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# The Negative Environmental Impacts of the Animal Agriculture Industry and the U.S. Policies in Place to Protect It

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*THE NEGATIVE ENVIRONMENTAL IMPACTS OF THE  
ANIMAL AGRICULTURE INDUSTRY AND THE U.S.  
POLICIES IN PLACE TO PROTECT IT*

By

Madeline Marie Lewis

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Submitted in partial fulfillment  
of the requirements for the degree of  
Bachelor of Arts  
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# ABSTRACT

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With the increase in the amount of animal agricultural mega-farms since the 1980's, the U.S. federal and state governments have set up legislation to sustain the industry and to protect its operations from being interrupted by any means. However, animal agriculture presents some dangerous environmental consequences through natural resource use, pollution, and degradation, as well as human health and animal welfare issues. Because of these harmful practices and the desire to keep them hidden from the public, activists have been working for decades to expose and challenge these practices to make people aware of the external costs associated with their food choices. In some cases, such as that of the Hallmark/Westland Meat Packing Company, companies have gone bankrupt; in others, new regulations have been proposed on the industry. As a result, the animal agriculture industry has pushed, and gotten passed, legislation preventing activists from exposing or disrupting industry practices. Two forms of legislation in place to protect the industry will be examined in this paper. The first is known as Right-to-Farm laws and, in some cases, state constitutional amendments, which prevent anyone from interfering with an animal operation by means of trespass, vandalism, lawsuits, or proposed regulations and laws. The second type of legislation is known as “ag-gag” laws which specifically prevent whistleblowers from exposing any practices conducted at an animal facility. Through these forms of legislation, the industry is able to use its economic and political power to continuously produce animal products at cheap prices, without any interferences and with practices that abuse animals, harm human health, and degrade and destroy our environment.

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## Table of Contents

<b>LITERATURE REVIEW .....</b>	<b>1</b>
<b>ENVIRONMENTAL CONSEQUENCES OF ANIMAL AGRICULTURE.....</b>	<b>16</b>
<b>RIGHT-TO-FARM.....</b>	<b>32</b>
<b>“AG-GAG” .....</b>	<b>53</b>
<b>CONCLUSION: WHAT SHOULD WE BE DOING? .....</b>	<b>71</b>
<b>References: .....</b>	<b>86</b>

## LITERATURE REVIEW

In Indiana, two families' qualities of life are being drastically diminished due to a nearby animal agriculture facility. The Himsels and Lannons live less than one mile from 4/9 Livestock, home to 8,000 hogs producing over 38,000 gallons of manure every day.<sup>1</sup> This manure has resulted in a stench so foul that family members have either moved out of their homes or avoid being home as much as possible.<sup>2</sup> The two families cannot sell their houses as no one will buy them because of the poor quality of life in the area resulting from the hog farm.<sup>3</sup> The livestock operation did not always house pigs; in fact up until 2013, the property was used to only grow crops.<sup>4</sup> The Himels and Lannons are suing the operation to try to win back their quality of life, but their case is not likely to succeed as Indiana has a history of cases similar to these in which the farm operations always win under Indiana's Right-to-Farm law.<sup>5</sup>

As the animal agriculture industry continues to grow and change from being dominated by small family farms to being controlled by industrial operations, many more animal welfare, health and environmental problems are arising. As far as the environment is concerned, the meat and dairy industries produce more greenhouse gases than the entire transportation sector.<sup>6</sup> A study released in 2009 found that animal agriculture is responsible for fifty-one percent of all greenhouse gases worldwide due to the destruction of carbon sinks, such as forest or other

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<sup>1</sup> Rick Callahan, "Environmental Group Targets Indiana's Right-to-Farm Laws," *The Washington Times* website, October 7, 2015.

<sup>2</sup> Kristine Guerra, "Lawsuit raises Stink Over Indiana's Right to Farm Laws," *IndyStar* website, October 7, 2015.

<sup>3</sup> Guerra, "Lawsuit raises Stink Over Indiana's Right to Farm Laws."

<sup>4</sup> Callahan, "Environmental Group Targets Indiana's Right-to-Farm Laws."

<sup>5</sup> Gary H. Baise and Anson M. Keller, "OFW Law Trial Team Wins Five Hog Nuisance Cases in Indiana," OFW Law website, February 10, 2016.

<sup>6</sup> Kip Andersen and Keegan Kuhn, *The Sustainability Secret: Rethinking Our Diet to Transform the World* (San Rafael, CA: Earth Aware Editions, 2015) 10.

vegetated land, and the waste produced by animals.<sup>7</sup> The industry also consumes several finite resources such as one third of the earth's freshwater, and 45% of land worldwide, while also being a leading cause of species extinction, ocean acidification, habitat destruction, loss of biodiversity (especially in the rainforests) and ocean dead zones.<sup>8</sup> Yet, when scholars focus on the environment, there is barely any talk of the animal agriculture industry.

Additionally, animals involved in the industry, are brutally abused and tortured. In Confined Animal Feeding Operations (CAFOs), animals have no room to move, sit in their own waste, and are routinely exposed to diseases. It is no secret that the animals we eat suffer and then are killed before they land on our plates. However, as Professor Gary Francione said, “there is more suffering in a glass of milk than in a pound of steak.”<sup>9</sup> The dairy industry causes “far, far worse” suffering and abuse to cows than the beef industry.<sup>10</sup>

By the mid-1980's all 50 U.S. states had enacted some form of Right-to-Farm legislation, to protect the operations involving farmland, farms, farmers and the food supply.<sup>11</sup> Jennifer Beidel argues in her piece, “Pennsylvania's Right-to-Farm Law: A Relief for Farmers or an Unconstitutional Taking?” that in the 1980's the need to protect agricultural investments from shifts in land use was vital because of an increase in the number of people moving away from cities and into exurban areas closer to farms.<sup>12</sup> Other scholars concur, that the initial laws were designed to protect farmers from people “coming to nuisance” when moving next to a pre-existing farm operation and then complaining of noises and odors.<sup>13</sup>

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<sup>7</sup> Robert Goodland and Jeff Anhang, "Livestock and Climate Change: What If the Key Actors in Climate Change Are ... Cows, Pigs, and Chickens?" *World Watch*, November 2009.

<sup>8</sup> Will Potter in Andersen Kuhn, *The Sustainability Secret* 11.

<sup>9</sup> Gary Francoine in Kip Andersen and Keegan Kuhn, *The Sustainability Secret* 118.

<sup>10</sup> Will Potter in Andersen and Kuhn, *The Sustainability Secret* 119.

<sup>11</sup> David Bennett. "Right to Farm Laws Being Tweaked across Nation," Delta Farm Press, August 7, 2013.

<sup>12</sup> Jennifer L. Beidel, “Pennsylvania's Right-To-Farm Law: A Relief for Farmers or an Unconstitutional Taking?” *Penn State Law Review*, (2005) 1.

<sup>13</sup> Bennett. "Right to Farm Laws Being Tweaked across Nation.”

Since the 1980's farms have increased drastically in size, and as a result, they are much more prone to nuisance cases.<sup>14</sup> Terrence J. Center, in "Governments and Unconstitutional Takings: When Do Right-To-Farm Laws Go Too Far?" credits the dramatic increase in nuisance cases to "non-farmers [...] flexing their political muscle to challenge objectionable agricultural activities."<sup>15</sup> These "non-farmers" refer to neighbors concerned about their own property and food safety issues, as well as environmental activist groups concerned about water and other resources.<sup>16</sup> As a result of increasing nuisance cases post 1990, scholars note that these Right-to-Farm laws have begun granting more protection to farms, farmland, farmers and the food supply.<sup>17</sup> Typically these laws now cover the original nuisance section as well as some aspect of four new categories: statutes that limit the amount of time a person has to file a case; language that protects the expansion of farms, production and technologies; exceptions for farms that use qualifying management practices; and sections that protect farms from nuisance cases regardless of whether or not the farm or the neighbor occupied the land first.<sup>18</sup>

Scholars have criticized these new Right-To-Farm amendments as they extend the protection against nuisance cases much further, and because, as some argue, they interfere with people's private property rights.<sup>19</sup> Under the Fifth Amendment, when private property rights are taken for the use of the public, or public land is taken for use by the government, some sort of compensation must be paid.<sup>20</sup> However, if certain states feel that the animal agriculture industry is a major economic contributor, land reserved for other uses is less likely to be protected by the

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<sup>14</sup>Beidel, "Pennsylvania's Right-To-Farm Law," 1.

<sup>15</sup> Terrence J. Center, "Governments and Unconstitutional Takings: When Do Right-To-Farm Laws Go Too Far?" *Boston College Environmental Affairs Law Review*: 33.1 (2006): 91.

<sup>16</sup> *Ibid*, 91-92.

<sup>17</sup> *Ibid*, 94.

<sup>18</sup> *Ibid*, 95.

<sup>19</sup> Center, "Governments and Unconstitutional Takings"; Angela Kennedy, "Sustainable Constitutional Growth? The 'Right to Farm' and Missouri's Review of Constitutional Amendments," *Missouri Law Review* (Winter 2016): 1.

<sup>20</sup> U.S. Const. Amend. V.; Center, "Governments and Unconstitutional Takings," 121.

government, and therefore the value of that land is diminished without any forms of compensation.<sup>21</sup>

Much of the push for these laws comes from the animal agriculture industry.<sup>22</sup> Center as well as Angela Kennedy and David Bennet argue that as farms have increased in size and production, newer and stricter laws are being pushed for, and sometimes passed, by the animal agriculture industry to shield them from lawsuits.<sup>23</sup> Some states are looking to strengthen the protection further by making the Right-to-Farm a state constitutional amendment.<sup>24</sup> In 2014, Missouri, by a very small margin, voted to make the “Right-To-Farm” a constitutional amendment.<sup>25</sup> The new Missouri law reads:

That agriculture which provides food, energy, health benefits, and security is the foundation and stabilizing force of Missouri’s economy. To protect this vital sector of Missouri’s economy, the right of farmers and ranchers to engage in farming and ranching practices shall be forever guaranteed in this state, subject to duly authorized powers, if any, conferred by article VI of the Constitution of Missouri.<sup>26</sup>

However, due to how recent these constitutional amendments are, most scholarly literature on these new efforts had not yet emerged. Kennedy, however, is critical of the amendment, noting that agriculture is hardly a “vital sector to Missouri’s economy as in 2015 agriculture only contributed to 1.5% of Missouri’s total GDP.<sup>27</sup> Supporters, agricultural proponents and lobbyists, and opponents alike began aggressively advertising and campaigning in order to persuade people to vote in their favor.<sup>28</sup> The amendment won by a bare majority,

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<sup>21</sup> Center, “Governments and Unconstitutional Takings,” 121.

<sup>22</sup> See: Beidel, Center, Kennedy.

<sup>23</sup> See Bennett, Center, Kennedy.

<sup>24</sup> Kennedy, “Sustainable Constitutional Growth?” 1

<sup>25</sup> *Ibid*, 1.

<sup>26</sup> MO. Const, art. I, [section] 35; Kennedy, “Sustainable Constitutional Growth?” 1.

<sup>27</sup> Mo. Econ. Research & Info. Ctr. Gross Domestic Product Series, 2015 Estimates, MO. Dept Econ Dev.; Kennedy, “Sustainable constitutional growth?” 2.

<sup>28</sup> Kennedy, “Sustainable Constitutional Growth?” 2.

50.12%, when Governor Jay Nixon put the amendment up for a public vote.<sup>29</sup> The narrowness of the victory shows just how controversial the amendment was even among the Missouri Senate which had initially tried to stay away from legislation that would prevent future regulations from being passed onto the industry.<sup>30</sup>

The Right-to-Farm constitutional amendments are modeled after a model form of legislation authored by the American Legislative Executive Council (ALEC).<sup>31</sup> ALEC is a “corporation-dominated” organization working side by side with major corporations to get legislation passed in favor of powerful industries.<sup>32</sup> Corporations pay a lot of money to become members of ALEC, and in return, ALEC works to push for legislation protecting the corporation’s industry.<sup>33</sup> ALEC is not only lobbying for these industries, they are allowing industries to write their own bills which ALEC then proposes to state legislatures.<sup>34</sup> Alexander Hertel-Fernandez, author of “Who Passes Business’s ‘Model Bills?’ Policy Capacity and Corporate Influence in U.S. State Politics,” argues that ALEC serves as an important outlet to look into business’s power within American politics.<sup>35</sup> While, the typical business politic practices of campaign donations and other inducements are successful tactics for businesses looking to influence policies, ALEC is able to further influence policies by offering model private policies to state legislatures.<sup>36</sup> ALEC is so successful because it focuses on state

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<sup>29</sup> Ibid.

<sup>30</sup> Ibid.

<sup>31</sup> Jacqui Fatka, "CAFO Gets Court Win: Right to Farm Law Helps Protect Maxwell Farms from Nuisance Charges," *Feedstuffs* (July 28, 2014);

<sup>32</sup> Andersen and Kuhn, *The Sustainability Secret* 99-100.

<sup>33</sup> William Potter, “‘Ag-Gag’ Bills and Supporters Have Close Ties to ALEC,” *Terrorism Legislation*, Green Is the New Red website. April 26, 2012.

<sup>34</sup> William Potter in Kip Andersen and Keegan Kuhn’s, *The Sustainability Secret: Rethinking Our Diet to Transform the World* Pg. 103.

<sup>35</sup> Alexander Hertel-Fernandez, “Who Passes Business’s ‘Model Bills?’ Policy Capacity and Corporate Influence in U.S. State Politics,” *Perspective on Politics*, 12:3 (September 2014): 582-602.

<sup>36</sup> Hertel-Fernandez, “Who Passes Business’s ‘Model Bills?’

legislation versus federal legislation, with smaller budgets, less resources for developing legislation, and legislators pressed for time. The drafted bills are not necessarily created to be passed, as they are usually very extreme, but instead exist as a “wish list” of protections they would like states to adopt.<sup>37</sup>

ALEC further protects the industry by influencing another form of legislation, referred to as “ag-gag” legislation, aimed to prevent whistleblowers from exposing harmful, abusive or environmentally degrading practices conducted by the animal industry.<sup>38</sup> Exposure of these practices can result in serious consequences for the industry. In 2008, the U.S. Department of Agriculture issued the largest beef recall in U.S. history, recalling over 143 million pounds of meat from the California based Hallmark/Westland Meat Packing Company.<sup>39</sup> The U.S. Humane Society released a video showing workers at the company kicking sick cows and using forklifts to make them walk to get in line for slaughter.<sup>40</sup> Thirty-seven million pounds of meat from these “downer” cows had been consumed as hamburgers and tacos in school lunches and other government-based programs throughout the country.<sup>41</sup> The seriousness of the recall reflected human health concerns, as consuming meat from sick cows is how mad cow disease and *E.coli* infects a population, but health concerns were not the only problem.<sup>42</sup> This episode revealed a major flaw in the way that the USDA regulated and inspected the practices in these facilities to prevent health, environmental and welfare problems.<sup>43</sup> Six weeks after the video was released, the Hallmark/Westland Company declared bankruptcy and ended their operation.<sup>44</sup>

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<sup>37</sup> William Potter, “‘Ag-Gag’ Bills and Supporters Have Close Ties to ALEC.”

<sup>38</sup> Matthew Shea, "Punishing Animal Rights Activists for Animal Abuse: Rapid Reporting and The New Wave of Ag-Gag Laws," *Columbia Journal of Law and Social Problems*: 48.3 (2015): 338.

<sup>39</sup> Andrew Martin, “U.S. Orders Largest Recall of Ground Beef,” *The New York Times*, Feb. 18, 2008.

<sup>40</sup> *Ibid.*

<sup>41</sup> *Ibid.*

<sup>42</sup> Timothy McDonald, “Largest Beef Recall in US History”, *The World Today* website. Feb. 18, 2008.

<sup>43</sup> Martin, “U.S. Orders Largest Recall of Ground Beef.”

<sup>44</sup> Shea, "Punishing Animal Rights Activists for Animal Abuse 338.

Over the past decade, due to cases such as the Hallmark/Westland one, scholars agree that there has been a major increase in the number of U.S. states proposing, and some enacting, new versions of legislation to limit information from reaching the public on practices and operations occurring at livestock farms.<sup>45</sup> Legislation of this sort has existed since 1990 with the passing of the “Kansas Act.”<sup>46</sup> The “Kansas Act” refers to the Farm Animal and Field Crop and Research Facilities Protection Act which prohibits “enter[ing] an animal facility to take pictures by photograph, video camera or by any other means.”<sup>47</sup> The “Kansas Act” was created in the wake of protests against the hog industry’s increasing of the number of mega-farms in certain states such as Kansas, Nebraska, Colorado and Oklahoma.<sup>48</sup> In the 1980’s, these mega-farms were producing 300,000 pigs a year, emitting a lot of pollution, odor, and noise.<sup>49</sup> The construction of hog mega-farms was met with a lot of protests and vandalism from both animal rights activists as well as neighbors of the facilities.<sup>50</sup> During this time, the non-profit organization People for the Ethical Treatment of Animals (PETA) was being formed.<sup>51</sup> The group began their efforts in 1980 by protesting against the slaughtering of chickens at Arrow Live Poultry, which was consequently shut down.<sup>52</sup> PETA then, in 1981, began focusing on exposing the practices of animal research and experiment facilities.<sup>53</sup> PETA conducted undercover investigations, held music festivals, led protests and even filed law suits to become

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<sup>45</sup> J.A. Robbins, B. Franks, D.M. Weary, and M.A.G. Von Keyserlingk, "Awareness of Ag-Gag Laws Erodes Trust in Farmers and Increases Support for Animal Welfare Regulations," *Food Policy*: 61 (2016): 121-25.

<sup>46</sup> Shea, "Punishing Animal Rights Activists for Animal Abuse," 341.

<sup>47</sup> Kan. Stat. Ann. 47-1827 (West 2014.); Shea, "Punishing Animal Rights Activists for Animal Abuse," 341.

<sup>48</sup> Sam Robinson, "More States Considering ‘Ag-Gag’ Farm Protection Bills," *Investigate Midwest* website. March 14, 2013.

<sup>49</sup> Robinson, "More States Considering ‘Ag-Gag’ Farm Protection Bills."

<sup>50</sup> Ibid.

<sup>51</sup> People for the Ethical Treatment of Animals, "PETA’s Milestones for Animals," PETA website, 2017.

<sup>52</sup> Ibid.

<sup>53</sup> People for the Ethical Treatment of Animals, "PETA’s Milestones for Animals," PETA website, 2017.

the legal guardians of animals used in experiments.<sup>54</sup> As a result of these efforts, the animal agriculture industry pushed for new legislation to protect people from entering mega-farms while citing the financial losses incurred by vandalism and under cover investigations.<sup>55</sup> Shea agrees by arguing that the Kansas Act directly prevents measures, like those PETA was taking, and continues to take, to expose dangerous abuse and unsanitary practices, from happening.<sup>56</sup> Following in Kansas' footsteps, Montana and North Dakota passed their own similar acts to the "Kansas Act" in 1991.<sup>57</sup>

Today, bills of this sort are referred to as "ag-gag" legislation, and they criminalize undercover investigations by making illegal any actions needed to expose abuse or harmful practices.<sup>58</sup> The legislation bans trespassing and restricts recording, distributing or possessing video, audio or photographs of agricultural activities without the owner's consent.<sup>59</sup> In some states these laws also require that if there are any documented incidents of animal abuse, they must be presented to authorities within a certain time limit determined by state.<sup>60</sup> A delayed report of animal abuse is often considered a criminal act.<sup>61</sup> In addition, other states have clauses that prohibit a person from obtaining employment under false identification or intentions.<sup>62</sup> Matthew Shea, author of "Punishing Animal Rights Activists for Animal Abuse: Rapid Reporting and the New Wave of Ag-Gag Laws," argues that the new wave of ag-gag legislation

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<sup>54</sup> Ibid.

<sup>55</sup> Robinson, "More States Considering 'Ag-Gag' Farm Protection Bills."

<sup>56</sup> Shea, "Punishing Animal Rights Activists for Animal Abuse," 338.

<sup>57</sup> Shea, "Punishing Animal Rights Activists for Animal," 341.

<sup>58</sup> Kan. Stat. Ann. 47-1827 (West 2014.); Shea, "Punishing Animal Rights Activists for Animal Abuse," 341.

<sup>59</sup> Kan. Stat. Ann. 47-1827 (West 2014.); Shea, "Punishing Animal Rights Activists for Animal Abuse," 341; Jessalee Landfried, "Bound & Gagged: Potential First Amendment Challenges to 'Ag-Gag' Laws," *Duke Environmental Law & Policy Forum* (March 22, 2013): 377.

<sup>60</sup> Kan. Stat. Ann. 47-1827 (West 2014.); Shea, "Punishing Animal Rights Activists for Animal Abuse," 341.

<sup>61</sup> Landfried, "Bound & Gagged," 377.

<sup>62</sup> Robbins, Franks, Weary, and Von Keyserlingk, "Awareness of Ag-gag Laws Erodes Trust," 121-25.

typically falls under one of two categories, though some are a combination of the two.<sup>63</sup> The first category makes it illegal to record or distribute evidence of an agricultural enterprise without the consent of the operation's owner.<sup>64</sup> The second category makes it a crime to apply for employment at an animal agriculture operation with a fake identification or intention for applying.<sup>65</sup> Shea argues that the difference between the "Kansas Act" and the ag-gag bills introduced subsequently, is that the "Kansas Act" restricted prosecution to people who intended to disrupt the operation taking place at a certain animal facility, whereas most ag-gag bills today are boarder, covering more industries as well.<sup>66</sup>

There is a consistent motive found behind all recent ag-gag bills that stems from one organization. Andersen and Kuhn, in their book *The Sustainability Secret*, provide evidence that current ag-gag bills are heavily supported by the ALEC.<sup>67</sup> The specifics of these ag-gag bills vary state by state but the main purpose is the same: to end whistleblowing and other undercover investigations that could harm animal enterprise productivity and profits.<sup>68</sup> Scholars agree that most support for these laws come from farmers and meat packing companies along with state governments that rely on economic support from the agriculture industry.<sup>69</sup> Additionally, supporters of ag-gag laws often complain that the videos recorded are edited and altered so greatly that they misrepresent animal abuse.<sup>70</sup> Most find that opposition comes from animal,

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<sup>63</sup> Shea, "Punishing Animal Rights Activists for Animal Abuse," 340-346.

