

No. 4:19-CV-442-JM

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT ARKANSAS
AUG 12 2019

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS

JAMES W. McCORMACK, CLERK
DEP CLERK

ANIMAL LEGAL DEFENSE FUND; ANIMAL EQUALITY; CENTER FOR
BIOLOGICAL DIVERSITY; and FOOD CHAIN WORKERS ALLIANCE

Plaintiffs,

v.

JONATHAN and DeANN VAUGHT, doing business as Prayer Creek Farm, and
PECO FOODS, INC.

Defendants.

MOTION FOR LEAVE TO FILE *AMICI CURIAE*
BRIEF IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS

The Reporters Committee for Freedom of the Press (the "Reporters Committee") and 7 other organizations (collectively, "*amici*"), for their Motion For Leave to File *Amici Curiae* Brief in Opposition to Defendants' Motion to Dismiss, state:

1. In support of their Motion, *amici* file simultaneously herewith a Brief in Support of this Motion and a copy of their proposed *amici curiae* brief attached hereto as Exhibit A.
2. Plaintiffs consent to the filing of this *amici* brief. Defendants do not consent to the filing of this *amici* brief.

WHEREFORE, *amici* move this Court for an Order permitting them to file the attached *amici curiae* brief in opposition to Defendants' Motion to Dismiss.

Respectfully submitted,

WILLIAMS & ANDERSON PLC
111 Center Street, Suite 2200
Little Rock, Arkansas 72201
Telephone: 501 372 0800
Facsimile: 501 372 6453

By: Alec Gaines
Alec Gaines (AR#2012277)
againes@williamsanderson.com

CERTIFICATE OF SERVICE

I hereby certify that on August 12, 2019, I filed with the foregoing with the Clerk of Court, which shall send notification of such filing to Counsel of Record. I also delivered the filing by email to all Counsel of Record.

By: Alec Gaines
Alec Gaines (AR#2012277)
againes@williamsanderson.com

No. 4:19-CV-442-JM

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS**

ANIMAL LEGAL DEFENSE FUND; ANIMAL EQUALITY; CENTER FOR
BIOLOGICAL DIVERSITY; and FOOD CHAIN WORKERS ALLIANCE

Plaintiffs,

v.

JONATHAN and DeANN VAUGHT, doing business as Prayer Creek Farm, and
PECO FOODS, INC.

Defendants.

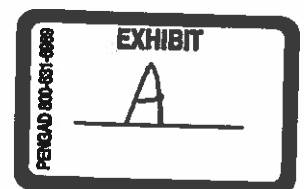
**BRIEF *AMICI CURIAE* OF THE REPORTERS COMMITTEE FOR
FREEDOM OF THE PRESS AND 7 OTHER ORGANIZATIONS
IN SUPPORT OF PLAINTIFFS AND OPPOSING DEFENDANTS'
MOTIONS TO DISMISS**

WILLIAMS & ANDERSON PLC
111 Center Street, Suite 2200
Little Rock, Arkansas 72201
Telephone: 501 372 0800
Facsimile: 501 372 6453

By: *Alec Gaines*

Alec Gaines (AR#2012277)
againes@williamsanderson.com

Counsel for *Amici Curiae*
[Full Counsel Listing in Appendix B]



DISCLOSURE STATEMENT

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

American Society of News Editors is a private, non-stock corporation that has no parent.

The Associated Press Media Editors has no parent corporation and does not issue any stock.

Association of Alternative Newsmedia has no parent corporation and does not issue any stock.

The International Documentary Association is an not-for-profit organization with no parent corporation and no stock.

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

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

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

TABLE OF CONTENTS

DISCLOSURE STATEMENT	i
TABLE OF CONTENTS	ii
TABLE OF AUTHORITIES	iii
STATEMENT OF INTEREST	1
SUMMARY OF THE ARGUMENT.....	2
ARGUMENT	3
I. Section 16-118-113 infringes on the First Amendment rights of journalists and members of the news media.....	3
A. Section 16-118-113 unconstitutionally criminalizes audiovisual recordings.	4
B. Section 16-118-113 is an impermissible content-based restriction.....	6
II. Section 16-118-113 chills constitutionally protected reporter-source communications.	8
III. Section 16-118-113 hampers the ability of the news media to report on matters of significant public concern.....	10
CONCLUSION	133
APPENDIX A: DESCRIPTIONS OF AMICI.....	A-1
APPENDIX B: FULL COUNSEL LISTING	A-4

