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Animal Farm Reality: The First Amendment Struggle to Reveal the Frightening Truth behind Industrial Farm Animal Production

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ANIMAL FARM REALITY: THE FIRST AMENDMENT STRUGGLE TO REVEAL THE FRIGHTENING TRUTH BEHIND INDUSTRIAL FARM ANIMAL PRODUCTION

Melanie M. Ghaw*

When I began writing this article, a deadly outbreak of listeria was ravaging the nation.¹ It began with the recall of cantaloupes and led to three additional recalls of produce in the following weeks.² Although the produce originated from a single farm in Colorado, the harmful effects of the outbreak spanned 18 states, reaching as far as Alaska. Currently, 29 people have died and 72 others were infected.³

Produce contaminated with animal waste caused this deadly tragedy.⁴ Listeria outbreaks are becoming more common, coinciding with the increase of Industrial Farm Animal Production (IFAP), and many believe IFAP facilities are to blame for the recent rash of outbreaks.⁵ Months later, the outbreak still affects the population as weekly reports of deaths continue. Soon we will forget the consequences of this outbreak, but the potential for the next outbreak hovers over us daily. Until we make the necessary changes, we must not forget the next victims could be us.

* Student, Appalachian School of Law, J.D. Candidate, May 2013; Rutgers University, B.A. I would like to give a special word of thanks to my family for their patience and encouragement, and always entertaining my whims and always believing in me. I would like to thank Pamela Keeling for encouraging me to write this article, Professor McKechnie for letting me know it's okay not to write it, and Professor Baker for preparing me to write it.

¹ *First Cantaloupe, Now Lettuce: California Farm Recalls 90 Cartons of Romaine Over Listeria Fears*, MAIL ONLINE (Sept. 30, 2011), <http://www.dailymail.co.uk/news/article-2043934/First-cantaloupe-lettuce-California-farm-recalls-90-cartons-romaine-listeria-fears.html> (last visited Nov. 25, 2012).

² *Id.*

³ *Id.*

⁴ *Listeria Infection*, MAYO CLINIC, <http://www.mayoclinic.com/health/listeria-infection/DS00963/DSECTION=causes> (last visited Oct. 4, 2011).

⁵ Max Teplitski, *E. coli and Salmonella on animal farms: sources, survival and management*, <http://edis.ifas.ufl.edu/ss458> (last visited Oct. 4, 2011).

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INTRODUCTION

This article analyzes the detrimental effects of IFAP facilities on the population and the environment. Part II will examine the effects of IFAP facilities on public health and will highlight the most significant areas of health risk to the population. Part III will discuss the harmful environmental consequences of IFAP facilities. Part IV will analyze food disparagement laws and their potential effect on the future of consumer protection. Part V will discuss legal trends occurring in the agricultural industry, particularly food disparagement laws and “ag-gag” bills, and solutions to problems these laws present. Part VI will reiterate the restrictive and unreasonable effects of these laws, and the resulting need to repeal food disparagement laws and prevent the enactment of “ag-gag” bills.

I. AN INTRODUCTION TO INDUSTRIAL FARM ANIMAL PRODUCTION

This section will discuss the origins of agriculture and the remarkable advances we have made in the past 10,000 years. There is a popular saying that bigger is better; however, this section will discuss why that is not always true.

A. The Green Revolution

The origins of agriculture go back more than 10,000 years, but it was not until recently that humans honed their craft to maximize their yield significantly.⁶ Following World War II, America’s newfound wealth paved the way for technological advances including new and improved farm machinery, genetic engineering, and the introduction of chemical fertilizers and pesticides.⁷ This

⁶ RPT. OF THE PEW COMM. ON INDUS. FARM ANIMAL PROD., PUTTING MEAT ON THE TABLE: INDUSTRIAL FARM ANIMAL PRODUCTION IN AMERICA, 1, *available at* <http://www.ncifap.org/bin/e/j/PCIFAPFin.pdf> (last visited Oct. 4, 2011) [hereinafter *Pew Report*].

⁷ *Id.* at 3.

transformation changed the face of farming dramatically.⁸ The “Green Revolution” was born.⁹

The increase in crop yield however, was just the first in a series of changes to the American landscape. In the 18th century, it took nearly five acres of land to feed one person for a year; it now takes just half an acre.¹⁰ The abundance of crops led to a decrease in value of corn and grain.¹¹ Affordable crops landed on the tables of well-fed Americans.¹² For practically the first time in American agricultural history, farmers were able to feed their livestock a surplus of corn and grain.¹³ With the inexpensive new staples in the livestock’s diet, large-scale animal agriculture was possible.¹⁴

B. The Detrimental Effects of IFAP

Unfortunately, remarkable changes often have unforeseen and dangerous consequences. With the Green Revolution paralleling the Industrial Revolution, it became possible to raise animals in higher concentrations than ever.¹⁵ Animal production efficiency made significant gains in the form of of meat, dairy and other animal by-products.¹⁶

Since the 1960’s, “milk production has doubled, meat production has tripled and egg production has increased fourfold. ... [I]n [the] 1950[s], it took 84 days to produce a 5-pound chicken whereas today it takes just 45 days.”¹⁷ Consolidation, efficiency and simplification of animal agriculture allowed for cheaper production costs, resulting in cheaper consumer costs.¹⁸ However, the externalized costs of these operations are hidden away from the discerning eye of the American public.¹⁹

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.* at 1.

¹¹ *Id.* at 3.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.* at 5.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.* at 7.

The main purpose of IFAP is to maximize the output of livestock, while minimizing production costs²⁰ by “standardizing the animals raised to eliminate natural genetic diversity.”²¹ Livestock farmers sped up animal production through genetic manipulation, adding chemical drug additives to feed and by concentrating production in giant confinement barns that crowd animals together in inhumane conditions ripe for disease.²²

Over the past 50 years, IFAP progressed quickly although maintenance and development has remained largely unregulated.²³ A lack of guidance left the public to bear the deleterious effects of IFAP facilities.²⁴ Although IFAPs have immediate benefits, the impact on public health, environment, economy and livestock welfare are now tangible. With the global growth of IFAP, it is imperative we understand the effects of these operations and the implications they have for the population.²⁵

II. PUBLIC HEALTH

Generally, an IFAP facility consists of large numbers of animals raised in a disproportionately sized confinement building.²⁶ Space is so limited that some animals are often unable to stand, while others spend their lives standing for lack of room to rest.²⁷ Due to the large number of animals and the limited space, animal waste management is one of the most significant challenges for IFAP facilities.²⁸ Solid ground industrial barns constantly expose livestock to their own feces accumulating on the floor.²⁹ In facilities

²⁰ *Id.* at 5.

²¹ SIERRA CLUB, CLEAN WATER & FACTORY FARMS: INHUMANE TREATMENT OF FARM ANIMALS, 1 (Feb. 17, 2006), available at http://www.columbia.org/pdf_files/husbandry.pdf [hereinafter CLEAN WATER].

²² *Id.*

²³ *Pew Report*, *supra* note 6, at 11.

²⁴ *Id.* at 19.

²⁵ *Id.* at 9.

²⁶ *Id.* at 11.

²⁷ CLEAN WATER, *supra* note 21.

²⁸ *Pew Report*, *supra* note 6, at 23.

