

**In The United States District Court
For The Southern District of Iowa**

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

Plaintiffs,

v.

KIM REYNOLDS, in her official capacity as
Governor of Iowa, **TOM MILLER**, in his official
capacity as Attorney General of Iowa, **VANESSA
STRAZDAS**, in her official capacity as Cass
County Attorney, **CHUCK SINNARD**, in his
official capacity as Dallas County Attorney, and
JOHN GISH, in his official capacity as
Washington County Attorney

Defendants.

Case No.: 4:21-cv-00231

**PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT OR,
IN THE ALTERNATIVE, A
PRELIMINARY INJUNCTION**

Pursuant to Federal Rule of Civil Procedure 56 and Local Rules 7 and 56, Plaintiffs submit this motion for summary judgment or, in the alternative, a preliminary injunction.

I. Section § 727.8A fails First Amendment scrutiny and is overbroad therefore it is facially invalid.

In light of the declarations submitted in support of this motion, the plain text of Iowa law, and Defendants' admissions in their Brief in Support of Motion to Dismiss of Defendants, Dkt. No. 19, there is no dispute of material fact, Iowa Code § 727.8A is unconstitutional and unenforceable because it fails First Amendment scrutiny and is overbroad. Pursuant to 28 U.S.C. § 2201, Federal Rules of Civil Procedure 57 and 65, and this Court's inherent equitable powers, Plaintiffs ask for a declaration to this effect and for an injunction preventing Defendants and all people in concert with them from enforcing Iowa Code § 727.8A.

II. Plaintiffs have at the least shown they are likely to prevail on the argument § 727.8A is unconstitutional and therefore a preliminary injunction is warranted.

In the alternative, for these same reasons, Plaintiffs contend they are likely to prevail on the merits and therefore should the Court deny summary judgment, Plaintiffs request a preliminary injunction preventing Defendants and all people in concert with them from enforcing Iowa Code § 727.8A. Defendants should not be allowed to squelch speech by delaying resolution of this litigation.

Plaintiffs have informed Defendants of their intent to file this motion. Defendants stated they intend to resist these requests and argue that Plaintiffs' request for summary judgment is premature. However, Defendants failed to identify any facts on which they would require discovery.

November 12, 2021

Respectfully submitted,

/s/ David S. Muraskin

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CERTIFICATE OF SERVICE

I hereby certify that on this date I electronically filed the foregoing paper with the Clerk of Court by using the CM/ECF system. All participants in this case are registered CM/ECF users and will be served by that system.

Date: November 12, 2021

/s/ David S. Muraskin_____

David S. Muraskin*

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**PLAINTIFFS' BRIEF IN
SUPPORT OF THEIR MOTION
FOR SUMMARY JUDGMENT
OR, IN THE ALTERNATIVE, A
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I. Introduction.

Section 727.8A creates a new crime that applies to “[a] person committing a trespass as defined in section 716.7 who knowingly places or uses a camera or electronic surveillance device that transmits or records images or data while the device is on the trespassed property[.]” Iowa Code § 727.8A. By its plain terms, this new criminal statute contains two elements: (1) trespassing; and (2) using a cell phone, photography equipment, video equipment or the like to capture pictures, sound or other data—such as the time stamps that are part and parcel of making recordings. In other words, Iowa has enacted a criminal statute, a central element of which involves making a recording. Recordings are protected by the First Amendment. Iowa has criminalized speech.

Lest there be any doubt that § 727.8A’s function is to deter speech, it imposes penalties that far exceed those for generic trespass—all because the trespasser is producing a video. A first violation of § 727.8A is an “aggravated misdemeanor,” a two-fold increase over most punishments for trespass, which is a “simple misdemeanor.” *Id.* § 716.8(1). This even exceeds the punishment for a person “knowingly trespass[ing]” with “the intent to commit a hate crime.” *Id.* § 716.8(3). A second violation of § 727.8A is a felony.

Section 727.8A is the latest in a string of “Ag-Gag” laws Iowa has enacted to suppress speech. As another court in this district explained, the initial Ag-Gag laws “arose on the heels of several industrial farm investigations that brought critical national attention to Iowa’s agricultural industry” through investigators gathering and releasing recordings of the onsite conditions to influence public opinion. *Animal Legal Def. Fund v. Reynolds*, 2019 WL 8301668, at *2 (S.D. Iowa Dec. 2, 2019). Indeed, the legislature stated a goal of Iowa’s first Ag-Gag law was to stop “investigative reporting.” *Id.* Days after the first law was struck down, Iowa enacted another one, similar to the first. *Id.* at *1-3. After that law was preliminarily enjoined, Iowa enacted § 727.8A.

See id.

Section 727.8A mimics what has been termed the “second wave” of Ag-Gag laws, which seek to evade rulings like those against Iowa’s first and second Ag-Gag laws by creating the false veneer that the statute protects private property rather than restricts speech. Chip Gibbons, *Ag-Gag Across America: Corporate-Backed Attacks on Activists and Whistleblowers*, Center for Constitutional Rights & Defending Rights & Dissent 2, 6 (2017).¹ Nonetheless, each court that has evaluated these second wave laws on the merits has held that they unconstitutionally suppress speech. *E.g.*, *People for the Ethical Treatment of Animals, Inc. (“PETA”) v. Stein*, 466 F. Supp. 3d 547, 574-75 (M.D.N.C. 2020), *appeal docketed* No. 20-1776 (L) (4th Cir. July 12, 2020); *W. Watersheds Project v. Michael (“W. Watersheds Project II”)*, 353 F. Supp. 3d 1176, 1191 (D. Wyo. 2018).

Defendants’ brief in support of their motion to dismiss, Dkt. No. 19, establishes this Court need not wait to reach the same outcome here. *See* Fed. R. Civ. P. 56(b) (“[A] party may file a motion for summary judgment at any time.”). Defendants correctly conceded Plaintiff Iowa Citizens for Community Improvement’s (“ICCI’s”) allegations, which have now been substantiated by declarations, establish it and its members are suffering an injury-in-fact because § 727.8A is chilling their speech. Dkt. No. 19, at 9. Defendants also rightly did not contest they are the people charged with enforcing § 727.8A, meaning that chill is traceable to Defendants’ powers and an order prohibiting them from using the law would redress the injury. All other Plaintiffs have also substantiated their allegations and thereby proven their standing, but ICCI’s standing alone is sufficient to reach the merits. *Rumsfeld v. F. for Acad. & Institutional Rts., Inc.*, 547 U.S. 47, 52 n.2 (2006).

¹ <https://ccrjustice.org/sites/default/files/attach/2017/09/Ag-GagAcrossAmerica.pdf>.

Defendants' representations in support of their motion to dismiss also make clear Plaintiffs prevail on the merits. According to Defendants, Iowa's interest in passing § 727.8A was "[t]he protection of property from interference" and the "protection of propriet[ary] information or trade secrets." A132-A133 (Statement of Material Facts ("SMF") ¶ 55). Assuming *arguendo* Defendants were correct in stating § 727.8A is only subject to intermediate scrutiny, Dkt. No. 19, at 26, these statements make clear it fails that review.² Section 727.8A is not tailored to its purported purposes. A law that did not target recording would easily achieve the State's ends. In fact, § 727.8A only protects against theft and entry if a person engages in recording, and thus it fails to deter a host of activities the State claims it is seeking to regulate—such as a person entering a facility and simply writing down the secrets they wish to steal.

Perhaps for these reasons, Defendants did not defend the State's need to restrict speech at all, and, correspondingly, did not introduce evidence substantiating the need for § 727.8A; instead they merely repeated their argument that recording is not speech. A133-A141 (SMF ¶¶ 56-57). They acknowledged that in arguing the law survived First Amendment review they bore the burden of proof and persuasion. Dkt. No. 19, at 14. That required them to offer an explanation and evidence showing the need to restrict speech. *McCullen v. Coakley*, 573 U.S. 464, 494-95 (2014); *United States v. Stevens*, 559 U.S. 460, 473, 481 (2010). Thus, separate and independent from the fact that the law does not achieve the State's purported objective, the absence of this information is a basis to hold the law invalid. Indeed, on this basis, the Court can conclude the law both fails intermediate scrutiny and is overbroad.

In sum, taking Defendants' statements as true, the law is facially invalid. *See* (Defendants

² Plaintiffs reserve their right to argue strict scrutiny is warranted. However, because Defendants have demonstrated they cannot justify the law under the lower level of scrutiny they claim applies, the Court need not reach this issue to find in Plaintiffs' favor.

acknowledging overbroad law facially invalid). Plaintiffs are entitled to a declaration and injunction preventing its enforcement.

Even were Defendants to convince the Court some fact issue remains to be developed, given their decision to move on issues for which they bore the burden, and their failure to substantiate that burden, the Court should conclude Plaintiffs are likely to prevail on the merits and enter a preliminary injunction prohibiting enforcement of § 727.8A. That is how the last court to face an Ag-Gag law in this district proceeded. *ALDF v. Reynolds*, 2019 WL 8301668, at *20.

II. Standard of Review.

“The Federal Rules of Civil Procedure authorize motions for summary judgment upon proper showings of the lack of a genuine, triable issue of material fact. Under Rule 56(c), summary judgment is proper if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” *ALDF v. Reynolds*, 353 F. Supp. 3d 812, 820 (S.D. Iowa 2019) (cleaned up).

“To determine whether to issue a preliminary injunction, the district court must consider: (1) the threat of irreparable harm to the movant; (2) the balance between that harm and the injury that granting the injunction will inflict on the other interested parties; (3) the probability the movant will succeed on the merits; and (4) whether the injunction is in the public interest.” *ALDF v. Reynolds*, 2019 WL 8301668, at *14. “When a plaintiff has shown a likely violation of his or her First Amendment rights, the other requirements for obtaining a preliminary injunction are generally deemed to have been satisfied.” *Id.*

III. Plaintiffs have standing.

“When a party brings a pre-enforcement challenge to a statute that provides for criminal

penalties and claims that the statute chills the exercising of its right to free expression, the chilling effect alone may constitute injury.” *St. Paul Area Chamber of Com. v. Gaertner*, 439 F.3d 481, 487 (8th Cir. 2006). That is, a plaintiff “suffers Article III injury when it must either make significant changes to its operations to obey the regulation, or risk a criminal enforcement action by disobeying the regulation.” *Id.*

“Of course, self-censorship based on mere allegations of a ‘subjective’ chill resulting from a statute is not enough to support standing”; rather a challenge must show its “decision to chill [its] speech in light of the challenged statute was objectively reasonable.” *281 Care Comm. v. Arneson*, 638 F.3d 621, 627 (8th Cir. 2011). “Reasonable chill exists when a plaintiff shows an intention to engage in a course of conduct arguably affected with a constitutional interest, but proscribed by the statute, and there exists a credible threat of prosecution.” *Id.* (cleaned up). Because it is proper to presume the State will seek to enforce its laws, this boils down to whether the challenger’s desired activities fall within the challenged statute and thus they altered their activities. *Iowa Right To Life Comm., Inc. v. Tooker*, 717 F.3d 576, 604 (8th Cir. 2013) (“Merely alleging a desire to engage in the proscribed activity is sufficient to confer standing.”); *St. Paul Area Chamber of Com.*, 439 F.3d at 487 (“When a statute is challenged by a party who is a target or object of the statute’s prohibitions, there is ordinarily little question that the statute has caused him injury.” (cleaned up)).

A plaintiff shows it would fall within a challenged statute’s sweep if the plaintiff establishes it has “‘in the past conducted’” activities that could be covered by the statute, it “‘wish[es]” to engage in similar activities, and it is “‘prepared’” to attempt to do so, but for the statute. *Animal Legal Def. Fund v. Vaught* (“*Vaught*”), 8 F.4th 714, 719 (8th Cir. 2021) (quoting *PETA v. Stein*, 737 F. App’x 122, 130 (4th Cir. 2018) (unpublished)). These facts “lend[]

concreteness and specificity to the plaintiffs’ claims” so they do not need “to show that they have specific plans or intentions to engage in the type of speech” restricted. *Initiative and Referendum Inst. v. Walker*, 450 F.3d 1082, 1089 (10th Cir. 2006) (en banc). Put another way, a challenger need not provide the “who, what, when, and where” of the chilled speech. *ALDF v. Reynolds*, 297 F. Supp. 3d 901, 915 (S.D. Iowa 2018). Due to the law’s chilling effect a challenger “‘by definition does not—indeed, should not—have a present intention to engage in that speech at a specific time in the future’”; its past conduct and future aims are sufficient. *Id.* (quoting *Initiative and Referendum Inst.*, 450 F.3d at 1089).

Once a law’s objectively reasonable chill is proven, that injury-in-fact is traceable to and redressable against the people who can enforce the law. *Vaught*, 8 F.4th at 721 (citing *Rodgers v. Bryant*, 942 F.3d 451, 455 (8th Cir. 2019)). Here, that is indisputably Defendants. Iowa County Attorneys are charged with enforcing State criminal laws. Iowa Code § 331.756(1). The Iowa Attorney General “supervis[es] county attorneys in all matters,” oversees all appeals on behalf of the State, and must educate all prosecuting attorneys so they properly apply the law. *Id.* § 13.2.

Through its declarations, ICCI has demonstrated it and its members are suffering the quintessential injury-in-fact of chill, which is traceable to and can be remedied by enjoining Defendants.³ ICCI explains that trespassing at corporate and political sites to protest those actors’

³ ICCI is a membership organization. A3, A4-A5, A10-A15 (SMF ¶ 1). Thus it can represent its members’ interest if the members “have standing to sue in their own right,” “the interests [the organization] seeks to protect are germane to the organization’s purpose,” and “[n]either the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.” *Heartland Acad. Cmty. Church v. Waddle*, 427 F.3d 525, 532-33 (8th Cir. 2005). For the reasons stated above, ICCI’s members have standing. This action is germane to ICCI’s purposes because facilitating it and its members’ participation in the regulated activities has been part of ICCI’s stated objectives for decades, and that is part of what ICCI seeks to offer its members. A5, A8 (SMF ¶¶ 2-3); see also *Red River Freethinkers v. City of Fargo*, 679 F.3d 1015, 1022 (8th Cir. 2012) (activity that organization is “dedicated” to undertaking is germane to its purpose). Finally, where, as here, the suit “seeks only declaratory and prospective injunctive relief, the participation

activities is and has always been a core part of its advocacy. A5, A8 (SMF ¶¶ 2-3). Indeed, ICCI members and staff, including two of its member declarants, have been arrested for trespass while participating in ICCI's acts of non-violent civil disobedience. A5-A6, A17, A22 (SMF ¶¶ 7-9). Moreover, ICCI always records those activities via photos or videos so it can use its protests in other political advocacy. A6 (SMF ¶¶ 4, 6). Its member declarants have similarly recorded ICCI's actions, including those involving trespass. A17, A18, A19-A20, A21-A22 (SMF ¶ 10). Thus, its and its members' activities fall within the core of what is prohibited by § 727.8A.

While the organization and individuals were willing to accept the penalties under Iowa's standard trespass law, the heightened penalties under § 727.8A are keeping them from proceeding in the same manner, despite their wish to do so. Numerous members, including the member declarants, will not trespass and record or even participate in actions where there is trespassing and recording because they fear the law's penalties—as well as its implication that Iowa seeks to punish their advocacy. A7, A18, A20, A22 (SMF ¶¶ 12-14). Because this weakens the impact of ICCI's non-violent civil disobedience, the organization is planning fewer such actions, including declining to put resources into planning actions in Dallas, Cass, and Washington Counties, where the Defendant County Attorneys are located and ICCI has ongoing work. A7-A8 (SMF ¶¶ 11-12).

However, the member declarants explain that if § 727.8A were enjoined they would be willing to risk the same penalties they previously faced, engaging once again in their now chilled speech. A18, A20, A22 (SMF ¶ 15). Correspondingly, ICCI would return to investing the same resources it previously did in planning actions involving trespass. A8-A9 (SMF ¶ 16). ICCI and its members are suffering the injury-in-fact of chill; they have altered their speech in response to

of individual [members] is not required"; the third element is met as a matter of law. *Heartland Acad. Cmty. Church*, 427 F.3d at 533.

a law that criminalizes that speech. That injury is traceable to the law and its enforcement—powers held by Defendants—and redressable by enjoining Defendants from using the law. ICCI has standing to proceed on behalf of itself and its members.

Although one Plaintiff with standing is sufficient to proceed to the merits, *Rumsfeld*, 547 U.S. at 52 n.2, Animal Legal Defense Fund (“ALDF”), People for the Ethical Treatment of Animals (“PETA”), and Bailing Out Benji (“BoB”), also have standing based on the law’s chilling effect. They explain that investigators sent on their behalf obtain employment at or otherwise enter animal facilities and, without express permission, to record and engage in recordings there so they can develop political advocacy based on those recordings, including having done so in Iowa. A24-A26, A33-A34, A36, A40- A43 (SMF ¶¶ 17-22, 28-32, 38-40). Their recordings have documented ongoing illegal and unethical conduct and are central features of the organizations’ social, political, and legal advocacy. A24-A26, A33, A34, A42-A43 (SMF ¶¶ 17, 21, 30, 41).

ALDF, PETA, and BoB do not believe that in producing their political speech they are engaging in trespass. A27-A30, A37-A38, A46-A47 (SMF ¶¶ 25, 35, 44), but Defendants explain that if any of the facilities ALDF, PETA, or BoB enter have a “no photography” sign posted, it is arguable their recording would amount to a trespass, A136 (SMF ¶ 47). ALDF, PETA, and BoB believe such an argument is particularly likely given that § 727.8A suggests recording interferes with private property rights, A27-A30, A37-A38, A46-A47 (SMF ¶¶ 25, 35, 44), and the State has repeatedly labeled ALDF, PETA and BoB’s investigators trespassers. A136, A143, A145 (SMF ¶¶ 47-49).

In these circumstances, Eighth Circuit case law makes clear that it is reasonable for them to change their activities in response to the law. Where plaintiffs explain “they wish to engage in conduct that could reasonably be interpreted” as violating the statute, “they have reasonable cause

to fear [the] consequences” and “this is enough to establish that plaintiffs’ decision to chill their speech was objectively reasonable.” *281 Care Comm.*, 638 F.3d at 628.

Because they do fear § 727.8A’s enforcement against them, ALDF, PETA and BoB have altered their plans, declining to engage in investigations in Iowa that would involve recording. Indeed, BoB had prepared to investigate and record an Iowa puppy mill and an Iowa dog breeder that it declined to pursue because of § 727.8A. A44-A45 (SMF ¶¶ 42-43). ALDF and PETA were in the process of planning investigations involving recording, including potentially in Dallas, Cass, and Washington Counties where the Defendant County Attorneys are located, when § 727.8A was enacted. A26-A30, A34-A35 (SMF ¶¶ 23-25, 33-34). ALDF, PETA and BoB explain that if § 727.8A were struck down they would not be deterred by the penalties under Iowa’s generic trespass law because they do not believe they trespass, but given § 727.8A’s enhanced penalties and the State’s related, repeated statements that it believes ALDF, PETA and BoB are trespassing, the organizations cannot proceed with their desired investigations while § 727.8A remains on the books. A28, A30, A38, A47 (SMF ¶¶ 26, 36, 45). As a result, ALDF, PETA and BoB have standing based on the law’s chilling effect.

Defendants may point out that that ALDF, PETA, and BoB are currently seeking to enjoin Iowa’s other two Ag-Gag laws, which they contend chill this same set of activities.⁴ That does not alter their standing here. Those laws were enjoined in full when Plaintiffs filed this action, meaning § 727.8A was all that was chilling their speech—although Plaintiffs acknowledge that later the same day, the Eighth Circuit upheld one provision in Iowa’s first Ag-Gag law and remanded for

⁴ ICCI is also a plaintiff in those suits, but contends this law interferes with different speech. *See, e.g., ALDF v. Reynolds*, 297 F. Supp. 3d at 910 (explaining in the first Iowa Ag-Gag challenge ICCI sought to protect its members’ ability to investigate their employers); Compl. ¶¶ 23-24, Dkt. No. 1, *ALDF v. Reynolds*, No. 4:19-cv-00124 (S.D. Iowa Apr. 22, 2019) (alleging same with regards to second Iowa Ag-Gag law).

further proceedings. *See ALDF v. Reynolds* (“*Reynolds*”), 8 F.4th 781 (8th Cir. 2021); *ALDF v. Reynolds*, 2019 WL 8301668. Further, ALDF, PETA, and BoB explain that prior to § 727.8A’s enactment they were actively preparing investigations in Iowa because they believed the other Ag-Gag laws would remain enjoined, but once § 727.8A became law they stopped those preparations. A26-A27, A34-A35, A44-A45 (SMF ¶¶ 23, 33, 43). Section 727.8A was the basis for their chill.

Even were that not the case, a plaintiff has standing to challenge any government action that could be a “contributing factor” to the plaintiff’s injury. *Nat. Res. Def. Council, Inc. v. U.S. FDA*, 710 F.3d 71, 85 (2d Cir. 2013) (citing *St. Pierre v. Dyer*, 208 F.3d 394, 402 (2d Cir. 2000)). The law need not be the only obstacle to the plaintiff engaging in its desired speech. Removing one statute makes it more likely that the challengers will be able to engage in their desired speech. *ALDF v. Kelly*, 434 F. Supp. 3d 974, 993 (D. Kan. 2020) (“Regardless whether ALDF faces a threat of prosecution under trespass law, removing the threat of prosecution under subsection (c) addresses the chilling effect of the Act. Put another way, if ALDF knew that it only risked violation of one law (trespass) rather than two (trespass and the Act), it would reasonably be less afraid to exercise its rights.”). Otherwise, a State could simply pass multiple laws targeting the same speech and successfully chill advocacy by arguing that enjoining any one law would not immediately enable challengers to proceed.

Finally, ALDF, PETA, BoB, and Food & Water Watch (“FWW”) also have standing because they use the image and videos targeted by § 727.8A in their advocacy. “[P]utative recipients of speech usually have standing” to challenge a law so long as there is “reason to believe that [another person] is willing to speak and is being restrained from doing so” by the law. *United States v. Wecht*, 484 F.3d 194, 202 (3d Cir. 2007); *see also In re Application of Dow Jones & Co., Inc.*, 842 F.2d 603, 607 (2d Cir. 1988). In other words, where the challenged law “reduced, or

possibly eliminated, [a] pipeline of information . . . that [another plaintiff] can use in its advocacy” there is standing to challenge that law’s chilling effect. *ALDF v. Reynolds*, 297 F. Supp. 3d at 916 (citing *ACLU v. Holder*, 673 F.3d 245, 255 (4th Cir. 2011); *Penn. Family Inst., Inc. v. Black*, 489 F.3d 156, 165 (3d Cir. 2007)). ALDF, PETA, BoB, and FWW detail that they have used the recordings created by animal advocates’ undercover investigations—including those of one another—in the past to further their own speech and advocacy, and wish to do so again in the future. A30, A35, A47-A48, A50-A54 (SMF ¶¶ 27, 37, 46, 50-52). FWW also explains that it is currently working with ICCI on an anti-factory farm campaign, and thus had intended to rely on ICCI’s protest videos to enhance its and ICCI’s advocacy. A50-A51, A54-A55 (SMF ¶ 53). Given that the law targets that information gathering, ALDF, PETA, BoB, and FWW have good reason to believe it restricts their ability to obtain such information. Indeed, that is proven above. Therefore, they all have standing to challenge the law.

IV. Section 727.8A restricts protected speech.

Overwhelming, controlling authority establishes that because § 727.8A restricts recording it requires First Amendment review. The Eighth Circuit recently held that where a statute “requires proof of [] elements, including intent to commit an unauthorized act” on private property, if other aspects of the law can be met by speech, the First Amendment applies. *Reynolds*, 8 F.4th at 787; *see also Bartnicki v. Vopper*, 200 F.3d 109, 121 (3d Cir. 1999) (“The government cites no support for the surprising proposition that a statute that governs both pure speech and conduct merits less First Amendment scrutiny than one that regulates speech alone. We are convinced that this proposition does not accurately state First Amendment law.”), *aff’d*, 532 U.S. 514 (2001). This follows from Supreme Court authority that emphasizes traditional First Amendment analysis is required where a law regulates protected speech, regardless of how else it “functions.” *Holder v.*

Humanitarian Law Project, 561 U.S. 1, 27-28 (2010); *see also* *ALCU of Ill. v. Alvarez*, 679 F.3d 583, 602 (7th Cir. 2012) (“When the expressive element of an expressive activity triggers the application of a [] law, First Amendment interests are in play.”).

Recording—be it taking photos, making a video, or gathering the related data—has repeatedly been held to be protected by the First Amendment. According to the Eighth Circuit, “videos themselves are, in a word, speech.” *Telescope Media Grp. v. Lucero*, 936 F.3d 740, 751 (8th Cir. 2019). True, in reaching this holding, *Telescope Media* referenced the fact that the videos there would be “assemble[d]” to reflect the videographer’s “judgment,” which it explained supported its conclusion that the videos were speech. *Id.* at 751-52. But it also explained that once it determined the final video was speech, it needed to protect the acts that produced that speech—such as recording. *Id.* at 752. Any other rule would allow the government to suppress speech simply by dividing it into its component parts. “The government could argue, for example, that painting is not speech because it involves the physical movements of a brush” and then regulate that movement to suppress the production of art. *Id.* (citing *Brown v. Entm’t Merchs. Ass’n*, 564 U.S. 786, 792 n.1, (2011)); *see also* *Fields v. City of Philadelphia*, 862 F.3d 353, 358 (3d Cir. 2017) (“The First Amendment protects actual photos . . . and for this protection to have meaning the Amendment must also protect the act of creating that material.”); *ACLU of Ill.*, 679 F.3d at, 595 (“The act of *making* an audio or audiovisual recording is necessarily included within the First Amendment’s guarantee of speech . . . as a corollary of the right to disseminate the resulting recording.” (emphasis in original)).

Telescope Media’s reasoning is mandated by Supreme Court precedent that holds predicates to speech must be protected as speech. The Court has explained “[w]hether government regulation applies to creating, distributing, or consuming speech makes no difference” for First

Amendment purposes. *Brown*, 564 U.S. at 792 n.1. This is because “[l]aws enacted to control or suppress speech may operate at different points in the speech process,” and to protect speech all such statutes must be subject to First Amendment review. *Citizens United v. FEC*, 558 U.S. 310, 336 (2010); *see also Buehrle v. City of Key W.*, 813 F.3d 973, 977 (11th Cir. 2015) (government cannot “proceed upstream and dam the source” of speech and thereby evade First Amendment review); *Anderson v. City of Hermosa Beach*, 621 F.3d 1051, 1061–62 (9th Cir. 2010) (government cannot “disaggregate” the steps required to develop speech and evade First Amendment review).

Moreover, the logic that underlays *Telescope Media* led the Ninth Circuit to hold that recording is not just a predicate to speech, but speech itself. The Ninth Circuit explained that like a finished video, the choice of what to record reflects “decisions about the content,” which communicates the recorders’ ideas and goals and thus it is itself expressive. *ALDF v. Wasden*, 878 F.3d 1184, 1203 (9th Cir. 2018). However, this Court need not go as far as the Ninth Circuit because, under governing Eighth Circuit and Supreme Court law, even if only a final video were speech, gathering the images, sound, and data for that video would necessarily be protected by the First Amendment.

Indeed, on this basis, numerous courts have struck down essentially identical statutes to § 727.8A because gathering information for speech is a protected predicate to speech, and thus the laws—which like here regulated that speech only when it occurred on private property—required and failed First Amendment review. In *PETA*, the district court explained that the “attempt to categorize image capture and recording following a trespass . . . as unprotected speech rests on a misreading of the law” because even if it is not expressive it is “conduct essentially preparatory to speech.” 466 F. Supp. 3d at 566-67. Accordingly, it subjected several provisions that prohibited entering private property without consent and recording there without authorization to First

Amendment review and held them unconstitutional in full or in part. *E.g., id.* at 558. *ALDF v. Herbert* stated “that the act of recording is protectable First Amendment speech” because without that protection “the State could do indirectly what the Supreme Court has made clear it cannot do directly” and criminalize films. 263 F. Supp. 3d 1193, 1208-09 (D. Utah 2017). That the prohibition on recording “applie[d] only to speech on private property” did not alter the analysis because even if a person can exclude an unwanted entrant, the State cannot prosecute “a person based on her speech on private property” and, in fact, the provision failed First Amendment review. *Id.* Finally, the Tenth Circuit held that a statute that prohibited trespassing and subsequently “collecting resource data” required First Amendment scrutiny because it punished the “creation” of speech. *W. Watersheds Project v. Michael*, 869 F.3d 1189, 1196 (10th Cir. 2017). The district court subsequently struck down the prohibition, noting the “speech interest” that required First Amendment scrutiny is the same no matter where the speech occurred. *W. Watersheds Project v. Michael*, 353 F. Supp. 3d 1176, 1189 n.7 (D. Wyo. 2018); *see also Wasden*, 878 F.3d at 1203 (Ninth Circuit decision recognizing recording as expressive, striking down that provision that “prohibit[ed] a person from entering a private agricultural production facility and, without express consent from the facility owner, making audio or video recordings of the [activities]”).

Section 727.8A directly restricts First Amendment protected activities and therefore requires First Amendment review.

V. Section 727.8A fails intermediate scrutiny.

Assuming for the purposes of this motion that Defendants are correct and § 727.8A is only subject to intermediate scrutiny, *e.g.*, Dkt. No. 19, at 26, it fails that review. To survive intermediate scrutiny a law must be “narrowly tailored to serve a significant governmental interest.” *McCullen*, 573 U.S. at 486. A law is not tailored if its text is facially over- or under-

inclusive. If “a substantial portion of the burden on speech does not serve to advance the State’s” goal in passing the law, it is over-inclusive and falls. *Simon & Schuster, Inc. v. Members of N.Y. State Crime Victims Bd.*, 502 U.S. 105, 122 n.* (1991) (brackets omitted); *see also Comite de Jornaleros de Redondo Beach v. City of Redondo Beach*, 657 F.3d 936, 949 (9th Cir. 2011) (en banc) (content-neutral solicitation ban unconstitutionally over-inclusive when it applied to all in-street solicitation, where goal was only to stop solicitation that blocked traffic). Likewise, if a law does not capture a significant swath of activities that produce the harm it is purportedly designed to address, it is under-inclusive and falls. *Nat’l Inst. of Family & Life Advocs. v. Becerra*, 138 S. Ct. 2361, 2375 (2018); *see also Showtime Ent., LLC v. Town of Mendon*, 769 F.3d 61, 75 (1st Cir. 2014) (content-neutral law purportedly addressing aesthetic and traffic concerns fatally under-inclusive when targeted only at adult entertainment facilities).

Even if a law appears tailored, “the government must demonstrate that alternative measures that burden substantially less speech would fail to achieve the government’s interests, not simply that the chosen route is easier.” *McCullen*, 573 U.S. at 495. To do so, it must produce evidence that it at least “considered different methods” that would restrict less speech before enacting the challenged law. *Id.* at 494.

Defendants’ brief makes clear § 727.8A fails these tests. Defendants state that Iowa’s interest in passing § 727.8A was to protect “property from interference,” and particularly “trade secrets.” A132-A133 (SMF ¶ 55). Any restriction on speech is therefore under- and over-inclusive. Section 727.8A is no different than a statute purporting to stop burglary that only applies to people who drive to the crime in a car with a “Biden-Harris 2020” bumper sticker. That law might capture someone, but the speech restriction is entirely unnecessary. In fact, by tying the protection of property to a speech restriction, a state enacting such a law would ensure it is less effective than

one aimed solely at non-expressive conduct. So too here. The State could have imposed the same penalties as § 727.8A for regular trespass and theft and achieved the ends they claim § 727.8A serves without regulating any speech. Thus, the speech restriction is unnecessary, and by tying the entry or theft to the speech restriction the State accomplishes less than it would have if it had acted rationally.

Moreover, Plaintiffs have been unable to locate any evidence supporting the need to enact § 727.8A. Despite claiming they could prevail under intermediate scrutiny, Defendants also produced none. A133-A137 (SMF ¶ 56). In so moving, it was their burden to provide that record. *McCullen*, 573 U.S. at 494-95. This burden was particularly appropriate given the breadth of § 727.8A; there is no basis to presume that any and all recording on private property produces legitimate harm. Thus, the absence of evidence at this point establishes the law is unsustainable.

In fact, the law is so unfounded the Court could conclude the State's proffered interests are nothing more than façade. The government's inability to establish a need to restrict speech undermines its claim that the law "serves a significant governmental interest." *Buehrle*, 813 F.3d at 978-79. When, as here, another law "would have precisely the same beneficial effect" and the government still enacted a restriction on speech, courts can conclude the statute's real purpose is to show "special hostility towards" the restricted speech, which is unacceptable. *R.A.V. v. City of St. Paul, Minn.*, 505 U.S. 377, 396 (1992).

In sum, there are numerous independent bases to conclude § 727.8A fails intermediate scrutiny. Its text is so disconnected from its purported objectives that it is not tailored. Even were that not the case, the State was obligated to produce evidence showing it considered alternatives before enacting § 727.8A. It failed to do so. As a result, § 727.8A must be held untailored. And given this, it would be appropriate to conclude the law's purpose is to suppress speech, which is

not a legitimate government objective.

VI. Section 727.8A is overbroad.

Based on the above, Defendants have also shown § 727.8A is overbroad. The Supreme Court recently explained that with untailed laws “[t]he lack of tailoring ... is categorical—present in every case” and thus there is “no trouble [in] concluding” they are also “overbroad.” *Americans for Prosperity Found. v. Bonta*, 141 S. Ct. 2373, 2387 (2021). In other words, where the State cannot explain why this restriction on speech is properly tailored to achieve its ends, every application of the law represents an “indiscriminate[]” restriction on speech, rendering its prohibitions overbroad. *Id.*

A law is also overbroad where it has “a substantial number” of unconstitutional applications “judged in relation to the statute’s plainly legitimate sweep.” *Stevens*, 559 U.S. at 473. When the “the Government makes no effort to defend” numerous applications of the law to protected speech, this balancing weighs in favor of holding the law overbroad. *Id.* at 473, 481.

Again, Defendants moved to dismiss Plaintiffs’ claim on this issue, but failed to meet their burden. They made no effort to defend § 727.8A’s numerous applications to speech beyond saying that the First Amendment does not apply to recordings. A138-A141 (SMF ¶ 57). This is despite the fact that the breadth of § 727.8A means it penalizes activities understood to lie at the core of an open society. For instance, it is a trespass under Iowa law to be on rail or utility property that is otherwise open to the public if one is standing on the property rather than crossing over it. Iowa Code § 716.7(2)(a)(5)-(6). Thus, § 727.8A creates new special penalties for the nightly news broadcasts that report on accidents and environmental concerns from these sites, because reporters would be standing on the property using a camera. Likewise, it is a trespass whenever a person is orally asked to leave property. Iowa Code § 716.7(2)(a)(2)(a). Thus, the videos members of the

public share showing business personnel discriminating against or abusing customers would expose those good Samaritans to § 727.8A's penalties. If the store personnel merely say the person needs to stop recording and exit, the customer is transformed from whistleblower to criminal violating § 727.8A. This is to say nothing of § 727.8A criminalizing recording as part of political protests and investigations that are not only performed by Plaintiffs, but also unions, equal protection advocates seeking to uncover discriminatory hiring, and reporters. Defendants do not try to defend these applications of § 727.8A because they cannot. Therefore, it is overbroad. *Stevens*, 559 U.S. at 473, 481.

