



Press Release

# Victory for Animals and Free Speech as U.S. Supreme Court Declines to Review Kansas Ag-Gag Law

The court denying review of the case cements the Animal Legal Defense Fund-led coalition victory in Kansas for animal protection, food safety, and worker safety

April 26, 2022

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**WASHINGTON, D.C.** — In a major victory for animals, workers, and transparency in the animal agriculture industry, the U.S. Supreme Court declined to review a decision by the U.S. Court of Appeals for the Tenth Circuit that struck down Kansas’s “Ag-Gag” law for violating the First Amendment. The decision follows a lawsuit filed in 2018 by an Animal Legal Defense Fund-led coalition of animal, environmental, and food safety advocacy groups challenging the law’s constitutionality.

The Kansas law in question made it a crime to engage in activities that are essential to conducting undercover investigations that have in the past revealed horrific treatment of farmed animals and food workers to the public. The

appeals court held that Kansas may not silence views critical of industrial animal agriculture. The court's decision affirmed that videos, articles, advocacy, and public dialogue generated by whistleblowing and undercover investigations of factory farms and slaughterhouses relate to a matter of public concern: The treatment of animals and workers on factory farms and slaughterhouses, and manner in which food is produced. Such speech lies at the core of the First Amendment. The Supreme Court's decision leaves that important ruling in place.



The 2021 U.S. Court of Appeals for the Tenth Circuit's decision notes: "[T]he text and legislative history of the Act evince Kansas's desire to limit the ability of [the Animal Legal Defense Fund] and like organizations to engage in true speech critical of animal facilities. . . . We reject this approach because it elevates form over substance and permits Kansas to do just what the First Amendment prohibits: 'license one side of a debate to fight freestyle, while requiring the other to follow Marquis of Queensberry rules.'"

"The U.S. Supreme Court's decision not to disturb the lower court decisions is a victory for farmed animals, factory farm and slaughterhouse workers, and food and public safety — as it leaves intact the public's constitutional rights over protecting corporate interests and profits. Until there are cameras publicly broadcasting the conditions within factory farms and slaughterhouses, investigations are the country's only opportunity to see the horrific 'industry standard' conditions under which food is made," says Animal Legal Defense Fund Executive Director Stephen Wells. "The industry works hard to keep its practices secret, knowing consumers won't accept the intense confinement and other inhumane treatment of animals, as evidenced by the passing of California's Proposition 12 and other proposed state legislation."

Earlier this year, the Supreme Court agreed to hear a challenge to California's Proposition 12 ballot initiative, which outlaws the sale of animal products from pigs held in gestation crates, calves held in veal crates, and eggs from hens kept in battery cages. The measure passed after undercover investigation footage exposed the cramped and cruel conditions in which pigs, calves, and chickens spend their lives at industrial animal agricultural facilities.



“The Supreme Court’s refusal to review the Tenth Circuit’s decision leaves in place important constitutional protections for investigators working with animal rights groups to expose misconduct in the industrial animal agriculture industry,” says Alan Chen, a University of Denver law professor who helped lead the lawsuit against Kansas. “This is a big win for the national campaign against Ag-Gag laws.” Enacted in 1990, the Kansas Ag-Gag law was the oldest in the United States. Kansas is a major agricultural producer with the third-most cows of any state, and until being struck down, its Ag-Gag law had successfully prevented whistleblowers from investigating the conditions that millions of pigs, cows, chickens, and other animals endure.

There have been nine lawsuits challenging state Ag-Gag laws around the country. Earlier lawsuits have resulted in courts striking down similar laws or portions of laws in Iowa, North Carolina, Idaho, Utah, and Wyoming. The Eighth Circuit Court of Appeals will soon consider the constitutionality of Iowa’s second law, after striking down Iowa’s first law and recently clearing the way for an Animal Legal Defense Fund-led coalition’s lawsuit challenging Arkansas’ law to proceed. A decision concerning North Carolina’s law is pending in the Fourth Circuit Court of Appeals. The Animal Legal Defense Fund is also currently challenging a third Iowa law in the U.S. District Court for the Southern District of Iowa.

The Kansas coalition is comprised of the Animal Legal Defense Fund, the Center for Food Safety, and state farmed animal organizations Shy 38, Inc. and Hope Sanctuary. The coalition is represented by Public Justice, leading First Amendment scholars, the law firm Foley & Mansfield, and attorneys with the plaintiff organizations, with assistance from Joshua Rosenkranz and the Supreme Court & Appellate practice at Orrick Herrington & Sutcliffe.



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