²⁹ Mindy Spiels & Sagar Goyal, *Best Management Practices for Pathogen Control*

with slotted floors, the waste accumulates beneath the pen, exposing livestock to the potentially poisonous fumes of ammonia and hydrogen sulfide emitting from the manure.³⁰

Some facilities then pump waste into open-air lagoons often as big as several football fields, which often succumb to leaks and spills.³¹ At other facilities, workers spray manure onto crops as fertilizer. However, the amount of waste applied often exceeds the ecological capacity of the land to absorb it.³² Inhumane and unsanitary conditions at the facilities, as well as improper storage and disposal of untreated animal waste, have substantial implications for public health.³³ Public health concerns associated with IFAP include heightened risks of pathogens, spread of pathogens through various vectors, antimicrobial resistance and hormone use, and the effects of gas exposure.

A. Pathogens

Factors contributing to the increase of pathogens and *zoonotic*³⁴ diseases are “prolonged worker contact with animals; increased pathogen transmission in a herd or flock; and increased opportunities for generation of antibiotic-resistant bacteria and new strains of pathogens.”³⁵ “Stresses induced by confinement may also increase likelihood of infection and illness in animal populations.”³⁶

Fifty years ago, farmers might have contact with several dozen animals for under an hour a day; today, IFAP facilities expose

in Manure Management Systems, UNIV. MINN. EXTENSION (2013), <http://www.extension.umn.edu/distribution/livestocksystems/DI8544.html> (last visited Mar. 16, 2013) [hereinafter *Waste Management*].

³⁰ CLEAN WATER, *supra* note 21.

³¹ *Facts about Pollution from Livestock Farms*, NATURAL RESOURCES DEFENSE COUNCIL, <http://www.nrdc.org/water/pollution/ffarms.asp> (last visited Oct. 4, 2011) [hereinafter *Livestock Pollution*].

³² *Pew Report*, *supra* note 6, at 23.

³³ *Id.* at 11.

³⁴ *Id.* at 13 (“A disease caused by a microbial agent that normally exists in animals but that can infect humans.”).

³⁵ *Id.* at 11, 13.

³⁶ *Id.* at 13.

workers to thousands of animals for a minimum of eight hours a day.³⁷ In addition, a farmer's exposure to sick or dying animals was once a rarity; today it is routine for farmers to handle sick and dying animals.³⁸ Increased exposure to healthy and sick animals alike increases the chances of humans contracting and spreading *zoonotic* illnesses.³⁹

Approximately 64 percent of the 1,400 documented human pathogens are *zoonotic*.⁴⁰ Housing several animals in over confined facilities may cause novel strains of *zoonotic* pathogens to become more virulent as humans and animals continually share and recycle several strains of infections.⁴¹ "Sick or stressed animals are more likely to shed pathogens . . . than healthy, comfortable animals."⁴² Even seemingly healthy animals may be *asymptomatic*⁴³ *carriers*⁴⁴ of microbial agents.⁴⁵ *Asymptomatic* animals can transmit the pathogens to workers, who in turn transmit the pathogens to members of the community.⁴⁶

In addition, concentrating livestock in overcrowded and unsanitary confinement barns where sick and healthy livestock must co-exist in their own feces provides conditions ideal for disease.⁴⁷ "Cattle . . . packed into feedlots get little exercise and live amid pools of manure."⁴⁸ Recirculation of manure has allowed feedlots to become efficient mechanisms for pathogen replication.⁴⁹

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² Spiels & Goyal, *supra* note 29.

⁴³ Max Teplitski, *E. Coli and Salmonella on Animal Farms: Sources, Survival and Management*, 1 (Mar. 2009) available at <http://edis.ifas.ufl.edu/pdf/SS/SS45800.pdf> ("Infected animals . . . [that] are not always visibly sick.").

⁴⁴ Spiels & Goyal, *supra* note 29 (Animals that may appear healthy, but "have previously been exposed to disease-causing microorganisms and can shed pathogens in their manure when they feel stressed or uncomfortable.").

⁴⁵ *Pew Report*, *supra* note 6, at 13.

⁴⁶ *Id.*

⁴⁷ CLEAN WATER, *supra* note 21.

⁴⁸ ERIC SCHLOSSER, FAST FOOD NATION 202 (Harper Perennial 2005).

⁴⁹ *Id.*

Pathogens such as *E. coli* can survive in water troughs and manure for up to 90 days.⁵⁰ Such unnatural and unsanitary conditions have made livestock prone to illness and disease.⁵¹ *Downers*⁵² are still slaughtered, nonetheless, for use as human food⁵³ and animal feed.⁵⁴

In addition, cattle are also fed the remains of dogs and cats from animal shelters, saw dust and poultry litter which may contain dangerous bacteria, parasites, antibiotic residues and heavy metals.⁵⁵ The feeding of rendered cattle parts to cattle, or ruminant-to-ruminant feeding, is what the FDA believes led to the outbreak of *bovine spongiform encephalopathy* (BSE), or “mad cow disease.”⁵⁶ Scientists later confirmed the inclusion of infected brain and brain stem parts caused the outbreak.^{57,58} Nevertheless, the FDA still approves of dead pigs, horses, chicken and cattle blood to be rendered into cattle feed.⁵⁹ Dead cattle may also be rendered in poultry feed.⁶⁰

Most of the pathogens originate from the poor handling of animal waste.⁶¹ Farm animals produce manure at a volume of 100 times that of human waste annually.⁶² Animal waste can be 10 to 100 times more concentrated with bacteria than human waste with more than forty diseases transmissible to humans.⁶³ Yet unlike animal

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² TADLOCK COWAN, CONG. RESEARCH SERV., RS21978, *Humane Treatment of Farm Animals: Overview and Issues* 3 (2010) (“*Downers*” refer to nonambulatory cattle.).

⁵³ *Id.* at 4.

⁵⁴ SCHLOSSER, *supra* note 48, at 202.

⁵⁵ *Id.* at 202–03.

⁵⁶ *Id.* at 202.

⁵⁷ *Pew Report*, *supra* note 6, at 15.

⁵⁸ JOEL SALATIN, DECLARE YOUR INDEPENDENCE, in *FOOD, INC.* 183, 199 (Karl Weber, 2009) (Because cattle are herbivores, they should only eat grass. “On factory farm feedlots—where animals eat only grains, animal by-products, and other unsavory substances—they often get sick because their stomach can’t properly digest the food.”).

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.* at 13.

⁶² David Kirby, *Animal Factory-Facts*, (last visited Oct. 4, 2011) http://animalfactorybook.com/?page_id=131 [hereinafter Kirby, *Factory Facts*].

⁶³ *Livestock Pollution*, *supra* note 31.

waste, human sewage is treated to kill pathogens.⁶⁴ Untreated raw manure is either stored in large lagoons, where most bacteria can survive and replicate⁶⁵ or sprayed onto fields as fertilizer.⁶⁶ Both options often lead to animal waste runoff, causing contamination of air, water and soil.⁶⁷

Most pathogens are transmitted through runoff or leaching from animal waste field applications or storage lagoons.⁶⁸ Animal waste runoff often contaminates surface water⁶⁹ and groundwater by extending through the aquifers, affecting drinking water in large regions.⁷⁰ Transmission of pathogens caused by water contamination include, but are not limited to, *campylobacter*, *cryptosporidium*, *E. coli*, *giardia*, *hepatitis E*, *leptospirosis*, *listeria*, *pfisteria*, *salmonella* and *yersinia*.⁷¹ Most waterborne pathogens are fatal if left untreated.

B. Animals and Workers as Vectors

Workers and wildlife can also transmit pathogens to the population. IFAP hog facilities contain tens of thousands of pigs at any given time and thousands of workers to tend to hogs and maintain buildings.⁷² Such crowded, unsanitary conditions in pathogen-filled confinement buildings prove to be excellent breeding grounds for novel strains of pathogens, easily transmissible from hog to human and vice versa.⁷³

Hogs are nature's "mixing bowl" of inter-species infections due to their efficient contracting, mutating and mixing different

⁶⁴ Kirby, *Factory Facts*, *supra* note 62.

