



# THE DEFENDER

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Newsletter of the American Civil Liberties Union of Iowa

## ACLU of Iowa Files Ag Gag Free Speech Lawsuit

**A coalition of public interest groups is challenging the constitutionality of Iowa's so-called "ag gag" law.**

Iowa's ag gag law, passed in 2012, got that nickname because it criminalizes undercover investigative efforts to expose poor conditions for workers, food safety violations, environmental problems, and animal cruelty in agricultural facilities.

The law threatens up to one year in jail for individuals, news media, and advocacy groups who use undercover means to document or report on questionable activities in agricultural animal facilities.

### **Whistleblowing shouldn't be punished**

In some circumstances, the law even criminalizes whistleblowing by conscientious employees.

The lawsuit asks, among other things, the federal court to 1) declare that Iowa's ag gag law is a violation of the U.S. Constitution 2) strike it down, and 3) enter an order blocking the state from enforcing it.

The law makes it a serious misdemeanor (punishable by up to one year in jail) to make a false statement in connection with obtaining a job at an animal agricultural facility. It also penalizes "obtaining access" to an agricultural production facility under "false pretenses."

Before the ag gag law passed, laws already existed that criminalized trespass or fraud or other similar crimes. But the ag gag law now criminalizes access to the facilities by false pretenses and publication of the information found by those means, even when there is no harm or injury to the facility investigated.

Only speech criticizing the agricultural industry is targeted in this manner and is treated differently from all other subject



**The ACLU is working to strike down Iowa's ag gag law because it suppresses important free speech and specifically targets those who criticize agricultural facility practices. Similar laws have been struck down in Idaho and Utah.**

matter. That sort of targeting of one specific area of speech by the government is a violation of the First Amendment.

The ag gag law is also particularly disturbing because of the way that it inhibits the ability of journalists or watchdog organizations to collect and publish important information. The law could penalize a reporter or investigator merely for not stating that they are indeed a reporter or investigator and that

*Continued on page 4*

## Court Debt is Driving Iowans Deeper into Poverty

**Iowa's methods of imposing and collecting legal fines and fees has created "a poor tax."**

In Iowa and across the nation, court debt is unfairly forcing people even deeper into poverty.

And for those who end up in jail, court debt also makes it far more difficult for them to rehabilitate and to re-enter society.

That's why the American Civil Liberties Union of Iowa has launched a special one-year research project to study and address these important issues.

Court debt consists of various legal fines, fees, and costs, including the cost of public defenders and court-appointed attorneys, as

well as the cost of food and shelter for each day a person is held in jail.

In rare cases, people may even be jailed for failure to pay those costs—without a hearing into their reasonable ability to pay.

### **Criminalizing being poor**

"Essentially, it's a poor tax," said Phil Brown, a legal fellow hired by the ACLU of Iowa to investigate and document problems related to court debt in Iowa and to propose reforms.

"You don't even need to go to jail to incur significant court debt. Tremendous amounts of court debt can be incurred on even a minor charge, such as a non-violent drug offense or even a traffic violation,

and can happen even when charges are ultimately dismissed in the case or you are acquitted," he said.

Here's what can often happen:

- First, whatever the charge, if you are taken into custody—guilty or not—you may have the option to post bail. But that's expensive, and some bail is set improperly high. If you can't afford bail, you will remain in jail.

- If you can't afford a private attorney, you are assigned a court-appointed attorney. But you might not see your attorney for days.

- With each passing day in jail, you are amassing fees for room and board.

- If you aren't able to show up for work or

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# **ACLU Legislative Team Gears Up for a Challenging Iowa Legislative Session**

**It will be another difficult session, but we're ready with a number of bills we'll be pushing forward or preparing to block.**

The 2017 legislative session was a tough one for civil liberties. But the ACLU of Iowa was up for the challenge, so there were significant wins, too. Once again, with the 2018 session that runs January through April, we are ready to fight the harmful bills and to take advantage of the opportunities for progress.

