TO AG-GAG

The First Amendment states that “Congress shall make no law . . . abridging the freedom of speech or of the press.”⁷⁶ Under the Fourteenth Amendment, this restriction also applies to the states.⁷⁷ Content-based restrictions on speech are presumed invalid⁷⁸ and only permitted for certain types of content, such as speech likely to incite imminent lawless action, “fighting words,” child pornography, threats, obscenity, defamation, and fraud.⁷⁹ Generally, mere false statements and misrepresentations are still protected speech.⁸⁰ For speech to be unprotected by the First Amendment, it must be associated with a legally cognizable harm.⁸¹

As of April 2020, federal courts in Idaho, Iowa, Utah, Wyoming, and Kansas have held ag-gag laws unconstitutional,⁸² and similar challenges are

71. See *supra* notes 20–26 and accompanying text.

72. See Hill, *supra* note 33, at 651–52.

73. See *id.* at 653–54.

74. See *id.* at 656.

75. Animal Legal Def. Fund v. Reynolds, 353 F. Supp. 3d 812, 824–26 (S.D. Iowa 2019); Animal Legal Def. Fund v. Herbert, 263 F. Supp. 3d 1193, 1212–13 (D. Utah 2017); Animal Legal Def. Fund v. Otter, 118 F. Supp. 3d 1195, 1207–08 (D. Idaho 2015), *aff'd in part, rev'd in part sub nom.* Animal Legal Def. Fund v. Wasden, 878 F.3d 1184 (9th Cir. 2018).

76. U.S. CONST. amend. I.

77. U.S. CONST. amend. XIV, § 1; Gitlow v. New York, 268 U.S. 652, 667–68 (1925).

78. United States v. Alvarez, 567 U.S. 709, 709 (2012) (citing *Ashcroft v. ACLU*, 542 U.S. 656, 660 (2004)).

79. *Id.*

80. *Id.* at 718.

81. *Id.* at 719.

82. Animal Legal Def. Fund v. Wasden, 878 F.3d 1184, 1194–95 (9th Cir. 2018); Animal Legal Def. Fund v. Reynolds, 353 F. Supp. 3d 812, 827 (S.D. Iowa 2019); Animal Legal Def. Fund v. Herbert, 263 F. Supp. 3d 1193, 1213 (D. Utah 2017); W. Watersheds Project v. Michael,

currently being considered in other states.⁸³ While videotaping and photographing are generally recognized as legally protected speech,⁸⁴ recording prohibitions and misrepresentation provisions are subject to different forms of First Amendment analysis.⁸⁵ This Part focuses solely on misrepresentation.

When considering these misrepresentation prohibitions, courts rely on *United States v. Alvarez*, where the Supreme Court invalidated the federal Stolen Valor Act.⁸⁶ This Part introduces *Alvarez* and then discusses ag-gag decisions in Idaho and Utah.

A. *United States v. Alvarez*

In *Alvarez*, the defendant publicly lied about receiving the Congressional Medal of Honor.⁸⁷ *Alvarez* was charged under the Stolen Valor Act, which criminalized false claims about receiving military decorations.⁸⁸ He was convicted at trial and appealed, arguing that the statute violated the First Amendment's free speech protections.⁸⁹

In a plurality opinion, Justice Kennedy rejected the argument that false speech has no First Amendment protection.⁹⁰ While false speech may be criminalized in cases of defamation or fraud, those cases are distinguishable because fraud and defamation laws prevent some legally cognizable harm.⁹¹ In contrast, the Stolen Valor Act's language criminalized harmless private utterances.⁹² Because the plurality found false speech was protected under the First Amendment, the Stolen Valor Act was subject to strict scrutiny.⁹³

Under strict scrutiny, a content-based restriction on speech is presumed unconstitutional and will only be upheld if the state proves it is narrowly

869 F.3d 1189, 1197 (10th Cir. 2017); *Animal Legal Def. Fund v. Kelly*, 434 F. Supp. 3d 974, 1000 (D. Kan. 2020).

83. AM. SOC'Y FOR THE PREVENTION OF CRUELTY TO ANIMALS, *supra* note 10.

84. *Herbert*, 263 F. Supp. 3d at 1206–07.

85. *See, e.g., Alvarez*, 567 U.S. at 724–27 (applying strict scrutiny to a law criminalizing misrepresentations about the receipt of military medals).

86. *Id.*

87. *Id.* at 714.

88. *Id.* at 715–16.

89. *Id.* at 714.

90. *Id.* at 718–19 (reasoning that if there is to be “open and vigorous expression of views in public and private conversation,” then “some false statements are inevitable”).

91. *Id.*

92. *Id.* at 722–23.

93. *Id.* at 724.

tailored to serve a compelling state interest.⁹⁴ To be narrowly tailored, a law must be both “actually necessary” and the “least restrictive means among available effective alternatives.”⁹⁵

While the plurality found a compelling interest in maintaining the integrity of the Medal of Honor, it reasoned the Act was not narrowly tailored to protect that interest.⁹⁶ There were other ways to protect the Medal of Honor’s reputation, so it was not “actually necessary.”⁹⁷ Potential effective alternatives were as simple as counter-speech or public refutation, solutions that did not restrict speech.⁹⁸ Furthermore, the law did not specifically prohibit speech that caused harm to the integrity of the Medal of Honor, as it applied even to harmless deceptions.⁹⁹ Thus, it was overly broad. Justice Kennedy concluded, “There must be a direct causal link between the restriction imposed and the injury to be prevented.”¹⁰⁰

Splitting from the plurality, Justice Breyer’s concurrence argued false statements are not fully protected by the First Amendment, and the Court should have used intermediate scrutiny.¹⁰¹ Under this test, the Court considers whether it is “possible substantially to achieve the Government’s objective in less burdensome ways . . . [with a] more finely tailored statute.”¹⁰² Specifically, Justice Breyer was skeptical because the law targeted speech that inflicted no specific harm, the law ranged very broadly, and the act risked

94. See *id.* at 716–17. While Justice Kennedy did not clearly state this standard, this is the analysis courts use when considering strict scrutiny. *Reed v. Town of Gilbert*, 576 U.S. 155, 165–66 (2015); see also *Animal Legal Def. Fund v. Reynolds*, 353 F. Supp. 3d 812, 824 (S.D. Iowa 2019) (citing *United States v. Playboy Ent. Grp.*, 529 U.S. 803, 818 (2000)); *Animal Legal Def. Fund v. Herbert*, 263 F. Supp. 3d 1193, 1211 (D. Utah 2017).