⁶⁵ Spiels & Goyal, *supra* note 29.

⁶⁶ *Pew Report*, *supra* note 6, at 11.

⁶⁷ *Id.*

⁶⁸ *Pollutants and Health Risks Associated with Concentrated Animal Feed Operations*, (last visited Oct. 7, 2011) www.pennfuture.org/UserFiles/hogfarmtoxicchart.pdf [hereinafter *Health Risk Chart*].

⁶⁹ *Pew Report*, *supra* note 6, at 23.

⁷⁰ *Id.* at 11.

⁷¹ *Health Risk Chart*, *supra* note 68.

⁷² David Kirby, *Swine Flu Outbreak—Nature Biting Back at Industrial Animal Production?* (last visited Apr. 25, 2009) http://www.huffingtonpost.com/david-kirby/swine-flu-outbreak----nat_b_191408.html [hereinafter Kirby, *Swine Flu Outbreak*].

⁷³ *Id.*

strains of viruses, creating new pathogens easily transmissible to animals and humans alike.⁷⁴ One particular strain discovered in 2009 contained “genetic components of human flu virus, avian flu virus and . . . two types of swine flu virus: American and Eurasian.”⁷⁵ Unlike previous strains, the novel strain transmitted easily through casual human contact.⁷⁶

[T]he continual cycling of viruses and other animal pathogens in large herds or flocks increases opportunities for the generation of novel viruses through mutation or recombinant events that could result in more efficient human-to-human transmission. In addition . . . agricultural workers serve as a bridging population between their communities and the animals in [IFAP facilities].⁷⁷

“Such novel viruses not only put the workers and animals at risk of infection but also may increase the risk of disease transmission to the communities where the workers live.”⁷⁸ Scientists have estimated that an avian flu outbreak could take as little as 36 hours to travel from the coast of Maryland to the Rocky Mountains, thanks to modern-day transportation.⁷⁹

Even common pathogen strains that affect workers and their communities are becoming drug-resistant due to the non-therapeutic use of antibiotics and cycling of pathogens.⁸⁰ MRSA (*methicillin-resistant staphylococcus aureus*), drug-resistant *E. coli* and *salmonella* are far more likely to infect hog workers than the general population.⁸¹ Scientists believe workers in IFAP facilities have an increased risk of contracting and spreading *zoonotic* diseases than workers at smaller operations with lower density animal populations

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Pew Report*, *supra* note 6, at 13.

⁷⁸ *Id.*

⁷⁹ Kirby, *Factory Facts*, *supra* note 62.

⁸⁰ *Id.*

⁸¹ *Id.*

and outdoor pens or ranges for the animals.⁸² MRSA affects approximately 1 in 5 farmers and 3% of pork samples tested by The National Pork Board.⁸³ In fact, families bringing store-bought pork home twice a week brought MRSA home three times a year.⁸⁴

Although monitoring systems protect the public from the spread of pathogens, many of the monitoring systems for IFAP facilities are inadequate.⁸⁵ Because the government considers IFAP facilities part of agricultural activities, they are often exempt from public health programs such as “monitoring, disease reporting, and surveillance programs.”⁸⁶ Therefore, it is difficult and often impossible to trace the origins of harmful diseases that permeate the facilities’ environments and reach surrounding communities.⁸⁷

The common practice of hiring migrant and visiting workers who often are undocumented also contributes to the spread of diseases.⁸⁸ Migrant and visiting workers present a substantial challenge to the development and enforcement of monitoring programs.⁸⁹ Their status as illegal aliens makes them less likely to participate in health monitoring programs.⁹⁰

However, workers are not the only bridging population between IFAP facilities and the general population. IFAP facilities are not “hermetically sealed environments, and pathogens can enter and exit . . . in a number of ways other than via . . . workers.”⁹¹ An estimated 10% of animals such as birds, flies, rodents, feral animals and even pets are *carriers* of pathogens originating from IFAP facilities.⁹²

Fecal samples of flies and birds from areas surrounding IFAP facilities have tested positive for *E. coli*⁹³ and *salmonella*.⁹⁴

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Pew Report, supra* note 6, at 11.

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ Kirby, *Swine Flu Outbreak, supra* note 73.

⁹² Teplitski, *supra* note 43.

⁹³ Spiehs & Goyal, *supra* note 29.

⁹⁴ Teplitski, *supra* note 43.

Infected flies shed up to ten million bacteria per dropping, enough to cause disease in a healthy, adult male.⁹⁵ *Asymptomatic* farm animals can shed billions of bacteria per ounce of waste.⁹⁶ *Salmonella* can survive in rodent feces for five months⁹⁷ and in untreated farm waste for two years, while *E. coli* strains have survived several months in untreated waste.⁹⁸ The lingering life span of pathogens in such unsanitary conditions allows plenty of time and opportunity for animals to contract and recycle diseases to the population.

Some IFAP facilities attempt to improve the unsanitary conditions by washing waste off the facilities' ground.⁹⁹ Unfortunately, the workers recover and recycle water from waste lagoons, perpetuating and intensifying the problem.¹⁰⁰ About 15% of viruses and 55% of bacteria survive in waste lagoons.¹⁰¹ The reintroduction of contaminated waste into animal housing may increase the risk of re-infection by combining and mutating strains, creating new types of viral infections.¹⁰²

As a vector, the bird is the greatest threat.¹⁰³ Many wonder how American hogs added the Eurasian avian flu strain to their pathogen cocktail; hogs may not fly, but birds do.

Every year, more than two million wild fowl fly up to 1,500 miles or more eastward across the Arctic Ocean from Asia to North America. There, the migrating Asian birds intersect with North American species along the great north-south "flyways" of the Americas. There is a sharing of viruses between bird species from both continents.¹⁰⁴

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ Spiels & Goyal, *supra* note 29.

⁹⁸ Teplitski, *supra* note 43.

⁹⁹ Kirby, *Swine Flu Outbreak*, *supra* note 73.

¹⁰⁰ *Id.*

¹⁰¹ Kirby, *Factory Facts*, *supra* note 62.

¹⁰² *Pew Report*, *supra* note 6, at 13.

¹⁰³ Kirby, *Swine Flu Outbreak*, *supra* note 73.

¹⁰⁴ *Id.*

Migrating birds contract strains of swine flu, which combine with avian flu in the infected bird. The re-infected bird then transmits this novel strain to other birds that transmit it to local hogs, creating a “viral patchwork.”¹⁰⁵ This frighteningly efficient intercontinental transmission of inter-species pathogens makes the possibility and potential for a pandemic outbreak all too real.¹⁰⁶

C. Antimicrobial Resistance and Hormone Use

Several pathogens circulating in IFAP facilities make livestock susceptible to disease.¹⁰⁷ Over the past fifty years, farmers learned to add antibiotics to the animals’ feed as a prophylactic.¹⁰⁸ Farmers realized the practice of adding low levels of antibiotics and growth hormones to feed also stimulated growth, and improved production and performance.¹⁰⁹ “This ongoing and often low-level dosing for growth and prophylaxis inevitably results in the development of resistance in bacteria in or near livestock, and also heightens fears of new resistant strains ‘jumping’ between species.”¹¹⁰

Farmers have unrestricted access to antibiotics.¹¹¹ This lack of supervision and regulation of antibiotic use increased resistant organisms and risks of “antimicrobial-resistant infections.”¹¹² While antibiotics are available without a prescription online, doctors use many identical antibiotics to treat life-threatening illnesses in humans. Farmers are using these same antibiotics non-therapeutically to promote growth¹¹³ and prevent disease in crowded conditions.¹¹⁴ “Seventy percent of all antimicrobials used in the United States are fed to livestock.”¹¹⁵ “This accounts for twenty-five million pounds of

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Pew Report*, *supra* note 6, at 15.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.*; *see also* World Health Organization, *Report on Infectious Diseases* (2006).