TABLE OF AUTHORITIES

Cases

<i>Am. Civil Liberties Union of Illinois v. Alvarez</i> , 679 F.3d 583 (7th Cir. 2012).....	4
<i>Animal Legal Def. Fund v. Herbert</i> , 263 F. Supp. 3d 1193 (D. Utah 2017)	4, 6
<i>Animal Legal Def. Fund v. Wasden</i> , 878 F.3d 1184 (9th Cir. 2018).....	5, 6, 8
<i>Boos v. Barry</i> , 485 U.S. 312 (1988).....	7
<i>City of Renton v. Playtime Theatres</i> , 475 U.S. 41 (1986).....	6
<i>Fields v. City of Philadelphia</i> , 862 F.3d 353 (3d Cir. 2017)	4
<i>First Nat’l Bank v. Bellotti</i> , 435 U.S. 765 (1978)	11
<i>Joseph Burstyn, Inc. v. Wilson</i> , 343 U.S. 495 (1952)	4
<i>Mills v. Alabama</i> , 384 U.S. 214 (1966).....	10
<i>R.A.V. v. City of St. Paul</i> , 505 U.S. 377 (1982)	6
<i>Reed v. Town of Gilbert</i> , 135 S. Ct. 2218 (2015).....	6, 7
<i>Roth v. United States</i> , 354 U.S. 476 (1957)	11
<i>Turner Broad. Sys. Inc. v. FCC</i> , 512 U.S. 622 (1994).....	6
<i>Turner v. Lieutenant Driver</i> , 848 F.3d 678 (5th Cir. 2017).....	4
<i>W. Watersheds Project v. Michael</i> , 869 F.3d 1189 (10th Cir. 2017).....	6

Statutes

Arkansas Code § 16-118-113	<i>passim</i>
Utah Code § 76-6-112	3

Other Authorities

1 Journals of the Continental Congress (1774).....	11
113 Cong. Rec. (daily ed. Aug. 3, 1967).....	12

<i>Ag-gag Across America</i> , Center for Constitutional Rights (2017), https://perma.cc/W34N-2P3P	3
Andy Sher, <i>Tennessee Governor Bill Haslam vetoing 'ag gag' bill</i> , Times Free Press (May 13, 2013), https://perma.cc/RKZ3-HR3A	3
Animal Charity Evaluators, <i>Interview with Will Potter</i> (May 6, 2016), https://perma.cc/A8SB-9MGJ	10
Cora Lewis, <i>America's Largest Meat Producer Averages One Amputation Per Month</i> , BuzzFeed News (Feb. 18, 2016), https://perma.cc/PSZ5-YGNE	12
Deron Lee, <i>'Ag-gag' reflex</i> , Columbia Journalism Review (Aug. 6, 2013), https://perma.cc/Z5D5-GSJZ	10
Farm Aid, <i>Corporate Power</i> (May 18, 2015), https://perma.cc/ACG7-WGU312 , 13	
James Diedrick, <i>The Jungle</i> , Encyclopedia of Chicago (Janice L. Reiff, Ann Durkin, Keating, & James R. Grossman, eds. 2005), https://perma.cc/6CRY- QUWE	9
John Rumpler, <i>Tyson's Pollution Pathways: from Factory Farms to Fouled Waters</i> , Huffington Post (July 5, 2016), https://perma.cc/Y4ZD-ATBB	13
Mark Bittman, <i>Who Protects the Animals?</i> , The New York Times (April 26, 2011), https://perma.cc/N74F-JUE8	2
Nicholas Kristof, <i>Abusing Chickens We Eat</i> , The New York Times (Dec. 3, 2014), https://perma.cc/QBS3-7AM7	8
Seth F. Kreimer, <i>Pervasive Image Capture and the First Amendment: Memory, Discourse, and the Right to Record</i> , 159 U. Pa. L. Rev. 335 (Jan. 2011).....	5
Susan McGregor, <i>Digital Security and Source Protection for Journalists</i> , Tow Center for Digital Journalism (June 2014)	8
<i>The Hierarchy of Information and concentric circles of sources</i> , American Press Institute (last visited Aug. 5, 2019), https://perma.cc/Z76A-3SC3	10
Upton Sinclair, <i>The Autobiography Of Upton Sinclair</i> (1962).....	9

STATEMENT OF INTEREST

The Reporters Committee for Freedom of the Press and 7 other media organizations, through undersigned counsel, respectfully submit this brief as *amici curiae* in support of Plaintiffs to urge the Court to deny Defendants' motions to dismiss.¹ *Amici* have filed an accompanying motion seeking leave of Court to file this *amici* brief. Plaintiffs consent to the filing of this *amici* brief. Defendants do not consent.