95. *Alvarez*, 567 U.S. at 725, 729 (citing *Ashcroft v. ACLU*, 542 U.S. 656, 666 (2004)). In *Ashcroft*, the Court considered whether the Child Online Protection Act (“COPA”), which criminalized certain content “harmful to minors,” was the “least restrictive means” to protect the state’s interest—children. *Ashcroft*, 542 U.S. at 659, 666–67. The court reasoned an internet content filter could have accomplished Congress’s goals without infringing speech and concluded the lower court should have considered alternatives. *Id.* at 666–68, 672–73; see also *Reynolds*, 353 F. Supp. 3d at 825–26.

96. *Alvarez*, 567 U.S. at 725–29.

97. *Id.* at 726–28.

98. *Id.* at 726–27.

99. *Id.* at 725–26. The government failed to provide evidence of a specific harm beyond dilution of public perception of the Medal of Honor. *Id.* This is distinguishable from the Court’s recognition that restrictions on “false claims . . . made to effect a fraud or secure moneys or other valuable considerations, say *offers of employment*” may be constitutional. *Id.* at 723 (emphasis added).

100. *Id.* at 725.

101. *Id.* at 730 (Breyer, J., concurring).

102. *Id.* Breyer’s test would have balanced “speech-related harms, justifications, and potential alternatives.” *Id.*

chilling speech significantly.¹⁰³ Though the concurrence reasoned the Act served a legitimate government interest, a more narrowly tailored statute would have reduced First Amendment harm while still protecting the government's interest.¹⁰⁴ Agreeing with the plurality, a sufficiently narrowed statute should include a link to a specific or tangible harm.¹⁰⁵

Less than a year after *Alvarez* held the Stolen Valor Act was unconstitutional, an amended version of the law was signed into law by President Obama.¹⁰⁶ While the old version of the law broadly criminalized false claims about receiving military decorations,¹⁰⁷ the revised statute only criminalizes misrepresentations made “with intent to obtain money, property, or other tangible benefit.”¹⁰⁸ With this fraudulent intent element (i.e. a link to a specific harm), the amended Stolen Valor Act has been successfully enforced.¹⁰⁹

Courts reviewing ag-gag laws have uniformly applied the *Alvarez* plurality's strict scrutiny standard.¹¹⁰ Some courts briefly discuss the concurrence's intermediate scrutiny standard after applying strict scrutiny but

103. *Id.* at 736–37; *see also* Animal Legal Def. Fund v. Wasden, 878 F.3d 1184, 1198 (9th Cir. 2018).

104. *Alvarez*, 567 U.S. at 739.

105. *See id.* at 734. Justice Breyer reasoned that lawful restrictions on speech must be narrow, in that they limit the scope of their application, sometimes by requiring proof of specific harm to identifiable victims; sometimes by specifying that the lies be made in contexts in which a tangible harm to others is especially likely to occur; and sometimes by limiting the prohibited lies to those that are particularly likely to produce harm.

Id.

106. 18 U.S.C. § 704; Lee Ferran, *Obama Signs Stolen Valor Act into Law*, ABC NEWS (June 3, 2013), <https://abcnews.go.com/blogs/headlines/2013/06/obama-signs-stolen-valor-act-into-law> [<https://perma.cc/WL3Y-KJRN>].

107. Stolen Valor Act of 2005, Pub. L. No. 109-437, § 704(b), 120 Stat. 3266, 3266–67 (2006), *invalidated by Alvarez*, 567 U.S. 709 (“Whoever falsely represents himself or herself, verbally or in writing, to have been awarded any decoration or medal . . . shall be fined under this title, imprisoned not more than six months, or both.”).

108. 18 U.S.C. § 704(b).

109. *See* United State v. Howe, 706 F. App'x. 446, 446–47 (9th Cir. 2017); United States v. Gambino, No. 16-2389 JCH, 2018 U.S. Dist. LEXIS 4469, at *1 (D. N.M. Jan. 10, 2018); United States v. Blackstone, No. 3:16-CR-409-M (01), 2016 U.S. Dist. LEXIS 159385, at*1–2 (D. Tex. Nov. 16, 2016).