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ *Health Risk Chart*, *supra* note 68.

¹¹⁵ Food and Water Watch, *Another Take: Food Safety Consequences of Factory*

antibiotics annually, more than eight times the amount used to treat disease in humans.”¹¹⁶ Liberal use of antimicrobials, particularly in low doses,¹¹⁷ “exerts a selective pressure, killing the susceptible bacteria and allowing the resistant ones to survive and reproduce new bacteria with antibiotic resistance.”¹¹⁸

Liberal antibiotic use in livestock creates a problem because “you are what you eat . . . and what they ate;” by consuming the antibiotic-laced meat, we are essentially building resistance to these medicines ourselves.¹¹⁹ Scientists have been particularly concerned about IFAP facilities using antibiotics similar to those used to treat humans¹²⁰ because the resistant strains can be “transferred to related and unrelated bacteria.”¹²¹ Bacterial transference increases the risk that antibiotics will be ineffective in treating life-threatening human illnesses.¹²²

In the United States, the American Medical Association, American Public Health Association, and the National Institutes of Health have all acknowledged the potential danger and risks involved with antibiotic-laced animal feed.¹²³ Several European countries have responded by banning the practice of adding antibiotics to animal feed.¹²⁴ These countries have since seen a decrease in antimicrobial resistance.¹²⁵

The use of hormones has also been a problem for IFAP facilities. Production and slaughter weight equal profit for cattle

Farms, in *Food, Inc.* 19, 20 (Karl Weber, Participant Media 2009) [hereinafter *Food Inc.*].

¹¹⁶ *Id.*

¹¹⁷ *Pew Report*, *supra* note 6, at 15.

¹¹⁸ A Rpt. of the Pew Commn. on Indus. Farm Animal Prod., *Antimicrobial Resistance and Human Health*, 6, http://www.ncifap.org/bin/a/r/212-2_AntbioRprt_FIN_web%206.7.10%202.pdf (last visited Oct. 7, 2011).

¹¹⁹ *Food Inc.*, *supra* note 116, at 20.

¹²⁰ *Health Risk Chart*, *supra* note 68.

¹²¹ *Pew Report*, *supra* note 6, at 15.

¹²² *Id.*

¹²³ *Food Inc.*, *supra* note 116, at 20.

¹²⁴ *Id.*

¹²⁵ *Id.*

farmers;¹²⁶ therefore, with the approval of the FDA and USDA, farmers also use hormones in cattle to stimulate growth and milk production.¹²⁷ Farmers inject an estimated two-thirds of all cattle with approximately six different hormones.¹²⁸ While the practice of injecting hormones increased growth and milk production, it also led to an increase in bacterial udder infections in cows by 25%; this in turn led to additional use of antibiotics to treat infected cattle.¹²⁹

A 1999 report detected hormonal residue in cattle that links human consumption of cattle with “reproductive issues and breast, prostate, or colon cancer.”¹³⁰ Following the report’s findings, the European Union, along with Japan, Canada and Australia have banned import and production of hormonally treated meat, including the import of US beef.¹³¹ The United States is now the only developed nation to allow their citizens to consume the by-products of hormonally treated cattle.¹³²

D. Effects of Gas Exposure

Unfortunately, pathogens are not the only public health risk. “Decomposing manure produces at least 160 different gases.”¹³³ The large amounts of animal waste produced emit toxic gases in high concentrations, such as nitrogen, phosphorous, carbon dioxide and ammonia.¹³⁴ At high levels, these gases often cause health problems for workers and those living close to the facilities.¹³⁵ Due to the inability to contain gases, they can also affect populations hundreds of miles away from the facility.¹³⁶

¹²⁶ About, *Animal Rights*, <http://animalrights.about.com/od/animalsusedforfood/f/AntibioticsrGBH.htm> (last visited Oct. 4, 2011).

¹²⁷ *Food Inc.*, *supra* note 116, at 22.

¹²⁸ *Id.* at 23.

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² *Id.*

¹³³ *Pew Report*, *supra* note 6, at 16.

¹³⁴ *Health Risk Chart*, *supra* note 68.

¹³⁵ *Pew Report*, *supra* note 6, at 11.

¹³⁶ *Health Risk Chart*, *supra* note 68.

Health risks for humans include, but are not limited to, eye irritation, particles in the lungs, respiratory problems, headaches, spontaneous abortions, seizures, brain damage, coma, asphyxiation and even death.¹³⁷ Recent studies have also shown hydrogen sulfide to affect the nervous system.¹³⁸ Residents living near IFAP facilities have an increased rate of depression, negative mood states and other neuropsychiatric abnormalities affecting “balance, hearing memory, mood, intellectual function and visual field performance.”¹³⁹ The elderly, infants and individuals with chronic or acute pulmonary or heart disorders¹⁴⁰ are particularly susceptible and many of these health problems are irreversible.¹⁴¹

III. ENVIRONMENT

“Increased animal production also implies an increase in the amount of nutrients and chemicals released to the environment.”¹⁴² Traditional animal husbandry practices relied on the ecosystem to balance and neutralize by-products produced by raising livestock. However, IFAP facilities have expanded beyond rural areas, affecting well-populated communities.¹⁴³ In addition, the sudden increase in animal waste coupled with poor regulation of its disposal overwhelms the ecosystem’s natural cleansing process.¹⁴⁴ The staggering increase in animal production results in the need for greater amounts of resources to sustain the practice, exhausting and eroding the environment.¹⁴⁵ Sustaining an IFAP facility requires a

¹³⁷ *Id.*

¹³⁸ *Pew Report*, *supra* note 6, at 17.

¹³⁹ *Id.* at 18–19.

¹⁴⁰ *Id.* at 17.

¹⁴¹ *Health Risk Chart*, *supra* note 68.

¹⁴² A Rpt. of the Pew Commn. on Indus. Farm Animal Prod., *Environmental Impact of Industrial Farm Animal Production*, 8, http://www.ncifap.org/bin/s/y/212-4_EnvImpact_tc_Final.pdf (last visited Oct. 26, 2011) [hereinafter *Environmental Impact*].

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

“disproportionately large input of fossil fuel, industrial fertilizers, and other synthetic chemicals, as well as substantial amounts of water, often withdrawn at unsustainable rates from scarce freshwater resources.”¹⁴⁶

Although the consequences of these practices often cycle back to the harmful effects on public health, they also significantly affect the environment. “The three root causes of environmental degradation from IFAP [are] the large volumes of animal waste produced, lack of appropriate management and disposal of these materials, and unsustainable water usage and soil degradation associated with feed production.”¹⁴⁷ Consequences of IFAP include contamination of ground water, surface water, soil and air.¹⁴⁸ This section discusses the three main areas of environmental impact: water, air and soil.

A. Water

Water contamination occurs through intentional discharge of animal waste, infiltration of contaminants into groundwater and airborne contaminants deposited into surface waters.¹⁴⁹ The repeated application of untreated waste onto saturated areas causes much of the contamination.¹⁵⁰ Due to the oversaturation of nutrients and contaminants, the land loses its ability to absorb the waste resulting in leaching and surface runoff.¹⁵¹

The runoff contains undegraded antibiotics and excess nutrients, which have multiple implications on the water supply.¹⁵² The practice of non-therapeutic antibiotic use led to the development of several antimicrobial strains of diseases.¹⁵³ These strains often

¹⁴⁶ *Id.*

¹⁴⁷ *Id.* at 5.

