

In Support of Free Speech on Food Production

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ABSTRACT

In May 2024, Florida and Alabama became the first states to ban the production and sale of lab-grown meat. Driven by a desire to protect the traditional agriculture industry, these new laws impose severe penalties on anyone found to have even stored lab-grown meat products in their home. The legislation follows in the footsteps of other laws aimed at offering the traditional agriculture industry additional protections. Florida, Alabama, and eleven other states already have “food disparagement laws” that make it easier to punish critics of traditional agriculture companies. Additionally, six states, including Alabama, currently have laws aimed at stifling undercover investigations into agricultural practices on farms and plants.

When bans on lab-grown meat co-exist with other laws designed to protect the traditional agricultural industry from criticism and accountability, the public loses the ability and willingness to freely engage in discourse aimed at discerning whether the bans are beneficial. Under current legal frameworks, the potential benefits of lab-grown meat, which may include lowering greenhouse gas emissions and reducing food contamination from pathogens like *E. coli*, cannot be properly weighed against the potential downsides, such as profit losses for traditional agribusinesses and new health risks.

This Article examines how the traditional agriculture industry has used legal tools to silence discussion on matters that could lead to significant innovation and improvement in human health and safety. Through the lens of these new bans on lab-grown meat, this Article considers the ways in which the public loses out on being able to make well-informed decisions about their food consumption due to restrictions on speech within the agricultural context. As a society, it is imperative that we scrutinize these regulations and advocate for policies that ensure food

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safety and protect access to information regarding agricultural practices. The future of food production may or may not include lab-grown meat, but the decision of whether to change our diets should rest with a well-informed public.

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I. INTRODUCTION

On May 1, 2024, Florida Governor Ron DeSantis signed legislation that banned the development of lab-grown meat in Florida.¹ In doing so, DeSantis promised to “save our beef” by directing investments toward traditional ranchers and farmers.² Florida Commissioner of Agriculture, Wilton Simpson, stressed that the legislation aimed to “stand up for Florida’s farmers,” noting that the decision stemmed from a desire to keep Florida’s agricultural industry “strong and thriving.”³ Florida’s law was the first in the United States to ban lab-grown meat, followed shortly by Alabama, which implemented a ban one week later.⁴ Other states are considering enacting similar laws.⁵

1. *See generally* S.B. 1084, 2024 Leg., Reg. Sess. (Fla. 2024); H.B. 435, 2024 Leg., Reg. Sess. (Fla. 2024); Press Release, Exec. Off. of the Governor, Governor DeSantis Signs Legislation to Keep Lab-Grown Meat Out of Florida (May 1, 2024), <https://perma.cc/DF5F-DBBQ>. “Lab-grown” meat is also referred to interchangeably with “Cultivated meat.” It is meat grown from cultivated animal cells. *See* H.B. 435 § 1(1)(k).

2. Exec. Off. of the Governor, *supra* note 1.

3. *Id.*

4. *See generally* S.B. 23, 2024 Leg., Reg. Sess. (Ala. 2024).

5. *See* Matt Reynolds, *States Are Lining Up to Outlaw Lab-Grown Meat*, WIRED (Mar. 14, 2024, 3:00 PM), <https://perma.cc/ZV86-THSK>; *see, e.g.*, H.B. 2121, 2024 Leg., Reg. Sess. (Ariz. 2024); H.B. 2860, 2024 Gen. Assemb., Reg. Sess. (Tenn. 2024).

These bans follow the trend of other legislation intended to provide the traditional agriculture industry with additional protections. Florida,⁶ Alabama,⁷ and eleven other states⁸ already have “food disparagement laws”⁹ that facilitate punishing the critics of large and traditional agricultural industry. Additionally, six states, including Alabama, currently have laws aimed at criminalizing undercover investigations into agricultural practices on farms,¹⁰ often referred to as “ag-gag laws.”¹¹ Florida’s anti-whistleblower bill, however, failed to receive enough support from legislators in both the state House and Senate to be enacted.¹²

When a ban against lab-grown meat co-exists with other laws designed to protect the traditional agricultural industry from criticism, the public loses the ability and willingness to freely engage in discourse aimed at discerning whether such a ban is beneficial. This Article will examine the existing legislation geared toward limiting criticism of food products. As new technologies change the way food is produced, this Article explores the impact of these developments on current laws. It also examines whether these laws limit valid criticism of measures like the Florida and Alabama bans, despite the importance of public discussion and debate on emerging issues. Indeed, the existing penalties for violating food disparagement laws vary by state, but can be severe. Additionally, the constraints around whistleblowing for existing agricultural conditions may leave it difficult to adequately evaluate whether new lab technology could produce plausible benefits to traditional farming practices.

Part I of this Article reviews several examples of how food disparagement laws have stifled free speech relating to food health and safety practices. Part II examines the progress achieved through

6. See FLA. STAT. § 865.065 (2024).

7. See ALA. CODE § 6-5-620 (2024).

8. See ARIZ. REV. STAT. ANN. § 3-113 (2024) (Arizona); COLO. REV. STAT. ANN. § 35-31-101 (West 2024) (Colorado); GA. CODE ANN. § 2-16-1 (West 2024) (Georgia); IDAHO CODE ANN. § 6-2001 (West 2024) (Idaho); LA. REV. STAT. ANN. §§ 3:4501 to 3:4504 (West 2024) (Louisiana); 9 MISS. CODE ANN. §§ 69-1-251 to -257 (2024) (Mississippi); N.D. CENT. CODE § 32-44-02 (2024) (North Dakota); OHIO REV. CODE ANN. § 2307.81 (West 2024) (Ohio); OKLA. STAT ANN. tit. 2 § 5-102 (West 2024) (Oklahoma); S.D. CODIFIED LAWS §§ 20-10A-1 to -4 (2024) (South Dakota); TEX. CIV. PRAC. & REM. CODE ANN. §§ 96.001–.004 (West 2024) (Texas).

9. These are sometimes referred to as “veggie libel laws” instead. See, e.g., Megan W. Semple, *Veggie Libel Meets Free Speech: A Constitutional Analysis of Agricultural Disparagement Laws*, 15 VA. ENVTL. L.J. 403, 406 (1996).

10. See ALA. CODE § 13A-11-150 (2024) (Alabama); ARK. CODE ANN. § 16-118-113 (2024) (Arkansas); IOWA CODE § 716.7A (2024) (Iowa); MO. REV. STAT. § 578.013 (2024) (Missouri); MONT. CODE ANN. §§ 81-30-101 to -105 (2024) (Montana); N.D. CENT. CODE § 12.1-21.1-02 (2024) (North Dakota).

11. See, e.g., *Modern-Day SLAPP Suits*, AM. C.L. UNION OHIO, <https://perma.cc/4U39-Z99P> (last visited Oct. 22, 2024).

12. See Brittany Davis, *Lawmakers Kill “Ag-Gag” Proposals*, MIA. HERALD: NAKED POLITICS (Jan. 25, 2012, 1:03 PM), <https://perma.cc/T86F-PBNB>.

investigative reporting in improving conditions in agricultural facilities—often at a profit cost to large food producers—which contributed to the rise of ag-gag whistleblower laws. This Part also analyzes legal challenges to ag-gag laws in Utah, Idaho, and North Carolina. Part III explores how Florida and Alabama’s ban on lab-grown meat works in tandem with food disparagement and ag-gag laws to stifle debate about the benefits and harms of such bans altogether. This Article concludes by advocating for the removal of the censorship frameworks that tie up speech about agricultural production. Human choices around food and health should be based on robust information. Chilling important discussions, debates, and information-exchanges out of fear of lessening profits for traditional agriculture companies does not justify the additional protections that the agriculture industry has been granted. While traditional agricultural companies should have access to the same legal protections available to other industries, the public interest in health and safety necessitates the removal of barriers to free speech regarding food production.

II. FOOD DISPARAGEMENT LAWS

On February 6, 1989, CBS aired a *60 Minutes* episode focused on the dangers of Alar, a chemical sprayed on commercial apples that cannot be removed by washing the fruit.¹³ The idea for the episode came from a report published by the Natural Resources Defense Council (NRDC), titled “Intolerable Risk: Pesticides in Our Children’s Food.”¹⁴ The report found that Alar was a carcinogen, and estimated that approximately 140 to 670 preschoolers in the U.S. were likely to develop cancer during their lifetime as a result of their exposure to Alar, mainly through consuming apples.¹⁵ It further raised concern that at least 17% of the preschool population (then 3 million children) were being exposed to neurotoxic chemicals at levels higher than what the federal government considered safe due to their exposure from raw produce, like apples.¹⁶ The U.S. Environmental Protection Agency (EPA) was so alarmed by the report that following the CBS program, it confirmed the NRDC’s findings and issued

13. See *60 Minutes: “A” is for Apple* (CBS television broadcast Feb. 26, 1989); Debora K. Kristensen, *What Can You Say About an Idaho Potato?*, 41 *ADVOC.* 18, 21 (1998); *Auvil v. CBS 60 Minutes*, 800 F. Supp. 928, 930 (E.D. Wash. 1992). “Alar” is the tradename for the chemical “daminozide.” Nat’l Libr. of Med., *Daminozide*, PUBCHEM, <https://perma.cc/E7S4-CT2A> (last visited Dec. 28, 2024).

14. See BRADFORD H. SEWELL & ROBIN M. WHYATT, *NAT. RES. DEF. COUNCIL, INTOLERABLE RISK: PESTICIDES IN OUR CHILDREN’S FOOD 1* (Lawrie Mott ed., 1989), <https://perma.cc/9G28-7KJR>.

15. See *id.* at 2.

16. See *id.* at 3.

a temporary ban on the use of Alar in May 1989. The EPA made the ban permanent in November 1989.¹⁷

CBS's *60 Minutes* episode was viewed by an estimated 60 million Americans and received significant attention.¹⁸ Following its broadcast, other media outlets ran similar stories.¹⁹ These programs had a dramatic impact. Grocery stores stopped stocking apples, schools refused to serve apples in their cafeterias, and apple growers incurred significant monetary losses.²⁰ The reduced demand for apples was wide-spanning, and even impacted apples that had never been treated with Alar. This prompted 4,700 apple growers in Washington state to bring a class action lawsuit against CBS, hoping to recoup their monetary losses.