VII. Plaintiffs are entitled to a declaration and injunction establishing § 727.8A is facially unenforceable.

Defendants rightly agree that an overbroad law is facially invalid. Dkt. No. 19, at 33; *see also Stevens*, 559 U.S. at 473. A law is also facially invalid if it fails scrutiny. *Bruni v. City of Pittsburgh*, 824 F.3d 353, 363 (3d Cir. 2016) (“The Court has often considered facial challenges simply by applying the relevant constitutional test to the challenged statute, without trying to dream up whether or not there exists some hypothetical situation in which application of the statute might be valid.”); *Doe v. City of Albuquerque*, 667 F.3d 1111, 1123-27 (10th Cir. 2012) (canvassing case law and demonstrating that applying the “relevant constitutional test” (scrutiny) determines whether a party is entitled to facial relief). Indeed, the Eighth Circuit affirmed facial relief against a provision of Iowa's first Ag-Gag law, despite assuming that it had certain applications that would “pass constitutional muster,” because it failed scrutiny. *Reynolds*, 8 F.4th at 787. Therefore, in light of the analysis above, § 727.8A is facially invalid in two ways.

Accordingly, Plaintiffs are entitled to declaratory and injunctive relief prohibiting § 727.8A's enforcement. *See, e.g., Sierra Club v. U.S. Army Corps of Eng'rs*, 771 F.2d 409, 413-14 (8th Cir. 1985) (declaratory relief warranted where government violating the law). Indeed, once

a law is held to violate the First Amendment, “the other requirements for obtaining” equitable relief “are generally deemed to have been satisfied.” *Minn. Citizens Concerned for Life, Inc. v. Swanson*, 692 F.3d 864, 870 (8th Cir. 2012) (en banc) (preliminary injunction decision).

Should the Court wish to consider the other equitable factors, “[i]t is well-established that the loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.” *Powell v. Noble*, 798 F.3d 690, 702 (8th Cir. 2015) (cleaned up). Moreover, the balance of the equities and public interest always favor relief prohibiting the enforcement of unconstitutional laws because “it is always in the public interest to protect” those rights. *Phelps-Roper v. Nixon*, 545 F.3d 685, 690 (8th Cir. 2008), *overruled on other grounds sub. nom. by Phelps-Roper v. City of Manchester, Mo.*, 697 F.3d 678 (8th Cir. 2012) (en banc). The government, of course, cannot claim any burden from being unable to enforce an unconstitutional law.

VIII. In the alternative, Plaintiffs are entitled to a preliminary injunction.

If Defendants come forward with some eleventh-hour evidentiary issue that the Court concludes prevents immediate resolution of this matter, a preliminary injunction is still warranted. “The primary distinction is a permanent injunction requires a showing of actual rather than probable success on the merits.” *Gerlich v. Leath*, 152 F. Supp. 3d 1152, 1181 (S.D. Iowa 2016). Defendants have been unable to justify § 727.8A based on its plain text. Plaintiffs have already searched for and been unable to locate any alternative, legitimate support for the law. Therefore, as the First Amendment applies to § 727.8A, and Defendants tried and failed to carry their burdens under the level of scrutiny they claim applies, at the least Plaintiffs are likely to prevail on the merits and a preliminary injunction is warranted. *Minn. Citizens Concerned for Life*, 692 F.3d at 877 (“[W]here we determine the appellants are likely to win on the merits of their First Amendment

claim, a preliminary injunction is proper.”).

Indeed, recognizing that “even a temporary violation of First Amendment rights unquestionably constitutes irreparable injury,” the court in the second Iowa Ag-Gag case entered a preliminary injunction against that law where the legal issues were much more in dispute. *ALDF v. Reynolds*, 2019 WL 8301668, at *20. The central legal question there—what false speech is exempt from the First Amendment under the splintered Supreme Court decision in *United States v. Alvarez*, 567 U.S. 709 (2005)—was already on appeal to the Eighth Circuit from the first Iowa Ag-Gag case. Nonetheless, in reasoning that is even more applicable here, the court stated “Defendants have not shown why a statute that considerably prohibits protected speech should stay in effect when the interests it purportedly advances are unsupported by the record and only tangentially associated with the statutory language,” thus a preliminary injunction was warranted. *Id.* at *18.

IX. Conclusion.

For the foregoing reasons, the Court should enter summary judgment declaring § 727.8A unlawful and enjoining Defendants from enforcing it. In the alternative, the Court should enter a preliminary injunction preventing § 727.8A’s enforcement because Plaintiffs are likely to prevail on the merits and Defendants should not be allowed to suppress speech further simply by dragging out this litigation.

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Respectfully submitted,

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**In The United States District Court
For The Southern District of Iowa**

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

Plaintiffs,

v.

KIM REYNOLDS, in her official capacity as Governor of Iowa, **TOM MILLER**, in his official capacity as Attorney General of Iowa, **VANESSA STRAZDAS**, in her official capacity as Cass County Attorney, **CHUCK SINNARD**, in his official capacity as Dallas County Attorney, and **JOHN GISH**, in his official capacity as Washington County Attorney

Defendants.

Case No.: 4:21-cv-00231

**PLAINTIFFS' STATEMENT
OF MATERIAL FACTS**

Pursuant to Local Rule 56(a)(3) Plaintiffs submit this statement of material facts setting forth the material facts for which Plaintiffs contend there is no genuine issue to be tried.

1. Plaintiff Iowa Citizens for Community Improvement ("ICCI") is a membership-based organization, in which dues-paying members elect amongst themselves a Board of Directors that sets the policies for and guides the organization. A3, A4-A5, A10-A15 (ICCI Decl. ¶¶ 3, 10-13 & Ex. A).

2. Throughout its existence, ICCI has engaged in non-violent civil disobedience involving trespass. A5 (ICCI Decl. ¶¶ 14-15).

3. ICCI's non-violent civil disobedience is a core component of both ICCI's public facing work and what it provides its members, helping them assert their power in conversations they are otherwise prevented from participating in. A5, A8 (ICCI Decl. ¶¶ 14, 38).

4. ICCI always records its non-violence civil disobedience involving trespass by either taking photos or videos that contain images and sound. A6 (ICCI Decl. ¶¶ 22).

5. ICCI's recordings of its non-violent civil disobedience are designed to capture the protestors, their chants, their statements, and their experiences. Those making the recording are instructed not to record the targeted organization or its employees. A6 (ICCI Decl. ¶¶ 23-24).

6. The recordings are integral to ICCI's advocacy because they can be shown to members, the public, the media, politicians, or corporate wrongdoers, increasing the impact of the action and ICCI's message, and they provide a record if those participating in the non-violent civil disobedience witness or experience anything illegal. A6 (ICCI Decl. ¶¶ 25-29).

7. On numerous occasions, ICCI members and staff have been arrested for trespass and other crimes of interfering with property when they engaged in non-violent civil disobedience that was being recorded. A5-A6 (ICCI Decl. ¶¶ 17-22).

8. ICCI-member declarant Adam Mason was arrested for and pled no lo contendre to trespass due to his involvement in ICCI non-violent civil disobedience. A17 (Mason Decl. ¶¶ 8-9).

9. ICCI-member declarant Janet Wann was arrested for trespass due to her involvement in ICCI non-violent civil disobedience. A22 (Wann Decl. ¶ 9).

10. ICCI-member declarants Mr. Mason, Ms. Wann, and Brenda Brink have all previously taken photos and/or produced videos of ICCI non-violent civil disobedience, including of non-violent civil disobedience involving trespass, in which they were participating and

trespassing. A17, A18, A21-A22, A19-A20 (Mason Decl. ¶¶ 10, 12; Wann Decl. ¶¶ 4-6; Brink Decl. ¶¶ 4-5).

11. Because of Iowa Code § 727.8A, ICCI is engaging in less non-violent civil disobedience involving trespass, including declining to pursue potential such actions it was considering engaging in prior to the enactment of § 727.8A. The areas where ICCI would consider engaging in non-violent civil disobedience involving trespass include Dallas, Cass, and Washington Counties. A8 (ICCI Decl. ¶¶ 36-37).

12. ICCI is investing less resources in planning non-violent civil disobedience involving trespass because numerous members will not participate in the actions due to the heightened penalties imposed by Iowa Code § 727.8A, thereby decreasing the impact of the actions. Because of this, ICCI is engaging in less non-violent civil disobedience involving trespass than it was prior to the passage of Iowa Code § 727.8A. A7 (ICCI Decl. ¶¶ 34-35).

13. ICCI members Mr. Mason, Ms. Wann, and Ms. Brink will not record ICCI non-violent civil disobedience involving trespass due to § 727.8A. A18, A22, A20 (Mason Decl. ¶¶ 13-15; Wann Decl. ¶¶ 10-11; Brink Decl. ¶¶ 7-8).

14. Because of Iowa Code § 727.8A, ICCI member Mr. Mason will not even participate in ICCI non-violent civil disobedience involving trespass. A18 (Mason Decl. ¶¶ 13, 15).

15. However, if Iowa Code § 727.8A was no longer enforceable, Mr. Mason and Ms. Wann would participate in and record ICCI's non-violence civil disobedience involving trespass. A18, A22 (Mason Decl. ¶ 16; Wann Decl. ¶ 12). Ms. Brink would consider doing the same. A20 (Brink Decl. ¶¶ 10).

16. If Iowa Code § 727.8A was no longer enforceable ICCI would also increase the amount of resources it is currently devoting to planning and carrying out non-violent civil

disobedience involving trespass, returning to investing the same amount of resources it did before § 727.8A was enacted, which would allow it to carry out more actions involving trespass. A8-A9 (ICCI Decl. ¶ 39).

17. Plaintiff Animal Legal Defense Fund (“ALDF”) seeks to provide the public truthful information about what is occurring at animal facilities, including by contracting with people to perform undercover investigations at animal facilities, which has allowed it to document mistreatment of animals. A24-A26 (Walden Decl. ¶¶ 4-6, 9-10, 12).

18. One of the ways in which ALDF’s investigators conduct undercover investigations is by obtaining employment at a facility and, once employed, unbeknownst to the property owner, using hidden recording equipment to record images, sound, and related data of unlawful, unethical, or inhumane practices. A25, A26 (Walden Decl. ¶¶ 7, 11).

19. ALDF’s investigators engaged in employment-based undercover investigations make recordings in areas open to others, where people perform their job functions. A25 (Walden Decl. ¶ 8).

20. ALDF’s investigators may also pose as customers and make recordings. A25, A26 (Walden Decl. ¶¶ 9, 12).

21. ALDF’s investigator’s recordings are then used by ALDF in educational materials, media activities, legislative advocacy, regulatory actions, lawsuits, and provided to allies. A26 (Walden Decl. ¶¶ 11-12).

22. An ALDF investigator previously performed a customer-based undercover investigation in Iowa. A24, A26 (Walden Decl. ¶¶ 4, 12).

23. ALDF was in the process of planning an employment-based undercover investigation in Iowa when Iowa enacted Iowa Code § 727.8A. A26-A27 (Walden Decl. ¶¶ 13-15).

24. Cass, Dall, and Washington Counties are areas that ALDF would consider sending an investigator to conduct an employment-based undercover investigation because they contain animal facilities that are of concern to ALDF. A27-A28 (Walden Decl. ¶ 16).

25. However, ALDF is declining to pursue employment-based undercover investigations in Iowa because it is concerned Iowa will declare that its investigators are trespassing and thus the employee-investigators are violating § 727.8A. ALDF does not believe its undercover investigations involve trespass, but § 727.8A, combined with the State's representations that it believes ALDF's investigators are trespassers, led ALDF to believe that Iowa would seek to label ALDF's investigations a trespass, and given § 727.8A's penalties it could not take that risk. A27-A30 (Walden Decl. ¶¶ 16-22).

26. If § 727.8A were declared unconstitutional, ALDF would not be deterred from conducting employment-based undercover investigations by Iowa's generic trespass law because ALDF does not believe its employment-based undercover investigations amount to a trespass and its investigators would be subject to lesser penalties. A28, A30 (Walden Decl. ¶¶ 18, 22).

27. Section 727.8A is also harming ALDF by inhibiting others from engaging in undercover investigations where they make recordings, such as Plaintiffs People for the Ethical Treatment of Animals ("PETA") and Bailing Out Benji ("BoB"), which is material ALDF has relied upon in its advocacy in the past and would rely upon again in the future. A30 (Walden Decl. ¶¶ 23-24).

28. Plaintiff PETA seeks to expose the cruelty to animals, including farmed animals, using that evidence to educate the public and influence government action, thereby bettering the treatment of animals. A33, A36 (Kerr Decl. ¶¶ 4, 26).

29. One of the ways PETA gathers information is through undercover investigations, which it then publishes to promote public and governmental action. A36 (Kerr Decl. ¶¶ 25-26).

30. PETA's investigations have revealed illegal and egregious animal abuse and resulted in criminal enforcement actions. A33, A34 (Kerr Decl. ¶¶ 6-7, 13).

31. To gather information about farmed animal cruelty, PETA engages in employment-based undercover investigations, in which PETA's investigator gains employment and uses a hidden camera (without express permission to do so) to document illegal and unethical conditions, as the employee-investigator goes about performing their regularly assigned tasks. A33-A34 (Kerr Decl. ¶¶ 6-12).

32. PETA has conducted such employment-based undercover investigations in Iowa. A34 (Kerr Decl. ¶¶ 13-14).

33. PETA has been informed of ongoing animal cruelty in Iowa it wishes to investigate using employment-based undercover investigations, had begun to plan those investigations, and intended to finalize those plans once Iowa's first and second Ag-Gag laws were permanently enjoined. A34-A35 (Kerr Decl. ¶¶ 15, 17-21).

34. However, because of § 727.8A, PETA will not undertake those investigations unless it too is enjoined. A35 (Kerr Decl. ¶ 22).

35. PETA does not believe its investigators trespass, but it believes that § 727.8A suggests Iowa prosecutors should regard PETA's recording on private property as a trespass; this

is particularly true as Iowa has repeatedly tried to label PETA's investigators trespassers. A37-A38 (Kerr Decl. ¶¶ 32-34).

36. However, because PETA does not believe its investigators are trespassers, if § 727.8A were enjoined PETA would be willing to proceed, particularly as with § 727.8A declared unconstitutional, the State's efforts to target PETA's advocacy would have been held unlawful. A38 (Kerr Decl. ¶¶ 35-37).

37. PETA is also harmed by § 727.8A because it wishes to use recordings by other organizations, such as ALDF, BoB and ICCI, in its advocacy, but the law discourages them from making those recordings. A35 (Kerr Decl. ¶ 16).

38. Plaintiff BoB works against puppy mills, including by seeking to provide truthful information to the public and government about the harms puppy mills cause. A40-A41, A42-A43 (Callison Decl. ¶¶ 3, 8-9).

39. As part of this work, BoB has its staff or volunteers enter puppy mills, dog auctions, and pet stores as customers, breeders or brokers—only entering areas that customers, breeders, and brokers typically access—and record what is occurring there using a hidden recording device to obtain images, sound, and related data. A41-A42 (Callison Decl. ¶ 6).

40. BoB has conducted these investigations around the country, including in Iowa. A42-A43 (Callison Decl. ¶¶ 7, 9-11).

41. BoB uses the recordings its investigators obtain to further its mission of educating the public about the mistreatment of dogs due to the puppy mill industry and pressing for greater regulatory oversight to prevent such mistreatment. A42-A43 (Callison Decl. ¶¶ 8-9).

42. BoB was in the process of planning undercover investigations in Iowa when § 727.8A was enacted. A44-A45 (Callison Decl. ¶¶ 14-15).

43. However, once § 727.8A was passed, because of the law, BoB declined to engage in undercover investigations of an Iowa puppy mill and an Iowa dog breeder it was prepared and had taken steps to undertake. A44-A45 (Callison Decl. ¶¶ 15-17).

44. Iowa's generic trespass law does not deter BoB from its investigations because it does not believe that its investigators are trespassers, but because § 727.8A was passed to single out undercover investigators and suggest that recording violates private property rights, BoB now fears that its investigators will be subjected to criminal prosecutions for making recordings. This is particularly the case as the State has sought to label such investigations trespasses. A46-A47 (Callison Decl. ¶¶ 19-21).

45. If § 727.8A were declared unconstitutional, however, BoB would no longer believe that the State would seek to target recording as violating private property rights, even recognizing Iowa's generic trespass law would remain in force, as in those circumstances BoB believes Iowa would either correctly apply the law or BoB's rights would be quickly vindicated. A47 (Callison Decl. ¶ 22).

46. Section 727.8A also harms BoB by inhibiting others, including Plaintiffs ALDF and PETA from making recordings, which is material BoB has used in its advocacy the past and would seek to use again if it were available. A47-A48 (Callison Decl. ¶¶ 23-24).

47. Defendants themselves have stated Plaintiffs ALDF, PETA and BoB should fear their investigators will be labeled trespassers, and thus that they risk charges under § 727.8A, because it is "not clear" whether using a camera without permission would be prohibited by Iowa's generic trespass statute. Iowa Code § 716.7. A136 (Br. ISO Mot. to Dismiss of Defs., Dkt. No. 19, at 31).

48. In other briefing, Defendants also stated that ALDF, PETA, and BoB's investigations amount to a trespass, including asserting that even without the Ag-Gag's laws targeted at Plaintiffs, "the activities Plaintiffs want to engage in are still illegal under Iowa's trespass laws." A143 (Defs.' Comb'd Br. ISO Resist. To Pltfs' MSJ and Cross MSJ, *ALDF et al. v. Reynolds et al.*, 4:17-cv-00362-JEG-HCA (S.D. Iowa), Dkt. No. 64, at 28).

49. Likewise, Defendants have asserted that Plaintiffs' undercover investigations are a "trespass—facilitated by lies." A145 (Defs.' Reply Br. ISO MSJ, *ALDF et al. v. Reynolds et al.*, 4:17-cv-00362-JEG-HCA (S.D. Iowa), Dkt. No. 76, at 2).

50. Plaintiff Food & Water Watch ("FWW") is an advocacy organization that works to protect food, water, and the climate, including by combatting factory farming in Iowa where it has active ongoing work. A50-A51 (FWW Decl. ¶¶ 3-4, 6).

51. FWW's advocacy—including reports, books, and legal work—has previously relied on information gathered by groups like Plaintiffs ALDF and PETA, particularly the images and videos they obtained in their undercover investigations of industrial animal agriculture facilities. A51-A53 (FWW Decl. ¶¶ 7-8).

52. FWW wishes to rely on similar information in the future, particularly from investigations in Iowa, and the absence of such information would undermine the speech it wishes to develop. A53-A54 (FWW Decl. ¶¶ 9-12).

53. FWW is also currently working with ICCI against factory farming in Iowa and thus wishes to promote ICCI's non-violent civil disobedience involving trespass connected with that campaign in order to draw attention to the issue and help build support for FWW's and ICCI's work. A50-A51, A54-A55 (FWW Decl. ¶¶ 6, 13-14).

54. Iowa Code § 727.8A has negatively impacted FWW’s ability to engage in its desired speech by preventing ALDF, PETA, ICCI, and others from gathering the images, videos, and data on which FWW would rely. A54-A55 (FWW Decl. ¶¶ 11-14).

55. Defendants represented to the Court that Iowa Code § 727.8A was passed to further the governmental interest of protecting “property and the right to privacy,” as well as the “[r]elated” right of “the protection of propriety [sic] information or trade secrets.” A132-A133 (Br. ISO Mot. to Dismiss of Defs., Dkt. No. 19, at 27-28).

56. Defendants argued that Iowa Code § 727.8A is “Narrowly Tailored to the Significant Governmental Interests,” but failed to introduce any evidence that the state considered alternatives to enacting Iowa Code § 727.8A. A133-A137 (Br. ISO Mot. to Dismiss of Defs., Dkt. No. 19, at 28-32).

57. Defendants argued that Iowa Code § 727.8A is not overbroad, but only defended its applications by arguing Iowa Code § 727.8A does not cover “protected speech.” A138-A141 (Br. ISO Mot. to Dismiss of Defs., Dkt. No. 19, at 33-36).

November 12, 2021

Respectfully submitted,

/s/ David S. Muraskin

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CERTIFICATE OF SERVICE

I hereby certify that on this date I electronically filed the foregoing paper with the Clerk of Court by using the CM/ECF system. All participants in this case are registered CM/ECF users and will be served by that system.

Date: November 12, 2021

/s/ David S. Muraskin
David S. Muraskin

In The United States District Court
For The Southern District of Iowa

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

Plaintiffs,

v.

KIMBERLY K. REYNOLDS, in her official
capacity as Governor of Iowa, and **TOM
MILLER**, in his official capacity as Attorney
General of Iowa, **VANESSA STRAZDAS**, in her
official capacity as Cass County Attorney, **CHUCK
SINNARD**, in his official capacity as Dallas
County Attorney, and **JOHN GISH**, in his official
capacity as Washington County Attorney

Defendants.

Case No.: 4:21-cv-00231

**APPENDIX TO PLAINTIFFS’
MOTION FOR SUMMARY
JUDGMENT**

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In The United States District Court
For The Southern District of Iowa

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

Plaintiffs,

v.

KIM REYNOLDS, in her official capacity as Governor of Iowa, **TOM MILLER**, in his official capacity as Attorney General of Iowa, **VANESSA STRAZDAS**, in her official capacity as Cass County Attorney, **CHUCK SINNARD**, in his official capacity as Dallas County Attorney, and **JOHN GISH**, in his official capacity as Washington County Attorney

Defendants.

Case No.: 4:21-cv-00231

**DECLARATION OF LISA
WHELAN ON BEHALF OF
PLAINTIFF IOWA
CITIZENS FOR
COMMUNITY
IMPROVEMENT**

I, Lisa Whelan, hereby declare as follows:

1. I am the Operations Director of Iowa Citizens for Community Improvement (“ICCI”), and Iowa Citizens for Community Improvement Action Fund (“ICCI Action Fund”).
2. The matters set forth in this declaration are based on my personal knowledge and experience and my consideration of materials and information described below. For any matter that is not based on my direct personal knowledge, I am authorized to make these statements on behalf of ICCI and I have developed personal knowledge of these facts by speaking with the organization’s staff and reviewing its documents. If called to testify as to these matters, I could and would competently testify to what is set out in this declaration.
3. ICCI is 501(c)(3) membership-based organization.

4. ICCI works to enable Iowans from all walks of life—urban and rural, young and old, immigrant and lifelong Iowan—to make change in their communities by raising their voices and doing grassroots advocacy.

5. ICCI's motto is "People Before Politics. People Before Profits. People Before Polluters."

6. ICCI organizational priorities include fighting factory farms, protecting Iowa's clean water and environment, as well as advancing worker justice, racial justice, and immigrants' rights.

7. ICCI sets out to achieve these goals through educating everyday Iowans about these issues, holding events that call attention to these concerns and that discuss policy solutions, and working to ensure decisionmakers are aware of the experiences and wishes of their constituents.

8. ICCI also has a sister-501(c)(4) membership-based organization, the ICCI Action Fund.

9. The ICCI Action Fund carries out activities based-upon ICCI's mission and goals, which ICCI cannot carryout due to its tax status. ICCI and ICCI Action Fund share office space and staff who allocate their time appropriately between the organizations.

10. Attached as Exhibit A is a true and correct copy of ICCI's bylaws laying out the role of Members in stewarding the organization.

11. Members vote to elect one another to serve on ICCI's Board of Director. *See Ex. A.*

12. The Board of Directors sets ICCI's overall policy, provides general direction for the organization, and monitors organization activities throughout the year to ensure we are fulfilling our overall mission. *See Ex. A.*

13. Moreover, Members can voice their opinion about the direction of the organization and its activities through regular organizational meetings and surveys.

14. Since its inception in 1975, among the tactics that ICCI's Members and Board of Directors have determined the organization should employ to advance its goals is non-violent civil disobedience. The organization has seen that this is one of its most effective tactics for organizing individuals and drawing attention to its issues—both due to action itself, and the press and advocacy materials that can be developed based upon the action.

15. This non-violent civil disobedience frequently involves trespassing at political and corporate sites where the politicians or executives have refused to listen to those impacted by their misconduct.

16. Since 1975, ICCI or ICCI Action Fund have planned and carried out non-violent civil disobedience involving trespass on hundreds of occasions.

17. On numerous occasions, Members and staff have been arrested under Iowa law for trespassing.

18. For example, in 2012 a staff member was convicted of trespass as a result of participating in an Occupy protest on behalf of ICCI, to show ICCI's support for that movement.

19. While participating in ICCI-organized non-violent civil disobedience in 2016, 31 people connected with ICCI were arrested for trespass for blocking a construction site that ICCI believed would be environmentally damaging to their community.

20. While working on behalf of ICCI Action Fund in 2017, ICCI's Executive Director was arrested for trespassing while in areas of Senator Grassley's office open to other constituents, as part of the organization's protest against the Senator's support for Jeff Sessions to be U.S. Attorney General and the Senator's connected support for voter suppression.

21. In 2012, 10 people associated with ICCI were arrested and charged with several different violations for interfering with Wells Fargo's property, due to them sitting in front of the entrance of a bank branch, as part of ICCI organized non-violent civil disobedience protesting Wells Fargo's predatory banking practices that contributed to the 2008-2009 financial crisis.

22. In each instance above, as is always true of ICCI and ICCI Action Fund's non-violent civil disobedience, the organization either took photos or made videos containing images and sound of the action.

23. These photos and videos focus on the protestors, their chants, their statements, and their experiences.

24. Those recording on behalf of ICCI are instructed not to leave the protest and not to record employees of the targeted organization or their work.

25. The recordings ensure that if any of the people participating in the action experience, witness, or are accused of illegal, there is a record.

26. More importantly, the recordings can be used by ICCI in its later advocacy.

27. Images or videos of the action are sent to the media and politicians or corporate wrongdoers the organization is seeking to influence.

28. Images or videos of the actions are also used in meetings with ICCI Members and the public at large. ICCI has seen that the images and videos of its non-violent civil disobedience are particularly effective tools to increase participation and motivate others to join its work.

29. Indeed, a central function of the recordings is to educate other Iowans about ICCI's activities and goals, work performed by ICCI. Thus, even if, for tax purposes, the action is carried out by ICCI Action Fund, a central purpose of the recording is to further ICCI's advocacy.

30. Given these diverse goals and the important function the images and videos serve

in advancing ICCI's goals, ICCI ensures those making recordings of an action understand the recordings' purpose and are able to record the non-violent civil disobedience in a way that serves ICCI's mission.

31. Accordingly, ICCI does not call on all of its Members to record its actions, but rather asks specific individuals to do so that can ensure the recording will serve its function. ICCI has asked Adam Mason to record actions in the past, and, given their familiarity with the organization, its advocacy, and non-violent civil disobedience, would ask Members Janet Wann and Brenda Brink to record actions in the future.

32. For the foregoing reasons, Iowa Code § 727.8A harms ICCI's advocacy.

33. ICCI must now warn people who could and would have recorded its actions previously of the significant penalties they will face if they record an action involving trespass. This has deterred people from being willing to record ICCI's actions making them more difficult to plan and carryout.

34. For instance, since Iowa Code § 727.8A was enacted numerous ICCI Members have stated they are unwilling to record ICCI's non-violent civil disobedience involving trespass because they fear the penalties created by the statute, which are far greater than for trespass. This includes Mr. Mason, Ms. Wann, and Ms. Brink.

35. Moreover, because Iowa Code § 727.8A targets ICCI's advocacy, Members have also stated that they will not participate in any non-violent civil disobedience that involves trespass and recording, as they have increased fears the state will arrest them and seek enhanced penalties. With fewer people willing to participate, the impact of ICCI's actions, both at the time they are occurring and through the recordings, is reduced, because the force of the advocacy is reduced with fewer voices present.

36. As a result, because of Iowa Code § 727.8A, ICCI has put less resources into planning non-violent civil disobedience involving trespass. Therefore, it has engaged in fewer actions involving trespass and recording that trespass.

37. Indeed, prior to Iowa Code § 727.8A's enactment, ICCI was considering using non-violent civil disobedience, including involving trespass in its ongoing campaigns for climate justice, to protect democracy, to ensure an equitable farm and food system, to enforce healthcare as a human right, to demand every immigrant and refugee receive a fair paying job and a pathway to citizenship, and to dismantle the systems of racial oppression. It would record those actions like it has in the past. This is particularly true in connection with its ongoing campaign against factory farms, for which ICCI has entered open business offices to protest in the past. It had contemplated engaging in similar activities in every Iowa county where factory farms are increasing, including Dallas, Cass and Washington Counties. However, it has been deterred from engaging in such actions if they involve trespass.

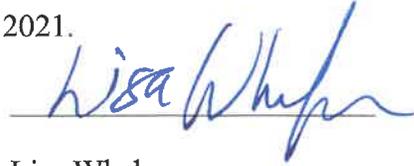
38. Accordingly, Iowa Code § 727.8A has undermined not only ICCI's advocacy, but its power building. ICCI and its members engage in non-violent civil disobedience to prove that regular people can obtain a seat at the table, even when those with traditional power seek to lock them out. Iowa Code § 727.8A's increased penalties for ICCI's actions has undermined that component of ICCI's work because the organization cannot demand the powerful listen to the people to the same extent, because it will not place its staff, Members, and others at the level of risk that would require.

39. If Iowa Code § 727.8A were declared unlawful and enjoined, however, ICCI would return to devoting the same resources to planning and carrying out non-violent civil disobedience involving trespass that it did prior to the law's enactment. Its Members have also informed ICCI

that they would be willing to record those actions. Therefore, ICCI would be able to increase its desired advocacy.

I declare under penalty of perjury that the foregoing is true and correct.

Executed in Des Moines, Iowa on November 8, 2021.



Lisa Whelan

Exhibit A

**BYLAWS
OF
IOWA CITIZENS FOR COMMUNITY IMPROVEMENT (CCI)**
as amended on Sept. 14, 1996, Nov. 15, 1997, Sept. 9, 2000, May 16, 2009,
Feb. 16, 2013, Oct. 19, 2014 and July 14, 2015

ARTICLE 1. NAME

The name of this corporation is Iowa Citizens for Community Improvement (Iowa CCI).

ARTICLE 2. PURPOSES

This corporation has been formed for charitable purposes to empower and unite grassroots people of all ethnic backgrounds to take control of their communities; involve them in identifying problems and needs and in taking action to address them; and, be a vehicle for social, economic, and environmental justice.

In addition, this corporation is formed for the purposes of performing all things appropriate to achieving the foregoing specific and primary purposes. However, the corporation shall not, except to an insubstantial degree, engage in any activities that are not in furtherance of its primary charitable purposes. Further, in no event shall the corporation engage in activities which are not permitted to be carried on by a corporation exempt under Section 501(c)(3) of the Internal Revenue Code.

ARTICLE 3. NONPARTISAN ACTIVITIES

This corporation has been formed under the Iowa Nonprofit Public Benefit Corporation Law for the charitable purposes described above, and it shall be nonprofit and nonpartisan. No substantial part of the activities of the corporation shall consist of the publication or dissemination of materials with the purpose of attempting to influence legislation, and the corporation shall not participate or intervene in any political campaign on behalf of or in opposition to any candidate for public office.

ARTICLE 4. DEDICATION OF ASSETS

The properties and assets of this nonprofit corporation are irrevocably dedicated to charitable purposes. No part of the net earnings, properties, or assets of this corporation, on dissolution or otherwise, shall inure to the benefit of any private person or individual, or any member, director or officer of this corporation. On liquidation or dissolution, all remaining properties and assets of the corporation shall be distributed and paid to an organization(s) dedicated to charitable purposes which has established its tax-exempt status under Internal Revenue Code Section 501(c)(3).

ARTICLE 5. MEMBERSHIP & DUES

Section 1. Qualifications. Members are individuals who support the general purposes of Iowa CCI and have paid their annual dues as set by the Iowa CCI board.

Section 2. Rights of Membership. Members shall have the right to vote on the election of directors.

Section 3. Termination of Membership. A membership shall terminate on occurrence of any of the following events:

- (a) Resignation of the member, on reasonable notice to the corporation;
- (b) Expiration of the period of membership, unless the membership is renewed on the renewal terms fixed by the board;
- (c) Expulsion of the member based on the good faith determination by the board, or a committee or person authorized by a vote of the board to make such a determination, that the member has acted in a manner clearly contrary to the interests of the corporation.

ARTICLE 6. BOARD OF DIRECTORS

Section 1. Membership on the board

1. Only CCI members can serve on the Iowa CCI Board.

2. The Board shall consist of no more than 15 people. Board members will decide the specific number. When members are nominated to run for the Board, consideration shall be given to geographic, racial and gender diversity. Our commander's intent, in terms of membership on the Board, is to have "the best board possible".

3. Elected or appointed salaried government officials shall not serve on the Iowa CCI Board.

4. Any member of the Board may be removed from an elected board office and/or the Board by a vote of a majority of the members of the entire board.

Section 2. Manner of election

Board members shall be elected by other CCI members. Board members shall determine how members are elected to the board. Members may be elected to the board in a number of ways, which could include, but are not limited to, the following:

- Election at CCI's annual convention
- Election by the general membership via mail
- Election by the general membership via online systems
- Election by the board of directors

Section 3. Terms of office

Iowa CCI board members shall be elected for two-year terms of office. Board members can be elected for 3 consecutive terms and be elected again after a 2-year absence from the board.

Section 4. Vacancies

The Board may elect persons to fulfill the remainder of the term of board members who: 1) resign before their term has expired, or 2) fail to attend two consecutive meetings.

Section 5. Powers and Duties of the board.

The powers and duties of the Board shall be:

- to establish broad policy and set general direction for the corporation

- to raise the necessary funding to carry out the purposes of the corporation by both giving a personal gift and helping to obtain needed funding
- to approve the annual budget of Iowa CCI
- to hire, evaluate and, if necessary, fire the executive director
- to actively participate in the organization and to actively promote understanding of the purposes and programs of the corporation
- to assist the executive director and staff in the implementation of the programs

Section 6. Meetings of Iowa CCI board of directors

1. The board shall elect its officers at its annual retreat. Dates and times of regular board meetings shall be determined by December for the following board year.

2. Special meetings of the Board of Directors may be called by the President in consultation with the Executive Director and other board members. While striving for consensus, a majority of the board must agree in order for a special meeting to be held. When calling for special meetings, at least 72 hours written notice shall be given to the entire board.

Section 7. Board meeting agendas

Appropriate agendas shall be prepared for each meeting authorized by these By-Laws. The Executive Director and the President of the Board of Directors shall be responsible for the preparation of the agendas for regular meetings, and the President or Board members calling a special meeting shall include in the notice of said meeting the specific agenda for that meeting.

Section 8. Quorum

At any meeting of the Board of Directors, the presence in person of one-half of the Directors shall constitute a quorum for transacting business.

ARTICLE 7. COMMITTEES

The President of the Board of Directors may establish such committees as he or she deems necessary. The President shall designate such committees to be formed and select the committee chairperson or allow the committees to select their own chairperson. Committee members will be confirmed by the Board of Directors.

ARTICLE 8. EXECUTIVE BOARD

The executive board made up of officers of the Board may make decisions when a decision is required before the next regularly scheduled board meeting. Such decisions are to be ratified by the entire Board at the next board meeting.

ARTICLE 9. OFFICERS OF THE BOARD OF DIRECTORS

Section 1. Officers

The officers of the Board of Directors shall be President, Vice President, Secretary and Treasurer.

Section 2. Election

Officers of the Board of Directors shall be elected from the Board at the first Board meeting following the statewide convention (normally the September meeting). Officers shall be elected for a one-year term and may be reelected. A majority of votes cast shall determine the election of each officer.

Section 3. Duties of the president

The duties of the President shall be: (1) to conduct meetings according to the prescribed manner; (2) to serve as ex officio member on all regular and special committees; (3) to call special meetings as necessary; (4) to represent the organization officially; and (5) to cast a vote only in the case of a tie.

Section 4. Duties of the vice president

The duties of the Vice President shall be: to fulfill the duties of the President in the absence of the President, and to assist generally in the duties of the President.

Section 5. Duties of the secretary

The Secretary shall be responsible for the records and documents of the corporation and to verify the accuracy of the minutes of meetings.

Section 6. Duties of the treasurer

The Treasurer shall provide assistance to the Board of Directors with respect to financial affairs of the corporation.