¹⁴⁸ *Id.* at 1.

¹⁴⁹ *Id.* at 13.

¹⁵⁰ *Id.* at 14.

¹⁵¹ *Id.* at 14, 16.

¹⁵² *Id.* at 16, 24.

¹⁵³ *Pew Report, supra* note 6, at 15.

survive and thrive in animal waste.^{154,155} Leaching into surface and groundwater supplies often expose humans to animal waste.¹⁵⁶ Antimicrobial strains in water sources enable the transfer of antibiotic-resistant bacteria and illnesses from animals to humans.¹⁵⁷

Nutrients present in water also disturb the balance of the ecosystem. Nitrogen and phosphorus are elements of control in soil and aquatic environments;¹⁵⁸ therefore, sudden influxes in the water supply can devastate the ecosystem.¹⁵⁹ *Eutrophication*¹⁶⁰ spawn algal blooms in freshwater, depleting water of oxygen during photosynthetic activity.¹⁶¹ The lack of oxygen results in the demise of aquatic life, creating dead zones and massive fish kills.¹⁶²

IFAP operations also produce issues with water sustainability. CAFO sites in arid or semi-arid regions have led to the depletion of aquifers and reduction in availability of riparian waters downstream.¹⁶³ “Eighty-seven percent of freshwater withdrawn in the United States from surface and groundwater resources is used in agriculture.”¹⁶⁴ As a result, there have been dramatic declines in groundwater tables regionally.¹⁶⁵

B. Air

Greenhouse gas emissions from facilities have also become a significant environmental problem.¹⁶⁶ Gas emissions from IFAP

¹⁵⁴ *Environmental Impact*, *supra* note 143, at 25.

¹⁵⁵ Spiels & Goyal, *supra* note 29 (Pathogens from livestock, including *E. coli* and *salmonella*, can survive and multiply in manure with some bacteria surviving as long as nine months.).

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

¹⁵⁸ *Id.* at 16.

¹⁵⁹ *Id.*

¹⁶⁰ *Pew Report*, *supra* note 6, at 25 (“*Eutrophication* is an excessive richness of nutrients in a body of water . . . [causing] a dense growth of plant life and the death of animal life due to lack of oxygen.”).

¹⁶¹ *Id.* at 19.

¹⁶² *Id.* at 16.

¹⁶³ *Id.* at 21.

¹⁶⁴ *Id.*

¹⁶⁵ *Id.* at 22.

¹⁶⁶ *Id.*

facilities constitute 18% of global greenhouse gases¹⁶⁷ and 6.8% of gas emissions in the U.S.¹⁶⁸ Livestock produce methane, carbon dioxide and nitrous oxide during the digestion process, which continues to increase during the degradation of waste.¹⁶⁹

Spraying manure on fields results in “environmental exposure to gases, organic dusts, bacteria, fungi, endotoxins, and residues of veterinary antibiotics.”¹⁷⁰ Compounds such as “particulate matter, ammonia, hydrogen sulfide, nitrous oxide, methane, and [other] volatile organic compounds” also contaminate the atmosphere causing health problems locally and regionally.¹⁷¹ Common health problems include “mucous membrane illnesses, bronchitis, asthma, asthma-like syndrome, and chronic obstructive pulmonary disease”¹⁷²

C. Soil

Disposal of animal waste and production of feed crops also stress the soil environment.¹⁷³ Main concerns are the harboring of bacteria and pathogens, and the subsequent runoff and leaching resulting from the overuse of contaminated soil.¹⁷⁴ “[C]yclic application of manure on the same location may result in the continuous exposure of soil microbes to antibiotic residues, thereby fostering the potential development of drug-resistant microbial populations.”¹⁷⁵ “[R]esidues can persist in the soil and may be transported to surface and groundwater.”¹⁷⁶ This results in contamination of ground and surface waters¹⁷⁷ as detailed above.

¹⁶⁷ *Id.*

¹⁶⁸ *Id.* at 29.

¹⁶⁹ *Id.* at 22.

¹⁷⁰ *Id.* at 27.

¹⁷¹ *Id.*

¹⁷² *Id.*

¹⁷³ *Id.* at 13.

¹⁷⁴ *Id.*

¹⁷⁵ *Id.* at 24.

¹⁷⁶ *Id.* at 25.

¹⁷⁷ *Id.* at 13.

IV. AGRICULTURAL CORPORATIONS FIGHT BACK: THE SOUND OF SILENCE

As the agricultural industry gained momentum, so did the growing trend of regulations and statutes to protect the lucrative industry.¹⁷⁸ The movement began in 1989, with an apple on 60 Minutes; today, it has grown into a multitude of laws adopted by both individual states and the nation.¹⁷⁹ This section discusses the birth and progression of food disparagement laws, also known as “veggie libel” laws.

A. In the Beginning, There Was an Apple

In 1989, 60 Minutes aired an episode highlighting the warnings of the Natural Resources Defense Council about the hazards of apples sprayed with Alar and other pesticides.¹⁸⁰ Following the broadcast, apple sales plummeted and Uniroyal, the makers of Alar, removed the product from the market.¹⁸¹ Apple growers immediately retaliated by suing 60 Minutes unsuccessfully under traditional common law of defamation and disparagement.¹⁸² The court concluded the growers could not meet the high standard of proof required for a claim of disparagement, including demonstrating the show’s accusations were false.¹⁸³ Although the growers lost their case, it planted the seeds for the future of food disparagement laws.¹⁸⁴

¹⁷⁸ Ronald K. L. Collins, *Veggie Libel: Agribusiness Seeks to Stifle Speech*, http://www.thirdworldtraveler.com/Environment/Veggie_Libel.html (May 1998).

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ *Id.*

¹⁸⁴ *Id.*

Today, over a dozen states have adopted food disparagement laws¹⁸⁵ with several other states pending adoption of similar laws.¹⁸⁶ Although food disparagement laws closely parallel traditional disparagement laws, there are certain differences carved out for the “special law of defamation for the food industry.”¹⁸⁷ Many states “establish a lower standard for civil liability, allow for punitive damages and attorneys fees for plaintiffs alone, [lending] themselves to abusive litigation practices.”¹⁸⁸ In addition, “food critics must demonstrate that their claims are grounded in reliable scientific facts and data.”¹⁸⁹

As food disparagement laws were taking shape throughout the United States, individual states differed on the elements and standards required to prove a *prima facie* case.¹⁹⁰ In general, because traditional tort law does not cover statements defaming objects, the statement must be “of and concerning” a particular person or corporation.¹⁹¹ In addition, the plaintiff must show particularized harm and damages to their business resulting from the statement for special damages.¹⁹²

¹⁸⁵ ALA. CODE § 6-5-620 to 625 (Supp. 1996); ARIZ. REV. STAT. ANN. § 3-113 (West Supp. 1995); COLO. REV. STAT. ANN. § 35-31-101 (West 1997); FLA. STAT. ANN. § 965.065 (West Supp. 1996); GA. CODE ANN. § 2-16-1 to 2-16-4 (Supp. 1996); IDAHO CODE § 6-2001 to 2002 (Supp. 1996); LA. REV. STAT. ANN. §§ 4501–4504 (West Supp. 1996); MISS. CODE ANN. § 69-1-251 to 257 (Supp. 1994); N.D. CODE § 32-44 (West 1997); OHIO REV. CODE ANN. § 2307.81 (Banks–Baldwin Supp. 1996); OKLA. STAT. ANN. title 2 §§ 3010–3012 (West Supp. 1996); S.D. CODIFIED LAWS § 20-10A-1 to 4 (Michie 1995); TEX. CIV. PRAC. & REM. CODE ANN. §§ 96.001-004 (West Supp. 1996) (With the exception of Colorado, all the statutes are civil. In 1994, Colorado amended its statute to criminalize food disparagement.).

