
**IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

**ANIMAL LEGAL DEFENSE FUND, BAILING OUT BENJI, IOWA
CITIZENS FOR COMMUNITY IMPROVEMENT, PEOPLE FOR THE
ETHICAL TREATMENT OF ANIMALS, INC., and CENTER FOR
FOOD SAFETY,**

Plaintiffs-Appellees,

v.

**KIMBERLY REYNOLDS, in her official capacity as Governor of Iowa,
TOM MILLER, in his official capacity as Attorney General of Iowa, and
DREW B. SWANSON, in his official capacity as Montgomery County,
Iowa County Attorney,**

Defendants-Appellants.

Appeal from an Order by the United States District Court
for the Southern District of Iowa
Case No. 4:19-cv-00124-SMR-HCA

**MOTION OF AMICI CURIAE THE REPORTERS COMMITTEE FOR
FREEDOM OF THE PRESS AND 21 MEDIA ORGANIZATIONS
FOR LEAVE TO FILE AMICUS CURIAE BRIEF
IN SUPPORT OF PLAINTIFFS-APPELLEES**

Bruce D. Brown
Counsel of Record
Katie Townsend*
REPORTERS COMMITTEE FOR
FREEDOM OF THE PRESS
1156 15th Street NW, Ste. 1020
Washington, D.C. 20005
(202) 795-9300
bbrown@rcfp.org
**Of Counsel*

MOTION

1. The Reporters Committee for Freedom of the Press and the 21 additional amici are members or representatives of the news media with a strong interest in ensuring that journalists and news organizations are able to gather and report information of interest and concern to the public.¹ The ability of sources, including whistleblowers, to inform journalists of dangerous, illegal, or unethical activities—and to provide documentation of such wrongdoing—without fear of criminal liability is critical to journalists’ ability to do so.

2. Amici write to emphasize the public interests at stake in this case and to highlight the chilling effect that Iowa Code Ann. § 717A.3B has on constitutionally protected activity of journalists and their sources. Amici submit the attached brief to aid the Court in its consideration of the significant First Amendment and newsgathering issues raised by the instant appeal. Amici’s brief provides the Court with a broader historical and legal context to explain how Iowa Code Ann. § 717A.3B infringes on constitutionally protected rights, and why the law is an unconstitutional viewpoint-based restriction on speech.

3. For the foregoing reasons, amici move the Court to accept the amicus curiae brief submitted together with this motion. Plaintiffs-Appellees have

¹ A statement of identity and interest of all amici is included with the proposed brief as Appendix A.

consented to the filing of this brief, and Defendants-Appellants have stated that they will not object to a request for leave to file an amicus brief in this matter.

Dated: August 15, 2022

Respectfully submitted,

/s/ Bruce D. Brown

Bruce D. Brown

Counsel of Record

Katie Townsend*

THE REPORTERS COMMITTEE FOR

FREEDOM OF THE PRESS

1156 15th Street NW, Ste. 1020

Washington, D.C. 20005

(202) 795-9300

bbrown@rcfp.org

**Of Counsel*

Counsel for Amici Curiae

**IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

**ANIMAL LEGAL DEFENSE FUND, BAILING OUT BENJI, IOWA
CITIZENS FOR COMMUNITY IMPROVEMENT, PEOPLE FOR THE
ETHICAL TREATMENT OF ANIMALS, INC., and CENTER FOR
FOOD SAFETY,**

Plaintiffs-Appellees,

v.

**KIMBERLY REYNOLDS, in her official capacity as Governor of Iowa,
TOM MILLER, in his official capacity as Attorney General of Iowa, and
DREW B. SWANSON, in his official capacity as Montgomery County,
Iowa County Attorney,**

Defendants-Appellants.

Appeal from an Order by the United States District Court
for the Southern District of Iowa
Case No. 4:19-cv-00124-SMR-HCA

**BRIEF OF AMICI CURIAE THE REPORTERS COMMITTEE FOR
FREEDOM OF THE PRESS AND 21 MEDIA ORGANIZATIONS IN
SUPPORT OF PLAINTIFFS-APPELLEES**

Bruce D. Brown
Counsel of Record
Katie Townsend*
REPORTERS COMMITTEE FOR
FREEDOM OF THE PRESS
1156 15th Street NW, Ste. 1020
Washington, D.C. 20005
(202) 795-9300
bbrown@rcfp.org
**Of Counsel*

CORPORATE DISCLOSURE STATEMENTS

The Reporters Committee for Freedom of the Press is an unincorporated association of reporters and editors with no parent corporation and no stock.

AXIOS Media Inc. is a privately owned company, and no publicly owned company owns 10% or more of its stock.

The Center for Investigative Reporting (d/b/a Reveal) is a California non-profit public benefit corporation that is tax-exempt under section 501(c)(3) of the Internal Revenue Code. It has no statutory members and no stock.

First Look Institute, Inc. is a non-profit non-stock corporation organized under the laws of Delaware. No publicly-held corporation holds an interest of 10% or more in First Look Institute, Inc.

Gannett Co., Inc. is a publicly traded company and has no affiliates or subsidiaries that are publicly owned. BlackRock, Inc. and the Vanguard Group, Inc. each own ten percent or more of the stock of Gannett Co., Inc.