ARTICLE 10. EXECUTIVE DIRECTOR

Section 1. Executive Director

The Board shall employ an executive director who shall be responsible to the Board of Directors for the performance of the affairs of the corporation. He or she shall be responsible for the implementation of Board policy and guidelines, and for supervision and evaluation of all staff. The board may terminate the employment of the Executive Director by a 2/3 vote of the entire Board.

Section 2. Hiring authority

The Executive Director shall have authority to hire and terminate the employment of all staff.

ARTICLE 11. FEES and COMPENSATION

Directors and members of committees may not receive any compensation for their services as such, but may receive reasonable reimbursement of authorized expenses incurred in the performance of their duties.

ARTICLE 12. ANNUAL REPORT

The board shall cause an annual report to be made available to all members of this corporation within 7 months after the end of the corporation's fiscal year, containing the following information:

- 1.) Expenses and revenues for the fiscal year.
- 2.) Key achievements for the fiscal year.

ARTICLE 13. FISCAL YEAR

The fiscal year for this corporation shall begin on January 1 and end on December 31.

ARTICLE 14. AMENDMENTS

The Board of Directors shall have authority to amend or repeal these by-laws by a 2/3 vote of the entire Board provided that notice of any such amendment or repeal is given to all members of the Board at least ten (10) days before such vote.

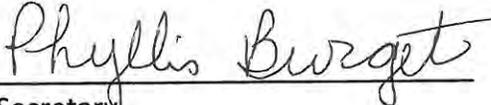
ARTICLE 15. PERIODIC REVIEW

Bylaws shall be periodically reviewed by the Board as needed, but at least once every 5 years. These reviews shall be noted in board minutes and on the bylaws.

CERTIFICATE OF SECRETARY

I, the undersigned, certify that I am the presently elected and acting secretary of the Iowa CCI board of directors, a Iowa nonprofit public benefit corporation, and the above bylaws, consisting of 5 pages, are the bylaws of this corporation as adopted by the Board of Directors on July 14, 2015, and that they have not been amended or modified since that date.

Executed on July 14, 2015, at Des Moines, Iowa


Secretary

[Phyllis Burget]

**In The United States District Court
For The Southern District of Iowa**

**ANIMAL LEGAL DEFENSE FUND;
PEOPLE FOR THE ETHICAL
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Defendants.

Case No.: 4:21-cv-00231

**DECLARATION OF ADAM
MASON**

I, Adam Mason, hereby declare as follows:

1. The matters set forth in this declaration are based on my personal knowledge and experience. If called to testify as to these matters, I could and would competently testify to what is set out in this declaration.

2. I have been an annual dues-paying Member of Iowa Citizens for Community Improvement (“ICCI”) since 2006.

3. From 2006-2021, I was also an ICCI staff member, but due to my support for the organization’s mission and objective I participated in its activities separate from my job functions. This includes voting on its Board of Directors, attending meetings as a Member, and

participating in the organization's non-violent civil disobedience, including when it involved trespass.

4. I am no longer an ICCI staff member, but I remain an annual dues-paying Member of the organization.

5. As a result of my roles as both staff and Member, I have participated in dozens, if not hundreds of ICCI organized non-violent civil disobedience, including actions involving trespass.

6. Those actions occurred in Dallas County, among other counties.

7. As part of two ICCI actions to bring attention to role banks played in bringing about the 2008-2009 financial crisis, I have trespassed on bank property.

8. Moreover, I was arrested for trespass as part of ICCI organized non-violent civil disobedience to protest the Dakota Access Pipeline and the environmental crisis fossil fuels are producing.

9. I chose to plead nolo contendere to that charge of trespass because I was only charged with a simple misdemeanor under Iowa law.

10. Due to my role as staff and organizational Member, I have been informed how to record ICCI's non-violent civil disobedience for ICCI, including ICCI actions involving trespass. I have learned to powerfully capture the organization's and Members' message and testimony through photos and videos to use for future educational purposes.

11. Part of the reason I believe in non-violent civil disobedience is that recording can ensure the action has lasting and broader impact, through increasing the number of people who witness the action and allowing it to be used in advocacy after the action is complete.

12. I have taken photos, made videos of, and live streamed ICCI non-violent civil disobedience.

13. However, due to Iowa Code § 727.8A, I will not participate and record or even just participate in ICCI non-violent civil disobedience involving trespass.

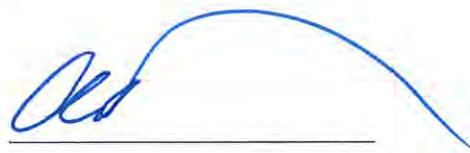
14. The penalties under Iowa Code § 727.8A, which are much more significant than for trespass, are keeping me from acting. I fear being convicted of an aggravated misdemeanor. I particularly fear the potential for a felony conviction that comes with a second violation. I believe such convictions would have negative consequences on my professional and personal life.

15. Moreover, I believe Iowa Code § 727.8A shows a special hostility by the State to my and ICCI's advocacy that it is presently unclear we will be protected against.

16. If Iowa Code § 727.8A were declared unconstitutional or enjoined, however, I would participate in and record ICCI non-violence civil disobedience involving trespass.

I declare under penalty of perjury that the foregoing is true and correct.

Executed in Des Moines, Iowa on November 3, 2021.


Adam Mason 11/3/2021

**In The United States District Court
For The Southern District of Iowa**

**ANIMAL LEGAL DEFENSE FUND;
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Defendants.

Case No.: 4:21-cv-00231

**DECLARATION OF
BRENDA BRINK**

I, Brenda Brink, hereby declare as follows:

1. The matters set forth in this declaration are based on my personal knowledge and experience. If called to testify as to these matters, I could and would competently testify to what is set out in this declaration.

2. I have been an annual dues-paying Member of Iowa Citizens for Community Improvement (“ICCI”) for nine years and have served on its Board of Directors.

3. As a Member of ICCI, I have worked with the organization to publicize its issues and proposed policy solutions in a variety of ways.

4. This includes participating in non-violent civil disobedience involving a protest in the lobby of a Wells Fargo in Polk County, meant to highlight the company’s moral failing in

funding the Dakota Access Pipeline, which will destroy Iowa's natural resources and contribute to climate change.

5. In that action, I recorded images of the protest in order to document the messages on the banners and signs, the speakers and the number of protestors.

6. I believed this would increase the impact of our message, by enabling us to demonstrate our positions and passion to others, encouraging them to join us.

7. However, due to Iowa Code § 727.8A, I will not participate and record ICCI non-violent civil disobedience involving trespass.

8. The penalties under Iowa Code § 727.8A, which are much more significant than for trespass, are keeping me from acting. I fear being convicted of an aggravated misdemeanor.

9. In fact, I believe Iowa Code § 727.8A shows a special hostility by the State to my and ICCI's advocacy that it is presently unclear we will be protected against.

10. If Iowa Code § 727.8A were declared unconstitutional or enjoined, however, I would consider participating in and recording ICCI non-violence civil disobedience involving trespass.

I declare under penalty of perjury that the foregoing is true and correct.

Executed in Huxley, Iowa on November 03, 2021.



Brenda Brink

**In The United States District Court
For The Southern District of Iowa**

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

Plaintiffs,

v.

KIM REYNOLDS, in her official capacity as Governor of Iowa, **TOM MILLER**, in his official capacity as Attorney General of Iowa, **VANESSA STRAZDAS**, in her official capacity as Cass County Attorney, **CHUCK SINNARD**, in his official capacity as Dallas County Attorney, and **JOHN GISH**, in his official capacity as Washington County Attorney

Defendants.

Case No.: 4:21-cv-00231

**DECLARATION OF JANET
L. WANN**

I, Janet L. Wann, hereby declare as follows:

1. The matters set forth in this declaration are based on my personal knowledge and experience. If called to testify as to these matters, I could and would competently testify to what is set out in this declaration.

2. I have been an annual dues-paying Member of Iowa Citizens for Community Improvement (“ICCI”) for at least ten years.

3. I was also a member of the ICCI Board of Directors for two years.

4. As a Member of ICCI, I have participated in approximately 20 actions involving trespass, in order to highlight the organization’s policy positions with which I agree.

5. These actions have occurred throughout the State of Iowa.

6. In many of those actions I recorded images of the protest.

7. I have shared images I recorded of protests involving trespass with ICCI and other ICCI members to enhance the organization's advocacy.

8. I believe part of the value of engaging in non-violent civil disobedience is to record that advocacy so that policymakers and other Iowans can see the message and passion of ICCI's members, encouraging them to join us.

9. As part of one of the actions involving trespass I was arrested for trespass.

10. However, due to Iowa Code § 727.8A, I will not participate and record ICCI non-violent civil disobedience involving trespass.

11. The penalties under Iowa Code § 727.8A, which are much more significant than for trespass, are keeping me from acting. I fear being convicted of an aggravated misdemeanor.

12. If Iowa Code § 727.8A were declared unconstitutional or enjoined, however, I would participate in and record ICCI non-violence civil disobedience involving trespass.

I declare under penalty of perjury that the foregoing is true and correct.

Executed in Mason City, Iowa on November 9, 2021.

DocuSigned by:

AA894A02A46F4AB...

Janet L. Wann

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA

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

Plaintiffs,

v.

KIM REYNOLDS, in her official capacity as
Governor of Iowa, **TOM MILLER**, in his official
capacity as Attorney General of Iowa, **VANESSA
STRAZDAS**, in her official capacity as Cass
County Attorney, **CHUCK SINNARD**, in his
official capacity as Dallas County Attorney, and
JOHN GISH, in his official capacity as
Washington County Attorney

Defendants.

Case No.: 4:21-cv-00231

**AFFIDAVIT OF MARK
WALDEN IN SUPPORT OF
PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT**

AFFIDAVIT OF MARK WALDEN

I, Mark Walden, declare as follows:

1. The facts contained in this declaration are known personally to me and, if called as a witness, I could and would testify competently thereto under oath.
2. I am the Chief Programs Officer at the Animal Legal Defense Fund (ALDF). I have served in this capacity since 2016. In this role, I am responsible for overseeing and coordinating ALDF's activities across its seven programs: Animal Law, Civil Litigation, Criminal Justice, Legal Campaigns, Legislative Affairs, Policy, and Pro Bono. I also coordinate the work of these programs with ALDF's executive leadership, communications, and donor and member outreach. Accordingly, I am intimately familiar with the negative effects of "Ag-Gag" laws, including Iowa Code § 727.8A, on ALDF's mission-driven activities.

3. ALDF is a national nonprofit animal protection organization founded in 1979 that uses education, public outreach, investigations, legislation, and litigation to protect the lives and advance the interests of animals, including animals who are raised for food. ALDF is supported by over 2,500 pro bono attorneys and more than 300,000 members and supporters nationwide, including in Iowa.

4. ALDF's mission is best served by demonstrating the true conditions in which animals in commercial industries are kept, the practices to which they are subjected, and the suffering they endure. This means ALDF must be able to gather and use evidence and information about how meat, dairy, eggs, and related animal products are produced in a similarly cruel manner industry-wide, across factory farms and slaughterhouses throughout the United States; that companion animals bred in puppy and kitten mills and sold for profit to unsuspecting consumers are kept in filthy, neglectful, and cruel conditions industry-wide that cause them to be sick; and that captive animals at roadside zoos are also commonly kept in filthy, neglectful, and cruel conditions that cause them to suffer physical and psychological harm. Because these industries are spread across the country, ALDF must be able to gather and use evidence and information in a variety of states, rather than in a select few.

5. Because access to truthful information about the conditions and practices inside factory farms, slaughterhouses, puppy and kitten mills, and roadside zoos is so vital to ALDF fulfilling its mission, and because this information is difficult, if not impossible, to obtain without gathering first-hand evidence of the conditions and practices, ALDF has employed and contracted with investigators and investigative entities to conduct undercover investigations at animal facilities around the country, including in Iowa. These facilities would meet the definition of "property" under Iowa Code § 716.7(1)(a).

6. In its experience conducting and sponsoring investigations, ALDF has found that it is often necessary to work with investigators who gain employment with agricultural facilities, or pose as patrons or buyers at facilities, because other methods of information gathering, such as communications with whistleblowers or filming from outside facilities, are often unreliable and frequently ineffective.

7. During the employment-based investigations, investigators apply for and obtain employment at an agricultural facility through the usual channels. In doing so, investigators do not disclose that they are investigators or their animal-protection affiliation; they obtain employment with the intent to make video or audio recordings therein. Once employed, unbeknownst to the property owners, the investigators use hidden recording equipment, including small cameras, to record what they observe and to document any unlawful, unethical, and/or inhumane business practices.

8. Investigator-employees perform all assigned lawful tasks while using this hidden recording equipment to document activities in areas of the facility that employees and others have access to in order to perform their job duties, such as the slaughterhouse floor or inside a chicken house. The recording equipment—which does not interfere with the investigator-employees' work—captures audio and video, which can include other data such as time stamps and location information.

9. Investigators sent on ALDF's behalf routinely document violations of applicable laws and regulations, including unsanitary practices, cruelty to animals, pollution, sexual misconduct, labor law violations, and other misdeeds of public concern—all while performing the tasks assigned by the employer (during employment-based investigations) or posing as a patron or buyer (during non-employment-based investigations).

10. ALDF has conducted numerous undercover investigations of this kind in the past. For example, in 2015, ALDF conducted an undercover investigation of a Texas-based chicken slaughter plant operated by Tyson Foods that showed widespread misconduct. In 2016, ALDF conducted an undercover investigation of a Nebraska-based pig breeding facility supplying Hormel Foods, revealing egregious cruelty to and neglect of pigs. And before the passage of Iowa's first Ag-Gag law, Iowa Code § 717A.3A, ALDF conducted undercover investigations in Iowa, including one investigation of the Cricket Hollow Animal Park in Manchester, Iowa.

11. ALDF has used videos and photos of unlawful, unethical, and/or inhumane business practices as well as time stamps and location information obtained through such investigations in its work to seek enforcement of civil and criminal laws and regulations; encourage legislative and industry reform; develop regulatory comments, petitions, and administrative complaints; educate the public about factory farms, slaughterhouses, puppy and kitten mills, and roadside zoos; push for changes in corporate policies and supply chains; and otherwise advocate for animals. ALDF often shares the footage its undercover investigations capture with the public by putting it on social media, disseminating it to news media, and forwarding it to other organizations.

12. For example, ALDF's employment-based undercover investigation of the Tyson chicken slaughterhouse resulted in a media exposé and gave rise to four separate legal complaints. Likewise, ALDF's consumer-based investigation of the Cricket Hollow Animal Park in Manchester, Iowa resulted in litigation and the ultimate rescue of animals confined there. In ALDF's experience, undercover investigation footage—which can be widely publicized, shared, and viewed—is one of our most powerful advocacy tools.

13. ALDF has long had a particular interest in gaining undercover investigation

footage and evidence from animal facilities in Iowa because, unfortunately, it leads the nation in industrial animal agriculture, has a high concentration of puppy mills, and is home to notorious roadside zoos. After the first Ag-Gag law, Iowa Code § 717A.3A, was struck down in February of 2019, following ALDF and its co-plaintiffs' challenge, ALDF began to plan an investigation in Iowa. But state legislators acted swiftly to pass follow-on Ag-Gag legislation, the "agricultural production facility trespass" law, codified at § 717A.3B, which forced ALDF to shelve its investigation plans.

14. ALDF and its co-plaintiffs moved quickly to challenge the "agricultural production facility trespass" law and, in December of 2019, secured a preliminary injunction barring its enforcement. After the preliminary injunction was entered ALDF wasted no time in planning to conduct an undercover investigation at an agricultural production facility in Iowa. ALDF wanted to show what had been hidden in Iowa since the passage of the first Ag-Gag law and wanted to move quickly to secure investigative footage to show the public. If Iowa legislators introduced a new Ag-Gag bill, ALDF wanted to be ready to show the public the unlawful, unethical, and/or inhumane conduct they were trying to keep secret.

15. But the pandemic slowed ALDF's progress, and then Iowa lawmakers again beat ALDF to the punch, passing Iowa Code § 727.8A, which again forced ALDF to pause its planned undercover investigation. ALDF has since refrained from taking any further steps to carry out an investigation for fear that this new Ag-Gag law will be used against it.

16. Iowa's Cass, Dallas, and Washington Counties are home to animal facilities of the kind ALDF would seek to investigate; these facilities would all meet the definition of "property" under Iowa Code § 716.7(1)(a). But ALDF has not pursued investigations there (or anywhere else in Iowa) because we fear law enforcement officers and prosecutors will construe the typical

activities of investigators sent on our behalf as violating § 727.8A.

17. Because ALDF's employment-based investigations expose illegal, unethical, and inhumane conduct, and use cameras or electronic surveillance equipment as part of those investigations, ALDF fears prosecution under Iowa Code § 727.8A if it were to move forward with an employment-based investigation of an animal agricultural facility in Iowa.

18. The trespass law, on its own, did not previously deter ALDF from pursuing investigations because, as explained above, investigators sent on ALDF's behalf apply for and perform their jobs just like any other worker, following all the rules and lawfully on the premises. However, they also wear a hidden camera while doing so. While the trespass law alone did not explicitly identify audio and video recording as trespasses, § 727.8A does; it overlays the terms of the trespassing law in a manner that heightens the risk Iowa prosecutors will interpret employment-based investigators as trespassers, and thus subject investigators to the burdens of a criminal prosecution. ALDF is therefore fearful it would be prosecuted under Iowa Code § 727.8A if it conducted an employment-based investigation in Iowa because it is fearful prosecuting authorities in Iowa will attempt to label ALDF and its employment-based investigator(s) as criminal trespassers under Iowa Code § 716.7, and as such, subject us to additional charges and penalties under § 727.8A. Section 727.8A has thus deterred ALDF's investigations separate and apart from the trespass law—which on its own did not.

19. Thus, while ALDF does not believe our investigations constitute simple trespass, we fear that the trespass law *in combination with* the more specific § 727.8A could and will be used to target our activities. The state's prior characterization of our investigative activities as "agricultural production facility trespass" (through § 717A.3B), and the statements in Defendants' motion to dismiss this lawsuit, make clear ALDF's fear is not unreasonable. As

Defendants said, while “Iowa’s general trespass law requires the individual to ‘wrongfully’ use an inanimate object without permission of the property owner, and *it is not clear* using a camera would be ‘wrongful’ for purposes of the statute in the absence of a direct and specific notice of the prohibition from the employer directly to the employee.” Defs.’ Brief in Supp. of Mot. to Dismiss 31, ECF No. 19 (emphasis added). The Defendants similarly assert the application of the trespass law may be unclear “if the employer had a ‘no photography’ sign posted.” *Id.*

20. The state’s own admission that the trespass law’s application to ALDF’s investigative activities is “not clear” is the same as saying that prosecution could happen—exactly ALDF’s fear. And reading § 727.8A against the backdrop of Iowa’s anti-investigator legislative climate adds to our concern that the law will actually be used against us. The Iowa legislature, through this law, specifically singled out “knowingly plac[ing] or us[ing] a camera or electronic surveillance device that transmits or records images or data”—i.e., the core investigative practice ALDF and its investigative partners employ—for specific heightened penalties not long after ALDF and its co-plaintiffs succeeded in barring the enforcement of both of Iowa’s previous two Ag-Gag laws. ALDF followed the bill’s passage and is aware of the statements made by Iowa state senators Boulton, Shipley, and Bisignano indicating that it was designed to apply to agricultural facilities. ALDF is further aware that the Iowa Pork Producers Association advocated for the bill. All of these indicators led us to conclude that, like the other Ag-Gag laws, this new law was meant to target ALDF’s undercover investigation activities.

21. Thus, taken in this context, ALDF understands § 727.8A to be targeted at investigations and therefore fears its application. Defendants’ statements about the various ways prosecutors could seek to apply the law to ALDF’s investigative activities confirms the reasonableness of our fear. ALDF thus has refrained from conducting its planned undercover

investigations.

22. If § 727.8A is—like the first two Ag-Gag laws—declared unconstitutional and stricken, the general trespass law would no longer be a bar to ALDF carrying out plans to commission and publicize an undercover investigation at an animal facility in Iowa, because Iowa prosecutors would no longer be incentivized to target videorecording and audio recording. In other words, going back to the status quo ante would alleviate ALDF's fear of prosecution.

23. ALDF also uses the results of other organizations' undercover investigations (using hidden recording equipment) in its outreach, regulatory, legislative, and litigation projects, and would do so with regard to a future undercover investigation conducted in Iowa. To take just one example of many, ALDF relied heavily on footage and evidence from a 2015 undercover investigation conducted by Animal Outlook of a Hormel Foods slaughterhouse operating at high line speeds to oppose, through regulatory advocacy and litigation, U.S. Department of Agriculture's nationwide expansion of the dangerous and inhumane pilot program the Hormel slaughterhouse was operating.

24. In thwarting its and others' investigations, such as those of fellow Plaintiffs PETA and Bailing Out Benji, Iowa's latest Ag-Gag law is impeding ALDF's ability to carry out our mission by diminishing the supply of investigations that support ALDF's many forms of advocacy for animals. This keeps secret and undisclosed the information, audio and video footage, and imagery whose dissemination could help motivate greater legal protections for animals, which is ALDF's central goal.

In accordance with 28 U.S.C. § 1746 and under penalty of perjury, I swear that the foregoing is true and correct.

Executed on November 8th, 2021 in Los Altos, CA.


Mark Walden

WITNESSED BY NOTARY:

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of Santa Clara)

On 11/08/2021 before me, Paul Elliott, Notary Public
(Date) (Here Insert Name and Title of the Officer)

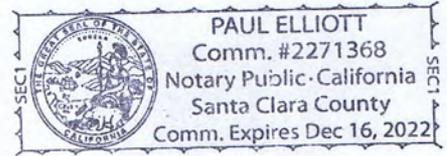
personally appeared Mark Walden
(Name(s) of Signer(s))

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature  (Seal)
(Signature of Notary Public)



**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA**

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

Plaintiffs,

v.

KIMBERLY K. REYNOLDS, in her official capacity as Governor of Iowa, **TOM MILLER**, in his official capacity as Attorney General of Iowa, **VANESSA STRAZDAS**, in her official capacity as Cass County Attorney, **CHUCK SINNARD**, in his official capacity as Dallas County Attorney, and **JOSH GISH**, in his official capacity as Washington County Attorney,

Defendants.

CASE NO. 21-cv-00231-RP-HCA

**DECLARATION OF JEFFREY S. KERR
IN OPPOSITION TO MOTION TO
DISMISS OF DEFENDANTS**

DECLARATION OF JEFFREY S. KERR

I, Jeffrey S. Kerr, swear and affirm as follows:

1. The facts contained in this affidavit are known personally to me and, if called as a witness, I could and would testify competently thereto under oath.
2. I serve as the General Counsel to People for the Ethical Treatment of Animals, Inc. (“PETA”), a plaintiff in the above-captioned action. I have served as PETA’s General Counsel for over 26 years. I am responsible for all legal matters concerning PETA.
3. PETA is a Virginia non-stock corporation and animal protection charity exempt

from taxation pursuant to Section 501(c)(3) of the Internal Revenue Code.

4. PETA is dedicated to protecting animals from abuse, neglect, and cruelty, and undertakes these efforts through public education, employment-based investigations, investigative news gathering and reporting, research, animal rescue, legislation, special events, celebrity involvement, protest campaigns, and lawsuits to enforce laws enacted to protect animals.

5. A central tenet of PETA's mission is to expose cruelty to farmed animals, educate the public about such cruelty, and encourage people to choose a lifestyle that does not involve or support abuse, neglect, or exploitation of animals.

6. PETA has a long history of using employment-based investigations in order to expose cruelty to animals. PETA's first employment-based investigation—the 1981 investigation of Dr. Edward Taub's monkey testing laboratory in Silver Spring, Maryland—resulted in the nation's first arrest and criminal conviction of an animal experimenter for cruelty to animals.

7. PETA has conducted dozens of investigations in the United States over the past three decades, exposing illegal animal abuse and turning the results of investigations over to appropriate law enforcement and/or regulatory authorities.

8. PETA continues to conduct these investigations to expose further illegal conduct on the part of workers and management personnel.

9. PETA's mission is best served by demonstrating that meat, dairy, eggs, and related products are produced in a similarly cruel manner industry-wide, across the United States. This requires the ability to access a diverse array of states and not just a select few.

10. PETA thus conducts investigations of agricultural facilities at various locations across the country.

11. During their investigations, PETA investigators use hidden recording equipment to

document violations of applicable laws and regulations, including unsanitary practices, cruelty to animals, pollution, sexual misconduct, labor law violations, and other matters of public importance—all while performing lawful tasks assigned by the employer.

12. In conducting its investigations, PETA has found that it can be necessary to use employment-based investigators who access the facilities in question without disclosing that they are investigators, their animal-protection interest, or their affiliation with PETA.

13. PETA has conducted previous investigations in Iowa. For instance, using an employment-based investigation, PETA exposed workers at a Hormel Foods supplier in Iowa beating pigs with metal rods and workers sticking clothespins into pigs' eyes and faces, and a supervisor kicking a young pig in the face, abdomen, and genitals to make her move while telling an investigator, "You gotta beat on the bitch. Make her cry."

14. Another employment-based investigation by PETA revealed horrific treatment of cows at an Iowa kosher slaughterhouse, some of whom remained conscious for as long as three minutes after their throats had been slit.

15. Since Iowa passed its first Ag-Gag law in 2012, at least 29 whistle-blowers have contacted PETA alleging cruel or inhumane treatment of animals at Iowa agricultural facilities, including pig farms, chicken farms, egg farms, dairy farms, fur farms, and cow slaughterhouses. Following receipt of several of these whistle-blower complaints, PETA sent letters to either the relevant authorities or the relevant facility owners, but no charges have been filed to date, and facility owners have not been forthcoming about issues at their facilities. It is important for PETA to conduct its own investigations because whistle-blowers may sometimes be unwilling to contact law enforcement directly due to fear of retaliation, and also because whistle-blowers may not necessarily know what types of evidence authorities will find compelling. However, because of

the threat of criminal liability under the Ag-Gag law, PETA was unable to conduct an employment-based investigation at any of these facilities.

16. In addition to conducting its own investigations, PETA may also incorporate into its messaging and speech the investigative findings or evidence captured by other independent persons or groups. PETA has used in the past, and intends to use in the future, relevant recordings or evidence captured by independent advocacy groups such as ALDF, BoB, and ICCI.

17. PETA and others previously challenged Iowa's first Ag-Gag law, Iowa Code § 717A.3A(1)(b), in this district.

18. Immediately after the Court struck down Iowa Code § 717A.3A(1)(b) in February of 2019, PETA began planning an employment-based investigation at an Iowa animal agricultural facility.

19. But after Iowa enacted its second Ag-Gag law, Iowa Code § 717A.3B, PETA called off these plans due to fear of prosecution under the Iowa Code § 717A.3B.

20. PETA and others then challenged Iowa Code § 717A.3B in this district.

21. That Court preliminarily enjoined enforcement of Iowa Code § 717A.3B in December of 2019. PETA had intended to resume planning an employment-based investigation at an Iowa animal agricultural facility in the event that Court issues a permanent injunction prohibiting enforcement of Iowa Code § 717A.3B.

22. However, after Iowa enacted Iowa Code § 727.8A, the statute that is the subject of the current lawsuit, PETA called off these plans due to fear of prosecution under the new law. Even if a permanent injunction prohibiting enforcement of Iowa Code § 717A.3B is issued, Iowa Code § 727.8A would still prevent PETA from conducting investigations in Iowa due to fear of prosecution.

23. In conducting investigations, PETA instructs and trains its investigators to act in compliance with all laws, to carry out all lawful duties assigned to them by the facility and conduct themselves as a model employee in doing so. PETA also trains its investigators to not do anything that is harmful to the facility, its operations, its property, or its employees. PETA, and PETA's investigators, do not intend to cause any direct, tangible harm to the agricultural facilities that it or they investigate.

24. If one of PETA's employment-based investigators finds evidence of animal mistreatment or cruelty, PETA compiles the information regarding such conduct and presents it to law enforcement or other government enforcement agencies or regulators to request enforcement of cruelty-to-animals laws and regulations. PETA directs its employment-based investigators to go to their immediate supervisors with concerns regarding animal mistreatment or cruelty, as appropriate.

25. PETA publishes this truthful information in the hope and with the intention that, where appropriate, such exposés will result in corrective action being taken by the subject facility. Any boycotts of the facility's cruel products or practices, and any harm to the facility's reputation results solely from the independent judgments of consumers and the public generally based upon the truthful published materials detailing the investigation and its findings.

26. Where applicable, PETA also publishes this information in the hope and with the intention that such exposés will result in appropriate governmental action, including food safety recalls, citations for environmental, labor, and/or health code violations, plant closures, and/or criminal charges and convictions.

27. PETA's intention in conducting employment-based investigations of animal agricultural facilities is to expose illegal, unethical and inhumane conduct, and the conditions at



animal agricultural facilities and the treatment of animals at such facilities so that the public is made aware of the source of their food. Any impact to the facilities investigated resulting from the investigation is attributable solely to the reaction from law enforcement, regulatory agencies, or the public to the truthful information PETA publishes.

28. Because PETA conducts employment-based investigations to expose illegal, unethical, and inhumane conduct, and uses cameras or electronic surveillance equipment as part of those investigations, PETA fears prosecution under Iowa Code § 727.8A if it were to conduct an employment-based investigation of an animal agricultural facility in Iowa.

29. PETA remains committed to conducting investigations of agricultural facilities in Iowa because the state is home to a large number of factory farms and slaughterhouses, and planned to do so promptly after Iowa Code § 717A.3A(1)(b) was struck down, and also planned to do so in the event the preliminarily injunction invalidating Iowa Code § 717A.3B became permanent.

30. PETA would have continued preparing such investigations were it not for the new threat of criminal prosecution under Iowa Code § 727.8A.

31. In conducting such investigations, PETA would instruct its investigators to capture photos and videos to document illegal conduct inside the facility, without the express permission or consent of the owner, and to not disclose their affiliation with PETA or any other animal protection organizations. The investigators would be instructed either to enter the facility without disclosing that they are investigators, their animal-protection interest, or their affiliation with PETA, or to obtain employment at the facilities with the intent to make video or audio recordings therein if and when apparent violations of law take place.

32. PETA is fearful it would be prosecuted under Iowa Code § 727.8A if it conducted



an employment-based investigation in Iowa because it is fearful prosecuting authorities in Iowa will attempt to label PETA and its employment-based investigator(s) as criminal trespassers under Iowa Code § 716.7, and as such, add on a charge under section 727.8A in any such prosecution.

33. While PETA is of the belief that its employment-based investigators are not trespassing because, as actual employees of the investigative subject, they are authorized to be on the premises, Iowa prosecuting authorities could attempt to argue otherwise.

34. PETA is particularly concerned Iowa will accuse PETA and its investigators of simple trespass because throughout the history of litigating Iowa's various Ag-gag laws, Iowa has repeatedly taken the position its Ag-gag laws essentially operate as sentencing enhancements for the simple trespass statute – a position which implies Iowa prosecuting authorities believe they could successfully prosecute PETA and its investigators for simple trespass.

35. If Iowa Code § 727.8A is declared unconstitutional, PETA intends to move forward with planning employment-based investigations of Iowa agricultural facilities.

36. An injunction prohibiting enforcement of Iowa Code § 727.8A would remedy PETA's constitutional injury because PETA would then be able to resume making investigative recordings, consistent with the First Amendment, without fear that the specific act of recording would put PETA at risk of a distinct criminal charge.

37. PETA does not seek an injunction invalidating Iowa's trespass statute, Iowa Code § 716.7, because that statute does not expressly and blatantly criminalize recording and speech the way PETA contends Iowa Code § 727.8A does.

38. PETA has diverted money and other organizational resources away from its core educational and outreach programs to focus on the social harms of allegedly unconstitutional Ag-Gag laws like Iowa Code § 727.8A.

39. The existence of Iowa Code § 727.8A forces PETA to do public outreach and education about Ag-Gag laws. Accordingly, because PETA must divert its resources to do public outreach and education about how unconstitutional Ag-Gag laws endanger animals and the public, PETA has less money and time to devote to outreach on topics that are central to its mission, such as animal rescues, educating the public about the harms of industrial farming, and other forms of abuse, neglect, and cruelty to animals.

In accordance with 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on November 11, 2021 in NEW JERSEY


Jeffrey S. Kerr

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA

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

Plaintiffs,

v.

KIM REYNOLDS, in her official capacity as Governor of Iowa, **TOM MILLER**, in his official capacity as Attorney General of Iowa, **VANESSA STRAZDAS**, in her official capacity as Cass County Attorney, **CHUCK SINNARD**, in his official capacity as Dallas County Attorney, and **JOHN GISH**, in his official capacity as Washington County Attorney

Defendants.

Case No.: 4:21-cv-00231

**DECLARATION OF MINDI
CALLISON IN SUPPORT OF
PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT**

DECLARATION OF MINDI CALLISON

I, Mindi Callison, declare as follows:

1. The facts contained in this declaration are known personally to me and, if called as a witness, I could and would testify competently thereto under oath.
2. I am the Founder and Executive Director of Bailing Out Benji, a plaintiff in the above-captioned action.
3. Bailing Out Benji is a nonprofit organization, founded in Iowa in 2011 and supported by volunteers across the country, dedicated to providing the public with current and accurate information about the puppy mill problem across the United States. In addition to its puppy mill research and education efforts, Bailing Out Benji works to inspire more advocates to

make change in their own communities by providing them with the educational tools to do so, such as puppy mill maps.

4. A puppy mill is any high-volume breeder that puts profit over the welfare of the animals. Puppy mills cut corners in veterinary care, quality of food, and genetic tests to save money, while also forcing dogs to live in close and unsanitary confinement with little to no human interaction. Mother dogs in puppy mills are treated as puppy-producing machines and not like family pets.

5. In order to further Bailing Out Benji's mission and gather information about puppy mills and their links to pet stores nationwide, Bailing Out Benji conducts undercover investigations of puppy mills, dog auctions, and pet stores. Bailing Out Benji staff members and volunteers serve as our undercover investigators. Unbeknownst to facility owners, they pose as customers or as pet breeders or brokers at puppy mills, dog auctions, and pet stores. Bailing Out Benji's investigators do not disclose their true purpose for entering the puppy mill, dog auction, or pet store, nor their affiliation with Bailing Out Benji. The puppy mills, dog auctions, and pet stores that Bailing Out Benji investigates in this way would meet the definition of "property" under Iowa Code § 716.7(1)(a).

6. Inside the mills, auctions, and stores, Bailing Out Benji's undercover investigators use hidden recording equipment, including small cameras, to capture and document the neglect and mistreatment of the dogs and any other unscrupulous conduct. The hidden recording equipment captures audio, video, and other data such as time and location information. Bailing Out Benji's undercover investigators are unobtrusive and take care not to cause any damage to the facilities. They simply engage in activities typical of a customer, breeder, or broker—like observing and interacting with dogs offered for sale—while using the hidden recording

equipment to document activity in areas of the mills, auctions, and stores that other customers, breeders, and brokers would typically have access to.

7. For example, in 2021, Colorado passed a puppy mill transparency bill that requires pet stores to disclose information about the puppy's origins and cost to customers on all kennels in the store and any online advertisements. Because Colorado doesn't have an Ag-Gag law, Bailing Out Benji volunteers are able to go into pet stores, posing as regular customers, to take photos and videos in order to see whether the stores are complying with the new law. In September 2021, our Colorado volunteers visited eleven pet stores in this way and documented violations through photos and videos. We participate in these types of investigations in numerous other states without Ag-Gag laws too, including Texas, Illinois, Wisconsin, Arizona and California.

8. Bailing Out Benji also uses the footage that its undercover investigators capture to educate the public about how dogs are treated in the puppy mill industry. In Bailing Out Benji's experience, such footage is a powerful policy-shaping instrument when shared with the public. For example, Bailing Out Benji recently used videos from its own investigations and investigations conducted by others to highlight how puppy mills neglect and mistreat dogs as a result of the U.S. Department of Agriculture's (USDA) lax enforcement of the Animal Welfare Act (AWA). Bailing Out Benji also used these videos to demand increased enforcement of the AWA in puppy mills.