Amici are listed in the appendix to this brief. As news media outlets and organizations dedicated to defending the First Amendment and the newsgathering rights of journalists, *amici* have a strong interest in this case. Specifically, *amici* have a powerful interest in ensuring that journalists are able to report on matters of concern to the public without facing unconstitutional impediments to their newsgathering activities. The ability of whistleblowers and other sources to inform journalists of dangerous, illegal, or unethical activities—and to provide documentation and evidence of those activities—without fear of criminal liability is central to journalists' ability to do their jobs effectively. For the reasons herein, *amici* urge the Court to deny Defendants' motions to dismiss.

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

SUMMARY OF THE ARGUMENT

Arkansas Code § 16-118-113 (“Section 16-118-113”) stifles public debate and discussion, discourages whistleblowers from coming forward out of fear of prosecution, and favors corporate interests at the expense of First Amendment freedoms and a well-informed society. Section 16-118-113, like other “ag-gag”² laws that have been struck down as unconstitutional, criminalizes the disclosure of information about agricultural facilities to members of the news media. As such, Section 16-118-113 chills reporter-source communications and thwarts journalists’ ability to report on issues of public concern, including food safety issues and the treatment of agricultural workers and farmed animals.

Members of the public cannot themselves monitor the agricultural facilities that produce their food; they depend on members of the media to do so, and to keep them informed about matters implicating health and safety. Section 16-118-113 stymies the ability of news organizations to gather news and report on such matters of significant public interest. For these reasons, *amici* urge the Court to deny Defendants’ motions to dismiss.

² The term “ag-gag” was coined by *New York Times* writer Mark Bittman in 2011. See Mark Bittman, *Who Protects the Animals?*, *The New York Times* (April 26, 2011), <https://perma.cc/N74F-JUE8>. “Ag-gag” laws refer to state laws that, among other things, may forbid filming or photography at concentrated animal feeding operations, or otherwise protect the agriculture industry by discouraging whistleblowing. *Amici* refer to Section 16-118-113 as an “ag-gag” statute.

ARGUMENT

I. Section 16-118-113 infringes on the First Amendment rights of journalists and members of the news media.

State laws intended to protect the agricultural industry by concealing industry practices and penalizing whistleblowers for documenting conditions on industrialized farms and other facilities have consistently been struck down as unconstitutional. *See generally, Ag-gag Across America*, Center for Constitutional Rights (2017), <https://perma.cc/W34N-2P3P>. In many states, legislators have *attempted* to pass such laws, but failed; in several cases, the failed bills resembled Section 16-118-113.³ In 2013, for example, a proposed ag-gag bill in Tennessee was vetoed by the governor on the ground that it was “constitutionally-suspect.” Andy Sher, *Tennessee Governor Bill Haslam vetoing 'ag gag' bill*, Times Free Press (May 13, 2013), <https://perma.cc/RKZ3-HR3A>.

Utah passed an ag-gag law in 2012. *See* Utah Code § 76-6-112. In 2017, the U.S. District Court for the District of Utah struck that law down as unconstitutional on the ground that it violated the First Amendment. In doing so, the district court explained: “Utah undoubtedly has an interest in addressing perceived threats to the state agricultural industry, and as history shows, it has a

³ In over fifteen states, ag-gag bills died before ever becoming law. There have been several bills that failed to become law that contained a recording provision similar to that of Section 16-118-113. *See, e.g.*, H.B. 2587, 51st Leg. (Ariz. 2014); H.B. 1104, 64th Leg. (Wash. 2015).

variety of constitutionally permissible tools at its disposal to do so. *Suppressing broad swaths of protected speech without justification, however, is not one of them.*” (emphasis added). *Animal Legal Def. Fund v. Herbert*, 263 F. Supp. 3d 1193, 1213 (D. Utah 2017). Utah’s unconstitutional law contained a recording provision, *id.* at 1211, like the one found in Section 16-118-113.