¹⁸⁶ Collins, *supra* note 179.

¹⁸⁷ *Id.*

¹⁸⁸ *Id.*

¹⁸⁹ *Id.*

¹⁹⁰ See Megan W. Semple, Student Author, *Veggie Libel Meets Free Speech: A Constitutional Analysis of Agricultural Disparagement Law*, 15 VA. ENVTL. L.J. 403, 419 (1996).

¹⁹¹ Collins, *supra* note 179.

¹⁹² Semple, *supra* note 191, at 418–19.

However, the fault requirement, more commonly known as intent or malice, varied among the states with some adopting the Second Restatement of Torts, requiring the defendant “recognized or should have recognized” the statement or publication would cause harm or intended such harm.¹⁹³ Other courts required proof that the plaintiff made the statement with malicious intent, where still other courts lowered the standard, allowing fault where the plaintiff showed the defendant intended to interfere with plaintiff’s economic interests.¹⁹⁴ It was not until *Texas Beef Group v. Winfrey* that a court would provide definitive guidelines on food disparagement laws and bring “veggie libel” laws to the attention of Americans.¹⁹⁵

B. Oprah’s Dilemma

As early as 1986, scientists were aware of BSE, otherwise known as “Mad Cow Disease,” in British cattle.¹⁹⁶ BSE is a “deadly, degenerative brain condition in cattle.”¹⁹⁷ However, in 1996 scientists discovered a variant of BSE transmissible to humans.¹⁹⁸ That year, the British Ministry of Health announced that scientists had linked BSE in humans with consumption of BSE infected cattle.¹⁹⁹ Panic over the consumption of infected cattle extended to the United States where media outlets ran several stories on the topic.²⁰⁰

In the midst of the media frenzy, employees of The Oprah Winfrey Show began assembling an episode based on the hidden hazards in food.²⁰¹ Segments included one on “Mad Cow Disease” and the potential of BSE penetrating the borders of Britain, infiltrating other countries.²⁰² During research, an employee learned that many reputable sources, including the Center for Disease Control and the

¹⁹³ *Id.* at 419.

¹⁹⁴ *Id.* at 420.

¹⁹⁵ 201 F.3d 680, 687 (5th Cir. 2000).

¹⁹⁶ *Id.* at 682.

¹⁹⁷ *Id.*

¹⁹⁸ *Id.*

¹⁹⁹ *Id.*

²⁰⁰ *Id.*

²⁰¹ *Id.*

²⁰² *Id.* at 683.

U.S. Department of Agriculture, felt “Mad Cow Disease” could not occur in the United States.²⁰³

However, one former cattle rancher, Howard Lyman, did believe BSE could create an epidemic worse than AIDS in the U.S.²⁰⁴ Employees screened and interviewed several other highly qualified experts whose views conflicted with Lyman’s views.²⁰⁵ Upon final editing, Lyman’s views and comments composed the majority of the segment, while the other experts’ opinions received minimal airtime.²⁰⁶ Lyman described the practice of feeding “rendered” cattle and other animals to cattle on American farms, to which Winfrey responded she would never eat another burger again.²⁰⁷

Following the broadcast, the price and volume of cattle sales dropped significantly, affecting the stock and cash market.²⁰⁸ Winfrey reacted by inviting an expert and a cattle rancher back on the panel to refute the claims made on the previous episode regarding BSE.²⁰⁹ Howard Lyman was not included in the second show.²¹⁰ In spite of the gesture, Paul Engler, Chairman of the Texas Cattle Feeders Association, and Cactus Feeders, Inc. filed suit against Winfrey and Lyman.²¹¹

Shortly after the 1989 Alar incident, Texas passed the False Disparagement of Perishable Food Products Act but this litigation was one of the first representations of the Act.²¹² This forced the federal district court to wrangle with several issues, including whether perishable food products included cattle and other farm animals.²¹³ On appeal, however, that particular issue was never resolved.²¹⁴ Instead, the critical issue became whether the defendants “knowingly

²⁰³ *Id.*

²⁰⁴ *Id.*

²⁰⁵ *Id.*

²⁰⁶ *Id.* at 683–84.

²⁰⁷ Collins, *supra* note 179.

²⁰⁸ *Winfrey*, 201 F.3d at 684.

²⁰⁹ *Id.*

²¹⁰ *Id.*

²¹¹ *Id.*

²¹² *Id.* at 687.

²¹³ *Id.*

²¹⁴ *Id.*

disseminated false information”²¹⁵ This meant that unlike traditional libel law,²¹⁶ the defendants had the burden to provide the trier of fact with sufficient information to determine “whether the information was based on reasonable and reliable scientific inquiry, facts, or data.”²¹⁷ After defendants successfully met their burden, it shifted to the plaintiffs to prove the “defendants knowingly disseminated false information.”²¹⁸ As a safeguard for First Amendment issues, the court required “knowledge that the information is false,” the highest standard available.²¹⁹ The plaintiffs challenged two of Lyman’s statements made during the show as false.²²⁰

First, the cattlemen challenged Lyman’s assertion that the effects of “‘Mad Cow Disease’ could make AIDS look like the common cold.”²²¹ Next, they challenged Lyman’s accusation of the United States “treating BSE as a public relations issue . . . and failing to take any ‘substantial’ measures to prevent a BSE outbreak in this country.”²²² Lyman’s second statement relied on the continued practice of ruminant-to-ruminant feeding in the United States, which caused the BSE outbreak in Britain.²²³

The court found Lyman’s first statement comparing the effects of “Mad Cow Disease” to AIDS looking like the common cold, although extreme, was not falsely disseminated information.²²⁴ The court noted “exaggeration does not equal defamation.”²²⁵ In the second statement, Lyman asserted the United States failed to take “substantial” measures to prevent a BSE outbreak, and the court found factual premise supporting the opinion.²²⁶ At the time of the broadcast, U.S. cattle ranchers still legally practiced ruminant-to-

²¹⁵ *Id.* at 688.

²¹⁶ Semple, *supra* note 191, at 417.

²¹⁷ *Winfrey*, 201 F.3d at 687.

²¹⁸ *Id.* at 688.