9. Bailing Out Benji also uses the footage that its undercover investigators capture to drive legislative action more directly. For example, through our investigations in California, we were able to prove that pet stores were participating in a nation-wide puppy laundering scheme and breaking the law in partnership with puppy mills, which resulted in stronger state legislation.

Because of our investigations in Arizona, we were able to prove that the pet stores were breaking state law and help policy makers look at various ways to enforce the law.

10. Prior to the passage of Iowa's first Ag-Gag law, Iowa Code § 717A.3A, Bailing Out Benji conducted undercover investigations into Iowa puppy mills, dog auctions, and pet stores. The goal of these undercover investigations was to document and expose the neglect and mistreatment of dogs in puppy mills and trace those dogs to the pet stores in Iowa that ultimately purchased them. For example, I posed as a college-bound student buying a puppy to keep her company so that I could go into a puppy mill that sold dogs to a pet store in Ames, Iowa.

11. I documented the conditions inside the puppy mill and used that documentation to pressure the pet store in Ames to stop buying puppies from the puppy mill. When that effort failed, Bailing Out Benji's volunteers protested the Ames pet store every weekend for seven years before it went out of business in 2018. I also investigated the Century Farm puppy mill in 2011 and a dog auction at K-D Kennels in 2012 by posing as a potential buyer.

12. After the first Ag-Gag law was signed into law, Bailing Out Benji largely ceased its undercover activities in Iowa for fear of being discovered and facing prosecution. When that law was declared unconstitutional, we looked forward to once again conducting undercover investigations of puppy mills and dog auctions.

13. But within weeks, the state passed a second Ag-Gag law, Iowa Code § 717A.3B, which also exposed us to criminal liability for engaging in undercover investigations, so Bailing Out Benji had to forgo its planned undercover investigative activities once again. For example, we were prevented from sending a volunteer to apply for a job at a puppy mill south of Ames, Iowa, which had posted a "help wanted" ad on a Facebook group of approximately 22,000 people. This particular puppy mill is one that Bailing Out Benji has been concerned about for

some time, and we planned to use hidden recording equipment, including small cameras, to observe and document the conditions inside and, if warranted, expose any abusive or unsafe conditions to regulatory agencies and the public. But because of the second Ag-Gag law, we were unable to conduct this undercover investigation.

14. Bailing Out Benji and its co-plaintiffs quickly challenged the second Ag-Gag law, Iowa Code § 717A.3B, and, in December 2019, secured a preliminary injunction barring its enforcement. After the preliminary injunction was entered, Bailing Out Benji again resumed planning undercover investigations in Iowa. We wanted to show what had been going on in puppy mills, pet stores, and dog auctions since the passage of the first Ag-Gag law and wanted to move quickly to secure investigative footage to show the public. After we secured a preliminary injunction prohibiting the enforcement of the second Ag-Gag law, Bailing Out Benji again looked forward to resuming undercover investigations of puppy mills and dog auctions.

15. But the pandemic hindered those plans, and then Iowa lawmakers passed the third Iowa Ag-Gag law, Iowa Code § 727.8A, which also exposes us to potential criminal liability for engaging in undercover investigations. The law forced Bailing Out Benji to let opportunities to conduct undercover investigations pass us by. For example, this year (2021) we began researching Maple Hill Puppies, a puppy mill in Seymour, Iowa owned by Daniel Gingerich, which USDA inspection reports revealed had dozens of AWA violations. We quickly realized that this puppy mill was a problem and began publicly reporting on the facility, its violations, and its connection to pet stores across the country. We heard from many local citizens who had dealings with the puppy mill; several families were invited to the facility itself to purchase puppies. Bailing Out Benji volunteers and employees wanted to pose as potential puppy buyers in order to gather footage documenting conditions on the property, but we felt that, due to the

new Ag-Gag law, it was too risky. While the USDA and the Department of Justice were investigating the puppy mill, hundreds of dogs suffered and died there—dogs we might have been able to help sooner if we had been able to record and share images and videos of the horrendous treatment of dogs on the property.

16. Similarly, Bailing Out Benji was ready to pose as customers to gain access to dog breeding facilities for the purpose of investigating the facilities' compliance with tough new regulations adopted by the Iowa Department of Agriculture in 2020—something we were particularly keen to do as both the Iowa Department of Agriculture and the USDA had suspended their routine inspections due to the pandemic. But because of § 727.8A, Bailing Out Benji held back from trying to gain access to the facilities and record photos and videos. Thus, despite the dire need for our investigations and the advocacy they support, Bailing Out Benji's pause on undercover investigations is still in effect due to its fear that the new Ag-Gag law will be used against it.

17. In short, Bailing Out Benji has identified puppy mills, dog auctions, and pet stores in Iowa, which are all facilities that meet the definition of “property” under Iowa Code § 716.7(1)(a), where it would conduct undercover investigations. But Bailing Out Benji will not pursue any undercover investigation in Iowa because our investigations document and expose the neglect and mistreatment of dogs by using cameras or electronic surveillance equipment, and we fear law enforcement officers and prosecutors will construe Bailing Out Benji's typical investigating activities as violating § 727.8A.

18. The trespass law alone did not previously prevent Bailing Out Benji from conducting undercover investigations because, as explained above, our investigators merely pose as customers, breeders, and brokers and engage in the same activities as others in those roles.

However, our investigators also wear a hidden camera while visiting the puppy mills, dog auctions, and pet stores. While the trespass law alone did not explicitly identify audio and video recording as trespasses, Iowa Code § 727.8A does; it overlays the terms of the trespassing law in a manner that heightens the risk Iowa prosecutors will interpret our investigators as trespassers, and thus it subjects investigators to the burdens of criminal prosecution. Bailing Out Benji is therefore fearful it would be prosecuted under § 727.8A if it conducted an investigation in Iowa because it is fearful prosecuting authorities in Iowa will attempt to label Bailing Out Benji and its investigators as criminal trespassers under Iowa Code § 716.7 and, as such, subject us to additional charges and penalties under § 727.8A. Section 727.8A has thus deterred our investigations separate and apart from the trespass law—which on its own did not.

19. Thus, while Bailing Out Benji does not believe our investigations constitute simple trespass, we fear that the trespass law *in combination with* the more specific § 727.8A could and will be used to target our activities. The statements in Defendants’ motion to dismiss this lawsuit make clear Bailing Out Benji’s fear is not unreasonable. As Defendants said, while “Iowa’s general trespass law requires the individual to ‘wrongfully’ use an inanimate object without permission of the property owner, and *it is not clear* using a camera would be ‘wrongful’ for purposes of the statute in the absence of a direct and specific notice of the prohibition from the employer directly to the employee.” Defs.’ Brief in Supp. of Mot. to Dismiss 31, ECF No. 19 (emphasis added).

20. The state’s own admission that the trespass law’s application to Bailing Out Benji’s investigative activities is “not clear” is the same as saying that prosecution could happen—exactly our fear. And § 727.8A against the backdrop of Iowa’s anti-investigator legislative climate adds to our concern that the law will actually be used against us. The Iowa

legislature, through this law, specifically singled out “us[ing] a camera or electronic surveillance device that transmits or records images or data”—i.e., a central practice of Bailing Out Benji’s investigators—for specific heightened penalties not long after Bailing Out Benji and its co-plaintiffs succeeded in barring the enforcement of both of Iowa’s previous two Ag-Gag laws. Bailing Out Benji followed the bill’s passage and is aware of the statements made by Iowa state legislators indicating that it was designed to apply to agricultural facilities like the ones we investigate. All of these indicators led us to conclude that, like the other Ag-Gag laws, this new law was meant to target Bailing Out Benji’s undercover investigation activities.

21. Thus, taken in this context, Bailing Out Benji understands § 727.8A to be targeted at investigations and therefore fears its application. Defendant’s statements about ways prosecutors could seek to apply the law to Bailing Out Benji’s investigative activities confirms the reasonableness of our fear. Bailing Out Benji thus has refrained from conducting its planned undercover investigations at Iowa puppy mills, dog auctions, and pet stores.

22. If § 727.8A follows in the footsteps of the first two Ag-Gag laws and is declared unconstitutional and stricken, the general trespass law would no longer be a bar to Bailing Out Benji carrying out its plans to conduct undercover investigations using hidden recording equipment, including small cameras, at puppy mills, dog auctions, and pet stores in Iowa. This is because Iowa prosecutors would no longer be incentivized to target videorecording and audio recording. In other words, going back to the state of the law before § 727.8A was passed would alleviate our fear of prosecution.

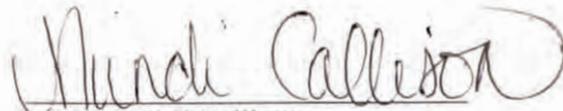
23. Bailing Out Benji also uses the results of other organizations’ undercover investigations (using hidden recording equipment) to educate the public and push for reforms in the puppy mill industry. Bailing Out Benji would do so with regard to any such undercover

investigation of a puppy mill, dog auction, or pet store conducted in Iowa.

24. In thwarting its and others' investigations, such as those of fellow Plaintiffs PETA and ALDF, Iowa's latest Ag-Gag law is impeding and impairing Bailing Out Benji's ability to carry out our mission of educating the public about the puppy mill industry by diminishing the supply of investigations that support Bailing Out Benji's advocacy for animals. This keeps secret and undisclosed the information, audio and video footage, and imagery that could educate the public about how dogs are treated in the puppy mill industry, which is Bailing Out Benji's central goal.

In accordance with 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 9, 2021.


Mindi Callison

**In The United States District Court
For The Southern District of Iowa**

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

Plaintiffs,

v.

KIMBERLY K. REYNOLDS, in her official capacity as Governor of Iowa, and **TOM MILLER**, in his official capacity as Attorney General of Iowa, **VANESSA STRAZDAS**, in her official capacity as Cass County Attorney, **CHUCK SINNARD**, in his official capacity as Dallas County Attorney, and **JOHN GISH**, in his official capacity as Washington County Attorney

Defendants.

Case No.: 4:21-cv-00231

**DECLARATION OF
MICHELE MERKEL ON
BEHALF OF PLAINTIFF
FOOD & WATER WATCH**

I, Michele Merkel, hereby declare as follows:

1. My name is Michele Merkel, and I am the Managing Director of Advocacy Programs at Food & Water Watch (“FWW”). My business address is 1616 P Street NW, Suite 300, Washington, D.C. 20036. Unless otherwise stated, I have personal knowledge of all the facts stated below and am authorized to make the following statements on behalf of FWW. I can and would competently testify to all the facts below if called as a witness in the above-captioned case.

2. I have worked for FWW for the past 10 years and have held positions within several departments of FWW. Given my past and present duties, I am intimately familiar with the organization’s mission, membership, activities, and operations.

3. FWW is a national, non-profit membership organization that mobilizes regular people to build political power to move bold and uncompromised solutions to the most pressing food, water, and climate problems of our time. FWW uses grassroots organizing, media outreach, public education, research, policy analysis, and litigation to protect people's health, communities, and democracy from the growing destructive power of the most powerful economic interests. FWW has more than 2.9 million members and supporters, including more than 22,000 members and supporters in Iowa.

4. FWW's objectives include ensuring that Americans consume safe, accessible, and sustainably produced food and have access to clean water, as well as organizing people to take action to change the rules for how food is produced. Accordingly, FWW advocates extensively on issues surrounding industrial animal agriculture systems, also known as "factory farming." For example, one of FWW's priority campaigns is focused on banning factory farms. FWW has worked on factory farm issues for over 10 years throughout the country, including extensively in Iowa for several years.

5. To accomplish its objectives, FWW works to increase transparency regarding factory farms to shed light on their pollution and other harms. This transparency is critical to FWW's efforts to educate the public and government officials about the many harmful impacts of factory farming. FWW's work includes disseminating information related to factory farming's food safety risks, threats to worker safety, contributions to climate change, water and air pollution, and poor animal welfare. FWW accomplishes this through its websites, news articles, press releases, reports, fact sheets, newsletters, social media, action alerts, email communications, and legal advocacy.

6. Iowa is a key state for FWW's factory farm campaign because of the size, power,

and adverse impacts of the industry in Iowa. FWW has invested in Iowa-based staff as part of its multi-year campaign. And FWW has engaged in legal advocacy in Iowa for several years, focused on exposing the industry's pollution and other harms. In particular, we are advancing a campaign for a legislative moratorium on factory farms in Iowa. Plaintiff Iowa Citizens for Community Improvement ("Iowa CCI") is a close partner in this campaign and related factory farm advocacy work, and we often hold events together and share campaign materials and information.

7. These advocacy efforts routinely rely on information obtained by employment-based undercover investigations because factory farm facilities that produce food and impact the environment are largely concealed from public view. These facilities are also inadequately regulated by state and federal regulators, making information obtained by such investigations all the more critical to FWW's advocacy and the public interest in holding harmful conduct to account. As part of these efforts, FWW has relied on information provided by advocacy groups like People for the Ethical Treatment of Animals ("PETA").

8. The following are examples of FWW's reliance on undercover investigations and/or the information derived from those investigations in its advocacy:

- a. Exhibit 1 is a true and correct copy of excerpts from Foodopoly, a book written by FWW's Executive Director that FWW uses to educate the public. The book discusses the harms of corporate control in the food industry, and these excerpts discuss an undercover investigation into the Hallmark/Westland slaughter facility performed by a Humane Society of the United States ("HSUS") investigator who obtained employment at the facility in order to gain access to non-public areas. Over six weeks, the investigator shot videos showing employees engaged in

animal welfare and food safety violations.

- b. In 2016, FWW filed an *amicus curiae* brief in support of Plaintiff-Appellees' challenge to Idaho's Ag-Gag Law. The brief discussed the increased food safety risks that would result from chilling undercover investigatory activities at industrial agricultural operations and slaughterhouses. Brief for Food & Water Watch as *Amicus Curiae* at 15, *ALDF v. Walden*, 878 F.3d 1184 (9th Cir. 2018). FWW relied on information obtained by HSUS and Mercy for Animals in various undercover investigations, which had been publicized by those organizations and reported in the media.
- c. Exhibit 2 is a true and correct copy of a Complaint filed by FWW against Pilgrim's Pride alleging false and misleading advertising related to animal welfare. *Food & Water Watch, et al. v. Pilgrim's Pride Co.*, No. 2019 CA 000730 (D.C. Super. Ct. filed Feb 4, 2019). In that lawsuit, FWW relied on employment-based undercover investigations by PETA and others to show the false and misleading nature of Pilgrim's Pride's animal welfare advertising claims. Descriptions and images derived from the audio and video recordings made as part of those undercover investigations were important evidence in this legal action to protect consumers from false and misleading advertising.
- d. Exhibit 3 is a true and correct copy of an ethics complaint against Iowa State Senator Ken Rozenboom, filed on behalf of Food & Water Action (FWW's 501(c)(4) affiliate) and Iowa Citizens for Community Improvement Action Fund (plaintiff Iowa CCI's 501(c)(4) affiliate). That complaint alleged violations of the Iowa Senate Code of Ethics, including a conflict of interest, because Senator

Rozenboom's contract hog factory farms were the subject of an undercover investigation and could be again in the future. As I understand, Senator Rozenboom has been a leading proponent of Iowa's various Ag-Gag laws, which attempt to criminalize First Amendment-protected speech that could harm his personal economic interests. That complaint relied on videos and photos obtained through an undercover investigation in Iowa by Direct Action Everywhere. FWA publicized and talked about this ethics complaint to the media and its members.

- e. Exhibit 4 is a true and correct copy of FWW's report "The Urgent Case for a Ban on Factory Farms," which FWW published as part of its factory farm ban campaign. This report draws on information made available via undercover investigations and whistleblowers of animal abuse similar to information uncovered and published by Plaintiffs ALDF and PETA. FWW's campaign and future reports would be enhanced with information from additional undercover investigations in Iowa.

9. FWW wishes to continue to rely on information obtained from undercover investigations performed by advocacy groups like ALDF and PETA in its advocacy and public education efforts.

10. In particular, FWW's ongoing advocacy efforts would be enhanced by additional information obtained from undercover investigations in Iowa. FWW has been and will continue conducting a campaign to establish a moratorium on new and expanding factory farms in Iowa, and this work relies in part on demonstrating to the public and legislators the hidden abuse of animals and violations of environmental and food safety laws at animal agriculture facilities. Video, audio, and other data collected via undercover investigations are invaluable public

education and engagement tools for a campaign like this.

11. FWW desires and plans to use information released to the public from undercover investigations like those conducted by ALDF and PETA in future efforts, but I am aware that because of Iowa's latest criminalization of protected First Amendment speech and expression, Iowa Code § 727.8A, advocacy groups that would perform such investigations and release the results to the public have ceased to conduct such investigations in Iowa due to the fear of being liable under the statute.

12. When advocacy groups like ALDF and PETA cease to perform investigations due to their fear of liability under Iowa's latest Ag-Gag law, Iowa Code § 727.8A, that does have and will continue to have a substantial impact on FWW's ability to bring attention to issues in Iowa relevant to its mission and members. Without information obtained in such undercover investigations, FWW's ability to demonstrate to our audiences that animal welfare abuses and other harmful activity at Iowa's factory farms is ongoing will be substantially hampered. This kind of information is important to effectively demonstrating the need for a factory farm moratorium in Iowa. In sum, FWW's access to information that fuels its First Amendment protected speech and advocacy has been and will be compromised because of this statute's chilling effect.

13. FWW also wishes to be able to use and amplify recordings taken by Iowa CCI in its non-violent civil disobedience actions in its advocacy and public education efforts. Like Iowa CCI, FWW's work focuses on building grassroots power by engaging everyday people to hold elected officials accountable and demand change. In our experience, people are often more willing to get involved in a campaign if they see others participating and speaking out. FWW regularly amplifies inspiring news footage and press coverage showing mass mobilizations of

citizens reclaiming democratic power, including by sharing this content on our social media channels, because this can be an effective communications tool to engage our supporters and advance our advocacy work. FWW's ongoing advocacy efforts in Iowa would be enhanced by the ability to share inspiring Iowa CCI footage of citizen activism to hold elected officials and polluters accountable, recorded during non-violent civil disobedience actions in Iowa. In particular, FWW would benefit from being able to share recordings of citizens engaging in actions related to factory farming and its harmful impacts, legislators who advocate against a moratorium or accountability for the factory farm industry, or other issues related to Iowa's environment and food and farm system.

14. When advocacy groups like Iowa CCI cease to engage in these civil disobedience actions due to their fear of liability under Iowa's latest Ag-Gag law, Iowa Code § 727.8A, that does have and will continue to have an impact on FWW's ability to bring attention to issues in Iowa relevant to its mission and members. Without the recordings obtained in such actions, FWW's ability to build enthusiasm among our members and supporters to get more involved in events and actions related to our moratorium campaign, in which we coordinate closely with Iowa CCI, will be hampered. This kind of footage and documentation of on-the-ground organizing would have provided creative opportunities for FWW to advance our campaign, which relies on building grassroots power through broad public engagement by everyday Iowans. As with our reliance on undercover investigations, FWW's access to recordings that fuel its First Amendment protected speech and advocacy will be compromised because of this statute's chilling effect on Iowa CCI.

I declare under penalty of perjury that the foregoing is true and correct to the best of my personal

knowledge.

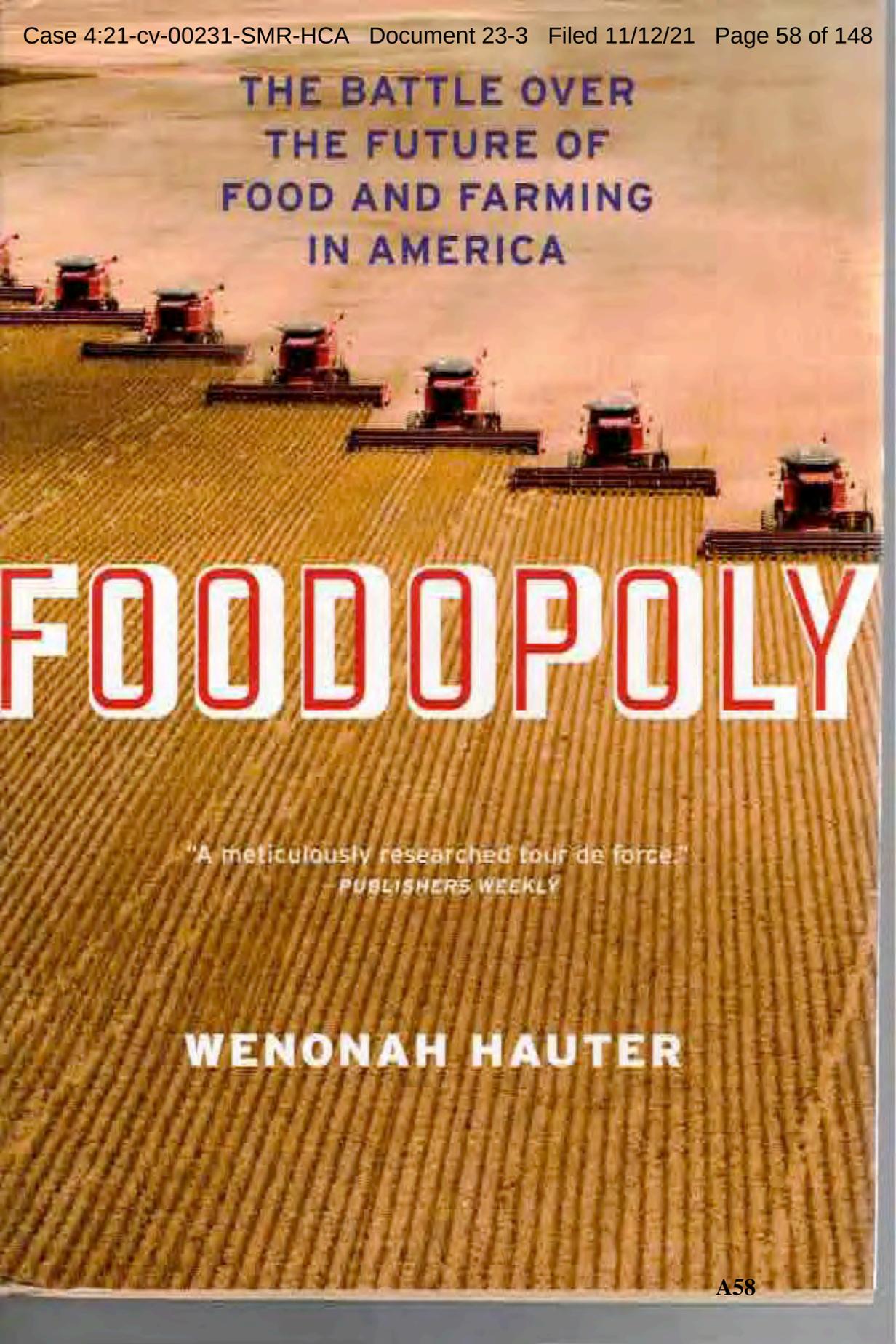
Executed in Bethesda, Maryland on November 5, 2021

A handwritten signature in cursive script, appearing to read "Michele Merkel", is written above a solid horizontal line.

Michele Merkel

Exhibit 1

**THE BATTLE OVER
THE FUTURE OF
FOOD AND FARMING
IN AMERICA**



FOODPOLY

"A meticulously researched tour de force."
— PUBLISHERS WEEKLY

WENONAH HAUTER

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Chapter 5 draws from the 2012 Food & Water Watch report "Why Walmart Can't Fix the Food System."

Chapter 6 draws from the 2011 Food & Water Watch report "A Decade of Dangerous Food Imports from China."

Chapters 8, 9, and 10 draw from the 2010 Food & Water Watch report "Factory Farm Nation: How America Turned Its Livestock Farms into Factories."

Chapter 9 draws from the 2008 Food & Water Watch report "The Trouble with Smithfield: A Company Profile."

Chapter 13 draws from the 2012 Food & Water Watch report "Genetically Engineered Foods: An Overview."

Chapter 16 draws from the 2012 Food & Water Watch report "Farm Bill 101."

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Composition by alex!

This book was set by Simon.

Printed in the United States of America.

*This book is dedicated to
family farm defenders who steward the land and fight for justice.*

It was an outrageous proposal, because not only were the salmonella and *E. coli* testing records they planned to use flawed, but the testing had been done in small plants, many of which had since been shut down, rather than the large ones that produced most of the meat consumed by Americans. A September 2006 USDA inspector general report identified as many as 865 establishments nationwide that had no testing data for salmonella.

There is no doubt that part of the USDA's enthusiasm for RBI was resource-related. The agency told the media that it was considering allowing "virtual inspection" of plants—companies would e-mail records so that agency personnel could examine them without ever coming to the plant.

Fortunately, Congresswoman Rosa DeLauro, chairwoman of the House Agriculture FDA appropriations subcommittee, brought the scheme to a screeching halt. She was able to add an amendment to an Iraqi war supplemental budget bill that FSIS could not spend even another dollar of taxpayer money until the Office of the Inspector General audited the agency's inspection system, including the microbial testing. In 2010 the OIG spent six months auditing the program and issued part one of the report in March 2011. The report was very critical of the agency's plan and concluded that FSIS must thoroughly reevaluate its testing. A second phase of the investigation is in progress.

But perhaps nothing demonstrates the Bush administration's failure to put public health first more than mad cow disease, the common name for bovine spongiform encephalopathy (BSE). First identified in the UK in 1986, when ranchers noticed their cows getting sick and being unable to walk, the USDA has never fully dealt with the safety issues related to this frightening disease. Now present in Europe, Asia, and North America, BSE has killed more than one hundred people, forced farmers to preemptively kill millions of cattle, and devastated the beef industry in some countries. Scientists believe the disease is spread when cattle eat nervous system tissues, such as the brain and spinal cord, from other infected animals.

In 2008 President Barack Obama came into office facing a food safety scandal that was a result of Bush-era policies. School lunches had fed children meat from sick and abused cows that were at a higher risk of having mad cow disease. A meat plant in Chino, California, the second largest supplier of beef to the National School Lunch Program, was found to be serving meat from tortured "downer" cows, which are so sick or crippled that they cannot get up. Making the scandal even more sensational, under the Bush administration the company had been named the USDA "supplier of the year" for 2004–5 and had delivered beef to schools in thirty-six states.¹¹

A Humane Society of the United States undercover investigator filmed workers at the midsize plant shoving cows violently with forklifts, using electric prods in sensitive areas, and employing other repulsive methods to make the diseased and sick dairy cows that are used for cheap meat walk through inspection. Wayne Pacelle, president of the organization, said that their investigator "found cows—in all stages of the handling and pre-slaughter process—being tormented to get them to stand and then walk toward the kill box."¹²

Foreshadowing the future lack of timely action, it took the new president a year to respond. Obama eventually banned the use of downer cows for meat, closing the loophole that the Chino plant was exploiting. While a step in the right direction, the move did not stop other practices that can spread mad cow disease, such as allowing cows to eat waste from the floors of poultry houses, cattle blood, and processed leftovers from restaurants. The administration is also not doing adequate testing for BSE in the United States and is allowing cattle in from countries such as Canada that have had reoccurring cases of the disease.

The failure to act quickly and decisively on important issues is an ongoing characteristic of the administration. Obama also waited until January 25, 2010, a full year into his presidency, to announce the nomination of Elisabeth Hagan, who had been chief medical officer at the USDA, as the permanent undersecretary of FSIS—a length of time much criticized by his opponents. Congress finally made her appointment permanent in September 2010. Hagan had been trained at Harvard and taught and practiced medicine before joining the senior staff of FSIS in 2006. Although the agency under Hagan has been somewhat more receptive to concerns of the advocacy community, Tony Corbo, lobbyist for Food & Water Watch's food program, which has been fighting for more stringent meat inspection regulation, assesses FSIS as follows: "The Obama administration has made some long overdue updates to the rules for meat inspection, like expanding the list of pathogens that are considered adulterants in ground beef. But they have not stood up to the meat industry strongly enough to slow the momentum toward deregulation that has prevailed for decades."

In the meantime, the FDA was in deep trouble dealing with a series of massive food recalls. And Michael Taylor would be coming back for another turn of the revolving door.

worker who was forced to urinate on herself because to allow her to use the bathroom would mean that her spot on the line would have been empty and it would have slowed processing speed down.” She went on to say, “In this same Perdue processing plant, workers were continually harassed by a supervisor who constantly threw pieces of chicken, hitting workers if it was deemed they weren’t moving fast enough.”

It is not only the workers in the poultry industry who suffer—the conditions in which the birds live and die can only be described as cruel, from their birth to slaughter. Broiler operations use birds that have been bred to have large breasts, and they grow so fast that their size does not keep pace with their hearts or lungs, causing heart attacks and other health effects.

Thousands of birds are crowded together for their brief lives in extremely crowded conditions in the filthy warehouses where they live in their own waste. At the end of their short lives, the birds are roughly loaded in tractor trailers, denied food and water, and sent to processing facilities where they are hung by their feet and slaughtered by the truckload.⁴⁵

Laying conditions for egg-producing hens are no better than for meat chickens—just different. Eggs are produced in large-scale operations with hundreds of thousands of layer hens held in each facility. A handful of firms own multiple farms or contract with a number of large layer operations, most of which house their birds in small cages that are stacked from floor to ceiling. Sixty-nine million eggs were produced in the five states where production is concentrated: Iowa, Ohio, Indiana, California, and Pennsylvania.

In October and November 2010 the Humane Society placed an undercover activist as a worker at an egg farm owned by Cal-Maine, producer of 8 billion eggs a year. The living conditions were extremely dirty and overcrowded, with each bird having a space the size of an 8” x 11” sheet of paper. When the hens’ wings, necks, legs, and feet became caught in cage wire, they could not reach food or water and suffered injuries that led to a miserable death. Eggs were covered in feces.⁴⁶

A video, shot as part of the Humane Society investigation, shows what appear to be employees cutting the toes off young turkeys before tossing them down a chute to a bloody conveyor belt. It also seems to show employees scooping up a handful of turkeys and tossing them into a bin, dropping some on the floor and leaving them there, as well as an employee pulling a cart of injured animals over to a grinder and throwing them in.⁴⁷

Beyond the cruelty that marks the poultry industry is the truly massive pollution associated with producing large numbers of chickens in one area.

Poultry facilities generate tremendous volumes of stinking waste that emit dangerous gases, such as ammonia, methane, and hydrogen sulfide.

For instance, layer hens can produce as much manure as the sewage generated in medium-size cities in the counties where the poultry farms are concentrated. The 13.8 million layer hens in Mercer County, Ohio, produce as much untreated waste as the entire population of greater Dallas–Fort Worth, as do the 20.1 million broiler chickens on factory farms in Shelby County, Texas. The 7.7 million layers in Sioux City, Iowa, produce as much manure as all the sewage in Seattle. And the 17.5 million broilers in Franklin County, Georgia, produce as much waste as the greater Philadelphia metro area.



A typical broiler factory. Photo by author.

As with the hog industry discussed earlier, the waste from laying hen operations is sometimes drained into lagoons that leak and overflow. Other egg factories and most broiler operations store dry litter (manure and bedding) in sheds or outdoors until it is spread on farm fields. After it is applied to the soil, much of the waste runs into local waterways, causing people to become sick from breathing harmful gases or from drinking water polluted with nitrates, dangerous microbes, antibiotic-resistant bacteria, and viruses. **A61**

Scott Edwards, a former attorney with the environmental organization Waterkeeper and now a litigator with Food & Water Watch's Justice program,

Exhibit 2

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION**

)
)
 FOOD & WATER WATCH, INC.,)
 a non-profit corporation,)
 1616 P Street NW)
 Suite 300,)
 Washington, DC 20035,)
)
 and)
)
 ORGANIC CONSUMERS)
 ASSOCIATION, a non-profit corporation,)
 6771 South Silver Hill Drive,)
 Finland, MN 55603,)
)
 Plaintiffs,)
)
 v.)
)
 PILGRIM’S PRIDE CORPORATION,)
 1770 Promontory Circle, Greeley, CO)
 80634,)
)
 Defendant.)

COMPLAINT

Plaintiffs Food and Water Watch (“FWW”) and Organic Consumers Association (“OCA”) bring this action against Defendant Pilgrim’s Pride Corporation (“Pilgrim’s Pride”), and allege the following based upon personal knowledge, information, and belief. This Complaint is on behalf of FWW and OCA, their respective members, and the general public.

INTRODUCTION

1. This is a case about deceptive marketing and advertising of chicken products. The case is brought by two non-profit organizations (FWW and OCA) dedicated to consumer

protection. FWW and OCA seek no monetary damages, only an end to the deceptive marketing and advertising at issue.

2. Defendant Pilgrim's Pride produces chicken products.

3. Pilgrim's Pride makes marketing and advertising representations to convey to consumers that the birds used in its chicken products are fed "only natural ingredients" and "treated humanely," and that the chicken products are produced in an environmentally responsible way.

4. Contrary to its marketing representations, Pilgrim's Pride systematically raises, transports, and slaughters chickens in inhumane factory-farm conditions that include:

- the routine use of antibiotics, synthetic chemical disinfectants, genetically modified organisms, growth-promoting drugs, and other unnatural substances;
- the crowding of birds by the tens of thousands into massive disease-ridden industrial warehouses with no access to the outdoors;
- the use of artificially selected fast-growing, breast-heavy chicken breeds that have chronic and debilitating health conditions;
- the abuse of chickens by Pilgrim's Pride contractors and employees; and
- the use of toxic chemicals and the emission of large amounts of pollutants.

5. Thus, Pilgrim's Pride's marketing and advertising, which suggests that the chickens in the Products are fed only natural ingredients and that Pilgrim's Pride employs humane and environmentally responsible production practices, is false and misleading.

STATUTORY FRAMEWORK

6. This action is brought under the District of Columbia Consumer Protections Procedures Act ("CPPA"), D.C. Code § 28-3901, *et seq.*

7. The CPPA "is a comprehensive statute with an extensive regulatory framework designed to remedy *all* improper trade practices." *Osbourne v. Capital City Mortg. Corp.*, 727

A.2d 322, 325 (D.C. 1999) (quotations omitted). “The CPPA protects consumers from those unlawful trade practices enumerated in § 28-3904, as well as practices prohibited by other statutes and common law.” *Id.* (quotations omitted).

8. The CPPA makes it a violation for “any person” to, *inter alia*:

Represent that goods or services have a source, sponsorship, approval, certification, accessories, characteristics, ingredients, uses, benefits, or quantities that they do not have;

Represent that goods or services are of a particular standard, quality, grade, style, or model, if in fact they are of another;

Misrepresent as to a material fact which has a tendency to mislead;

Fail to state a material fact if such failure tends to mislead;

Use innuendo or ambiguity as to a material fact, which has a tendency to mislead;
or

Advertise or offer goods or services without the intent to sell them or without the intent to sell them as advertised or offered.

D.C. Code § 28-3904(a), (d), (e), (f), (f-1), (h). A violation occurs regardless of “whether or not any consumer is in fact misled, deceived or damaged thereby.” *Id.*

9. The CPPA “establishes an enforceable right to truthful information from merchants about consumer goods and services that are or would be purchased, leased, or received in the District of Columbia.” *Id.* § 28-3901(c). It “shall be construed and applied liberally to promote its purpose.” *Id.*

10. The CPPA affords FWW and OCA a right to bring this action on behalf of themselves, their members, and/or on behalf of the general public:

A nonprofit organization may, on behalf of itself or any of its members, or on any such behalf and on behalf of the general public, bring an action seeking relief from the use of a trade practice in violation of a law in the District, including a violation involving consumer goods or services that the organization purchased or received in order to test or evaluate qualities pertaining to use for personal, household, or family purposes.

Id. § 28-3905(k)(1)(C).