110. Animal Legal Def. Fund v. Wasden, 878 F.3d 1184, 1198 (9th Cir. 2018) (applying strict scrutiny and briefly considering intermediate scrutiny); Animal Legal Def. Fund v. Reynolds, 353 F. Supp. 3d 812, 823 (S.D. Iowa 2019) (applying strict scrutiny and concluding intermediate scrutiny would lead to the same result); Animal Legal Def. Fund v. Herbert, 263 F. Supp. 3d 1193, 1209 (D. Utah 2017) (applying solely strict scrutiny); Animal Legal Def. Fund v. Kelly, 434 F. Supp. 3d 974, 1000 (D. Kan. 2020) (applying solely strict scrutiny).

conclude the result is the same under either test.¹¹¹ Ultimately, lower courts look at the points of agreement between the Justices and focus on whether the false speech was made for material gain or to inflict harm.¹¹²

B. Idaho Ag-gag

In 2014, the Animal Legal Defense Fund challenged the constitutionality of Idaho's ag-gag law.¹¹³ Under Section 18-7042 of the Idaho statute, a person commits the crime of interference with agricultural production if the person knowingly:

- (a) Is not employed by an agricultural production facility and enters an agricultural production facility by force, threat, misrepresentation or trespass;
- (b) Obtains records of an agricultural production facility by force, threat, misrepresentation or trespass; [or]
- (c) Obtains employment with an agricultural production facility by force, threat, or misrepresentation with the intent to cause economic or other injury to the facility's operations, livestock, crops, owners, personnel, equipment, buildings, premises, business interests or customers¹¹⁴

In *Animal Legal Defense Fund v. Otter* (renamed *Animal Legal Defense Fund v. Wasden* on appeal), a district court held that the entirety of Section 18-7042 was unconstitutional.¹¹⁵ Idaho argued the law was narrowly tailored because it only criminalized speech accompanied by conduct.¹¹⁶ However, the law did not target a legally cognizable harm as misrepresentations to obtain access to a farm could be harmless.¹¹⁷ Moreover, any harms to agriculture would come from publication of the undercover investigation rather than the misrepresentation itself.¹¹⁸

111. *Wasden*, 878 F.3d at 1198; *Reynolds*, 353 F. Supp. 3d at 823–24. The courts' application of intermediate scrutiny is perfunctory, lasting little more than a paragraph in each case, suggesting the courts believe strict scrutiny to be the proper test.

112. *Wasden*, 878 F.3d at 1194.

113. *Animal Legal Def. Fund v. Otter*, 118 F. Supp. 3d 1195 (D. Idaho 2015), *aff'd in part, rev'd in part sub nom. Wasden*, 878 F.3d 1184.

114. IDAHO CODE § 18-7042(1) (2014). The statute also criminalized recording agricultural operations without the owner's consent. *Id.*

115. *Otter*, 118 F. Supp. 3d at 1209.

116. *Id.* at 1203.

117. *Id.*

118. *Id.* at 1204.

On appeal, the Ninth Circuit agreed section (a) was unconstitutional.¹¹⁹ The court added that section (a) was not “actually necessary” to protect the state’s interests because trespass laws already protect property rights.¹²⁰ Relying in part on *Food Lion*, the court further reasoned that access by misrepresentation is not necessarily a trespass.¹²¹ Moreover, legislative history indicated that the main purpose of the law was to quash investigative reporting rather than to protect property or privacy.¹²²

However, sections (b) and (c) were upheld.¹²³ Obtaining business records through misrepresentation inflicts a legally cognizable harm, as it directly interferes with ownership of business property.¹²⁴ Stolen trade secrets or confidential information could easily injure businesses, so section (b) targeted a specific harm as required by *Alvarez*.¹²⁵

Section (c) applied to misrepresentations to obtain employment “with the intent to cause economic or other injury,” thus criminalizing only lies meant to cause harm.¹²⁶ The Ninth Circuit reasoned this was a sufficient nexus to a legally cognizable harm, noting it was “as though the Idaho legislature drafted this provision with *Alvarez* by its side.”¹²⁷ Moreover, the *Alvarez* plurality specifically stated that lies meant to secure offers of employment may not be entitled to full First Amendment protection.¹²⁸ There was a compelling government interest in restricting such misrepresentations because employees may have access to restricted areas and confidential information, potentially posing a serious threat to businesses.¹²⁹ Therefore, sections (b) and (c) were narrowly tailored and served a compelling government interest.¹³⁰

The dissent reasoned *Alvarez* did not apply and would have upheld section (a) based on common law property rights.¹³¹ Judge Bea argued that a property owner’s right to exclude is “a fundamental element of the property right” and that the access provision was no different than a trespass law.¹³² Judge Bea reasoned obtaining access by misrepresentation inflicts trespassory harm on

119. *Animal Legal Def. Fund v. Wasden*, 878 F.3d 1184, 1198 (9th Cir. 2018).

120. *Id.* at 1196–97.

121. *Id.* at 1195–96.

122. *Id.* at 1196–97.

123. *Id.* at 1200–03.

124. *Id.* at 1199.

125. *Id.* at 1199–1200.

126. *Id.* at 1201.

127. *Id.*

128. *United States v. Alvarez*, 567 U.S. 709, 723 (2012); *Wasden*, 878 F.3d at 1201.

129. *Wasden*, 878 F.3d at 1202.

130. *Id.* at 1201–02.

131. *Id.* at 1206–07 (Bea, J., dissenting in part, concurring in part).

132. *Id.* at 1206–08 (quoting *Kaiser Aetna v. United States*, 444 U.S. 164, 179–80 (1979)).

property owners, whereas the majority, citing *Food Lion*, reasoned access by misrepresentation is not necessarily trespassory.¹³³ To the dissent, this was a property law issue, not a First Amendment case.¹³⁴ Nevertheless, Judge Bea concluded the law should still be upheld under *Alvarez* because access through misrepresentation *does* cause a legally cognizable harm.¹³⁵ Thus, the dissent sympathized with lawmakers who argue these laws are meant to protect private property rights.¹³⁶

C. Utah Ag-gag

In the 2017 case *Animal Legal Defense Fund v. Herbert*, a federal district court ruled the entirety of Utah’s ag-gag law was unconstitutional.¹³⁷ Relying heavily on *Alvarez*, the district court concluded the law did not target a legally cognizable harm.¹³⁸ The court conceded that injuries to animals and employees are likely legally cognizable harms but reasoned the law did not specifically target statements that inflicted those harms.¹³⁹ Like section (a) of the Idaho law, the Utah law also criminalized harmless lies.¹⁴⁰

The court next considered whether the law protected against trespass harms.¹⁴¹ While some nefarious misrepresentations to obtain access, like posing as a customer to steal business records, might be a trespass, other misrepresentations, like a restaurant critic concealing their identity, might be harmless and non-trespassory.¹⁴² Citing *Food Lion*, the court reasoned misrepresentations to conduct an undercover investigation do not inflict a trespass harm.¹⁴³

133. *Id.* at 1195–96, 1211 (citing *Food Lion, Inc. v. Cap. Cities/ABC, Inc.*, 194 F.3d 505, 517 (4th Cir. 1999)); *see also* *Animal Legal Def. Fund v. Herbert*, 263 F. Supp. 3d 1193, 1203–04 (D. Utah 2017).