The Inter American Press Association (IAPA) is a not-for-profit organization with no corporate owners.

The McClatchy Company, LLC is privately owned by certain funds affiliated with Chatham Asset Management, LLC and does not have publicly traded stocks.

The Media Institute is a 501(c)(3) non-stock corporation with no parent corporation.

The Foundation for National Progress, dba Mother Jones, is a nonprofit, public benefit corporation. It has no publicly-held shares.

The National Freedom of Information Coalition is a nonprofit organization that has not issued any shares or debt securities to the public, and has no parent companies, subsidiaries, or affiliates that have issued any shares or debt securities to the public.

National Press Photographers Association is a 501(c)(6) nonprofit organization with no parent company. It issues no stock and does not own any of the party's or amicus' stock.

Online News Association is a not-for-profit organization. It has no parent corporation, and no publicly traded corporation owns 10% or more of its stock.

No publicly held corporations own any stock in the Philadelphia Inquirer, PBC, or its parent company, the non-profit Lenfest Institute for Journalism, LLC.

POLITICO LLC's parent corporation is Capitol News Company. No publicly held corporation owns 10% or more of POLITICO LLC's stock.

Pro Publica, Inc. ("ProPublica") is a Delaware nonprofit corporation that is tax-exempt under section 501(c)(3) of the Internal Revenue Code. It has no statutory members and no stock.

Radio Television Digital News Association is a nonprofit organization that has no parent company and issues no stock.

The Seattle Times Company: The McClatchy Company, LLC owns 49.5% of the voting common stock and 70.6% of the nonvoting common stock of The Seattle Times Company.

The Society of Environmental Journalists is a 501(c)(3) non-profit educational organization. It has no parent corporation and issues no stock.

Society of Professional Journalists is a non-stock corporation with no parent company.

Student Press Law Center is a 501(c)(3) not-for-profit corporation that has no parent and issues no stock.

Time USA, LLC is a privately held limited liability company. No publicly held corporation owns 10% or more of its stock.

Vox Media, LLC has no parent corporation. NBCUniversal Media, LLC, a publicly held corporation, owns at least 10% of Vox's stock.

TABLE OF CONTENTS

INTEREST OF AMICI CURIAE 1

SUMMARY OF ARGUMENT 3

ARGUMENT 5

 I. Journalists have a long history of reporting on agricultural production facilities and their work has spurred public debate and led to important reforms..... 5

 II. Section 717A.3B is a viewpoint-based restriction on speech that will undermine journalists’ reporting on agricultural production facilities. 7

 A. Reporters rely on information and documentation from sources antagonistic toward agricultural facilities—along with sources who are neutral or positive toward the industry—to inform the public..... 8

 B. Section 717A.3B chills communications between journalists and sources antagonistic toward agriculture facilities. 11

 C. Section 717A.3B violates the First Amendment because it discriminates based on viewpoint and cannot survive strict scrutiny..... 13

CONCLUSION 16

APPENDIX A 17

TABLE OF AUTHORITIES

Cases

<i>Animal Legal Def. Fund v. Reynolds</i> , 297 F. Supp. 3d 901 (S.D. Iowa 2018)	13
<i>Animal Legal Def. Fund v. Reynolds</i> , 353 F. Supp. 3d 812 (S.D. Iowa 2019)	3
<i>Animal Legal Def. Fund v. Reynolds</i> , 8 F.4th 781 (8th Cir. 2021)	3
<i>Animal Legal Def. Fund v. Reynolds</i> , No. 4:19-cv-00124, 2022 WL 777231 (S.D. Iowa Mar. 14, 2022)	14, 15
<i>Animal Legal Def. Fund v. Kelly</i> , 9 F.4th 1219 (10th Cir. 2021)	12
<i>Brown v. Ent. Merchs. Ass’n</i> , 564 U.S. 786 (2011).....	15
<i>Buckley v. Valeo</i> , 424 U.S. 1 (1976).....	5
<i>Davenport v. Wash. Educ. Ass’n</i> , 551 U.S. 177 (2007).....	13
<i>NAACP v. Button</i> , 371 U.S. 415 (1963).....	15, 16
<i>Nat’l Endowment for the Arts v. Finley</i> , 524 U.S. 569 (1998).....	13
<i>Reed v. Town of Gilbert</i> , 576 U.S. 155 (2015).....	13, 14
<i>Stanley v. Georgia</i> , 394 U.S. 557 (1969).....	11
<i>United States v. Playboy Ent. Grp., Inc.</i> , 529 U.S. 803 (2000).....	14