<sup>64</sup> Ibid, 342.

<sup>65</sup> Ibid, 343.

<sup>66</sup> Shea, "Punishing Animal Rights Activists for Animal," 341.

<sup>67</sup> Andersen and Kuhn, *The Sustainability Secret* 99-100.

<sup>68</sup> Hertel-Fernandez, "Who Passes Business's 'Model Bills?'"

<sup>69</sup> Fatka, "CAFO Gets Court Win"; Center, "Governments and Unconstitutional Takings," 87-148; Sara Lacy, "Hard to Watch: How Ag-Gag Laws Demonstrate the Need for Federal Meat and Poultry Industry Whistleblower Protections." *Administrative Law Review* 65: 1 (2013): 127.

<sup>70</sup> "Tennessee Governor Vetoes Ag Gag Bill," *Feedstuffs* 27 (May 2013): 17.

environmental and health activists as this legislation specifically targets them as undercover reporters.<sup>71</sup>

Scholars have focused on the fact that because these laws prevent reporting, they suggest to the public that the industry has something to hide.<sup>72</sup> In a study conducted by J.A. Robbins, B. Franks, D.M. Weary and M.A.G. von Keyserlingk, participants were tested to see if their trust in the agriculture industry weakens upon being informed of the ag-gag laws.<sup>73</sup> The study found that the people who were exposed to the laws did lose trust in the industry and that a lack of transparency tends to have negative consequences.<sup>74</sup>

Regardless, between 2011 and 2013 there was a significant increase in the interest of ag-gag legislation; sixteen states introduced legislation of this sort.<sup>75</sup> William Potter argues that this surge is a result of several highly publicized undercover investigations by activist groups such as the Humane Society, Mercy for Animals and Compassion Over Killing.<sup>76</sup>

According to Shea legislation of this sort is having a hard time passing in most states for three reasons. The first is that “animal welfare activists and allies won the public debate over ag-gag.”<sup>77</sup> Most opposition comes from animal welfare groups asking the industry why they are banning cameras if there is nothing to hide which the industry hasn’t provided a convincing answer for.<sup>78</sup> Michael Pollan, in his article, “An Animal’s Place,” calls for the “steel and

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<sup>71</sup> Kevin C. Adam, "Shooting the Messenger: A Common-Sense Analysis of State 'Ag-Gag' Legislation under the First Amendment," *Suffolk University Law Review* (November 2012) 1129; Center, "Governments and Unconstitutional Takings," 87-148; Landfried, "Bound & Gagged," 377; Shea, "Punishing Animal Rights Activists for Animal Abuse," 337-371.

<sup>72</sup> Lacy, "Hard to Watch," 127; Adam, "Shooting the Messenger," 1129.

<sup>73</sup> Robbins, Franks, Weary, and Von Keyserlingk, "Awareness of Ag-gag Laws Erodes Trust," 121-25.

<sup>74</sup> *Ibid*

<sup>75</sup> Landfried, "Bound & Gagged," 377.

<sup>76</sup> "The Current State of Ag Gag," End Ag-Gag Laws! website; William Potter, "First 'Ag-Gag' Prosecution: Utah Woman Filmed a Slaughterhouse from the Public Street," *Terrorism Legislation*, Green Is the New Red website, April 29, 2013.

<sup>77</sup> Shea, "Punishing Animal Rights Activists for Animal Abuse," 347.

<sup>78</sup> *Ibid*, 349.

concrete walls” of the Confined Animal Feeding Operations (CAFOs) to be knocked down.<sup>79</sup>

Pollan calls for the “right to look” and suggests making these walls out of glass instead of concrete since the industry claims there is nothing to hide.<sup>80</sup>

The second reason, according to Shea, involves the concerns that the ag-gag legislation contradicts the First Amendment.<sup>81</sup> The First Amendment declares that “Congress shall make no law ... abridging the freedom of speech, or of the press.”<sup>82</sup> Under the First Amendment, speech is defined as “communication” or “expressive conduct.”<sup>83</sup> This can mean speaking out against the government, making a sign or burning the American flag as all portray a message which, under the First Amendment, is considered “speech.”<sup>84</sup> The U.S. Supreme Court does not have an exact definition for videos and photography under the First Amendment.<sup>85</sup> There have been several cases brought to court regarding First Amendment violations, and the court has ruled differently depending on the specific case.<sup>86</sup> Based on the court rulings, scholars have been able to observe a common theme: if the photo or video was intended as a “sufficient communicative effort” with an intended audience then it is protected by the First Amendment.<sup>87</sup> Kevin Adams in, “Shooting the Messenger: A Common-Sense Analysis of State ag-gag Legislation under the First Amendment” suggests that perhaps instead of taking away transparency within the industry, the government should focus on educating people on current animal agricultural practices so that people feel more comfortable with the way the animals, environment and their food is handled.”

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<sup>79</sup> Michael Pollan, “An Animal’s Place,” *N.Y. Times Magazine*, November 10, 2002.

<sup>80</sup> *Ibid.*

<sup>81</sup> Shea, “Punishing Animal Rights Activists for Animal Abuse,” 351.

<sup>82</sup> Adam, “Shooting the Messenger,” 1129.

<sup>83</sup> *Ibid.*

<sup>84</sup> *Ibid.*

<sup>85</sup> *Ibid.*

<sup>86</sup> *Ibid.*

<sup>87</sup> *Ibid.*

Finally, when the strength of the law was being tested in the first case against a woman charged with violating the law, the animal operation dropped the case.<sup>88</sup> On February 19 2013, “Amy Meyer was charged with a class B misdemeanor for agricultural-operation interference in Utah.”<sup>89</sup> Meyer had taken a video on her mobile phone of a live cow being carried in a tractor at the Dale T. Smith and Sons Meatpacking Company.<sup>90</sup> Meyer did not have time to distribute the video as the manager of the operation, Bret Smith, approached her and called the police.<sup>91</sup> The meatpacking company filed charges against her under Utah’s ag-gag law but the charges were dropped once evidence was provided to prove that Meyer was standing on public property when she recorded the video.<sup>92</sup> Since the charges were dropped, there was a lot of doubt on whether or not these laws would actually be successful in protecting the industry, which led people to believe that ag-gag movement would consequently fail in other states.<sup>93</sup>

The scholarly work discussing the resistance against the animal agriculture industry by means of ag-gag and Right-to-Farm legislation focuses mainly on the opposition coming from animal welfare organizations. This is especially true when studying “ag-gag.” Andersen and Kuhn, authors of *The Sustainability Secret*, were curious about why major environmental organizations weren’t talking about the negative consequences resulting from the animal agriculture industry. The two put in tremendous effort trying to get an interview with Greenpeace to ask some questions regarding the impact the industry has on climate change and the environment.<sup>94</sup> Greenpeace, however, would not give them the time.<sup>95</sup> Andersen and Kuhn were

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<sup>88</sup> Shea, “Punishing Animal Rights Activists for Animal Abuse,” 352.

<sup>89</sup> Ibid.

<sup>90</sup> William Potter, “First Video to Result in #AgGag Prosecution (and Dismissal) - Watch and See Why,” *Terrorism on Court Cases*, June 24, 2013.

<sup>91</sup> Ibid.

<sup>92</sup> Shea, “Punishing Animal Rights Activists for Animal Abuse,” 352.

<sup>93</sup> Ibid, 347.

<sup>94</sup> Andersen and Kuhn, *The Sustainability Secret*

<sup>95</sup> Ibid.

able to interview Will Anderson, the cofounder of Greenpeace Alaska, who expressed his feelings on how much the major environmental organizations are failing the people.<sup>96</sup> “It’s so frustrating when the information is right before their eyes. It’s documented in peer-reviewed papers and journals,” yet the organizations are “failing to act.”<sup>97</sup> Michael Pollan, the author of *The Omnivore’s Dilemma*, blames the lack of recognition by large environmental organizations on the fact that they are membership based.<sup>98</sup> They rely on large numbers of members as reliable means of funding, which could be hurt by challenging people to alter their everyday habits.<sup>99</sup>

Andersen and Kuhn were also able to sit down with the Animal Agriculture Alliance, one of the largest advocacy groups for the animal agriculture industry.<sup>100</sup> The two interviewed the, at the time director of communications for the Animal Agriculture Alliance, Emily Meredith.<sup>101</sup> They explicitly asked her, “does the meat and dairy industry ever support or donate to environmental non-profits?”<sup>102</sup> Meredith answered by saying that she would not like to comment on that issue.<sup>103</sup>

There is another law, which Andersen and Kuhn believe should also be challenged by environmental groups, as well as animal welfare organizations, that exists for the same purpose as ag-gag and Right-to-Farm legislation. The Animal Enterprise Terrorism Act (AETA), is another piece of the broader trend to protect the animal agriculture industry from animal welfare, environmental and other activists. The AETA differs from ag-gag and Right-to-Farm because it is a federal law while these other forms vary by state.<sup>104</sup> The AETA deals more directly with

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<sup>96</sup> Will Anderson in Andersen and Kuhn, *The Sustainability Secret* 107.

<sup>97</sup> Ibid.

<sup>98</sup> Michael Pollan in Andersen and Kuhn, *The Sustainability Secret* 16.

<sup>99</sup> Ibid.

<sup>100</sup> Ibid, 105.

<sup>101</sup> Ibid, 105.

<sup>102</sup> Will Anderson in Andersen and Kuhn, *The Sustainability Secret* 107.

<sup>103</sup> Emily Meredith in Andersen and Kuhn, *The Sustainability Secret* 107.

<sup>104</sup> Andersen and Kuhn, *The Sustainability Secret* 98-99.

other industries, such as pharmaceuticals and fur companies, but also includes the animal agriculture industry, similar to the “Kansas Act”.<sup>105</sup> The purpose of the AETA is to “provide the Department of Justice with the necessary authority to apprehend, prosecute, and convict individuals committing animal enterprise terrorism.”<sup>106</sup> Violations of this act include intentionally damaging or causing the loss of an animal enterprise’s territory; intentionally causing a person to reasonably fear death with threats, vandalism, trespass, intimidation or harassment; and for conspiring or attempting to commit one of the crimes listed above.<sup>107</sup> The AETA was signed into law, in 2006, by George W. Bush and supported by several powerful industries such as; the National Cattlemen’s Beef Association, the National Association for Biomedical Research, United Egg Producers, Pfizer, Wyeth, Fur Commission USA and more.<sup>108</sup> Additionally, the AETA was supported by the Animal Enterprise Protection Coalition and ALEC, the same committee that pushed for the ag-gag and Right-to-Farm legislation.<sup>109</sup>

The AETA, as well as ag-gag and Right-To-Farm legislation are all elements that make up a broader movement to defeat activists “disrupting and damaging” animal agricultural operations. The environmental consequences surrounding the industry are destroying and degrading the earth at alarming rates, but the legal obstacles in place against these threats make it very challenging to change the way these facilities operate. Environmental organizations need to mobilize against the industry and the policies set up to protect it. The rest of this paper will explore the detrimental effects the animal agriculture industry has on the environment, the

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<sup>105</sup> Ibid.

<sup>106</sup> S. 3880. ‘Animal Enterprise Terrorism Act’ (28 September 2006).; Moshe Shalev, "Senate Passes Animal Enterprise Terrorism Act," *Lab Animal* 35:10 (2006): 13.

<sup>107</sup> Ibid.

<sup>108</sup> Ibid.

<sup>109</sup> Ibid.

animals, and human health along with the ways in which ag-gag and Right-to-Farm legislation has been created and modified to protect the industry today and into the future.

# ENVIRONMENTAL CONSEQUENCES OF ANIMAL AGRICULTURE

Within the past few decades, livestock raising has changed dramatically.<sup>1</sup> The number of farms, generally speaking, in the U.S. declined from 4,000 farms, averaging about 300 acres per farm in 1960, down to 2,000 farms averaging about 450 acres per farm in 2002.<sup>2</sup> Today, 99% of farm animals are raised on factory farms, often referred to as “AFOs”<sup>3</sup> According to the Environmental Protection Agency (EPA), “Animal Feeding Operations (AFOs) are agricultural operations where animals are kept and raised in confined situations.” To be considered an AFO, animals present must be confined and fed for at least 45 days within a 12 month period and no other form of crops can be sustained within a normal growing season on the facility.<sup>4</sup> Confined animal feeding operations (CAFOs) are classified by the greater number and types of animals they contain, as well as the way in which they discharge waste into the U.S. water supply.<sup>5</sup> CAFOs are different from AFOs as they hold and feed more animals in a facility than AFOs do.<sup>6</sup> In 2007, the average number of animals on a CAFO was “3,810 cattle, 1,481 dairy cows, 5,144 pigs, 168,080 broiler chickens (raised for flesh), and 614,133 layer hens” but these numbers sometimes could, and continue to be much greater.<sup>7</sup> The EPA acknowledges that CAFOs often pollute waterways. As a result, CAFOs are required to have their methods of discharging pollutants regulated by the National Pollution Discharge Elimination System (NPDES) which

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<sup>1</sup> Carrie Hribar, “Understanding Concentrated Animal Feeding Operations and Their Impact on Communities,” Centers for Disease Control and Prevention.

<sup>2</sup> Carolyn Dimitri, Anne Effland, and Neilson Conklin, “The 20th Century Transformation of U.S. Agriculture and Farm Policy,” United States Department of Agriculture, June 2005.

<sup>3</sup> “Farm Animal Welfare.” ASPCA.

<sup>4</sup> “Animal Feeding Operations (AFOs),” U.S. EPA, June 27, 2016.

<sup>5</sup> Hribar, “Understanding Concentrated Animal Feeding Operations and Their Impact on Communities.”

<sup>6</sup> Kip Andersen and Keegan Kuhn, *The Sustainability Secret: Rethinking Our Diet to Transform the World* (San Rafael, CA: Earth Aware Editions, 2015): 54.

<sup>7</sup> Ibid.

regulates pollutants that are leaked from direct point sources into U.S. waterways.<sup>8</sup> No regulations exist to prevent water contamination or excess pollution from AFO's.<sup>9</sup> There has been strong resistance to include them under the regulations of the Clean Water Act, even as AFOs discharge large amounts of waste polluting major waterways such as the Chesapeake Bay.<sup>10</sup>

The number of farms has decreased due to the increased efficiency of today's farms. Since 1960, production rates have doubled for milk, "meat production has tripled, and egg production has quadrupled" thanks to improvements in technology, breeding methods and feed.<sup>11</sup> The amount of time required for an animal to be ready for slaughter is much shorter due to their inability to move along with the constant availability of food.<sup>12</sup> The efficiency of CAFOs and AFOs have led to low-cost meat, dairy and eggs.<sup>13</sup> However, efficient, cheap meat poses tremendous environmental consequences. Richard Oppenlander, author of *Comfortably Unaware*, stated that the origin of our food "is the major contributing force in global depletion."<sup>14</sup> Henning Steinfeld, the senior official for the United Nations Food and Agriculture Organization said, "Livestock are one of the most significant contributors to today's most serious environmental problems."<sup>15</sup> Even the EPA agrees, as their website defines even their small

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<sup>8</sup> "Animal Feeding Operations (AFOs)," U.S. EPA.

<sup>9</sup> Ibid.

<sup>10</sup> Tamara Dietrich, "Environmental Groups Petition EPA over Virginia Factory Farm Permit Program," *The Daily Press Newspaper*, October 13, 2014.

<sup>11</sup> Hribar MA, "Understanding Concentrated Animal Feeding Operations and Their Impact on Communities."

<sup>12</sup> Ibid.

<sup>13</sup> Ibid; "Farm Animal Welfare," ASPCA.

<sup>14</sup> Richard A. Oppenlander, *Comfortably Unaware: What We Choose to Eat Is Killing Us and Our Planet* (New York City: Beaufort Books, 2012): 2.

<sup>15</sup> "Rearing Cattle Produces More Greenhouse Gases Than Driving Cars, UN Report Warns," UN News Centre, November 29, 2006.

CAFOs as “a significant contributor of pollutants” because of the excessive amount of pollution they emit into waterways.<sup>16</sup>

Nationwide, animal agriculture accounts for 56% of all water consumed, while agriculture as a whole consumes 80%.<sup>17</sup> According to the Heather Cooley, the Water Program Co-Director of the Pacific Institute, having received the EPA award for outstanding achievement for her work on water conservation and efficiency involving agriculture, the reason for such a high water usage is because of the water-intensive alfalfa hay, grass hay, corn, soy, canola and other grains in which these animals are fed.<sup>18</sup> Alfalfa is the most water intensive crop in California and the majority of it is grown to feed cattle.<sup>19</sup> The water used to produce alfalfa and other grains for cows, as well as process the animal product and clean the factory farms, is part of people’s ecological footprint in the form of “virtual water.”<sup>20</sup> “Virtual water consumption” refers to the amount of water needed to produce a product, and by eating commercially raised meat, humans consume a lot of virtual water.<sup>21</sup> About half of a typical Californian’s 1,500 gallons of water consumed a day is related to animal meat and dairy consumption.<sup>22</sup> It is estimated that to produce a quarter-pound hamburger 660 gallons of water is required, which is equivalent to showering for two months straight.<sup>23</sup> Additionally, one dozen eggs requires 477

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<sup>16</sup> “Regulatory Definitions of Large CAFOs, Medium CAFO, and Small CAFOs,” U.S. EPA.

<sup>17</sup> “Irrigation & Water Use,” USDA ERS. October 12, 2012; Michael F. Jacobson, “More and Cleaner Water,” *Six Arguments for a Greener Diet: How a More Plant-based Diet Could save Your Health and the Environment* (Washington, DC: Center for Science in the Public Interest, 2006)

<sup>18</sup> Hribar, “Understanding Concentrated Animal Feeding Operations and Their Impact on Communities”; “Farm Animal Welfare,” ASPCA; Heather Cooley in Andersen and Kuhn, *The Sustainability Secret* 22.

<sup>19</sup> James E. McWilliams, “Meat Makes the Planet Thirsty,” *The New York Times*. March 7, 2014.

<sup>20</sup> Christina Catanese, “Virtual Water, Real Impacts: World Water Day 2012,” EPA Healthy Waters, March 22, 2012; Andersen and Kuhn, *The Sustainability Secret* 53-66.

<sup>21</sup> Catanese, “Virtual Water, Real Impacts.”

<sup>22</sup> Andersen and Kuhn, *The Sustainability Secret* 53-66.

<sup>23</sup> Catanese, “Virtual Water, Real Impacts”; Andersen and Kuhn, *The Sustainability Secret: Rethinking Our Diet to Transform the World*, Pg. 22.

gallons of water, one block of cheese requires 900 gallons and one gallon of milk requires 1,000 gallons, while one pound of tofu requires 469.<sup>24</sup>

The dairy industry is another major water consumer. A dairy cow consumes approximately 30-40 gallons of water a day while 150 gallons of water are required per cow to flush the amount of nitrogen manure produced by one cow out of the facility.<sup>25</sup> This nitrogen typically gets flushed into rivers, lakes and eventually the ocean causing massive algal blooms and eventually leading to dead zones.<sup>26</sup> Any form of bacterial contamination can cause an excess of nutrients, such as ammonia, to gather in waterways.<sup>27</sup> An excess amount of ammonia can deplete oxygen levels in water while also converting itself into nitrates to further the dead zones caused by an excess of nitrogen.<sup>28</sup> Bacteria is able to survive longer in water than in manure which can cause contamination to last longer than expected, and due to the lack of sun and lower temperatures in ground water, pathogens are able to survive longer in groundwater.<sup>29</sup>

Livestock have caused more than 500 nitrogen-flooded dead zones in the ocean worldwide to devoid life in the oceans for over than 95,000 square miles.<sup>30</sup> The second biggest dead zone exists in the gulf of Mexico and it is currently equal in size to the state of Connecticut.<sup>31</sup> This area in the Gulf of Mexico is experiencing very low oxygen levels, a condition known as hypoxia.<sup>32</sup> Dead zones are the result of manure and feed containing

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<sup>24</sup> "Water," Meat Eater's Guide to Climate and Health, 2011, Accessed November 04, 2016.

<sup>25</sup> Marcus Benedetti in Andersen and Kuhn, *The Sustainability Secret: Rethinking Our Diet to Transform the World*, Pg. 48-50.

<sup>26</sup> Hribar "Understanding Concentrated Animal Feeding Operations and Their Impact on Communities."

<sup>27</sup> Ibid.

<sup>28</sup> Ibid.

<sup>29</sup> Ibid; "Detecting and Mitigating the Environmental Impact of Fecal Pathogens Originating from Confined Animal Feeding Operations," U.S. EPA, 2005.

<sup>30</sup> Andersen and Kuhn, *The Sustainability Secret* 67; Richard Oppenlander in Andersen and Kuhn, *The Sustainability Secret* 67.

<sup>31</sup> Melodi Smith and Jason Hanna, "Gulf of Mexico 'Dead Zone' is the size of Connecticut," CNN, August 5, 2014.

<sup>32</sup> Ibid.

fertilizers, antibiotics, growth hormones, and steroids, ending up in the oceans. The contamination leads to an increase in nutrients which causes an increase in algal growth. When the algae break down they consume a lot of oxygen, leaving little left for the rest of the fish.<sup>33</sup> As a result, billions of fish have died, resulting in a great loss of biodiversity.<sup>34</sup> Losing all of these species is likely to not only harm the fragile ecosystems of the ocean, but also to result in major monetary losses for the U.S. seafood and tourism industries.<sup>35</sup>

Surface water is also typically polluted through manure flushing but can also be infected by means of soil erosion, heavy storms or floods which then cause manure storage lagoons to overflow.<sup>36</sup> Additionally, contaminated groundwater can travel laterally to contaminate surface water.<sup>37</sup> There is a clear connection between the amount of nitrogen manure produced on animal farms and water pollution as a 2001 study conducted by the U.S. EPA found that states with higher concentrations of CAFOs experience 20-30 more water quality issues every year.<sup>38</sup>

1.37 billion tons of animal waste, equal to 130 times the amount of human waste, is produced yearly in the United States.<sup>39</sup> The numbers add up to equal 116,000 pounds of farm animal waste excreted every second; “enough waste per year to cover every square foot of San Francisco, New York City, Tokyo, Paris, New Delhi, Berlin, London, Hong Kong, London, Rio de Janeiro, Delaware, Bali, Costa Rica, and Denmark - combined.”<sup>40</sup> This waste ends up in our water and eventually into the oceans, as there is no treatment facility for animal feces.<sup>41</sup>

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<sup>33</sup> Smith and Hanna, “Gulf of Mexico ‘Dead Zone’ is the size of Connecticut.”

