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Legal Issues in Animal Agriculture: Farm Protection Laws

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Overview



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- What Are Farm Protection Laws?
- Why Do They Exist?
- Pending Litigation

What Are Farm Protection Laws?



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“Ag Gag” Laws

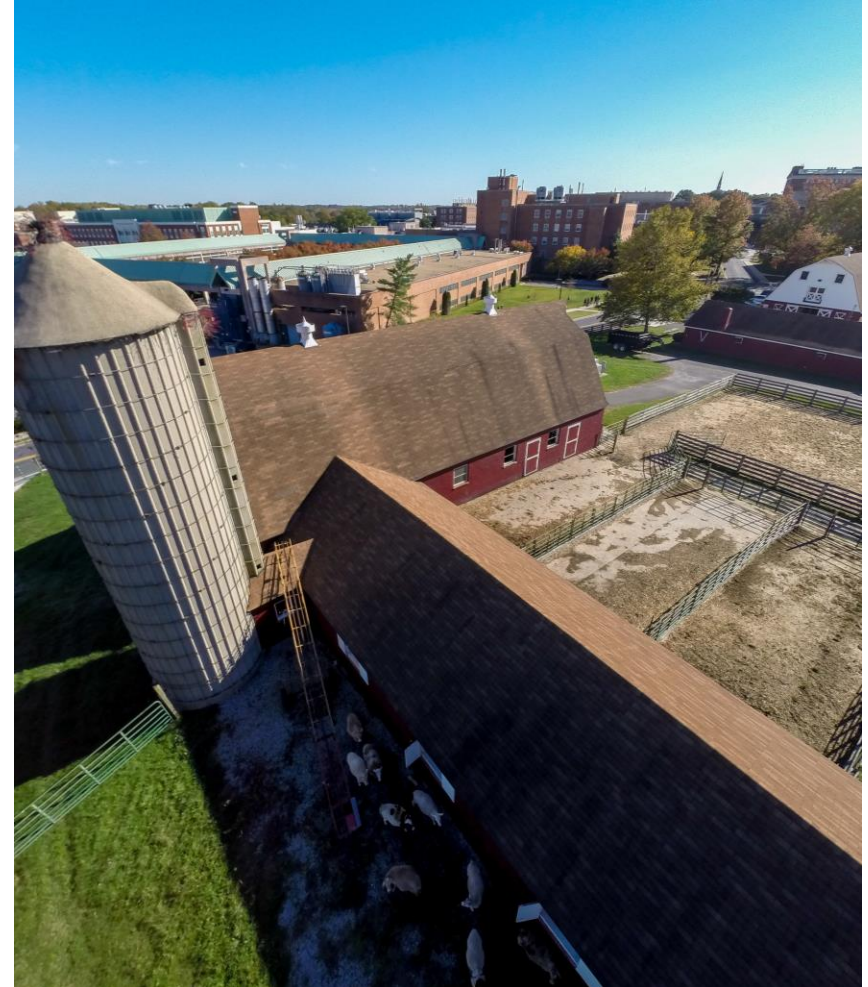
- refers to *anti-whistleblower laws* that restrict employees from taking photographs or videos illustrating alleged cruelty to animals, food safety issues, and/or poor working conditions, during the farming process and/or restrict people from obtaining illegal access (commonly through job application fraud) onto agricultural operations for this same purpose

The Evolution of Ag Gag Laws



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- Some states have **“animal enterprise interference”** statutes that intensify penalties for fraud, trespass, and physical damage to facilities.



Evolution of Farm Protection Laws



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- Kansas passed the first of its kind, in 1991, followed by Washington State, California, Oregon, Montana, and North Dakota



Farm Protection Laws in Our Current Climate

WHAT ABOUT TODAY?

What Are Farm Protection Laws?



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- *Ag Gag Legislation* can be said to criminalize up to **5 categories** of behavior:
 - 1. Recording, photographing, videotaping, or audio recording at agricultural facilities (aka *no recording*)



What Are Farm Protection Laws?