<i>Wieman v. Updegraff</i> , 344 U.S. 183 (1952).....	12
<i>Ysursa v. Pocatello Educ. Ass’n</i> , 555 U.S. 353 (2009).....	13
Statutes	
Iowa Code § 717A.3A.....	3
Iowa Code § 717A.3B	4, 8, 9, 14
Other Authorities	
113 Cong. Rec. S21,283 (daily ed. Aug. 3, 1967).....	6, 7
1968 Pulitzer Prize Winner in National Reporting, The Pulitzer Prizes, https://perma.cc/HD9W-NR32	7
Animal Equality, https://perma.cc/B92A-77MH (last visited July 22, 2022).....	10
<i>Animal Legal Defense Fund Wants New Mexico Kennel Shut Down</i> , KRQE (Feb. 29, 2016), https://perma.cc/Z6KG-CXC5	10
<i>COVID’s Hidden Toll</i> , Frontline (July 21, 2020), https://perma.cc/CUM9-AEUZ	12, 13
Jade Scipioni, <i>Tyson Foods Under Fire as Second Video Shows Chicken Abuse</i> , Fox Business (Sept. 14, 2015), https://perma.cc/Y9LX-C9KD	9, 10
James Diedrick, <i>The Jungle</i> , in Electronic Encyclopedia of Chicago (Janice L. Reiff, Ann Durkin Keating & James R. Grossman eds., 2005), https://perma.cc/5Q28-5ZBF	5, 6, 9
James O’Shea, <i>Raking the Muck</i> , Chi. Trib. (May 21, 2006), https://perma.cc/SD53-EQN4	5
Louis Brandeis, <i>Other People’s Money</i> (1933).....	5
Mark Bittman, <i>Who Protects the Animals?</i> , N.Y. Times (Apr. 26, 2011), https://perma.cc/N74F-JUE8	2

Matt Olberding, *Animal Rights Group Alleges Abuse at Nebraska Calf Operation*, Lincoln J. Star (July 18, 2019), <https://perma.cc/W8BX-GHP2>10, 11

Michael Holtz, *6 Months Inside One of America’s Most Dangerous Industries*, The Atlantic (June 14, 2021), <https://perma.cc/H6AH-6RTE>12

Mike McGraw, *Animal abuse persists at some slaughter plants*, Kan. City Star (July 1, 2013, 12:33 PM), <https://tinyurl.com/y6ddr786>7

Upton Sinclair, *The Autobiography of Upton Sinclair* (1962)9

Wallace F. Janssen, *The Story of the Laws Behind the Labels*, FDA, <https://perma.cc/KL3D-AS3S>6

INTEREST OF AMICI CURIAE

Amici curiae are the Reporters Committee for Freedom of the Press (the “Reporters Committee”), Axios Media Inc., The Center for Investigative Reporting (d/b/a Reveal), First Look Institute, Inc., Gannett Co., Inc., Inter American Press Association, The McClatchy Company, LLC, The Media Institute, Mother Jones, National Freedom of Information Coalition, National Press Photographers Association, Online News Association, The Philadelphia Inquirer, POLITICO LLC, Pro Publica, Inc., Radio Television Digital News Association, The Seattle Times Company, Society of Environmental Journalists, Society of Professional Journalists, Student Press Law Center, TIME USA, LLC, and Vox Media, LLC.¹ Amici have filed an accompanying motion seeking leave of the Court to file this amici brief.

Lead amicus the Reporters Committee is an unincorporated nonprofit association founded by journalists and media lawyers in 1970, when the nation’s press faced an unprecedented wave of government subpoenas forcing reporters to name confidential sources. Today, its attorneys provide pro bono legal representation, amicus curiae support, and other legal resources to protect First

¹ No party’s counsel authored any part of this brief. No person other than amici or their counsel contributed money intended to fund the brief’s preparation or submission.

Amendment freedoms and the newsgathering rights of journalists. A supplemental statement of identity and interest of all amici is included below as Appendix A.

As members and representatives of the news media, amici have a strong interest in ensuring that journalists can gather and report information about matters of public concern without facing unconstitutional impediments. Investigative journalism depends on sources who are willing to speak out about dangerous, illegal, or unethical activities of concern to the public. And such sources within agricultural facilities, in particular, have been crucial to groundbreaking investigative reporting focused on the agriculture industry—reporting that Iowa Code § 717A.3B (the “Iowa Ag-Gag Statute”) is designed to deter.

By exposing agricultural workers and others with knowledge of unsafe or unsanitary conditions—or other issues of public concern at agricultural facilities—to potential criminal liability, the Iowa Ag-Gag Statute will chill willingness to speak to reporters about those issues and, in turn, prevent news organizations from informing the public.² Amici respectfully submit this brief in support of affirmance to emphasize the public interests at stake in this case, and to underscore the chilling effect of the Iowa Ag-Gag Statute on journalists and their sources.

² The term “ag-gag” was coined by then-*New York Times* writer Mark Bittman in 2011. See Mark Bittman, *Who Protects the Animals?*, N.Y. Times (Apr. 26, 2011), <https://perma.cc/N74F-JUE8>. “Ag-gag” refers to state laws that, among other things, prohibit undercover investigations and protect the agriculture industry by discouraging whistleblowing.

SUMMARY OF ARGUMENT

Journalists have a long, storied history of investigating and reporting on abusive, unsafe, and unsanitary conditions in the agriculture industry. Indeed, such reporting helped spur several pieces of landmark federal legislation aimed at ensuring the safety of the nation's food supply. To report on conditions and practices in agricultural facilities, journalists depend on sources with firsthand knowledge of those conditions and practices who are willing to speak out. The news media and their sources thus have mutually reinforcing First Amendment interests in informing the public about the state of the nation's food supply and conditions in agricultural facilities. The Iowa Ag-Gag Statute unconstitutionally infringes upon these First Amendment interests.