While the *60 Minutes* episode never specifically mentioned "red apples" as being a particular concern, red apples did appear on the screen during discussions of Alar use.²¹ Washington state, which was also never explicitly mentioned on the program, is the leading producer of red apples.²² These apple growers alleged that the episode both defamed and disparaged them. In addressing the defamation claim, the court considered that no single grower in the class was mentioned by name, nor was any moral culpability thrust on growers by the episode. As a result, the court found that no aired remark could be considered defamatory, as none of the statements were "of and concerning" the plaintiffs.²³

Regarding the product disparagement claim, the court explained that the apple growers bore the burden of proving that CBS published a "knowingly false statement harmful to the interests of another and intended such publication to harm the plaintiff's pecuniary interests."²⁴ The growers attempted to meet this burden by pointing out that the studies suggesting that Alar causes cancer were conducted on animal, as opposed to human, subjects.²⁵ The court found this unconvincing, noting that "animal laboratory tests are a legitimate means for assessing cancer risks

17. See Melissa Denchak, *All About Alar*, NAT. RES. DEF. COUNCIL (Mar. 14, 2016), <https://perma.cc/LG8Z-TF7G>; *Auvil*, 800 F. Supp. at 940.

18. See Eileen Gay Jones, *Forbidden Fruit: Talking About Pesticides and Food Safety in the Era of Agricultural Product Disparagement Laws*, 66 BROOK. L. REV. 823, 827 (2001).

19. See *id.*

20. See *Modern-Day SLAPP Suits*, *supra* note 11.

21. See *id.*

22. See *id.*

23. *Auvil v. CBS 60 Minutes*, 800 F. Supp. 928, 933–34 (E.D. Wash. 1992).

24. *Auvil v. CBS 60 Minutes*, 67 F.3d 816, 820 (9th Cir. 1995). The Ninth Circuit decision reiterates many of the same points from the district court and affirmed the below holding. I discuss "the court" decision interchangeably as a result because the specific legal process is irrelevant to the ultimate development of the statutory regime against food disparagement that is of concern to this Article.

25. See *id.* at 821.

to humans.”²⁶ Further, the growers could present no affirmative evidence that ingesting Alar posed no risk to children.²⁷ Unable to show that *60 Minutes* aired a false statement, the court granted CBS’s motion for summary judgment, and the Ninth Circuit Court of Appeals affirmed.²⁸

The Alar case set off a chain of agriculture lobbyists, who feared facing economic losses much like the Washington apple growers.²⁹ These lobbyists have persuaded thirteen states, including Florida and Alabama, to enact statutes authorizing damages for disparaging various agricultural products.³⁰ Several government leaders have been concerned that these statutes could inhibit serious debates around health issues, such as Governor Roy Romer of Colorado, who vetoed a food disparagement bill after it passed in the state legislature.³¹ Nevertheless, in states where such statutes have been enacted, the agriculture industry wields significant power in limiting criticisms of their products and practices. The below cases exemplify how food disparagement laws have served to chill legitimate public commentary around health and food to protect big agriculture producers.

A. *Texas Beef Group v. Oprah Winfrey*

In March 1996, the British government announced that ten of its citizens died by eating beef contaminated with Bovine Spongiform Encephalopathy (BSE), commonly known as “mad cow disease.”³² The story made headline news globally, with the World Health Organization (WHO) holding an emergency two-day session in April, during which it recommended that all countries ban cattle feeding practices involving feeding live cattle the remains of deceased cattle where the cause of death was unknown.³³ At the time, the United States had never experienced a case of BSE.³⁴

26. *Id.*

27. *See id.*

28. *See id.* at 823.

29. *See* Ronald K.L. Collins, *Free Speech, Food Libel, & the First Amendment . . . in Ohio*, 26 OHIO N.U. L. REV. 1, 4–5 (2000) (“In the early 1990s, the American Feed Industry Association arranged with the law firm of Olsson, Frank & Weeda (Wash., D.C.) to draft model food disparagement legislation. Thereafter, the American Feed Industry Association and the American Farm Bureau Federation distributed the model legislation for industry lobbying purposes.”).

30. *See id.* at 4.

31. *See* Semple, *supra* note 9, at 404.

32. *Tex. Beef Grp. v. Winfrey*, 11 F. Supp. 2d 858, 860 (N.D. Tex. 1998), *aff’d*, 201 F.3d 680 (5th Cir. 2000); *Don’t Call Your Food Names: Oprah on Trial for Disparaging Beef*, 3 SOC’Y PRO. JOURNALISTS (1998), <https://perma.cc/4927-UGSB>.

33. *See* 11 F. Supp. 2d at 865.

34. *See id.* It should be noted that one case of classical BSE occurred in 2003 and six cases of atypical BSE have been found since then, with the last occurring in 2023. *See*

Two weeks following the WHO's recommendation, Oprah Winfrey hosted *The Oprah Winfrey Show* with an episode entitled "Dangerous Food."³⁵ The program, which spanned just over 42 minutes,³⁶ included a segment on BSE.³⁷ At the start of the program, Oprah interviewed two guests from England who had loved ones either suffering from or having succumbed to brain disease linked to the consumption of BSE-tainted beef.³⁸ After sharing the experiences of their loved ones, the interviewed guests were excused during a commercial break. The show resumed with Oprah asking the open-ended question of whether the disease could happen here in the United States.³⁹ To give answers, she introduced two new guests: Dr. Gary Weber of the National Cattlemen's Beef Association, and Howard Lyman, whom she described as "cattle rancher-turned-vegetarian."⁴⁰ Weber and Lyman debated, with Weber insisting the beef supply in the United States was safe, and Lyman pushing back. Lyman argued that the same feeding practices that gave rise to an outbreak of BSE in England—in which deceased cows on farms were being turned into feed for living cows—existed in the United States, raising cause for concern.⁴¹ Weber, in turn, explained that there was only "a limited amount of that done in the United States," and although deceased cows "are not" being tested before being ground into feed, there was no reason to be concerned because there have been other surveillance procedures in place for a decade and no cases of BSE had been found in the United States at the time.⁴²

On live television, Oprah told her audience that the conversation between her guests "has just stopped me cold from eating another burger."⁴³ While the program never mentioned Texas, nor discussed any specific ranchers,⁴⁴ eight Texas cattle companies and one of their CEO's alleged that Oprah's remark, and the episode as a whole, defamed their businesses and disparaged their products in violation of Texas's food

Bovine Spongiform Encephalopathy, APHIS USDA, <https://perma.cc/56JU-6DVV> (July 11, 2024).

35. 11 F. Supp. 2d at 861.

36. See Brief for Appellees Oprah Winfrey, Harpo Productions, Inc., and King World Productions, Inc., at *5, *Tex. Beef Grp. v. Winfrey*, 11 F. Supp. 2d 858 (N.D. Tex. 1998), *aff'd*, 201 F.3d 680 (5th Cir. 2000) (No. 98-10391), 1998 WL 34085861 [hereinafter Brief for Appellees].

37. See 11 F. Supp. 2d at 861.

38. See Brief for Appellees, *supra* note 36, at *6.

39. See *id.*

40. *Id.*

41. See *id.* at *7.

42. *Id.*; 11 F. Supp. 2d 858, 861–62.

43. Sam Howe Verhovek, *Talk of the Town: Burgers v. Oprah*, N.Y. TIMES (Jan. 21, 1998), <https://perma.cc/5U27-PC3Y>.

44. See 11 F. Supp. 2d at 862.

disparagement law.⁴⁵ On June 4, 1996, all nine plaintiffs filed a complaint against Oprah in the Northern District of Texas (Amarillo), seeking more than \$10 million in damages. The complaint alleged that Oprah violated Texas law by disseminating information to the public relating to a perishable food product that she knew was false, and that the information stated or implied that the perishable food product was not safe for consumption by the public.⁴⁶ When the case eventually proceeded to trial, Oprah was placed under a gag order, which she challenged unsuccessfully.⁴⁷ Unable to discuss the case, she proceeded to film her talk show (in Texas due to the trial), deliberately avoiding any discussions relating to her trial or food products in general.⁴⁸ A jury ruled unanimously in her favor on February 26, 1998.⁴⁹ The jurors found that because the plaintiffs' product is "sold in the form of live cattle" and "live cattle are not generally perishable," Texas's food disparagement statute did not apply.⁵⁰ Further, because the program never directly named nor referenced the plaintiff-cattle companies, the statements were not considered to be "of and concerning" them. Because this is a required common law element of any disparagement or defamation claim,⁵¹ the plaintiffs had no viable claim that Oprah or her program defamed them.⁵²

Oprah, speaking after the jury's verdict was announced, described being on trial as "one of the worst experiences of [her] life."⁵³ Around the time of the trial, however, Oprah's net worth was an estimated \$725 million.⁵⁴ Her immense wealth enabled her to afford a legal defense estimated to have cost between \$500,000 and \$1 million.⁵⁵ The case did not come to an official close until April 7, 2000, when the U.S. Court of Appeals denied the plaintiffs' petition for a rehearing *en banc*.⁵⁶

45. See TEX. CIV. PRAC. & REM. CODE § 96.002 (West 1996).

46. See *id.*

47. See Mike Kautsch, Judges as Newsmakers 2 (Mar. 24, 2006) (unpublished manuscript), <https://perma.cc/PU4S-BUBX>.

48. See OWN, #11: Oprah on Taking the Show to Texas During Her Trial | TV Guide's Top 25 | Oprah Winfrey Network, YOUTUBE (Sept. 12, 2012), <https://perma.cc/PU4S-BUBX>.

49. See Aman Batheja, *The Time Oprah Winfrey Beefed with the Texas Cattle Industry*, TEX. TRIB. (Jan. 10, 2018, 12:00 AM), <https://perma.cc/6FDF-MUDB>.

50. 11 F. Supp. 2d at 863.

51. See *id.* at 864.

52. See *id.*

53. OWN, *supra* note 48.

54. See Juliet E. K. Walker, *Oprah Winfrey: The Tycoon*, in BUILDING THE BLACK METROPOLIS: AFRICAN AMERICAN ENTREPRENEURSHIP IN CHICAGO 185 (Robert E. Weems & Jason P. Chambers eds., 2017).