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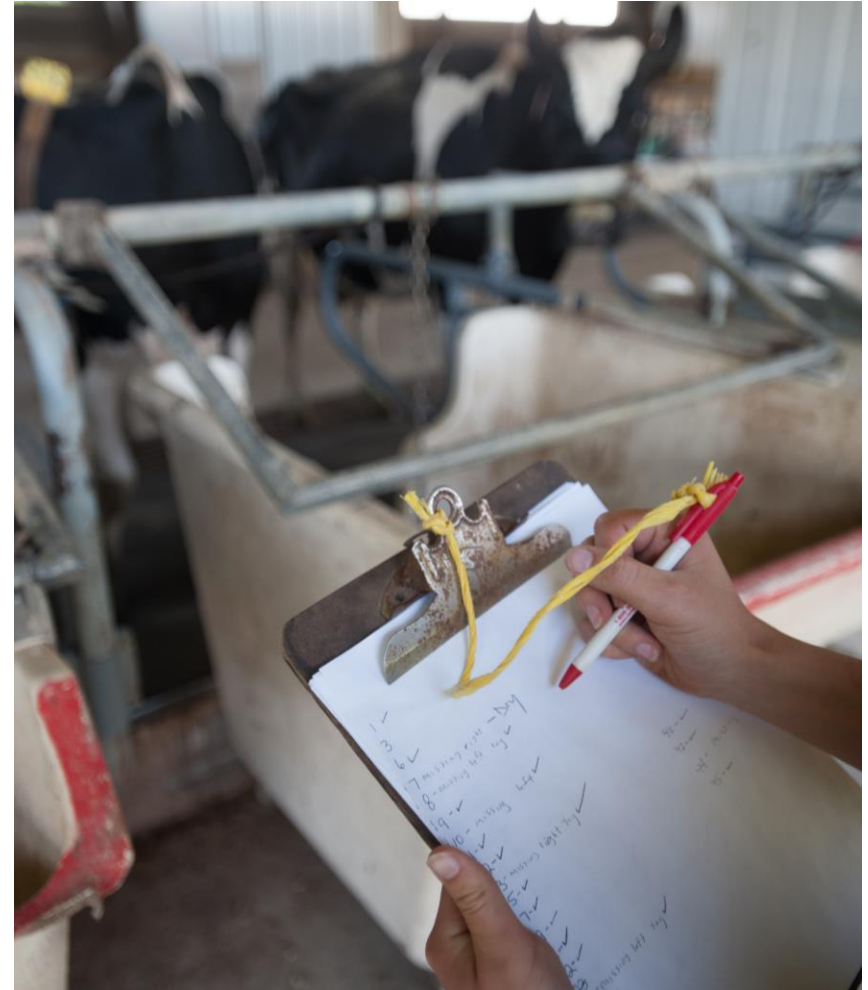
- 2. possession or distribution of recordings made on agricultural facilities (aka *no distributing*)
- 3. obtaining access to an agricultural production facility under false pretenses (aka *no lying*)

What Are Farm Protection Laws?



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- 4. failure to report recorded abuse and/or relinquish recordings with within a stated time frame (aka *mandatory disclosure*)
- 5. the act of gaining employment **(in any industry)** by giving false or incomplete application information when the purpose to gain employment is to create a recording within the facility (aka *employment fraud*)