Iowa Code § 717A.3B is the second attempt by the Iowa legislature to criminalize undercover investigations by the news media and others into conditions at agricultural facilities. The first version, Iowa Code § 717A.3A, passed in 2012 it was permanently enjoined by the District Court, *see Animal Legal Def. Fund v. Reynolds*, 353 F. Supp. 3d 812 (S.D. Iowa 2019). The current version of the law was passed prior to this Court's partial affirmance and partial reversal of the District Court's injunction, *see Animal Legal Def. Fund v. Reynolds*, 8 F.4th 781 (8th Cir. 2021). While Iowa Code § 717A.3B modified some of the language of its

predecessor, Iowa Code § 717A.3A, the substance of the law raises similar constitutional concerns.

Importantly, Iowa Code § 717A.3B deters speech about matters of public concern, including food safety, the treatment of animals, and working conditions for employees at agricultural facilities. It imposes criminal liability if “[a] person commits agricultural production facility trespass,” which is defined as when a person “uses deception” to gain access to an agricultural production facility or is employed at such a facility with “the intent to cause physical or economic harm or other injury to the . . . facility’s operations, agricultural animals, crop, owner, personnel, equipment, building, premises, business interest, or customer.” Iowa Code § 717A.3B(1)(a)–(b). Conviction under Section 717A.3B is a serious misdemeanor, and subsequent convictions are aggravated misdemeanors. *Id.* § 717A.3B(2).

By imposing criminal penalties upon those who wish to disclose unsafe conditions or wrongdoing in agricultural facilities to the public—disclosures that could be expected to cause “economic harm or other injury to” that business—Section 717A.3B deters whistleblowers from coming forward to speak with members of the news media, ultimately stifling the flow of information to the public. Further, Section 717A.3B is an unconstitutional content-based and viewpoint-based restriction on the exercise of First Amendment rights, as it targets

only viewpoints that are antagonistic to agricultural facilities, and it cannot survive strict scrutiny. For these reasons, amici urge this Court to affirm the District Court’s ruling and strike down Iowa’s Ag-Gag Statute.

ARGUMENT

I. Journalists have a long history of reporting on agricultural production facilities and their work has spurred public debate and led to important reforms.

Investigative journalism about the agricultural industry has played a pivotal role in informing the public and catalyzing change. News media scrutiny of food safety practices, animal treatment, and other issues has prompted reforms benefiting the public at large—real-world examples of how “[s]unlight” can be “the best of disinfectants.” *Buckley v. Valeo*, 424 U.S. 1, 67 (1976) (quoting Louis Brandeis, *Other People’s Money* 62 (1933)).

Investigative journalism about agricultural facilities—and, arguably, investigative journalism itself—finds its roots in Upton Sinclair’s renowned 1906 book about conditions in Chicago’s slaughterhouses, *The Jungle*, as well as the work of his contemporaries. See James O’Shea, *Raking the Muck*, Chi. Trib. (May 21, 2006), <https://perma.cc/SD53-EQN4>. Sinclair’s book was rooted in extensive research and investigation. He interviewed health inspectors and industry workers and went undercover in meatpacking facilities to document unsanitary conditions. James Diedrick, *The Jungle*, in *Electronic Encyclopedia of Chicago* (Janice L.

Reiff, Ann Durkin Keating & James R. Grossman eds., 2005),

<https://perma.cc/5Q28-5ZBF>.

Sinclair’s work has been credited with contributing to the passage of the Pure Food and Drug Act and Meat Inspection Act, both enacted in 1906, which protected the public by instituting reforms in the meatpacking industry. *Id.*; *see also* Wallace F. Janssen, *The Story of the Laws Behind the Labels*, FDA, <https://perma.cc/KL3D-AS3S> (originally published in *FDA Consumer*, June 1981) (“A single chapter in Upton Sinclair’s novel, *The Jungle*, precipitated legislation expanding federal meat regulation to provide continuous inspection of all red meats for interstate distribution, a far more rigorous type of control than that provided by the pure food bill.”).

Since *The Jungle*, investigative journalism about agricultural facilities has continued to foster public debates and industry reforms. For example, in the late 1960s, reporting by *Minneapolis Tribune* reporter Nick Kotz revealed widespread unsanitary conditions in the country’s meatpacking plants; that reporting helped lead to the passage of the Meat Inspection Act of 1967, which broadened federal regulation of slaughterhouses in the United States. 113 Cong. Rec. S21,283–86 (daily ed. Aug. 3, 1967) (appending investigative articles written by Nick Kotz). During a congressional session leading to the passage of the Act, Senator Walter Mondale thanked Kotz for bringing the issue to Congress’s attention, saying “the

press must take a major share of the credit for action in this area.” *Id.* Kotz also won a Pulitzer Prize for his reporting. *See* 1968 Pulitzer Prize Winner in National Reporting, The Pulitzer Prizes, <https://perma.cc/HD9W-NR32>.