<sup>34</sup> Andersen and Kuhn, *The Sustainability Secret* 68.

<sup>35</sup> Smith and Hanna, “Gulf of Mexico ‘Dead Zone’ is the size of Connecticut.”

<sup>36</sup> Hribar, "Understanding Concentrated Animal Feeding Operations and Their Impact on Communities."

<sup>37</sup> Ibid.

<sup>38</sup> “Environmental Assessment of Proposed Revisions to the National Pollutant Discharge Elimination System Regulation and the Effluent Guidelines for Concentrated Animal Feeding Operations,” U.S. EPA, 2001.

<sup>39</sup> "Issues," Pew Commission on Industrial Farm Animal Production Fan site.

<sup>40</sup> Andersen and Kuhn, *The Sustainability Secret* 67.

<sup>41</sup> Ibid; Hribar, "Understanding Concentrated Animal Feeding Operations and Their Impact on Communities."

CAFOs, AFOs, and free range farms require a lot of land to grow animals for us to consume. Approximately 34 million acres of rainforest worldwide are already lost and about 80% of that land is turned into cropland for raising food for all types of livestock or into land to graze cattle.<sup>42</sup> According to the Western Watersheds Project, grazing livestock is the leading factor impacting the American landscape.<sup>43</sup> Nearly half of all the land in the U.S. is used to for agriculture, and almost 80% of all the land used in the U.S. for agriculture is used to support livestock in some way.<sup>44</sup> 70% of all grain grown in the U.S. is fed to livestock which has resulted in the clearing of more than 260 million acres of forest.<sup>45</sup> We need to use U.S. land to grow food in order to feed an increasing human population. Today's practices of using a large amount land to grow food for animals, to then feed humans, is not going to work for much longer. One acre of land can produce 12-20 times the number of pounds of animal products in fruit, vegetables, or grains.<sup>46</sup> Three and one fourth acres are required to feed one person on a typical high meat and dairy consumption U.S. diet, which is almost 20 times the amount of land required to feed a vegetarian.<sup>47</sup> Forests are cleared at dramatic rates to make land available for livestock grazing. All of the ecosystems within the forests are destroyed causing habitat which leads to species extinction and biodiversity loss. For example, land cleared for grazing is causing a mass removal of wild horses from the western parts of the U.S.<sup>48</sup>

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<sup>42</sup> Oppenlander, *Comfortably Unaware* 22.

<sup>43</sup> Andersen and Kuhn, *The Sustainability Secret* 45.

<sup>44</sup> Henning Steinfeld, P. Gerber, T. Wassener, V. Castel, M. Rosales, C. de Haan, "Livestock's Long Shadow - Environmental issues and options," UN Food and Agriculture Organization; "Summary Table 1: Major Uses of Land, by Region, State and United States, 2007," USDA ERS - Major Land Uses, December 19, 2011.

<sup>45</sup> "Food Choices and the Planet." Save the Earth website; Richard A. Oppenlander, *Comfortably Unaware* 27.

<sup>46</sup> Steinfeld, Gerber, Wassener, Castel, Rosales, de Haan, "Livestock's Long Shadow - Environmental issues and options."

<sup>47</sup> "Myth v. Reality," Earth Save website.

<sup>48</sup> "Wild Horse Preservation: About," Wild Horse Preservation website; Andersen and Kuhn, *The Sustainability Secret* 87.

According to the head of the American Wild Horse Prevention Campaign, Deniz Bolbol, more horses and burros are living in government holding facilities than on free range land because the resources in the wild are given away to cattle grazing.<sup>49</sup> Wolves too have fallen victim to the mismanagement of land in the west due to the cattle industry.<sup>50</sup> Ranchers have noted that wolves and coyotes feed on the cattle, so when the ranchers see one, they call up the USDA who comes to shoot it.<sup>51</sup> The diminishing wolf population has serious effects on the rest of the ecosystem, resulting in exploding populations for the animals preyed on by the wolves, such as moose, which results in further land destruction causing habitat loss for birds and other smaller species.<sup>52</sup>

Similarly, the diverse wildlife of the Amazon Rainforest is falling victim to the destruction of the forest by to the animal agriculture industry. The Amazon Rainforest is being burned, slashed and demolished at the rate of one and a half acres, the size of two football fields, every second.<sup>53</sup> Over 70% of the Amazon Rainforest has been completely devastated by cattle ranching to the point in which will no longer be able to support any life.<sup>54</sup> Soy is one of the major crops grown on destroyed rainforest land and it is used directly to feed animals.<sup>55</sup> Also the U.S. is the single largest consumer of Central and South American beef, purchased mostly to provide for the demand of the U.S. fast food industry.<sup>56</sup>

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<sup>49</sup> Bolbol in Andersen and Kuhn, *The Sustainability Secret* 87.

<sup>50</sup> Ibid.

<sup>51</sup> Ibid.

<sup>52</sup> Will Andersen in Andersen and Kuhn, *The Sustainability Secret* 88.

<sup>53</sup> Andersen and Kuhn, *The Sustainability Secret* 82; "Facts About the Rainforest," Save the Rainforest website, 2015.

<sup>54</sup> Oppenlander, *Comfortably Unaware* 22.

<sup>55</sup> Ibid, 23.

<sup>56</sup> Ibid, 22.

To produce one quarter-pound hamburger, fifty-five square feet of rainforest are required.<sup>57</sup> Due to the increasing demand and the devastating land use required to produce animal products, the amount of earth covered by rainforest has decreased from 15% to less than 2% in just fifteen years.<sup>58</sup> But, why does that matter? Well, rainforests contain the greatest amount of biodiversity on earth.<sup>59</sup> SaveTheRainforest.com discusses the biodiversity; “the intensity of life forms is extraordinary: on the order of 1,000 species per square kilometer. By comparison, here in North America, we might only find 100 species in the same space.”<sup>60</sup>

Additionally, because of the decrease in rainforest land area, the rainforests contain almost half the amount of species they once flourished with.<sup>61</sup> If we continue to destroy the rainforests at the rates we are today, there will be no rainforests left by 2060.<sup>62</sup> Along with the great diversity of organisms in the rainforest, more than six million indigenous people once lived in the Amazon rainforests.<sup>63</sup> Today, there are less than a quarter million people living there due to the amount of deforestation.<sup>64</sup>

The tropical rainforests are “the single greatest terrestrial source of air that we breathe.”<sup>65</sup> Over 20% of oxygen worldwide is produced in the rainforests.<sup>66</sup> Imagine how much oxygen the rainforests would be able to provide, and how much CO<sub>2</sub>, they would be able to sequester if they covered the 15% they did just fifteen years ago. The rainforests act as the earth’s lungs, pulling in CO<sub>2</sub> and releasing oxygen.<sup>67</sup> CO<sub>2</sub> is stored in the vegetation and soils of the rainforest where

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<sup>57</sup> Oppenlander, *Comfortably Unaware* 22.

<sup>58</sup> *Ibid*, 22.

<sup>59</sup> Rhett Butler, “Rainforest Diversity - Origins and Implications,” Mongabay.com, July 27, 2006.

<sup>60</sup> “Facts About the Rainforest,” Save the Rainforest website.

<sup>61</sup> Butler, “Rainforest Diversity - Origins and Implications,” 22.

<sup>62</sup> Andersen and Kuhn, *The Sustainability Secret* 83.

<sup>63</sup> *Ibid*, 83.

<sup>64</sup> Butler, “Rainforest Diversity - Origins and Implications,” 24.

<sup>65</sup> “Facts About the Rainforest,” Save the Rainforest website.

<sup>66</sup> Butler, “Rainforest Diversity - Origins and Implications,” 23.

<sup>67</sup> *Ibid*, 23.

is can remain sequestered for years.<sup>68</sup> With every acre cut down to raise cattle or grow food for animals, the rainforest loses more of its capacity to provide the earth with oxygen and take away CO<sub>2</sub>. When the vegetation is burned, or slashed down, the sequestered CO<sub>2</sub> is released, further increasing the amount of CO<sub>2</sub> in the atmosphere.

Carbon dioxide makes up 82% of all greenhouse gases in the U.S. and 76% of all greenhouse gases emitted worldwide. Carbon dioxide is the most commonly known greenhouse gas in the ever-confusing discussion on climate change.<sup>69</sup> Generally, educated people know, that in order to decrease the amount of CO<sub>2</sub> emitted into the atmosphere, people should drive less, take public transportation, and use less fossil fuels (especially coal).<sup>70</sup> However, according to a United Nations report released in 2006, “cattle-rearing generates more global warming greenhouse gases, as measured in CO<sub>2</sub> equivalent, than transportation.”<sup>71</sup> If just cattle rearing generates this much CO<sub>2</sub>, then imagine the amount contributed by all dairy cows, chickens, turkeys, pigs, and all other animals raised for their meat, fur, eggs or milk. Policy makers need to be looking into the science behind the claims that animal agriculture is the leading cause of climate change due to the fact that climate change is caused by an increase of greenhouse gases, specifically CO<sub>2</sub>, and the animal agriculture industry is the biggest greenhouse gas emitter.<sup>72</sup>

CO<sub>2</sub> is a very harmful greenhouse gas, and efforts to reduce the amount of CO<sub>2</sub> emitted is very important. However, there is another greenhouse gas, methane, that is even more dangerous than CO<sub>2</sub>.<sup>73</sup> Methane has 86 times the ability of CO<sub>2</sub> to trap in heat in the

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<sup>68</sup> Ibid, 25.

<sup>69</sup> “U.S. Greenhouse Gas Inventory Report 1990-2014,” U.S. EPA, October 4, 2016; “Global Greenhouse Gas Emissions Data,” U.S. EPA, August 9, 2016.

<sup>70</sup> Ibid.

<sup>71</sup> “Rearing Cattle Produces More Greenhouse Gases Than Driving Cars, UN Report Warns,” UN News Centre.

<sup>72</sup> “Rearing Cattle Produces More Greenhouse Gases Than Driving Cars, UN Report Warns,” UN News Centre; Oppenlander, *Comfortably Unaware* 3.

<sup>73</sup> “Global Greenhouse Gas Emissions Data,” U.S. EPA.

atmosphere.<sup>74</sup> Additionally, methane has a much shorter half-life, meaning it takes less time for it to break down, which makes reducing the emissions of methane more dire as we are able to see more immediate results.<sup>75</sup> It is estimated that livestock industry is the world's largest methane emitter, accounting for 37% of methane emissions worldwide which is extremely important considering the high global warming potential of the gas.<sup>76</sup> Cattle are a major source of methane due to the fermentation of feed in the animal's stomach and the anaerobic (without oxygen) fermentation of manure by bacteria.<sup>77</sup> Grass-fed beef emit more methane than grain-fed cows due to the way in which their stomachs ferment grass over grain.<sup>78</sup>

Even worse is the greenhouse gas nitrous oxide. It has a global warming potential almost 300 times greater than CO<sub>2</sub> and can stay in the atmosphere for 114 years.<sup>79</sup> Livestock are the single largest contributor of nitrous oxide emitting 65% of all nitrous oxide worldwide.<sup>80</sup> A lot of this nitrous oxide is released by means of nitrogen fertilizers used to grow grain to feed the animals but also through the breakdown of manure.<sup>81</sup>

Manure from CAFOs is also often used as fertilizer for crops.<sup>82</sup> The manure typically sits at the CAFO facilities for several months before being shipped to various farms.<sup>83</sup> The transportation process requires additional fossil fuels further increasing the ecological footprint of the industry. There is so much manure produced, that not all of it can be used as fertilizer or

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<sup>74</sup> Andersen and Kuhn, *The Sustainability Secret* 17.

<sup>75</sup> Robert Goodland, and Jeff Anhang, "Animal Agriculture & Climate Change," A Well-Fed World - Feeding Families/Saving Animals website.

<sup>76</sup> Goodland and Anhang, "Animal Agriculture & Climate Change"; Steinfeld, Gerber, Wassener, Castel, Rosales, de Haan, "Livestock's Long Shadow - Environmental issues and options."

<sup>77</sup> Doug Gurian-Sherman, *CAFOs Uncovered - The Untold Costs of Confined Animal Feeding Operations* (Cambridge, MA: UCS Publications, April 2008) 26.

<sup>78</sup> Ibid.

<sup>79</sup> "Overview of Greenhouse Gases," U.S. EPA, October 6, 2016.

<sup>80</sup> Oppenlander, *Comfortably Unaware* 18.

<sup>81</sup> Gurian-Sherman, *CAFOs Uncovered - The Untold Costs of Confined Animal Feeding Operations* 26.

<sup>82</sup> Andersen and Kuhn, *The Sustainability Secret* 55.

<sup>83</sup> Ibid.

repurposed in any way, so it remains on the land or in manure lagoons.<sup>84</sup> Soil has a limit on the amount of manure that it can absorb, and when excess is applied, it typically ends up in the waterways through runoff and leaching.<sup>85</sup>

The problems cited above are issues that occur with large-scale cattle grazing in general. Grass-fed beef, however, isn't any better. Free range livestock require and degrade more soil than CAFOs do. The amount of land needed to feed the United States population with only grass fed beef, at current rates of consumption, would require all of the United States and all of Central America to be cleared for grazing as well as land well up into Canada and South America.<sup>86</sup> Additionally, grass fed animals live longer than those in CAFOs because it takes them longer to fatten up to be ready for slaughter.<sup>87</sup> With that being said, more land is required to grow more feed for the animals.<sup>88</sup> Most land cleared for cattle grazing is grazed to its limits from which the soils cannot recover from.<sup>89</sup> In a 1994 study, it was estimated that overgrazing of livestock in the U.S. has degraded 700 million acres of rangeland, meaning that the fertile topsoil on all this land has been completely eroded.<sup>90</sup>

Cattle grown to produce dairy products also contribute a lot to land degradation because they often consume more food than cows raised for meat due to the metabolic strain that producing milk puts on their bodies.<sup>91</sup> Marcus Benedetti expressed his concerns regarding the increasing demand for dairy-based protein by saying that “there is not enough land on the planet”

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<sup>84</sup> Ibid.

<sup>85</sup> Hribar, "Understanding Concentrated Animal Feeding Operations and Their Impact on Communities."

<sup>86</sup> Andersen and Kuhn, *The Sustainability Secret* 43.

<sup>87</sup> Judith L. Capper, "Is the Grass Always Greener? Comparing the Environmental Impact of Conventional, Natural and Grass-Fed Beef Production Systems," *Animals (2076-2615)* 2:2 (2012): 127-14.

<sup>88</sup> Ibid.

<sup>89</sup> Andersen and Kuhn, *The Sustainability Secret: Rethinking Our Diet to Transform the World*, Pg. 43.

<sup>90</sup> T.L. Fleischner, "Ecological Costs of Livestock Grazing in Western North America," *Conservation Biology* 8.3 (1994).

<sup>91</sup> Marcus Benedetti in Andersen and Kuhn, *The Sustainability* 50.

to do the sort of dairy farming required to feed an increasing demand.<sup>92</sup> He concluded that on a global scale, dairy is not sustainable, not only because of the amount of land needed to for the animals, but also because of the resources required to produce animal products.<sup>93</sup>

The agriculture industry is depleting earth's natural resources at rapid rates as seen all over the U.S. but especially in California. California is the most agriculturally productive state in the U.S., according to the United States Department of Agriculture, placing heavy demands on the state's water supply. 80% of the state's water is used for agriculture and more than half of that 80% is used for specifically for animal agriculture.<sup>94</sup> It is not surprising then, that in 2014, Jerry Brown, the governor of California, declared a state of emergency as 2013 had been the driest year on record in California.<sup>95</sup> This drought started in 2011 and continues to plague California today, as every year surpasses the previous as the "driest year on record."<sup>96</sup>

In order to help solve the problem, in April 2015, for the first time in the history of California, Governor Brown called for a mandatory 25 percent water use reduction in towns and cities throughout the state, to be enforced with fines when necessary.<sup>97</sup> In order to help their citizens reduce their water consumption, California.gov provides several ways to reduce their water use such as fixing leaks, filling the bathtub only halfway, recycling indoor water for plants, installing a high efficient toilet and aerators, washing full loads of laundry, turning off the water when brushing teeth, showering for only five minutes, planting drought resistant plants, installing drip irrigation, adjusting sprinkler heads and so on.<sup>98</sup> All of these solutions deal with

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<sup>92</sup> Ibid, 49.

<sup>93</sup> Ibid, 49.

<sup>94</sup> Jeff Guo, "Agriculture Is 80 Percent of Water Use in California. Why Aren't Farmers Being Forced to Cut Back?" *The Washington Post*, April 3, 2015; Heather Cooley in Andersen and Kuhn, *The Sustainability* 23.

<sup>95</sup> Andersen and Kuhn, *The Sustainability Secret* 21.

<sup>96</sup> Ibid.

<sup>97</sup> Ibid.

<sup>98</sup> "Conservation Lifestyle," Save Our Water, California.gov.

municipal water use, which in California, accounts for 14% of all water usage compared to animal agriculture's 56%.<sup>99</sup> Nowhere does the website recommend cutting back on animal products and interestingly enough, the California agriculture industry is actually exempt from the water use reduction requirements.<sup>100</sup>

With all these devastating environmental effects, one can assume that there would be a major resistance towards the animal agriculture industry from the Californian citizens as well as environmental groups in general. However, on large environmental organizations' websites, such as Greenpeace and the Sierra Club, there is very little, if any, information on the environmental consequences of animal agriculture. The majority of articles focus on coal and hydro-fracking.<sup>101</sup> Hydro-fracking has been getting a lot of attention recently, and rightly so, as the industry consumes a massive amount of about 140 billion gallons of water per year.<sup>102</sup> Yet, when that 140 billion gallons is compared to 34-76 trillion gallons of water consumed by the animal agriculture industry per year, it doesn't seem like hydro-fracking should be the main focus of Greenpeace's website.<sup>103</sup>

There was one article on Greenpeace's website about the industry with a few statistics listed around the scenario of everyone in the U.S. going vegetarian for just one day (based on a 2009 U.S. population).<sup>104</sup> The U.S. would save:

100 billion gallons of water, enough to supply all the homes in New England for almost 4 months; 1.5 billion pounds of crops otherwise fed to livestock, enough to feed the entire state of New Mexico for more than a year; 70 million gallons of gas - enough to fuel all the cars of Canada and Mexico combined with plenty of spare; 3

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<sup>99</sup> D.J. Waldie, "Drought by the Numbers: Where Does California Water Go?" KCET, February 10, 2014.

<sup>100</sup> Andersen and Kuhn, *The Sustainability Secret* 22.

<sup>101</sup> Greenpeace, Greenpeace website; Sierra, Sierra Club website.

<sup>102</sup> "Draft Plan to Study the Potential Impacts of Hydraulic Fracturing on Drinking Water Resources," U.S. EPA, February 2011.

<sup>103</sup> "Facts and Sources," *Cowspiracy* website.

<sup>104</sup> Mike Gaworecki, "The 'Breathtaking Effects' of Cutting Back on Meat," Greenpeace website, April 10, 2009.

million acres of land, an area more than twice the size of Delaware; 33 tons of antibiotics.<sup>105</sup>

Additionally, the article states that the U.S. would also prevent: “Greenhouse gas emissions equivalent to 1.2 million tons of CO<sub>2</sub>, as much as produced by all of France; 3 million tons of soil erosion and \$70 million in resulting economic damages; 4.5 million tons of animal excrement; almost 7 tons of ammonia.”<sup>106</sup> While admitting that eating less meat can greatly reduce a person’s carbon footprint, Greenpeace decided to no longer address the issues but instead directs the reader to several other websites to learn more.<sup>107</sup> Greenpeace was clearly aware of this information, but contrary to what one might assume, this topic would be not a priority of the organization.

Part of the reason for this is that environmental organizations don’t like to propose behavioral changes in fear that will decrease their donor base.<sup>108</sup> Michael Pollan agrees with this statement by blaming the lack of recognition on the fact that these organizations are membership based.<sup>109</sup> On Greenpeace’s website, I was able to find an article from 2009 that exemplified Pollan’s statement.<sup>110</sup> The 2009 article featured a disclosure directly under its title that read:

Here at Greenpeace we work a lot more to influence global warming policy than we do to promote individual lifestyle choices. But this recent HuffPo article, “The Breathtaking Effects of Cutting Back On Meat”; is an excellent reminder that our personal choices really do have an impact on the planet.<sup>111</sup>

Instead of environmental organizations, most attacks on the industry come from animal welfare groups instead of environmental groups, for the reasons listed above, but also because of

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<sup>105</sup> Ibid.

<sup>106</sup> Ibid.

<sup>107</sup> Ibid.

<sup>108</sup> Kip Andersen in “Eating as Though the Earth Matters - Cowspiracy Conversation,” Interview by Dale Lugenbehl, The Sierra Club website.

<sup>109</sup> Michael Pollan in Andersen and Kuhn, *The Sustainability Secret* 16.

<sup>110</sup> Mike Gaworecki, “The ‘Breathtaking Effects’ of Cutting Back on Meat.”

<sup>111</sup> Ibid.

the severely abusive practices. The animal welfare groups have been leading the fight against the animal agriculture through undercover investigations, court cases, commercials, newsletters and other methods. Smaller more local environmental groups are beginning to follow the animal welfare groups as more local lands are increasingly being degraded by CAFOs and other animal operations. Every year 11 billion animals are raised and killed in the U.S. for the meat egg and dairy industry.<sup>112</sup> The animals are bred to their biological limits in order to produce more meat per animal.<sup>113</sup> Breeding in this way causes several diseases including osteoporosis, lameness or the inability to walk along with several others that must be treated with antibiotics.<sup>114</sup> Animals, however, that are not stressed have been proven to be more productive than those that are.<sup>115</sup> When the animals don't have to spend all their energy on trying to maintain their health, they are able to reproduce and grow more quickly and successfully.<sup>116</sup> However, we see that there is a disconnect between productivity and welfare. Industries lose sight of welfare in order to improve productivity.