A. Section 16-118-113 unconstitutionally criminalizes audiovisual recordings.

Audiovisual recordings have long been recognized to be a “significant medium for the communication of ideas” entitled to full constitutional protection. *Joseph Burstyn, Inc. v. Wilson*, 343 U.S. 495, 501 (1952). The First Amendment protects “the broader right to film.” *Turner v. Lieutenant Driver*, 848 F.3d 678, 689 (5th Cir. 2017). As the Seventh Circuit has recognized, the “act of making an audio or audiovisual recording is necessarily included within the First Amendment’s guarantee of speech and press rights as a corollary of the right to disseminate the resulting recording.” *Am. Civil Liberties Union of Illinois v. Alvarez*, 679 F.3d 583, 595 (7th Cir. 2012). In *Fields v. City of Philadelphia*, 862 F.3d 353, 358 (3d Cir. 2017), the Third Circuit held that the “First Amendment protects actual photos, videos, and recordings . . . and for this protection to have meaning the Amendment must also protect the act of creating that material.” Indeed, especially today, “[w]e live, relate, work, and decide in a world where image capture from life is routine, and captured images are part of ongoing

discourse, both public and private.” Seth F. Kreimer, *Pervasive Image Capture and the First Amendment: Memory, Discourse, and the Right to Record*, 159 U. Pa. L. Rev. 335, 337 (Jan. 2011).

Arkansas Code § 16-118-113 infringes this constitutional right to record by, in pertinent part, criminalizing the “record[ing]” of “images or sound occurring within an employer’s commercial property and us[ing] the recording in a manner that damages the employer;” and “plac[ing] on the commercial property an unattended camera or electronic surveillance device and us[ing] the unattended camera or electronic surveillance device to record images or data in a manner that damages the employer.”

A recent decision of the Ninth Circuit is instructive. In January 2018, the court struck down almost all of an Idaho ag-gag statute aimed at criminalizing the recording of undercover video at agricultural facilities. *See Animal Legal Def. Fund v. Wasden*, 878 F.3d 1184 (9th Cir. 2018). The Ninth Circuit reaffirmed that audio and video recording is constitutionally protected expression, *id.* at 1203, and described the law as having the improper purpose of targeting investigative journalists and protected speech. *Id.* at 1195. It stated that:

It is no surprise that we have recognized that there is a ‘First Amendment right to film matters of public interest.’ *Fordyce v. City of Seattle*, 55 F.3d 436, 439 (9th Cir. 1995). It defies common sense to disaggregate the creation of the video from the video or audio recording itself. The act of recording is itself an inherently expressive activity.

Id. at 1203. *See also Herbert*, 263 F. Supp. at 1208 (holding that Utah’s ag-gag statute violated the First Amendment, in part due to its recording provisions); *W. Watersheds Project v. Michael*, 869 F.3d 1189, 1196 (10th Cir. 2017) (portions of Wyoming’s ag-gag statute proscribing audio-visual recordings implicate the First Amendment).

B. Section 16-118-113 is an impermissible content-based restriction.

Content-based restrictions on speech are presumptively unconstitutional under the First Amendment. *City of Renton v. Playtime Theatres*, 475 U.S. 41, 47 (1986). The government is prohibited from restricting speech based on its content because such restrictions threaten to “manipulate the public debate through coercion rather than persuasion,” *Turner Broad. Sys. Inc. v. FCC*, 512 U.S. 622, 641 (1994), and permit governments to “drive certain ideas or viewpoints from the marketplace.” *R.A.V. v. City of St. Paul*, 505 U.S. 377, 387 (1982). Laws imposing content-based speech restrictions are *only* constitutional if they survive strict scrutiny, which requires that the law be narrowly tailored to serve a compelling state interest. *Reed v. Town of Gilbert*, 135 S. Ct. 2218, 2226 (2015).

In *Reed*, the Supreme Court struck down the town of Gilbert’s ordinance limiting residents’ ability to display outdoor signs because it was a content-based regulation. The Court defined content-based regulations as “those that target speech based on its communicative content.” *Id.* It noted that:

This commonsense meaning of the phrase “content based” requires a court to consider whether a regulation of speech “on its face” draws distinctions based on the message a speaker conveys. Some facial distinctions based on a message are obvious, defining regulated speech by particular subject matter, and others are more subtle, defining regulated speech by its function or purpose. Both are distinctions drawn based on the message a speaker conveys, and, therefore, are subject to strict scrutiny.