Independent and objective scrutiny of industry practices and conditions in agricultural facilities remains vitally important today because government inspections of those facilities can be obstructed or insufficient. For example, *The Kansas City Star* reported that abuse of farm animals on their way to slaughter continued even after efforts by slaughterhouses and meat inspectors to improve enforcement of the Humane Methods of Slaughter Act of 1958, which “requires that food animals be slaughtered in a way ‘that causes a minimum of excitement, pain, injury, or discomfort.’” Mike McGraw, *Animal abuse persists at some slaughter plants*, *Kan. City Star* (July 1, 2013, 12:33 PM), <https://tinyurl.com/y6ddr786>. With the help of “two whistle-blowing meat inspectors,” it was revealed that even after increased enforcement efforts, meat inspectors continued to unevenly enforce humane-slaughter rules—or failed to enforce them at all—“because their bosses won’t support them.” *Id.*

II. Section 717A.3B is a viewpoint-based restriction on speech that will undermine journalists’ reporting on agricultural production facilities.

Section 717A.3B criminalizes the actions of those “with the intent to cause physical or economic harm or other injury to the agricultural production facility’s operations, agricultural animals, crop, owner, personnel, equipment, building,

premises, business interest, or customer.” Iowa Code § 717A.3B(1)(a)–(b). But sources with antagonistic views towards agricultural facilities may be important sources for accurate reporting about agricultural facilities. By imposing the threat of criminal liability on sources critical of an agricultural facility’s operations—or those otherwise deemed to possess “the intent to cause physical or economic harm or other injury” to an agricultural facility’s “business interest”—Section 717A.3B impermissibly discriminates against speech that is negative towards agricultural facilities and interferes with reporter-source communications.

A. Reporters rely on information and documentation from sources antagonistic toward agricultural facilities—along with sources who are neutral or positive toward the industry—to inform the public.

To keep the public informed about issues affecting the agricultural industry, reporters rely on firsthand accounts from sources including agricultural employees, whistleblowers, and organizations like Plaintiffs-Appellees—sources who are often antagonistic toward or highly critical of agricultural facilities. Some sources speak to reporters after they witness events or conditions they believe the public should know of, while others take jobs intending to carry out their employment responsibilities while also observing conditions and practices to inform the public.

For instance, Upton Sinclair’s interviews of health inspectors and industry workers at Chicago slaughterhouses more than a hundred years ago informed *The Jungle*, which, as noted above, was central to prompting reforms in the regulation

of food production. Diedrick, *supra*. Sinclair relied on interviews with whistleblowers, including slaughterhouse employees. By his own account, these sources were indispensable: “I sat at night in the homes of the workers, foreign-born and native, and they told me their stories, one after one, and I made notes of everything. In the daytime I would wander about the yards, and my friends would risk their jobs to show me what I wanted to see.” Upton Sinclair, *The Autobiography of Upton Sinclair* 109–10 (1962). Sinclair’s sources, all of whom likely held critical views of the agricultural facility due to their firsthand experiences there, would have been subject to criminal liability under Section 717A.3B insofar as they “[u]se[d] deception” to allow Sinclair access to the yards, and possessed “the intent to cause . . . economic harm or other injury to the agricultural production facility’s operations . . . [or] business interest.” Iowa Code § 717A.3B(1)(a)–(b).

Since *The Jungle*, undercover investigations by sources with views antagonistic toward agricultural facilities—such as Plaintiff-Appellee Animal Legal Defense Fund (“ALDF”)—have resulted in extensive media reporting about the agricultural industry. For instance, in 2015, Fox Business wrote about what an ALDF investigator discovered while working undercover for 21 days at a Tyson chicken facility in Texas. Jade Scipioni, *Tyson Foods Under Fire as Second Video Shows Chicken Abuse*, Fox Business (Sept. 14, 2015), <https://perma.cc/Y9LX->

C9KD. The investigation raised questions about both the safety of workers and the handling of animals within the facility, where the investigator said she was required to “rip the heads off of live chickens” and “could tell that the chickens were alive and scared as [she] put their heads into the hook[.]” *Id.*; *see also Animal Legal Defense Fund Wants New Mexico Kennel Shut Down*, KRQE (Feb. 29, 2016), <https://perma.cc/Z6KG-CXC5> (reporting by several news organizations on the findings of ALDF’s undercover investigation with a hidden camera of a “puppy mill” in New Mexico).

More recently, in 2019, the *Lincoln Journal Star* in Nebraska reported on an undercover investigation at Summit Calf Ranch undertaken by Animal Equality, an organization that works to “expose and abolish the cruel practices of the animal agriculture industry” and end factory farming. Matt Olberding, *Animal Rights Group Alleges Abuse at Nebraska Calf Operation*, *Lincoln J. Star* (July 18, 2019), <https://perma.cc/W8BX-GHP2>; Animal Equality, <https://perma.cc/B92A-77MH> (last visited July 22, 2022). As explained by the newspaper, the investigation revealed photos and videos of “calves freezing to death or enduring frozen limbs after they were left outside in temperatures well below freezing,” and uncovered instances in which workers “jabbed and hit calves with sorting sticks and hut rods, allowed dogs to bite the calves, failed to provide veterinary care to sick calves and also performed procedures on the calves without using pain medication.”