There are no federal laws in place to regulate the treatment of the billions of animals raised for food while on they remain on the farm.<sup>117</sup> The federal Humane Methods of Slaughter Act is in place to protect animals during the time of slaughter but has been cited by the United States Department of Agriculture to not fully protect farmed birds, which make up 86% of farmed animals, or fish, and those that are covered under the act, such as pork and cattle, are still not always slaughtered humanely.<sup>118</sup> Additionally, the United States Environmental Protection

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<sup>112</sup> The Humane Society of the United States, "An HSUS Report: The Welfare of Animals in the Meat, Egg, and Dairy Industries," The Humane Society Website updated 2017, 1.

<sup>113</sup> Ibid, 4.

<sup>114</sup> Ibid, 4.

<sup>115</sup> Ibid, 5.

<sup>116</sup> Ibid, 5.

<sup>117</sup> Ibid, 5.

<sup>118</sup> Ibid, 1 & 5.

Agency (EPA) has been sued several times for its lack in regulating and cleaning up manure spills.<sup>119</sup> Organizations such as the Humane Society of the United States, Center for Food Safety and the Sierra Club have sued the EPA in 2009 as well as 2011 for failure to regulate greenhouse gas emissions as well as ammonia in manure leaking from manure lagoons.<sup>120</sup> According to some citizens, the EPA is following in its typical business-as-usual manner by not regulating these emissions from CAFO operations.<sup>121</sup>

The severe negative consequences on the well-being of the animals involved in the industry gives purpose to the animal welfare organizations battle. Environmental organizations need to organize themselves in the same way to fight the practices occurring within the industry that degrade the earth. It would also be very beneficial for these two types of organizations to form a sort of coalition against the industry. The industry has so much power and money that it is able to not only support but to also control what regulations are in place to prevent any nuisances such as animal welfare, the environment or human health, from getting in the way of production. A coalition would strengthen the fight against power of the animal agriculture industry. The current Right-to-Farm and ag-gag legislation in place makes it very challenging for anyone to interrupt the operations of the industry by means of a lawsuit, trespassing, or negative media attention. The industry has strategically protected itself very well, which will be demonstrated in the following chapters.<sup>122</sup>

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<sup>119</sup> Katie Valentine, "Groups Sue EPA Over Failure to Regulate Emissions from Factory Farms," *Think Progress* website, January 30, 2015.

<sup>120</sup> *Ibid.*

<sup>121</sup> *Ibid.*

<sup>122</sup> *Ibid.*

## RIGHT-TO-FARM

All fifty states have adopted Right-to-Farm laws in order to preserve farmland and enable farmers to continue operating without disruption caused by nuisance cases.<sup>1</sup> The original forms of “right to farm” legislation implemented in Kansas, North Dakota and Montana served to protect farmers from nuisance lawsuits typically dealing with noise, odor and dust problems.<sup>2</sup> There are two types of nuisances; a public nuisance, which refers to an interference with community rights, and a private nuisance, which interferes with individual rights to the use and enjoy their own land.<sup>3</sup> In the beginning, farms received protection from nuisance lawsuits as long as they were in operation before the arrival of their neighbors complaining of the nuisance.<sup>4</sup> These original laws did not provide as much protection to the farmer as newer Right-to-Farm laws and, in some cases even constitutional amendments do.

Since the mid 1980’s several states have extended these laws to further protect farming operations with four new elements: statutes that limit the amount of time a person has to file a case; language that protects the expansion of farms, production and technologies; exceptions for farms that use qualifying management practices; and sections that protect farms from nuisance cases regardless of whether or not the farm or the neighbor occupied the land first.<sup>5</sup> First, statutes of limitation have been adopted by states such as Mississippi, Minnesota, Pennsylvania and Texas.<sup>6</sup> These statutes place a certain time frame in which citizens can file a nuisance case

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<sup>1</sup> Terrence J. Center, “Governments and Unconstitutional Takings: When Do Right-To-Farm Laws Go Too Far?” *Boston College Environmental Affairs Law Review* 33:1 (2006): 88.

<sup>2</sup> *Ibid.*

<sup>3</sup> Jennifer L. Beidel, “Pennsylvania’s Right-To-Farm Law: A Relief for Farmers or an Unconstitutional Taking?” *Penn State Law Review*, 2005,1.

<sup>4</sup> *Ibid.*, 2.

<sup>5</sup> Center, “Governments and Unconstitutional Takings,” 95; Beidel, “Pennsylvania’s Right-To-Farm Law,” 3.

<sup>6</sup> Center, “Governments and Unconstitutional Takings,” 98.

depending on which state they reside in.<sup>7</sup> Typically if an operation, the farm itself, or an activity has been in existence for at least one year prior to the time the nuisance case is filed, then the farm is protected, and neighbors cannot do anything to stop a certain activity.<sup>8</sup> In this way, neighbors' ability to file law suits has been diminished. In 2005, Jennifer Beidel wrote about how Pennsylvania is working to adopt a similar statute. She argue that the statute would disrupts a farm's protection from a nuisance case for one year if a statute of limitation was created that allowed for someone to file a case within one year of an animal facility making a "substantial change" in operation.<sup>9</sup> The law itself does not outline what a "substantial change" refers to.<sup>10</sup> However, in this case, Beidel feels sympathetic towards the farmer by noting that the farmers are left vulnerable for a year, while most opponents of the law take the stance that the neighbors only have one year to act upon a change.<sup>11</sup>

Second, states are proposing new language allowing for certain expansions to pre-existing farms is necessary in the eyes of supporters, because industrial mega-farms need to be able to make operational changes as new practices and technologies are adopted.<sup>12</sup> Most states that have adopted these clauses allow for a great amount of expansion, but the determined amount varies by state.<sup>13</sup> Minnesota allows for some expansion by allotting a percentage in which a farm can increase by, and Missouri provides specific guidelines on how much a farm can increase by.<sup>14</sup> Scholars have found that most states do not protect farms from completely

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<sup>7</sup> Ibid, 98.

<sup>8</sup> Ibid, 98-101.

<sup>9</sup> Beidel, "Pennsylvania's Right-To-Farm Law," 2.

<sup>10</sup> Pennsylvania Right to Farm Act (3 PA. STAT. §§ 951-957) (July 2009).

<sup>11</sup> Beidel, "Pennsylvania's Right-To-Farm Law," 2.

<sup>12</sup> Center, "Governments and Unconstitutional Takings," 101.

<sup>13</sup> Ibid, 102.

<sup>14</sup> Mo. Ann. Stat. 537.295 (1) (West 2000) & Minn. Stat. Ann. 561.19 subdivision. (1)(b), (2) (West 2000 Supp. 2005); Center, "Governments and Unconstitutional Takings," 103.

changing their production activities, but they do tend to favor more expansion over less.<sup>15</sup>

Typically with expansion comes more environmental consequences especially when more animals are added to a farm. In states with these clauses, farm operations are then protected from any cases that may result from an increase in pollution as a result of expansion.

Third, some Right-to-Farm laws will encourage good practices with “qualifying management practices” clauses.<sup>16</sup> Under these clauses, farmers are only under protection from nuisance cases if they carry out their operations using some sustainable and humane practices.<sup>17</sup> The definition of what practices qualify varies by state and some states, such as Michigan and New York, call in an outside committee to determine if the practices meet legislative qualification.<sup>18</sup> These statutes do not eliminate nuisance cases but help decrease the amount filed as better practices are less likely to aggregate neighbors, or spike the interests of animal welfare and environmental activists.<sup>19</sup> These clauses can actually benefit the environment as these practices can help clean up the surrounding area.

Lastly, favorable legislation toward the agriculture operations have been implemented to some Right-to-Farm laws with the “expansive immunity” statutes protecting farmers even if they did not occupy the land first.<sup>20</sup> The language in these statutes differs greatly from the language in the original “coming to nuisance” clauses as “expansive immunity” allows farmers to adopt activities that may be offensive to neighbors without a legitimate justification for doing so.<sup>21</sup> In states such as Iowa and Georgia, these Right-To-Farm amendments are driven by the growth of

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<sup>15</sup> Center, “Governments and Unconstitutional Takings: When Do Right-To-Farm Laws Go Too Far?” 101-107.

<sup>16</sup> *Ibid*, 107

<sup>17</sup> *Ibid*, 107

<sup>18</sup> *Ibid*, 109; Mich. Comp. Laws Ann. 286.471-474 (West 2003); N.Y. Agric. & Mkts. Law 308, 308-a (McKinney 2004).

<sup>19</sup> Center, “Governments and Unconstitutional Takings,” 108.

<sup>20</sup> *Ibid*, 114.

<sup>21</sup> *Ibid*, 116.

animal feeding operations and the need for farms to expand their physical facilities which is, typically not favored by neighbors and activists.<sup>22</sup> These types of clauses are particularly controversial as people lose the ability to stand up to the industry even if they have owned the land for decades prior to the farms arriving.

Additionally, some states' Right-To-Farm laws even require that if those who bring a nuisance case to the court lose, they must pay for the farmer's attorney fees.<sup>23</sup> Passages like these prevent citizens from filing nuisance suits, eliminating an interruption caused by a law suit. However, even if a nuisance case is filed in a state without this criterion, the cost of just one attorney's fees is so great that the cost of this alone can prevent people from filing.<sup>24</sup> Language additions, such as those listed above, demonstrate the political power that the industry has to influence legislation to strongly protect it from neighboring homes and industries.

Because of the new limitations proposed by several U.S. states, there has been a push against these laws by animal welfare and environmental groups. Since 2009, four court cases have been filed in Indiana challenging their Right-to-Farm law, when neighbors brought suit against farm operations for negligence and nuisance.<sup>25</sup> Indiana's Right-to-Farm law was passed in 1981 "to conserve, protect, and encourage the development and improvement of its agricultural land for the production of food and other agricultural products."<sup>26</sup> In Indiana, food producers are covered under the act if the operation has been operating continuously on the same site for at least one year before the case was filed; if no significant change occurs in the type of agricultural operation, which does not include changing from a crop to an animal production

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<sup>22</sup> Ibid, Pg. 114.

<sup>23</sup> David Bennett. "Right to Farm Laws Being Tweaked across Nation," Delta Farm Press, August 7, 2013.

<sup>24</sup> Ibid.

<sup>25</sup> Gary H. Baise and Anson M. Keller, "OFW Law Trial Team Wins Five Hog Nuisance Cases in Indiana," OFW Law website, February 10, 2016.

<sup>26</sup> *The Right to Farm Statute of 1981*, Indiana Public Law. 30-32-6-9.

facility, changing size or ownership; or if when the agricultural operation would not have been a nuisance when it started on the property.<sup>27</sup> The four cases were *Armstrong and Dungan vs. Gary Foulke and Maxwell Farms of Indiana Inc.*; *Neudecker vs. Maxwell Farms of Indiana Inc.*; *Pegg vs. Maxwell Foods*; and *Williams vs. Maxwell Farms of Indiana Inc.*, all of which were decided in favor of the farm industry.<sup>28</sup>

Under Indiana's strict law it is very hard for neighbors to provide a sufficient case to receive damages or force changes in farm operations when filing a suit as a nuisance case. In each of the four cases, the court found that the plaintiffs failed to provide sufficient evidence to prove negligence or nuisance in the farm location or in the ways in which the farms were operating.<sup>29</sup> All four cases were brought against Maxwell Farms of Indiana Inc. by neighbors seeking damages for nuisances caused by odors, manure management and farm location.<sup>30</sup>

Maxwell Farms of Indiana has quite a large presence in some parts of Indiana, currently owning three 4,800-sow operations along with three nurseries in just Randolph County alone.<sup>31</sup>

Throughout the state, Maxwell Farms of Indiana also has about 250,000 finishing spaces in with approximately one fourth of them located in Randolph County.<sup>32</sup> There is very limited information available on why the plaintiffs filed the cases other than complaints on the ways in which manure was handled, odors, and farm locations.<sup>33</sup>

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<sup>27</sup> Jacqui Fatka, "CAFO Gets Court Win," Feedstuffs Foodlink website, July, 23, 2014.

<sup>28</sup> Baise and Keller, "OFW Law Trial Team Wins Five Hog Nuisance Cases in Indiana."

<sup>29</sup> Fatka, "CAFO Gets Court Win."

<sup>30</sup> Indiana Farm Bureau, "Indiana Pork Producers Prevail in Right to Farm Lawsuits," *National Hog Farmer* website, July 18, 2014.

<sup>31</sup> Kevin Schulz, "Farmers, 'Right to Farm' is Your Friend," *National Hog Farmer* website, July 25, 2014.

<sup>32</sup> *Ibid.*

<sup>33</sup> T. Dowell, "Judge Upholds Constitutionality of Indiana's Right to Farm Law," *Sportsmen's and Animal Owners' Voting Alliance* website, July 29, 2014.

In the Armstrong and Dugan case, which was filed in 2009, the Armstrongs had moved into their home in 1985, and the Dugans in 1990.<sup>34</sup> Their neighbor, Gary Foulke, had a farm operation on his land since the early 1990's.<sup>35</sup> There had not been a problem with the farm operation since both families moved in until Maxwell Farms of Indiana began keeping hogs in Foulke's barn in June of 2007.<sup>36</sup> It has been noted that the other three cases were similar in their reasons for filing.<sup>37</sup>

A judge put out a summarizing statement in July 2014 saying that the elements in the right to farm statute had been met as the farms had been in existence for more than one year prior to the trial, there were no changes in operation circumstances and sufficient evidence was not provided to show that there had been nuisance.<sup>38</sup> Apparently, the change in operations on Gary Foulke's farm, upon Maxwell Farms turning into an industrial agricultural operation, was not seen as significant enough to create an additional nuisance.<sup>39</sup>

After the court cases, Joe Baldwin, the operations manager of Maxwell Farms of Indiana said that "Maxwell Farms is extremely pleased to have prevailed in the recent court actions brought against the company and some of its growers."<sup>40</sup> Industry supporters view the implementation of the law as continuing to protect agriculture from attacks meant to discredit the industry which "has an excellent environmental record."<sup>41</sup> But it has left neighbors and critics of farm practices with few remedies to hold the industry accountable for their actions which affect neighboring properties.

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<sup>34</sup> Ibid.

<sup>35</sup> Ibid.

<sup>36</sup> Ibid.

<sup>37</sup> Ibid.

<sup>38</sup> Baise and Keller, "OFW Law Trial Team Wins Five Hog Nuisance Cases in Indiana."

<sup>39</sup> T. Dowell, "Judge Upholds Constitutionality of Indiana's Right to Farm Law."

<sup>40</sup> Indiana Farm Bureau, "Indiana Pork Producers Prevail in Right to Farm Lawsuits."

<sup>41</sup> Ibid.

The devastating environmental consequences of farm operations typically are challenged within property rights battle, between the farmers and neighbors as the more environmentally disruptive an operation is, the less the value of the neighbors' properties become. The Hoosier Environmental Council (HEC) is Indiana's largest advocate for and information source on the environmental policies and issues in Indiana, fighting specifically for forests, lakes and groundwater.<sup>42</sup> As mentioned in the Literature Review, the HEC challenged the constitutionality of Indiana's Right-to-Farm act on behalf of two families in the Hendricks County area, in 2015.<sup>43</sup> The HEC is hoping that their lawsuit will have a successful outcome unlike the four cases previously mentioned.<sup>44</sup> The HEC is challenging the constitutionality of the law opposed to filing a lawsuit as a result of negligence or nuisance, as seen in the previous four cases. Neighbors have been complaining of a stench drifting from a farm housing up to 8,000 hogs, called 4/9 Livestock LLC, that has been making their homes "unlivable" since it opened in 2013.<sup>45</sup> Richard Himsel, one of the neighbors filing suit, lives less than a mile away from the hog farm.<sup>46</sup> 4/9 Livestock LLC is operated by Himsel's cousins who built a concentrated animal feeding operation next door to Himsel's house where they dispose of millions of gallons of feces and urine in the surrounding fields.<sup>47</sup> CAFOs of this size typically pollute the air with ammonia, hydrogen sulfide, and methane, diminishing the quality of life for Himsel and his neighbors.<sup>48</sup>

Himsel told the *IndyStar* newspaper that the 38,000 gallons of manure produced daily on the farm have created such a foul stench that his wife has had to move out due to terrible

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<sup>42</sup> "About the Hoosier Environmental Council," Hoosier Environmental Council website.

<sup>43</sup> Rick Callahan, "Environmental Group Targets Indiana's Right-to-Farm Laws," *The Washington Times* website, October 7, 2015.

<sup>44</sup> *Ibid.*

<sup>45</sup> *Ibid.*

<sup>46</sup> Kristine Guerra, "Lawsuit Raises Stink Over Indiana's Right to Farm Laws," *IndyStar* website, October 7, 2015.

<sup>47</sup> *Ibid.*

<sup>48</sup> *Ibid.*

headaches induced by the smells.<sup>49</sup> Himsel himself tries to avoid his home, where he and his children were both born and raised, as much as possible, and cannot step outside without being repulsed by the smell to the point of gagging.<sup>50</sup> Himsel has tried to sell the house to be with his wife and children, who don't visit anymore because of the odor, but no one will buy the house because of the poor quality of life.<sup>51</sup> He has been told has made his house "unlivable."<sup>52</sup> As a result, Himsel argues that his property rights have been severely damaged by the farm operation.

The second family suing 4/9 Livestock are Robert and Susan Lannon.<sup>53</sup> The Lannons have been less vocal on the matter but are also suffering from the pollution produced by the nearby CAFO. The Lannons have owned their property since 1971 and Himsel has owned his twenty-six-acre farm since 1994.<sup>54</sup> One morning, both families woke up to a massive feed lot with no way of protecting themselves from the results of the operation.<sup>55</sup> Instead of suing Livestock LLC for nuisance and negligence, the HEC, Himsel and the Lannons are challenging parts of the law which "unjustly allows massive, factory-style farms to decimate local quality of life."<sup>56</sup> The fight of these families is part of a bigger movement demonstrating how the Right to Farm laws only protect the interests of large corporate farms.<sup>57</sup>

The HEC has said that their main goal is to get Himsel's and the Lannons' "lives back" so that they can enjoy their property as much as everyone else does.<sup>58</sup> By doing so, the HEC aims

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<sup>49</sup> Rick Callahan, "Environmental Group Targets Indiana's Right-to-Farm Laws"; Kristine Guerra, "Lawsuit Raises Stink Over Indiana's Right to Farm Laws."

<sup>50</sup> Kristine Guerra, "Lawsuit Raises Stink Over Indiana's Right to Farm Laws."

<sup>51</sup> Ibid.

<sup>52</sup> Ibid.

<sup>53</sup> Ibid.

<sup>54</sup> Jeff Newman, "Lawsuit takes on Indiana's Right-to-Farm Laws," *Indiana Business Journal* website, October 7, 2015.

<sup>55</sup> Kristine Guerra, "Lawsuit Raises Stink Over Indiana's Right to Farm Laws."

<sup>56</sup> James Gherardi, "Lawsuit Aims to Help Families Living Near Massive Hendricks County Farm," *FOX 59* website, October 7, 2015.

<sup>57</sup> Kristine Guerra, "Lawsuit Raises Stink Over Indiana's Right to Farm Laws."

<sup>58</sup> James Gherardi, "Lawsuit Aims to Help Families Living Near Massive Hendricks County Farm."

to clean up the environment in the area, especially the air quality. It is interesting to see an environmental group advocating for property rights as this is an area in which environmental rights are typically challenged. The HEC is using this property rights case in order “to challenge the constitutionality of Indiana’s ‘Right to Farm’ law through the legal system.”<sup>59</sup> There has not yet been a result of this case, but if it ends up with a result similar to the last four cases, it is not likely that Himsel or the Lannons will see themselves with a better quality of life in the near future.<sup>60</sup> The HEC is prepared to pursue the case “all the way up the legal ladder” if it is necessary.<sup>61</sup> However, due to the political power of the industry, it is not very likely to succeed as past cases in Indiana have ruled in favor of the industry because the law grants farmers the right to use “generally accepted” practices which are commonly used by large corporate farms such as the ones the HEC, Himsel and the Lannons are up against.<sup>62</sup>

The challenge of constitutionality by the HEC, Himsel and the Lannons demonstrates how broad the Right-to-Farm implications actually are. As a result of lawsuits, such as those occurring in Indiana, there has been a movement throughout the United States to further protect the animal agriculture industry by making the Right-to-Farm a constitutional right. A constitutional Right-to-Farm amendment would prevent the composition of future laws that could threaten the industry by means such as, creating pollution allotments or setting a maximum number of animals a farm can confine.<sup>63</sup> The industry and its supporters portray their actions as efforts to gain protection from “the attacks of zealot animal-rights and environmental groups opposed to modern farming and livestock-rearing practices.”<sup>64</sup>

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<sup>59</sup> Jeff Newman, “Lawsuit Takes on Indiana’s Right-to-Farm Laws.”

<sup>60</sup> Rick Callahan, “Environmental Group Targets Indiana’s Right-to-Farm Laws.”

<sup>61</sup> Jeff Newman, “Lawsuit takes on Indiana’s Right-to-Farm Laws.”

<sup>62</sup> Ibid.

<sup>63</sup> Kristofor Husted, “‘Right to Farm’ Amendment Upheld by State Supreme Court,” KBIA, June 30, 2015.

<sup>64</sup> Ryan Sabalow, “Indiana Senate Kills ‘Right to Farm’ amendment,” *The IndyStar*, February 24, 2015.