As policy director, I'll be leading the team. Pete McRoberts, a seasoned, long-time contract lobbyist who knows the Iowa political scene inside and out, will be helping us out once again. In addition, our new Community Engagement Associate will be working to better connect us with groups and individuals across the state to advance our legislative agenda. Our communication staff will also be on hand to livestream, tweet, and post the latest developments. And our Executive Director Mark Stringer will there for his first legislative session with us, ready to meet with key legislators and policymakers to articulate our positions.

We're ready.



**Daniel Zeno**  
Policy Director

## **Legislation We Support:**

### **Civil asset forfeiture reform**

Civil asset forfeiture allows law enforcement to seize cash and other assets from motorists and individuals, in many cases without a conviction, and in some cases, without even an arrest.

We made progress last session with legislation that reduced some of the harms of civil asset forfeiture. That included requiring a criminal conviction before law enforcement can seize amounts of \$5,000 or more. However, we'd like to see that taken further so that a conviction is required when seizing any amount.

Legislation must also change the law so that the profit incentive for law enforcement is removed. Right now, for example, a sheriff's office or police department directly seizing cash can keep a portion of it.

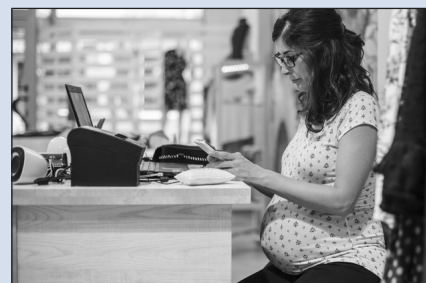
### **Pregnant Workers Rights Act**

One of our major efforts this session will be to pass a Pregnant Workers Rights' Act. This bill addresses changes in Iowa law a few years ago that removed some protections for pregnant workers in the workplace.

This legislation, which has bipartisan support, would restore once again a clear, modest, common-sense rule for employers. The legislation requests merely that employers provide "reasonable accommodations" that do not put an undue burden on employers.

Most responsible Iowa employers already do these things—such as accommodating limits on lifting or time off for necessary doctor appointments or providing a stool for pregnant women to sit on.

But a few bad players have made the law necessary to protect the health of Iowa women and their pregnancies.



**A key effort this session will be passing a Pregnant Workers Rights Act to provide "reasonable accommodations" to protect the health of Iowa women and their pregnancies in the workplace.**

### **Legislation to combat racial profiling**

Last session a bill was introduced to ban racial profiling in Iowa, but it didn't go anywhere. This year, we'll be working with partner organizations to push forward another racial profiling bill. In particular, we'd like to see legislation that

- Bans racial profiling by law enforcement.
- Requires law enforcement to collect data on pedestrian and vehicular stops, including perceived race and ethnicity of the person who is stopped and to report aggregate data.
- Requires all law enforcement to complete anti-racial profiling training and training on data collection and reporting.
- Allows a person who is subjected to profiling to sue in court or file a complaint with the Iowa Civil Rights Commission.

## Restoring voting rights for people with a felony in their background

Iowa, shamefully, remains just one of three states that automatically bans *for life* anyone convicted of a felony from voting. Restoring that right is currently arduous and often requires a lawyer's assistance.

It's also a racial equality issue: More than 50,000 Iowans—a disproportionate number of whom are African-Americans—remain unable to vote and therefore participate fully in their communities.

The ACLU will continue to work with Iowa legislators for changes in the law. That includes continuing to press for an amendment to the Iowa Constitution, a heavy lift that requires approval by two successive General Assemblies followed by ratification by voters.

## Legislation We'll Push Back On:

### Misnamed "religious freedom" legislation

The ACLU of Iowa was successful in blocking a misnamed "Religious Freedom Restoration Act" (RFRA) bill that would have given businesses a license to discriminate. The bill would have allowed for discrimination based on religion beliefs, including turning away visitors or customers based on sexual orientation, gender identity, marital status, and more.

We will continue to fight any more RFRA-style bills in Iowa. We're heartened to see that leading Iowa businesses have come down solidly against them because they know it's bad for business and our state's ability to attract and retain top employers.