Olberding, *supra*. Such reporting would not have been possible without the investigation by Animal Equality, which held views critical, or antagonistic, towards Summit Calf Ranch’s treatment of animals.

B. Section 717A.3B chills communications between journalists and sources antagonistic toward agriculture facilities.

Journalists, their sources, and the public have mutually reinforcing First Amendment interests in the free flow of information about conditions at agricultural facilities. *See, e.g., Stanley v. Georgia*, 394 U.S. 557, 564 (1969) (“It is now well established that the Constitution protects the right to receive information and ideas.”). As this litigation illustrates, many sources want to disclose information about the animal facilities where they work, and news organizations want to report this information to the public which, in turn, has an interest in receiving it.

But the threat of criminal liability posed by the Iowa Ag-Gag Statute chills constitutionally protected speech by deterring communications from sources—communications that are central to news reporting about the agricultural industry. Indeed, even employees who happen upon newsworthy information accidentally may be dissuaded from providing it to the media for fear of facing prosecution under the statute under a theory—even if incorrect—that they sought employment for the purpose of sharing instances of wrongdoing with the press or otherwise obtained access to areas of the facility by false pretenses. Because investigative

journalists rely on such employees to sound the alarm about risks to public safety and welfare, the Iowa Ag-Gag Statute prevents sources and, in turn, news organizations from disseminating vital information to the public. *See Wieman v. Updegraff*, 344 U.S. 183, 195 (1952) (Frankfurter, J., concurring) (explaining that when the government deters First Amendment protected expression, it “has an unmistakable tendency to chill that free play of the spirit” of others).

Much investigative journalism about the agricultural industry is possible due to the absence of ag-gag laws in the respective state. For instance, in 2021, the Atlantic published a story by a journalist who went undercover as an employee at a Cargill meatpacking plant in Kansas to document working conditions there, including the effects of COVID-19. Michael Holtz, *6 Months Inside One of America’s Most Dangerous Industries*, The Atlantic (June 14, 2021), <https://perma.cc/H6AH-6RTE>. Such a story was likely made possible because Kansas was enjoined from enforcing its ag-gag law after the Tenth Circuit found it unconstitutional in *Animal Legal Defense Fund v. Kelly*, 9 F.4th 1219 (10th Cir. 2021).

In another example, a Frontline documentary about the toll of COVID-19 on immigrant farm and meatpacking workers in California relied on interviews with anonymous sources from inside farms and meatpacking factories about unsafe conditions and the lack of protection from the virus. *COVID’s Hidden Toll*,

Frontline (July 21, 2020), <https://perma.cc/CUM9-AEUZ>. Such reporting in California—where there is no ag-gag law—would have been stymied by a statute like Section 717A.3B, as sources would likely have been discouraged from speaking to journalists about their working conditions.

Consequently, under the Act, agricultural facility owners and others remain free to speak positively about those facilities, while critics, whistleblowers, and even journalists who go undercover to report on facilities will be deterred from—and potentially face criminal punishment for—providing truthful (but negative) information about those facilities to the press and public.

C. Section 717A.3B violates the First Amendment because it discriminates based on viewpoint and cannot survive strict scrutiny.

Restrictions on speech are viewpoint-based “where they distinguish between speech based on ‘the specific motivating ideology or the opinion or perspective of the speaker,’ or ‘proscribe[] views on particular disfavored subjects and suppress[] distinctive ideas conveyed by a distinctive message.’” *Animal Legal Def. Fund v. Reynolds*, 297 F. Supp. 3d 901, 925 (S.D. Iowa 2018) (first quoting *Reed v. Town of Gilbert*, 576 U.S. 155, 168 (2015); then quoting *Nat’l Endowment for the Arts v. Finley*, 524 U.S. 569, 582 (1998)). Content-based and viewpoint-based restrictions on speech are presumptively invalid and subject to strict scrutiny. *Ysursa v.*

Pocatello Educ. Ass’n, 555 U.S. 353, 358 (2009) (quoting *Davenport v. Wash. Educ. Ass’n*, 551 U.S. 177, 188 (2007)).

As the District Court correctly held, Section 717A.3B is a viewpoint-based speech restriction because it criminalizes only speech that is critical of animal facilities, not speech that is supportive of them. By prohibiting deceptive trespass and employment only when there is “the intent to cause physical or economic harm or other injury to the . . . facility’s operations, agricultural animals, crop, owner, personnel, equipment, building, premises, business interest, or customer,” Iowa Code § 717A.3B(1)(a)–(b), the statute “considers the viewpoint of the trespasser when deciding whether to criminalize the conduct in question through its intent requirement” and “single[s] out specific individuals for punishment based on their viewpoint regarding such facilities,” *Animal Legal Def. Fund v. Reynolds*, No. 4:19-cv-00124, 2022 WL 777231, at *10–11 (S.D. Iowa Mar. 14, 2022).