In 2015, Republican Indiana State Senator Brent Steele, authored a bill that would put a potential Right-to-Farm amendment on Indiana's ballot.<sup>65</sup> Steele is viewed by his opponents as having worked hard throughout his career to protect businesses operations and profits.<sup>66</sup> Several organizations such as Pfizer, Indiana Pork Producers, Indiana Deer and Elk Farmers, Indiana Farm Bureau and Bluegrass Barbecue have donated to his campaign over the course of his career.<sup>67</sup> However, the Indiana Senate vetoed the proposed amendment before it could go to a public vote.<sup>68</sup> The Senate voted 22-28 to kill the amendment as they feared it would prevent legislation from being passed to ensure mega-farms are using animal welfare practices as well as to prevent an excess of manure and pollutants.<sup>69</sup>

The language for Indiana's, as well as several other states proposing a Right-to-Farm amendment, was most likely derived from an example written by the American Legislative Exchange Council (ALEC). ALEC has constructed a model Right-to-Farm bill for states to use as a reference when trying to make the right-to-farm a constitutional amendment. The model bill calls for protection for all "farm operations," including and is not limited to:

1. *Marketing products at roadside stands or farm markets.*
2. *The generation of noise, odors, dust, fumes, and occasional conditions.*
3. *The operation of equipment and machinery necessary for a farm, including but not limited to irrigation and drainage systems and pumps and on-farm grain dryers, and the movement of vehicles, machinery, equipment, and farm products and associated inputs necessary for farm operations on the roadway as authorized by applicable motor vehicle laws.*
4. *Field preparation and ground and aerial seeding and spraying.*
5. *The application of chemical fertilizers or organic materials, conditioners, liming materials, or pesticides.*
6. *Use of alternative pest management techniques.*

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<sup>65</sup> Ibid.

<sup>66</sup> IARA Admin, "Brent Steele: The Indiana Legislator who Works Tirelessly to Make Lives Worse for Animals," Indiana Animal Rights Alliance website, March 3, 2016, Accessed January 27, 2017.

<sup>67</sup> Ibid.

<sup>68</sup> Sabalow, "Indiana Senate Kills 'Right to Farm' amendment."

<sup>69</sup> Ibid.

7. *The fencing, feeding, watering, sheltering, transportation, treatment, use, handling, and care of farm animals.*
8. *The management, storage, transport, application and utilization of farm by-products, including manure or agricultural wastes.*
9. *The conversion from a farm operation activity to other farm operation activities.*
10. *The employment and use of labor.*<sup>70</sup>

Based on this wide list of operations, it can be very challenging for anyone to bring a case against the animal agriculture industry.

North Dakota, in 2012, was the first state to add a “Right to Farm and Ranch” amendment to their constitution, authored after ALEC’s model bill.<sup>71</sup> There was not much debate in North Dakota over the amendment as it passed in a public vote by a two thirds majority.<sup>72</sup> Farmers and ranchers in the state feared that new laws would be pushed through by animal rights activists to hinder farm operations.<sup>73</sup> Jeffrey Missling, the vice president and CEO of the North Dakota Farm Bureau, said the push to pass this amendment came from North Dakota citizens wanting to prevent animal rights activists coming into North Dakota and “wreaking havoc” on agricultural operations as he claims they did in “Arizona and California and Colorado and beyond.”<sup>74</sup> In terms of “wreaking havoc,” Missling was referring to efforts being made by animal-rights organizations to pass laws restricting gestation crates, and to mandate the size of chicken cages.<sup>75</sup> North Dakota felt that there was no need to wait until a conflict arose before enacting the amendment into their constitution to ensure the protection of animal agriculture

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<sup>70</sup> American Legislative Exchange Council, “Right to Farm Act,” ALEC website, January 1, 1996.

<sup>71</sup> Logan Layden, “Uncertainty Surrounds Right to Farm Even in States That Adopted It Years Ago,” *Oklahoma StateImpact* website, October 13, 2016.

<sup>72</sup> Logan Layden, “Relating to the Practices of Farming and Ranching - Precincts Reporting: 407/426,” *The Bismarck Tribune*, November 7, 2012.

<sup>73</sup> *Ibid.*

<sup>74</sup> Layden, “Uncertainty...”

<sup>75</sup> *Ibid.*

industry.<sup>76</sup> Since enacting it, North Dakota has not seen any cases brought up in the legal system.<sup>77</sup>

Before the amendment passed, there had been discussion in North Dakota as to why agriculture should be the only industry protected under a constitutional amendment.<sup>78</sup> Proponents of the amendment argued that farming and ranching “always will be [a] special element in the identity of the state’s residents” so it was imperative that it is protected.<sup>79</sup> Farming and ranching were, and most likely still are today, seen as critical elements in the state’s heritage and economic future; the majority of citizens felt that the amendment would guarantee the future of farming and ranching in North Dakota, which “is pretty hard to argue against.”<sup>80</sup>

Opponents of the amendment feared that the state would see an increase in the amount foreign-owned corporate farms that would not respect the local people or the surrounding environment, such as the Chinese-owned Smithfield Foods, the largest pork processing company in the U.S.<sup>81</sup> Other opponents spoke out by saying that the amendment wouldn’t actually protect farmers or ranchers, but that it would instead “infringe upon the private property rights and food stewardship practices of farmers and ranchers” on smaller farms and end up protecting large industrial industry rights and practices.<sup>82</sup> Opponents also argued that the amendment was brought about and put to vote before there was a sufficient amount of time provided for the public to discuss the matter and even think about it.<sup>83</sup>

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<sup>76</sup> Ibid.

<sup>77</sup> Ibid.

<sup>78</sup> “Measure 3 Speaks to N.D. Soul,” *The Bismarck Tribune*, October 17, 2012.

<sup>79</sup> Ibid.

<sup>80</sup> Ibid.

<sup>81</sup> Layden, “Uncertainty...”; Stephanie Mercier, “Foreign Ownership in the U.S. Agricultural Sector,” *Farm Journal Foundation* as seen on Ag-Web website, August 6, 2016.

<sup>82</sup> Link Reinhiller, “Measure 3 Would Infringe on Rights,” *The Bismarck Tribune*, September 29, 2012; “Right to Farm, Amendment 1... Pro and Con,” *Richmond News* online edition, 2012.

<sup>83</sup> Reinhiller, “Measure 3 Would Infringe on Rights.”

In 2014, Missouri’s Right-to-Farm amendment passed with much more controversy. Before the amendment was passed Missouri had seen a dramatic increase in the size of farms, as from 1982 to 2007, the number of hogs in the state stayed roughly the same while the number of farms dropped by nearly 99%.<sup>84</sup> Additionally, in 2013, a Missouri hog farm lost an \$11 million-dollar odor nuisance case to a class of plaintiffs which, together with the farm size increase, caused for a large push for stricter agriculture protection legislation.<sup>85</sup>

The amendment was inspired in reaction to a 2010 measure which implemented stricter regulations on commercial dog breeders.<sup>86</sup> The amendment gained support from those who wanted to keep the “Missouri farming tradition safe” by providing farmers protection so from future laws that could threaten their future operations, such as the 2010 measure on animal breeding.<sup>87</sup> Blake Hurst, the president of the Missouri Farm Bureau Federation, in 2014, felt that agriculture throughout the country was under attack by outside groups “willing to spend millions to advance their agendas” and that it was important for Missouri to protect farmers from these attacks.<sup>88</sup> Supporters believe that because “fewer people” are connected to farms” it is easier for opponents, such as the Humane Society, to get regulations passed that prevent farms from operating in a necessary matter.<sup>89</sup> As a result, Missouri Farmers Care, a group consisting of forty agribusinesses such as Monsanto and Cargill, pushed strongly to get the amendment passed.<sup>90</sup>

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<sup>84</sup> Angela Kennedy, "Sustainable Constitutional Growth? The 'Right to Farm' and Missouri's Review of Constitutional Amendments," *Missouri Law Review* (Winter 2016): 1.

<sup>85</sup> *Ibid.*, 2.

<sup>86</sup> “Is a ‘Right to Farm’ Needed in Missouri?” *The Kansas City Star*, June 13, 2014; “Opponents Plan Rally Missouri ‘Right to Farm’ amendment,” *The Kansas City Star*, June 19, 2014.

<sup>87</sup> Kevin McDermott, “Supporters, Opponents of ‘Right to Farm’ Referendum Have Raised More than \$1.5M,” *The St. Louis Post-Dispatch*, August 1, 2014.

<sup>88</sup> “Is a ‘Right to Farm’ Needed in Missouri?” *The Kansas City Star*.

<sup>89</sup> *Ibid.*

<sup>90</sup> Kira Lerner, “How Corporate Agribusiness is Quietly Seizing the Heartland with ‘Right to Farm’ Laws,” Think Progress website, March 26, 2015.

Before the amendment passed, Jeff Jones, a fourth generation farmer, was worried about what effect a hog farm moving only a half mile away from his home might have on his family farm.<sup>91</sup> Before the farm moved in, Jones told *Harvest Public Media* that the facility would house more than 10,000 hogs and that “fertilizer will be spread on the land, which will be uphill,” so when it rains, “there’s going to be concerns about that coming down here and being in the water and the creek and the ditches.”<sup>92</sup> Jones also expressed concern for the health of his family and his own livestock with the new hog operation moving in.<sup>93</sup> He feared that the passing of the amendment would make it much harder for smaller farmers like himself to hold larger operations accountable for their environmental destruction, while also making the state of Missouri much more appealing to large farm companies with lots of money.<sup>94</sup>

The debate over the Missouri amendment became “one of the most expensive campaigns ever waged over a state constitutional measure.”<sup>95</sup> It is likely that the debate in Missouri was more intense than North Dakota’s because Missouri produces much more cattle and pork than North Dakota does.<sup>96</sup> Missouri is one of the top ten cattle and pork producing states, while North Dakota is not in the top ten for either category.<sup>97</sup> Additionally, in the amendment battle in Missouri, the Humane Society teamed up with Missouri’s Food For America, a coalition of small local farmers, environmentalists such as the Sierra Club, animal welfare groups, food safety advocates and local citizens.<sup>98</sup> Missouri’s Food For America launched an advertising effort

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<sup>91</sup> Kristofor Husted, “Missouri Constitutional Amendment Pits Farmer Against Farmer.” *Harvest Public Media* website, July 28, 2014.

<sup>92</sup> Jones in Kristofor Husted, “Missouri Constitutional Amendment Pits Farmer Against Farmer.”

<sup>93</sup> Kristofor Husted, “Missouri Constitutional Amendment Pits Farmer Against Farmer.”

<sup>94</sup> *Ibid.*

<sup>95</sup> McDermott, “Supporters, Opponents of ‘Right to Farm’ Referendum Have Raised More Than \$1.5M.”

<sup>96</sup> Rob Cook, “Cattle Inventory: Ranking of all 50 States,” *Drovers* website, May 22, 2015; Ben Potter, “Bringing Home the Bacon: Top Ten Pork Producing States,” *Agweb.com*, September 3, 2015.

<sup>97</sup> Cook, “Cattle Inventory”; Potter, “Bringing Home the Bacon.”

<sup>98</sup> “Missourians Urged to Vote No on “Right to Farm” Measure,” *The Humane Society* website, June 10, 2014.

against the state measure, something which did not happen in North Dakota.<sup>99</sup> This joint coalition was able to gain the attention of citizens to start a debate over the amendment making the topic much more controversial.

Sierra Club member voiced her opposition for the amendment by saying that it ““would establish a legal environment where agribusiness - or, really, any farm or ranching business - could choose to sue in courts, with a very increased likelihood of success to overturn our existing, or future, laws and regulations.””<sup>100</sup> She emphasized that her concerns echoed those of the Sierra Club especially with regards to the fact that the passing of the amendment could cause the government to overturn the Missouri Clean Water Act on the grounds that the law violates farmers’ “right to farm”.<sup>101</sup>

Additionally the advertisements echoed all the groups shared concern for the small farmer, as the number of foreign corporate farms were increasing in Missouri.<sup>102</sup> The coalition believed that the amendment would not protect Missouri’s “right to farm” but would protect “China’s ‘right to farm’ in Missouri.”<sup>103</sup> Wes Shoemyer, a former Missouri state legislator and farmer, was one of the biggest opponents to the Missouri amendment for the same reason.<sup>104</sup> Shoemyer predicted, similarly to Jones, that the passing of the amendment would lead to an

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<sup>99</sup> David A. Lieb, “Agriculture Industry Seeks to Create Right to Farm,” *The St. Louis Post-Dispatch*, July 17, 2014.

<sup>100</sup> “Opponents Proposed: ‘Right to Farm’ Amendment Not as Good as it Sounds,” *News Tribune* website, June 20, 2014.

<sup>101</sup> *Ibid.*

<sup>102</sup> Kevin McDermott, “Is Missouri’s Agricultural Law Being Rewritten in Hong Kong?” *The St. Louis Post-Dispatch* website, May 24, 2015.

<sup>103</sup> “Vote No on Highway Sales Tax and Right to Farm on August 5,” *The Sierra Club* website, June 2, 2014; “Missourians Urged to Vote No on “Right to Farm” Measure,” *The Humane Society* website; “Vote No on Amendment One!” *Missouri’s Food for America* YouTube channel, July 26, 2014.

<sup>104</sup> Layden, “Uncertainty...”; Angela Kennedy, “Sustainable constitutional growth? the ‘right to farm’ and Missouri’s review of constitutional amendments,” *Missouri Law Review* website (Winter 2016): 1.

increasing number of foreign-owned farms, which proved to be true as the numbers have continued to increase in Missouri since 2014.<sup>105</sup>

One of the organizations fighting to protect “Missouri’s Right to Farm” was the Missouri Rural Crisis Center founded in 1985.<sup>106</sup> The Rural Crisis Center is a rural and farm membership organization serving “to preserve family farms, promote stewardship of the land and environmental integrity and strive for economic and social justice by building unity and mutual understanding among diverse groups.”<sup>107</sup> The group advocates for family farms and rural communities.<sup>108</sup> The Rural Crisis Center was acting on similar motives as the massive advertising coalition.<sup>109</sup> They also feared that the amendment would negate even Missouri’s most modest regulations on massive CAFO operations which could result in an excess amount of pollution in waterways and air due to the large amount of fertilizer use.<sup>110</sup> The Rural Crisis Center expressed concern before the vote that the amendment would result in a corporate takeover that “guarantees the rights of corporations to write their own rules and bypass democracy and local control.”<sup>111</sup>

Other opponents, concerned for their health, feared that the passing of the amendment would cause antibiotic usage to rapidly increase as large farms tend to use antibiotics more regularly and in larger quantities compared to small farms.<sup>112</sup> The increase in antibiotic use can cause the bacteria to evolve to become drug-resistant, making a lot of people worried about their own health.<sup>113</sup> Citizens were also nervous about future unknown agricultural changes involving

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<sup>105</sup> Layden, “Uncertainty...”

<sup>106</sup> “About,” The Missouri Rural Crisis Center website.

<sup>107</sup> Ibid.

<sup>108</sup> Ibid.

<sup>109</sup> Ibid.

<sup>110</sup> “Farming Amendment Will Hurt Rural Missourians,” *St. Louis Post-Dispatch*, August 11, 2014.

<sup>111</sup> “Right to Farm Opponents Weigh Recount Request,” *The Kansas City Star*, August 6, 2014.

<sup>112</sup> “Missouri ‘Right to Farm’ Amendment Could be Used as a Right to Harm,” *The Kansas City Star* website, July 29, 2014.

<sup>113</sup> Ibid.

genetically modified foods and CAFOs which would be protected under the amendment.<sup>114</sup> Some people were so worried for their health with the passing of the amendment that they compared it to passing an amendment that allowed the tobacco industry to conduct business however they would like to in the 1970's.<sup>115</sup>

The big uncertainty before citizens cast their votes was that no one knew how the courts would respond to the amendment in the future. It was understood by both sides that every future regulation most likely would end up in court, but the language was vague on how the amendment would be defined by the courts.<sup>116</sup> Supporters tried to undercut opposition by arguing that, due to the language, reasonable regulations could still be passed under the amendment.<sup>117</sup> This has yet to be proved.

The amendment passed in legislature and then passed by a slim majority in the public vote in August of 2014.<sup>118</sup> In October of the same year, Wes Shoemyer, Darvin Bantlage and Richard Oswald filed a case against the passing of the amendment because the language on the ballot was “unfair, insufficient, deceptive and misleading.”<sup>119</sup> The ballot stated that the new amendment would grant rights to “Missouri citizens” when it actually only provides additional benefits to farmers and ranchers.<sup>120</sup> Shoemyer, Bantlage and Oswald made clear that they were not challenging the amendment itself but instead the way in which the act of adopting the amendment was carried out with deceiving language.<sup>121</sup> But the court ruled that the ballot

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<sup>114</sup> Ibid.

<sup>115</sup> “Missouri ‘Right to Farm’ Amendment Could be Used as a Right to Harm,” *The Kansas City Star* website.

<sup>116</sup> “Is a ‘Right to Farm’ Needed in Missouri?” *The Kansas City Star*.

<sup>117</sup> Ibid.

<sup>118</sup> Case Summary for Wes Shoemyer, *Darvin Bantlage and Richard Oswald v. Missouri Secretary of State Jason Kander Cole County*, SC94516, 2014.

<sup>119</sup> Ibid.

<sup>120</sup> Ibid.

<sup>121</sup> Ibid.

language was “sufficient and fair” and that there was no irregularity in the election,” and with that being said, the amendment remained valid.<sup>122</sup>

The only court cases involving the amendment so far has been to decide if the Right-to-Farm law protects the production of marijuana, which it was determined that it does not.<sup>123</sup> However, small farm operators fear the amendment will completely alter the agricultural landscape of the Midwest.<sup>124</sup> The Missouri Rural Crisis Center and the coalition of organizations under Missouri Food for America predict that small-scale farmers will suffer under the new amendment as large-scale industrial farms will gain more rights and abilities to carry out operations as they wish.<sup>125</sup>

Carolyn Orr, the executive secretary of the State Agriculture and Rural Leaders, predicted that if the amendment passed in Missouri, other state legislatures would look at Missouri’s amendment much more closely and seriously.<sup>126</sup> The State Agriculture and Rural Leaders organization is composed of elected state and local legislators dedicated to “promoting and fostering cooperation, leadership and educational opportunities” on technology, processes and policies around the agricultural and rural communities.<sup>127</sup> The organization is supported by big agricultural companies encouraging the passing of these amendments throughout the country.<sup>128</sup>

Orr was correct in her guess, as Oklahoma soon followed with a vote on a “right to farm” amendment in 2016.<sup>129</sup> While the amendment was defeated in Oklahoma, the proposed

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<sup>122</sup> Wes Shoemyer, *Darvin Bentlage and Richard Oswald v. Missouri Secretary of State Jason Kander Cole County*, SC94516, 2014. <http://www.courts.mo.gov/file.jsp?id=87897>

<sup>123</sup> “Judge: Missouri Right-to-Farm Doesn’t Cover Marijuana,” *The St. Louis Post-Dispatch* website, September 2, 2015.

<sup>124</sup> Kristofor Husted, “Missouri Constitutional Amendment Pits Farmer Against Farmer.”

<sup>125</sup> *Ibid.*

<sup>126</sup> Lieb, “Agriculture Industry Seeks to Create Right to Farm.”

<sup>127</sup> “Ag and Rural Leaders,” State and Ag and Rural Leaders website.”

<sup>128</sup> *Ibid.*

<sup>129</sup> “Oklahoma Right to Farm Amendment, State Question 777 (2016),” Ballotpedia website.

amendment demonstrates the trend in making the Right-to-Farm a constitutional amendment throughout the U.S.<sup>130</sup> As in both Missouri and North Dakota, support for the amendment came from agricultural organizations while opposition came from small farmers, as well as, environmental and animal welfare organizations. The defeat is likely due to the increased number of environmental groups that actively fought against the passing of the amendment. The environmental organization Save the Illinois River, along with Oklahoma State Representative Jason Dunnington, filed a lawsuit against the Oklahoma State Election Board and Attorney General Scott Pruitt on the grounds that the potential amendment would “require Oklahoma courts to strike down any legislation that affects farming, ranching and the use of livestock production practices, ranching practices, and agricultural technology.”<sup>131</sup> Save the Illinois River serves to preserve and protect the Illinois River and its tributaries.<sup>132</sup> Save the Illinois River was able to influence individuals and organizations involved in the case, that the amendment would give industrial farms the ability to pollute Oklahoma waters without regulation.<sup>133</sup>

Other organizations like the Kirkpatrick Foundation worked very hard to show Oklahomans that if the amendment passed, it would be likely that foreign owned farms would benefit, and as a result, their numbers would increase.<sup>134</sup> More foreign owned farms could bring greater environmental degradation and a decrease in animal welfare regulation, an issue raised in other states such as Missouri.<sup>135</sup> This fear was realistic as Oklahoma experienced a 475% increase in foreign owned farms between 2004 and 2014.<sup>136</sup> The KirkPatrick foundation also

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<sup>130</sup> Ibid.

<sup>131</sup> “Oklahoma Farm Bureau Condemns Lawsuit Against Right to Farm Amendment,” Protect the Harvest website, March 2, 2016.

<sup>132</sup> “STIR’s Mission,” Save the Illinois River website.

<sup>133</sup> “Oklahoma Farm Bureau Condemns Lawsuit Against Right to Farm Amendment,” Protect the Harvest website.

<sup>134</sup> “Right to Farm or the Right to Harm,” The Kirkpatrick Foundation website.

<sup>135</sup> Ibid.

<sup>136</sup> “The Facts about Foreign Involvement in Oklahoma Agriculture,” *Know Before You Vote Series*, The Kirkpatrick Foundation website.

emphasized that the constitutional amendment would force Oklahoma to grant the Right-to-Farm the same power as all other constitutional rights valued so deeply in American democracy.<sup>137</sup>

Because of the value associated with constitutional rights, almost all laws proposed against those rights are struck down.<sup>138</sup>

The Oklahoma right to farm amendment vote had one of the “most dramatic shifts” from pro-amendment to anti-amendment, and had one of the highest undecided percentages at 14%.<sup>139</sup>

Many Republicans felt split on the issue as they generally tend to support individual rights and property rights, but they felt that the right to farm would be supporting group rights instead.<sup>140</sup>

The Oklahoma vote against the amendment was a very unlikely outcome for the conservative state. Upon looking at what counties within the state voted in favor and against the amendment, there was a clear geographic divide on voters’ attitudes.<sup>141</sup> Oklahoma’s densest counties voted against the amendment, and there was also a clear divide between the western and eastern parts of the state.<sup>142</sup> Strongest support for the amendment was found in Oklahoma’s rural counties to the west where most agriculture occurs. It was also noted that most of the counties against the amendment were in “lake country” where water quality issues from runoff have been a major issue.<sup>143</sup> Luckily, with the vote against the amendment, Oklahoma has saved its ability to prevent more water quality issues resulting from animal agriculture.

These constitutional amendments, modeled after the ALEC bill, demonstrate the animal agriculture industry’s power to author, and pass legislation necessary to protect and grant more

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<sup>137</sup> “State Question 777 Analysis,” The Kirkpatrick Foundation website.