134. *Wasden*, 878 F.3d at 1213 (Bea, J., dissenting in part, concurring in part) (“The misconception of the ancient right at stake—the right of an owner of real property to exclude all others from his property—is where the majority goes wrong . . .”).

135. *Id.* at 1208.

136. For justifications from lawmakers regarding these laws, *see supra* notes 62–65 and accompanying text.

137. *Herbert*, 263 F. Supp. 3d at 113. For text of Utah’s overturned ag-gag law, *see supra* note 58 and accompanying text.

138. *Herbert*, 263 F. Supp. 3d at 1201–02.

139. *Id.* at 1202.

140. *Id.* at 1203.

141. *Id.* at 1202–03.

142. *Id.* at 1203–04.

143. *Id.* (“In other words, under this reasoning, lying to gain entry, without more, does not itself constitute trespass.”).

The state also argued it had an interest in protecting against employment-related harms.¹⁴⁴ While the Utah law did not specifically criminalize obtaining employment through misrepresentation, doing so was nevertheless prohibited by the access provision.¹⁴⁵ The court recognized the distinction *Alvarez* had made for employment, conceding, “If the Act solely criminalized obtaining an offer of employment under false pretenses,” perhaps the law would be sufficiently narrow.¹⁴⁶ But the law did not specifically target offers of employment and was therefore overbroad.¹⁴⁷

The court concluded the state’s interest in protecting animals and workers was not compelling and expressed skepticism about the law’s actual purpose.¹⁴⁸ The statute was more likely to target undercover investigations than harmful conduct, and the failure of the law to target harm also meant it was not narrowly tailored.¹⁴⁹ Thus, the law failed strict scrutiny.¹⁵⁰

D. Iowa’s Original Ag-gag Law

Iowa’s first ag-gag law was overturned by a federal district court in January 2019.¹⁵¹ Like the Idaho law, Iowa’s law criminalized misrepresentations to obtain access or employment at agricultural facilities.¹⁵² Iowa Code Section 717A.3A provided

1. A person is guilty of agricultural production facility fraud if the person willfully does any of the following:
 - a. Obtains access to an agricultural production facility by false pretenses.
 - 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 agricultural production facility, knowing that the act is not authorized.¹⁵³

144. *Id.* at 1206.

145. *Id.*

146. *Id.*

147. *Id.* at 1207–08.

148. *Id.* at 1212.

149. *Id.* at 1212–13.

150. *Id.* at 1213.

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

152. IOWA CODE § 717A.3A(1) (2020).

153. *Id.*

In *Animal Legal Defense Fund v. Reynolds*, the district court granted summary judgement and ruled Iowa’s law unconstitutional.¹⁵⁴ Applying strict scrutiny, the court first reasoned the state did not have a compelling interest in protecting biosecurity or the property rights of the agriculture industry, pointing to legislative history that indicated the law was intended to silence advocacy groups.¹⁵⁵ Further, alleged harms like infectious disease or injury to workers and animals were entirely speculative.¹⁵⁶

Nor did the court find the statute narrowly tailored.¹⁵⁷ Misrepresentations to obtain access or employment do not necessarily threaten biosecurity, so the Iowa law criminalized harmless lies.¹⁵⁸ Moreover, Iowa had narrower, less restrictive means, such as trespass law, which adequately protected biosecurity and private property.¹⁵⁹

At first glance, Section 717A.3A(1)(b) might appear to have the intent to cause a specific harm required by *Alvarez*, as it targets only false statements “with an intent to commit an act not authorized by the owner.”¹⁶⁰ Perhaps the scope of the Iowa law was somewhat limited by this language. Indeed, this is similar to the limiting language in Idaho’s upheld statute: “misrepresentations with the intent to cause economic or other injury.”¹⁶¹ However, the *Reynolds* court reasoned that an act “not authorized” by the owner is not necessarily harmful.¹⁶² Thus, it was still overinclusive and failed to satisfy *Alvarez*.¹⁶³ The court came to the same result under Justice Breyer’s intermediate scrutiny test.¹⁶⁴

E. Iowa’s Revised Ag-gag Law

In March 2019, a revised version of Iowa Code Section 717A.3A was passed by the Iowa legislature.¹⁶⁵ Seemingly drafted with *Alvarez* as a guide, Iowa Code Section 717A.3B now provides

154. *Reynolds*, 353 F. Supp 3d at 827.

155. *Id.* at 824.

156. *Id.* at 825.

157. *Id.* at 824–25.

158. *Id.* at 825.

159. *Id.* at 824–26.

160. IOWA CODE § 717A.3A(1)(b) (2020).

161. IDAHO CODE § 18-7042(1)(c) (2020).

162. *Reynolds*, 353 F. Supp 3d at 826.

163. *Id.* at 826–27.