55. See Sue Anne Pressley, *Oprah Winfrey Wins Case Filed by Cattlemen*, WASH. POST (Feb. 26, 1998, 7:00 PM), <https://perma.cc/QR3B-ZEHA>.

56. See *Tex. Beef Grp. v. Winfrey*, 212 F.3d 597, 597 (5th Cir. 2000).

Despite her plentiful resources and emerging the victorious party, Oprah found being a defendant in a food disparagement proceeding “very difficult and stressful.”⁵⁷ Imagine then, how an everyday person without such abundant resources may feel under the same circumstances. While it is fortunate that Oprah could afford to fight for and realize her right to engage in speech on a legitimate matter of public concern, defendants with less funds available would be more likely to settle or retract lawful statements to extract themselves from lengthy and expensive litigation processes.⁵⁸ Lawsuits like this further serve to chill similarly protected speech by others: if Oprah could be publicly dragged into court to endure a long legal challenge and gag order, reporters and individuals of lesser means who wish to avoid a similar fate will be less likely to report on stories of the same topic, regardless of Oprah’s ultimate victory in court.⁵⁹

B. Beef Products, Inc. v. American Broadcasting Companies (ABC)

On March 7, 2012, ABC News broadcasted a program questioning whether most ground beef sold in the United States was “padded” with filler made by Beef Products Inc. (BPI), commonly referred to as “pink slime.”⁶⁰ This term, which refers to beef trimmings more formally known as lean finely textured beef (LFTB),⁶¹ was coined by former U.S. Department of Agriculture scientist Gerald Zirnstein, who appeared as a guest on the program.⁶² In ABC’s report, Zirnstein alleged that 70% of ground beef sold to U.S. supermarkets was being padded with “pink slime,” and sprayed with ammonia to make it safe for human consumption.⁶³ Beef Products, Inc., the makers of LFTB, and its associates⁶⁴ took issue with the program and its use of the word “pink

57. Pressley, *supra* note 55.

58. Cf. Nicole J. Ligon, *Protecting Local News Outlets from Fatal Legal Expenses*, 95 N.Y.U. L. REV. ONLINE 280, 290 (2020).

59. *See id.*

60. Jim Cristea, *Pink Slime - What is REALLY in your Hamburger - ABCNews.com*, YOUTUBE (Mar. 8, 2012), <https://perma.cc/5FDA-A8W8>; Complaint & Jury Demand, *Beef Products Inc. et al. v. ABC News et al.*, 2012 WL 4017340 (S.D.Cir. Sept. 13, 2012) (No. CIV12-292) [hereinafter *Beef Prods. Compl.*]. This was the first of a series of reports made on this topic by ABC. Additional reports are collected in the *Beef Prods. Compl.*

61. Beef trimmings are the last traces of skeletal muscle meat, scraped, shaved, or pressed from the bone. *See* Steven E. Niebuhr & J. S. Dickson, *Impact of pH Enhancement on Populations of Salmonella, Listeria monocytogenes, and Escherichia coli O157:H7 in Boneless Lean Beef Trimmings*, 66 J. FOOD. PROT. 874, 874, 876 (2003).

62. *See* Michael Moss, *Safety of Beef Processing Method Is Questioned*, N.Y. TIMES (Dec. 30, 2009), <https://perma.cc/C75U-YZGL>.

63. Jim Cristea, *supra* note 60.

64. Specifically, the other plaintiffs include BPI Technology Inc., which develops technology and processing mechanisms for producing meat products, and Freezing Machines Inc., which develops equipment, recipes, and processing mechanisms in the production of LFTB.

slime” to label its product, and sued ABC⁶⁵ on September 13, 2012. The plaintiffs, who conducted substantial business in South Dakota, alleged that the word “slime” connoted a repulsive, filthy, noxious, and low-grade substance.⁶⁶ The 257-page complaint claimed that by using the phrase “pink slime” to refer to its product, ABC was creating a false impression about what LFTB is, amounting to defamation and disparagement under South Dakota’s Agricultural Food Products Disparagement Act. The plaintiffs also claimed that ABC’s program eroded consumer confidence in their product, and resulted in blacklisting by grocery stores that directly impacted sales.

In South Dakota, anyone who suffers damages because of the disparagement of a perishable agricultural food product has a cause of action under the state’s Agricultural Food Products Disparagement Act.⁶⁷ Liability under South Dakota’s law can be extensive because anyone found to have disparaged a perishable agricultural food product “with intent to harm the producer” will be responsible for paying treble damages.⁶⁸ In this instance, the plaintiffs claimed to have suffered damages in excess of \$400 million.⁶⁹ With the treble damages provision in South Dakota’s law, ABC faced over \$1.2 billion in potential liability for airing its program.

To pass a law that is so protective of traditional agriculture companies, the industry itself must have a large influence on South Dakota’s population. Indeed, according to South Dakota State University Professor Warren Rusche, “[a]griculture is the largest single industry in South Dakota (\$11.7 billion dollars in total value added) with beef production providing \$1.08 billion dollars.”⁷⁰ The state’s beef industry is a large part of South Dakota agriculture, with cattle and calf sales representing the biggest single source of cash receipts from agriculture in the state.⁷¹

Although the plaintiffs have significant markets in South Dakota, it is not among ABC’s largest markets, and ABC is relatively less influential there. For these reasons and others,⁷² ABC sought to move the suit out of a small South Dakota state court (near plaintiff BPI’s plant) to federal

65. Several ABC reporters and guests who appeared on ABC broadcasts about this topic were also named as defendants. *See* Beef Prods. Compl., *supra* note 60, ¶¶ 30–38.

66. *See id.* ¶¶ 173–75.

67. *See* S.D. CODIFIED LAWS § 20-10A (1994).

68. *Id.* § 20-10A-3.

69. *See* Beef Prods. Compl., *supra* note 60 ¶ 42.

70. Warren Rusche, *Economic Contribution of the South Dakota Beef Industry*, S.D. ST. U. EXTENSION, <https://perma.cc/4KWH-WE85> (May 18, 2023).

71. *See id.*

72. Procedural guidelines and laws in federal court can differ from state court.

court.⁷³ Originally, ABC's request was granted, but was eventually remanded back to state court where the trial played out, following the denial of motions to dismiss.⁷⁴ Had the case been allowed to remain in federal court, the jury would have been drawn from a larger population of the state. Instead, jurors were selected from a 15,000-person county, where BPI was a major employer.⁷⁵

This meant that ABC would be arguing that its program failed to fall under South Dakota's food disparagement law to an audience especially sympathetic to the plaintiffs. ABC attempted to do that in a few ways.⁷⁶ One of the respondent's main arguments rested on the idea that "pink slime" is a truthful description of LFTB because it is, in fact, both pink and slimy.⁷⁷ ABC further argued that while "pink slime" may sound "unflattering or critical," the use of hyperbolic language to describe the product falls squarely within the First Amendment's protections.⁷⁸ ABC also denied that its broadcasts implied that LFTB was "not safe for public consumption," or was otherwise "not nutritious."⁷⁹

The trial was set to last for eight weeks, but settled after just three and a half weeks.⁸⁰ Facing the possibility of treble damages over a billion dollars in a court without hometown advantage, ABC agreed to pay over \$177 million to settle the action.⁸¹ The outcome did not deliver an unsalvageable blow to ABC, but still sent a clear message that even a large and established news network should fear criticizing the powerful agriculture industry. The decision to settle is even more chilling, given that

73. See Leah Carlson, *Pink Slime by Any Other Name Is Still Lean Finely Textured Beef: Beef Products, Inc. v. American Broadcasting Companies, Inc. & the Policy Considerations Surrounding Agricultural Product Disparagement Statutes*, 19 DRAKE J. AGRIC. L. 191, 197 (2014).

74. See *id.* at 197–98.

75. Alexandra M. Gutierrez, *The Case for A Federal Defamation Regime*, 131 YALE L.J.F. 19, 40 (2021).

76. One of the initial arguments that ABC relied on was that all non-BPI plaintiffs lacked standing under the food disparagement law because they were not "producers" of the relevant product. See Memorandum in Support of Motion to Dismiss for Fraudulent Joinder, *Beef Products Inc. et al v. ABC News et. al*, 2012 WL 6888672, ¶ 2 (D.S.D.).

77. See Memorandum in Support of ABC Defendants' Motion to Dismiss all Claims of Plaintiff Beef Products, Inc., *Beef Products Inc. et al. v. ABC News et al.*, 2012 WL 6888676 (D.S.D.) (stating arguments on motion to dismiss that were later brought up in trial); Eriq Gardner, *Jury Hears ABC's Diane Sawyer Call "Pink Slime" a "True Description" of Beef Product*, HOLLYWOOD REP. (June 14, 2017, 10:59 AM), <https://perma.cc/R67N-TYHR>.

78. Memorandum in Support of ABC Defendants' Motion to Dismiss all Claims of Plaintiff Beef Products, Inc., *Beef Products Inc.*, 2012 WL 6888676, ¶ 2 (D.S.D.) (citing *Milkovich v. Lorain Journal Co.*, 497 U.S. 1 (1990)).

79. See *id.*

80. See Timothy McLaughlin, *ABC TV Settles with Beef Product Maker in 'Pink Slime' Defamation Case*, REUTERS (June 28, 2017, 6:15 PM), <https://perma.cc/72HM-VF9V>.

81. See *id.*

the *Columbia Journalism Review* described ABC's reporting as "well sourced" and observed that the "most serious criticisms were presented as matters of opinion."⁸² Further, ABC was not the first news station to report on this food concern; media reports had published the phrase "pink slime" over 3,800 times before ABC aired its program.⁸³ Nonetheless, ABC felt compelled to settle knowing that it was viewed by the local community, including jurors, as a large media company with "no local ties" and full of "outsiders" who could be blamed for recent BPI layoffs.⁸⁴ The financial risks of continuing through the trial and losing would, in fact, be utterly crushing for the news station.

If a large and well-resourced news station feels pressured to pursue a nine-figure settlement for criticizing the agriculture industry in a public trial, it would logically follow that everyday individuals will be less tempted to engage in similar conversations critical of that industry, no matter how well-researched or well-informed the discussion. South Dakota's food disparagement law, with its treble damages provision, can strike fear into the most well-meaning and well-informed members of the public. At a time when technology is developing and the industry is adapting and changing, stifling remarks critical of the traditional agriculture industry could lead to an inability to beneficially progress as a society.