Id. at 2227. Similarly, In *Boos v. Barry*, the Supreme Court held that a local ordinance prohibiting the display of signs near any foreign embassy that brought a foreign government into “public odium” or “public disrepute,” *Boos v. Barry*, 485 U.S. 312, 316 (1988), drew a content-based distinction on its face. *Id.* at 319–320. The law was content-based because the ability to picket in front of a particular embassy depended entirely upon whether the picket signs were critical of the foreign government. *Id.* at 313. The Court explained, “[b]ecause the display clause regulates speech due to its *potential primary impact*, we conclude it must be considered content-based.” *Id.* at 321 (emphasis added).

Section 16-118-113 is unquestionably content-based. It penalizes speech on the basis of its “potential primary impact” – i.e., whether it “damages the employer.” Arkansas Code § 16-118-113(c)(1)-(3). The law thus “defin[es] regulated speech by its function or purpose,” *see Reed*, 135 S. Ct. at 2222, and “target[s] speech based on its communicative content.” *Id.* at 2226. *Wasden*, discussed *supra* at 5–6, is again illustrative. In that case, Idaho’s ag-gag law was found to impose unconstitutional content-based restrictions on speech because “a

videographer could record an after-hours birthday party among co-workers, a farmer's antique car collection, or a historic maple tree *but not* the animal abuse, feedlot operation, or slaughterhouse conditions." *Wasden*, 878 F.3d at 1204 (emphasis added). Section 16-118-113 contains the same constitutional blight.

II. Section 16-118-113 chills constitutionally protected reporter-source communications.

Sources, confidential or otherwise, are the lifeblood of investigative reporting. "There are no stories without sources." Susan McGregor, *Digital Security and Source Protection for Journalists*, Tow Center for Digital Journalism (June 2014) at 12. Section 16-118-113 threatens these vital reporter-source relationships.

Journalists and their sources, who include whistleblowing agricultural facility employees, have mutually reinforcing interests in disclosing conditions at those facilities to the public. Whistleblowers may seek to disclose information about the agricultural facilities where they work in order to bring issues of public concern to light, and the news media, in turn, wants to report on such information. See Nicholas Kristof, *Abusing Chickens We Eat*, *The New York Times* (Dec. 3, 2014), <https://perma.cc/QBS3-7AM7> (Craig Watts, a former farmer for Perdue who raised about 720,000 chickens a year for the company, invited the press into his facility to see the "raw, angry, red flesh" of the chickens, nearly all of whom "lost their feathers").

Upton Sinclair's experiences interviewing health inspectors and industry workers at Chicago slaughterhouses more than a hundred years ago helped inform his famed book, *The Jungle*. James Diedrick, *The Jungle*, Encyclopedia of Chicago (Janice L. Reiff, Ann Durkin, Keating, & James R. Grossman, eds. 2005), <https://perma.cc/6CRY-QUWE>. While a work of fiction, the book describes all too real unsanitary conditions at meatpacking facilities in the late-18th and early 20th centuries. *Id.* Sinclair's work spurred reforms in food safety and motivated passage of the Pure Food and Drug Act and the Meat Inspection Act in 1906. *Id.* In an age that pre-dated smartphones and video cameras, Sinclair's reliance on interviews with his sources was indispensable: "I sat at night in the homes of the workers, foreign-born and native, and they told me their stories, one after one, and I made notes of everything. In the daytime I would wander around the yards, and my friends would risk their jobs to show me what I wanted to see." Upton Sinclair, *The Autobiography Of Upton Sinclair* 109–10 (1962).

Journalists' access to first-hand accounts enhances accuracy and credibility in reporting, increases transparency and reader trust, and enriches news stories, allowing reporters to convey more than can be said based on second- or third-hand accounts. *See, e.g., The Hierarchy of Information and concentric circles of sources*, American Press Institute (last visited Aug. 5, 2019), <https://perma.cc/Z76A-3SC3>. In addition, in the digital age, those sources can

provide the evidence and documentary materials which further enhance accuracy and allow journalists to complement their written word. *See, e.g.*, Deron Lee, ‘Ag-gag’ reflex, Columbia Journalism Review (Aug. 6, 2013), <https://perma.cc/Z5D5-GSJZ>.