164. *Id.*

165. S. 519, 88th Gen. Assemb., Reg. Sess. (Iowa 2019), <https://www.legis.iowa.gov/docs/publications/LGE/88/SF519.pdf> [https://perma.cc/JD7K-NRYF].

1. A person commits agricultural production facility trespass if the person does any of the following:
 - a. Uses deception . . . and, through such deception, gains access to the agricultural production facility, with the intent to cause physical or economic harm or other injury to the agricultural production facility's operations, agricultural animals, crop, owner, personnel, equipment, building, premises, business interest, or customer.
 - b. Uses deception . . . and, through such deception, is so employed, with the intent to cause physical or economic harm or other injury to the agricultural production facility's operations, agricultural animals, crop, owner, personnel, equipment, building, premises, business interest, or customer.¹⁶⁶

The Iowa law now targets deception *with the intent to cause harm*.¹⁶⁷ When asked why this new law would be upheld, a state senator stated that the law was specifically redrafted with the Idaho law and the Ninth Circuit's opinion in mind.¹⁶⁸ He argued that the focus had been narrowed significantly, and they had learned from the Iowa law's previous constitutional challenge.¹⁶⁹ It appears Iowa used these prior decisions as drafting guides when writing the new law.

IV. ANALYSIS OF IOWA'S NEW AG-GAG LAW

Iowa Code Section 717A.3B imposes content-based restrictions on speech and will likely be subject to strict scrutiny.¹⁷⁰ Under strict scrutiny, the statute is presumed unconstitutional and will only be upheld if it is narrowly tailored to serve a compelling state interest.¹⁷¹ Like other ag-gag decisions, this analysis focuses on strict scrutiny.¹⁷²

166. IOWA CODE § 717A.3B(1) (2020).

167. *Id.*

168. *Agriculture Facility Trespass*, *supra* note 63, at 11:51:44 (statement of Ken Rozenboom, Sen., Iowa S.).

169. *Id.*

170. *Animal Legal Def. Fund v. Reynolds*, 353 F. Supp. 3d 812, 822 (S.D. Iowa 2019). If authorities must examine the content of an individual's statement or the content's veracity to determine if the speaker violates the statute, then a restriction is content based. *Id.*

171. *Id.* at 824 (citing *United States v. Playboy Ent. Grp.*, 529 U.S. 803, 818 (2000)); *Animal Legal Def. Fund v. Herbert*, 263 F. Supp. 3d 1193, 1211 (D. Utah 2017).

172. For a discussion of intermediate scrutiny, see *supra* notes 101–105, 110–112 and accompanying text, and *infra* note 198.

Section (a) of the Iowa law focuses on misrepresentations to obtain access to an agricultural production facility, while section (b) focuses on misrepresentations to obtain employment.¹⁷³ Because the two provisions have different targets, they will likely be considered separately.

A. Section (a)—Obtaining Access Through Deception

Section (a) is likely unconstitutional. On one hand, the law may satisfy *Alvarez*'s specific harm requirement because it targets only deceptions made with the intent to injure agricultural facilities.¹⁷⁴ But on the other hand, courts have repeatedly reasoned that states do not have a compelling interest in restricting lies made to obtain access to agricultural facilities.¹⁷⁵ Moreover, the law is likely not narrowly tailored because existing criminal laws already target the same injuries.¹⁷⁶ The ultimate question may be whether the intent to cause harm element is enough to uphold the provision.

1. Does Section (a) Serve a Compelling State Interest?

The first element of strict scrutiny is whether the state has a compelling interest in restricting the speech.¹⁷⁷ Iowa will likely argue the law protects animals, workers, and the private property rights of agricultural facilities.¹⁷⁸ This argument will likely fail. First, other ag-gag decisions reason biosecurity and safety are not compelling state interests.¹⁷⁹ Courts reason harms related to disease or animal and worker safety are too speculative to justify ag-gag laws.¹⁸⁰ Second, the *Food Lion*, *Wasden*, *Reynolds*, and *Herbert* decisions all reason access through misrepresentation does not interfere with property

173. IOWA CODE § 717A.3B(1) (2020).

174. For a brief overview of *Alvarez*, see *supra* notes 87–112 and accompanying text.

175. *Reynolds*, 353 F. Supp. 3d at 824; *Herbert*, 263 F. Supp. 3d at 1212; Animal Legal Def. Fund v. Otter, 118 F. Supp. 3d 1195, 1207 (D. Idaho 2015), *aff'd in part, rev'd in part sub nom.* Animal Legal Def. Fund v. Wasden, 878 F.3d 1184 (9th Cir. 2018).

176. See, e.g., §§ 716.7A, 717, 717A (establishing several criminal offenses related to agricultural facilities). Moreover, normal criminal, tort, and contract laws already protect businesses from harmful conduct.

177. *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015); *Reynolds*, 353 F. Supp. 3d at 824; *Herbert*, 263 F. Supp. 3d at 1211.

178. These are the interests Iowa put forward in *Reynolds*, 353 F. Supp. 3d at 824.

179. *Id.*; *Herbert*, 263 F. Supp. 3d at 1212; *Otter*, 118 F. Supp. 3d at 1207; see also *Wasden*, 878 F.3d at 1196, 1198 (assuming there was a compelling interest but expressing doubt as to the state's actual intent).

180. *Reynolds*, 353 F. Supp. 3d at 824; *Herbert*, 263 F. Supp. 3d at 1212.

rights and is not trespass.¹⁸¹ The *Otter* court found a state's interest in property rights was important but not compelling.¹⁸² Thus, it is unlikely a court will find a compelling, property-related harm where other courts have not. In contrast, the Ninth Circuit found a compelling interest in Idaho's employment provision because of potentially catastrophic harms if someone has insider business access.¹⁸³ Unless Iowa advances a novel state interest that protects against similarly catastrophic harms, a court is unlikely to find a compelling interest here.