C. AgriGeneral Co. v. Ohio Public Interest Research Group and Simpson

On March 25, 1997, AgriGeneral, then the fifth-largest egg producer in the United States (later renamed Buckeye Egg Farm),⁸⁵ sued Amy Simpson, the director of an Ohio non-profit organization.⁸⁶ At a press conference, Simpson had questioned the safety of AgriGeneral's practice of re-packing and re-dating eggs for sale to consumers.⁸⁷ The litigation specifically concerned Simpson's remark that: "To this date, we have no idea how many, if any, consumers have been made ill by consuming these

82. Gutierrez, *supra* note 75, at 3875 (citing Curtis Brainard, *BPI's Beef with ABC News*, COLUM. JOURNALISM REV. (Oct. 3, 2012), <https://perma.cc/7MTR-2EFJ>).

83. *Id.*

84. *Id.* at 39–4075; see James Warren, *ABC News Quietly Settles Massive \$5.7 Billion Case*, VANITY FAIR (June 29, 2017), <https://perma.cc/6HWM-ZSCD>.

85. See Michael F. Jacobson, *When Talk Isn't Cheap*, NUTRITION ACTION HEALTH LETTER, June 1998, at 2, ProQuest, Doc. No. 204128270.

86. See *AgriGeneral Co. v. Ohio Pub. Interest Grp.*, No. 3:97-CV-07262 (N.D. Ohio, Mar. 25, 1997). The lawsuit also named the non-profits Simpson directed, Ohio Public Interest Group, as a defendant in the suit. Both received joint pro bono representation by David Marburger of Baker & Hostetler (Ohio), as discussed subsequently.

87. See Nicole E. Negowetti, *Opening the Barnyard Door: Transparency and the Resurgence of Ag-Gag & Veggie Libel Laws*, 38 SEATTLE U. L. REV. 1345 (2015); Collins, *supra* note 29, at 5.

eggs.”⁸⁸ Calling the statement “outrageous,” AgriGeneral filed suit under Ohio’s food disparagement statute, Ohio Rev. Code § 2307.81. Like South Dakota, Ohio’s statute imposes treble damages on any person found to have intentionally disparaged “a perishable agricultural or aquacultural food product for the purpose of harming the producers of that product, in addition to any award of punitive damages.”⁸⁹

AgriGeneral initially denied engaging in egg repackaging. However, numerous interviews and sworn statements by the company’s employees “who knew of the repackaging” were able to confirm its truth, and an NBC *Dateline* report further confirmed the charge as well.⁹⁰ Despite this, given Ohio’s law, Simpson faced significant liability for questioning whether the practice itself was safe. Simpson was fortunate to have garnered public sympathy and received pro bono legal assistance, since obtaining other representation would have imposed a serious financial burden.⁹¹ AgriGeneral, represented by the large, multinational law firm Jones Day, continued its suit against Simpson for over a full calendar year.⁹² The company eventually dropped the case against Simpson amid public pressure,⁹³ but the chilling effect caused by the suit endures.

After the litigation had ended, Simpson described the experience as “enormously time-consuming and a terrible psychological drain.”⁹⁴ She expressed concern that food disparagement lawsuits will target people without the resources to defend themselves, and that those defendants may not always be as fortunate as she was to receive pro bono representation.⁹⁵ Simpson also expressed reluctance to speak about the lawsuit for fear of future legal action, and noted that food disparagement statutes like Ohio’s embolden the agriculture industry to “quell debate on evolving issues” and stifle informed public discussion about “unconscionable business practices.”⁹⁶

III. AG-GAG LAWS

In addition to enacting food disparagement laws, the agriculture industry has been successful at lobbying for more protections in the form of whistleblower gag restrictions, frequently referred to as “ag-gag”

88. Collins, *supra* note 29, at 5.

89. OHIO REV. CODE ANN. § 2307.81(E) (West 2024).

90. Ronald K.L. Collins, *Veggie Libel: Agribusiness Seeks to Stifle Speech*, MULTINATIONAL MONITOR (May 1998), <https://perma.cc/9BF8-B5PR>.

91. *See* Collins, *supra* note 29, at 5, 56 n.28.

92. *See id.* at 56 n.14.

93. *See id.* at 5.

94. Anne Hawke, *Veggie Disparagement: Laws in 13 State Prompt Fears Activists - And Journalists - Will Be Stifled*, QUILL (Sept. 1, 1998), <https://perma.cc/TZS9-56KE>.

95. *See id.*

96. *Id.*

laws.⁹⁷ These laws make undercover investigations into the safety of food production and the humane treatment of animals in agricultural facilities extremely difficult to conduct, resulting in some investigative reporters being arrested and charged with criminal trespass. As a result, it is challenging to engage in truthful and serious debate regarding whether there are better alternatives to or changes that should be made to the traditional agriculture industry, as information about their procedures and production processes can be hidden and difficult to obtain without undergoing investigations, which ag-gag laws effectively ban.

The ability to engage in investigative reporting is important.⁹⁸ This is especially true where the public's health and safety are concerned, as is the case with human food production. Consider *Minneapolis Tribune* reporter Nick Kotz's Pulitzer prize-winning series on the meatpacking industry in the late 1960s.⁹⁹ Kotz conducted an in-depth investigation into the meatpacking industry by visiting plants across the United States and speaking with workers. In doing so, he documented the unsanitary conditions he witnessed and heard about, and highlighted direct threats to public safety that could lead to foodborne illnesses.¹⁰⁰ His investigative reporting played a critical role in enacting the Meat Inspection Act of 1967, which expanded federal oversight to include all slaughterhouses and meat-processing facilities across the United States, not just those involved in interstate commerce.¹⁰¹ Senator Walter Mondale of Minnesota thanked Kotz for raising the issue to Congress during a congressional session leading to the passage of the Act, saying "the press must take a major share of the credit for action in this area."¹⁰²

Other examples of beneficial investigative reporting abound.¹⁰³ *The Wall Street Journal* reporter Tony Horwitz posed as a worker in two poultry slaughterhouses and processing plants in 1994.¹⁰⁴ His undercover experience revealed safety concerns for workers at both plants, and the

97. "Ag-gag" stands for "agricultural gag."

98. See Ligon, *supra* note 58.

99. See, e.g., Nick Kotz, *Ask Tighter Law on Meat Inspections for Products Sold Within States*, DES MOINES SUNDAY REG., July 16, 1967, at 1.

100. See Brief of Amici Curiae the Reporters Committee for the Freedom of the Press et al. in Support of Plaintiffs-Appellees at 10, *Animal Legal Def. Fund v. Wasden*, 878 F.3d 1184 (9th Cir. 2018) (No. 15-35960), 2016 WL 3537326 [hereinafter RCFP Amicus Brief in *Wasden*]. He also reported on the harsh environments that agricultural workers faced without proper safety gear. In prior works, I have argued that investigative reporting is vitally important for underserved communities, which would include resource-limited agricultural workers. See Ligon, *supra* note 57, at 282.

101. See RCFP Amicus Brief in *Wasden*, *supra* note 100, at 10.

102. 113 CONG. REC. 21283 (1967).

103. See RCFP Amicus Brief in *Wasden*, *supra* note 100, at 10–12.

104. See "9 to Nowhere" - Tony Horwitz - *Wall Street Journal*, UNDERCOVER REPORTING, <https://perma.cc/9WFQ-HS32> (last visited Oct. 15, 2024).

industry more generally, winning him the Pulitzer Prize.¹⁰⁵ In 2010, Michael Moss of *The New York Times* also received the Pulitzer Prize for his important article calling into question the effectiveness of “injecting ammonia into beef to remove *E. coli*” based on his investigative reporting, which demonstrated that dozens of ammonia-treated meats being served to schoolchildren were still contaminated with dangerous pathogens.¹⁰⁶ These reports allowed for the enactment of follow-up measures, helping to address the issues at the root of the investigations.

Ag-gag laws often seek to broadly stop investigative reporting on agricultural facilities to the extent that revelations of unsavory business practices could negatively impact profits. But as the above reports show, the public can benefit significantly from the ability to engage in undercover checks on the health and safety of food production. This Part will discuss the ag-gag laws of three states, Utah, Idaho, and North Carolina. All have been stricken as unconstitutional because of their infringement on the constitutional guarantee of freedom of speech. Six states—Alabama, Arkansas, Iowa, Missouri, Montana, and North Dakota—are still burdened with ag-gag laws, some of which serve to hinder critical discussions around the agricultural industry in those jurisdictions.¹⁰⁷ Not all of these statutes are drafted equally,¹⁰⁸ however

105. *See id.* These concerns stemmed, in part, from workers needing to perform rapid and repetitive motion in undesirable conditions without control over their pace. *See* Elliott Negin, *Ask a Scientist: Tyson’s Near Monopoly is Bad for Workers, Farmers, and Communities*, EQUATION (Sept. 15, 2021, 5:50 PM), <https://perma.cc/6LAN-BXQU>.

106. *See* RCFP Amicus Brief in *Wasden*, *supra* note 100, at 10–11. Moss’s report was based on investigative reporting that did not require going undercover, but instead rather required him to review numerous government and industry records on the testing of *E. coli* and salmonella pathogens in school lunch programs to see that ammonia injection was failing to eliminate the contamination of meat in dozens of cases. *See* Michael Moss, *Safety of Beef Processing Method is Questioned*, N.Y. TIMES (Dec. 30, 2009), <https://perma.cc/TK9U-S6SZ>.

107. *See Ag-Gag Laws*, ANIMAL LEGAL DEF. FUND, <https://perma.cc/85SM-T64B> (last visited Oct. 21, 2024).