<sup>138</sup> Ibid.

<sup>139</sup> Joe Wertz, “Support for State Question on Farming Rights Seems to be Slipping, Poll Suggests,” *StateImpact* website, October 24, 2016.

<sup>140</sup> Ibid.

<sup>141</sup> Joe Wertz and Logan Layden, “Oklahoma Divided: How Geography Influenced the Vote on ‘Right-to-Farm,’” *StateImpact* website, November 10, 2016.

<sup>142</sup> Ibid.

<sup>143</sup> Bob Doucette in Wertz and Layden, “Oklahoma Divided.”

power to the industry.<sup>144</sup> ALEC has been a key player in the nationwide movement to protect the animal agriculture industry from “modern agriculture” opponents, especially the Humane Society, but also other animal welfare and environmental groups.<sup>145</sup> It is important for animal welfare and environmental organizations to team up to try to prevent these laws and amendments from being passed. As seen in the cases of Missouri and Oklahoma, more involvement by these organizations can produce success. It is imperative that environmental organizations become more involved to ensure that all practices used by the industry are sustainable.

The power of the industry is determined by the legislation protecting it, whether it be Right-to-Farm or ag-gag legislation. The next chapter will explore the detrimental effects ag-gag legislation has on protecting the animal agriculture industry by means of allowing it to carry out any practices deemed as necessary towards their operations regardless of the effects these practices may have on the environment, as well as animals and human health.

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<sup>144</sup> Kip Andersen, and Keegan Kuhn, *The Sustainability Secret: Rethinking Our Diet to Transform the World* (San Rafael, CA: Earth Aware Editions, 2015), 98-100.

<sup>145</sup> Andersen and Kuhn, *The Sustainability* 98-100.

## “AG-GAG”

Beginning in 1990, with the passing of Kansas’ Animal and Field Crop and Research Facilities Act, also known as the “Kansas Act”, the majority of U.S. states have introduced some sort of ag-gag bill to prevent whistleblowing efforts from exposing specific activities involved with the animal agriculture industry.<sup>1</sup> Kansas became the first ag-gag state with their law criminalizing the act of damaging or destroying an animal facility, or property within an animal facility without the consent of the owner or with intent to damage the enterprise carried out at the animal facility.<sup>2</sup> The act makes it illegal for a person to exercise control over an animal or property of the facility, and to enter a facility that is not open to the public for the purpose of taking pictures or videos.<sup>3</sup> Violating this law will result in a class A misdemeanor as well as one year in prison and a fine up to \$2,500.<sup>4</sup>

Hog farmers began constructing massive hog facilities, capable of producing 300,000 hogs a year, in Kansas, Colorado, Nebraska and Oklahoma in the early 1980’s.<sup>5</sup> These large operations were very profitable as they allowed farmers to produce more food with lower input costs.<sup>6</sup> However, these animal facilities were typically met with great opposition from neighbors as they tended to pollute waterways and air as well as decrease surrounding property values.<sup>7</sup>

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<sup>1</sup> American Society for the Prevention of Cruelty to Animals, “What is Ag-Gag Legislation?” *ASPCA* website, updated 2017.

<sup>2</sup> Jeff Zalesin, “An Overview of ‘Ag-Gag’ Laws,” *Reporters Committee* website, Summer 2013; K. S. A. 47-1825 - 1830, (Kan, 1990), Michigan State University Legal and Historical Animal Center website, Updated November 2016.

<sup>3</sup> K. S. A. 47-1825 - 1830, (Kan, 1990), Michigan State University Legal and Historical Animal Center website.

<sup>4</sup> K. S. A. 47-1825 - 1830, (Kan, 1990), Michigan State University Legal and Historical Animal Center website; Ave Mince-Didler, “Kansas Misdemeanor Crimes by Class and Sentences,” *Criminal Defense Lawyer* website.

<sup>5</sup> Sam Robinson, “More States Considering ‘Ag-Gag’ Farm Protection Bills,” *Investigate Midwest* website, March 14, 2013.

<sup>6</sup> Robinson, “More States Considering ‘Ag-Gag’ Farm Protection Bills.”

<sup>7</sup> *Ibid.*

Around this time, animal welfare organizations began questioning how well the animals were being treated in these facilities.<sup>8</sup> As a result, the initial construction of these properties were often met with protests and vandalism.<sup>9</sup> In some cases, protestors would sneak into the facilities after hours and steal animals from the site.<sup>10</sup> In response to the theft and vandalism, the industry pushed for laws to protect them from trespassers.<sup>11</sup> The result, “the Kansas Act” which then served as a model bill for a few other states.<sup>12</sup>

One year later, both Montana and North Dakota passed their own ag-gag laws.<sup>13</sup> Montana’s Farm Animal and Research Facilities Protection Act, known as the “Montana Act,” prohibits anyone from interfering with the operations of an animal facility by means of damaging the property or trespassing for the purpose of recording videos or taking pictures in order to deface the operations of an animal facility.<sup>14</sup> If someone is found guilty of breaking this law, the individual is responsible for paying three times the damage cost as well as all the court costs and “reasonable” attorney fees.<sup>15</sup> North Dakota’s Animal Research Facility Damage Act is similar as it prohibits anyone from entering an animal facility without permission from the owner, as well as trying to use or succeeding in using any sort of camera device to take a photo or video.<sup>16</sup> Violators of this law face 30 days of jail time.<sup>17</sup> North Dakota’s law is likely to criminalize a broader range of individuals as it does not contain any language specifying the intent of the

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<sup>8</sup> Ibid.

<sup>9</sup> Ibid.

<sup>10</sup> Ibid.

<sup>11</sup> Ibid.

<sup>12</sup> Ibid.

<sup>13</sup> Zalesin, “An Overview of ‘Ag-Gag’ Laws.”

<sup>14</sup> Ibid.; Dan Flynn, “Five States Now Have ‘Ag-Gag’ Laws on the Books,” Food Safety News website, March 26, 2012; MCA 81-30-101 to 81-30- 105, (Mon, 1991), Michigan State University Legal and Historical Animal Center website, Updated December 2016.

<sup>15</sup> MCA 81-30-101 to 81-30- 105, (Mon, 1991), Michigan State University Legal and Historical Animal Center website.

<sup>16</sup> Zalesin, “An Overview of ‘Ag-Gag’ Laws.”

<sup>17</sup> Flynn, “Five States Now Have ‘Ag-Gag’ Laws on the Books.”

photographer or videographer to be that of specifically trying to damage the enterprise.<sup>18</sup> The restrictions under the law are placed on both animal livestock operations as well as animal testing and research facilities. These ag-gag laws are the direct result of undercover reporting exposing information to the public that the industry does not want them to know.<sup>19</sup> However, undercover investigations have been a part of American journalism since at least the 1840's, during the years of slavery.<sup>20</sup> In this way, undercover journalism has been a key part of research in the U.S. to the point in which, "several journalists have reported on animal agriculture enterprises and won Pulitzer prizes for their undercover work."<sup>21</sup>

It was not until twenty years later, that this form of ag-gag bills began to be introduced again.<sup>22</sup> The resurgence followed an increase in the amount of animal welfare organization members entering into large-scale farming operations to document, via photograph or video, incidents of animal abuse or mistreatment.<sup>23</sup> In fact, studies have cited a direct correlation between the resurgence of ag-gag laws and the Hallmark/Westland Meat Packing Company lawsuit of 2008.<sup>24</sup> As mentioned in the Literature Review, the lawsuit filed by the Humans Society of the United States (HSUS), resulted in the company going bankrupt and having to pay a judgement of \$497 million.<sup>25</sup> While the payment was symbolic as the company was bankrupt, the lawsuit sent a strong message to the animal agriculture industry that U.S. citizens believe that

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<sup>18</sup> Matthew Shea, "Punishing Animal Rights Activists for Animal Abuse: Rapid Reporting and The New Wave of Ag-Gag Laws," *Columbia Journal of Law and Social Problems* 483 (2015): 342.

<sup>19</sup> Sam Robinson, "More States Considering 'Ag-Gag, Farm Protection Bills."

<sup>20</sup> Brooke Kroeger, "Undercover Reporting: An American Tradition," *Investigative Reporters and Editors, Inc. The IRE Journal* 37:2 (2014): 20-24.

<sup>21</sup> Ibid.

<sup>22</sup> Flynn, "Five States Now Have 'Ag-Gag' Laws on the Books."

<sup>23</sup> Ibid.

<sup>24</sup> Alicia Prygoski, "Detailed Discussion of Ag-Gag Laws," Animal Legal & Historical Center, (Michigan State University Law, 2015).

<sup>25</sup> Ibid.

“farmed animal abuse is unacceptable.”<sup>26</sup> However, instead of addressing the problems, the industry pushed for these ag-gag laws to protect themselves from future exposures through undercover investigations conducted by animal welfare, environmental and health activists.

During the transition from small family farms to larger industrial operations, regulations were placed on the industry to try to limit animal abuse and environmental degradation as well as improve food quality and health.<sup>27</sup> Even with these regulations in place, numerous violations have been cited by facility employees as well as government inspectors.<sup>28</sup> Regulation enforcement tends to be lax as there is a network of close knit relations between regulators, facility owners, managers and employees.<sup>29</sup> While there are regulators who fulfill their jobs to their best abilities, there are also those who do not, as well as a shortage of regulators needed to properly inspect every animal facility.<sup>30</sup> Advocates and activists rely heavily on undercover investigations to document and expose these instances of regulation violations.<sup>31</sup> Exposures often resulted in high costs for the industry not only in terms of sales, but also in terms of litigations and recalls.<sup>32</sup>

It was during the resurgence that the legislation received its title of “ag-gag” by Mark Bittman, who coined the term in a 2011 *New York Times* opinion piece: “ag” referring to agriculture and “gag” as in to suppress or stifle.<sup>33</sup> The new forms of legislation were aimed to

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<sup>26</sup> Flynn, “Five States Now Have ‘Ag-Gag’ Laws on the Books.”

<sup>27</sup> Gabriela Wolfe, “Anything but Ag-Gag: Ending the Industry-Advocate Cycle,” *Syracuse Law Review*, 66:367 (2016).

<sup>28</sup> Ibid.

<sup>29</sup> Ibid.

<sup>30</sup> Ibid.

<sup>31</sup> Ibid.

<sup>32</sup> Jessalee Landfried, “Bound & Gagged: Potential First Amendment Challenges to “Ag-Gag” Laws,” *Duke Environmental Law & Policy Forum* (March 22, 2013): 377.

<sup>33</sup> “What are Ag-Gag Laws and Why Are They Dangerous?” *About News* website, Updated February 2, 2016; Kip Andersen, and Keegan Kuhl, *The Sustainability Secret: Rethinking Our Diet to Transform the World* (San Rafael, CA: Earth Aware Editions, 2015) 99.

specifically punish undercover investigators, employees or onlookers in general for recording and distributing evidence recorded within an animal facility.<sup>34</sup> In 2012, ten U.S. States introduced some form of ag-gag legislation, but Iowa, Missouri and Utah were the only states to get their laws passed during that year.<sup>35</sup> Matthew Shea argues that, while the ag-gag legislation varies by state, all states share a common theme: “to keep evidence of unflattering, and sometimes criminal, practices of farms and slaughterhouses from public view.”<sup>36</sup> The laws are modeled after ALEC’s model “Animal and Ecological Terrorism Act” drafted in 2003, intended to update the existing federal law, the Animal Enterprise Protection Act (AEPA) of 1992.<sup>37</sup> The AEPA was introduced around the same time the original ag-gag bills were passed.<sup>38</sup> The AEPA was amended in 1996, 1999 and again in 2002 to make the act stricter and to increase the maximum number of penalties it covered.<sup>39</sup> The AEPA makes it a federal offense to cause physical disruption to an animal enterprise resulting in economic damages exceeding \$10,000.<sup>40</sup>

One year after the 2002 amendment, ALEC’s model Animal and Ecological Terrorism Act was introduced to broaden the protection guaranteed to the industry by the AEPA. Like other ALEC model legislation, the purpose of the model bill is not to be copied word for word, but instead to serve as a template for state legislators.<sup>41</sup> Potential prohibitions under the model law include:

- (a) damaging or destroying an animal or research facility, or other property in or on the premises; (b) entering an animal or research facility that is at the time closed

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<sup>34</sup> Prygoski, “Detailed Discussion of Ag-Gag laws.”

<sup>35</sup> Flynn, “Five States Now Have ‘Ag-Gag’ Laws on the Books”; William Potter, “‘Ag-Gag’ Bills and Supporters Have Close Ties to ALEC,” *Terrorism Legislation*, Green Is the New Red website, April 26, 2012.

<sup>36</sup> Shea, “Punishing Animal Rights Activists for Animal Abuse.”

<sup>37</sup> Potter, “‘Ag-Gag’ Bills and Supporters Have Close Ties to ALEC”; William Potter, “Animal Enterprise Protection Act,” Green Is the New Red website.

<sup>38</sup> *Ibid.*

<sup>39</sup> Potter, “Animal Enterprise Protection Act.”

<sup>40</sup> United States Department of Justice, “The Animal Enterprise Terrorism Act of 1992 and Mandated Report,” *Fur Commission USA* website, September 2, 1993.

<sup>41</sup> Potter, “‘Ag-Gag’ Bills and Supporters Have Close Ties to ALEC.”

to the public; (c) remaining concealed in an animal or research facility with the intent to commit an act prohibited by this chapter; (d) entering an animal or research facility and committing or attempting to commit an act prohibited by this chapter; (e) entering an animal or research facility to take pictures by photograph, video camera, or other means with the intent to commit criminal activities or defame the facility or its owner; (f) entering or remaining on the premises of an animal or research facility if the person or the organization: (i) had notice that the entry was forbidden; or, (ii) received notice to depart but failed to do so.<sup>42</sup>

Iowa was the first state to draft, and pass a bill modeled after the “Animal and Ecological Terrorism Act” in 2011.<sup>43</sup> Iowa’s new wave ag-gag law criminalizes “agricultural production facility fraud” and therefore prevents anyone, especially activists and reporters, from gaining access to an animal facility by or being hired under false pretenses.<sup>44</sup> Prior to the passing of the act, Mercy for Animals’ (MFA), a Chicago based animal rights group, conducted several investigations exposing disturbing industry practices. In 2009, MFA exposed Hy-Line Hatchery of Iowa’s daily practice of throwing 150,000 live male chicks into grinding machines.<sup>45</sup> Exposures such as this, are likely to have led Iowa’s government members to draft and then to pass the law.<sup>46</sup> As a result of the exposures by animal welfare organizations such as the MFA and the Humane Society, ag-gag opponents felt that the timing of the passing of the law implied that the industry had something to hide.<sup>47</sup> Environmental organizations were not as vocal in the debate over the law as animal welfare groups were. Nathan Runkle, the executive director for the MFA urged Iowa to vote against the bill by saying:

This flawed and misdirected legislation could set a dangerous precedent nationwide by throwing shut the doors to industrial factory farms and allowing

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<sup>42</sup> American Legislative Exchange Council, “The Animal and Ecological Terrorism Act,” ALEC website, January 1, 2004.

<sup>43</sup> Dayton Martindale, “Ag-Gag Laws: The Less You Know the Better,” *In These Times* website, June 19, 2015.

<sup>44</sup> Jesse Hirsch, “Ag-Gag Laws: State of the States,” *Modern Farmer* website, April 10, 2013; Shea, “Punishing Animal Rights Activists for Animal Abuse,” 338.

<sup>45</sup> Dan Flynn, “Iowa Approves Nation’s First ‘Ag-Gag’ Law,” *Food Safety News* website, March 1, 2012

<sup>46</sup> *Ibid.*

<sup>47</sup> *Ibid.*

animal abuse, environmental violations, and food contamination issues to flourish undetected, unchallenged and unaddressed. This bill is bad for consumers, who want more, not less, transparency in production of their food.<sup>48</sup>

The Iowa Poultry Association helped drafted the bill along with Iowa State Representative Annette Sweeney, the former director of the Iowa Angus Association.<sup>49</sup> It was signed into effect by Republican Governor Terry Branstad, who is not only member of ALEC but has also been praised on ALEC's website for his impressive leadership roles.<sup>50</sup> Additionally, twenty-three percent of the Iowa's lawmakers who voted in favor of the bill were ALEC members.<sup>51</sup>

In 2012, Iowa was the country's largest corn and soy producer as well maintaining the largest number of hogs which is also likely to have influenced the passing of the act.<sup>52</sup> According to Wayne Parcell, the president and chief executive of the Humane Society, the bill was rushed through the Iowa Senate and House at a rate much faster than usual in order to give animal agribusiness the "unbridled and unchecked power over worker safety, public health and animal welfare."<sup>53</sup> Branstad signed the bill on a Friday but his approval was not released until the following Monday.<sup>54</sup> On that Monday, Branstad told reporters, "If somebody comes on somebody else's property through fraud or deception or lying, that is a serious violation of people's rights and people should be held accountable for that."<sup>55</sup> As one of the largest hog farming states,

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<sup>48</sup> Ibid.

<sup>49</sup> Potter, "'Ag-Gag' Bills and Supporters Have Close Ties to ALEC."

<sup>50</sup> Flynn, "Iowa Approves Nation's First 'Ag-Gag' Law"; Potter, "'Ag-Gag' Bills and Supporters Have Close Ties to ALEC."

<sup>51</sup> Ibid.

<sup>52</sup> Kay Henderson, "Iowa Governor Signs Law Penalizing Animal Rights Activists," *Reuters* online website, March 5, 2012.

<sup>53</sup> Flynn, "Iowa Approves Nation's First 'Ag-Gag' Law."

<sup>54</sup> Henderson, "Iowa Governor Signs Law Penalizing Animal Rights Activists."

<sup>55</sup> Ibid.

the passing of the Iowa law has a major influence over other large animal agricultural states, including Missouri.<sup>56</sup>

In 2012 Missouri was the tenth largest hog producer in the U.S.<sup>57</sup> It is unsurprising then that the industry in Missouri create and put to vote, an ag-gag law in 2012.<sup>58</sup> The “ag-gag” bill was debated down to the last minute in the legislature however, the Missouri Senate decided not to pass the original bill authored by Republican State Representative Casey Guernsey. Instead, the senate passed an overarching agriculture law which appeared to be an “‘ag-gag’ compromise.”<sup>59</sup> Missouri kept all existing agricultural laws in place, regarding things like agricultural education and road limits, but changed the act of trespassing from a Class B misdemeanor to a Class A misdemeanor.<sup>60</sup> Additionally, a statement was added to the agriculture law that made it illegal for employee whistleblowers to withhold evidence of animal abuse from law enforcement for longer than 24 hours.<sup>61</sup> No statement, however was added to prevent individuals from taking videos or photographs.<sup>62</sup> Missouri was the first state to pass a law with a statement involving an evidence release time frame.<sup>63</sup> Supporters such as, Lonny Duckworth of the Missouri Cattlemen’s Association argue that, “‘if abuse does in fact occur, it needs to be dealt with immediately instead of being sensationalized months later as a fundraising tool for extremist animal rights groups like HSUS, PETA.’”<sup>64</sup> Opponents of the law argue that this addition prohibits activists from building a comprehensive case, and some are calling it

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<sup>56</sup> Ibid.

<sup>57</sup> “Missouri Swine Industry,” *Missouri Swine Resource Guide*, University of Missouri, 2017.

<sup>58</sup> Dan Flynn, “‘Show Me’ State Compromises on Ag-Gag,” Food Safety News website, May 18, 2012, Accessed February 6, 2017.

<sup>59</sup> Ibid; Deron Lee, “‘Ag-Gag’ Reflex,” *Columbia Journal Review* website, August 6, 2013.

<sup>60</sup> Hirsch, “Ag-Gag Laws: State of the States.”

<sup>61</sup> Ibid; Lee, “‘Ag-Gag’ Reflex.”

<sup>62</sup> Ibid.

<sup>63</sup> Lee, “‘Ag-Gag’ Reflex.”

<sup>64</sup> Ibid.

unconstitutional.<sup>65</sup> Undercover investigators typically gather evidence for at least a month and argue that the law makes it impossible to conduct any investigation responsibly within 24 hours.<sup>66</sup> Other opponents of the law advise the industry that this law could backfire by not providing enough time for investigators to confront management before going to the authorities.<sup>67</sup>

Also in 2012, Utah was the first state to pass a bill which made it not only illegal to take a photograph or video in an animal agricultural facility without the owner's consent, but also to distribute the footage without the owner's consent, or to engage in both activities, in 2012.<sup>68</sup> As a result of this law, Illinois, Minnesota, Florida, Indiana and New York all proposed the same type of legislation, which all eventually failed.<sup>69</sup> Utah's bill was introduced by Republican State Representative John Mathis who is also a veterinarian.<sup>70</sup> Opponents of the bill criticize Mathis for acting on behalf of the animal industry and not the welfare of animals which many people "look for in [their] veterinarian."<sup>71</sup>

As discussed in the Literature Review, Utah was the first state to prosecute someone under their ag-gag legislation.<sup>72</sup> Amy Meyer was arrested for taking a video of a cow being carried away from the Dale Smith Meat Packing company in a tractor "as though she were nothing more than rubble."<sup>73</sup> She filmed the video from the sidewalk across the street from the facility and was confronted by the manager of the operation.<sup>74</sup> She defended herself by stating

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<sup>65</sup> Hirsch, "Ag-Gag Laws: State of the States"; Lee, "'Ag-Gag' Reflex."

<sup>66</sup> Lee, "'Ag-Gag' Reflex."

<sup>67</sup> Ibid.

<sup>68</sup> Shea, "Punishing Animal Rights Activists for Animal Abuse," 344.

<sup>69</sup> Ibid.

<sup>70</sup> Hirsch, "Ag-Gag Laws: State of the States."

<sup>71</sup> "Gagging on AG-GAG," Alliance for a Better Utah website, May 6, 2013.

<sup>72</sup> William Potter, "First 'Ag-Gag' Prosecution: Utah Woman Filmed a Slaughterhouse from the Public Street," *Terrorism Legislation*, Green Is the New Red website, April 29, 2013.

<sup>73</sup> Ibid.