Accordingly, if the Iowa Ag-Gag Statute is to survive strict scrutiny, the State must show *both* that (a) its interest in regulating speech is compelling *and* (b) its speech-suppressing measures are narrowly tailored to that compelling State interest. *Reed*, 576 U.S. at 163. A restriction is not narrowly tailored “if less restrictive alternatives would be at least as effective in achieving the legitimate purpose that the statute was enacted to serve.” *See United States v. Playboy Ent. Grp., Inc.*, 529 U.S. 803, 813 (2000) (citation omitted) (striking down provisions of

Telecommunications Act of 1996 where less restrictive channel-blocking features were available to serve government interest). To survive strict scrutiny, a law must be “actually necessary” to achieve the State’s interests and may not be over or underinclusive. *Brown v. Ent. Merchs. Ass’n*, 564 U.S. 786, 799–804 (2011).

Section 717A.3B is not narrowly tailored. As the District Court correctly concluded, the aim of Section 717A.3B is to prohibit “subsequent speech”—*i.e.*, critical statements (or critical media coverage) about an agricultural facility—following the unprotected “deceptive” speech; it focuses not on the harm from trespass, “but on the subsequent harm from the intent to harm the facility once on the property.” *Reynolds*, 2022 WL 777231, at *12 (citation omitted). Allowing a statute to examine an individual’s “intent or motive,” to determine whether the speech is protected, would “undermine[] the right to free speech by allowing the government to criminalize the inchoate desire to express a view where it cannot criminalize the expression.” *Id.* (citation omitted).

Further, Section 717A.3B is not narrowly tailored because a less restrictive means—enforcement of existing Iowa trespassing laws—is available and sufficient to address the State’s purported interests in protecting property and biosecurity. For these reasons, Section 717A.3B fails under strict scrutiny.

CONCLUSION

As the Supreme Court has recognized, we must be wary of “the danger of tolerating, in the area of First Amendment freedoms, the existence of a penal statute susceptible of sweeping and improper application.” *NAACP v. Button*, 371 U.S. 415, 432–33 (1963). For the foregoing reasons, amici urge the Court to affirm the District Court’s order and hold Iowa’s Ag-Gag Statute unconstitutional.

Dated: August 15, 2022

Respectfully submitted,
/s/ Bruce D. Brown
Bruce D. Brown
Counsel of Record
Katie Townsend*
REPORTERS COMMITTEE FOR
FREEDOM OF THE PRESS
1156 15th Street NW, Ste. 1020
Washington, D.C. 20005
(202) 795-9300
bbrown@rcfp.org
**Of Counsel*

Counsel for Amici Curiae

APPENDIX A

SUPPLEMENTAL STATEMENT OF IDENTITY OF AMICI CURIAE

The Reporters Committee for Freedom of the Press is an unincorporated nonprofit association. The Reporters Committee was founded by leading journalists and media lawyers in 1970 when the nation's news media faced an unprecedented wave of government subpoenas forcing reporters to name confidential sources. Today, its attorneys provide pro bono legal representation, amicus curiae support, and other legal resources to protect First Amendment freedoms and the newsgathering rights of journalists.

Axios Media Inc. is a digital media company with a mission to deliver news in an efficient format that helps professionals get smarter faster across an array of topics, including politics, science, business, health, tech, media, and local news.

The Center for Investigative Reporting (d/b/a Reveal), founded in 1977, is the nation's oldest nonprofit investigative newsroom. Reveal produces investigative journalism for its website <https://www.revealnews.org/>, the Reveal national public radio show and podcast, and various documentary projects. Reveal often works in collaboration with other newsrooms across the country.

First Look Institute, Inc. is a non-profit digital media venture that produces The Intercept, a digital magazine focused on national security reporting. First Look Institute operates the Press Freedom Defense Fund, which provides essential

legal support for journalists, news organizations, and whistleblowers who are targeted by powerful figures because they have tried to bring to light information that is in the public interest and necessary for a functioning democracy.

Gannett is the largest local newspaper company in the United States. Our 260 local daily brands in 46 states — together with the iconic USA TODAY — reach an estimated digital audience of 140 million each month.

The Inter American Press Association (IAPA) is a not-for-profit organization dedicated to the defense and promotion of freedom of the press and of expression in the Americas. It is made up of more than 1,300 publications from throughout the Western Hemisphere and is based in Miami, Florida.

The McClatchy Company, LLC is a publisher of iconic brands such as the Miami Herald, The Kansas City Star, The Sacramento Bee, The Charlotte Observer, The (Raleigh) News & Observer, and the Fort Worth Star-Telegram. McClatchy operates media companies in 30 U.S. markets in 16 states, providing each of its communities with high-quality news and advertising services in a wide array of digital and print formats. McClatchy is headquartered in Sacramento, California.

The Media Institute is a nonprofit foundation specializing in communications policy issues founded in 1979. The Media Institute exists to foster three goals: freedom of speech, a competitive media and communications

industry, and excellence in journalism. Its program agenda encompasses all sectors of the media, from print and broadcast outlets to cable, satellite, and online services.

Mother Jones is a nonprofit, reader-supported news organization known for ground-breaking investigative and in-depth journalism on issues of national and global significance.

The National Freedom of Information Coalition is a national nonprofit, nonpartisan organization of state and regional affiliates representing 45 states and the District of Columbia. Through its programs and services and national member network, NFOIC promotes press freedom, litigation and legislative and administrative reforms that ensure open, transparent and accessible state and local governments and public institutions.