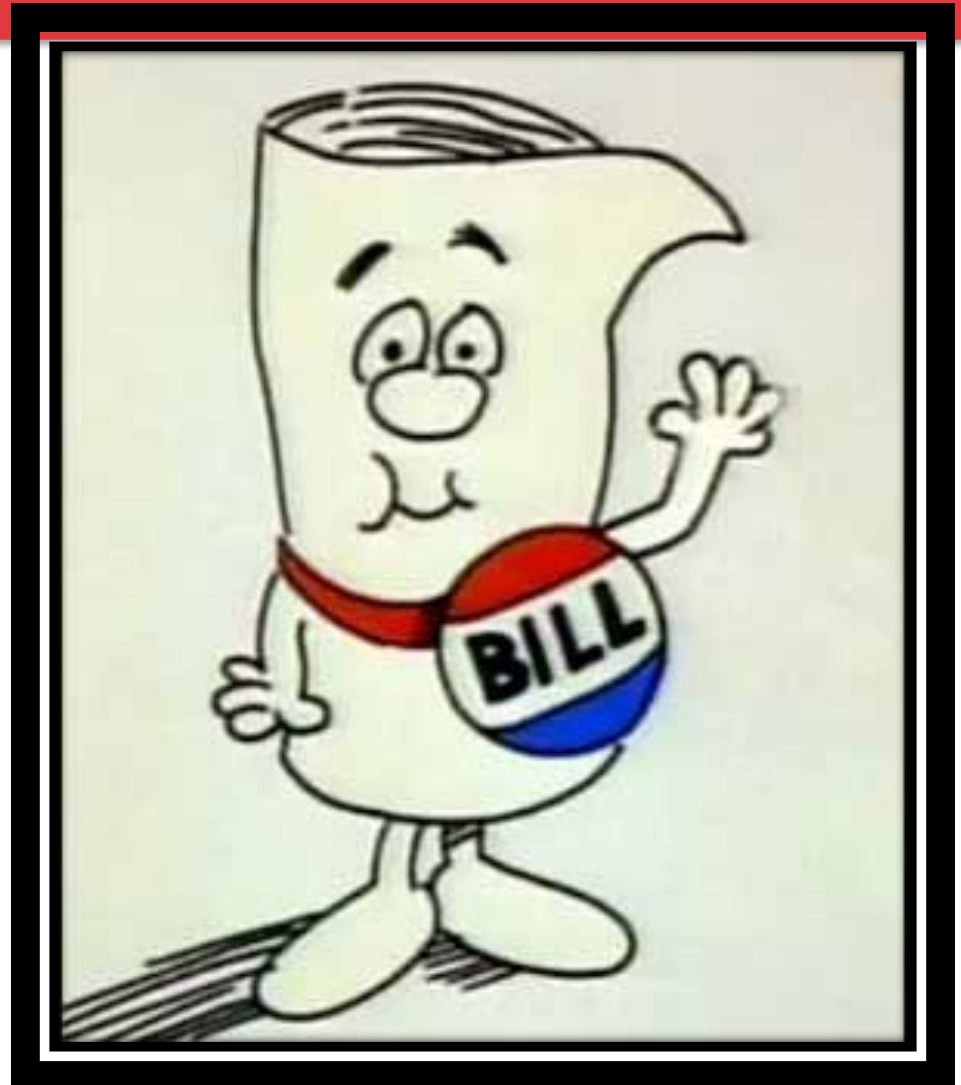
**WHICH STATES HAVE ENACTED
THEM?**

Timeline



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- **1990:** Kansas (first "ag gag" law)
- **1991:** North Dakota & Montana
- **2011:** 4 proposed bills but none passed
- **2012:** 10 proposed bills and 3 passed (Iowa, Missouri, and Utah)
- **2013:** 15 proposed bills but none passed
- **2014:** Idaho
- **2015:** North Carolina



Which Categories Do The States Fall In?



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- Many statutes fall under more than one criminalization category
 - Kansas (K.S.A. 47-1827)
 - *NO RECORDING*
 - North Dakota (N.D. Cent. Code § 12.1-21.1-02)
 - *NO DISTRIBUTING*
 - *NO RECORDING*

Which Categories Do The States Fall In?



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- Montanan (Mont. Code Ann § 81-30-103)
 - *NO DISTRIBUTING*
 - *NO RECORDING*
- Iowa (Iowa Code § 717A.3A)
 - *NO LYING*
- Missouri (Mo. Rev. Stat. § 578.013)
 - *MANDATORY DISCLOSURE*



Which Categories Do The States Fall In?