Moreover, a court will likely point to public statements by proponents that ag-gag laws are meant to stifle investigations.¹⁸⁴ The *Reynolds* court was concerned with the old Iowa law's legislative history, so it is likely the next court reviewing an Iowa law will be similarly concerned.¹⁸⁵ The acknowledgements that similar laws are meant to crack down on advocates help show that section (a) does not serve a compelling state interest.

2. Is Section (a) Narrowly Tailored?

The second element of strict scrutiny is whether the law is narrowly tailored.¹⁸⁶ Perhaps the most troubling aspect of overturned ag-gag laws was their potential to criminalize even harmless speech.¹⁸⁷ But the law here no longer applies to innocent statements.¹⁸⁸ The only statements criminalized are those made as part of a plan to harm an agricultural facility.¹⁸⁹ The Ninth Circuit stated the unconstitutional portion of Idaho's law would have been more narrowly tailored had it been limited to statements that cause a particular harm.¹⁹⁰ As a result, the revised law might be sufficiently cabined.

181. *Food Lion, Inc. v. Cap. Cities/ABC, Inc.*, 194 F.3d 505, 518 (4th Cir. 1999); *Wasden*, 878 F.3d at 1196; *Reynolds*, 353 F. Supp. 3d at 824; *Herbert*, 263 F. Supp. 3d at 1202–03.

182. *Otter*, 118 F. Supp. 3d at 1207–08.

183. *Wasden*, 878 F.3d at 1201.

184. Although lawmakers have provided innocent justifications for Iowa's new law, the multitude of incriminating statements surrounding similar laws suggests Iowa's new law is not above suspicion. See *Reynolds*, 353 F. Supp. 3d at 817, 824; *Herbert*, 263 F. Supp. 3d at 1212; *Otter*, 118 F. Supp. 3d at 1200–01. For statements from lawmakers about ag-gag laws, see *supra* notes 64–70 and accompanying text.

185. *Reynolds*, 353 F. Supp. 3d at 817, 824 n.4.

186. *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015); *Reynolds*, 353 F. Supp. 3d at 824; *Herbert*, 263 F. Supp. 3d at 1211.

187. See *Wasden*, 878 F.3d at 1195.

188. See IOWA CODE § 717A.3B(1)(A) (2020).

189. *Id.*

190. See *Wasden*, 878 F.3d at 1198.

Alvarez held that a law restricting false speech must target a legally cognizable harm.¹⁹¹ The revised Iowa law now specifically targets deceptions made with the intent to cause “physical or economic harm or other injury.”¹⁹² This is strikingly similar to the upheld section of Idaho’s employment provision, which targets only deceptions made with “intent to cause economic or other injury.”¹⁹³ Moreover, the Ninth Circuit suggested that Idaho’s access provision would have been upheld if it had required specific intent,¹⁹⁴ so a targeted access provision could conceivably be constitutional. Unlike Iowa’s previous ag-gag statute,¹⁹⁵ harmless trespassers who deceptively obtain access do not violate the law.¹⁹⁶ Lastly, the provision is similar to the revised Stolen Valor Act, which targets only lies made with “intent to obtain money, property, or other tangible benefit.”¹⁹⁷ Therefore, the new law’s intent-to-cause-injury requirement limits its scope to deception that causes a legally cognizable harm, possibly satisfying both the *Alvarez* plurality’s and concurrence’s specific harm requirement.¹⁹⁸

To be narrowly tailored, a law must also be “actually necessary.”¹⁹⁹ Here, section (a) hits the same problem as other ag-gag laws: other criminal and civil laws already protect the state’s alleged interests. As the Ninth Circuit reasoned, ag-gag laws that supposedly protect property and privacy interests

191. See *United States v. Alvarez*, 567 U.S. 709, 719 (2012). This rule is clearly stated in ag-gag cases. *Reynolds*, 353 F. Supp. 3d at 821–22; *Herbert*, 263 F. Supp. 3d at 1201; *Animal Legal Def. Fund v. Otter*, 118 F. Supp. 3d 1195, 1207 (D. Idaho 2015), *aff’d in part, rev’d in part sub nom. Wasden*, 878 F.3d at 1203.

192. § 717A.3B.

193. IDAHO CODE § 18-7042(1)(c) (2020).

194. *Wasden*, 878 F.3d at 1198.

195. IOWA CODE § 717A.3A (2020).

196. *Id.* § 717A.3B(1)(A).

197. 18 U.S.C. § 704(b).

198. The legally cognizable harm requirement was essential to the *Alvarez* plurality, but it may have been even more important to the concurrence. See *United States v. Alvarez*, 567 U.S. 709, 718–19, 734–37 (2012) (Breyer, J., concurring). The *Alvarez* concurrence noted that constitutional restrictions on speech are limited in scope, generally because they are only applicable to speech related to harm. *Id.* at 734. Justice Breyer expressed concern that the Stolen Valor Act lacked anything to limit its applicability, whereas Iowa’s new law is limited to speakers with harmful intent. *Id.* at 736. Furthermore, unlike the Stolen Valor Act, this law does not apply in “family, social, or other private contexts, where lies will often cause little harm.” *Id.* It is fair to say that “threat of liability or criminal punishment” will likely not “roam at large” for all members of society here—it will only affect individuals in a small niche of situations. *Id.* While this connection to a specific harm is not enough to satisfy strict scrutiny alone, intermediate scrutiny may deserve more than cursory review here. For discussion of intermediate scrutiny, see *supra* notes 101–105, 110–112 and accompanying text.