11. Remedies available for any CPPA claim include “[a]n injunction against the use of the unlawful trade practice” and “[a]ny other relief which the court determines proper.” *Id.* § 28-3905(k)(2)(D), (F).

FACT ALLEGATIONS

I. Pilgrim’s Pride Marketing and Advertising Represents That the Birds Used in the Products Are Fed “Only Natural Ingredients” and “Treated Humanely,” and That the Products Are Produced in an Environmentally Responsible Manner.

12. Pilgrim’s Pride markets chicken to consumers under multiple different brand names, including but not limited to “Pilgrim’s,” “Just BARE,” and “Gold’n Plump.”

13. The Pilgrim’s Pride chicken products at issue (the “Products”) in this case¹ include Blazin’ Wings and Frozen Ready to Cook Tempura Nuggets.

14. Pilgrim’s Pride markets and advertises its chicken products—including the Pilgrim’s brand—in the District. It seeks to reach the District consumer base through online marketing such as Facebook, Twitter, and its company websites.

15. Pilgrim’s Pride makes clear that the company has complete control over the production of its chicken products. In a video on its corporate webpage,² the company’s President and Chief Executive Officer Bill Lovette says, “In our chicken business, we use a vertical integrated supply chain so that we can assure the consumer that’s buying our product that we’ve been in control of the process at every step of the way.”

¹ Discovery may cause additional Pilgrim’s Pride brands and products to be included within the scope of the allegations in this Complaint, and Plaintiffs reserve the right to add such products.

² Pilgrim’s, “About Us,” at <https://www.pilgrims.com/about-us/> (last visited Jan. 31, 2019). The video is also available on Vimeo as “Pilgrim’s 30 Second Video,” at <https://vimeo.com/107917405> (last visited Jan. 31, 2019). According to Vimeo, the video was posted on October 3, 2014.

A. Pilgrim’s Pride Represents That the Birds Used in the Products Are Fed “Only Natural Ingredients.”

16. Throughout its advertising, Pilgrim’s Pride makes representations regarding the natural qualities of the feed it provides to chickens used in the Products.

17. For example, one webpage on its Pilgrim’s brand website states, “[W]e feed our chickens only natural ingredients,” and , “We do not use growth hormones of any kind in our poultry rations.”³

18. In another example, the Frequently Asked Questions page on the Pilgrim’s USA website notes that its feed ingredients are “from natural sources.”⁴

B. Pilgrim’s Pride Represents That the Chickens Used for the Products Are Humanely Treated.

19. Multiple pages within the Pilgrim’s website make claims related to the raising and treatment of the chickens that become the Products. The Frequently Asked Questions webpage⁵ makes welfare representations such as these:

- “Pilgrim’s strongly supports the humane treatment of animals [and] maintains a strict animal welfare program that utilizes guidelines established by the National Chicken Council. . . . These guidelines ensure that birds raised are treated humanely and raised with care. Humane treatment is practiced during the processing of the bird as well.”
- “These barns allow for our farmers to regulate their air flow and ensure they are receiving adequate food and water [T]hey are given plenty of space to move freely inside of the barn.”

20. The Our Chickens webpage⁶ makes further representations regarding the humane treatment of animals used for the Products, such as these:

- “Employees or growers who violate the Pilgrim’s animal welfare policy and associated procedures will be subject to disciplinary action,” and “[a]ll

³ Pilgrim’s, “Our Chickens,” at <https://www.pilgrimsusa.com/our-chickens/> (last visited Jan. 31, 2019).

⁴ Pilgrim’s, “Frequently Asked Questions,” at <https://www.pilgrimsusa.com/faqs/> (last visited Jan. 31, 2019).

⁵ *Id.*

⁶ *See supra*, note 3.

of our complexes are audited on a regular basis to ensure full compliance with [National Chicken Council] humane treatment guidelines.”

- “Pilgrim’s works closely with our grower partners, customers, and other industry stakeholders to humanely raise and process the birds under our care in accordance with our values”
- “[A]ll Pilgrim’s employees who handle live birds are required to complete animal-welfare training on an annual basis.”
- “Caring for our flocks also means taking steps to protect them from disease or illness.”
- “All of our complexes are audited on a regular basis to ensure full compliance with these humane treatment guidelines. If a deficiency is identified, immediate corrective action is taken and follow-up audits are scheduled until the issue is resolved.”

21. A video on the Our Chickens page of the website, viewed 9,701 times, makes repeated references to the “happy” and “healthy” birds raised by Pilgrim’s.⁷

22. The Pilgrim’s Pride 2016 Sustainability Report, available on the Pilgrim’s brand consumer website, makes additional representations about how Pilgrim’s Pride cares for the chickens it slaughters and sells: “Our strict and comprehensive Animal Welfare Program ensures that birds are humanely raised and handled through all phases of hatching, growth, transport and slaughter.”⁸

23. The Sustainability Report states that Pilgrim’s Pride’s “chickens are raised in accordance with the Five Freedoms, including practices that prevent or minimize fear, pain, stress and suffering throughout the production process.”⁹

⁷ See supra, note 3.

⁸ Pilgrim’s Pride, “2016 Sustainability Report,” p. 122, available at <http://sustainability.pilgrims.com/index.html#p=1> (last visited Jan. 31, 2019).

⁹ *Id.*

24. The Sustainability Report also states, “Our family farm partners protect our chickens from weather, safeguard them from predators and disease and ensure their health and well-being through proper care and appropriate human interaction.”¹⁰

25. Under large all-capitalized words “OUR CHICKENS,” a Pilgrim’s Sustainability Highlights brochure¹¹ states:

Ensuring the well-being of the chickens under our care is an uncompromising commitment at Pilgrim’s. Whether organic, antibiotic-free or traditional production methods are employed, the health and safety of our chickens remains a priority. At Pilgrim’s, our values dictate that we implement humane animal welfare practices for one simple reason: it is the right thing to do.

26. The Sustainability Highlights brochure also states, “100% of our team members and family farm partners have been trained according to our Animal Welfare Program.”¹²

C. Pilgrim’s Pride Represents That the Products Are Produced in an Environmentally Responsible Manner.

27. Pilgrim’s Our Chickens webpage touts Pilgrim’s purported commitment to “environmental stewardship.”¹³

28. This theme of “environmental stewardship” is repeated throughout the “sustainability reports” publicly available on the “Sustainability” webpage of the Pilgrim’s brand consumer website.¹⁴

29. For example, the 2017 Sustainability Highlights document states that Pilgrim’s is “committed to being an industry leader in sustaining air, water, and land.”¹⁵

¹⁰ *Id.* at 131.

¹¹ Pilgrim’s Pride, “2016 Sustainability Highlights,” p. 6, https://www.pilgrims.com/wp-content/uploads/2018/11/Pilgrims-Sustainability-Report_Condensed-v3.pdf.

¹² *Id.*

¹³ *See supra*, note 3.

¹⁴ Pilgrim’s, “Sustainability,” at <https://www.pilgrimsusa.com/sustainability/> (last visited Jan. 31, 2019).

¹⁵ Pilgrim’s, “2017 Sustainability Highlights,” p. 18, at https://www.pilgrims.com/wp-content/uploads/2018/11/Pilgrims_SustainReport_2017_final.pdf.

30. The website for Pilgrim’s parent company, JBS USA, states, “At JBS USA and Pilgrim’s . . . environmental stewardship is a key pillar in our sustainability approach.”¹⁶

31. This webpage specifically refers to stewardship of “the water and land required to . . . humanely raise our . . . chickens” and to “reclaiming water used in our facilities to place back into aquifers.”¹⁷

32. This webpage states, “At JBS USA and Pilgrim’s, how we leave the planet in a better condition than which we found it is at the heart of each environmental, economic and social decision we make.”¹⁸

33. Pilgrim’s “environmental policy,” accessible on the JBS website, states that “Pilgrim’s Pride is dedicated to the responsible stewardship of the natural resources required to produce our products,” and that “Pilgrim’s is committed to . . . [p]reventing pollution and protecting the environment” and “[m]anaging all of our operations in accordance with environmental laws and regulation.”¹⁹

II. Pilgrim’s Marketing Representations Are Material to Consumers.

34. Surveys suggest that consumers are willing to pay more for poultry products from animals fed natural ingredients and that they have specific expectations of what “natural” means. Surveys also demonstrate that representations about animal welfare are material to consumers in their purchasing decisions, a fact that Pilgrim’s Pride has acknowledged.

35. Survey research suggests that (1) most consumers believe that “natural” ingredients are free from antibiotics, GMOs, and toxic and/or artificial chemicals; that (2) it is

¹⁶ JBS, “Environmental Stewardship,” <https://jbssa.com/sustainability/stewardship/> (last visited Jan. 31, 2019).

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ JBS “Environmental Policy,” p. 1, available at https://jbssa.com/images/sustainability/stewardship/EnvironmentalPolicy_Pilgrims.pdf.

material to consumers that animals are not fed these unnatural ingredients; and that (3) consumers are willing to pay a premium for meat and poultry products from animals fed only “natural” ingredients.

36. A November 2017 report from the U.S. Department of Agriculture’s Economic Research Service, titled “Beyond Nutrition and Organic Labels—30 Years of Experience With Intervening in Food Labels,” approvingly referenced²⁰ a 2015 Consumer Reports survey to describe consumer interpretation of “natural” claims:

. . . 64 percent of consumers surveyed believed that *natural* meant that no artificial growth hormones were used, 59 percent believed that it meant that animals were fed feed that did not contain genetically engineered ingredients, and 57 percent believed that it meant that no antibiotics or other drugs were used.

37. In the USDA-cited 2015 Consumer Reports nationally representative survey, consumers stated they believed the following about meat and poultry products called “natural”:

- The animals’ feed contained no artificial ingredients or colors (61%);
- The animals’ feed contained no genetically modified organisms (59%);
- The animals were given no artificial growth hormones (64%); and
- No antibiotics or other drugs were used (57%).²¹

38. These survey results demonstrate that the majority of consumers do not consider artificial ingredients such as antibiotics and GMOs to be “natural” ingredients in the context of animal feed.

39. Moreover, in the context of chicken feed, salmonella-contaminated rendered meat, bones, blood, and feathers from other chickens are not “natural ingredients.”

²⁰ Kuchler et al., *Beyond Nutrition and Organic Labels—30 Years of Experience With Intervening in Food Labels*, U.S. Department of Agriculture, ERR-239 (2017), <https://www.researchgate.net/publication/327534891>.

²¹ Consumer Reports, *Natural Food Labels Survey* (2015).

40. The 2015 Consumer Reports survey also found that consumers deem it important that food not be produced via standard factory-farm methods. For example, 84% of food shoppers said that it was “important” or “very important” to provide better living conditions for animals, and 83% said it was “important” or “very important” to reduce antibiotic use in food. A whopping 89% said it was “important” or “very important” to reduce exposure to pesticides.²²

41. According to a 2016 Consumer Reports nationally representative survey²³ of 1,001 adults, 68% of respondents were extremely or very concerned that feeding antibiotics and other drugs to healthy animals may allow the animals to be raised in crowded and unsanitary conditions. Sixty-five percent were extremely or very concerned that the routine use of antibiotics and other drugs may create new bacteria that cause illnesses that antibiotics cannot cure. And 51% of respondents were extremely or very concerned that antibiotic use may artificially promote growth.

42. In the same 2016 Consumer Reports survey, the overwhelming majority of respondents (88%) reported²⁴ that they believe the government should require that meat raised with hormones or ractopamine be labeled as such. A similar majority (84%) said they think that the government should require meat from healthy animals routinely fed antibiotics to be labeled as “raised with antibiotics.”

43. Because several of the attributes consumers expect from “natural” meat products concern the natural quality of the animals’ feed, it is material to consumers that animals used for food are fed “natural ingredients.”

²² *Id.*

²³ Consumer Reports, Food Labels Survey (2016).

²⁴ *Id.*

44. Consumers care about animal welfare. Many consumers are willing to pay more for products that they believe come from humanely treated animals, as several consumer studies have documented. According to a 2013 survey conducted by the American Humane Association, 89% of consumers were very concerned about farm animal welfare, and 74% stated that they were willing to pay more for humanely raised meat products.²⁵ A 2018 study published in the journal *Animals* found that the weighted average of consumers' marginal willingness to pay for products from humanely treated animals was \$0.96 for one pound of chicken breast (a 48% premium).²⁶

45. Pilgrim's Pride's 2016 Sustainability Report²⁷ acknowledges changing consumer expectations for poultry products: "We endeavor to meet changing consumer expectations while maintaining our high standards for food safety, animal welfare, environmental stewardship, social responsibility, and economic viability. Consumer expectations continue to evolve, including increased interest in antibiotic-free and free-range poultry production systems." The Sustainability Report goes on to suggest using these consumer expectations for advertising and marketing: "[I]t may be increasingly popular to leverage the inherent ethical obligation of proper animal husbandry as a marketing tool."²⁸

46. Pilgrim's Pride subsidiary Gold'n Plump has recognized that "[t]he demand for products raised humanely and without antibiotics ever is growing." According to a 2016 survey commissioned by Gold'n Plump, 32 percent of consumers agreed that "humanely raised means

²⁵ American Humane Association, Humane Heartland Farm Animal Welfare Survey (2013), available at <https://www.americanhumane.org/publication/humane-heartland-farm-animal-welfare-survey/>.

²⁶ Spain et al., Are They Buying It? United States Consumers' Changing Attitudes toward More Humanely Raised Meat, Eggs, and Dairy, 8 *Animals* 128 (2018).

²⁷ See supra, note 8 at 70.

²⁸ *Id.* at 121.

higher quality” and just “over 33 percent of shoppers agreed that humanely raised on the label encourages their purchase.”²⁹

47. Consumers also care about environmental stewardship. A 2015 Nielsen global survey of 30,000 consumers found that 66% of respondents were willing to pay more for products from companies “committed to positive social and environmental impact.”³⁰

48. A 2017 international study by Unilever found that 33% of global consumers are “choosing to buy from brands they believe are doing social or environmental good.” The study further found that 78% of shoppers in the U.S. “say they feel better when they buy products that are sustainably produced.”³¹

49. A 2017 survey of U.S. consumers, based on approximately 25,000 in-person interviews, found that 56% of consumers were willing to pay more to use “environment-friendly (‘green’) products.”³²

III. Pilgrim’s Pride’s Advertising and Marketing Misrepresents the Reality of Its Practices.

50. Contrary to Pilgrim’s Pride’s representations, the chickens who become these Products are, as a matter of standard business practices, treated in unnatural, cruel, and inhumane manners, from hatching through slaughter.

²⁹ Gold’n Plump, “Gold’n Plump® Launches New Attributes For All Natural Line And Tool To Help Define New Label Claims” (July 12, 2016) <https://www.goldnplump.com/news-room/goldn-plump-launches-new-attributes-all-natural-line-and-tool-help-define-new-label-claims> (last visited Jan. 31, 2019).

³⁰ Nielsen, *The Sustainability Imperative: New Insights on Consumer Expectations* (2015), available at <https://www.nielsen.com/content/dam/nielsen-global/co/docs/Reports/2015/global-sustainability-report.pdf>.

³¹ Unilever, “Report shows a third of consumers prefer sustainable brands,” <https://www.unilever.com/news/press-releases/2017/report-shows-a-third-of-consumers-prefer-sustainable-brands.html> (last visited Jan. 31, 2019).

³² GfK MRI, “In US, willingness to pay more for environment-friendly products grows,” <https://www.gfk.com/en-us/insights/press-release/in-us-willingness-to-pay-more-for-environment-friendly-products-grows/> (last visited Jan. 31, 2019).

51. Contrary to Pilgrim's Pride's representations, Pilgrim's Pride and its growers employ factory-farming techniques, which include the routine use of antibiotics, GMOs, and other artificial chemicals.

52. Pilgrim's Pride's practices related to animal welfare and chemical contaminants in its production processes are contrary to how a reasonable consumer would understand its marketing and advertising claims regarding such issues.

A. Contrary to Pilgrim's Pride's Advertising and Marketing, the Chickens Are Fed Unnatural Ingredients, Including Growth Promoters.

53. As set forth above, Pilgrim's Pride represents that the chickens in its Products are fed only natural ingredients, without growth hormones of any kind.

54. Contrary to these representations, a 2014 Reuters investigation reported the existence of documents known as "feed tickets," which showed that Pilgrim's Pride "added . . . the antibiotics bacitracin and monensin, individually or in combination, to every ration fed to a flock grown early [that] year."³³

55. Bacitracin has widely recognized growth-promoting properties and has been historically used for that purpose in the poultry industry.³⁴

56. Pilgrim's Pride has not ended the routine application of bacitracin, monensin, or other antibiotics to the chickens raised for the Products. On the contrary, Pilgrim's Pride still uses antibiotics for disease prevention, a practice that has been condemned by the World Health

³³ Reuters, "Documents Reveal How Poultry Firms Systematically Feed Antibiotics to Flocks," <https://www.reuters.com/investigates/special-report/farmaceuticals-the-drugs-fed-to-farm-animals-and-the-risks-posed-to-humans/> (last visited Jan. 31, 2019).

³⁴ See Ujvala Deepthi Gaddad et al., *Antibiotic growth promoters virginiamycin and bacitracin methylene disalicylate alter the chicken intestinal metabolome*, 8 SCIENTIFIC REPORTS (2018), at <https://www.nature.com/articles/s41598-018-22004-6>.

Organization, as a typically unnecessary and routine form of antibiotic overuse.³⁵ In Pilgrim's Pride's facilities, only the routine use of "critically important antibiotics" is ostensibly prohibited.³⁶

57. A 2017 study conducted on Pilgrim's Pride chickens, many of which were ultimately "processed by Pilgrim's Pride for commercial distribution," showed that five out of eight treatment groups were given bacitracin in their feed as an "antibiotic growth promotor."³⁷

58. In that same study, six out of eight treatment groups were fed a combination of the antibiotic narasin and the antiparasitic drug nicarbazin, and the remaining two groups were given the antibiotic salinomycin through their feed.³⁸

59. The study was designed to mimic "standard commercial industry practices," which include the routine use of antibiotic and non-antibiotic chemicals to prevent parasitic disease.³⁹

60. Along with being fed or administered the antibiotics and unnatural growth promoters, chickens raised for the Products are fed other unnatural ingredients, as well. Pilgrim's Pride's Our Chickens webpage represents to consumers that the chickens are fed "only natural ingredients."⁴⁰ In a manner confusing to consumers, a wholly different Pilgrim's Pride webpage admits that the corn and soy used in its feed "are considered genetically modified" organisms.⁴¹

³⁵ World Health Organization, "Stop Using Antibiotics in Healthy Animals to Prevent the Spread of Antibiotics Resistance," <http://www.who.int/news-room/detail/07-11-2017-stop-using-antibiotics-in-healthy-animals-to-prevent-the-spread-of-antibiotic-resistance> (last visited Jan. 31, 2019).

³⁶ See supra, note 8 at 141.

³⁷ Justin M. Glasscock, *Evaluation of Different Probiotic Strains Supplemented in Commercial Broiler Rations and their Influences on Performance, Yield, and Intestinal Microbiota*, Electronic Theses and Dissertations (2017).

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ See supra, note 3.

⁴¹ See supra, note 4. While the FAQ section of Pilgrims.com explains that GMOs are used in the Products, that is insufficient to remedy the misrepresentations about the natural quality of the products and ingredients made elsewhere on the website.

61. Nowhere on the website does Pilgrim's Pride acknowledge that, in addition to the alleged "wholesome mixture of soy and corn meal" fed to its chickens, it also adds meat and bone meal ("MBM") and dried distillers grains ("DDGS").⁴² DDGS commonly contains residues of growth-promoting antibiotics,⁴³ and MBM is an ingredient that can contain meat, bones, blood, and feathers from other chickens and is commonly contaminated with pathogens and treated with toxic substances such as formaldehyde.⁴⁴

62. These facts are inconsistent with Pilgrim's Pride's representations to consumers that "we feed our chickens only natural ingredients" and "do not use growth hormones of any kind in our poultry rations."

B. Contrary to Pilgrim's Pride's Advertising and Marketing, Chickens Processed for the Products Are Not Treated Humanely.

63. Contrary to Pilgrim's Pride advertising that the company "ensures that birds are humanely raised and handled throughout all phases of hatching, growth, transport, and slaughter," investigations spanning more than a decade, and recent federal inspections, have documented horrific abuse of chickens in the production of Pilgrim's Pride products.

64. Undercover investigations in 2004, 2014, and 2017 at Pilgrim's Pride slaughterhouses and contract growing facilities, as well as inspections by FSIS, reveal a pattern

⁴² West Virginia Department of Environmental Protection, "Engineering Evaluation/Fact Sheet," available at <https://dep.wv.gov/daq/Documents/May%202017%20Draft%20Permits%20and%20Evals/1506D-Eval.PDF> (last visited Jan. 31, 2019).

⁴³ Kenneth M. Bischoff, Yanhong Zhang & Joseph O. Rich, *Fate of virginiamycin through the fuel ethanol production process*, 32 WORLD JOURNAL OF MICROBIOLOGY AND BIOTECHNOLOGY (2016), <https://www.ncbi.nlm.nih.gov/pubmed/27038946>.

⁴⁴ J.J. Carrique-Mas, S. Bedford & R.H. Davies, *Organic acid and formaldehyde treatment of animal feeds to control Salmonella; efficacy and masking during culture*, 103 JOURNAL OF APPLIED MICROBIOLOGY, 88-96 (2007); see also Poultry World, "EU member states decide to ban formaldehyde in poultry feed," at <https://www.poultryworld.net/Nutrition/Articles/2017/12/EU-member-states-decide-to-ban-formaldehyde-in-poultry-feed-228694E/> (last visited Jan. 31, 2019).

of practices involving systemic animal cruelty, inhumane treatment, and abuse. Pilgrim's has provided no reason to believe that this documented pattern of mistreatment has ceased.

1. Factory Farming of Broiler Chickens Involves Inhumane Raising and Slaughter Practices.

65. Broiler chicken production and slaughter activities can be divided into ten stages: (1) breeding; (2) hatching; (3) growing; (4) catching at the contract growing facility; (5) transportation to the slaughterhouse; and (6) pre-slaughter handling, (7) stunning, (8) neck cutting, (9) scalding, and (10) picking at the slaughterhouse.

66. Pilgrim's Pride describes its breeder facilities as "entirely automated": "hens lay eggs in the nest, then the eggs roll out and land gently on a conveyor belt, which bring the eggs right to the egg farmer. They are then loaded on crates for delivery to the hatchery. These eggs are meant to become broiler chickens, grown for consumer use."⁴⁵

67. A contractor who raises breeding chickens for Pilgrim's Pride has explained that Pilgrim's Pride systematically starves egg-laying birds for days at a time to prevent them from growing to their unnaturally large size, because "they don't lay [eggs] when they get too big." Each of this grower's "barns" holds up to 60,000 birds at a time.⁴⁶

68. According to Pilgrim's Pride, the company delivers chicks that become broiler chickens to contract growing facilities. Delivery usually occurs right after the chicks hatch.

69. For about 50 days after delivery of the chicks, the birds remain, and "grow," in same "house" of the contract growing facility to which they were delivered. Pilgrim's Pride's grow houses contain as many as 60,000 birds⁴⁷ at a time, with birds allowed one square foot of

⁴⁵ Pilgrim's, "Serenity Farm," at <http://www.pilgrimspride.com/family-farms/featured-grower.aspx> (last visited Jan. 31, 2019).

⁴⁶ Pilgrim's, "Hays Creek Farm," at <https://www.pilgrimsusa.com/featured-grower/hays-creek-farm/> (last visited Jan. 31, 2019).

⁴⁷ Pilgrim's, "Triple G Farm," at <https://www.pilgrimsusa.com/featured-grower/triple-g-farm/> (last visited Jan. 31, 2019).

space each.⁴⁸ These houses are generally rectangular buildings with litter-covered dirt floors, without windows. The chickens never step foot outside.

70. In these facilities, the animals are so numerous and disease is so prevalent that, once a day, the contract grower walks through the house to “euthanize” birds that are sick, injured, or growing too slowly, and to remove dead birds. Pilgrim’s Pride uses “cervical disarticulation” as a method of “euthanizing” sick, weak, and/or small birds. This risky and inhumane method entails pulling a bird’s head and yanking the neck to cause extensive damage to the spinal cord and brainstem, and to cut off blood flow to the brain. Studies suggest that because of the manual nature of the process, there is a “high variability” in the welfare outcomes of this procedure and “animals may be conscious for a significant period post-application.” Furthermore, “accidental decapitation” is a common outcome of this inhumane procedure.⁴⁹

71. Pilgrim’s uses a breed of chicken called the “Cobb 500,”⁵⁰ which is marketed as having the “best growth rate” and the “lowest cost” among commercially available chicken breeds.⁵¹

72. Many broiler chickens, including those who end up as Pilgrim’s Pride chicken products, have been selectively bred for rapid growth to market weight. An average broiler chicken in 1920 reached 2.2 pounds in 16 weeks. In 2016, the average market weight for Pilgrim’s Pride chickens after six-to-seven weeks was approximately six pounds.⁵²

⁴⁸ Justin M. Glasscock, *Evaluation of Different Probiotic Strains Supplemented in Commercial Broiler Rations and their Influences on Performance, Yield, and Intestinal Microbiota*, Electronic Theses and Dissertations (2017).

⁴⁹ Jessica Martin et al., *On Farm Evaluation of a Novel Mechanical Cervical Dislocation Device for Poultry*, 8 *Animals* 10 (2018).

⁵⁰ Farm Credit Bank of Texas, “Chickens are a Girl’s Best Friend,” at https://www.farmcreditbank.com/landscapes-win08_poultry (last visited Jan. 31, 2019).

⁵¹ Cobb, “Cobb 500,” at <https://www.cobb-vantress.com/products/cobb-500> (last visited Jan. 31 2019).

⁵² See supra, note 8, at 146.

73. The faster growth is a severe welfare problem, causing leg disorders, ruptured tendons, weakened immune systems, and other painful conditions. Several studies have shown, for example, that the fast-growing Cobb 500 used by Pilgrim's is prone to skeletal deformities and associated health conditions.⁵³

74. Ascites, a condition in which unnaturally rapid growth in chickens means they do not have the heart and lung capacity to distribute oxygen throughout the body, causes fluid in the abdominal cavity, the appearance of a shrunken liver, and heart failure. Federal regulations require FSIS to inspect for ascetic fluid in the birds, condemn birds showing the condition of ascites, and record all such condemnations.⁵⁴

75. According to University of Bristol professor emeritus John Webster, fast-growing "broiler" chickens are the only food-producing farm animals who spend the last 20% of their lives in chronic pain. They do not move around much, because moving hurts their joints too much.⁵⁵

76. Once a company determines that the chickens have reached the size it wants for slaughter, it sends human "catching crews" or mechanized "catchers" into the contract growing facility houses to grab the chickens and put the birds into cages, which are also called "drawers." The cages are loaded onto trucks and stacked on top of each other.

77. Trucks then transport the caged broiler chickens to the slaughterhouse.

⁵³ See e.g., É. Gocsik, et al., *Exploring the economic potential of reducing broiler lameness*, 85 BRITISH POULTRY SCIENCE 337-347 (2017); I. Dinev, S. A. Denev & F. W. Edens, *Comparative clinical and morphological studies on the incidence of tibial dyschondroplasia as a cause of lameness in three commercial lines of broiler chickens*, 21 JOURNAL OF APPLIED POULTRY RESEARCH 637-644 (2012).

⁵⁴ See FSIS PHIS Directive 6100.3 (Apr. 11, 2011).

⁵⁵ Erlichman, J. "The Meat Factory," *The Guardian* (October 1991).

78. Death during transportation is a common occurrence, and FSIS refers to birds who die during transportation, or for another reason are dead when removed from the truck, as “dead-on-arrivals,” or “DOAs.”

79. Pilgrim’s Pride slaughterhouses use the following slaughter process. First, workers use a forklift to remove the chickens and their cages from the transportation trucks, and move them to a slaughter line. Workers dump the chickens onto a conveyor belt and segregate DOAs from live birds, tossing the DOAs into bins. After segregation, workers strap the birds into metal shackles attached to an overhead line, leaving the live birds to hang upside down by their legs.

80. Once the chickens are shackled, the mechanized line drags them through an electrified vat of water, which is supposed to “stun” the birds, *i.e.*, render them unconscious. Multiple animal welfare scientists have concluded that the stunning process merely paralyzes the birds but does not render them “insensible to pain,” which has been considered a hallmark of humane slaughter.⁵⁶

81. The line continues on to “cutting,” via the “kill blade.” If the process works correctly, the sharp blade cuts open a chicken’s necks and blood drains out. If the kill blade misses a chicken, at least one “back-up killer” employee works the line to cut that bird’s neck. Physical death is meant to occur from exsanguination, also called “bleeding.”

82. The chickens then proceed down the line to the “scalding,” a scalding hot tank of water used to loosen feathers from carcasses.

⁵⁶ Nico Pitney, “Scientists Believe the Chickens We Eat Are Being Slaughtered While Conscious,” The Huffington Post (Oct. 28, 2016), https://www.huffingtonpost.com/entry/chickens-slaughtered-conscious_us_580e3d35e4b000d0b157bf98 (last visited Jan. 31, 2019); *see also* Sara J. Shields & A. B. M. Raj S, *A critical review of electrical water-bath stun systems for poultry slaughter and recent developments in alternative technologies*, 13 *Journal of Applied Animal Welfare Science* 281-299 (2011).

83. FSIS regulations require that the slaughter “will result in thorough bleeding of the carcasses and ensure that breathing has stopped prior to scalding.” 9 C.F.R. § 381.65(b). In reality, chickens regularly miss the neck blade on a slaughterhouse line, enter the scald tank fully conscious, and boil alive in the scald. The USDA calls these birds “cadavers.” In industry vernacular, they are “red birds,” because their still-beating hearts pump blood to the surface of their scalded flesh.

84. Slaughterhouses are generally subject to a maximum line speed limitation of 140 birds per minute, or nearly two birds per second. This fast speed leads to handling errors along the slaughter line, as well as an inability to observe and correct instances where birds miss the stun bath and/or neck blade and continue to the scald still alive.

2. Investigations in 2017 Reveal Inhumane Treatment of Pilgrim’s Pride Chickens.

85. Undercover investigations and federal inspections, both recent and dating back as far as 10 years, have uncovered tremendous and systematic cruelty inflicted intentionally upon chickens raised by Pilgrim’s Pride.

86. In 2017, the non-profit organization Humane Society of the United States (HSUS) conducted investigations at a Pilgrim’s Pride slaughterhouse and at a Pilgrim’s Pride contract growing facility.

87. During that investigation, one HSUS undercover investigator worked at the Pilgrim’s Pride slaughterhouse in Mount Pleasant, Texas. A 2018 FTC complaint filed by HSUS regarding Pilgrim’s Pride’s misleading advertising notes that the “investigator worked in the live hang room where workers take live birds from a conveyor belt and hang them upside down in

metal leg shackles attached to a fast-moving overhead slaughter line.”⁵⁷ The complaint further notes that “[d]espite the Pilgrim’s Pride advertisement that all ‘employees who handle live birds are required to complete animal-welfare training,’ the investigator received no animal welfare training whatsoever during a full week of orientation” and “[i]n fact, during the orientation, animal welfare was never mentioned.”⁵⁸

88. The investigator witnessed and contemporaneously video-recorded live chickens being carelessly thrown into shackles from an inappropriate distance, and even being punched by a worker as they were hung upside down and immobilized in shackles.⁵⁹

89. The investigator also saw a worker grab live birds by the legs, violently slam them down forcefully into the metal shackles, and yank them out repeatedly, causing extreme pain.⁶⁰

90. The FTC complaint also describes another 2017 undercover investigation of a facility that raises chickens under contract for Pilgrim’s Pride. According to the complaint, this facility housed approximately 126,000 chickens in six large-scale industrial chicken growing “houses.” The investigator witnessed and contemporaneously video-recorded extremely cramped conditions for the chickens grown for Pilgrim’s Pride. As shown below, chickens were packed in “densely populated windowless warehouse-like growing sheds” with a single structure housing as many as 24,000 birds.⁶¹ According to the complaint, this “afforded each bird less than one

⁵⁷ Humane Society of the United States, Complaint requesting action to enjoin the dissemination of false or deceptive advertising by Pilgrim’s Pride, Corp., at 46 (2018), available at <https://blog.humanesociety.org/wp-content/uploads/2018/12/2018-12-12-Pilgrims-Pride-FTC-Complaint.pdf>.

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

square foot of space.” Furthermore, the birds reportedly “lived in their own waste” and the buildings, which reeked of ammonia, were “so overcrowded that the birds could barely move.”⁶²



91. The investigator further “observed lame, limping, injured, and dead birds.”⁶³

92. Pilgrim’s Pride’s birds grow so quickly that they reach slaughter weight at only 50 days old.⁶⁴ Because Pilgrim’s Pride uses a type of chicken bred for rapid growth and weight gain, many chickens that become the company’s chicken products suffer physically. “[S]ome of the birds suffered from crippling leg deformities so severe that the animals were unable to walk and could not reach their food or water.”⁶⁵

93. The FTC complaint further notes that some of these birds, such the chicken in the screenshot below, suffer from “Sudden Death Syndrome,” which is “exacerbated by rapid growth.”⁶⁶

⁶² See *supra*, n. 57, at 48.

⁶³ *Id.* at 49.

⁶⁴ *Id.* at 50

⁶⁵ *Id.*

⁶⁶ *Id.*; Siddiqi et al., *Sudden Death Syndrome - an Overview*, 2 *Veterinary World* 444-447 (2009).



94. The investigator further witnessed the owner of the facility “bludgeoning chickens with a metal rod to cause debilitating physical harm.” The owner also grabbed chickens by the neck and swung them “in an attempt to kill them, which likely caused ‘prolonged suffering prior to death’.”⁶⁷

95. Birds were subject to violent handling by the owner who grabbed chickens by the neck and threw them across the chicken house.⁶⁸

96. The investigator observed a water leak that lead to soaked litter in a crowded barn, creating unhealthy living conditions for the birds. For example, when birds lie in wet litter, ammonia produced by decomposing organic material can burn the birds’ skin.⁶⁹

97. When Pilgrim’s Pride’s birds reach slaughter weight, contract “catching crews” arrive at the farm to catch the birds and put them in cages to be trucked to the slaughter plant. According to the HSUS complaint, a “seven-person catching crew at this Hull, Georgia Pilgrim’s Pride contract growing facility cleared four barns—each designed to house 24,000 birds—in a single day.” Because of the enormous number of birds that were caught in such a short time

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

period, the catching crew subjected the chickens to “violent and aggressive catching and handling.”

98. This conventional manual catching is extremely risky from an animal welfare perspective. As HSUS noted, this practice used by Pilgrim’s Pride causes stress, fear, bruising, broken bones, dislocated joints, and other injuries.⁷⁰

99. At this growing facility, each crew member was expected to grab around eight birds at a time and transfer them into transport cages. As shown below, crew members grabbed birds and shoved them violently into metal transport cages.



100. Pilgrim’s Pride claims to have “investigated” the findings of the HSUS worker undercover at the Hull, Georgia facility, and represented to media outlets that the actions observed by the HSUS worker throughout the facility were in conflict with Pilgrim’s Pride’s “animal welfare training.” (As alleged in Paragraph 87, the undercover worker employed at a Pilgrim’s Pride slaughterhouse facility in Mount Pleasant, Texas received no animal welfare training whatsoever.)

⁷⁰ *Id.* at 58; *see also*, Humane Society of the United States, *An HSUS Report: Welfare Issues with Conventional Manual Catching of Broiler Chickens and Turkeys*, at <https://www.humanesociety.org/sites/default/files/docs/hsus-report-manual-catching-of-poultry.pdf> (last visited Jan. 31, 2019) (“Alternatives to conventional manual catching practices that improve bird welfare exist, including mechanical harvesters [and] gentle manual catching...”).

101. Contrary to any such representation, however, multiple whistleblower accounts and previous investigations have documented systematic inhumane treatment of Pilgrim's Pride's birds over a period of years, as set forth below.