108. Some ag-gag statutes remain in-tact despite legal challenges. This includes two laws in Iowa: The 2021 Trespass-Surveillance statute and 2019 Agricultural Trespass Law. *See* IOWA CODE §§ 716, 727, 903 (2024). Iowa’s laws have faced multiple challenges, resulting in a back-and-forth between being struck down as unconstitutional by a district court only to be revived by the Eighth Circuit Court of Appeals. *See* Animal Legal Def. Fund v. Reynolds, 89 F.4th 1071, 1082 (8th Cir. 2024). As-applied challenges will likely continue for years to come. The laws criminalize creating recordings while trespassing on agricultural property as well as lying in a job application to work at an agricultural facility. *See* §§ 716, 727, 903; Madeline Lyskawa, *8th Circ. Revives Iowa ‘Ag-Gag’ Trespass Laws*, LAW360 (Jan. 8, 2024, 7:33 PM), <https://perma.cc/CL5E-RV6G>. It is, however, worth noting that while the person recording must have committed legally cognizable trespass pursuant to Iowa Code § 716.7(2) to come under this statute, Iowa typically punishes this offense as a “simple misdemeanor,” § 716.8, imposing a fine between \$105 - \$855 with up to thirty days of imprisonment. *See id.* § 903(1)(a). However, Iowa’s Trespass-Surveillance statute punishes recording while trespassing on agricultural property as an “aggravated misdemeanor,” with a fine between \$855-\$8,540 and up to two years of imprisonment. *See*

where they remain, they do so at the behest of the traditional agriculture industry.

A. Utah

In 2012, Utah enacted an ag-gag law that restricted the ability to investigate food safety concerns and animal abuse on factory farms.¹⁰⁹ The stated purpose of the law was to limit the inadvertent exposure of animals to disease from untrained persons on farm grounds, maintain private property rights, and prevent economic losses that could come from negative publicity of farming practices.¹¹⁰ In effect, however, the legislation also served to minimize whistleblowing activity intended to inform the public about food safety and related concerns.

Specifically, the law criminalized four activities: (1) recording an image or sound by leaving “a recording device on the agriculture operation” without consent from the owner; (2) obtaining “access to an agriculture operation under false pretenses;” (3) applying for employment “with the intent to record an image of, or sound from, the agriculture operation” while knowing that the operation prohibits such recording and actually recording such an image or sound; and (4) recording an image or sound without the consent of the owner while committing criminal trespass.¹¹¹

In April 2013, animal rights activist Amy Meyer was charged with a class B misdemeanor for failing to obtain the permission of the facility’s owner before filming an agricultural operation.¹¹² She was arrested while standing on public property adjacent to a slaughterhouse in Draper City, Utah and using a handheld device to videotape a sick cow being pushed by heavy machinery.¹¹³ It is not clear whether her actions neatly fall into

id. § 903.1(2). Opponents of the law have argued that these steeper penalties chill their protected activities. See Brief of Amici Curiae the Reporters Committee for Freedom of the Press et al. in Support of Plaintiffs-Appellees Urging Affirmance at 2, *Reynolds*, 89 F.4th 1071 (No. 22-3464).

109. See *Challenging Utah’s Ag-Gag Law*, ANIMAL LEGAL DEF. FUND, <https://perma.cc/VB74-LLPS> (July 13, 2018).

110. See Amended* Amicus Curiae Memorandum of the U.S. Poultry & Egg Association in Support of Defendants’ Motion for Summary Judgment and in Opposition to Plaintiffs’ Motion for Summary Judgment at 2, *Animal Legal Def. Fund v. Herbert*, 263 F. Supp. 3d 1193 (D. Utah 2017) (No. 2:13-CV-00679), 2016 WL 4448301.

111. UTAH CODE ANN. § 76-6-112(2)(a)–(d).

112. See Tiffany Caldwell, *Utah to Pay Animal Welfare Groups \$349,000 to Settle ‘Ag-Gag’ Lawsuit*, SALT LAKE TRIB. (Nov. 17, 2017, 8:22 PM), <https://perma.cc/KW2L-9GAN>.

113. See Negowetti, *supra* note 87, at 1353; Bill Chappell, *Judge Overturns Utah’s ‘Ag-Gag’ Ban On Undercover Filming At Farms*, NPR: TWO-WAY (July 8, 2017, 4:13 PM), <https://perma.cc/4LTY-4YZ2>; Will Potter, *Filming This Slaughterhouse From the Street Was the First ‘Ag-Gag’ Prosecution*, YOUTUBE (June 24, 2013), <https://perma.cc/5JH6-PM2X>.

any of the ag-gag provisions, including the first, because she filmed with a device in her hand.

The media immediately reported on the arrest, and placed pressure on prosecutors to drop the charges quickly.¹¹⁴ Meyer was relieved by the decision to drop the charges, but was “shocked” to be charged with a crime for recording an act of what she believed to be animal abuse, while on a public easement in the first place.¹¹⁵ “It should never be a crime to tell the story of an animal who is being abused and killed, even if it’s for food,” Meyer told reporters after the case was dismissed.¹¹⁶ The law was later used in September 2014 to arrest four additional activists for taking photographs of a Utah pig farm, though those charges were eventually dropped as well.¹¹⁷

Meyer, with help from the Animal Legal Defense Fund, decided to challenge the constitutionality of Utah’s ag-gag law altogether. She filed a complaint with the U.S. District Court of Utah (Central Division) on July 22, 2013,¹¹⁸ alleging violations of the First Amendment, the Supremacy Clause, and the Fourteenth Amendment of the United States Constitution.¹¹⁹ The case lasted nearly four years, and was decided on summary judgment only after the court reviewed the parties’ many motions, over a dozen filed expert reports, and numerous amicus briefs.¹²⁰ Concentrating on the First Amendment challenge, the court concluded that because “the act of recording is protectable First Amendment speech, . . . the making of those recordings [must also] be protected.”¹²¹ Utah’s law, the court determined, sought to prevent the recording of activities in agricultural facilities even when the recorder was not physically on the premises or interfering with business operations in any way. The decision to ban recording only of certain content (activities in agricultural facilities) amounted to a content-based restriction that needed to, but could not, survive strict scrutiny to stand. Concluding, the court explained that “Utah undoubtedly has an interest in addressing perceived threats to the state agricultural industry, and as history shows, it has a variety of constitutionally permissible tools at its disposal to do so. Suppressing broad swaths of protected speech without

114. See Potter, *supra* note 113; Will Potter, *First Video to Result in #AgGag Prosecution (and Dismissal)*, GREEN IS THE NEW RED (June 24, 2013), <https://perma.cc/UGN9-QPE4>.

115. See Chappell, *supra* note 113.

116. *Id.*

117. See Negowetti, *supra* note 87, at 1353.

118. See Civil Rights Complaint at 2, *Animal Legal Def. Fund v. Herbert*, 263 F. Supp. 3d 1193 (D. Utah 2017) (No. 2:13-CV-00679), 2013 WL 4017889.

119. See *id.*

120. See Docket, *Herbert*, 263 F. Supp. 3d 1193 (No. 2:13-CV-00679).

121. *Herbert*, 263 F. Supp. 3d at 1208.

justification, however, is not one of them.”¹²² Accordingly, the court agreed with Meyer that the law, as written, violated the First Amendment and granted her motion for summary judgment.¹²³

B. Idaho

In October 2012, Mercy for Animals, a Los Angeles-based animal rights group, published a video that showed farm workers using a moving tractor to drag a prone cow with a chain around her neck, as well as workers “repeatedly beating, kicking, and jumping” on other cows.¹²⁴ The video was recorded at Dry Creek Dairy in Hansen, Idaho by an animal rights activist who had secretly secured a job working at the Dairy to conduct an investigation of their practices.¹²⁵ When the workers were fired and subsequently charged with animal cruelty,¹²⁶ the public demanded accountability. Large food chains, like Burger King and In-N-Out Burger, issued public statements denouncing the animal abuse amid concerns that the restaurants indirectly supported Dry Creek Dairy by purchasing cheese from bulk suppliers that sourced milk from the dairy.¹²⁷ Burger King even announced that it would “immediately suspend[] their use of dairy products from . . . Dry Creek Dairy in response to Mercy For Animals’ video [as Burger King] doesn’t condone cruelty to animals.”¹²⁸

In response to the negative publicity stemming from the video, the Idaho Dairymen’s Association drafted and sponsored an ag-gag bill that became Idaho Code § 18–7042.¹²⁹ The legislation criminalized engaging in the types of “undercover investigations” that exposed the problematic activities at the Dry Creek Dairy.¹³⁰ During a committee hearing on the bill, one Idaho state senator compared undercover investigations to “terrorism, [which] has been used by enemies for centuries to destroy the

122. *Id.* at 1213.

123. *See id.*

124. *Animal Legal Def. Fund v. Otter*, 118 F. Supp. 3d 1195, 1199 (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).

125. *See id.*; *Three Ex-workers at Huge Idaho Dairy Charged with Animal Cruelty*, CBS NEWS (Oct. 10, 2012, 7:07 AM), <https://perma.cc/S7Q7-LG6R>.

126. *See Three Ex-workers at Huge Idaho Dairy Charged with Animal Cruelty*, *supra* note 125; Michael Martinez & Amanda Watts, *Idaho Dairy Fires 5 Workers in Animal Abuse Video; 3 of Them Charged*, CNN, <https://perma.cc/9T5L-4AEB> (Oct. 10, 2012, 10:19 PM).

127. *See Torment of Dairy Cows in Undercover Video Leads to Cruelty Charges*, NBC NEWS (Oct. 10, 2012, 3:26 PM), <https://perma.cc/WCQ5-ST2A>.

128. Anna Almednrala, *In-N-Out Responds to Animal Abuse Allegations Directed at Idaho Dairy Farm (Graphic Video, Updated)*, HUFFPOST, <https://perma.cc/4V4K-3HSV> (Dec. 6, 2017).

129. *See Otter*, 118 F. Supp. 3d. at 1199.