199. *Wasden*, 878 F.3d at 1196; *Animal Legal Def. Fund v. Reynolds*, 353 F. Supp. 3d 812, 824–25 (S.D. Iowa 2019).

are superfluous.²⁰⁰ Not only do existing criminal statutes already safeguard those interests generally, Iowa has many criminal statutes specifically protecting agriculture.²⁰¹ The Iowa Code has a chapter titled “Offenses Relating to Agricultural Production,” which criminalizes theft, property destruction, disruption, harming crops or animals, and trespass when committed in the context of agriculture.²⁰² Therefore, the harms allegedly targeted by section (a) are already prohibited by Iowa law. If the state’s interests are already protected, it follows that the law is not “actually necessary.”

A narrowly tailored law must also use the “least restrictive means among available effective alternatives.”²⁰³ If a state’s interests can be protected through means that do not limit speech, a court is unlikely to find it is the “least restrictive means.”²⁰⁴ Like in the “actually necessary” analysis, courts point to existing criminal statutes that are less restrictive of speech to show an ag-gag law is not the “least restrictive means.”²⁰⁵ Iowa’s existing criminal laws already effectively protect the state’s interests with no limitations on speech.

However, when the Ninth Circuit considered whether Idaho’s access provision was narrowly tailored, they noted an intent requirement linking it to a specific harm may have helped satisfy the “least restrictive means” test.²⁰⁶ While the intent requirement in the Iowa law weighs in its favor, it is nevertheless not “actually necessary” because other criminal laws accomplish the same goals without restricting speech. As the Ninth Circuit concluded, there is an easy fix to the First Amendment problem while still protecting the state’s alleged interests: simply strike the word “deception” and avoid implicating speech at all.²⁰⁷

3. Section (a) Is Likely Unconstitutional

Section (a) likely fails strict scrutiny. Unless Iowa advances a novel interest, a court is unlikely to find a compelling state interest here. A court is unlikely to depart from precedent ag-gag cases that reject compelling

200. *Wasden*, 878 F.3d at 1196.

201. IOWA CODE §§ 716.7A, 717, 717A (2020).

202. *Id.* §§ 717A.1–4.

203. *Wasden*, 878 F.3d at 1198 (citing *Ashcroft v. ACLU*, 542 U.S. 656, 666 (2004)); see also *Reynolds*, 353 F. Supp. 3d at 825–26.

204. See *Ashcroft*, 542 U.S. at 666–68.

205. *Reynolds*, 353 F. Supp. 3d at 825–26; *Animal Legal Def. Fund v. Otter*, 118 F. Supp. 3d 1195, 1207 (D. Idaho 2015), *aff’d in part, rev’d in part sub nom. Wasden*, 878 F.3d at 1208.

206. *Wasden*, 878 F.3d at 1198.

207. See *id.* at 1198–99.

interests in private property and biosecurity. Moreover, the existence of other protective criminal laws that do not restrict speech shows that the law is not narrowly tailored. Thus, section (a) is likely unconstitutional.

B. Section (b)—Obtaining Employment Through Deception

Section (b) of the Iowa law, which prohibits obtaining employment through deception, will likely be upheld. Like section (a), the employment provision is limited only to deception with the intent to injure an agricultural facility and contains the intent nexus required by *Alvarez*.²⁰⁸ While a restriction on mere access is unlikely to serve a compelling state interest, *Alvarez* suggested states have a greater interest in restricting lies made to obtain employment.²⁰⁹ Lies made to gain a material advantage like employment are essentially fraud and have never been entitled to First Amendment protection.²¹⁰

The Ninth Circuit in *Wasden* upheld Idaho’s similar employment provision, relying on *Alvarez*’s discussion of employment.²¹¹ Idaho’s law criminalizes obtaining “employment with an agricultural production facility by . . . misrepresentation with the intent to cause economic or other injury.”²¹² The court imagined that Idaho legislators could have drafted this section with *Alvarez* by their side,²¹³ and it appears Iowa legislators have followed their lead.

1. Does Section (b) Serve a Compelling State Interest?

Iowa’s employment provision likely serves a compelling state interest because of the serious harm an employee can cause an employer. Employees have access to protected areas and confidential information, are less supervised than mere visitors, and are uniquely situated to subvert a business from the inside-out. Indeed, the Ninth Circuit found Idaho had a compelling interest in protecting employers from these harms.²¹⁴ Moreover, intent to harm an employer may be a breach of state employment practices, such as

208. IOWA CODE § 717A.3B(1)(B) (2020).

209. *United States v. Alvarez*, 567 U.S. 709, 723 (2012) (“Where false claims are made to effect a fraud or secure moneys or other valuable considerations, say offers of employment, it is well established that the Government may restrict speech without affronting the First Amendment.”).

210. *See id.* at 717, 719, 723.

211. *Wasden*, 878 F.3d at 1201.

212. IDAHO CODE § 18-7042(1)(c) (2020).

213. *Wasden*, 878 F.3d at 1201.

214. *Id.* at 1202–03.

implied covenants of good faith, fair dealings, and loyalty.²¹⁵ Thus, a state likely has a compelling interest in protecting agricultural facilities from employees who intend harm.

2. Is Section (b) Narrowly Tailored?

The employment provision is likely narrowly tailored because it is limited to a relatively small range of speech. To be prosecuted under the section, an individual must both obtain employment *and* intend to harm the employer—elements that limit the law’s applicability.²¹⁶ Given these limits, a person who merely overstates their education or experience on a resume cannot be prosecuted because the intent requirement is not satisfied. Harmless speech is no longer included in the law’s scope, likely satisfying the “least restrictive means” standard.²¹⁷

Moreover, this is likely “actually necessary” as it targets a small niche of situations not specifically protected by existing criminal laws. Perhaps fraud or other business protection laws already protect employers from deceptive employees, but *Alvarez* and the Ninth Circuit nevertheless reasoned employment is entitled to special protections.²¹⁸ Therefore, the employment provision is both “actually necessary” and the “least restrictive means,” and thus narrowly tailored.