### The death penalty

Iowa simply should not go back half a century to an era when people were executed at the hands of our government. It was a system filled with injustices, and in some cases, innocent people were put to death.

Death penalty legislation was introduced last session, but fortunately didn't go anywhere. But legislators have promised to push that bill again this session.

The ACLU of Iowa will, of course, fight any such legislation every step of the way.

### Bills to restrict reproductive rights and women's abortion rights

There will almost certainly be a host of anti-abortion bills, including a "personhood" bill again this session. This extremist bill would grant legal rights to fertilized eggs and make any abortions illegal, as well as some commonly used birth control methods.

Along with our allies, including Planned Parenthood, we will continue to fight these bills. We are optimistic that we will be able to block the personhood bill. And even if it were passed, it would likely be struck down by the courts as unconstitutional.

Meanwhile, we continue to press forward in the Iowa Supreme Court on the lawsuit brought by the ACLU and Planned Parenthood. That lawsuit contests two major provisions of Iowa's new abortion law. The first is a 72-hour waiting period for women seeking abortions. The second is a medically unnecessary second clinic in order to obtain an abortion.

Those provisions are simply obstacles to block women—especially those who don't have reliable transportation, flexible work schedules, or must drive long distances—from accessing legal abortions.

### Anti-immigrant legislation

Legislators have already said that they plan to push legislation that targets immigrants.

One issue that is already on our radar is Immigration and Customs Enforcement (ICE) "detainers," which wrongly keep people in jail longer without a judge's authorization.

ICE is one of the primary federal agencies that enforce immigration law.

It has been asking Iowa county jails to hold people longer than authorized by a judge so that federal agents can take their time to find out if that person might also be in this country without authorization.

These detainers, as they are called, are *requests* from ICE; they are not warrants. In some cases, U.S. citizens have been detained in jail for days, simply because they were *suspected* of being undocumented. In one case, in another state, the ACLU successfully represented a woman who was a citizen yet was detained by ICE.

In Iowa, a number of Iowa sheriffs, correctly, have refused to comply with the ICE detainer requests.

So now some legislators want to force law enforcement's hand by requiring them to violate individuals' due process rights and keep them in jail on the whim of ICE, rather than because a judge authorized it.

### School vouchers

This session we'll continue to fight against school vouchers. Not only are school vouchers bad for public schools, but they underwrite private schools, which unlike public schools, can legally discriminate against students on the basis of sexual orientation, religion, ethnicity, gender, and other characteristics ■

## Minimizing the Harm of the Voter ID Bill



Last session, a voter ID bill passed the Iowa Legislature that will make voting more difficult and complicated for thousands of Iowans. We are now working to minimize the inherent problems with that bill by giving input on the administrative rules used to implement the law and advocating for changes. Shown here is a rally and demonstration the ACLU organized at the Iowa Secretary of State's office during one of the public meetings on those administrative rules. It drew about 100 people and substantial media attention to the unclear, inadequate administrative rules being created to carry out the voter ID law.



# Medicaid Should Provide Necessary Surgeries for Transgender Iowans

**Two Iowa women are fighting Iowa Medicaid's discriminatory policies that don't cover medically necessary transition-related surgeries.**

For many transgender Iowans, surgery to help them transition is an absolute medical necessity. Yet Iowa's Medicaid program has sweeping, categorical exclusions for all transition-related surgical care, regardless of medical necessity. This despite the fact that Iowa Medicaid provides coverage for medically necessary care for virtually every other type of medical condition.

That's why the ACLU of Iowa is representing two Iowa women—EerieAnna Good and Carol Ann Beal—in their fight against Medicaid's blanket denial of any transition-related surgery. Both women have their doctors' recommendation. And this type of care is recommended by the



American Medical Association, the American Psychological Association, the American Psychiatric Association, the American Academy of Family Physicians, and many other professional organizations.

Not all transgender people want or need such surgery. But for others, the surgery is life saving. Gender dysphoria, untreated, in some cases can cause extreme depression and thoughts of self-harm.