By criminalizing the newsgathering activities of potential sources, ag-gag laws like Section 16-118-113 chill the flow of this vital information between potential sources and journalists. Will Potter, an award-winning investigative journalist, has interviewed numerous undercover investigators and farm workers who are “increasingly afraid of speaking out.” Animal Charity Evaluators, *Interview with Will Potter* (May 6, 2016), <https://perma.cc/A8SB-9MGJ>. Potter attributes this fear to the proliferation of ag-gag laws. *See id.* Because one of the many roles of journalism is to “amplif[y] marginalized voices” – for example, the voices of agricultural workers or even of farmed animals – access to inside sources is indispensable to fully telling these stories. *Id.* Section 16-118-113 impedes those stories from being told.

III. Section 16-118-113 hampers the ability of the news media to report on matters of significant public concern.

“The Constitution specifically selected the press . . . to play an important role in the discussion of public affairs.” *Mills v. Alabama*, 384 U.S. 214, 219 (1966); *see also Roth v. United States*, 354 U.S. 476, 484 (1957) (“The protection given speech and press was fashioned to assure unfettered interchange of ideas for the bringing

about of political and social changes desired by the people.”). Indeed, the Founders envisioned the press as a means to freely challenge the status quo without government restraint. *See* 1 Journals of the Continental Congress 108 (1774) (stating that the importance of a free press consists, in part, of “the advancement of truth, science, [and] morality . . .”).

Section 16-118-113 undermines these fundamental principles. It grants the government power to cut off the flow of information to the press and, therefore, the public. Because the First Amendment’s scope “encompasses a range of conduct related to the gathering and dissemination of information” and prohibits the government from “limiting the stock of information from which members of the public may draw,” *First Nat’l Bank v. Bellotti*, 435 U.S. 765, 783 (1978), the Court should reject the pending motion to dismiss the plaintiffs’ constitutional challenge to Section 16-118-113.

The news media has a long and indispensable history of keeping the public informed about issues concerning the safety of the food supply and the conditions under which food is produced. For example, in the late 1960s, Minneapolis Tribune reporter Nick Kotz published a series of articles that revealed widespread unsanitary conditions in our country’s meatpacking plants. 113 Cong. Rec. 21283–86 (daily ed. Aug. 3, 1967). Kotz’s reporting contributed to the passage of the Meat Inspection Act of 1967, which broadened federal regulation of

slaughterhouses in the United States. *Id.* at 21283. During a congressional session leading to the passage of the Act, Senator Walter Mondale thanked Kotz for bringing the issue to Congress's attention, saying "the press must take a major share of the credit for action in this area." *Id.*

In Arkansas, there have been a number of examples of impactful reporting on industrialized agricultural facilities that focus on the treatment of farm workers, the effects of animal farming on our environment, and the treatment of animals. For example, in 2016 BuzzFeed reported on the astonishing rate of amputations and other injuries suffered by Tyson workers in Little Rock, Van Buren, and Springdale, Arkansas. Cora Lewis, *America's Largest Meat Producer Averages One Amputation Per Month*, BuzzFeed News (Feb. 18, 2016), <https://perma.cc/PSZ5-YGNE>. In addition, Farm Aid has reported in-depth about the experiences of Arkansas farmers and the nature of their contractual relationships with Tyson, Arkansas' third largest public company. Farm Aid, *Corporate Power* (May 18, 2015), <https://perma.cc/ACG7-WGU3>. Among the farmers featured in *Corporate Power* is Randy James, a former "grower" of chickens for Tyson. *Id.* James' wages under his contract with Tyson were based on the square footage of his chicken houses, yet after 15 years of raising the same number of birds, Tyson demanded he produce more with no increase in wages, thereby granting Tyson thousands of extra birds for free. *Id.* "They just took

advantage of us,” stated James. *Id.* And, in 2016, the Huffington Post chronicled how pollution from Tyson’s farms has had particularly severe impacts on the waters of northwest Arkansas and eastern Oklahoma. John Rumpler, *Tyson’s Pollution Pathways: from Factory Farms to Fouled Waters*, Huffington Post (July 5, 2016), <https://perma.cc/Y4ZD-ATBB>. “Tyson came out on top of the polluter pile—with more than 55 million tons of manure in its supply chain, and its facilities responsible for dumping 104 million pounds of toxic pollutants into waterways over a five-year period.” *Id.*