²¹⁹ *Id.*

²²⁰ *Id.*

²²¹ *Id.*

²²² *Id.*

²²³ *Id.*

²²⁴ *Id.*

²²⁵ *Id.*

²²⁶ *Id.*

ruminant feeding; it was not until months after the show aired that the FDA imposed a ban on this practice.²²⁷ The court noted, “Lyman’s opinions, though strongly stated, were based on truthful, established fact, and are not actionable under the First Amendment.”²²⁸ Furthermore, “[d]efamation law should not be used as a threat [to] force individuals to muzzle their truthful, reasonable opinions and beliefs.”²²⁹

C. The Aftermath

The *Buckeye Egg Farm* case followed quickly on the heels of the *Winfrey* case.²³⁰ Ohio PIRG and Amy Simpson charged Buckeye Egg with redating and reselling their eggs to consumers.²³¹ Simpson stated, “We have no idea how many, if any, consumers have been made ill by consuming these eggs.”²³² Offended by the statement, Buckeye sued Ohio PIRG and Simpson for compensatory and punitive damages, court costs and attorneys’ fees.²³³ This caused an outrage among various supporters of free speech.²³⁴ Consumer advocate Ralph Nader stated, “The realistic objective of the frivolous ‘veggie-libel’ statutes and lawsuits is not money. . . . It is to send a chilling message to millions of people that they better keep their opinions to themselves.”²³⁵

Although Buckeye Egg dropped their lawsuit a year later, many still feared the national impact of these laws.²³⁶ These laws have particularly chilled individuals and media outlets without the finances to defend themselves against possible litigation.²³⁷

²²⁷ *Id.*

²²⁸ *Id.*

²²⁹ *Id.*

²³⁰ Coalition for Free Speech, *FoodSpeak: Developments*, <http://www.cspinet.org/foodspeak/new/new.htm> (last updated Apr. 16, 1999).

²³¹ *Id.* (Simpson’s claim turned out to be true.); *infra* note 276 (for further discussion of incidents leading up to the lawsuit).

²³² *Id.*

²³³ *Id.*

²³⁴ *Id.*

²³⁵ Collins, *supra* note 179.

²³⁶ *Id.*

²³⁷ *Id.*

Consumer protection is very much at the mercy of the large agricultural corporations.²³⁸ Furthermore, groups and individuals utilizing the internet to post their statements may be subject to “runaway liability,” potentially allowing them to be sued by affected corporations from every state with food disparagement laws.²³⁹ “Runaway liability” may also subject authors and book publishers in the national market to nationwide litigation.²⁴⁰

The effects of food disparagement laws have been devastating. Speaking out about food safety “may result in a long and expensive lawsuit, a huge damages award or criminal sanctions. Even if the speaker prevails in court, he or she must still bear the litigation costs.”²⁴¹ “The mere threat of litigation could silence many would be critics” resulting in less consumer protection.²⁴² Although agricultural corporations have yet to prevail in court, the chilling effect on free speech continues.²⁴³ An eventual victory may extend the laws to cover other consumer topics, such as auto safety.²⁴⁴

The ultimate effect of food disparagement laws is “far less public talk about food and perhaps other consumer products by far fewer people.”²⁴⁵ Although courts have yet to resolve whether food disparagement laws violate the First Amendment, Ira Glasser, the Executive Director of the ACLU, stated the one certain and conclusive effect of these laws: “Today, [food disparagement] laws are used almost exclusively by the powerful to silence their critics.”²⁴⁶ Indeed, eight of the thirteen statutes stated the purpose of these laws is to protect an “important and significant portion of the state’s economy.”²⁴⁷ The language in these statutes indicate free speech and public safety have taken a back seat to corporate greed.

²³⁸ *Id.*

²³⁹ *Id.*

²⁴⁰ *Id.*

²⁴¹ *Id.*

²⁴² *Id.*

²⁴³ *Id.*

²⁴⁴ *Id.*

²⁴⁵ *Id.*

²⁴⁶ *Id.*

²⁴⁷ Coalition for Free Speech, *Food-Disparagement Laws: State Civil & Criminal Statutes*, <http://www.cspinet.org/foodspeak/laws/existlaw.htm> (Mar. 19, 1998).

V. A REASONABLE SOLUTION TO THE UNREASONABLE BURDEN

In recent years, the agricultural industry has continued to insulate their lucrative business by turning to corporate heads and state legislatures.²⁴⁸ With the industry’s significant financial growth, it has become easier to hide their secrets and silence the public.²⁴⁹ As a result, the industry has grown more corrupt, and speaking out against their practices has become more difficult than ever.²⁵⁰ This section discusses how the choice to withhold and censor vital information may affect future challengers of food disparagement laws, and the need for complete transparency to protect the public, the environment and ultimately, our future.

A. Unveiling the Face of Corporate Greed

The *Winfrey* case ruling hinged on whether the defendant had “*knowingly* disseminated false information.”²⁵¹ As mentioned earlier, food disparagement statutes are unique from other libel laws²⁵² because they place the burden on the defendant to prove their statements are based on “reasonable and reliable scientific inquiry, facts, or data.”²⁵³ Each state’s statute has a similar or identical requirement regarding proof of “falsely disseminated information.”²⁵⁴ In an attempt to protect free speech, the *Winfrey* court established the highest standard available that “requirement of knowledge that the information is false,”²⁵⁵ but the agricultural

²⁴⁸ Kurt Friese, *UPDATE: Gagging on the Ag Gag Bill—Industrial Lobbying and Corporate Overreach at Its Finest*, http://www.huffingtonpost.com/kurt-friese/farm-animal-abuse_b_872867.html (June 7, 2011).

²⁴⁹ *Id.*

²⁵⁰ *See id.*

²⁵¹ *Winfrey*, 201 F.3d at 685.

²⁵² Semple, *supra* note 191, at 417.

²⁵³ *Winfrey*, 201 F.3d at 687.

²⁵⁴ TEX. CIV. PRAC. & REM. CODE ANN. §§ 96.001–.004 (In determining proof, § 96.003 states “the trier of fact shall consider whether the information was based on reasonable and reliable scientific inquiry, facts, or data.”).

²⁵⁵ *Winfrey*, 201 F.3d at 688.

industry's influence has made it increasingly difficult for future defendants to meet this burden.²⁵⁶

With the industry's growing power, they are producing and controlling much of the information regarding food science and industry practice, putting them in a "particularly strong position to influence what is considered 'reasonable and reliable.'"²⁵⁷ The defendants in the *Winfrey* case may have succeeded because Lyman was a former cattleman with first-hand experience in the practice. If Lyman was not a former cattleman, the outcome of the case could have been different, affecting not only the parties but also the entire American population.

Many critics, reporters and publishers are discouraged from speaking about the dangers of food absent current and documented scientific evidence, much of which is accessible only to the particular criticized industry.²⁵⁸ This has created an unreasonable burden on the defendants, giving the industry a significantly unfair advantage in court.²⁵⁹ If the industry withholds access to the only source of reliable data, it will be nearly impossible for defendants to prevail; thus, state legislatures must repeal food disparagement statutes.

B. If You Can't See It, It Can't Hurt You . . . Can It?

The recent introduction of "ag-gag" bills²⁶⁰ are intended to be an additional, and perhaps final hurdle in their pursuit to fully divide public knowledge from corruption in the industry.²⁶¹ Enactment of these bills will shield the public from any form of photojournalism

²⁵⁶ See Collins, *supra* note 179.

²⁵⁷ Ken Silverstein, *How Food-Disparagement Laws Gag Reporting On Issues Of Public Health And Safety*, <http://www.cspinet.org/foodspeak/oped/nation.htm> (last visited Dec. 20, 2011).

²⁵⁸ Collins, *supra* note 179.

²⁵⁹ Silverstein, *supra* note 258.

²⁶⁰ 2011 Iowa Iowa Admin. Bull. 431 (Mar. 7, 2011); 2011–2012 Minn. Reg. 1118 (Apr. 7, 2011); 2011 Fla. Admin. Weekly 1246 (Mar. 8, 2011); 2011–2012 N.Y. Reg. 5172 (May 3, 2011).

²⁶¹ Will Potter, *What Is Big Ag Trying to Hide?* http://www.huffingtonpost.com/will-potter/animal-cruelty-_b_852675.html (Apr. 22, 2011).

within an animal facility,²⁶² which in many cases is the last remaining means to procure and document “reliable and scientific data” detailing the corruption behind this industry. It is imperative that consumers advocate for greater transparency, and prevent the enactment of these bills. Public knowledge of the industry is the most effective method of preventing harm to the consumers and the environment.²⁶³ If we allow states to enact these bills, we may find ourselves with no protection from the industry’s limitless greed and corruption.