3. Prior Investigations Confirm Systemic Mistreatment of Pilgrim's Pride Chickens.

102. In 2016, three Pilgrim's Pride growers became whistleblowers when they exposed disease and death on their farms, where they raised birds for Pilgrim's Pride.⁷¹ One grower explained that birds were dying so quickly on his farm that he would fill two large buckets with carcasses in one trip through the barn. Another grower explained how the birds on his farm routinely grew so large that they could not even move. A third grower stated that "there's bloody poop laying all over the floor."⁷²

103. In January and February 2014, the non-profit organization Compassion Over Killing (COK) conducted an undercover investigation at a Pilgrim's Pride contract growing facility in Harnett County, North Carolina. Abuses documented by COK included birds suffering from painful leg deformities so severe they were unable to walk; sick and injured birds being thrown; unwanted birds stuffed into buckets while still alive, surrounded by dead and decaying corpses; and unwanted birds buried alive in outdoor pits with dead and decaying corpses, where

⁷¹ These farmers' testimony shows that, despite Pilgrim's Pride's claim that it values its "family farm partners," many are required to sign exploitative contracts that force them to raise animals in ways that run contrary to their values. Multiple Pilgrim's poultry growers have accused Pilgrim's Pride of illegally conspiring with other chicken producers to coerce farmers into unfair contracts that require some farmers to work up to 16 hours a day for as little as \$12,000 a year. *See, e.g.,* Class Action Complaint, *In Re: Broiler Chicken Grower Litigation*, E.D.N.C., Case No., 7:18-cv-00031-D.

⁷² Nicholas Kristof, "Animal Cruelty or the Price of Dinner?" *The New York Times* (April 16, 2016), <https://www.nytimes.com/2016/04/17/opinion/sunday/animal-cruelty-or-the-price-of-dinner.html> (last visited Jan. 31, 2019); *See* Compassion In World Farming, "Pilgrim's Pride Farmers Expose Diseased Chickens," at <https://action.ciwf.com/ea-action/action?ea.client.id=1872&ea.campaign.id=49849> (last visited Jan. 31, 2019).

they were left to suffer and die of starvation, dehydration, or possibly suffocation.⁷³ A screenshot from the investigation is below.



104. After release of the COK investigation, in June 2014 Pilgrim’s Pride majority shareholder JBS USA issued a statement saying it was looking into the “startling images of birds being mistreated[.]”⁷⁴ The statement continued, “The actions in the video are unacceptable,” and “[t]he proper treatment of animals, whether under our direct care or under the care of our contract growers, is one of our core beliefs. We will not tolerate the abuse of animals.”⁷⁵ Yet, again, contrary to the representation, previous investigations had documented systematic animal cruelty against Pilgrim’s Pride’s birds, as set forth below.

105. In July 2004, the non-profit organization People for the Ethical Treatment of Animals (PETA) released the results of an undercover investigation into a Pilgrim’s Pride slaughterhouse in Moorefield, West Virginia. Video footage taken at the slaughterhouse shows Pilgrim’s Pride workers jumping up and down on live chickens, causing the birds to explode, drop-kicking birds, punting birds as if they were footballs, and violently slamming live chickens

⁷³ See Compassion Over Killing, “Buried Alive: COK Investigation Uncovers Shocking Cruelty to Chickens at NC Factory Farm,” at <http://cok.net/inv/pilgrims/> (last visited Jan. 31, 2019).

⁷⁴ Steve Lynn, “Pilgrim’s Pride investigating alleged chicken abuse,” BizWest (June 30, 2014) at <https://bizwest.com/pilgrims-pride-investigating-alleged-chicken-abuse-2/>.

⁷⁵ *Id.*

against a wall. Workers also ripped chickens' beaks off, twisted their heads off, sprayed aerosol paint into their eyes and mouths, squeezed birds so hard that their bodies expelled feces, and dumped live birds in a trash bin to die.⁷⁶

106. The market responded to the horrific acts revealed in the 2004 investigation. Pilgrim's Pride shares fell by 10.4%. Food Quality News reported, "This can be seen as proof that both customers and consumers have been so horrified by the allegations of cruelty—which center around a video taken by an undercover animal rights activist—that they are choosing to purchase products elsewhere."⁷⁷

107. In response to the investigation, Pilgrim's Pride's then-president O.B. Goolsby said the company was making changes to ensure that such abuses did not recur; that the company had ordered managers at each of its slaughterhouses to take time out to educate workers about the company's animal welfare policies; and that employees who handled live birds would have to sign a document acknowledging the company's zero-tolerance policy for animal cruelty.⁷⁸

108. Notwithstanding this verbal condemnation of animal cruelty, the systematic abuse of Pilgrim's Pride's chickens continued, as shown by the subsequent undercover investigations.

4. Federal Inspections of Pilgrim's Pride Facilities Confirm Inhumane Treatment of Chickens.

109. In addition to the undercover investigations, federal inspections in the past several years have identified cruel and abusive practices at Pilgrim's Pride slaughter plants.

⁷⁶ See McNeil, "KFC Supplier Accused of Animal Cruelty," *The New York Times* (Jul. 20, 2004), at <https://www.nytimes.com/2004/07/20/business/kfc-supplier-accused-of-animal-cruelty.html>; see also, People for the Ethical Treatment of Animals, "Thousands of Chickens Tortured by KFC Supplier," at <http://www.kentuckyfriedcruelty.com/u-pilgrimspride.asp> (last visited Jan. 31, 2019).

⁷⁷ Anthony Fletcher, "Pilgrim's Pride pays price for poultry plant scandal," *Food Quality News*, (Jul. 26, 2004), <http://www.foodqualitynews.com/Industry-news/Pilgrim-s-Pride-pays-price-for-poultry-plant-scandal> (last visited Jan. 17, 2019).

⁷⁸ See Associated Press, "KFC Supplier Suspends Worker After Video" (Jul. 21, 2004), at <http://www.foxnews.com/story/2004/07/21/kfc-supplier-suspends-worker-after-video.html> (last visited Jan. 31, 2019).

110. FSIS inspectors “are to issue an NR,”—*i.e.*, a Noncompliance Record—“when an ongoing pattern or trend develops where birds are not being slaughtered in a manner that results in thorough bleeding of the carcasses, that results in birds entering the scalding before their breathing has stopped, or that otherwise involves their being handled in a way that results in their dying otherwise than by slaughter.” FSIS Notice 44-16, at 1 (Jun. 27, 2016). In addition, mistreatment MOIs—*i.e.*, a Memoranda of Interview—“are primarily issued when, based on findings by the [inspector], the establishment is mistreating birds before or during shackling or elsewhere in the slaughter operation, up until the kill step, but the mistreatment does not demonstrate that the establishment’s process is out of control.” *Id.* at 3.

111. As documented by federal investigations, transportation and unloading of chickens has caused immense pain and suffering at Pilgrim’s Pride slaughterhouses. For example, on March 22, 2016, at the Hickory, North Carolina slaughterhouse, an inspector found four chickens crushed and entrapped beneath three different trailer tires, and a fifth bird crushed and flattened further underneath a truck over a grate. The inspector noted in an MOI, “The issue of loose birds and poor cage status has been documented and addressed in weekly meeting minutes with the establishment on previous occasions.”⁷⁹

112. Inspectors have found Pilgrim’s Pride slaughterhouse workers suffocating birds in DOA piles upon the chickens’ arrival at the slaughterhouses, including an April 26, 2016, incident at the Sumter, South Carolina slaughterhouse, where an inspector saw three live birds under the DOA pile of approximately 50-to-60 birds.⁸⁰

113. Inspectors have also observed inhumane handling and operation of the slaughterhouse machinery. On May 13, 2016, at the Live Oak, Florida slaughterhouse, inspectors

⁷⁹ See *supra*, n. 57, at 58.

⁸⁰ *Id.*

noticed “multiple birds coming with broken legs and bruises.” At least four birds “had broken legs with fresh blood running all the way down to the back.” The MOI stated that the most likely cause of the broken legs was how the employees were shackling the birds.⁸¹

114. Inspectors have observed chickens at Pilgrim’s Pride slaughterhouses dying from drowning or electrocution in the stun baths at Pilgrim’s Pride slaughterhouses. For example, FSIS issued an NR to Pilgrim’s Pride concerning an inspection of the Lufkin, Texas slaughterhouse on January 6, 2016. That day, an inspector observed that a slaughter line “had been down in excess of 5 minutes, however the stunner had not been emptied or lowered to allow the birds the ability to breathe.” After employees restarted the line to get the birds out of the water, the chickens “were examined and noticed as having no signs of life.” According to the inspector, in late December 2015, FSIS had written the Lufkin establishment an NR for leaving a bird in the stunner too long, thus drowning the bird.⁸²

115. Inspectors observed—and issued both MOIs and NRs for—violations in which chickens entered the scald tanks alive and conscious, becoming “cadavers.” During a six-month period in 2016, inspectors noted more than a dozen instances of chickens entering the scalders alive—a rate of more than twice per month. On April 28, 2016, at the Marshville, North Carolina slaughterhouse, an inspector saw a live bird who “was fully alert, had its head up, was looking around and vocalizing, and breathing in a normal rhythmic manner as it entered the scald tank.”

C. Contrary to the Advertising and Marketing, the Products Are Not Produced in an Environmentally Sustainable Manner.

⁸¹ *Id.*

⁸² *Id.*

116. Pilgrim's Mount Pleasant, Texas slaughter plant emits millions of pounds of toxic waste every year.⁸³

117. As recently as 2017, this Pilgrim's facility was found in violation of the Clean Air Act.⁸⁴

118. In 2016, the facility released over 8,000 lbs. of peracetic acid, a chemical that USDA whistleblowers have alleged is extremely harmful to workers, and can cause lung damage, emotional disturbances, and even death.⁸⁵ The use of peracetic acid (another disinfectant widely used in industrial U.S. poultry production) and other chemical disinfectants has been prohibited in the EU, because of concerns that they may be carcinogenic to humans.⁸⁶

119. In 2012, the Occupational Safety and Health Administration secured a \$50,000 settlement following an investigation into the termination of a Mount Pleasant plant employee who raised environmental complaints, in potential violation of the whistleblower provision of the Federal Water Pollution Control Act.⁸⁷

120. The employee alleged they had alerted the Texas Commission on Environmental Quality when process and storm water containing excessive amounts of chromium, lead, and mercury were discharged into the environment, and that they were terminated as a result of raising the alert.⁸⁸

⁸³ Detailed Facility Report, United States Environmental Protection Agency, <https://echo.epa.gov/detailed-facility-report?fid=110000598844> (last visited Jan. 31, 2019).

⁸⁴ Civil Enforcement Case Report, United States Environmental Protection Agency, <https://echo.epa.gov/enforcement-case-report?id=06-2017-3338> (last visited Jan. 31, 2019).

⁸⁵ Eyal Press, "Something in the Air," *The Intercept*, <https://theintercept.com/2018/07/19/moroni-utah-turkey-farm-workers-norbest/> (last visited Jan. 31, 2019).

⁸⁶ Susanna Capelouto, "European Activists Say They Don't Want Any U.S. 'Chlorine Chicken'," *NPR* (Sept. 30, 2015) <https://www.npr.org/sections/thesalt/2014/09/30/351774240/european-activists-say-they-dont-want-any-u-s-chlorine-chicken> (last visited Jan. 31, 2019).

⁸⁷ US Department of Labor's OSHA settles whistleblower case against Pilgrim's Pride in Mount Pleasant, Texas, United States Department of Labor, <https://www.osha.gov/news/newsreleases/region6/06292012> (last visited Jan. 31, 2019).

⁸⁸ *Id.*

121. Pilgrim’s pollution has a disproportionate impact on marginalized populations. The EPA notes that, within three miles of the Mount Pleasant facility, 68% of the population are members of racial minority groups and over half of the population lives below the poverty level.⁸⁹

122. Other reports from the Environmental Protection Agency demonstrate that artificial and/or toxic chemicals are sprayed on the Products at Pilgrim’s Pride processing facilities. In both 2016 and 2017, the most recent years for which data is available, a Pilgrim’s Pride processing plant in South Carolina released hundreds of pounds of chlorine dioxide.⁹⁰ Chlorine dioxide, commonly used as a disinfectant in the poultry industry, is recognized by the Centers for Disease Control as a “hazardous” substance.⁹¹ The National Institutes of Health notes that the chemical “does not occur naturally in the environment.”⁹²

123. At a separate Pilgrim’s plant, in Georgia, the EPA documented the release of thousands of pounds of the toxic chemical peracetic acid in 2016 and 2017.⁹³

124. A Pilgrim’s plant in Florida has been found to be in violation of the Safe Drinking Water Act for the past three years, for exceeding “maximum contaminant levels” for haloacetic acids, a byproduct from the use of chlorine disinfectants.⁹⁴

⁸⁹ *See supra*, note 83.

⁹⁰ Detailed Facility Report, United States Environmental Protection Agency, <https://echo.epa.gov/detailed-facility-report?fid=110000746792#history> (last visited Jan. 31, 2019).

⁹¹ Public Health Statement for Chlorine Dioxide and Chlorite, Agency for Toxic Substances & Disease Registry, <https://www.atsdr.cdc.gov/phs/phs.asp?id=580&tid=108> (last visited Jan. 31, 2019).

⁹² PubChem Open Chemistry Database, Chlorine Dioxide, National Institute of Health, https://pubchem.ncbi.nlm.nih.gov/compound/chlorine_dioxide#section=Top (last visited Jan. 31, 2019).

⁹³ Detailed Facility Report, United States Environmental Protection Agency, <https://echo.epa.gov/detailed-facility-report?fid=110009357766> (last visited Jan. 31, 2019).

⁹⁴ Detailed Facility Report, United States Environmental Protection Agency, <https://echo.epa.gov/detailed-facility-report?fid=110027375597> (last visited Jan. 31, 2019).

125. On information and belief, Pilgrim's utilizes the above chemical disinfectants to mitigate the effects of the unnaturally disease-infested chicken that result from its unsanitary and inhumane industrial practices.

126. Pilgrim's operates at least three industrial slaughter facilities that are currently exceeding the "maximum allowable" salmonella contamination levels set by the USDA Food Safety Inspection Service (FSIS).⁹⁵ In the first four months of 2018 alone, FSIS detected campylobacter bacteria and 20 separate instances of salmonella contamination of Pilgrim chicken carcasses. In 2016, a Pilgrim's Pride plant was cited by the EPA for violating the Clean Water Act due to *e.coli* contamination emanating from the plant.⁹⁶

127. The USDA has detected pathogens resistant to multiple critical and highly important antibiotics in several Pilgrim's Pride slaughter plants since 2016.

128. The USDA further determined that several of these multidrug-resistant pathogens are commonly associated with human illness.

129. The widespread presence of antibiotic-resistant bacteria detected by USDA in Pilgrim's facilities suggests that the chickens used in the Products are raised in unsanitary and inhumane conditions where antibiotics are widely used.

PARTIES

130. Defendant Pilgrim's Pride Corporation is incorporated in Delaware with a principal executive office in Greeley, Colorado. Pilgrim's Pride produces, processes, markets,

⁹⁵ Salmonella Categorization of Individual Establishments for Poultry Products, United States Dept. of Agriculture, https://www.fsis.usda.gov/wps/portal/fsis/home/!ut/p/a0/04_Sj9CPykssy0xPLMnMz0vMAfGjzOINA3MDC2dDbwsfDxdDDz9AtyMgnyMDf3dDPQLsh0VAcy6FX0!/?1dmy&page=gov.usda.fsis.internet.newsroom&urile=wcm%3Apath%3A%2Ffsis-content%2Finternet%2Fmain%2Ftopics%2Fdata-colle (last visited Jan. 31, 2019).

⁹⁶ Detailed Facility Report, United States Environmental Protection Agency, <https://echo.epa.gov/detailed-facility-report?fid=110000564853#history> (last visited Jan. 31, 2019).

and distributes fresh, frozen, and value-added chicken products. Pilgrim's Pride offers several lines of pre-packaged chicken products.

131. Pilgrim's Pride's website notes that "Pilgrim's branded chicken is available in a wide variety of national supermarket chains, regional stores, and clubs." Several of these retailers have stores within and/or adjacent to the District, making their products available to District consumers.

132. Plaintiff Food and Water Watch ("FWW") is a national nonprofit corporation that champions healthy food and clean water for all by standing up to corporations that put profits before people and advocating for a democracy that improves people's lives and protects the environment. FWW is headquartered in the District of Columbia, and has more than one million members and supporters nationwide, including consumers who seek to purchase food products that are better for animals, the environment, and public health. Factory farming is one of FWW's priority issues, and FWW is engaged in numerous campaigns to hold the industrial agribusiness accountable for its adverse impacts on rural communities, animals, and the environment. Through grassroots organizing, policy advocacy, research, communications, and litigation, FWW works to increase transparency about how factory farms operate, where they are located, and the pollutants they emit into communities and waterways, as well as towards reducing that pollution and improving regulation of animal agribusinesses.

133. As a result of Pilgrim's Pride's legal violations, FWW has suffered injury in fact and has lost money or property. Specifically, FWW has expended its resources to address Pilgrim's Pride's misrepresentations. For years, FWW diverted resources from its other efforts in order to conduct research on Pilgrim's Pride's agricultural practices and to educate consumers about its inhumane and unsustainable industrial practices. For example, as recently as September

18, 2018, FWW published a blog post specifically challenging Pilgrim’s Pride’s dangerously rapid and unsanitary industrial slaughter practices.⁹⁷ FWW has also published posts on its website and social media to educate consumers about “claims that make it difficult to differentiate between food produced by sustainable farmers using humane practices, and corporate agribusinesses greenwashing their products.”⁹⁸

134. On January 29 and 31, 2019, FWW bought Pilgrim’s Pride Blazin’ Wings and Tempura Nuggets, respectively, at Walmart stores in the District, in order to evaluate Pilgrim’s Pride’s marketing and advertising claims regarding natural feed ingredients, humane treatment, and environmental stewardship. The packaging identified the products as coming from FSIS establishment number P7091A, a slaughterhouse in Mount Pleasant, Texas.

135. Plaintiff Organic Consumers Association (“OCA”) is a 501(c)(3) non-profit organization that deals with crucial issues of truth in advertising, accurate food labeling, food safety, children’s health, corporate accountability, and environmental sustainability.

136. OCA performs work throughout the United States, including in the District. Some of OCA’s staff, including its political director, reside and work in or near the District. OCA has members who reside in the District.

137. OCA formed in 1998 in the wake of backlash by consumers against the U.S. Department of Agriculture’s proposed national regulations for organic food. In its public education, network-building, and mobilization activities, OCA works with a broad range of public interest organizations to challenge industrial agriculture and corporate globalization, and

⁹⁷ Food & Water Watch, “Privatized Inspection Plants Still Turning Out More Contaminated Chicken,” <https://www.foodandwaterwatch.org/news/privatized-inspection-plants-still-turning-out-more-contaminated-chicken> (last visited Jan. 17, 2019).

⁹⁸Food & Water Watch, “Understanding Food Labels,” <https://www.foodandwaterwatch.org/about/live-healthy/consumer-labels>; Food & Water Watch (last visited Jan. 17, 2019), “How Much Do Food Labels Really Tell You?,” <https://www.foodandwaterwatch.org/insight/how-much-do-labels-really-tell-you> (last visited Jan. 17, 2019).

to inspire consumers to “Buy Local, Organic, and Fair Made.” OCA focuses on promoting the views and interests of the United States’ estimated 50 million organic and socially responsible consumers. Its media team provides background information, interviews, and story ideas to media producers and journalists on a daily basis.

138. OCA represents and advances the views and interests of consumers by educating consumers on food safety, industrial agriculture, genetic engineering, corporate accountability, and environmental sustainability issues. OCA uses funds it raises to protect the environment by promoting regenerating organic and/or sustainable agriculture. For example, OCA has a campaign called “The Myth of Natural,” which educates consumers that “in the overwhelming majority of cases [the term ‘natural’] is meaningless.” OCA also uses its funds and member base to pressure food companies to adopt honest labeling practices to benefit consumers.

139. As a result of Pilgrim’s Pride’s legal violations, OCA has suffered injury in fact and has lost money or property. Specifically, OCA has expended its resources to address Pilgrim’s Pride’s misrepresentations. For years, OCA diverted resources from its other efforts in order to conduct research on Pilgrim’s Pride’s agricultural practices and to educate consumers that, contrary to its representations, its products are neither natural nor humane. For example, as recently as March 1, 2018, OCA published an Op-Ed specifically challenging Pilgrim’s Pride’s unnatural and inhumane industrial practices.⁹⁹ OCA has also published posts on its website and social media to educate consumers about Pilgrim’s Pride’s practices.¹⁰⁰

⁹⁹ AlterNet, “48 Million Sickened Every Year by Tainted Meat” (Mar. 1, 2018), <https://www.alternet.org/food/48-million-sickened-every-year-cheap-dirty-meat> (last visited Jan. 31, 2019).

¹⁰⁰ See, e.g., Organic Consumers Association, “Chicken Feed. Not.” at <https://www.organicconsumers.org/newsletter/organic-bytes-447-its-not-over/chicken-feed-not> (last visited Jan. 31, 2019); Organic Consumers Association (@OrganicConsumers), Facebook, (May, 11, 2016), at <https://www.facebook.com/organicconsumers/posts/10153875952834934> (last visited Jan. 31, 2019).

140. On January 10, 2019, OCA bought Pilgrim's Pride Frozen Ready to Cook Tempura Nuggets and Blazin' Wings at a Walmart in the District, in order to evaluate Pilgrim's Pride's marketing and advertising claims regarding natural feed ingredients, humane treatment, and environmental stewardship. The packaging identified the products as coming from FSIS establishment number P7091A, a slaughterhouse in Mount Pleasant, Texas.

JURISDICTION AND VENUE

141. This Court has personal jurisdiction over the parties in this case.

142. FWW and OCA each have a presence in the District and consent to this Court having personal jurisdiction over their respective organizations.

143. This Court has personal jurisdiction over Pilgrim's Pride because Pilgrim's Pride has purposefully directed its conduct to the District and has availed itself of the benefits and protections of District of Columbia law.

144. This Court has subject matter jurisdiction over this action under the CPPA, D.C. Code § 28-3901, *et seq.*

145. Venue is proper in this Court because Pilgrim's Pride aims its marketing and advertising at consumers within the District. Pilgrim's Pride internet advertising is accessible in the District. Pilgrim's Pride chicken products can be, and are, purchased in the District by District consumers.

CAUSE OF ACTION

Violations of the District of Columbia Consumer Protection Procedures Act

146. FWW and OCA incorporate by reference all the allegations of the preceding paragraphs of this Complaint.

147. FWW and OCA are non-profit organizations that bring these claims in their individual and representative capacities, on their own behalves, on behalf of their members, and on behalf of affected consumers and the general public. *See* D.C. Code § 28-3905(k)(1)(C).

148. Pilgrim’s Pride is a “person” and a merchant that provides “goods” within the meaning of the CPPA. *See id.* § 28-3901(a)(1), (3), (7).

149. Pilgrim’s Pride has advertised and marketed the Products with claims such as “we feed our chickens only natural ingredients,” and by disclaiming the use of growth-promoting drugs—when, in fact, the chickens used to create the Products are routinely fed antibiotics, GMOs, and toxic and/or artificial chemicals. Thus, Pilgrim’s Pride has violated the CPPA by “represent[ing] that goods . . . have a source . . . [or] characteristics . . . that they do not have”; “represent[ing] that goods . . . are of a particular standard, quality, grade, style, or model, in in fact they are of another”; “misrepresent[ing] as to a material fact which has a tendency to mislead”; “fail[ing] to state a material fact if such failure tends to mislead”; “us[ing] innuendo or ambiguity as to a material fact, which has a tendency to mislead”; and “advertis[ing] . . . goods . . . without the intent to sell them as advertised.” *See id.* § 28-3904(a), (d), (e), (f), (f-1), (h).

150. Pilgrim’s Pride has advertised and marketed the Products as “humanely raised and handled through all phases of hatching, growth, transport, and slaughter,” has stated that “[h]umane treatment is practiced during the processing of the bird,” has stated that the chickens are “given plenty of space to move freely,” and has made other variations of humane treatment representations—when, in fact, the chicken products come from chickens who are raised, handled, transported and slaughtered through routinely abusive and inhumane conditions and practices. Thus, Pilgrim’s Pride has violated the CPPA by “represent[ing] that goods . . . have a source . . . [or] characteristics . . . that they do not have”; “represent[ing] that goods . . . are of a

particular standard, quality, grade, style, or model, in in fact they are of another”; “misrepresent[ing] as to a material fact which has a tendency to mislead”; “fail[ing] to state a material fact if such failure tends to mislead”; “us[ing] innuendo or ambiguity as to a material fact, which has a tendency to mislead”; and “advertis[ing] . . . goods . . . without the intent to sell them as advertised.” *See id.* § 28-3904(a), (d), (e), (f), (f-1), (h).

151. Pilgrim’s Pride has advertised and marketed the Products with terms such as “environmental stewardship,” “[p]reventing pollution,” and “sustaining, air, water, and land”—when, in fact, its production practices routinely releases damaging substances and otherwise contaminate the environment. Thus, Pilgrim’s Pride has violated the CPPA by “represent[ing] that goods . . . have a source . . . [or] characteristics . . . that they do not have”; “represent[ing] that goods . . . are of a particular standard, quality, grade, style, or model, in in fact they are of another”; “misrepresent[ing] as to a material fact which has a tendency to mislead”; “fail[ing] to state a material fact if such failure tends to mislead”; “us[ing] innuendo or ambiguity as to a material fact, which has a tendency to mislead”; and “advertis[ing] . . . goods . . . without the intent to sell them as advertised.” *See id.* § 28-3904(a), (d), (e), (f), (f-1), (h).

JURY TRIAL DEMAND

152. Plaintiffs hereby demand a trial by jury.

PRAYER FOR RELIEF

Wherefore, Plaintiffs FWW and OCA pray for judgment against Pilgrim’s Pride and requests the following relief:

- a. A declaration that Pilgrim’s Pride’s conduct is in violation of the CPPA;
- b. An order enjoining the Pilgrim’s Pride conduct found to be in violation of the CPPA, as well as requiring corrective advertising;

- c. An order granting Plaintiff costs and disbursements, including reasonable attorneys' fees and expert fees, and prejudgment interest at the maximum rate allowable by law; and
- d. Any such further relief, including equitable relief, as this Court may deem to be just and proper.

RICHMAN LAW GROUP



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Cailen LaBarge (*Pro Hac Vice forthcoming*)

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Counsel for Plaintiffs

Superior Court of the District of Columbia

CIVIL DIVISION- CIVIL ACTIONS BRANCH INFORMATION SHEET

ORGANIC CONSUMERS ASSOCIATION

Case Number: _____

vs

Date: _____

PILGRIM'S PRIDE CORPORATION

One of the defendants is being sued
in their official capacity.

Name: <i>(Please Print)</i> Kim Richman	Relationship to Lawsuit <input checked="" type="checkbox"/> Attorney for Plaintiff <input type="checkbox"/> Self (Pro Se) <input type="checkbox"/> Other: _____
Firm Name: Richman Law Group	
Telephone No.: Six digit Unified Bar No.: 718-705-4579 1022978	

TYPE OF CASE: Non-Jury 6 Person Jury 12 Person Jury
 Demand: \$ _____ Other: _____

PENDING CASE(S) RELATED TO THE ACTION BEING FILED

Case No.: _____ Judge: _____ Calendar #: _____

Case No.: _____ Judge: _____ Calendar#: _____

NATURE OF SUIT: <i>(Check One Box Only)</i>		
A. CONTRACTS <input type="checkbox"/> 01 Breach of Contract <input type="checkbox"/> 02 Breach of Warranty <input type="checkbox"/> 06 Negotiable Instrument <input type="checkbox"/> 07 Personal Property <input type="checkbox"/> 13 Employment Discrimination <input type="checkbox"/> 15 Special Education Fees	COLLECTION CASES <input type="checkbox"/> 14 Under \$25,000 Pltf. Grants Consent <input type="checkbox"/> 17 OVER \$25,000 Pltf. Grants Consent <input type="checkbox"/> 27 Insurance/Subrogation <input type="checkbox"/> 07 Insurance/Subrogation <input type="checkbox"/> 28 Motion to Confirm Arbitration Award (Collection Cases Only)	<input type="checkbox"/> 16 Under \$25,000 Consent Denied <input type="checkbox"/> 18 OVER \$25,000 Consent Denied <input type="checkbox"/> 26 Insurance/Subrogation <input type="checkbox"/> Over \$25,000 Consent Denied <input type="checkbox"/> 34 Insurance/Subrogation <input type="checkbox"/> Under \$25,000 Consent Denied
B. PROPERTY TORTS <input type="checkbox"/> 01 Automobile <input type="checkbox"/> 03 Destruction of Private Property <input type="checkbox"/> 05 Trespass <input type="checkbox"/> 02 Conversion <input type="checkbox"/> 04 Property Damage <input type="checkbox"/> 07 Shoplifting, D.C. Code § 27-102 (a)		
C. PERSONAL TORTS <input type="checkbox"/> 01 Abuse of Process <input type="checkbox"/> 10 Invasion of Privacy <input type="checkbox"/> 17 Personal Injury- (Not Automobile, Not Malpractice) <input type="checkbox"/> 02 Alienation of Affection <input type="checkbox"/> 11 Libel and Slander <input type="checkbox"/> 18 Wrongful Death (Not Malpractice) <input type="checkbox"/> 03 Assault and Battery <input type="checkbox"/> 12 Malicious Interference <input type="checkbox"/> 19 Wrongful Eviction <input type="checkbox"/> 04 Automobile- Personal Injury <input type="checkbox"/> 13 Malicious Prosecution <input type="checkbox"/> 20 Friendly Suit <input checked="" type="checkbox"/> 05 Deceit (Misrepresentation) <input type="checkbox"/> 14 Malpractice Legal <input type="checkbox"/> 21 Asbestos <input type="checkbox"/> 06 False Accusation <input type="checkbox"/> 15 Malpractice Medical (Including Wrongful Death) <input type="checkbox"/> 22 Toxic/Mass Torts <input type="checkbox"/> 07 False Arrest <input type="checkbox"/> 16 Negligence- (Not Automobile, Not Malpractice) <input type="checkbox"/> 23 Tobacco <input type="checkbox"/> 08 Fraud <input type="checkbox"/> 24 Lead Paint		

SEE REVERSE SIDE AND CHECK HERE IF USED

Information Sheet, Continued

C. OTHERS

- | | |
|---|---|
| <input type="checkbox"/> 01 Accounting | <input type="checkbox"/> 17 Merit Personnel Act (OEA) |
| <input type="checkbox"/> 02 Att. Before Judgment | (D.C. Code Title 1, Chapter 6) |
| <input type="checkbox"/> 05 Ejectment | <input type="checkbox"/> 18 Product Liability |
| <input type="checkbox"/> 09 Special Writ/Warrants
(DC Code § 11-941) | <input type="checkbox"/> 24 Application to Confirm, Modify,
Vacate Arbitration Award (DC Code § 16-4401) |
| <input type="checkbox"/> 10 Traffic Adjudication | <input type="checkbox"/> 29 Merit Personnel Act (OHR) |
| <input type="checkbox"/> 11 Writ of Replevin | <input type="checkbox"/> 31 Housing Code Regulations |
| <input type="checkbox"/> 12 Enforce Mechanics Lien | <input type="checkbox"/> 32 Qui Tam |
| <input type="checkbox"/> 16 Declaratory Judgment | <input type="checkbox"/> 33 Whistleblower |

II.

- | | | |
|--|---|--|
| <input type="checkbox"/> 03 Change of Name | <input type="checkbox"/> 15 Libel of Information | <input type="checkbox"/> 21 Petition for Subpoena
[Rule 28-I (b)] |
| <input type="checkbox"/> 06 Foreign Judgment/Domestic | <input type="checkbox"/> 19 Enter Administrative Order as
Judgment [D.C. Code § | <input type="checkbox"/> 22 Release Mechanics Lien |
| <input type="checkbox"/> 08 Foreign Judgment/International | 2-1802.03 (h) or 32-151 9 (a)] | <input type="checkbox"/> 23 Rule 27(a)(1)
(Perpetuate Testimony) |
| <input type="checkbox"/> 13 Correction of Birth Certificate | <input type="checkbox"/> 20 Master Meter (D.C. Code § | <input type="checkbox"/> 24 Petition for Structured Settlement |
| <input type="checkbox"/> 14 Correction of Marriage
Certificate | 42-3301, et seq.) | <input type="checkbox"/> 25 Petition for Liquidation |
| <input type="checkbox"/> 26 Petition for Civil Asset Forfeiture (Vehicle) | | |
| <input type="checkbox"/> 27 Petition for Civil Asset Forfeiture (Currency) | | |
| <input type="checkbox"/> 28 Petition for Civil Asset Forfeiture (Other) | | |

D. REAL PROPERTY

- | | |
|--|--|
| <input type="checkbox"/> 09 Real Property-Real Estate | <input type="checkbox"/> 08 Quiet Title |
| <input type="checkbox"/> 12 Specific Performance | <input type="checkbox"/> 25 Liens: Tax / Water Consent Granted |
| <input type="checkbox"/> 04 Condemnation (Eminent Domain) | <input type="checkbox"/> 30 Liens: Tax / Water Consent Denied |
| <input type="checkbox"/> 10 Mortgage Foreclosure/Judicial Sale | <input type="checkbox"/> 31 Tax Lien Bid Off Certificate Consent Granted |
| <input type="checkbox"/> 11 Petition for Civil Asset Forfeiture (RP) | |



Attorney's Signature

02/04/19

Date

Exhibit 3

Food & Water Action & Iowa CCI Action Fund
Ethics Complaint against Senator Ken Rozenboom

Filed August 12, 2020 with the Secretary of the Senate

THE SENATE
Ethics Complaint Form

Re: Senator Ken Rozenboom, of Oskaloosa, Iowa.

We, Emma Schmit on behalf of Food & Water Action (FWA) headquartered at 1616 P Street, NW, Washington, DC 20036, and Adam Mason on behalf of Iowa Citizens for Community Improvement Action Fund (Iowa CCI Action) headquartered at 2001 Forest Ave., Des Moines, IA, hereby complain that Senator Ken Rozenboom, whose address is 2200 Oxford Ave, Oskaloosa, IA 52577, has violated the Senate Code of Ethics in that:

➤ **The Preamble of Senate Resolution 2 – Senate Code of Ethics (approved February 13, 2019) states:**

“Every legislator owes a duty to uphold the integrity and honor of the general assembly, to encourage respect for the law and for the general assembly and the members thereof, and to observe the legislative code of ethics.

In doing so, members of the senate have a duty to conduct themselves so as to reflect credit on the general assembly, and to inspire the confidence, respect, and trust of the public, and to strive to avoid both unethical and illegal conduct and the appearance of unethical and illegal conduct.”

➤ **Complainants’ comments on the Preamble:** Due to his ties to and direct economic interests in the concentrated animal feeding operation (CAFO) industry, his position as chair of the Senate Natural Resources and the Environment Committee (and the power that comes with that position), and the personal reasons upon which he has repeatedly advocated in support of Ag-Gag legislation, we feel that Senator Rozenboom does not reflect credit on the general assembly and does not inspire the confidence, respect and trust of the public.

➤ **Section 9 of Senate Resolution 2 – Senate Code of Ethics - states:** “Conflicts of Interest: In order to permit the general assembly to function effectively, a senator will sometimes be required to vote on bills and participate in committee work which will affect the senator’s employment and other monetary interests. In making a decision relative to the senator’s activity on given bills or committee work which are subject to the code, the following factors shall be considered:

- a. Whether a substantial threat to the senator’s independence of judgment has been created by the conflict situation.
- b. The effect of the senator’s participation on public confidence in the integrity of the legislature.
- c. The need for the senator’s particular contribution, such as special knowledge of the subject matter, to the effective functioning of the legislature.”