Carol Ann, who lives in a small northwest Iowa town says, "Transition-related care is a medical issue, plain and simple. It's like any other surgery that a doctor would recommend for you or a family member. Insurance would pay for it and you'd just do it and move ahead with your life. I look forward to the day when someone fighting to get the transition-related medical care they need doesn't have to go to court. I'm doing it because someone needs to be the trailblazer here. I want to make it easier for younger people who need this surgery." ■



# Ag Gag Free Speech Lawsuit

*Continued from page 1*

they are there to collect information at an ag facility. It could also penalize them if they merely didn't correct an assumption that they were there for some other purpose. In fact, the law makes gaining entry to an agricultural facility under "false pretenses" a *criminal* offense. It also subjects those who conceal a source's identity to "accessory after the fact" liability when the source gained entry by such means.

## Public advocates silenced

"An especially grievous harm to our democracy occurs when the government uses the power of criminal laws to target unpopular speech to protect those with power—which is exactly what this law is about. Ag gag clearly is a violation of Iowans' First Amendment rights to free speech," said Rita Bettis, ACLU of Iowa legal director.

The bill also raises Fourteenth Amendment concerns of equal protection, Bettis says, "because ag gag was motivated by legislative animus toward animal rights organizations and singled them out from exercising their free speech rights."

Changing the law is especially important since Iowa is by far the country's biggest producer of pigs raised for meat and hens raised for eggs, along with millions of cows, chickens, turkeys, and goats.

## Many public interest groups involved

The lawsuit has been filed by the ACLU of Iowa, along with attorneys from the Animal Legal Defense Fund, the Law Offices of Matthew Strugar, Public Justice, and the Center for Food Safety.

Clients in the lawsuit include Bailing Out Benji, an Iowa nonprofit organization focused on protecting the welfare of dogs and puppies. It is particularly concerned about puppy mills, which have flourished in Iowa.

Another client, Iowa Citizens for Community Improvement (ICCI), is an organization whose priorities include fighting factory farms to advance worker justice, protecting Iowa's clean water and environment, and advancing racial justice and immigrants' rights.

Other clients are the national Animal Legal Defense Fund, People for the Ethical Treatment of Animals (PETA), and the National Center for Food Safety. ■



Photo: Casey Gradishnig

## Record Turnout for Bill of Rights Brunch in Des Moines

More than 200 people attended the ACLU of Iowa's annual event in November at the Des Moines Botanical Garden. In an era where our civil liberties are increasingly being threatened, it was a chance to connect with other like-minded people and an opportunity to honor several people for their contributions in protecting civil liberties.

# How to Talk

## So Your Iowa Legislator Will Listen

Iowa legislators say it takes just a dozen to a couple dozen phone calls, emails, or other contacts from constituents to get an issue on their radar.

### Do A Little Research

Find out who your state senator and state representative are, their positions, and contact information at <https://www.legis.iowa.gov/legislators/find>

- Sign up for your legislators' emails.
- Sign up for ACLU of Iowa Updates and ACLU People Power emails or texts to stay in the loop and take action. Go to [www.aclu-ia.org](http://www.aclu-ia.org)

## MEET IN PERSON

- Attend town hall meetings or voter and legislative forums. Come prepared with a question and be sure to introduce yourself afterwards.
- During session (January through April), visit your legislators at the Iowa Capitol. Contact them in advance.
- Out of session, in their home area, legislators have more time. Set up a meeting in your area and bring like-minded friends.



## WRITE A LETTER



Old-fashioned pen and paper can be very effective since they're increasingly rare. Go to the ACLU of Iowa website for messaging or use your own words. Encourage others to write as well.

## MAKE A CALL



Simply pick up the phone and call your legislator's office. State the issue(s) and what you want them to do about it.

**State senators:** 515-281-3371

**State reps:** 515-281- 3221

## Pro Tips

- Be brief. Legislators simply want to know what you think. Write just a paragraph or two and keep phone messages to a few sentences.
- Be firm but courteous. Use respectful language. If possible, include praise for a position the legislator has taken in the past.