<sup>74</sup> Ibid.

that she was on public easement which she later informed the cops of as well.<sup>75</sup> The manager, according to the police report, said that Meyer had trespassed by crossing over the barb-wired fence she filmed through.<sup>76</sup> The police however, did not report any damage to the fence.<sup>77</sup> The story made the front page of reddit.com which was then inundated with viewers that the website crashed soon after.<sup>78</sup> After the prosecution made numerous media headlines, the case against Amy Meyer was dropped.<sup>79</sup> The plaintiffs rejoiced with the dropping of the case as opponents warned the industry, “you are losing.”<sup>80</sup> The plaintiffs included the Animal Legal Defense Fund and the People for the Ethical Treatment of Animals (PETA).<sup>81</sup> There was no mention of environmental groups involved in the battle.<sup>82</sup>

Even though the case in Utah ended in defeat for the industry and undermined the power of Utah’s ag-gag law, the trend throughout the country did not stop. In 2015, North Carolina introduced and passed a bill that prohibits anyone from gaining access to the non-public area of their employers’ property in order to record or remove data or other information in secrecy.<sup>83</sup> The bill gives companies the right to sue employees who expose either “trade secrets or take pictures in the workplace.”<sup>84</sup> The bill was originally vetoed by North Carolina’s Governor Patrick McCrory but was then overturned by the North Carolina House and Senate.<sup>85</sup> In his veto

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<sup>75</sup> Ibid.

<sup>76</sup> Ibid.

<sup>77</sup> Ibid.

<sup>78</sup> William Potter, “Amy Meyer’s Ah-Gag Charges Have Been Dropped!” *Terrorism Legislation*, Green Is the New Red website, April 30, 2013.

<sup>79</sup> Ibid.

<sup>80</sup> Ibid.

<sup>81</sup> Brady McCombs, “Animal Welfare Activists, State Spar Over Utah’s ‘Ag-Gag’ Law,” *The Salt Lake Tribune* website, June 1, 2016.

<sup>82</sup> Ibid.

<sup>83</sup> American Society for the Prevention of Cruelty to Animals, “Ag-Gag Legislation by State,” ASPCA website, updated 2017.

<sup>84</sup> Mark Binker and Laura Leslie, “Lawmakers Override McCrory Veto on Controversial ‘Ag-Gag’ Bill,” WRAL.com, June 3, 2015.

<sup>85</sup> American Society for the Prevention of Cruelty to Animals, “Ag-Gag Legislation by State.”

message, McCrory said, ““While I support the purpose of this bill, I believe it does not adequately protect or give clear guidance to honest employees who uncover criminal activity.””<sup>86</sup>

Other opponents agreed by saying that the bill would not just protect the animal agriculture industry but all other employers (even hospitals, institutions and veteran homes) which could prevent people coming forward with cases of abuse.<sup>87</sup> Under the law, violators can be charged with bad publicity and can be fined \$5,000 per day in which they gathered evidence.<sup>88</sup> The law also makes it illegal to help violate the law, which explicitly prevents journalists and animal rights organizations from sending a member to an animal facility to expose evidence or from publicizing any stories they hear of.<sup>89</sup>

In 2015, North Carolina was home to about 10 million hogs.<sup>90</sup> There had been several complaints in North Carolina about the poisoned air and water in local communities due to massive hog waste pools in local communities.<sup>91</sup> These massive pools tend to end up in communities with majority African American communities which have called on not only environmental activists to join their fight against the ag-gag legislation, but minority advocates to join the coalition as well.<sup>92</sup> Because of this environmental racism, the ag-gag battle has also had to involve environmental regulatory agencies such as U.S. EPA, and the North Carolina Department of Environmental and Natural Resources.<sup>93</sup> Clearly, a coalition formation was not present here as it was in other battles occurring in states such as Idaho. North Carolina had the

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<sup>86</sup> Binker and Leslie, “Lawmakers Override McCrory Veto on Controversial ‘Ag-Gag’ Bill.”

<sup>87</sup> Ibid.

<sup>88</sup> The Editorial Board, “No More Exposés in North Carolina,” *The New York Times* website, February 1, 2016.

<sup>89</sup> Martindale, “Ag-Gag Laws.”

<sup>90</sup> Martindale, “Ag-Gag Laws.”

<sup>91</sup> Ibid.

<sup>92</sup> Ibid.

<sup>93</sup> Matt Smith, “Ponds off Pig Shit Are Making People in North Carolina Really Sick,” *Vice* website, February 27, 2015.

ability to make a stronger coalition by involving more types of activists such as minority advocates to defeat the proposed bill.

Idaho has an interesting relationship with ag-gag legislation as in 2014, Idaho passed an ag-gag law which was then revoked one year later on the grounds that it was unconstitutional. The law made it illegal for anyone to interfere with agricultural production by trespassing, obtaining employment with the intent to cause economic or other injury to the enterprise, or intentionally damaging the physical property of the facility.<sup>94</sup> The bill was drafted by the Idaho Dairymen's Association after Mercy for Animals released videos of workers punching, kicking and jumping on cows at Bettencourt Dairies' Dry Creek Dairy in Hansen, Idaho.<sup>95</sup> Mercy for Animals later released more videos of further abuse which spurred Governor Butch Otter to sign the bill into law.<sup>96</sup> Fighting against the law was a coalition of seventeen plaintiffs made up of animal welfare organizations, environmental groups and journalists.<sup>97</sup> 17 groups filed suit including the Animal Legal Defense Fund (ALDF), People for the Ethical Treatment of Animals (PETA), The Center for Food Safety, Farm Sanctuary, River's Wish Animal Sanctuary, Western Watersheds Project, and the Idaho Concerned Area Residents for the Environment, to name a few.<sup>98</sup> Opponents of the law argued that instead of protecting the behavior documented in the videos, Otter should have done something to prevent the behavior from happening again.<sup>99</sup>

About one year later, the opposition prevailed when U.S. District Court Judge B. Lynn Winmill ruled that the bill was unconstitutional as it criminalized certain types of speech. The

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<sup>94</sup> Res. 18-7072, Session of 2014, (Idaho, 2014).

<sup>95</sup> Luke Runyon, "Judge Strikes Down Idaho 'Ag-Gag' Law, Raising Questions for Other States," *NPR* website, August 4, 2015.

<sup>96</sup> *Ibid*,

<sup>97</sup> Katie Valentine, "More Than a Dozen Groups Sue Idaho Over Its New 'Ag Gag' Law, Saying It Violates Free Speech," *Think Progress* website, March 19, 2014.

<sup>98</sup> *Animal Legal Defense Fund, et al v. C.L. Butch Otter and Lawrence Wasden*. (2014).

<sup>99</sup> Runyon, "Judge Strikes Down Idaho 'Ag-Gag' Law."

law was reviewed as a result of a local woman being arrested for taking a picture of an animal facility.<sup>100</sup> It was discovered that she too took the picture on public land and not private land so the charges against her were dropped.<sup>101</sup> As a result of being charged in the first place, several Idaho citizens felt that the new law contradicted their freedom of speech, which Winmill agreed with. He specified that just because people with money and power, the industry itself, do not want people to speak up on certain issues, does not mean a law should exist to protect these people.<sup>102</sup> While some states have dismissed proposed ag-gag legislation in the past, Idaho is the only state to have passed and later revoked the law because it was unconstitutional.<sup>103</sup> On his decision, Winmill wrote:

Although the State may not agree with the message certain groups seek to convey about Idaho's agricultural production facilities, such as releasing secretly recorded videos of animal abuse to the Internet and calling for boycotts, it cannot deny such groups equal protection of the laws in their exercise of their right to free speech.<sup>104</sup>

The result of this case was very inspiring for animal welfare and also environmental groups, especially in the way in which the power of the industry was tested. Members of the Humane Society after the ruling felt like they will have an easier time convincing lawmakers that these laws are unconstitutional in the future.<sup>105</sup>

Another, smaller success for whistleblowers occurred in Indiana. Indiana introduced ag-gag legislation in 2012 and 2013, which both failed because they contained language that many voters felt infringed upon their first amendment rights.<sup>106</sup> In 2014, Indiana passed a bill which

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<sup>100</sup> Dan Flynn, "Idaho Appeals Federal Court Decision Overturning State's Ag-Gag Law," December 17, 2015.

<sup>101</sup> Ibid.

<sup>102</sup> The Register's Editorial, "Editorial: 'Ag-Gag Laws' Have No Place Under the First Amendment," *The Des Moines Register* website, August 16, 2015.

<sup>103</sup> American Society for the Prevention of Cruelty to Animals, "Ag-Gag Legislation by State."

<sup>104</sup> Runyon, "Judge Strikes Down Idaho 'Ag-Gag' Law."

<sup>105</sup> "After Idaho Ruling, More Ag Gag Challenges to Come," *Harvest Public Media* website, September 8, 2015.

<sup>106</sup> American Society for the Prevention of Cruelty to Animals, "Ag-Gag Legislation by State."

prohibited causing property damage to an agricultural operation, increased the monetary thresholds for the crime, and changed the definition of trespass to include a person entering a “portion of an agricultural operation that is used for production; or any part of the real property of an agricultural operation and causes property damage.”<sup>107</sup> The 2014 bill passed, only after the ag-gag provision, which would have made whistleblowing a criminal act due to the monetary loss the act could impose upon a farm operation, was removed.<sup>108</sup>

According to *Indystar* newspaper, the bill was “significantly changed” in a Senate meeting so that it “satisfied animal rights activists and representatives of the news media” worried about the language restricting activities involved in journalistic reporting.<sup>109</sup> This bill was able to be passed as a result of the language compromise which was not reached the first two times the bill was proposed in 2012 or 2013.<sup>110</sup> Indiana Republican Senator Travis Holdman was happy with the “lots of compromise” worked out between supporters and opponents of the bill.<sup>111</sup> Supporters of the bill include the Indiana Pork Advisory Coalition and the Indiana Farm Bureau, as well as the poultry, cattle, dairy, corn, and soybean industries.<sup>112</sup> Josh Trenary of the Indiana Pork Advisory Coalition told the *Indiana Business Journal* that Indiana farmers’ privacy rights have and are being ignored.<sup>113</sup> He argued that “just because they’re farmers,” doesn’t mean they should have to give up property rights.<sup>114</sup> The bill ensured the same property rights to farms that are in place for schools, churches and private homes but does not specify

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<sup>107</sup> S.B. 101 of 2014, (Ind. 2014), <https://iga.in.gov/legislative/2014/bills/senate/101>

<sup>108</sup> American Society for the Prevention of Cruelty to Animals, “Ag-Gag Legislation by State”; Barb Berggoetz, Tony Cook, and Eric Weddle, “How major bills fared in 2014 Indiana General Assembly,” *Indystar* website, March 15, 2014, Accessed January 30, 2017.

<sup>109</sup> Barb Berggoetz, “Farm Trespass Bill Heads to Governor,” *Indystar* website, February, 24, 2014.

<sup>110</sup> Olivia Covington and The Statehouse File, “Farmers Push Revised Ag-Gag Bill; Critics Say Problems Remain,” *The Indianapolis Business Journal* website, January 7, 2014.

<sup>111</sup> Berggoetz, “Farm Trespass Bill Heads to Governor.”

<sup>112</sup> *Ibid.*

<sup>113</sup> *Ibid.*

<sup>114</sup> *Ibid.*

criminalizing whistleblowers in particular.<sup>115</sup> The rights granted to these facilities can result in up to three years of prison time if damages exceed more than \$750.<sup>116</sup> However, undercover journalism which typically draws negative media attention to industry, can result in profit losses much greater than \$750 as seen in Utah's Hallmark/Westland case.

The Humane Society of the U.S. was also pleased with the way the bill worked out. Matthew Dominguez, the public policy manager of farm animal protection for the Humane Society said, “we're neutral on SB101 because it no longer suppresses whistleblowers.”<sup>117</sup> Dominguez also expressed gratitude towards Indiana's ability to take the citizens' concerns for food safety, and animal welfare with the altering of the law's language.<sup>118</sup> Several opponents were concerned about how their First Amendment rights would be affected if the original bill was passed. However, once the whistleblowing provision was taken out, the number of opponents dropped.<sup>119</sup>

Several other U.S. states have proposed ag-gag legislation but have not been successful in their efforts to pass such laws. These states include, Arizona, Arkansas, California, Colorado, Florida, Illinois, Minnesota, Nebraska, New Hampshire, New York, Pennsylvania, Tennessee, and Vermont.<sup>120</sup> Wyoming passed a bill that targets trespassing and speech violations by criminalizing the act of collecting resource data on private land and makes it illegal to use this data in a criminal trial.<sup>121</sup> As of 2016, according to the American Society for the Prevention of Cruelty to Animals, it appears that Wyoming is not specifying animal rights activists with this

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<sup>115</sup> Dan Flynn, “Indiana General Assembly Passes Tough New Ag Property Trespass Law,” *Food Safety News* website, March 4, 2014.

<sup>116</sup> *Ibid.*

<sup>117</sup> Berggoetz, “Farm Trespass Bill Heads to Governor.”

<sup>118</sup> *Ibid.*

<sup>119</sup> *Ibid.*

<sup>120</sup> American Society for the Prevention of Cruelty to Animals, “Ag-Gag Legislation by State.”

<sup>121</sup> *Ibid.*

law.<sup>122</sup> In 2015, both Washington and New Mexico have introduced bills with language similar to other ag-gag legislation but they have not become law.<sup>123</sup> Washington's proposed law specifically criminalizes "interfering with agricultural production" while New Mexico's proposed law aims to make it illegal to withhold evidence of animal abuse for more than twenty four hours.<sup>124</sup> Colorado also introduced a "quick-reporting bill" in 2015 which would have made it illegal to withhold evidence of animal abuse for more than forty eight hours.<sup>125</sup> This bill has been set aside.<sup>126</sup> Lastly, in 2014, Kentucky proposed a bill preventing individuals from gaining employment at an animal facility under false intentions, recording videos, photographs or sounds within an animal facility without the owner's consent and trespassing.<sup>127</sup> This proposed bill eventually died upon reaching the Kentucky Senate.<sup>128</sup>

As more and more states begin to pass ag-gag laws, the tables are being turned on animal welfare activists carrying out undercover investigations to expose practices that degrade the environment, harm animals and negatively affect human health. In states with ag-gag legislation in place, animal facilities will be viewed as victims in cases in which they should be tried for pollution, animal abuse, and health violations.<sup>129</sup> Instead of trying to prevent animal cruelty, health violations and environmental degradation, states with ag-gag laws are working to cover it up.<sup>130</sup> As Cody Carlson argues, instead of preventing fraud, these bills actual perpetrate it by deceiving consumers that they are not taking part in an industry that participates in animal

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<sup>122</sup> Ibid.

<sup>123</sup> Ibid.

<sup>124</sup> Ibid.

<sup>125</sup> Ibid.

<sup>126</sup> Ibid.

<sup>127</sup> Ibid; 14 RS HB 222/PSS 1, (Ken.2014).

<sup>128</sup> American Society for the Prevention of Cruelty to Animals, "Ag-Gag Legislation by State."

<sup>129</sup> Flynn, "Iowa Approves Nation's First 'Ag-Gag' Law."

<sup>130</sup> Cody Carlson, "The Ag Gag Laws: Hiding Factory Farm Abuses from Public Scrutiny," *The Atlantic* website, March 20, 2012.

suffering and environmental degradation.<sup>131</sup> The political and economic power of the industry is exemplified through ag-gag laws, directly resulting from undercover exposures damaging industry profits, as the dangerous practices are being concealed.

Seventy organizations have publically made their stance against ag-gag laws through the American Society for the Prevention of Cruelty to Animals.<sup>132</sup> These organizations make their claim on the grounds that the “ag gag” legislation is able to:

perpetuate animal abuse on industrial farms [...] threaten workers’ rights, consumer health and safety, law enforcement investigations and the freedom of journalists, employees and the public at large to share information about something as fundamental as our food supply.<sup>133</sup>

Of these seventy, about twenty percent of them are environmental organizations concerned for the animals but also the pollution coming out of these operations. Instances like the hog manure pools in North Carolina are not unique. Because of the land, water and air pollution caused by these large animal operations, more resistance from animal rights organizations should be more prevalent. The fight today is spearheaded by animal welfare activists but the environmental organizations are beginning to become more involved as seen in several Right-to-Farm cases. With the Idaho ruling and the legislation failures in several other states resulting from activist work, there is hope for the trend of these laws to diminish. Governor Winmill of Idaho was correct in classifying those offended by the freedom of certain means of speech, as those with money, power and influence. These factors make the battle tougher, as organizations such as ALEC are very powerful, but so is a coalition of seventy organizations. If these organizations

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<sup>131</sup> Ibid.

<sup>132</sup> American Society for the Prevention of Cruelty to Animals. “Statement of Opposition to Proposed ‘Ag-Gag’ Laws from Broad Spectrum of Interest Groups,” ASPCA website, updated 2017, Accessed February 12, 2017.

<sup>133</sup> Ibid.

begin to draft their own legislation, protecting the environment, the animals and our health, there is hope these trends can be reversed.

## CONCLUSION: WHAT SHOULD WE BE DOING?

The U.S. meat industry produces annual sales greater than the GDP of Hungary or the Ukraine.<sup>1</sup> Clearly, the industry plays a vital role in America's economy. Because of this, supporters of specific legal protections for animal agriculture argue that laws and constitutional amendments are necessary to protect the industry from "terrorist" acts. In their view, these acts intend to damage the daily operations of the industry, cause profit or time loss, draw negative media attention, or make the operation alter its practices. Supporters believe that the purpose of this type of legislation is to protect the animal agriculture industry.<sup>2</sup> However, instead of protecting the longevity of the industry, these laws actually only protect its short-term profits.<sup>3</sup> The practices being exposed by whistleblowers and neighbors challenging ag-gag and Right-to-Farm legislation are practices that pollute and degrade the earth to the point in which it may not be able to revitalize itself. By contributing to more than half of U.S. water consumption while simultaneously polluting waterways, producing an extensive amount of animal waste every year equal to 130 times the amount of human waste, emitting more greenhouse gases than any other industry, and cutting down the rainforests at such rapid rates that it is likely to be gone by 2060, the industry is not sustainable.<sup>4</sup> In fact, the industry practices have been called, "the most destructive technology on earth."<sup>5</sup>

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<sup>1</sup> Marta Zaraska, "Hooked on Meat: How Cultural Beliefs and Attitudes Drive Meat Consumption," Meatonomics website, April 20, 2016.

<sup>2</sup> Kip Andersen, and Keegan Kuhn, *The Sustainability Secret: Rethinking Our Diet to Transform the World*, (San Rafael, CA: Earth Aware Editions, 2015).

<sup>3</sup> Ibid.

<sup>4</sup> Michael F. Jacobson, "More and Cleaner Water," *Six Arguments for a Greener Diet: How a More Plant-based Diet Could save Your Health and the Environment*, Washington, DC; "Issues," Pew Commission on Industrial Farm Animal Production Fan site; Andersen and Kuhn, *The Sustainability Secret* 83.

<sup>5</sup> Allison Aubrey, "Saving The Planet, One Burger at A Time: This Juicy Patty Is Meat Free," *NPR* website, heard on *Weekend Edition Saturday*, February 11, 2017.

Right to Farm laws and amendments make it very challenging, if not impossible, for neighbors to protect their property rights or to change practices so that they do not destroy the surrounding environment, as demonstrated with Richard Himsel's and others' court cases. A spill from a manure lagoon contaminates the air, which the animals, employees and neighbors breathe; the land; and the surface and the groundwater, which are all vital to sustaining an animal operation.<sup>6</sup> Since governmental regulations are not working to keep these practices in check, citizens have been given the responsibility of protecting their environment by speaking out against these types of practices themselves. Ag-gag bills and amendments have created a chilling effect on reporting abuses and problems that arise as a result of the industry. Ag-gag opponents are wary that employees or neighbors won't call on environmental or public health officials when there is an environmental hazard such as a manure lagoon failure causing a large spill of animal waste because of the intense repercussions imposed by certain state legislators.<sup>7</sup>

A nationwide movement is needed to contest the laws and constitutional amendments. Petitions have been organized to end these types of legislation, which provide a way to show law makers the opposition surrounding ag-gag and Right-to-Farm legislation.<sup>8</sup> Some organizations, such as the American Society for the Prevent of Cruelty to Animals, have created "advocacy brigades" to challenge legislation such as Right-to-Farm and ag-gag legislation.<sup>9</sup> It is important for individuals to join these as well as to spread information on these laws and on the consequences resulting from the industry. As more people become aware of the prohibitions that come with Right-to-Farm laws and constitutional amendments, along with ag-gag laws, it is

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<sup>6</sup> Geiling, "The Unintended Consequences of North Carolina's 'Ag-Gag' Law."

<sup>7</sup> Natasha Geiling, "The Unintended Consequences of North Carolina's 'Ag-Gag' Law," Think Progress website, June 7, 2015.

<sup>8</sup> Farm Forward, "Stop Ag-Gag!" 2017.

<sup>9</sup> American Society for the Prevention of Cruelty to Animals, "Join the ASPCA Advocacy Brigade," ASPCA website.

likely that the opposition will increase. As opposition increases, the likelihood that these laws are passed once set to a public vote, will decrease. The more people know, the less likely they will support laws supporting the animal agriculture industry, as seen in the study by Robbins, Franks, Weary and von Kryserlingk presented in the Literature Review.<sup>10</sup>

Cases such as Idaho's, in which the ag-gag law was revoked, prove that a coalition of activists has the ability to overturn legislation backed by the animal agriculture industry. Almost all of the evidence against the industry, has come from animal welfare groups such as PETA and the HSUS. Environmental groups need to be more involved. The earth's natural resources that environmentalists fight to save from "coal plants, fracking, pipelines, gas-guzzling SUVs" plastics and other products and practices, are being brutally damaged, degraded and destroyed by the animal agriculture industry.<sup>11</sup> Yet there is not one environmental organization solely focused on stopping the industry.<sup>12</sup> Environmental organizations may not be having such success when it comes to helping people make environmentally conscious diet choices, not because they aren't aware of the issue, but because they are working with the animal industry. The nonprofit organizations The Nature Conservancy, World Wildlife Fund and the National Wildlife Federation are involved in an organization called Global Roundtable for Sustainable Beef which works alongside the industry to attempt to limit the environmental impact of beef production.<sup>13</sup> Through this partnership, the nonprofits listed above also take money from the industry.<sup>14</sup>

Environmental organizations have encouraged changes in people's daily habits in the past by suggesting people ride their bike to work, shower for shorter amounts of time and even

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<sup>10</sup> J.A. Robbins, B. Franks, D.M. Weary, and M.A.G. Von Keyserlingk, "Awareness of Ag-Gag Laws Erodes Trust in Farmers and Increases Support for Animal Welfare Regulations," *Food Policy*: 61 (2016): 121-25.