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- Utah (1953 § 76-6-112)
 - *NO RECORDING*
 - *NO LYING*

- Idaho (Iowa Code 717A.1)
 - *NO RECORDING*
 - *NO LYING*

- North Carolina (HB 405)
 - *EMPLOYMENT FRAUD-ALL INDUSTRIES*



WHY AG GAG LAWS?

Why Are They In Existence?



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- These laws are “intended to address a valid concern of...state's businesses - ***how to discourage those bad actors who seek employment with the intent to engage in corporate espionage or act as an undercover investigator***. This practice is unethical and unfair to employers, and is a particular problem for our agricultural industry. It needs to be stopped.”

—Governor McCrory, North Carolina

Why Are They In Existence?



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- Concerns over:
 - privacy
 - Safety of animals
 - Safety of persons
 - Biosecurity
 - Ability to continue production (economic effects of videos)
 - Expense to defend
 - Footage is often taken out of context, etc.





Constitutional Challenges Against Farm Protection Laws

CURRENT LITIGATION

Utah Litigation



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- **Utah's** farm protection law was enacted in 2012 and criminalizes fraudulent employment and recording images or sound without the owner's consent
 - no recording and no lying



Utah Litigation



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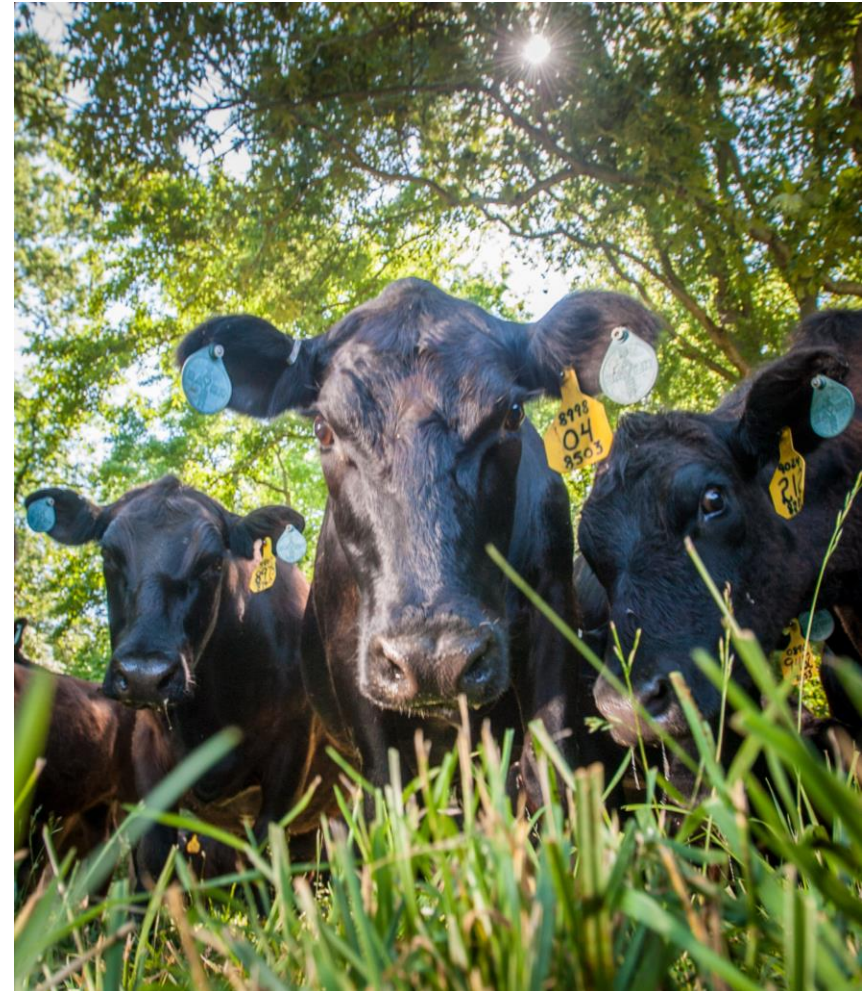
- One person was prosecuted under Utah's law for filming a slaughterhouse worker pushing a cow with a bulldozer
- Dropped because defendant was standing on public property
 - Not trespassing so not in violation of law