➤ **Complainants’ comments on Section 9:** We recognize that members of Iowa’s citizen legislature often vote on issues which may have some effect on their employment and/or monetary interests. We also recognize that the professional experience of legislators can be a valuable tool in addressing issues before the General Assembly.

However, the Senate has passed these rules to prevent conflicts of interest, and it is the duty of every legislator to avoid conflicts of interest, as reflected in the preamble and Section 9 of the Senate's Rules. Senator Rozenboom has failed to follow the Senate's guidance to avoid conflicts of interest.

- According to DNR Records Senator Rozenboom owns and operates Rosewood Pork, a 4340 head swine finishing CAFO in Mahaska County¹. The Des Moines Register reported that Senator Rozenboom owns three facilities with his brother: two with about 2,000 pigs in each, and one with about 1,200².
- Senator Rozenboom has used his position in the past to advance Ag-Gag legislation, floor managing Senate File 519 in 2019³ – commonly known as Ag-Gag 2, attempting to silence whistleblowers and enhancing penalties for trespass at agricultural production facilities.
- Senator Rozenboom has also used his position in the past as a committee chair to block committee work related to stronger rules and regulations related to CAFOs and industrialized agriculture. Senate Files 2049⁴ and 2108⁵ in 2018 would have both advanced needed common sense regulations on oversight of manure structures and in the authority of the Environmental Protection Commission to enforce penalties for manure spills, respectively. Both bills died without even a sub-committee hearing.
- Senator Rozenboom was the target of an undercover video exposing possible animal abuse and potential animal welfare violations at his operations, which was widely reported across Iowa in media outlets, including in The Des Moines Register⁶ and The Cedar Rapids Gazette⁷. This news coverage called the operation's animal welfare practices into question, with Senator Rozenboom acknowledging: *"The pictures indicate careless animal husbandry practices that violate acceptable animal care protocols, the very protocols that our family has carefully followed during a lifetime of animal care," he said. "What we saw in the pictures is not OK..."⁸*
- Senator Rozenboom championed, managed, and presumably whipped support for Amendment S-5109 to Senate File 2413⁹, taking additional measures to include provisions commonly known as Ag-Gag legislation in a Covid-19/IDALS response bill. Senate File 2413 initially sought to address the authority of IDALS and issues surrounding the surrender of animals due to animal abuse, a pandemic, or other circumstances. The result was codifying yet another Ag-Gag law that will likely face constitutional challenges. In celebrating the bill's passage, Senator Rozenboom noted:

¹ Iowa DNR AFO Database:

<https://programs.iowadnr.gov/animalfeedingoperations/FacilitySummary.aspx?FacilityId=59577>

² Des Moines Register, Jan 24, 2020: <https://www.desmoinesregister.com/story/money/agriculture/2020/01/24/animal-rights-group-claims-neglect-pigs-iowa-farm-ag-gag-supporter/4545787002/>

³ Iowa Legislature: <https://www.legis.iowa.gov/legislation/BillBook?ba=SF519&ga=88>

⁴ Iowa Legislature: <https://www.legis.iowa.gov/legislation/BillBook?ga=87&ba=SF%202049>

⁵ Iowa Legislature: <https://www.legis.iowa.gov/legislation/BillBook?ga=87&ba=SF%202108>

⁶ Des Moines Register, Jan 24, 2020: <https://www.desmoinesregister.com/story/money/agriculture/2020/01/24/animal-rights-group-claims-neglect-pigs-iowa-farm-ag-gag-supporter/4545787002/>

⁷ Cedar Rapids Gazette, Jan 24, 2020: <https://www.thegazette.com/subject/news/government/animal-welfare-group-direct-action-everywhere-charges-neglect-on-iowa-senators-hog-farm-20200124>

⁸ Cedar Rapids Gazette, Jan 24, 2020: <https://www.thegazette.com/subject/news/government/animal-welfare-group-direct-action-everywhere-charges-neglect-on-iowa-senators-hog-farm-20200124>

⁹ Iowa Legislature: <https://www.legis.iowa.gov/legislation/BillBook?ga=88&ba=SF2413>

“The M.O. here is simply lies, deception and intimidation. That’s what they do,” Rozenboom said¹⁰.

- **Section 9a of Senate Resolution 2 – Senate Code of Ethics - states:** “... In making a decision relative to the senator’s activity on given bills or committee work which are subject to the code, the following factors shall be considered: a. Whether a substantial threat to the senator’s independence of judgment has been created by the conflict situation.”
- **Complainants’ comments on Section 9a:** Aside from Senator Rozenboom’s personal economic interests in the factory farm industry and how he has used his position in the General Assembly to limit regulations on the CAFO industry, the investigation into his factory farm operation and his response display a clear conflict of interest through lack of independent judgment.
 - Senator Rozenboom’s responses to the aforementioned investigation included dismissing the video evidence as a personal attack against him *“...Sen. Ken Rozenboom said Thursday the investigation was a ‘professional hit job’ ...¹¹”*
 - Senator Rozenboom expressed distrust and a general misunderstanding of the role of the courts in checking unconstitutional laws while simultaneously confirming his conflict of interest when he responded to a court decision staying the enforcement of Iowa’s Ag-Gag 2.0 law in 2019, which he had floor managed: *“I think that we in the Legislature are the ones that make the laws. I don’t think judges do that, so I’m disappointed,” said Rozenboom, who noted he and several relatives were victims of an attempt by activists last May¹².*
- **Section 9b of Senate Resolution 2 – Senate Code of Ethics - states:** “... In making a decision relative to the senator’s activity on given bills or committee work which are subject to the code, the following factors shall be considered:... b. The effect of the senator’s participation on public confidence in the integrity of the legislature.”
- **Complainants’ comments on Section 9b:** Due to his ties to and direct economic interests in the factory farm industry, his position as chair of the Senate Natural Resources and the Environment Committee (and the power that comes with that position), and the impression that he created that his support of Ag-Gag legislation was based in personal interest, Senator Rozenboom has harmed public confidence in the integrity of the general assembly or its legislative process.
 - Noted Des Moines Register columnist Rekha Basu highlighted the detrimental and far reaching effect of Senator Rozenboom’s actions, lamenting: *“...shouldn’t it be a conflict of interests for a lawmaker to push through laws that directly benefit his or her business to the detriment of people or animals? Rozenboom also chaired the Iowa Senate’s Natural Resources and Environment Committee while opposing a bill for a moratorium on new hog confinements. The bill died, as countless more animals will.¹³”*

¹⁰ Radio Iowa, June 9, 2020: *“The M.O. here is simply lies, deception and intimidation. That’s what they do,” Rozenboom said.*

¹¹ Des Moines Register, Jan 24, 2020: <https://www.desmoinesregister.com/story/money/agriculture/2020/01/24/animal-rights-group-claims-neglect-pigs-iowa-farm-ag-gag-supporter/4545787002/>

¹² Quad City Times, Dec.2, 2019: https://qctimes.com/news/local/federal-judge-halts-enforcement-of-iowa-ag-gag-law/article_faff9629-0d70-54ea-b397-b2053b474122.html

¹³ Des Moines Register, Jan 24, 2020: <https://www.desmoinesregister.com/story/opinion/columnists/rekha-basu/2020/01/24/undercover-animal-activists-expose-what-ag-gag-law-would-cover-up/4464599002/>

- Food & Water Action and Iowa CCI Action have thousands of members and supporters across Iowa. On behalf of our members, we often advocate pro-family farm bills and a “good government” agenda. Actions exemplified by Senator Rozenboom, however, give our organizations concern and a lack of confidence in the integrity of the legislature to fairly consider a broad range of policy proposals based on their merit.
- **Section 9c of Senate Resolution 2 – Senate Code of Ethics - states:** “...In making a decision relative to the senator’s activity on given bills or committee work which are subject to the code, the following factors shall be considered:... c.The need for the senator’s particular contribution, such as special knowledge of the subject matter, to the effective functioning of the legislature.”
- **Complainants’ comments on Section 9c:** While section 9c allows for legislators’ participation in matters which may have some effect on their employment and/or monetary interests, it limits that participation to when they bring a unique contribution or special knowledge to the matter. Senator Rozenboom is not an expert on issues pertaining to free speech and the first amendment – the exercise of which Ag-Gag laws are meant to suppress. Neither is he an expert on employment law, which previous versions of Iowa’s Ag-Gag laws sought to address.

Senator Rozenboom lists his profession as ‘Farming/Ag Business.’ This does not meet the qualifications for contribution of special knowledge to the debate on this bill, as Iowa’s legislature boasts the membership of dozens of farmers who could weigh in on this bill, including four members of this Senate Ethics committee. Senator Rozenboom’s participation in the debate on Ag-Gag bills was not required, and his failure to recognize his conflict of interest and recuse himself further harms public confidence in the integrity of the general assembly.

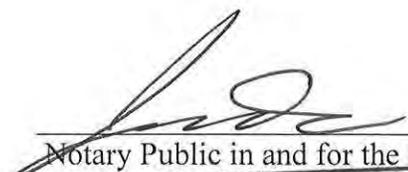
- **Action requested by Food & Water Action and Iowa CCI Action Fund:** We request that the Senate Ethics Committee, upon review of this complaint, hold a public hearing, find that Senator Rozenboom violated the Senate Code of Ethics Conflict of Interest provision, and issue an admonishment to Senator Rozenboom pursuant to Senate Code of Ethics Section 18(g)(3)(a), advising him against the conduct that formed the basis for the complaint and to exercise better care in the future.

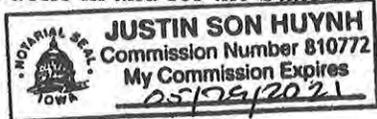
Under penalty of perjury, we certify that the above complaint is true and correct as we verily believe.

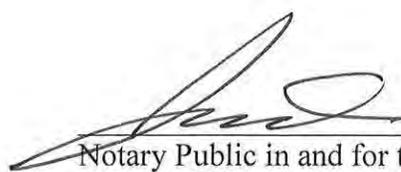

 Emma Schmit (Food & Water Action)


 Adam Mason (Iowa CCI Action)

SUBSCRIBED AND AFFIRMED to before me this 12th day of August, 2020.


 Notary Public in and for the State of Iowa




 Notary Public in and for the State of Iowa

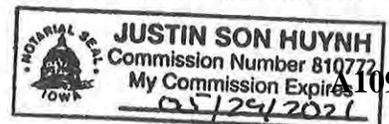


Exhibit 4



THE URGENT CASE for a Ban on Factory Farms

About Food & Water Watch

Food & Water Watch champions healthy food and clean water for all. We stand up to corporations that put profits before people, and advocate for a democracy that improves people's lives and protects our environment. We envision a healthy future for our families and for generations to come, a world where all people have the wholesome food, clean water and sustainable energy they need to thrive. We believe this will happen when people become involved in making democracy work and when people, not corporations, control the decisions that affect their lives and communities.

Food & Water Watch has state and regional offices across the country to help engage concerned citizens on the issues they care about. For the most up-to-date contact information for our field offices, visit foodandwaterwatch.org.

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THE URGENT CASE **for a Ban on Factory Farms**

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Executive Summary

The way animals are raised for food has changed significantly over the past several decades. Small and medium-sized farms have been pushed out by factory farms housing thousands of animals in crowded spaces. Factory farms:

- produce enormous volumes of waste
- fuel climate change
- pollute air and water
- exploit workers
- harm animal welfare
- drive antibiotic resistance and
- harm rural communities.

The transition to factory farms was not an accident. It was fueled by bad farm policies that led to an overproduction of cheap feed and to unrestricted access to antibiotics to keep disease at bay in overcrowded confinement buildings. It was further enabled by federal regulators allowing the biggest meat companies to unfairly dominate the market and by the U.S. Environmental Protection Agency and states failing to uphold environmental laws.

It is time for a ban on factory farms. To get rid of factory farms, we need to change the fundamental structure of the food system, which will require policy change. And policy change will only come from building the political

power to elect decision makers who are not beholden to the meat industry.

Food & Water Watch recommends:

- The federal and state governments must enact aggressive policies to address climate change, including policies to limit the contribution of agriculture to climate change.
- Federal and state regulators should ban factory farms by not allowing new factory farm operations to be built or existing factory farms to expand.
- The federal, state and local governments should enforce environmental laws on existing factory farms, including restoring control over siting and practices to local governments, requiring permits for all factory farms and holding vertically integrated companies responsible for the pollution created by the animals they own.
- The federal and state governments should support the research and technical assistance needed to transition existing factory farm operations, contract growers and family farm grain producers to diversified operations that can serve regional markets.
- Public policy and government spending at all levels should prioritize rebuilding the infrastructure needed for diversified, smaller-scale livestock production using regenerative practices to supply regional markets.

What Is a Factory Farm?

A factory farm is a facility that raises large numbers of food animals in a confined situation, concentrating the animals, and their manure, in a small area. Instead of allowing animals to forage for their feed in pasture or other open areas, factory farms confine the animals and bring food to them.

The U.S. Environmental Protection Agency (EPA) uses the term Concentrated Animal Feeding Operation (CAFO) to describe these operations. The EPA defines medium and large CAFOs with a combination of how manure is handled and the number of animals on the site. For the purposes of this report, we are defining factory farms as those that the EPA would classify as medium or large CAFOs, which contain:

- Greater than 200 head of mature dairy cattle
- Greater than 300 head of cattle (beef)
- Greater than 750 hogs over 55 pounds
- Greater than 3,000 hogs under 55 pounds
- Greater than 16,500 turkeys
- Greater than 25,000 egg-laying chickens
- Greater than 37,500 broiler (meat) chickens





Introduction

Livestock production has changed significantly over the past several decades. Small and medium-sized farms raising food animals have been pushed out by factory farms housing thousands of animals in crowded spaces. These operations produce enormous volumes of waste, pollute the air and water, exploit workers, harm animal welfare, fuel antibiotic resistance and climate change, and harm the rural communities they are purported to benefit.

Since 1997, the total number of U.S. farms fell sharply while the number of livestock soared, as did the percentage of animals raised on factory farms. This transition was not an accident. It was fueled by bad farm policies that led to an overproduction of cheap feed that robbed crop farmers of their profits and benefited the largest players in the meat industry. It was aided by unrestricted access to antibiotics to keep disease at bay in overcrowded confinement buildings. It was further enabled by the U.S. Department of Justice giving its blessing to megamergers that resulted in the top meatpacking firms controlling the majority of the market,¹ and by the U.S. Environmental Protection Agency (EPA) and states failing to uphold our nation's environmental laws.

Small and medium-sized farms face numerous obstacles, from federal programs that give preference to factory farms to slaughterhouses that refuse to do business with smaller operators. Meanwhile, more and more rural communities are becoming sacrifice zones for the factory farm industry, where toxic air and polluted water become a fact of life.

We cannot continue this failed experiment. It is time for a ban on factory farms. The health of our rural communities — and our planet — depends on it.

Climate Change

The latest climate science makes it clear that we must take bold action in the next 10 years if we are to avoid the worst impacts of climate change. Global average temperatures are 1.0 degrees Celsius (°C) higher than before the Industrial Revolution that spurred our now-crippling dependency on fossil fuels. This warming has led to dramatic, planet-wide ecological and climatic changes. In 2014, the Intergovernmental Panel on Climate Change reported that “recent climate changes have had widespread impacts on human and natural systems,” including increasingly frequent violent storms, droughts, floods, acidifying and rapidly warming oceans and altered growing seasons.²

These changes affect everyone. In 2015, nations of the world met in Paris to negotiate the United Nations Framework Convention on Climate Change and agreed that preventing the planet from warming 1.5 °C above pre-industrial levels “would significantly reduce the risks and impacts of climate change.” This will require aggressive action on many fronts, including reducing meat consumption and dramatically changing the way that food animals are raised.

Livestock production contributes 14.5 percent of all greenhouse gas emissions originating from human activity.³ To put this in perspective, the Institute for Agriculture and Trade Policy estimates that the top 20 corporations producing meat and dairy together produce more greenhouse gases than the entire country of Germany; the top 5 combined produce more than Exxon, Shell or BP.⁴ Without a rapid transition away from factory farming, we will not avoid catastrophic climate change.⁵

According to the United Nations Food and Agriculture Organization, producing and processing feed contributes 45 percent of greenhouse gas emissions from the livestock sector.⁶ Growing corn and other crops to feed cattle is inefficient, resulting in significantly fewer calories than if we instead grew crops for direct human consumption. For example, North American production systems use an estimated five and a half calories of feed crops to produce just one calorie of animal products.⁷ The trend toward increasing meat consumption will only lead to more feed-related greenhouse gas emissions and further exacerbate our climate crisis.⁸

Methane emissions from enteric fermentation (a digestive process in ruminants like cattle) contributes 39 percent of greenhouse gas emissions from livestock production, and manure storage and processing contribute 10 percent.⁹ In small livestock and poultry systems, farmers can spread solid manure on nearby fields that provide grazing pasture or animal feed, potentially reducing emissions from liquid manure storage. These benefits are lost when there is more waste than nearby fields can handle and the manure instead ends up being stored or transferred offsite.¹⁰

An emerging body of evidence shows that smaller farms and grass-fed operations may have lower greenhouse gas emissions compared to factory farms. A review of over 900 studies found that increasing cattle’s intake of digestible feed can reduce methane emissions that occur during enteric fermentation. It also notes that manure from grazing cattle releases lower levels of methane than confined cattle.¹¹ Research indicates that organic livestock systems may have a slightly lower global warming potential because their feed is grown without synthetic fertilizers and is less processed.¹² Finally, converting crop fields to grazing pasture may increase soil carbon sequestration, potentially turning livestock systems into net carbon sinks, although the data are mixed.¹³

Air Pollution

Factory farms release more air pollutants and in higher concentrations than small and medium-sized farms.¹⁴ They raise a larger number of animals in a confined

TABLE 1 • Top Factory Farm Counties and Human Sewage Equivalent – Hogs

Top Factory Farm Hog Counties	2012 Hog Inventory	Human Population Sewage Equivalent (millions)	Comparable Metropolitan Area
North Carolina/Sampson	1,854,471	32.3	14 x Charlotte
North Carolina/Duplin	1,725,305	30.1	25 x Raleigh
Oklahoma/Texas	1,204,135	21.0	3 x Dallas
Iowa/Sioux	1,134,262	19.8	33 x Des Moines
Iowa/Washington	972,291	17.0	65 x Cedar Rapids
Minnesota/Martin	797,305	13.9	4 x Minneapolis-St. Paul
Iowa/Plymouth	722,227	12.6	21 x Des Moines
Iowa/Hardin	714,373	12.5	Chicago + St. Louis
Iowa/Lyon	698,205	12.2	14 x Omaha
North Carolina/Bladen	650,537	11.3	5 x Charlotte

SOURCE: County ranking and inventory numbers are taken from Food & Water Watch’s analysis of the state- and county-level five-year Census of Agriculture data collected by the USDA National Agricultural Statistics Service. Sewage equivalents are Food & Water Watch calculations based on the EPA “Risk Assessment Evaluation for Concentrated Animal Feeding Operations” (May 2004) and U.S. Census Bureau figures for metropolitan area population estimates.



setting and produce significantly more manure. Manure from factory farms emits a slew of toxic pollutants, including respiratory irritants such as ammonia and hydrogen sulfide.¹⁵ It also contributes to particulate matter, another respiratory hazard.¹⁶

It is no surprise that proximity to factory farms is correlated with an increase in childhood asthma rates and treatment, and also that working in factory farms is correlated with chronic respiratory symptoms.¹⁷ Residents living near factory farms report experiencing health symptoms such as eye and throat irritation, nausea, vomiting and breathing problems.¹⁸ Surveys of residents living near North Carolina hog factory farms also documented a diminished quality of life from being forced to stay indoors and keep their windows closed,¹⁹ a complaint echoed by residents living near factory farms in other parts of the country.

Federal law requires livestock facilities to report any significant releases of toxic pollutants like ammonia.²⁰ Yet in practice, the EPA does little to monitor or prevent factory farm pollution. In fact, in 2008 the EPA rolled back regulations so that only the largest factory farms had to report toxic emissions, and only to local, rather than national, emergency response officials.²¹ In 2018, Congress went a step further by granting an exemption from national reporting requirements for air emissions created by animal waste on farms.²²

Water Pollution

While smaller farms have for years applied manure as fertilizer to cropland and grazing fields, factory farms produce more manure than nearby fields can absorb.²³ Agriculture is the leading known cause of pollution in U.S. rivers and streams, and is the second largest known contributor to the contamination of wetlands.²⁴ Pollution from animal feeding operations threatens or impairs over 13,000 miles of U.S. rivers and streams and 60,000 acres of lakes and ponds.²⁵

Much of this pollution stems from the vast amount of manure generated by factory farms. For instance, the nearly 500,000 dairy cows on factory farms in Tulare County, California produce five times as much waste as the New York City metropolitan area.²⁶ Manure carries chemical additives, pathogens like *E. coli* and antibiotics.²⁷ These contaminants can reach waterways through surface runoff, spills, groundwater leaching and direct discharges.²⁸ Manure application contributes to outbreaks of waterborne diseases in rural areas.²⁹

The Clean Water Act is designed to protect U.S. waterways from pollution. Although the law is supposed to regulate factory farms along with other polluters, the EPA's weak rules and lack of oversight allow much of the

industry to avoid regulation.³⁰ The EPA estimated in 2011 that only 41 percent of factory farms that are required to get discharge permits have actually obtained them.³¹

One huge gap is that the EPA does not currently collect comprehensive data on factory farm size or location, making sufficient oversight impossible.³² For example, Iowa's Department of Natural Resources recently identified through satellite imagery over 5,000 animal confinement operations that it previously did not know existed and for which it had no records in its database. Approximately one-quarter are likely large enough to require permitting from the Department.³³

Manure Overload

Factory farms produce such an excess of manure that it cannot readily be absorbed by nearby fields. For example, hogs in Sampson County, North Carolina outnumber people 29 to 1, and produce over 500 times as much fecal waste as the county's human population.³⁴ Storing, applying and transporting all of this manure can have devastating consequences. Here are just a few examples from across the county:

- In 2012, a waste spill from an 8,000-head hog farm reached an Illinois creek, killing nearly 150,000 fish and 17,500 mussels.³⁵
- A 2016 spill caused by an alleged burst check valve at a Wisconsin dairy remained unreported for months until state authorities received an anonymous tip. The tens of thousands of gallons of manure released threatened the well water of the families living near the farm.³⁶
- State officials blamed manure for a nine-mile fish kill in Indiana's Little Flatrock River in 2016.³⁷
- In 2016, a broken levee at a dairy farm in Washington released a mixture of dairy waste and water that damaged at least four nearby homes. The 5,000-head dairy farm had previously been sued numerous times for Clean Water Act violations.³⁸
- Flooding from Hurricane Matthew in 2016 inundated poultry and hog operations in North Carolina, drowning 1.8 million chickens and 2,800 hogs. The hurricane also flooded manure ponds, resulting in the release of untreated manure directly into waterways. Hurricane Floyd in 1999 caused similar damage on an even larger scale.³⁹
- Nearly one-third of drinking water wells in Kewaunee County, Wisconsin have unsafe levels of contaminants that likely originate from the county's many large dairy farms.⁴⁰

Antibiotic Resistance and Food Safety

Factory farming's addiction to antibiotics is fueling the rise in resistant superbugs. Many antibiotics approved for use in food animals are also medically important for combating human infections. It is estimated that approximately 70 percent of all medically important antibiotics sold in the United States are sold for use in food animals.⁴⁷ Alarming, 96 percent of these antibiotics were sold over-the-counter in 2016.⁴⁸ By 2030, global antibiotic use in food animals is projected to rise by 67 percent.⁴⁹

The U.S. Food and Drug Administration's 2017 guidance on antibiotic use in livestock is the first step in many years to address how the livestock industry uses antibiotics. But it did not go far enough. While it blocked one dangerous overuse of antibiotics (growth promotion), the other type of overuse (disease prevention) is still allowed.⁵⁰ The disease prevention loophole allows low doses of antibiotics to be given to large groups of healthy animals to try to ward off disease in crowded conditions, an irresponsible use that brings the risk of creating antibiotic-resistant bacteria.

Antibiotic-resistant bacteria can spread from factory farms to humans. Particulate matter originating from feedlots has been shown to carry antibiotic resistance genes.⁵¹ Antibiotic-resistant bacteria can also migrate from manure into underlying aquifers.⁵² It can also be carried by workers into the wider community.⁵³

The crowded living conditions and diets of factory farmed animals also provide an ideal breeding ground for food pathogens. Poultry egg-laying facilities that have large flocks and caging systems have an elevated risk of *Salmonella* outbreaks.⁵⁴ Adding antibiotics to hog feed can increase the amount of *E. coli* in the hogs' intestinal systems.⁵⁵ Increasing amounts of wet distillers grains, a byproduct of ethanol production, are being used as cattle feed at feedlots, increasing the levels of *E. coli* in manure.⁵⁶ These pathogens enter the food chain through contaminated meat, and also threaten public health when livestock feces contaminate water sources that may be used for drinking water or food production.

An outbreak of *Salmonella* or *E. coli* originating from a single operation can infect hundreds of people across multiple states. In 2011, a *Salmonella* outbreak linked to ground turkey sickened 136 people in 34 states. This strain of *Salmonella* was resistant to multiple

Environmental Justice Communities

In many parts of the country, factory farms are concentrated in impoverished areas and communities of color, making them environmental justice catastrophes.⁴¹ In North Carolina counties that contain hog factory farms, schools with larger percentages of students of color, and those with greater shares of students receiving free lunches, are located closer to hog farms than whiter and more affluent schools.⁴² Similarly, researchers at Clark University found that parts of Ohio with large densities of dairy and hog factory farms have a higher percentage of Hispanic residents.⁴³

Industries may build polluting facilities like factory farms and slaughterhouses in the areas least able to resist their development.⁴⁴ This leaves vulnerable populations in factory farm sacrifice zones. Communities can file complaints with the EPA when state and federal agencies allow polluting facilities to be disproportionately sited near communities of color.⁴⁵ However, the EPA is failing to uphold its civil rights obligations, delaying processing of complaints and dismissing or rejecting 9 out of 10 complaints received by its civil rights office from 1996 to 2013.⁴⁶

antibiotics. The outbreak was traced to a single Cargill processing facility, which later recalled approximately 36 million pounds of ground turkey.⁵⁷

Unfortunately, cooking meat thoroughly or avoiding it altogether does not eliminate all risk of exposure. All of the *E. coli* and *Salmonella* food outbreaks reported by the U.S. Centers for Disease Control in 2017 originated from non-animal products, likely the result of food crops being contaminated with manure or manure-tainted water.⁵⁸ An *E. coli* outbreak beginning in December 2015 was traced to flour and sickened 63 people in 24 states.⁵⁹ People can also contract *E. coli* by drinking or swimming in waters contaminated by manure.⁶⁰

Worker Safety

Factory farms are an unhealthy and stressful work environment. Workers face increased exposure to air pollutants produced at factory farms, including particulate matter carrying mold, animal dander and pathogens. Exposure to air pollutants can lead to respiratory issues, with an estimated one-quarter of hog confinement workers suffering from chronic bronchitis.⁶¹ One study reported workers at hog facilities developing occupational asthma within weeks of starting employment.⁶²

Workers also suffer the same health impacts as nearby community members from the hydrogen sulfide, ammonia and other pollutants produced by decomposing manure. At times, toxic emissions from manure pits can exceed lethal levels and have caused worker deaths.⁶³

In 2016, nearly 6 out of every 100 workers in the animal production industry reported a work-related injury or illness. That is over six times the injury rate of workers

in the notoriously dangerous oil and gas extraction industry.⁶⁴ The Government Accountability Office notes that injury rates could be higher due to underreporting, especially by immigrant workers who may fear losing their jobs for speaking out.⁶⁵

Factory farm workers are injured through accidents involving animals and machinery, as well as through exposure to toxic pollutants.⁶⁶ Some accidents are unique to large operations; Idaho had two deaths in 2016 caused by workers falling into dairy manure ponds and drowning. In both cases, the federal regulators fined the dairies only \$5,000.⁶⁷ Across the country, regulations to prevent workplace injuries and death have not kept pace with the rapid growth in factory farms.⁶⁸

Injury and illness rates at slaughterhouses and processing facilities are higher than the rates for the overall manufacturing sector.⁶⁹ This did not prevent the National Chicken Council, which advocates on behalf of corporations in the chicken industry, from petitioning the U.S. Department of Agriculture (USDA) in 2017 to waive slaughter line speed limitations — a request that the USDA denied in early 2018, while stating that it would eventually create a system for plants to receive linespeed limit waivers.⁷⁰ Tyson meatpacking plants reported on average one amputation per month in the first nine months of 2015; eliminating limits on line speeds would only increase these risks.⁷¹

Animal Welfare

Conditions on factory farms make life miserable for animals. Animals in crowded houses lack access to the outdoors, the space to move and freedom to perform their natural behaviors such as grazing, pecking and rooting.⁷² For example, pregnant and nursing sows are



often confined to crates where they cannot turn around, interact with their young or engage in nest building.⁷³

Factory-farmed animals also face injuries and illnesses unique to this form of animal production. Taking cattle off the pasture and feeding them diets of grain wreaks havoc on their digestive systems and can lead to bloat and other conditions.⁷⁴ Today's chickens grow twice as large in half the amount of time as earlier breeds, causing lameness, heart and lung issues, and even premature death.⁷⁵ The stressful conditions of factory farms necessitates painful practices like tail-docking and de-beaking to prevent animals from hurting each other.⁷⁶ Factory-farmed animals also face abuse at the hands of farm and slaughterhouse workers, some of whom may be suffering emotional trauma from working in terrible conditions day in and day out.⁷⁷

It is no wonder that agribusinesses continue to lobby state legislatures to criminalize undercover filming inside of factory farms.⁷⁸ At least seven states currently have "ag-gag" laws targeting citizens who dare to lift the curtain on factory farm abuses.⁷⁹

Rural Economies and Communities

Proponents of factory farms tout their efficiency⁸⁰ in raising livestock and their ability to bring economic growth to rural communities.⁸¹ But you can't have

your cake and eat it, too; making livestock farming more "efficient" will ultimately reduce the number of people needed to raise the same number of animals.⁸² According to a report by an expert panel commissioned by the Pew Charitable Trusts, 50 decades of research on industrialized agriculture has shown that the "single-minded pursuit of economic efficiency" has favored agribusinesses over farmers. "The result is the transformation of rural America from a setting of many small, productive family farms and economically diverse, visible rural communities into a state of relatively few ever-growing factory farms and dying communities."⁸³

Iowa is a stark example of this transformation. Between 1982 and 2007, the number of hogs in Iowa increased 10-fold; yet over the same period, the number of farms in Iowa fell by more than 80 percent, and the economic value of the state's hog production actually declined.⁸⁴ Moreover, the state shed more than 40 percent of its farm jobs.⁸⁵ Small and medium-sized farms, it turns out, are integral to the social and economic welfare of rural communities.⁸⁶

Decades of research support the theory that the rise in large-scale, factory farms damages rural economies, leading to unemployment, more economic inequality and poverty, higher food stamp usage and depopulation.⁸⁷ There is also some evidence that larger farms

make fewer local purchases than smaller farms, which hurts local businesses, deprives communities of the “multiplier effect” that occurs when money is circulated in a local economy, and decreases tax revenue.⁸⁸ Tax revenue may also be lost when home values decline due to their proximity to factory farms.⁸⁹

The social fabric of rural communities also deteriorates when small, family farms are replaced by industrial operations.⁹⁰ A 2007 analysis of over 50 studies found few positive impacts resulting from industrialized farming, but 82 percent documented negative impacts, which include a loss of community services, a decline in neighborly relations and decreased participation in local governance.⁹¹

Conversely, a study of 433 farming-dependent counties found that those located in states with anti-corporate farming laws that restrict the growth of non-family

farms score higher on welfare indicators, including higher levels of employment.⁹²

Consumers

The meat industry argues that factory farms keep meat prices low for consumers. Yet the real price of groceries has continued to rise over the past three decades, with the prices of ground beef and eggs far outstripping inflation.⁹⁹ At the same time, farmers’ share of food dollars has declined.¹⁰⁰ In today’s dollars, farmers are earning 10 percent less per pound of beef produced than they did in 1987, while consumers are paying 32 percent *more* per pound of ground beef.¹⁰¹

The rise in the price of beef and other animal products happened after the meatpacking industry achieved extreme levels of consolidation. The top four beef-packing firms slaughtered one out of every three beef



Vertical Integration

With declining farm wages and a shift to larger slaughterhouses that do not purchase animals from small or independent operators on the open market, some growers have turned to contracts with meat companies in order to continue farming.⁹³ In vertically integrated systems, agribusinesses (the integrators) contract with growers to raise birds or livestock. The companies own the animals, set the terms of the contracts and dictate all aspects of raising the animals, from the design of the buildings that they are confined in to the feed that they eat. The growers must invest in whatever infrastructure the integrators require (often taking out huge loans) and dispose of the enormous amount of waste generated.⁹⁴ In the end, growers get paid by the live weight of the finished livestock, meaning that they bear all of the risks associated with raising livestock while the agribusinesses capture the profits.⁹⁵

Contract farming is a risky endeavor. Some integrators use a “tournament” system to determine the price per animal pound, paying growers based on how their performances compare to each other. Contracts between growers and integrators are often short — sometimes just “flock to flock,” meaning that integrators are under no obligation to continue the contract after the current flock is gone — and companies might refuse to renew contracts if livestock prices lag or the grower has fallen out of favor.⁹⁶ This leaves growers with crushing debts that they cannot repay. Growers also lose their economic independence when they enter into contracts, going from being independent small business owners to being contractors beholden to large corporations.⁹⁷ In 2012, contract growers produced 44 percent of all hogs and 96 percent of all broiler chickens in the United States.⁹⁸

cattle in 1980, but this increased to four out of five by 1995, and remains steady to this day (see Figure 1 on page 11).¹⁰² Consolidation like this drives down competition and allows consumer price increases to go unchecked.

The Inefficiency of Factory Farms

By marshaling its immense political and economic power, the meat industry has created a narrative about the efficiency of industrialized animal production and its role in meeting the increasing dietary demands of a growing global population. In this era of increasingly chaotic weather and water scarcity, these claims are not only false but also dangerous.