Public scrutiny of agricultural facilities has spurred improvements in food safety and working conditions at agriculture facilities. By criminalizing constitutionally protected activities at those facilities, Section 16-118-113 threatens to eliminate the kind of vital public interest reporting about the agriculture industry that has in the past led to safer food, a cleaner environment, and better conditions for agricultural workers and animals alike. For this reason too, *amici* urge the Court to deny defendants’ motions to dismiss and allow plaintiffs’ challenge to the constitutionality of Arkansas’s ag-gag law at the pleading stage.

CONCLUSION

For the foregoing reasons, *amici* respectfully urge the Court to deny Defendants’ Motions to Dismiss.

Dated: August 12, 2019

Respectfully submitted,

WILLIAMS & ANDERSON PLC
111 Center Street, Suite 2200
Little Rock, Arkansas 72201
Telephone: 501 372 0800
Facsimile: 501 372 6453

By: Alec Gaines
Alec Gaines (AR#2012277)
againes@williamsanderson.com

APPENDIX A: DESCRIPTIONS OF *AMICI*

The Reporters Committee for Freedom of the Press is a voluntary, unincorporated nonprofit association of reporters and editors that works to defend the First Amendment rights and freedom of information interests of the news media. The Reporters Committee has provided representation, guidance and research in First Amendment litigation since 1970.

With some 500 members, **American Society of News Editors (“ASNE”)** is an organization that includes directing editors of daily newspapers throughout the Americas. ASNE changed its name in April 2009 to American Society of News Editors and approved broadening its membership to editors of online news providers and academic leaders. Founded in 1922 as American Society of Newspaper Editors, ASNE is active in a number of areas of interest to top editors with priorities on improving freedom of information, diversity, readership and the credibility of newspapers.

The Associated Press Media Editors is a nonprofit, tax-exempt organization of newsroom leaders and journalism educators that works closely with The Associated Press to promote journalism excellence. APME advances the principles and practices of responsible journalism; supports and mentors a diverse network of current and emerging newsroom leaders; and champions the First Amendment and promotes freedom of information.

Association of Alternative Newsmedia (“AAN”) is a not-for-profit trade association for approximately 110 alternative newspapers in North America. AAN newspapers and their websites provide an editorial alternative to the mainstream press. AAN members have a total weekly circulation of seven million and a reach of over 25 million readers.

The International Documentary Association (IDA) is dedicated to building and serving the needs of a thriving documentary culture. Through its programs, the IDA provides resources, creates community, and defends rights and freedoms for documentary artists, activists, and journalists.

The Media Institute is a nonprofit foundation specializing in communications policy issues founded in 1979. The Media Institute exists to foster three goals: freedom of speech, a competitive media and communications industry, and excellence in journalism. Its program agenda encompasses all sectors of the media, from print and broadcast outlets to cable, satellite, and online services.

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

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

APPENDIX B: FULL COUNSEL LISTING

Kevin M. Goldberg
Fletcher, Heald & Hildreth, PLC
1300 N. 17th St., 11th Floor
Arlington, VA 22209
Counsel for American Society of News Editors

Kevin M. Goldberg
Fletcher, Heald & Hildreth, PLC
1300 N. 17th St., 11th Floor
Arlington, VA 22209
Counsel for Association of Alternative Newsmedia

Kurt Wimmer
Covington & Burling LLP
One CityCenter
850 Tenth Street, N.W.
Washington, DC 20001
Counsel for The Media Institute

Kathleen A. Kirby
Wiley Rein LLP
1776 K St., NW
Washington, DC 20006
Counsel for Radio Television Digital News Association

Bruce W. Sanford
Mark I. Bailen
Baker & Hostetler LLP
1050 Connecticut Ave., NW
Suite 1100
Washington, DC 20036
Counsel for Society of Professional Journalists

CERTIFICATE OF SERVICE

I hereby certify that on August 12, 2019, I filed with the foregoing with the Clerk of Court, which shall send notification of such filing to Counsel of Record. I also delivered the filing by email to all Counsel of Record.

By: Alec Gaines
Alec Gaines (AR#2012277)
againes@williamsanderson.com