

Iowa Ag-Gag Statute: Federal Appellate Court Addresses Challenge to Amended Law



Walter Wright, Jr.
wwright@mwlaw.com
(501) 688.8839

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Co-Author: Caroline O'Connor

The United States Court of Appeals for the Eighth Circuit (“Eighth Circuit”) addressed in a January 8, 2024, Opinion the constitutionality of an Iowa Ag-Gag law. See *Animal Legal Defense Fund v. Reynolds*, 89 F.4th 1065 (8th Cir.).

The question considered was whether two provisions of the Iowa Ag-Gag law violated free speech protections under the First Amendment.

Ag-Gag laws are also known as farm security laws. They forbid photography and recordings on farms and other agricultural operations. The statutes may tie the ban on photography/recording to obtaining access through deception.

The Animal Legal Defense Fund (“ALDF”) and other advocacy groups challenged the Iowa Ag-Gag law for impermissibly restraining free speech. The Iowa Ag-Gag law criminalized “agricultural production facility trespass.” This occurred in two circumstances. See Iowa Code § 717A.3B(1)(a)-(b).

First, the access provision forbids individuals from using deception “on a matter that would reasonably result in a denial of access to an agricultural production facility that is not open to the public, and...gains access to the agricultural production facility, with the intent to cause physical or economic harm” to the business.

Second, an employment provision prohibits an individual from using deception “on a matter that would reasonably result in a denial of an opportunity to be employed at an agricultural production facility that is not open to the public, and, through such deception, is so employed, with intent to cause physical or economic harm” to the business.

The Eighth Circuit in 2021 considered a challenge to the constitutionality of a previous version of this Iowa statute. See *Animal Legal Defense Fund v. Reynolds*, 8 F.4th 781 (8th Cir. 2021). It upheld the access provision. However, the employment provision was invalidated as being unconstitutionally broad. The prohibition was deemed problematic because it included even “immaterial fibs by applicants.”

The Iowa legislature subsequently amended the statute to only prohibit false statements that an employer would consider material to hiring decisions. Further, the amended statute included new intent requirements for both provisions.

The ALDF sued to enjoin enforcement of the law.

The United States District Court (“Lower Court”) held that both provisions of the amended statute violated the First Amendment because the law is “viewpoint-based.” By adding an intent requirement, according to the Court, the legislature had created a statute that impermissibly targeted speakers with negative views of agricultural production facilities.

The Eighth Circuit disagreed and upheld the Iowa law.

The Eighth Circuit first established that the new statute remedied the infirmities found in the previous statute. The scope of the employment provision was narrowed to only forbid false statements that are material to hiring.

It also considered whether the additional intent requirement includes an impermissible viewpoint-based restriction on an otherwise constitutional statute.

While the government may prohibit certain categories of speech without violating the First Amendment, it may not prohibit speech in one of those categories based on its content or viewpoint. In other words, the government may not treat certain speech differently based on the viewpoint it expresses. For example, while the Supreme Court in *R.A.V.* noted that while the government can prohibit fighting words, which incite violence, it cannot single out particular categories of fighting words for punishment. Examples are words that specifically communicate messages of prejudicial intolerance. *R.A.V. v. City of St. Paul*, 505 U.S. 377 (1992).

The Eighth Circuit held that the intent requirement was not based on viewpoint because each of the statute’s provisions permissibly forbid “false statements that result in a legally cognizable harm.” The intent requirement only reflects a general view that criminality should be reserved for those that intend to cause harm, and it does not turn on any particular offender’s viewpoint. For example, the employment provision targets any material falsehood that would impact a hiring decision, not only deceptive praise or deceptive criticism. Further, the access provision focuses on trespassers that mean to cause harm through deception.

Therefore, the Eighth Circuit reversed the Lower Court’s decision and upheld the Iowa Ag-Gag law as a “permissible restriction on intentionally false speech undertaken to accomplish a legally cognizable harm.”

A copy of the Opinion can be downloaded [here](#).