130. *See id.*

ability to produce food and the confidence in the food's safety."¹³¹ A member of the Idaho House of Representatives similarly stated the bill was important "to protect members of the dairy industry from undercover investigators."¹³² A second representative said undercover investigators were conducted by "extreme activists who want to contrive issues simply to bring in the donations."¹³³ And another representative accused animal rights activists of "taking the dairy industry hostage and seeking to persecute them in the court of public opinion."¹³⁴

Pursuant to the law, a journalist or animal rights investigator could be convicted for "not disclosing his media or political affiliations" when requesting a tour of the agricultural facilities or applying for a job.¹³⁵ Likewise, employees could be convicted for recording any videotape at an agricultural facility without obtaining the owner's permission, even if the content was of animal abuse or life-threatening safety violations.¹³⁶ Further, the law provided that violators of the law face up to a year in jail, and that any publication damages that result from posting impermissible recordings would face double damages for any resulting economic loss.¹³⁷ The bill passed the Idaho legislature with little fanfare and was signed into law by Idaho Governor Butch Otter on February 14, 2014.¹³⁸

The Animal Legal Defense Fund sued shortly thereafter, alleging that the law violates the First Amendment of the U.S. Constitution. The U.S. District Court of Idaho agreed, finding that a law targeting only certain content (e.g., video or audio recordings) and views critical of the agricultural industry was content-based and viewpoint-based, respectively.¹³⁹ This made strict scrutiny the proper standard of review. Unable to meet this high burden, the court found Idaho's ag-gag law to be unconstitutional on August 3, 2015. Appeals followed, and a three-judge panel from the Ninth Circuit substantially affirmed the lower court's decision on January 4, 2018.¹⁴⁰

Had the law been permitted to stand, journalists and activists alike would have to be willing to risk criminal prosecution to conduct any meaningful investigative reporting on agricultural facilities, even if the

131. *Id.* at 1200.

132. *Id.*

133. *Id.*

134. *Id.*

135. *Id.* at 1201 (citing IDAHO CODE § 18-7042(1)(a), (c) (2015)).

136. *See id.* (citing § 18-7042(1)(d)).

137. *See id.* (citing § 18-7042(4)).

138. *See id.* at 1199.

139. *See Otter*, 118 F. Supp. 3d. at 1211-12.

140. The partial reversal makes clear that trespassing onto private property for any means is not lawful. *See Animal Legal Def. Fund v. Wasden*, 878 F.3d 1184, 1196 (9th Cir. 2018).

purpose of the investigation was to check for compliance with important health and safety ordinances to truthfully inform the public.

C. North Carolina

North Carolina's ag-gag law imposed steep civil penalties against anyone, including farmworkers, who recorded unsafe working conditions or otherwise unethical or illegal conduct occurring on their employer's property unless directed to do so by their employer.¹⁴¹ Under North Carolina's law, each day that a farmworker acts "disloyally" by capturing photographic evidence of their employer's agricultural facility (including of important safety or health violations), they would be subject to a daily penalty of \$5,000.¹⁴² Accordingly, farmworkers were prevented from collecting any evidence of workplace violations or unsafe conditions without violating the law.

By specifically targeting employees, North Carolina's law took a vulnerable group of workers and placed them in a precarious situation. An amicus brief filed by the United Farm Workers of America, the oldest and largest farmworkers' union in the United States, noted as much. The union explained that 94% of farmworkers in North Carolina are native Spanish speakers, while nearly a third speak no English.¹⁴³ Most farmworkers have only an eighth-grade education and 49% of them are undocumented immigrants.¹⁴⁴ Their recourse for formal complaints without documented evidence is nearly non-existent, in part because of their immigration status.¹⁴⁵ Even migrant farmworkers who come to the United States on an H-2A worker visa cannot seek other employment if they are fired for complaining about work conditions,¹⁴⁶ nor can they sue in court for violations of their rights, because H-2A guest workers are specifically excluded from the Migrant and Seasonal Agricultural Worker Protection Act.¹⁴⁷ Without the ability to document problematic conditions where they work, these farmworkers are left with little options for redress or course-correcting in their place of work.

Of course, some agriculture industry leaders would rather be spared any potential embarrassment or public pressure that could stem from the

141. See N.C. GEN. STAT. § 99A-2 (2021).

142. See *id.* § 99A-2(d)(4).

143. See Brief of Amicus Curiae United Farm Workers of America in Support of Plaintiffs-Appellees at 5, *People for the Ethical Treatment of Animals, Inc. v. N.C. Farm Bureau Fed'n*, 60 F.4th 815 (4th Cir. 2023) (No. 20-1776), 2021 WL 807831 [hereinafter UFW Brief].

144. See *id.*

145. See *id.*

146. See *id.* at 5–6; see also HUM. RTS. CTR., UNIV. OF CAL., BERKELEY, HIDDEN SLAVES: FORCED LABOR IN THE UNITED STATES 16 (2004), <https://perma.cc/UN2U-4GDK>.

147. See UFW Brief, *supra* note 143, at 6; 29 U.S.C. §§ 1802(8)(B)(ii), (10)(B)(ii).

revelation of unsavory conditions at their facilities. So, when People for the Ethical Treatment of Animals (PETA) sued North Carolina to challenge the constitutionality of the ag-gag law on January 13, 2016, agriculture groups joined the fight to preserve it. Traditional agriculture groups that argued in favor of preserving North Carolina’s ag-gag penalties include the National Pork Producers Council,¹⁴⁸ North Carolina Pork Council, the American Farm Bureau Federation, and the Southern Association of State Departments of Agriculture.¹⁴⁹ In responding to the constitutional challenge, North Carolina argued that “undercover investigations in nonpublic areas, as a class, constitute unprotected speech.”¹⁵⁰ The district court and later the Fourth Circuit Court of Appeals disagreed, calling the position “a dangerous proposition that would wipe the Constitution’s most treasured protections from large tranches of our daily lives.”¹⁵¹ North Carolina pushed back, claiming that the law punishes “not speech but intent to be disloyal, speech merely providing one way to prove disloyalty.”¹⁵² Calling this argument mere “wordplay,” the Fourth Circuit affirmed the lower court’s decision and rejected this stance, noting “the publication of an unfavorable article *is* the act of disloyalty” being barred by the statute.¹⁵³

North Carolina’s ag-gag law helped insulate the agriculture industry from responsibility for any wrongs committed on their properties. By imposing punitive measures against employees for documenting unsafe or illegal activities, the law effectively silenced a crucial avenue for accountability and redress. Without the collection of photographic or video evidence, reporting on health and safety issues to the public also becomes much more difficult and less powerful—a point well known to the law’s supporters. The resistance from powerful agricultural entities highlights the tension between industry interests and fundamental civil liberties. Ultimately, the decision to strike this recording ban underscores the necessity of upholding constitutional protections to ensure that farmworkers and the public alike can learn of and expose injustices without fear of retribution.

148. An association of 43 state pork producer organizations and the self-described global voice in Washington, DC for the Nation’s nearly 60,000 pork producers. *See* Amicus Curiae Brief of the American Farm Bureau Federation et al. in Support of Petitioners at 1, *N.C. Farm Bureau Fed’n v. People for the Ethical Treatment of Animals, Inc.*, 144 S. Ct. 325 (2023) (Nos. 22-1148, 22-1150), 2023 WL 4532419.

149. *See id.*

150. *People for the Ethical Treatment of Animals, Inc. v. N.C. Farm Bureau Fed’n*, 60 F.4th 815, 822 (4th Cir.), *cert. denied*, 144 S. Ct. 325 (2023), and *cert. denied sub nom. Stein v. People for the Ethical Treatment of Animals, Inc.*, 144 S. Ct. 326 (2023).

151. *See id.*

152. *Id.* at 828.

153. *Id.*

IV. APPLICATION TO FLORIDA AND ALABAMA CULTIVATED MEAT BANS

Florida's ban on cultivated meat was signed into law by Governor Ron DeSantis on May 1, 2024, and took immediate effect.¹⁵⁴ Cultivated meat is produced in a lab by placing animal cells from a donor animal into a controlled, nutrient-rich environment in a bioreactor where cells then replicate to form larger, consumable food.¹⁵⁵ The law makes it a second-degree misdemeanor to sell, hold or offer for sale, or distribute cultivated meat in the state of Florida.¹⁵⁶ Any individual found to be in violation—for example, by storing cultivated meat purchased elsewhere in their refrigerator and serving it to company—is subject to a fine of up to \$500 for each offense.¹⁵⁷ A food establishment that distributes or sells cultivated meat may have their permit of operation revoked or suspended, and have “a prominent closed-for-operation sign” placed on its doors.¹⁵⁸ Furthermore, if any individual business owner or employee of that business is found to have engaged in prohibited conduct while performing job duties, that business may have its operation license suspended altogether. An employer in Tallahassee, Florida therefore ought to be careful that an employee who resides thirty-minutes away in Calvary, Georgia carefully packs their lunch.

Alabama's ban was signed into law by Governor Kay Ivey on May 7, 2024, with an effective date of October 1, 2024. The law confusingly prohibits “the manufacture, sale, or distribution of food products made from cultured animal cells in this state.”¹⁵⁹ I assume that the proper reading means no one in Alabama can make, sell, or distribute any lab-grown meat (rather than the alternate reading that such activities would be permissible so long as the food products were made from cultured animal cells outside of Alabama).¹⁶⁰ Under the law, any person who manufactures, sells, holds or offers for sale, or distributes any cultivated food product in the state would be subject to a Class C misdemeanor.¹⁶¹ Persons convicted of a class C misdemeanor face fines up to \$500 and up to three months in prison.¹⁶²

154. *See generally* S.B. 1084, 2024 Leg., Reg. Sess. (Fla. 2024); H.B. 435, 2024 Leg., Reg. Sess. (Fla. 2024).

155. *See* Laura Ungar & Jonel Aleccia, *Meat Grown from Animal Cells? Here's What It Is and How It's Made*, AP NEWS (June 21, 2023, 1:57 PM), <https://perma.cc/Q7ZK-KS5M>.

156. *See* FLA. STAT. § 500.452(1) (2024).

157. *See* FLA. STAT. § 775.083(e) (2024).

158. *See* FLA. STAT. § 500.121 (2024).

159. S.B. 23, 2024 Leg., Reg. Sess. (Ala. 2024) (enacted); *see also* ALA. CODE § 20-1-160 to -161 (2024).

160. *See* ALA. CODE § 20-1-161 (2024).

161. *See id.* § 20-1-161(b).

162. *See id.* § 13A-5-12, -7.