In 2015, Lloyds of London, the insurance company, published a report for the insurance industry called *Food System Shock: The Insurance Impacts of Acute Disruption to the Global Food Supply*. The report cites extreme weather events and water scarcity as drivers of risk for famine, among other global crises. Extreme weather or other adverse impacts on grain production could have devastating effects on the food system, including making meat production impractical or even impossible.¹⁰⁸

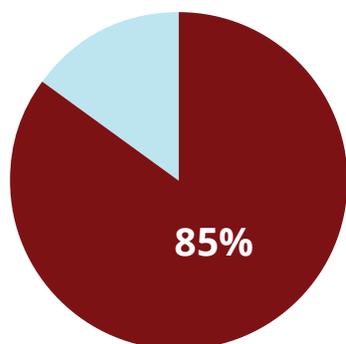
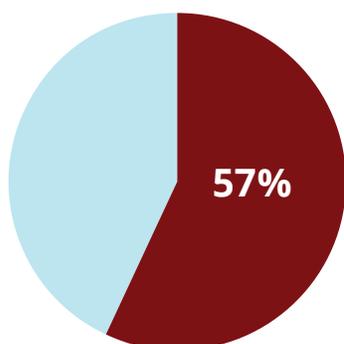
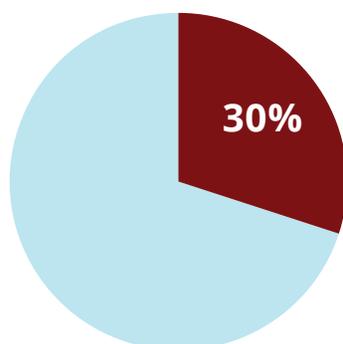
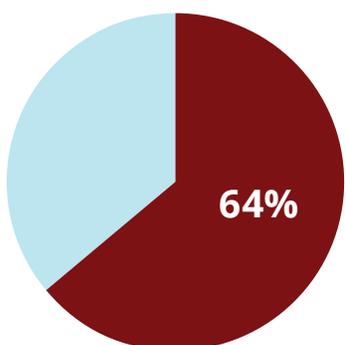
U.S. commodity policy continues to promote the increased production of grains like corn and soy despite the threat that they pose to dwindling water

Public Funding Hijacked by Factory Farms

The Environmental Quality Incentives Program (EQIP) was created by the 1996 Farm Bill and is implemented by the USDA. It was intended to provide farmers with financial incentives and technical assistance for implementing conservation practices,¹⁰³ but it quickly transformed into a cash giveaway to factory farms. The 2002 Farm Bill raised the cap on EQIP contracts from \$50,000 to \$450,000, and mandated that 60 percent of all funds go toward livestock operations.¹⁰⁴ Both changes resulted in a glut of money subsidizing practices largely undertaken by factory farms, including anaerobic digesters — an expensive, unproven technology to use animal waste to generate electricity — and transferring manure to different watersheds.¹⁰⁵

In Iowa, nearly one-third of all EQIP dollars received from 1997 to 2015 went toward factory farm practices. This included a whopping \$62 million that paid for waste storage facilities. If this money had instead been allocated toward non-factory farm practices, Iowa could have funded approximately 7,500 additional contracts.¹⁰⁶ Nationally, two out of three EQIP applications submitted between 2000 to 2010 went unfunded.¹⁰⁷



Figure 1 • Market Share of Top Four Firms**Beef Packing****Poultry Processing****Layer Hens****Hog Packing**

resources. In the United States, water resources like the Ogallala — an aquifer that stretches beneath eight states — are threatened in part by the unsustainable irrigation of grains. Government policies lobbied for by agribusiness make growing corn — a very thirsty crop — an economic imperative for farmers who often have few options to sell anything else.

The United States is the largest producer of corn in the world, producing over 14 billion bushels in 2017.¹⁰⁹ Thirty-six percent of U.S. corn production is fed to livestock as their primary food source.¹¹⁰ Over 70 percent of the soy produced in the United States is used to feed livestock.¹¹¹ Worldwide, livestock production consumes an estimated 40 percent of global crop calories. Yet most of these calories are lost when converted into animal protein. For example, North American systems require five-and-a-half calories of feed crop to produce just one calorie of animal products.¹¹²

Yet, despite the obvious inefficiency of the factory farm system, we are witnessing the rapid growth of the industry and an increase in meat consumption as the industry works with governments to push for more meat in every meal.¹¹³ Given current, increasing consumption patterns, each year an average American will eat an estimated 207.5 pounds of meat by 2024.¹¹⁴

The conventional wisdom holds that the unsustainable factory farm system is the only way to meet global demand for affordable food. However, research suggests just the opposite. For example, the Leopold Center for Sustainable Agriculture at Iowa State University has produced many studies on food systems and sustainability, including in the meat sector. The Leopold Center's Agriculture of the Middle (AOTM) project looks to smaller, less industrialized and more diverse systems to meet food — including meat — demands. The essential difference between industrial agriculture and the AOTM approach emphasizes agricultural systems that enable midsize farms and ranches to retain more value and profit. AOTM businesses emphasize maintaining high environmental standards while producing and marketing more differentiated food products through wholesale supply chains.¹¹⁵

The significant costs to the environment, public health and rural communities from the inherently unsustainable, highly inefficient factory farm system demands that policy makers look to different models like AOTM.

SOURCE: USDA Grain Inspection, Packers and Stockyard Administration, "Packers & Stockyards Annual Report 2013," March 2014; USDA Economic Research Service, "Technology, Organization, and Financial Performance in U.S. Broiler Production," June 2014; *Watt Egg Industry*, "2014 egg industry exclusive survey," February 2015.

Conclusion and Recommendations

Agribusiness — from meat companies like Tyson to grain monopolies like Cargill and biotech seed and chemical giants like Monsanto — built the current factory farm system. They accomplished this on a foundation of government policies that allow pollution and public health impacts, provide a steady oversupply of cheap corn and soy, and create unfair advantages to the largest players in the marketplace. Relying on the marketplace — which is controlled by the biggest players — to correct the factory farm problem will not work. To get rid of factory farms, we need to change the fundamental structure of the food system, which will require policy change. And policy change will only come from building the political power to elect decision makers who are not beholden to the meat industry.

The policies we need to create a better food system include: enforcing antitrust laws to break up the agribusiness stranglehold on our food system; establishing supply management programs to ensure that grain producers can make a fair living without flooding the market with cheap grains that feed factory farms; creating policy incentives for encouraging diversified and regenerative farms; and rebuilding the local and regional infrastructure needed for small and mid-sized livestock producers to get their animals to market.

These reforms will change the economic conditions of the food system and will likely increase the price of meat. This will change the way that most consumers include meat in their diet, a transition that is already happening for many people motivated by personal health, ethical and environmental considerations. The growth of efforts like Meatless Monday and the number of people shifting to diets that are plant-based or use “less but better” animal products demonstrate that a growing number of people are willing to reconsider the role that meat plays in their diet.

There are several steps that the federal and state governments should take to move us in the right direction toward a food system that does not include factory farms:

- It is past time for the federal and state governments to enact aggressive policies to address climate change, including policies to limit the contribution of agriculture to climate change.



- Federal and state regulators should ban factory farms by not allowing new factory farm operations to be built or existing factory farms to expand.
- The federal, state and local governments should enforce environmental laws on existing factory farms, including restoring control over siting and practices to local governments, requiring permits for all factory farms and holding vertically integrated companies responsible for the pollution created by the animals they own.
- The federal and state governments should support the research and technical assistance needed to transition existing factory farm operations, contract growers and family farm grain producers to diversified operations that can serve regional markets. The funding that currently goes to factory farms through programs like the EQIP or government-backed loans could serve as a source of funding for these transition efforts.
- Public policy and government spending at all levels should prioritize rebuilding the infrastructure needed for diversified, smaller-scale livestock production using regenerative practices to supply regional markets.

Endnotes

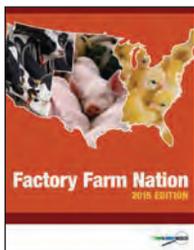
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More Food & Water Watch Research on Factory Farms



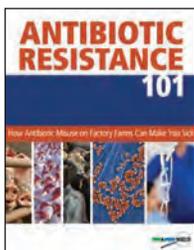
Factory Farm Nation

Over the last two decades, small- and medium-scale farms raising livestock have given way to factory farms that confine thousands of cows, hogs and chickens in tightly packed facilities. Factory farming practices have spread at the behest of the largest meatpackers, pork processors, poultry companies and dairy processors. The largest of these agribusinesses are practically monopolies, controlling what consumers get to eat, what they pay for groceries and what prices farmers receive for their livestock. These intensive methods come with a host of environmental and public health impacts that are borne by consumers and communities.



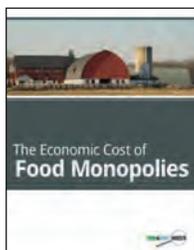
Hard to Digest: Greenwashing Manure into Renewable Energy

Most food animals in the United States are grown on highly concentrated factory farms, and the vast amounts of waste those animals produce poses a huge environmental and public health problem. Historically, farmers used animal manure as fertilizer, but factory farms produce far more manure than can be used responsibly on local fields. Manure digesters have been offered up by agribusiness and policy makers as a way to turn factory farm manure into “renewable” energy. In reality, digesters have negligible impacts on the deep environmental problems caused by factory farms, and, if anything, serve to further entrench this disastrous method of food production.



Antibiotic Resistance 101

The development of antibiotic resistance is hastened by the use of low doses of antibiotics at industrial farms. The drugs are used routinely not to treat sick animals, but for disease prevention, a practice known as nontherapeutic use. Antibiotic-resistant bacteria can spread from farm animals to humans via food, via animal-to-human transfer on farms and in rural areas, and through contaminated waste entering the environment.



The Economic Cost of Food Monopolies

The agriculture and food sector is unusually concentrated, with just a few companies dominating the market in each link of the food chain. In most sectors of the U.S. economy, the four largest firms control between 40 and 45 percent of the market, and many economists maintain that higher levels of concentration can start to erode competitiveness. This report examines five case studies of agribusiness concentration: Iowa’s hog industry; the milk processing and dairy farming in upstate New York; poultry production on Maryland’s Eastern Shore; organic soybean farming and soymilk production; and the California processed fruit and vegetable industry.

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A130

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA

ANIMAL LEGAL DEFENSE FUND,
PEOPLE FOR THE ETHICAL
TREATMENT OF ANIMALS, INC.,
BAILING OUT BENJI, FOOD & WATER
WATCH, and IOWA CITIZENS FOR
COMMUNITY IMPROVEMENT,

Plaintiffs,

vs.

KIMBERLEY K. REYNOLDS, in her official
capacity as Governor of Iowa, TOM
MILLER, in his official capacity as Attorney
General of Iowa, VANESSA STRAZDAS, in
her official capacity as Cass County Attorney,
CHUCK SINNARD, in his official capacity
as Dallas County Attorney, and JOHN GISH,
in his official capacity as Washington County
Attorney,

Defendants.

No. 21-cv-00231-RP-HCA

**BRIEF IN SUPPORT OF MOTION TO
DISMISS OF DEFENDANTS**

Defendants Kimberley Reynolds, Tom Miller, Vanessa Strazdas, Chuck Sinnard, and John Gish (hereafter collectively referred to as “Defendants”), pursuant to Federal Rule of Civil Procedure 12(b)(1) and (6) and Local Rule 7, hereby submit the following brief in support of their Motion to Dismiss:

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a prohibition on placing an unattended recording device on an employer's premises and recording images or data to be content-neutral because it prohibited all unauthorized recordings).

Accordingly, Iowa's Trespass Surveillance statute is content-neutral.

2. Iowa's Trespass Surveillance Statute Satisfies Intermediate Scrutiny as it is a Reasonable Time, Place and Manner Regulation.

A content-neutral regulation that has an incidental impact on speech is subject to intermediate scrutiny. *See Peterson v. City of Florence*, 727 F.3d 839, 843 (8th Cir. 2013) (citing *Turner Broad. Sys. v. F.C.C.*, 512 U.S. 622, 642 (1994)). The Eighth Circuit has held that to survive intermediate scrutiny, a content-neutral time, place, or manner regulation must be

narrowly tailored to serve a substantial governmental interest and leaves open ample alternative channels for communicating the speech. *Ward*, 491 U.S. at 791, 109 S.Ct. 2746. An ordinance is narrowly tailored if it "'promotes a substantial interest that would be achieved less effectively absent the regulation' and the means chosen does not 'burden substantially more speech than is necessary to further' the city's content-neutral interest." *Excalibur Grp., Inc. v. City of Minneapolis*, 116 F.3d 1216, 1221 (8th Cir.1997) (quoting *Ward*, 491 U.S. at 799, 109 S.Ct. 2746).

Peterson, 727 F.3d at 843.

a. Iowa's Trespass Surveillance Statute Advances Substantial Governmental Interests.

The protection of both private and public property and the right to privacy from invasion through trespass and subsequent recording are substantial governmental interests. The protection of property from interference, even by those who seek to engage in speech protected by the First Amendment, has been deemed a substantial governmental interest. *See Schenck v. Pro-Choice Network of Western New York*, 519 U.S. 357, 374-77 (1997) (Court held that protecting property rights, among other governmental interests, near an abortion clinic from protestors was a significant enough governmental interest to justify an appropriately tailored injunction); *Stein*, 466 F.Supp.3d at 577 (recognizing that protecting property rights is a significant governmental

interest) (citing *McCullen*, 573 U.S. at 486-87); *see also Phelps-Roper v. City of Manchester*, 697 F.3d 678, 691-93 (8th Cir. 2012) (Court, noting the Supreme Court’s expansion of the right to privacy as a substantial governmental interest, held the right to privacy of funeral attendees was a substantial governmental interest). Related to property rights is the protection of propriety information or trade secrets, which is also a substantial governmental interest. *See Wasden*, 878 F.3d at 1200-01 (the Ninth Circuit, applying a “more searching” application of rational basis review, held the concern about theft of trade secrets or propriety information was a legitimate governmental interest).

Here, the aforementioned interests are certainly substantial in light of the underlying requirement that a trespass must have occurred, and the prevention of trespass alone is a substantial governmental interest. There have been several instances in the past two years that involve the trespass and subsequent recording of activity within a business that demonstrate the concern for the aforementioned interests is very real.^{8,9}

b. Iowa’s Trespass Surveillance Statute is Narrowly Tailored to the Significant Governmental Interests.

Iowa’s Trespass Surveillance statute is narrowly tailored to the significant interests it aims to protect and leaves open ample alternative channels for communication. It is focused

⁸ In 2019, individuals trespassed onto an Iowa State Senator’s farm, broke into a hog confinement building, and recorded animals and conditions therein. Animal Rights Group Claims Animal Neglect at Farm of Iowa Senator Who Backed Ag Gag Law (Jan. 24, 2020), available at <https://www.desmoinesregister.com/story/money/agriculture/2020/01/24/animal-rights-group-claims-neglect-pigs-iowa-farm-ag-gag-supporter/4545787002/>.

⁹ Individuals associated with the same group involved in the 2019 trespass, again trespassed onto a farm, broke into a hog confinement building, and recorded animals and conditions therein multiple times in May 2020. Activists Arrested After Chaining Themselves Outside Iowa Facility Where Pigs Euthanized (June 1, 2020), available at <https://www.desmoinesregister.com/story/money/agriculture/2020/06/01/activists-protesting-pig-euthanasia-arrested-charged/5308820002/>.

only on those situations where a person has committed a trespass and is attempting to use or place a camera or electronic surveillance device. To be narrowly tailored, the law “‘need not be the least restrictive or least intrusive means of’ serving the government’s interests.” *McCullen*, 573 U.S. at 486 (quoting *Ward v. Rock Against Racism*, 491 U.S. 781, 798 (1989)). But, the government still “may not regulate expression in such a manner that a substantial portion of the burden on speech does not serve to advance its goals.” *Id.* (quoting *Ward*, 491 U.S. at 799).

The scope of a First Amendment speech right is informed by the nature of the location in which it is exercised. *See Perry Educ. Ass’n v. Perry Local Educators’ Ass’n*, 460 U.S. 37, 44 (1983). On private property, any First Amendment speech rights are at their most attenuated. *Thompson*, 643 N.E.2d at 1163 (citing *Lloyd Corp.*, 407 U.S. at 567). The government’s ability to restrict speech is most circumscribed in a traditional public forum. *Perry*, 460 U.S. at 45. The government may create a designated public forum, or “a nonpublic forum the government intentionally opens to expressive activity for a limited purpose such as use by certain groups or use for discussion of certain subjects.” *Bowman v. White*, 444 F.3d 967, 975 (8th Cir. 2006). “A designated public forum can be classified as either ‘of a limited or unlimited character.’” *Id.* at 976 (quoting *Van Bergen v. Minnesota*, 59 F.3d 1541, 1553 n.8 (8th Cir. 1995)). A regulation that imposes a reasonable time, place and manner restriction—the highest level of scrutiny for a content neutral regulation—in a traditional public forum would also satisfy the requisite level of scrutiny for more limited public or nonpublic forums.

Plaintiffs’ reliance on the existence of other statutes to argue the Trespass Surveillance statute is not narrowly tailored ignores that the other statutes may not protect the same interests. Iowa Code section 709.21 is only limited to those circumstances where a person is recording someone who is nude or partially nude; privacy rights extend beyond those instances where a

person is in some state of undress. Nor does Iowa’s “peeping tom” trespass law protect all the same interests as Iowa’s Trespass Surveillance statute. Iowa Code section 716.7(2)(a)(7) defines trespass as only those instances where the person is standing on the real property of the victim and recording them (or placing a recording device to view them) through the dwelling window or other aperture. The statute arguably does not apply where the nefarious photographer trespasses onto a third-party’s property to conduct said recording.

Plaintiffs argue Iowa’s Trespass Surveillance statute is not narrowly tailored because it is over-inclusive, ensnaring: those who trespass on public or private property where there is no expectation of privacy; reporters who access railroad tracks or public utilities to document an accident; people who use phones to take videos of their discriminatory denial of access to a business; whistleblowers who use a camera to gather proof of unsafe conditions or managers’ derogatory comments; and rail hobbyists who take photos of rail crossings while standing on the railroad’s property. Complaint ¶¶ 19-20, 90-93.

The statute is not over-inclusive for the same reasons it is not overbroad. *See supra* Section III.G., pp. 33-36. For many of the Plaintiffs’ examples, the individuals have already engaged in a trespass, which is not conduct protected by the First Amendment; content neutral proscriptions on activity subsequent to the trespass does not render an otherwise constitutional statute unconstitutional because the activity involves speech. For reporters, railroad hobbyists or business customers who seek to record conduct on private property, their presence on railroad tracks or public utilities without consent or continued presence at the business after being asked to leave is a trespass under section 716.7(2)(a), and regardless of the person’s desire for information or photographs, the First Amendment does not protect such conduct on private property. *See Lloyd Corp.*, 407 U.S. at 568. For these aforementioned examples, the Trespass

Surveillance statute is essentially only enhancing the penalty for conduct that is already prohibited by law—using a camera on a railroad or public utility property without consent or at a business’ property after being asked to leave but remaining thereon (trespass). Under Plaintiffs’ theory, prohibiting the recording or protesting of a funeral while committing a trespass at a cemetery would violate the First Amendment, but, under the *Phelps-Roper* line of cases, creating a buffer zone at the cemetery to keep the protesters or recording devices a sufficient distance from the funeral would pass muster. *See Phelps-Roper*, 867 F.3d at 891-97; *Phelps-Roper*, 697 F.3d at 689-95. Such a result is incongruous.

Plaintiffs are mistaken that whistleblowers would be subject to the Trespass Surveillance statute because merely using a camera or electronic surveillance device an employee brought onto an employer’s property does not qualify as a trespass for purposes of Iowa’s general trespass law.¹⁰ Plaintiffs have not provided any examples of whistleblowers who record conduct without permission of their employer being prosecuted for criminal trespass.

Iowa’s general trespass law requires the individual to “wrongfully” use an inanimate object without permission of the property owner, and it is not clear using a camera would be “wrongful” for purposes of the statute in the absence of a direct and specific notice of the prohibition from the employer directly to the employee. *See Iowa Code* § 716.7(2)(a)(4). Criminal laws are narrowly interpreted, and it is not clear even if the employer had a “no photography” sign posted that the employee would have received sufficient notice to establish the requisite intent to for their use to be “wrongful”. *See State v. Ahitow*, 544 N.W.2d 270, 273-

¹⁰ However, a whistleblower who enters into an area they lack authorization or the legal right to be or leaves a recording device to record images outside the presence of the whistleblower may run afoul of Iowa’s general criminal trespass statute or one-party consent statute. *See Iowa Code* §§ 716.7(2)(a)(4) and 808B.2(c).

74 (Iowa 1996) (a narrow interpretation of a criminal statute was “dictated by the rule of statutory interpretation that criminal statutes must be narrowly construed.”). Otherwise, whistleblowers would always be engaging in trespass in Iowa if they used a camera to capture purported illegal or unethical activity, regardless of Iowa’s Trespass Surveillance statute. Such an interpretation would also turn every movie theater attendee who uses their cell phone after the near-ubiquitous phone prohibition notice most theaters provide at the beginning of a movie into a criminal trespasser. In any event, as previously mentioned, even assuming Plaintiffs’ interpretation is correct, the Trespass Surveillance statute would essentially only be enhancing the penalty for conduct that is already prohibited by law—using a camera on a business’ property without consent (trespass).

Finally, with respect to Plaintiffs’ assertion that the statute is not narrowly tailored because it applies to Plaintiff ICCI when it is engaging in nonviolent, civil disobedience (trespass) on public property where there is no expectation of privacy, even in a traditional public forum, the First Amendment is not unbridled in its protections. The First Amendment cannot be utilized as a justification for trespass, even on public property. *See Adderley*, 385 U.S. at 47-48. Moreover, depending upon the type of public forum, restrictions on recording have been upheld as reasonable time, place and manner restrictions. *See Kushner v. Buhta*, 2018 WL 1866033, at 9-11 (D. Minn. April 18, 2018) (not reported) (holding that a university’s prohibition on unauthorized recordings of a lecture was a reasonable time, place and manner restriction in a limited public forum). Senator Grassley’s Office is likely a nonpublic forum and not a traditional public forum (e.g. streets, sidewalks, parks), and prohibiting recording at the Office would be a reasonable time, place or manner restriction. *See Helms v. Zubaty*, 495 F.3d 252,

256-58 (6th Cir. 2007) (holding that a public official’s office was a nonpublic forum, and protestor was not entitled to “sit in” and protest in the office).

Iowa’s Trespass Surveillance statute leaves open ample alternative channels for communicating the speech. The statute does not prohibit the recording or placement of a recording device in the absence of an underlying trespass. The statute does not prohibit the publication of anything that is recorded. The statute does not prohibit ICCI members, who are not committing a trespass, from recording their fellow members’ trespasses on public or private property and any subsequent activity or conduct by law enforcement or others.

Iowa’s Trespass Surveillance statute is a reasonable time, place and manner restriction and satisfies intermediate scrutiny. Accordingly, Plaintiffs’ as applied constitutional challenge in Count I of the Complaint should be dismissed.

G. PLAINTIFFS FAIL TO STATE A CLAIM THAT IOWA’S TRESPASS SURVEILLANCE STATUTE IS OVERBROAD IN VIOLATION OF THE FIRST AMENDMENT.

Iowa’s Trespass Surveillance statute is not overbroad in violation of the First Amendment because it does not burden substantially more speech than the First Amendment permits. The United States Supreme Court has held that a statute is facially overbroad

if it prohibits a substantial amount of protected speech. The doctrine seeks to strike a balance between competing social costs. On the one hand, the threat of enforcement of an overbroad law deters people from engaging in constitutionally protected speech, inhibiting the free exchange of ideas. On the other hand, invalidating a law that in some of its applications is perfectly constitutional—particularly a law directed at conduct so antisocial that it has been made criminal—has obvious harmful effects. In order to maintain an appropriate balance, we have vigorously enforced the requirement that a statute’s overbreadth be substantial, not only in an absolute sense, but also relative to the statute’s plainly legitimate sweep. Invalidation for overbreadth is strong medicine that is not to be casually employed.

U.S. v. Williams, 553 U.S. 285, 292-93 (2008) (internal citations and quotation marks). The overbreadth doctrine should only be used as a “last resort.” *New York v. Ferber*, 458 U.S. 747,

769 (1982)) (quoting *Broadrick v. Oklahoma*, 413 U.S. 601, 613 (1973)). Plaintiffs also bear the burden of demonstrating substantial overbreadth exists. *New York State Club Assn., Inc. v. City of New York*, 487 U.S. 1, 14 (1988).

1. Iowa’s Trespass Surveillance Statute does not Prohibit Protected Speech Necessitating First Amendment Protection.

As previously discussed in this Brief, the use or placement of a camera or electronic surveillance device while committing the trespass is not speech protected by the First Amendment. Therefore, Plaintiffs cannot rely upon said conduct as an example of “protected speech” to support their overbreadth argument. *See Johnson v. Quattlebaum*, 664 Fed.Appx. 290, 293 (4th Cir. 2016) (unpublished decision) (court held South Carolina’s public disorderly conduct statute prohibiting the use of certain obscene or profane language reached only speech unprotected by the First Amendment, and was therefore not unconstitutionally overbroad); *U.S. v. Simpson*, 741 F.3d 539, 551 (5th Cir. 2014) (court held statute prohibiting aiding and abetting the transmission of spam, with an intent to deceive or mislead, only reached speech unprotected by the First Amendment because it only applies to intentionally misleading commercial speech, and was therefore not unconstitutionally overbroad).

2. Even if the Trespass-Surveillance Statute Criminalizes Some Protected, Expressive Conduct, the Statute does not Proscribe a Substantial Amount of Protected Speech in Relation to its Plainly Legitimate Sweep.

Plaintiffs argue Iowa’s Trespass Surveillance statute suppresses “a substantial amount of protected speech compared to any legitimate sweep.” Complaint ¶ 105. Plaintiffs identify reporters, railroad hobbyists, business customers recording misconduct, whistleblowers, and activists engaging in nonviolent civil disobedience, all of whom are recording activity or their conduct while committing a trespass, as examples of alleged speech criminalized by the statute as support for their overbreadth claim. *Id.* at ¶¶ 19-20, 90-93.

Instead of proscribing a substantial amount of protected speech as Plaintiffs allege, Iowa's Trespass Surveillance statute proscribes a substantial amount of conduct that is not protected by the First Amendment, including the use or placement of a camera while committing a criminal trespass at: residential dwellings; private businesses; hospitals and other medical facilities, including abortion clinics; agricultural facilities; military installations; and governmental offices. While this is not an exhaustive list, it is sufficiently broad enough to demonstrate the potential overbreadth, if any, of Iowa's Trespass Surveillance statute would be insufficient to invalidate the statute. *See United States v. Brune*, 767 F.3d 1009, 1018 (10th Cir. 2014) ("Thus, even where a fair amount of constitutional speech is implicated, we will not invalidate the statute unless significant imbalance exists"); *see also Project Veritas Action Fund*, 982 F.3d at 841 (Court rejected Project Veritas' overbreadth claim because, although plaintiff identified ten examples of applications of Section 99 that it argues are unconstitutional, it failed to show that the unconstitutional applications are "substantial" relative to the extensive range of applications it does not even challenge).

Moreover, an undercover investigator or protester who used or placed a camera to record while trespassing who was being prosecuted under the Trespass Surveillance statute could always bring an as-applied challenge to the existence of the requisite underlying trespass; this is a critical element that requires proof, beyond a reasonable doubt, and to be determined on a case-by-case basis. *See Golb v. Attorney General of the State of New York*, 870 F.3d 89, 102 (2nd Cir. 2017) (rejecting overbreadth challenge to criminal impersonation statute because the statute had a substantial legitimate sweep, and any alleged overbreadth could be raised in an as-applied challenge); *see also Wasden*, 878 F.3d at 1202 (rejecting a claim that Idaho's Ag Trespass statute would apply to any undercover investigator who used false statements to obtain a job, noting the

statute requires and intent to harm, and not every investigator intends to harm the employer, which is a “criminal element that requires proof.”). Accordingly, Plaintiffs’ overbreadth claim in Count II of the Complaint should be dismissed.

IV. CONCLUSION

Because Plaintiffs have failed to demonstrate the Trespass Surveillance statute invades their legally protected interests or the alleged harm Plaintiffs will suffer is both “qualitatively and temporally concrete, as well as distinct and palpable, as opposed to merely abstract,” they lack standing. Plaintiffs’ applied claims are also not ripe for review. Furthermore, assuming *arguendo* that Plaintiffs have standing and their claims are ripe, Plaintiffs have failed to state a claim upon which relief may be granted. The Trespass Surveillance statute regulates conduct, not speech. But even if the statute regulates speech, the statute is not facially unconstitutional under the First Amendment, and it is not unconstitutional as applied to Plaintiffs. Iowa’s Trespass Surveillance statute is narrowly tailored to a compelling governmental interest. Finally, the statute is not overbroad under the First Amendment. For these reasons, Defendants respectfully request that Plaintiffs’ Complaint be dismissed in its entirety.

Respectfully submitted,

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA

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

Plaintiffs,

vs.

KIMBERLEY K. REYNOLDS, in her
official capacity as Governor of Iowa, TOM
MILLER, in his official capacity as
Attorney General of Iowa, and BRUCE E.
SWANSON, in his official capacity as
Montgomery County, Iowa County
Attorney,

Defendants.

No. 17-CV-00362-JEG-HCA

**DEFENDANTS’ COMBINED BRIEF IN
SUPPORT OF RESISTANCE TO
PLAINTIFFS’ MOTION FOR
SUMMARY JUDGMENT AND CROSS-
MOTION FOR SUMMARY JUDGMENT**

Defendants Kimberley Reynolds, Tom Miller, and Bruce Swanson (hereafter collectively referred to as “Defendants”), pursuant to Federal Rule of Civil Procedure 56(a) and Local Rule 56(a) and (b), hereby submit the following Combined Brief in Support of Resistance to Plaintiffs’ Motion for Summary Judgment and Cross-Motion for Summary Judgment:

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prohibitions of various expressive activities. *Phelps*, 63 F. Supp. 3d at 955-56. The Court found that the flag-misuse statute lacked any legitimate application and that to violate it, the individual must “have the intent to engage in expressive conduct.” *Id.* at 956.

Unlike the statutes in *Phelps*, the Ag-Fraud statute does not include any explicit prohibitions of various expressive activities. Iowa Code § 717A.3A. Plaintiffs also provide no information demonstrating that the Ag-Fraud statute criminalizes a sufficient amount of expressive conduct relative to non-expressive conduct. In fact, Plaintiffs fail to address this crucial aspect of the overbreadth analysis. *See* Plaintiffs’ MSJ (Dkt. #53), at 34-36. They also assert speech is chilled without meaningfully considering the actual impact of the Ag-Fraud statute. Even in the absence of the statute, the activities Plaintiffs want to engage in are still illegal under Iowa’s trespass laws. *See* Iowa Code § 716.7.

By deterring trespassing and protecting bio-security at agricultural production facilities, the Ag-Fraud statute has a host of legitimate applications. A mere handful of animal rights organizations claiming that their speech has been chilled simply does not establish that a sufficient amount of expressive conduct relative to non-expressive has been criminalized. Furthermore, Plaintiffs only speculate that the Ag-Fraud statute inhibits parties not before the Court from exercising their First Amendment rights. In the overbreadth section of Plaintiffs’ MSJ, they conjure up numerous hypothetical scenarios but fail to provide examples of these scenarios actually occurring or to even address the likelihood of any of them occurring. *See* Plaintiffs’ MSJ (Dkt. #53), at 35-36.

Nor does the analysis end here. Even if the Ag-Fraud statute criminalized a substantial amount of expressive, protected conduct in relation to its legitimate applications, the Court must consider if it is “readily susceptible” to a limiting construction rendering the statute

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MILLER, in his official capacity as
Attorney General of Iowa, and BRUCE E.
SWANSON, in his official capacity as
Montgomery County, Iowa County
Attorney,

Defendants.

No. 4:17-CV-00362-JEG-HCA

**DEFENDANTS' REPLY BRIEF IN
SUPPORT OF MOTION FOR
SUMMARY JUDGMENT**

Defendants Kimberley Reynolds, Tom Miller, and Bruce Swanson (hereafter collectively referred to as "Defendants"), pursuant to Federal Rule of Civil Procedure 56(a) and Local Rule 56(d), hereby submit the following Reply Brief in Support of Motion for Summary Judgment:

Plaintiffs' Brief in Support of Plaintiffs' Combined Motion for Summary Judgment and Resistance to Defendants' Cross-Motion for Summary Judgment ("Resistance") asserts a number of arguments to further support their Motion for Summary Judgment and oppose Defendants' Cross-Motion for Summary Judgment. Plaintiffs' arguments are without merit and should be rejected.

I. The First Amendment does not Protect the Conduct Prohibited by Iowa's Ag-Fraud Statute.

1. Iowa's Ag-Fraud Statute Regulates Conduct Facilitated by False Speech, not Pure Speech Itself.

Plaintiffs’ argue that the Ag-Fraud statute “does not in fact promote a private owner’s ability to control her property” and limits “pure speech.” *See* Plaintiffs’ Resistance (Dkt. #69), pp. 6, 8. These arguments are erroneous and ignore other examples of constitutionally valid restrictions on the use of false pretenses. Defeating a landowner’s right to control access to his or her property through deceit certainly hinders that landowner’s ability to control access to their property. For example, a hunter who uses false pretenses to obtain admittance to farm property to hunt limit’s that landowner’s ability to control access by obtaining access where it otherwise would have been withheld, even where the hunter does not harvest any deer.

Moreover, similar to Iowa’s prohibition on “fraudulent practice[s]”, wherein the State is punishing conduct—*theft*—facilitated by lies, the Ag-Fraud statute prohibits more than “pure speech”; it prohibits conduct—*trespass*—facilitated by lies. *See* Iowa Code § 714.8. In both instances, the State is not seeking to punish speech, but rather the conduct of obtaining someone else’s property or access to their property facilitated by false speech. Plaintiffs’ Resistance ignores this argument, raised in Defendants’ Motion for Summary Judgment (“MSJ”) (Dkt. # 63), pp. 14-15.

Instead, Plaintiffs rely on two easily distinguishable Eighth Circuit cases to support their argument that a prohibition on lies to obtain access to private property is a limitation on pure speech, subject to First Amendment protection. *See* Plaintiffs’ Resistance (Dkt. #69), p. 8 (citing *281 Care Committee v. Arneson*, 638 F.3d 621, 636 (8th Cir. 2010) (*281 Care Comm. I*) and *281 Care Committee v. Arneson*, 766 F.3d 774, 782-84 (8th Cir. 2014) (*281 Care Comm. II*). In *281 Care Comm. I* and *II*, the challenged statute prohibited false political speech on ballot measures; the cases did not involve a prohibition on conduct facilitated by false speech. In *281 Care Comm. I*, the court held only that knowingly false *campaign speech* is not categorically exempt from First

**In The United States District Court
For The Southern District of Iowa**

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

Plaintiffs,

v.

KIM REYNOLDS, in her official capacity as Governor of Iowa, **TOM MILLER**, in his official capacity as Attorney General of Iowa, **VANESSA STRAZDAS**, in her official capacity as Cass County Attorney, **CHUCK SINNARD**, in his official capacity as Dallas County Attorney, and **JOHN GISH**, in his official capacity as Washington County Attorney

Defendants.

Case No.: 4:21-cv-00231

**DECLARATION OF DAVID
S. MURASKIN**

I, David S. Muraskin, hereby declare as follows:

1. The matters set forth in this declaration are based on my personal knowledge and experience. If called to testify as to these matters, I could and would competently testify to what is set out in this declaration.

2. I am an attorney in this matter and was also an attorney in the challenges to Iowa's first and second "Ag-Gag" laws. As a result, I am familiar with the dockets in these matters. I also was involved in preparing the declarations in support of Plaintiffs' motion for summary judgment and the appendix for Plaintiffs' summary judgment motion in this matter and therefore am familiar with that material.

3. What is identified in the appendix as excerpts of Brief in Support of Motion to

Dismiss of Defendants', Dkt. No. 19, is a true and correct copy of those pages.

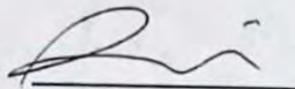
4. What is identified in the appendix as excerpts of Defendants' Combined Brief in Support of Resistance to Plaintiffs' Motion for Summary Judgment and Cross Motion for Summary Judgment, *Animal Legal Def. Fund v. Reynolds*, 4:17-cv-00362-JEG-HCA (S.D. Iowa), Dkt. No. 64 is a true and correct copy of those pages.

5. What is identified in the appendix as excerpts of Defendants' Reply in Support of Defendants' Motion for Summary Judgment, *Animal Legal Def. Fund v. Reynolds*, 4:17-cv-00362-JEG-HCA (S.D. Iowa), Dkt. No. 76 is a true and correct copy of those pages.

6. The declarations in the appendix are true and correct copies of the executed documents.

I declare under penalty of perjury that the foregoing is true and correct.

Executed in Washington, DC on November 12, 2021.


David S. Muraskin

CERTIFICATE OF SERVICE

I hereby certify that on this date, I electronically filed the foregoing paper with the Clerk of Court by using the CM/ECF system.

All participants in this case are registered CM/ECF users and will served by the CM/ECF system.

Date: November 12, 2021

/s/ David S. Muraskin
David S. Muraskin*
Public Justice, P.C.
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