<sup>11</sup> Marc Gunther, "Why Won't Environmental Foundations (And Nonprofits) Go After Meat?" *Nonprofit Chronicles* website, May 15, 2016.

<sup>12</sup> Ibid.

<sup>13</sup> Ibid.

<sup>14</sup> Ibid.

separate out their trash into compost, recyclables and actual trash. If they can promote those changes, they can promote diet changes. Local environmental groups such as the Hoosier Environmental Council of Indiana is doing a great job fighting the pollution being emitted by CAFOs in the Indiana farmland. There needs to be battles like that of the Hoosier Environmental Council from national organizations. In order to make the biggest impact, these environmental groups need to team up in a coalition of allies with health, animal welfare, free speech and, with some more unlikely allies of property and first amendment rights activists to defeat the degradation the animal agriculture industry is causing. They need to work together by exposing dangerous practices and encouraging the overturning legislation existing to protect the industry.

If these laws and constitutional amendments cannot be revoked, they need to be altered. The Right-to-Farm laws need to be revised to support all farmers' "right-to-farm" and not just corporate dominated farm operations, especially foreign owned farms. These mega corporate dominated operations pollute water and land used by the animal agriculture industry. Because these laws do not protect the sustainability of these resources, they protect farmer's "right-to-farm" only for the short term. By broadening these laws to include sustaining resources, not only will the industry be protected into the future, but also their practices will be altered to become more environmentally friendly for short term benefits. Right-to-farm constitutional amendments must be continuously fought against as they are the most dangerous for the environment. These amendments protect the industry against any proposed laws that could alter the way in which the industry operates and consequently destroys the environment, harms animals and creates human health problems.

Ag-gag laws also should be revised to become more like Indiana's revised ag-gag law. The trespassing aspects of these laws are fair as one should not be allowed to trespass on anyone

else's land or property, but the ban on evidence recording creates a public distrust of the industry. It also allows the industry to operate however they want without any environmentally degrading practices. Consumers are going to continue to be curious about the actual practices occurring within the industry that supplies their food if they are hidden from the consumers. The exposures by activists are imperative in holding the animal agriculture industry responsible for their actions. Additionally, the economic losses they cause can be beneficial in either making the operation change their practices or in some cases, even causing them to shut down as seen with the Hallmark/Westland Meat Packing Company. In this way, exposures and regulations have tended to increase public confidence in the industry, while monitoring the practices involved.

While there have been some instances in which Right-to-Farm and ag-gag legislation has been challenged and even revoked, the likelihood that the broad movement proposing these forms of legislation stops, is slim due to the industry's power. Historically, the United States federal government has created subsidies for the industry so that it can obtain nonrenewable natural resources for less than they actually should cost.<sup>15</sup> In the past, farmers and ranchers in the western part of the United States have had an abundance of water with easy access to streams and rivers where they could obtain water for free.<sup>16</sup> Today, these streams and rivers are rapidly drying up due to overuse as well as overgrazing, soil erosion, and desertification.<sup>17</sup> As a result, ranchers and farmers growing animal feed have begun pumping water from underground aquifers while the government simultaneously began created tax deductions for sinking wells and for farmers to purchase drilling equipment.<sup>18</sup> These subsidies consequently encouraged farmers

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<sup>15</sup> Dr. Richard A. Oppenlander, *Comfortably Unaware: What We Choose to Eat Is Killing Us and Our Planet* (New York City: Beaufort Books, 2012) Pg. 105.

<sup>16</sup> *Ibid*, 106.

<sup>17</sup> *Ibid*, 105.

<sup>18</sup> *Ibid*, 106.

to further deplete freshwater supplies.<sup>19</sup> David Fields, a Cornell University economist, upon reviewing reports by the Water Resource Council, Rand Corporation and the General Accounting Office, found that “the irrigation water subsidies to livestock producers are economically counterproductive ... current water use practices now threaten to undermine the economies of every state in the region.”<sup>20</sup> If subsidies are going to be given to the agriculture industry, they should be given to organic production of plant crops which are used directly to feed humans.<sup>21</sup>

In addition to this “economically counterproductive” system which creates subsidies to allow easy access to water, the United States Department of Agriculture (USDA) has long given direct price supports to the dairy industry and de facto supports for the meat industry. These supports come from feed grain price assistance resulting from the creation of the Commodities Credit Corporation (CCC) in 1933, during the Great Depression.<sup>22</sup> The CCC was created “to stabilize, support and protect farm income and prices” as well as help “maintain balanced and adequate supplies of agricultural commodities.”<sup>23</sup> According to Dr. Richard Oppenlander, author of *Comfortably Unaware: What We Choose to Eat Is Killing Us and Our Planet*, the CCC “has allowed our government to keep the industry in an artificial sense of security and viability and immune to any downturns due to market pricing or demand.”<sup>24</sup> Oppenlander provides an example from 1998, when the USDA bought up at least \$250 million worth of eggs, dairy, chicken, pork, lamb, beef, and fish that, in the flooded market, could not be sold.<sup>25</sup> As a result,

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<sup>19</sup> Ibid, 105.

<sup>20</sup> Ibid, 106.

<sup>21</sup> Ibid, 111.

<sup>22</sup> Ibid, 107.

<sup>23</sup> United States Department of Agriculture, “Commodity Credit Corporation,” *USDA Farm Service Agency* website, Accessed February 18, 2017.

<sup>24</sup> Oppenlander, *Comfortably Unaware* 107.

<sup>25</sup> Ibid.

money flowed back into the meat and dairy industries which helped to sustain production of their without an actual demand from the market or even the public.<sup>26</sup> The products purchased were intended to be used in public feeding programs such as the National School Lunch Program.<sup>27</sup> Additionally, the USDA was known to have encouraged growing international markets as outlet for an overproduction to keep prices high.<sup>28</sup> At this time, livestock was the second biggest U.S. export followed by poultry and then dairy which resulted in a further increase in production, and therefore further degradation, for the environment of the U.S.<sup>29</sup>

The animal agriculture industry has the power to continuously put pressure on the government to support the industry through a false demand mechanism.<sup>30</sup> This false demand brings money into the industry to maintain it as well as to launch extensive massive advertising campaigns and education programs for schools and the general public.<sup>31</sup> These advertising campaigns provide its viewers with images that help generate a demand for the products produced by the industry.<sup>32</sup> False images are created with pictures of happy cows, or other animals, posted on milk, butter and cheese products. The reality of the industry is masked by the disconnect between the food we eat and where it comes from. Industry advertising and education programs further create this separation through false imagery.

In his book, *Comfortably Unaware*, Dr. Richard Oppenlander proposes several solutions to change our food system in order to make it sustainable. Dr. Oppenlander, founder of the non-profit organization Inspire Awareness Now, as well as the president and founder of a vegan food

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<sup>26</sup> Ibid.

<sup>27</sup> Ibid, 105.

<sup>28</sup> “USDA projects exports down \$2.5 billion,” *The Augusta Chronicle* website, April 1, 1998, Accessed February 20, 2017.

<sup>29</sup> Ibid.

<sup>30</sup> Oppenlander, *Comfortably Unaware* 107.

<sup>31</sup> Ibid.

<sup>32</sup> Ibid.

production and education business, has been studying the effect our food choices have on the environment and our health.<sup>33</sup> He believes that the best way to start changing our food choices is by “opening up the pathways of communication regarding the reality of food choices.”<sup>34</sup> His first solution is that information needs to be made available to the public on the negative health and environmental impacts of eating meat, and other animal products, and the benefits to eating a plant based diet through the media.<sup>35</sup> Celebrities, politicians, and other people who are influential in the media, have the ability to persuade the public and “must assume a higher level of awareness” especially on the effects of our food choices.<sup>36</sup>

Second, federal and state governments can also be involved by implementing and overseeing proper food education programs in food systems. To start, the government should rework the USDA Food Pyramid and other guidelines.<sup>37</sup> The Physicians Committee for Responsible Medicine (PCRM) has come out with a new “food pyramid” that emphasizes four main food groups: legumes, vegetables fruits and whole grains.<sup>38</sup> PCRM combines the expertise of over 12,000 physicians around the world working to change “the way doctors treat chronic diseases such as diabetes, heart disease, obesity and cancer” by encouraging vegetarian and vegan diets.<sup>39</sup> PCRM advocates for “prevention over pills” by empowering their patients to be in control of their health.<sup>40</sup> According to PCRM, “a vegetarian diet is the optimal way to meet your nutrition needs.”<sup>41</sup> The USDA food pyramid needs to be replaced with food choices that are

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<sup>33</sup> “About Dr. Richard Oppenlander,” Comfortably Unaware website.

<sup>34</sup> Oppenlander, *Comfortably Unaware* 111.

<sup>35</sup> *Ibid*, 111.

<sup>36</sup> *Ibid*, 111.

<sup>37</sup> *Ibid*, 112.

<sup>38</sup> PCRM, “The New Four Food Groups,” Physicians Committee for Responsible Medicine website.

<sup>39</sup> PCRM, “About Us,” Physicians Committee for Responsible Medicine website.

<sup>40</sup> *Ibid*.

<sup>41</sup> PCRM, “Vegetarian and Vegan Diets,” Physicians Committee for Responsible Medicine website.

“factually healthy for us and for our planet” in order to promote the longevity of our food supply system as well as positively influence human lives.<sup>42</sup>

Dr. Oppenlander calls on the need for an “ecotax” to reflect the environmental degradation caused by raising and slaughtering animals for food. Every resource that is not only destroyed, but used during animal production operations should have to be paid for. This ecotax would also account for the land, water, air and other resource polluted as a result of the industry, as well as the species and biodiversity loss caused by the industry.<sup>43</sup> Oppenlander admits that, “because some of these things are irreplaceable in our lifetime, it would be difficult to estimate the true ecotax.”<sup>44</sup> Oppenlander suggests that “somewhere in the thousands of dollars would not be out of line for replacing a five-hundred-year-old section of the Amazonian rainforest.”<sup>45</sup> If this ecotax was actually established, the meat and dairy industry would not be able to produce anything at an affordable rate except for the plant based-portion of the meal, which for a cheeseburger would mean the bun, tomato, pickles, onion and condiments.<sup>46</sup> By giving a monetary value to natural resources, short-term gains will no longer be met at the cost of the cost of the environment.<sup>47</sup>

Another form of an “ecotax” could exist in the form of a carbon tax, already placed on the energy and transportation industries.<sup>48</sup> These carbon taxes have been quite successful in reducing carbon emissions from these two sectors.<sup>49</sup> Marya Torrez, an attorney and activist in Washington DC, writes about raising animals for food with regards to the environment, public

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<sup>42</sup> Oppenlander, *Comfortably Unaware* 112.

<sup>43</sup> *Ibid*, 112-113.

<sup>44</sup> *Ibid*, 109.

<sup>45</sup> *Ibid*, 109.

<sup>46</sup> *Ibid*, 109.

<sup>47</sup> *Ibid*, 112.

<sup>48</sup> Marya Torrez, “A New Way to Account for Taste: Tax Meat to Fight Climate Change,” *Meatonomics* website, February 10, 2016.

<sup>49</sup> *Ibid*.

health and ethical implications.<sup>50</sup> In 2014, Torrez wrote an analysis on the possibility of imposing a greenhouse gas tax on meat.<sup>51</sup> In her opinion, one of the largest obstacles is how the idea would be accepted by the government, but also how it would interact with the U.S. trade obligations.<sup>52</sup> A tax like this could backfire if the tax is imposed on only domestically produced meat. While the tax would benefit the natural resources within the U.S. and potentially Canada and Mexico, it is likely that it would also cause an increase in the meat and animal product imports as the domestic tax would drive the prices up for domestic meat.<sup>53</sup> In this way, the tax would fail as it would only increase production in other countries.<sup>54</sup> A carbon tax was proposed in 2009 but failed in part because of international trade implications.<sup>55</sup> Torrez suggests a border tax adjustment (BTA) which “would rebate the tax for exports and impose it on imports.”<sup>56</sup> BTAs are allowed under the World Trade Organization in which the U.S. is a member of, but they must be carefully constructed and can be found lawful if it is seen as “‘necessary to protect human, animal or plant life health’ or [is] related to the ‘conservation of exhaustible natural resources.’”<sup>57</sup>

Additionally, Oppenlander argues for a health-risk-tax that would force businesses to have to pay to produce or sell any food item that is associated with causing any chronic disease.<sup>58</sup> <sup>59</sup> In 2015, national health expenditure rates in the U.S. were at \$3.2 trillion according

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<sup>50</sup> “A New Way to Account for Taste: Tax Meat to Fight Climate Change,” *Meatonomics* website, February 10, 2016.

<sup>51</sup> Torrez, “A New Way to Account for Taste: Tax Meat to Fight Climate Change.”

<sup>52</sup> *Ibid.*

<sup>53</sup> *Ibid.*

<sup>54</sup> *Ibid.*

<sup>55</sup> *Ibid.*

<sup>56</sup> *Ibid.*

<sup>57</sup> *Ibid.*

<sup>58</sup> Oppenlander, *Comfortably Unaware* 114.

<sup>59</sup> *Ibid.*, 59-80.

to a report by the Centers for Medicare and Medicaid Services.<sup>60</sup> Along with PCRM, the American Cancer Society, the American Heart Association, the American Dietetic Association and many others organizations, acknowledge the health benefits of a plant-based diet.<sup>61</sup> The American Cancer Society recommends on their website to “eat a healthy diet with an emphasis on plants” to prevent cancer.<sup>62</sup> People who do not eat animal products have a 50% less chance of developing many forms of cancer.<sup>63</sup> Eating a diet heavy in animal products additionally increased one’s chances of developing heart disease, osteoporosis, as well as obesity. Oppenlander argues that since there is a direct link between eating animal products and developing several chronic diseases, the companies that sell foods that cause these diseases, should have to cover some of the health care costs that result from their products.<sup>64</sup> In the same Minutearth video discussed above, the health costs and wages lost from the diseases caused by consuming animal products would add approximately another twenty-five dollars to a family of four’s weekly grocery list.<sup>65</sup>

David Simon, a lawyer and advocate for sustainable consumption, is the author of *Meatonomics*, a book about the hidden economics of animal agriculture.<sup>66</sup> In an interview with Simon in *The Sustainability Secret*, Simon says that the industry imposes about \$415 billion in external costs onto society in healthcare, environmental destruction, damage to fisheries, cruelty and subsidies.<sup>67</sup> In a video on the *Meatonomics* blog by Minutearth, the hidden costs of these subsidies covered in Americans’ taxes are exposed. If the subsidies provided to the animal agriculture industry in the form of crop insurance, cheap water, low-interest loans and low fees

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<sup>60</sup> “National Health Expenditure Fact Sheet,” CMS.gov, 2017.

<sup>61</sup> Oppenlander, *Comfortably Unaware* 59.

<sup>62</sup> “Summary of the ACS Guidelines on Nutrition and Physical Activity,” The American Cancer Society website, 2017.

<sup>63</sup> Oppenlander, *Comfortably Unaware* 61.

<sup>64</sup> *Ibid*, 114.

<sup>65</sup> Minutearth, “Great New Animated Video Explains the Terrible Economics of Meat Production in 3 Minutes.”

<sup>66</sup> Andersen, and Kuhl, *The Sustainability Secret* 154; “Author,” *Meatonomics* website.

<sup>67</sup> Simon in Andersen, and Kuhl, *The Sustainability Secret* 154-155.

for grazing on public lands were reflected in the price of food and not hidden in taxes, the average family of four's weekly grocery store would increase by about ten dollars.<sup>68</sup> The video also demonstrates that if the environmental costs were reflected in the price of the same grocery bill, about another \$240 dollars would be added to the bill every week.<sup>69</sup> If these costs were accounted for and people were able to save \$240 dollars, equivalent to \$12,480 a year by switching to a plant based diet, it is likely that consumers would try to buy less animal products in order to save money. As a result of these various subsidies, the actual price of animal products is skewed to misrepresent the actual costs associated with the industry.<sup>70</sup> As consumers, we never fully pay the "true cost" reflecting what it takes to get an animal product from "point A to point B."<sup>71</sup> Through the government subsidy programs, consumers pay so little for a hamburger because the environmental consequences resulting in the production of the hamburger are not taken into account. All the water used, vegetation destroyed, biodiversity lost, greenhouse gases emitted and earth depleted for future use, is not reflected in the price.

These costs hidden in our taxes, are paid by everyone whether they are meat eaters or not. However, these hidden costs keep our food prices low; if they were reflected in the price of our food, "prices would skyrocket."<sup>72</sup> A carton of eggs would increase from about \$5 to \$13, and a Big Mac typically costing \$4 would increase to about \$11.<sup>73</sup> If subsidies were no longer given to the animal agriculture industry, the hidden costs would be exposed in the price increase, but would only be paid for by those who purchase these products and not all citizens.

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<sup>68</sup> Minuteearth, "Great New Animated Video Explains the Terrible Economics of Meat Production in 3 Minutes," *Meatonomics* website, March 4, 2016.

<sup>69</sup> *Ibid.*

<sup>70</sup> Oppenlander, *Comfortably Unaware* 107.

<sup>71</sup> *Ibid.*

<sup>72</sup> Simon in Andersen, and Kuhl, *The Sustainability Secret* 155.

<sup>73</sup> *Ibid.*

While the solutions given above would likely make a large impact, their return time is slow. There are many wealthy people in the U.S. who would likely be able to still afford meat with the price increase in place. Eventually however, one can expect the demand to dramatically decrease. In the time it takes to educate people around the world environmental degradation and destruction will still be taking place. It will eventually slow down but it will not have an immediate impact. Additionally, companies with a lot of money may be able to pay for some of the resources needed even under an ecotax, at least for a little while. If resource depletion doesn't diminish with the passing of a tax, it will have to occur in another way. Dr. Oppenlander suggests that legislation banning the raising and eating of animals as food will happen as a result of depleted resources that will begin to affect U.S. citizens' daily lives.<sup>74</sup> It is likely that these laws will start by ensuring that less animals are used to produce food for our country but eventually they will have to change to cut animals out entirely.<sup>75</sup>

There has been an increase in environmental groups fighting against Right-to-Farm and this increase has brought about great success. This is needed for the ag-gag movement as well. According to Marc Gunther in his 2016 article, "Why Won't Environmental Foundations (and Nonprofits) Go After Meat?" Gunther argues that while environmentalists may make the argument, buried somewhere in their website, they do so "without much vigor."<sup>76</sup> Gunther references the World Resources Institute's (WRI) 2016 report titled, *Shifting Diets for a Sustainable Food Future*. According to Gunther, the WRI report encourages governments, NGOs, and even the food industry to develop ways to influence people to stop choosing meat, dairy and egg products and to choose healthier, sustainable plant-based options, perhaps through

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<sup>74</sup> Oppenlander, *Comfortably Unaware* 116.

<sup>75</sup> Ibid, 117.

<sup>76</sup> Marc Gunther, "Why Won't Environmental Foundations (And Nonprofits) Go After Meat?"

re-working the USDA's food pyramid.<sup>77</sup> The WRI's report has attracted little notice and Gunther blames this on the fact that it is a research institution and not an environmental, health or welfare organization that has had success in the past in changing people's daily behaviors.<sup>78</sup>

On the Nature Conservancy website, there is an article titled, "A New Diet for the Planet?" by Mark Trecek, the president and CEO of The Nature Conservancy, involved in Global Roundtable for Sustainable Beef. Trecek happens to be a vegan, a decision he made "as an environmentalist."<sup>79</sup> Upon being asked why The Nature Conservancy doesn't make changing people's diets one of its strategies, Trecek responded by saying, "no one wants to be told what they can and cannot eat."<sup>80</sup> Trecek then states that the industry should focus more on getting the most from land already under cultivation.<sup>81</sup> However, to feed the amount on animals we are growing to feed humans, three times the amount of crops are required than if we were just feeding humans.<sup>82</sup> Trecek must understand that growing excess amounts of food to indirectly feed humans, is not "getting the most out of the land" as he himself does not support the animal industry by purchasing their products.<sup>83</sup> Trecek's article ends with him saying, "Can changing your diet make a positive impact on the planet? Of course. But in my view, our biggest hope for widespread change lies in 'greening' our meat, for those who choose to eat it."<sup>84</sup> As demonstrated in Chapter Two, there is no way to "green" our meat because the practice is not sustainable with the amount of resources used or destroyed to produce such a small amount of animal-based food.

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<sup>77</sup> Ibid.

<sup>78</sup> Ibid.

<sup>79</sup> Mark Tercek, "A New Diet for the Planet?" The Nature Conservancy website, May 1, 2013.

<sup>80</sup> Ibid.

<sup>81</sup> Ibid.

<sup>82</sup> Ibid.

<sup>83</sup> Minutearth, "Great New Animated Video Explains the Terrible Economics of Meat Production in 3 Minutes"; Tercek, "A New Diet for the Planet?"

<sup>84</sup> Tercek, "A New Diet for the Planet?"

We as citizens can also fight for a sustainable, healthy environment with our dietary choices. We can continue to encourage environmental organizations to fight for the environments being depleted by the industry. Dr. Oppenlander's final solution to end the animal agriculture industry is for individual people to take responsibility.<sup>85</sup> Consumers should choose plant based foods as they are better for their health and for the environment. By purchasing and consuming animal products, one shows their support for environmental destruction, animal abuse and health hazards resulting from the animal agriculture industry Howard Lyman, a retired fourth generation meat and dairy farmer turned vegan, is quoted in *The Sustainability Secret*:

I totally believe, with every fiber in my being, that you cannot be an environmentalist and consume animal products. It's just totally opposed. You can't be an environmentalist and eat animal products, period. Kid yourself if you want. If you want to feed your addiction, so be it, but don't call yourself an environmentalist.<sup>86</sup>

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<sup>85</sup> Oppenlander, *Comfortably Unaware* 130.

<sup>86</sup> Andersen and Kuhl, *The Sustainability Secret* 112.

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