Due to the limited means of revealing the industry’s corruption without fear of legal repercussions, several photojournalists recently recorded and revealed to the public, “examples of animal abuse, unsafe working conditions, and environmental degradation.”²⁶⁴

However, “[i]ndustrial agriculture, like most powerful business interests, has a very effective lobbying organization.”²⁶⁵ Agricultural corporations retaliated by contributing tens of thousands of dollars to the American Legislative Exchange Council to draft model bills,²⁶⁶ which became known as “whistleblower suppression” bills or “ag-gag” bills.²⁶⁷

Instead of correcting and reforming industry weaknesses, four states attempted to enact versions of these statutes, which would criminalize photographing or video/audio recording farms without the owners’ consent.²⁶⁸ Certain statutes go as far as to make it illegal to even possess and /or distribute these images, “putting them on par with child pornography.”²⁶⁹ Advocates justify “ag-gag” bills as preventing crimes including theft, trespass and fraud, although

²⁶² *Id.*

²⁶³ See Friese, *supra* note 249.

²⁶⁴ *Id.*

²⁶⁵ *Id.*

²⁶⁶ Potter, *supra* note 262.

²⁶⁷ Bruce Friedrich, *Ag Gag: Why Whistleblower Suppression Laws Are A Bad Idea*, <https://www.commondreams.org/view/2011/12/22-5> (Dec. 22, 2011).

²⁶⁸ Friese, *supra* note 249.

²⁶⁹ *Id.* (Minnesota’s and Iowa’s statutes make it illegal to even possess photo, audio or video footage of animal facilities.).

existing statutes have addressed these crimes.^{270,271} These statutes do not protect consumers, farmers, animals or the environment, nor does it create jobs.²⁷² In fact, the only ones benefiting from these statutes are the corporations controlling the agricultural industry.²⁷³

Photojournalism has played an important part in our culture, protecting and educating the public.²⁷⁴ The poor justifications for these bills indicate they are yet another ruse in a further attempt to stifle revelation of what occurs in the practice.²⁷⁵ In 2008, photojournalists investigated a USDA's "supplier of the year" slaughter plant, and uncovered inhumane treatment and unsafe meat, 143 billion pounds, headed for the nation's school cafeterias.²⁷⁶ If the investigation had not occurred, children around the U.S. would have eaten the potentially lethal meat.²⁷⁷

"Ag-gag" bills will "make it a crime to save human beings from dying from [consuming] contaminated meat, and would also criminalize video investigations that led to employer indictments for worker safety violations, violations of civil rights and sexual

²⁷⁰Minn. Voters for Animal Protec., *Minnesota ag-gag bill*, <http://votersforanimals.org/issues-legislation/current-legislation-2011-2012/animal-bills-2012/minnesota-legislators-aim-to-ban-whistleblowers-from-exposing-inhumane-conditions-in-puppy-mills-and-factory-farms/> (last visited Dec. 16, 2011).

²⁷¹2011 N.Y. Sess. Laws, *S5172: Relates to unlawful tampering with farm animals* (available at <http://open.nysenate.gov/legislation/bill/S5172-2011> (last visited Dec. 16, 2011)) (New York's justification for the bill is to prevent unlawful injection of cattle with antibiotics and the theft of fertilizer utilized by meth addicts. There is no mention of how criminalizing photojournalism will deter meth addicts from stealing fertilizer or increase security on the farms.).

²⁷²Friese, *supra* note 249.

²⁷³*Id.*

²⁷⁴See *Minnesota ag-gag bill*, *supra* note 271.

²⁷⁵Silverstein, *supra* note 258 (In the late '90's, Buckeye Egg Farm, the same company involved in the earlier mentioned lawsuit, was the subject of many indiscretions. The Ohio E.P.A. fined the company for causing a mass of flies to invade the town and homes of nearby residents in the dead of winter. The flies were attracted to the overwhelming amount of chicken manure on the farm. Other actions that eventually led to the lawsuit include subjecting migrant workers to twelve-plus-hour work shifts and never paying overtime. Their tasks included picking out maggot-covered eggs, and washing and redating them for sale.).

²⁷⁶Friedrich, *supra* note 268.

²⁷⁷*Id.*

harassment laws, and any other potentially illegal activity of a corporation.²⁷⁸ These are investigations corporations and governments should be doing, but because they choose to hide the injustices and dangers, enactment of the “ag-gag” bills cannot and should not occur. Consumers have a right to complete transparency, not selective information the industry chooses to reveal. If the agricultural industry fails to vindicate their wrongdoings, then the consumers must actively advocate, preventing the states’ enactment of these bills.

C. The Poisonous Apple v. The Fruit of Knowledge

As IFAP continues to spread internationally, the need to educate and inform the public about the harmful effects is more urgent than ever. Food disparagement statutes prevent this from occurring by allowing corporations to withhold vital information from the public.²⁷⁹ In doing so, industrial agriculture has taken away the resources necessary for a proper and successful defense.²⁸⁰ Withholding information also prevents the free flow of information that would allow individuals to make fully informed decisions regarding their health and food choices.²⁸¹ Therefore, states should repeal food disparagement statutes and agricultural corporations should be required to release information from their studies for public review. In addition, passage of the “ag-gag” bills would provide another insurmountable hurdle for the defendant. “Ag-gag” bills, when used in conjunction with food disparagement statutes would make it nearly impossible for any defendant to prevail in court; thus, states should not enact “ag-gag” bills.

Repealing food disparagement statutes and advocating against “ag-gag” bills will force industry-wide reforms that corporations have long resisted.²⁸² Complete disclosure from the industry will allow public access to information and the freedom

²⁷⁸ *Id.*

²⁷⁹ Silverstein, *supra* note 258.

²⁸⁰ *Id.*

²⁸¹ Potter, *supra* note 262.

²⁸² *Id.*

to educate others about the industry. This transparency will benefit workers, animals and consumers, and may even prompt consumers to change or modify their diets.²⁸³ Knowledge is power, and the law should not permit agricultural corporations to prevent the public from obtaining information about the practice leading to the foods they serve us.

CONCLUSION

Over the years, the agricultural industry has made remarkable advances. Although the industry may have started this controversial journey with the best intent, their acquisition of wealth over the past years has led to more harm than good. It is common knowledge that wealth leads to power, which often leads to greed and inevitably to corruption. The agricultural industry is no exception to this concept. Progression from the humble beginnings of the small-town farmer has led to corporation-run animal factories. The effects of their corrupt practices have resulted in detrimental effects on the public and the environment. Ironically, you do not have to be a consumer to fall victim to their practices.

Whether or not you consume the meat, the far-reaching effects can destroy your health, community, environment and now your rights. Food disparagement laws and “ag-gag” bills have no place in a society that depends so heavily upon the agricultural industry for food. The public has a right to know what they are eating and where it is coming from. It is also important to know how the practice is affecting the environment we live in. The fight for complete disclosure and transparency will be difficult, but necessary.

The negative correlation of power between the agricultural industry and the public has limited our ability to oppose the hazardous practices occurring behind the facilities’ doors. However, allowing the industry to muzzle our right to expose the corruption and dangers of these facilities would be a disservice to the global population and the environment. As the food wars progress, it is imperative to stay informed and educated; and before putting that piece of steak in your mouth, remember to ask yourself, “What exactly am I eating?”

²⁸³ *Id.*