A food establishment found to have sold or distributed any cultivated food products can have its food permit suspended or revoked.¹⁶³ The penalty for violating these laws is serious. But they also beg the question: are they justified? The research on the benefits and harms of lab-grown meat is mixed and mostly focused on environment concerns.¹⁶⁴

Nearly 15% of global greenhouse gas emissions come from the animals we eat, with cows being the largest contributors.¹⁶⁵ According to a study performed by scientists at the United Nations, “cattle-rearing generates more global warming greenhouse gases, as measured in CO2 equivalent, than transportation” and serves as a “major source of land and water degradation.”¹⁶⁶ The breakdown of cattle waste also purportedly produces 64% of the world’s ammonia, which contributes significantly to acid rain and water pollution.¹⁶⁷ Additionally, traditional meat production demands significant quantities of water, energy, and land.¹⁶⁸ Furthermore, the WHO has raised alarm over the excessive use of antibiotics to treat livestock, which can contribute to the development of antibiotic-resistant bacteria.¹⁶⁹ Approximately 80% of all antibiotics sold in the United States are used for animal agriculture.¹⁷⁰

These findings suggest that an alternative to traditional livestock farming may, in fact, produce some benefits.¹⁷¹ A report published by the University of California at Berkeley found that cultivated meat has the potential to serve as a “viable alternative” to traditional meat.¹⁷² Calling the product “ethical meat,” researchers found that this cultivated, lab-grown substitute could potentially alleviate conventional concerns about environmental sustainability and the treatment of animals.¹⁷³ Hanna

163. *See id.* § 20-1-162(b).

164. *See* Casey Crownhart, *Here’s What We Know About Lab-Grown Meat and Climate Change*, MIT TECH. REV. (July 3, 2023), <https://perma.cc/8AEB-9P55>.

165. *See id.*

166. *Rearing Cattle Produces More Greenhouse Gasses Than Driving Cars, UN Report Warns*, UNITED NATIONS NEWS (Nov. 29, 2006), <https://perma.cc/W9GJ-Y6SC>.

167. *See id.*

168. *See id.*; Seher Yuksel & Jakki J. Mohr, *Disrupting the Plate: Cultured Meat Technology*, CAL. REV. MGMT. (July 31, 2023), <https://perma.cc/E52F-GFR3>.

169. *See* Yuksel & Mohr, *supra* note 168.

170. *See* Michael Martin et al., *Antibiotics Overuse in Animal Agriculture: A Call to Action for Health Care Providers*, 105 AM. J. PUB. HEALTH 2409, 2409 (Dec. 2015), <https://perma.cc/9JFQ-PGCP> (citing FDA, 2011 SUMMARY REPORT ON ANTIMICROBIALS SOLD OR DISTRIBUTED FOR USE IN FOOD-PRODUCING ANIMALS (2014), <https://perma.cc/JC52-LB86>).

171. In addition to the benefits discussed in the accompanying paragraph, The European Space Agency is exploring the possibility of growing cultivated meat in space and using it as sustenance for astronauts on space missions. So far, research has produced “promising” results. *ESA Explores Cultivated Meat for Space Food*, EUR. SPACE AGENCY (Oct. 30, 2023), <https://perma.cc/Z58B-PL7>.

172. Yuksel & Mohr, *supra* note 168.

173. *Id.*

Tuomisto, an associate professor at the University of Helsinki, likewise found that cultivated meat could have major climate benefits, in a study published in August 2022.¹⁷⁴ However, another study conducted by the University of California at Davis (UC Davis) researchers in early 2023 found that “cultivated meat is likely worse for the climate than retail beef under current production methods.”¹⁷⁵ This is because the materials and processes needed to help animal cells multiply require significant energy, and emit greenhouse gases during production.¹⁷⁶ While new production methods may evolve to become less energy intensive, and Alabama’s ban does permit limited research into cultivated meat production,¹⁷⁷ imposing strict restrictions on its production stifles progress in this field.

By coupling Florida and Alabama’s bans with existing legislation curtailing free speech on food production, discussions surrounding potential benefits of lab-grown meat and how to optimize them are further stifled. Florida’s food disparagement statute allows for the recovery of both compensatory and punitive damages where someone engages in “willful or malicious dissemination to the public in any manner of any false information that a perishable agricultural food product is not safe for human consumption.”¹⁷⁸ Alabama’s food disparagement statute is nearly identical.¹⁷⁹ However, whether certain statements provide the agriculture industry with a cause of action under these food disparagement laws can be unclear.

Take, for example, the above-mentioned concern that livestock have been overtreated with antibiotics, which can lead to antibiotic resistance.¹⁸⁰ Imagine if the *Oprah Winfrey Show* ran a program not on “pink slime” but on cultivated meat. Two guest scientists—one from UC Davis and another from the WHO—are invited to discuss the bans in Florida and Alabama. The UC Davis scientist raises concern that the process for developing cultivated meat is worse for climate change than traditional livestock farming. The scientist from the WHO nods but expresses a different concern: that traditional livestock meat is bursting with antibiotics, and consuming too much could lead to humans encountering antibiotic-resistant bacteria or otherwise developing

174. See Crownhart, *supra* note 164; Hanna L. Tuomisto et al., *Prospective Life Cycle Assessment of a Bioprocess Design for Cultured Meat Production in Hollow Fiber Bioreactors*, 851 SCI. TOTAL ENV’T 1 (2022), <https://perma.cc/X5YH-488D>.

175. Amy Quinton, *Lab-Grown Meat’s Carbon Footprint Potentially Worse Than Retail Beef*, UC DAVIS (May 22, 2023), <https://perma.cc/Z58H-NZ4S> (discussing pre-printed study linked therein).

176. See *id.*

177. See S.B. 23, 2024 Leg., Reg. Sess. § 1(f) (Ala. 2024).

178. FLA. STAT. § 865.065(2)(a) (2024).

179. See ALA. CODE § 6-5-621 (2024).

180. See *supra* notes 169–170 and accompanying text.

resistance to antibiotics themselves.¹⁸¹ Oprah listens to the discussion and says that encountering antibiotic-resistant bacteria would be a nightmare and she, personally will not be consuming any more traditional meat anytime soon until she gets over that fear. Some of her viewers feel similarly, and the demand for beef plummets. Florida is the ninth largest producer of beef cattle in the United States as of January 2024.¹⁸² Would cattle farmers from Florida have a cause of action to sue Oprah and her WHO guest under their food disparagement statute? Many people consume beef every day without any known negative health consequences. Does the program falsely suggest that consuming beef is unsafe? Florida's food disparagement statute presents a chilling risk to speakers, making it less likely for members of the press or public to engage in speech about new developments, like cultivated meat production, due to fear of retribution. Less speech means limiting meaningful debate and discussion that could potentially lead to progress for human health on a global scale.

Consider another example. A guest on the *Oprah Winfrey* program discussing cultivated meat accurately explains that pathogens like *E. coli*, which have contaminated slaughtered meat, are less likely to be present in cultivated meat.¹⁸³ Does such speech give the false impression that slaughtered meat is likely to be contaminated with *E. coli*? Does it give rise to a cause of action under Florida or Alabama's food disparagement statute?

Suppose the guest took the *E. coli* example even further. According to FDA reports, a cow with *E. coli* who lays waste may inadvertently contaminate other food sources.¹⁸⁴ When lettuce fields are planted near cattle on a large factory farm, cow waste can wash off into stream or canals used for crop irrigation. This distributes these pathogens from cattle to

181. The facetious WHO scientist's concern may be overstated; while the overuse of antibiotics can lead to antibiotic-resistant bacteria developing, whether it leads to human antibiotic resistance is debated in scientific literature. Compare Mary Jane Brown & Rachael Ajmera, *Antibiotics in Your Food: Should You Be Concerned*, HEALTHLINE, <https://perma.cc/CR7Z-ALR5> (last visited Oct. 12, 2024) ("There is no clear-cut link between antibiotic use in animals and resistant bacteria infections in humans. The risk to human health is likely to be small, since adequate cooking destroys bacteria in food."), with Ana Sandoiu, *Drug Resistance: Does Antibiotic Use in Animals Affect Human Health?*, MED. NEWS TODAY (Nov. 9, 2018), <https://perma.cc/Z25B-7XUU> ("An additional factor that may contribute to drug resistance in humans is the overuse of antibiotics in farming and agriculture.").

182. See HANNAH BAKER, UNIV. OF FLA., FLORIDA CATTLE MARKET UPDATE 1 (2024), <https://perma.cc/TV54-48LM>.

183. See Brian P. Sylvester et. al., *From Petri Dish to Main Dish: The Legal Pathway for Cell-Based Meat*, 12 KY. J. EQUINE, AGRIC. & NAT. RES. L. 243, 274–75 (2020).

184. See FDA, FACTORS POTENTIALLY CONTRIBUTING TO THE CONTAMINATION OF ROMAINE LETTUCE IMPLICATED IN THE THREE OUTBREAKS OF *E. COLI* O157:H7 DURING THE FALL OF 2019, at 1 (2020); Sandra Eskin, *FDA Says Cattle Likely Source of E. Coli That Contaminated Romaine in 2019*, PEW CHARITABLE TRS. (July 2, 2020), <https://perma.cc/FE6Y-DWEP>.

produce, which the FDA suggests likely caused contamination of some romaine lettuce in 2019.¹⁸⁵ If, during the program, a guest truthfully named on air specific farms that continue to raise cattle near their crop fields despite these reports, does this give those farms a viable food disparagement claim? It may cause a loss of profits because consumers of produce from those farms could be worried about possible food contamination. But E. coli outbreaks are not the norm. So does the statement imply a false and disparaging accusation against the specific farms and their products?

Surely, speech opposing new farming or food production mechanisms should be freely heard too. If the Oprahs of the world did not need to fear food disparagement litigation, they could broadcast and pit these favorable considerations against other legitimate concerns that cultivated meat contains its own health risks. Researchers have, for instance, expressed unease that cultivated meat cells undergo many more divisions than cells from farm animals, increasing the risk that cancer could present more readily in cultivated meat.¹⁸⁶ While reports indicate that cancer cells in meat are likely harmless in humans, understanding any risks and being able to openly discuss them can help members of the public make informed decisions about their food consumption.¹⁸⁷ Food disparagement laws make these balanced, but important, conversations difficult to have. They also raise the risk of viewpoint discrimination,¹⁸⁸ because negative commentary about a product like cultivated meat can be raised without fear of violating a food disparagement law. The same is not always true for speech complimentary of a product like cultivated meat, which may be seen as unduly critical of traditional agriculture.