The National Press Photographers Association (“NPPA”) is a 501(c)(6) non-profit organization dedicated to the advancement of visual journalism in its creation, editing and distribution. NPPA’s members include television and still photographers, editors, students and representatives of businesses that serve the visual journalism industry. Since its founding in 1946, the NPPA has vigorously promoted the constitutional rights of journalists as well as freedom of the press in all its forms, especially as it relates to visual journalism. The submission of this brief was duly authorized by Mickey H. Osterreicher, its General Counsel.

The Online News Association is the world’s largest association of digital journalists. ONA’s mission is to inspire innovation and excellence among journalists to better serve the public. Membership includes journalists, technologists, executives, academics and students who produce news for and support digital delivery systems. ONA also hosts the annual Online News Association conference and administers the Online Journalism Awards.

The Philadelphia Inquirer, owned by the Lenfest Institute for Journalism, is the largest newspaper in the United States operated as a public-benefit corporation. It publishes The Inquirer as well as the Philadelphia Daily News in print, and online at www.inquirer.com. The Inquirer has won 20 Pulitzer Prizes. Under the non-profit ownership of the Institute, which is dedicated solely to the mission of preserving local journalism, the Inquirer is dedicated to public service journalism and news innovation.

POLITICO is a global news and information company at the intersection of politics and policy. Since its launch in 2007, POLITICO has grown to nearly 300 reporters, editors and producers. It distributes 30,000 copies of its Washington newspaper on each publishing day and attracts an influential global audience of more than 35 million monthly unique visitors across its various platforms.

Pro Publica, Inc. (“ProPublica”) is an independent, nonprofit newsroom that produces investigative journalism in the public interest. It has won six Pulitzer

Prizes, most recently a 2020 prize for national reporting, the 2019 prize for feature writing, and the 2017 gold medal for public service. ProPublica is supported almost entirely by philanthropy and offers its articles for republication, both through its website, propublica.org, and directly to leading news organizations selected for maximum impact. ProPublica has extensive regional and local operations, including ProPublica Illinois, which began publishing in late 2017 and was honored (along with the Chicago Tribune) as a finalist for the 2018 Pulitzer Prize for Local Reporting, an initiative with the Texas Tribune, which launched in March 2020, and a series of Local Reporting Network partnerships.

Radio Television Digital News Association (“RTDNA”) is the world’s largest and only professional organization devoted exclusively to electronic journalism. RTDNA is made up of news directors, news associates, educators and students in radio, television, cable and electronic media in more than 30 countries. RTDNA is committed to encouraging excellence in the electronic journalism industry and upholding First Amendment freedoms.

The Seattle Times Company, locally owned since 1896, publishes the daily newspaper The Seattle Times, together with the Yakima Herald-Republic and Walla Walla Union-Bulletin, all in Washington state.

The Society of Environmental Journalists is the only North-American membership association of professional journalists dedicated to more and better coverage of environment-related issues.

Society of Professional Journalists (“SPJ”) is dedicated to improving and protecting journalism. It is the nation’s largest and most broad-based journalism organization, dedicated to encouraging the free practice of journalism and stimulating high standards of ethical behavior. Founded in 1909 as Sigma Delta Chi, SPJ promotes the free flow of information vital to a well-informed citizenry, works to inspire and educate the next generation of journalists and protects First Amendment guarantees of freedom of speech and press.

Student Press Law Center (“SPLC”) is a nonprofit, nonpartisan organization which, since 1974, has been the nation’s only legal assistance agency devoted exclusively to educating high school and college journalists about the rights and responsibilities embodied in the First Amendment to the Constitution of the United States. SPLC provides free legal assistance, information and educational materials for student journalists on a variety of legal topics.

TIME is a global multimedia brand that reaches a combined audience of more than 100 million around the world. TIME’s major franchises include the TIME 100 Most Influential People, Person of the Year, Firsts, Best Inventions, Genius Companies, World’s Greatest Places and more. With 45 million digital

visitors each month and 40 million social media followers, TIME is one of the most trusted and recognized sources of news and information in the world.

Vox Media, LLC owns New York Magazine and several web sites, including Vox, The Verge, The Cut, Vulture, SB Nation, and Eater, with 170 million unique monthly visitors.

CERTIFICATE OF COMPLIANCE

This amici curiae brief complies with the length permitted by Federal Rule of Appellate Procedure 29(a)(5) because it contains 3,355 words, excluding the portions exempted by Federal Rule of Appellate Procedure 32(f). The brief complies with Federal Rule of Appellate Procedure 32(a)(5) and (6) because it has been prepared using Microsoft Office Word 2016 and has a typeface of 14-point Times New Roman.

Dated: August 15, 2022

/s/ Bruce D. Brown _____
Bruce D. Brown
Counsel of Record
REPORTERS COMMITTEE FOR
FREEDOM OF THE PRESS

CERTIFICATE OF SERVICE

I hereby certify that on August 15, 2022, I electronically filed this amici curiae brief with the Clerk of the Court for the United States Court of Appeals for the Eighth Circuit using the appellate CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Dated: August 15, 2022

/s/ Bruce D. Brown _____
Bruce D. Brown
Counsel of Record
REPORTERS COMMITTEE FOR
FREEDOM OF THE PRESS