Utah Litigation



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- On July 22, 2013, ALDF, PETA, and others filed a lawsuit challenging Utah's law alleging violations of the right to freedom of speech and equal protection
- Also the federal False Claims Act
 - Designed to protect whistleblowers on fraud and abuse in government contracts



Utah's Litigation Status



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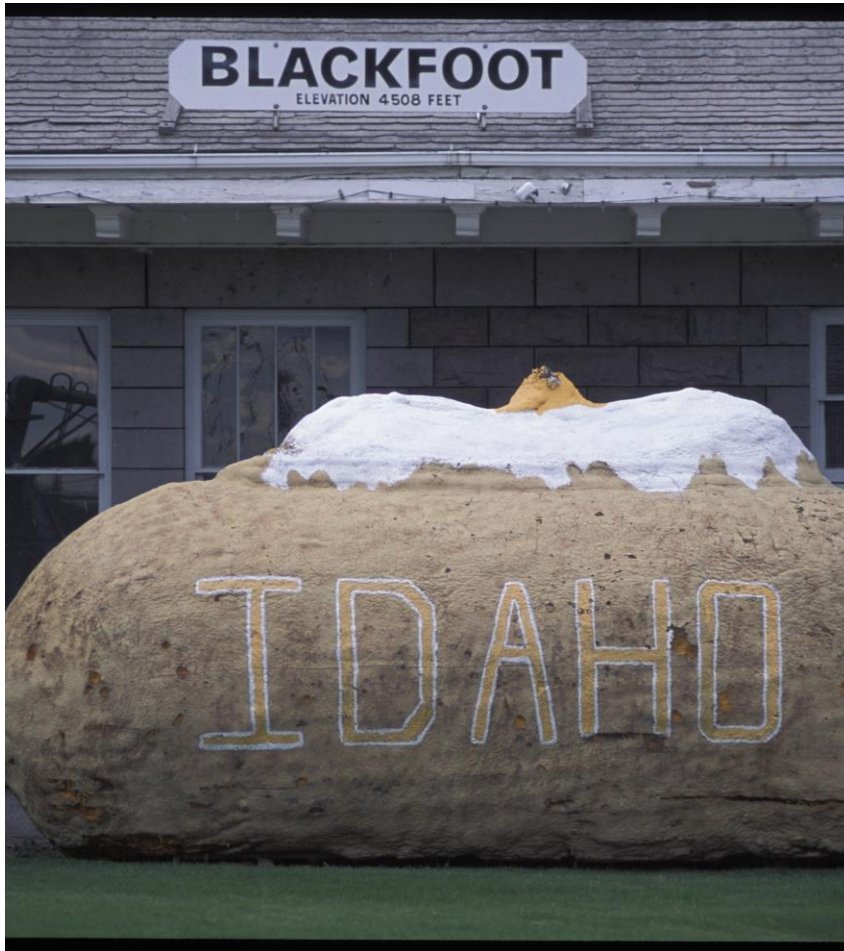


- In Utah, they have filed a scheduling order and a trial will happen in the **3rd quarter of 2016**

Idaho Litigation



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- **Idaho's** farm protection law was enacted February 28, 2014 and criminalizes fraudulent employment, trespass, or secretly filming without the owner's consent
 - no recording and no lying

Idaho Litigation



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- Activists sued the state to enjoin enforcement of the law
- Many of the same plaintiffs in Utah
- Law suit is based on the federal False Claims Act, the Food Safety Modernization Act, and the Clean Water Act



Idaho Litigation Status



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- On September 9, 2014, the judge determined that the First Amendment and equal protection challenges to the law are valid and will allow the two claims to move forward to trial
- On August 3, 2015 U.S. Court Judge B. Lynn Winmill found that the law violates the First Amendment.



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Thank You!

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