3. Section (b) Is Likely Constitutional

Because section (b) of Iowa’s amended ag-gag law now focuses on employment, an area of traditional state interest, and has been further narrowed to apply only to those with harmful intent, it will likely survive strict scrutiny. Not only does Iowa’s employment provision contain the harmful intent element required by *Alvarez*, employment is a unique state interest that is entitled to special recognition and protection. Thus, by using Idaho’s employment provision and *Alvarez* as drafting guides, Iowa has crafted a law likely to withstand First Amendment scrutiny. If it is upheld, other states may look to Iowa and Idaho when writing their own ag-gag laws.

215. *Id.* at 1201; *see also* *Food Lion, Inc. v. Cap. Cities/ABC, Inc.*, 194 F.3d 505, 516, 518–19 (4th Cir. 1999).

216. *Wasden*, 878 F.3d at 1201.

217. *See id.* at 1198; *see also* *Animal Legal Def. Fund v. Reynolds*, 353 F. Supp. 3d 812, 825–26 (S.D. Iowa 2019).

218. *Wasden*, 878 F.3d at 1201 (citing *United States v. Alvarez*, 567 U.S. 709, 723 (2012)).

V. CONCLUSION

If employment provisions like Iowa's are upheld, then criminalizing access and filming will prove unnecessary. Undercover investigations by reporters and animal welfare groups are almost entirely employment based, so without employment, secretly filming is impossible.²¹⁹ Thus, if pro-industry state legislatures want to re-enact ag-gag laws without fear of invalidation, they will look towards employment provisions like Iowa's and Idaho's.

If the amended Iowa law is any indication, agricultural interests and industry-friendly legislators will continue advocating for ag-gag laws despite free speech challenges. The mere two months between the Iowa law's invalidation and subsequent revision show that industry proponents are keenly aware of these challenges and will continue to fight them.²²⁰ Evincing this further, Iowa enacted a third agricultural trespass law in June 2020 that critics decry as ag-gag.²²¹

There are, however, other questions about the enforceability of ag-gag laws. Nationwide, there have been only two ag-gag prosecutions.²²² But even in those cases, the state eventually dropped the ag-gag charges.²²³ Specifically, proving intent to harm an employer is difficult. Is the undercover investigator who films animal cruelty, thus hurting the farm's reputation and reducing profits, *harming* the farm? Perhaps Upton Sinclair would have violated Iowa's law by intending to publicize a damaging account of the meatpacking industry. These situations seem more analogous to the restaurant critic, who, by writing a bad review, reduces the restaurant's business. In these cases, criminal convictions seem unrealistic. So, while the intent of these laws might be to intimidate advocates, enforceability seems reserved for more nefarious actors.

If Iowa's employment provision is upheld, then other industries may take note. Similar employment-based investigations take place in nursing

219. See Dorning, *supra* note 1.

220. See *supra* notes 17, 18 and accompanying text.

221. Alleen Brown, *Iowa Quietly Passes Its Third Ag-Gag Bill After Constitutional Challenges*, INTERCEPT (June 10, 2020, 1:55 PM), <https://theintercept.com/2020/06/10/iowa-animal-rights-crime-ag-gag-law> [<https://perma.cc/4C2T-KQ5K>].

222. CHIP GIBBONS, CTR. FOR CONST. RTS., *AG-GAG ACROSS AMERICA* 16 (2017), <https://ccrjustice.org/sites/default/files/attach/2017/09/Ag-GagAcrossAmerica.pdf> [<https://perma.cc/3322-VBN2>].

223. *Id.*

homes,²²⁴ prisons,²²⁵ and even corporate offices.²²⁶ Indeed, arguments about protecting agricultural facilities from bad-intentioned employees seem equally applicable in other fields. Other industries attempting to stifle undercover investigations may have something to learn from ag-gag litigation.

Given America's tradition of undercover investigations, it is concerning that states continue restricting them. Even before Upton Sinclair went undercover for *The Jungle*, Nellie Bly feigned insanity in a mental asylum for her 1887 book *Ten Days in a Mad-House*, sparking much-needed reforms to mental health treatment.²²⁷ In instances like these, the benefit to society greatly outweighs the harm to industry interests. It is no surprise then, that ag-gag has been regularly defeated in courts and legislatures over the past decade. If Iowa's amended law is struck down, this trend will likely continue. However, if it is upheld, we may see the beginning of a new wave of ag-gag.

224. Blake Ellis & Melanie Hicken, *Sick, Dying and Raped in America's Nursing Homes*, CNN (Feb. 22, 2017), <https://www.cnn.com/interactive/2017/02/health/nursing-home-sex-abuse-investigation/> [<https://perma.cc/6WGR-2GAZ>].

225. Shane Bauer, *My Four Months as a Private Prison Guard*, MOTHER JONES (July 2016), <https://www.motherjones.com/politics/2016/06/cca-private-prisons-corrections-corporation-inmates-investigation-bauer/> [<https://perma.cc/ZNA9-MR7W>].

226. *Corporate Investigations*, PINKERTON, <https://www.pinkerton.com/our-services/corporate-investigations/> [<https://perma.cc/FQ8Z-BQ7Q>].

227. Diane Bernard, *She Went Undercover To Expose an Insane Asylum's Horrors. Now Nellie Bly Is Getting Her Due*, WASH. POST (July 28, 2019, 6:00 AM), <https://www.washingtonpost.com/history/2019/07/28/she-went-undercover-expose-an-insane-asylums-horrors-now-nellie-bly-is-getting-her-due/> [<https://perma.cc/4PPY-BPR9>].