Alabama's ag-gag law, working in tandem with the state's cultivated meat ban, has similar chilling effects. Alabama's law prohibits anyone from obtaining access to an animal or crop facility by false pretenses for unauthorized purposes.¹⁸⁹ Further, it prohibits using or copying any records, materials, or data from an animal or crop facility without a reasonable belief that the owners or administrators of that facility have given authorization to do so.¹⁹⁰ Any person who violates the law is guilty of a Class A misdemeanor if the damages are less than \$250, or a Class C felony if the facility faces greater than \$250 in damages.¹⁹¹ Furthermore,

185. See Eskin, *supra* note 184.

186. See Jaydee Hanson & Julia Ranney, *Is Lab-Grown Meat Healthy and Safe to Consume?*, CTR. FOR FOOD SAFETY (Sept. 20, 2020), <https://perma.cc/XN4Z-MQYQ>.

187. See *id.*

188. See Colleen K. Lynch, *Disregarding the Marketplace of Ideas: A Constitutional Analysis of Agricultural Disparagement Statutes*, 18 J.L. & COM. 167, 187 (1998).

189. See ALA. CODE § 13A-11-153(3) (2024).

190. See *id.* § 13A-11-153(6) (2024).

191. See *id.* § 13A-11-154 (2024).

any person convicted under the statute must also make restitution of two times the value of the loss experienced by the facility owner or operator.¹⁹²

These penalties are severe. As discussed in Part II, undercover investigative reporting on agricultural facilities have had positive impacts on consumers of food products as well as farmworkers and livestock. Alabama's ag-gag law makes it very difficult to understand how behind-the-scenes activities are conducted on farms. Perhaps, for example, an undercover investigation reveals ongoing animal neglect or abuses at certain facilities. To the extent this is a problem within the farming culture in Alabama, the advent of cultivated meat production could be particularly beneficial as it would produce a more humane source for food. Alternatively, an undercover investigation could reveal that poor conditions or choices around what feed animals consume raises the risk of *E. coli* at facilities in Alabama, making cultivated meat a potentially safer option. On the other hand, if farming practices were shown to be sustainable because of, say, an ingrained culture of water recycling in Alabama, cultivated meat production may be of less value. These are all hypotheticals, and are not meant to suggest any factual problems or conditions in Alabama. However, by upholding an ag-gag law that essentially prohibits undercover investigations into the workings of agricultural properties, the public loses the ability to fully weigh the benefits and harms to consuming cultivated meat in their state.

V. CONCLUSION

There are many important industries that our nation depends on for successful operation, and agriculture is one of them. In 2022, 2.6 million full- and part-time jobs were related to on-farm employment, accounting for 1.2% of U.S. employment.¹⁹³ The output of farms in the United States contributed approximately 0.7% of the U.S. GDP (\$203.5 billion) in 2023.¹⁹⁴ Throughout the history of the United States, agriculture has been an important backbone of society. Sixteen years before becoming the nation's third president, Thomas Jefferson wrote in a letter to the then-U.S. Secretary of Foreign Affairs John Jay, "[c]ultivators of the earth are the most valuable citizens."¹⁹⁵ Farming has always been a part of America's identity. However farming today looks a lot different than it did

192. *See id.* § 13A-11-155 (2024).

193. *See Ag and Food Sectors and the Economy*, USDA, <https://perma.cc/G6W4-H9XF> (Apr. 19, 2024)

194. *See id.*

195. Letter from Thomas Jefferson to John Jay (Aug. 23, 1785), in 8 *THE PAPERS OF THOMAS JEFFERSON* 426, 426–28 (Julian P. Boyd ed., 1953).

in 1785.¹⁹⁶ Instead of wholesome, barn-studded farms, the agriculture industry is dominated by powerful companies that control meat supply chains from many factory farms.¹⁹⁷ Allowing industry giants to operate unchecked in their businesses by preventing criticism of food sanitation or facility conditions places unusual authority in the agriculture industry. Real estate accounted for nearly 18% of the U.S. GDP in 2023, but we do not have any special penalties that could be levied against someone for speaking critically about the quality of a residential property on the market.¹⁹⁸ Why should industrialized agricultural properties and the activities upon them be treated differently?

Food disparagement laws and ag-gag laws impose risks on people who dare to raise concerns about the health and safety of what society consumes and how that food is produced. Lobbying groups for the agriculture industry have been successful in promoting special agriculture legislation to state legislators throughout the country,¹⁹⁹ often with significant financial backing. In 2023, Tyson Foods (one of the largest meat producers in the United States) alone spent \$2,050,000 on lobbying efforts.²⁰⁰ The American Farm Bureau Federation (AFBF) reportedly spent \$15.7 million on lobbying over the past five years, contributing to the approximately \$200 million in lobbying that six trade associations (the National Cattlemen's Beef Association, the National Pork Producers Council, the North American Meat Institute, the National Chicken Council, the International Dairy Foods Association, and AFBF) spent on lobbying between 2000-2021.²⁰¹ Some recent estimates place agribusiness lobbying costs significantly higher.²⁰² However, while severing access to information could lead to greater profits for large agricultural producers

196. According to a 2022 White House Press Release, four large meat-packing companies control 85 percent of the beef market. In pork, the top four processing firms control about 70 percent of the market. And in poultry, the top four processing firms control 54 percent of the market. See Press Release, The White House, The Biden-Harris Action Plan for a Fairer, More Competitive, and More Resilient Meat and Poultry Supply Chain, (Jan. 3, 2022), <https://perma.cc/73KC-FS82>.

197. See Brian Deese et al., *Addressing Concentration in the Meat-Processing Industry to Lower Food Prices for American Families*, THE WHITE HOUSE (Sept. 8, 2021), <https://perma.cc/HM3M-CP7A>.

198. See *Real Estate's Impact on the Economy by the Numbers: A State-by-State Analysis*, NAT'L ASS'N OF REALTORS (May 1, 2024), <https://perma.cc/KV5L-5MHQ>.

199. See Negowetti, *supra* note 87, at 1355; see also *supra* notes 1–10 and accompanying text.

200. See *Industry Profile: Food Processing & Sales for 2023*, OPEN SECRETS, <https://perma.cc/4SX3-EAEG> (last visited Oct. 14, 2024).

201. See Sigal Samuel, *It's Not Just Big Oil. Big Meat Also Spends Millions to Crush Good Climate Policy.*, VOX (Apr. 13, 2021, 3:01 PM), <https://perma.cc/S43P-2M6F>.

202. See *Lobbying to Influence Legislation Including Farm Bill Tops \$500 Million*, UNION OF CONCERNED SCIENTISTS (May 13, 2024), <https://perma.cc/H35P-DLM4> (“Agribusiness interests spent a huge sum of money—\$523 million dollars—lobbying Congress over the past five years.”).

and prompt increased spending on lobbying efforts, members of the public lose the ability to make informed decisions about their own diets and well-being.²⁰³

One of the decisions that would benefit from robust discussion is how to proceed with cultivated meat. Cultivated meat has already been served to eager consumers in the United States (California and Washington, D.C.), Singapore, and Israel.²⁰⁴ In each of these highly developed countries, their respective governments and health agencies have found the lab-grown products safe to consume.²⁰⁵ There are different views on whether cultivated meat offers any tangible benefits over traditional livestock meat. As discussed in Part III, some researchers believe that cultivated meat has the potential to reduce climate change, minimize unnecessary exposure to antibiotics, and limit the risk of meat contamination with *E. coli* and similar pathogens.²⁰⁶ Other researchers worry that the processes for producing cultivated meat will increase greenhouse gas production and harm the environment²⁰⁷ as well as create new health risks for consumers.²⁰⁸

Parts I and II illustrated how reporters, activists, media personalities, and members of the public have been sued for criticizing agricultural practices. If laws designed to punish critics are allowed to act as a constant threat, it will stifle vital discussions in the future. The agriculture industry has already tried to silence critics in numerous instances,²⁰⁹ chilling essential speech on food production. Currently, outright bans in Florida and Alabama on an alternative method of food production, along with legislation limiting discussions on its potential benefits, not only restrict the free market but also perpetuate the status quo without considering possible advantages of change.

203. See Nancy Fink Huehnergath, *Big Agriculture Bullies And Lobbies to Keep Americans in the Dark*, FORBES (May 6, 2016, 11:05 AM), <https://perma.cc/WS9M-CH4G>.

204. See Toi Staff & Sharon Wrobel, *In World First, Israel Approves Cultured Beef for Sale to the Public*, TIMES ISR. (Jan. 17, 2024, 1:48 PM), <https://perma.cc/26EF-C7U9>; Matt Reynolds, *You Can't Buy Lab-Grown Meat Even If You Wanted To*, WIRED (Feb. 2, 2024, 10:25 AM), <https://perma.cc/4JWT-H5EV>; Liam Pritchett, *The World's First Lab-Grown Meat Restaurant Opens In Israel*, LIVEKINDLY, <https://perma.cc/TN3S-92B6> (last visited Jan. 10, 2025); *Menu*, THE CHICKEN, <https://perma.cc/T7KB-HXNJ> (last visited Jan. 10 2025).

205. See sources cited *supra* note 204; Laura Reiley, *Lab-Grown Meat Is Safe to Eat, Says FDA*, WASH. POST (Nov. 16, 2022, 3:01 PM), <https://perma.cc/8C9W-KF6U>; Ana Faguy, *USDA Approves 'Lab-Grown' Chicken—Here's Where To Buy It*, FORBES (June 21, 2023, 1:31 PM), <https://perma.cc/WB6H-PLRK>; *Singapore becomes first country to approve sale of lab-grown meat*, REUTERS (Dec. 1, 2020, 8:55 PM), <https://perma.cc/4TCU-YFAE>.

206. See *supra* notes 164–74 and accompanying text.

207. See *supra* notes 174–76 and accompanying text.

208. See *supra* note 186 and accompanying text.

209. See *supra* Parts I–II.

While agriculture is and should always be a vital industry in the United States, no industry should be above public discussion or accountability. The influence of major agricultural corporations and their successful lobbying for food disparagement and ag-gag laws underscore a troubling trend of prioritizing profits over public transparency and health. As a society, it is imperative that we scrutinize these regulations and advocate for policies that ensure food safety and ethical practices within the agriculture industry, protecting the right to information and the health of consumers. The future of agriculture may or may not include new types of food production like cultivated meat, but the decision of whether changes to our diets are good or bad should rest with a well-informed public.