# Free Speech Win on Political Signs in Windsor Heights

**The ability to display yard signs critical of local government is a crucial First Amendment right for homeowners.**

The City of Windsor Heights has agreed to amend its contentious sign regulation ordinance, which resulted in homeowners being threatened with fines of up to \$1,000 a day and another family having their sign torn down by the city.

The ACLU of Iowa represented Windsor Heights couples Diane Foss and Mike Miller and Marijetka and Jamie Orr in their successful challenge to their local city government's overreach. Both households had posted signs critical of Windsor Heights actions on installing sidewalks.

Foss and Miller had posted a small campaign-sized sign that read "City Hall Run Amok" and the Orrs posted a banner secured to their porch stating that 96 percent of residents opposed the sidewalks.

While they were out of town on vacation, the Orrs received word that they needed to remove the sign immediately or be fined. Their sign was torn down by the city while they were still out of town.

After working with the ACLU, the

City of Windsor Heights agreed to drop all notices of violation and to revise its sign regulation ordinance so that it doesn't violate First Amendment rights. The city will also train staff on how to respond to possible violations of its nuisance ordinance without violating due process and privacy rights.

Homeowner Jamie Orr said that he and his wife "are just happy to have a resolution to this situation. We never dreamed it would stir up as much controversy as it did."

Mike Miller said, "Our original intent in putting up our sign was to protest the city's heavy-handed behavior, both in regard to the sidewalk debacle, and in violating our neighbor's rights when the city forcibly



The homeowners who put this small sign, critical of Windsor Heights government, in their front yard were ordered to remove it or pay a hefty fine. The ACLU of Iowa represented them and other homeowners who felt they were wrongly prohibited from displaying political signs that were critical of local government.

confiscated their sign.... Ironically, the city proved the truth of our sign, 'City Hall Run Amok,' when they threatened to fine us \$1,000 per day, while ignoring all other signs in the city that were as large or larger than ours."

The ACLU will be monitoring the City of Windsor Heights as it revises its ordinance and adopts new training in the months to come. ■



**VICTORY!**

## No More Routine Shackling of Kids in Iowa Courtrooms

Thousands of Iowa children will no longer regularly be shackled when appearing in juvenile state court, the result of a rule change by the Iowa Supreme Court prompted by the ACLU of Iowa, Drake University's Middleton Center for Children's Rights, and other groups.

Restraints on children in the courtroom are almost always unnecessary unless there is a flight or safety risk. Also, shackling children—who can be as young as 10—is psychologically traumatic and damaging. It also makes it harder for children to listen, recall facts, speak effectively, or follow judges' instructions.

## Pretext Traffic Stops Fuel Racial Profiling

**The ACLU and civil rights groups have asked the Iowa Supreme Court to declare such traffic stops unconstitutional.**

It's a story you hear all the time, either in the media or from a friend. Or maybe you've even experienced it: A person of color is driving and is stopped by the police for no apparent reason, although a minor traffic violation is alleged.

Now the ACLU of Iowa and other civil rights organizations are working to get that changed. The ACLU of Iowa, the Iowa-Nebraska Conference of the NAACP, the League of United Latin American Citizens (LULAC) of Iowa, and 1,000 Kids for Iowa urged the Iowa Supreme Court to declare pretext traffic stops unconstitutional.

Pretext stops are what they sound like: They're a traffic stop that the officer says they are making for one reason, like a minor traffic or vehicle equipment violation. But they are actually making the stop for another reason—on a pretext—that doesn't have a constitutional basis. That might be deciding that a driver's

mere race, location, gender, car, or record is "suspicious."

The civil rights organizations' amicus brief argues that pretext stops are unreasonable, and therefore not permitted by the Iowa Constitution because they fuel racial profiling and put people of color at risk of police violence.

In fact, some pretext stops have led to the death of those stopped, as in the cases of Philando Castile in Minnesota and Walter Scott in Charleston.

An ACLU data analysis of the state's larger cities and counties found that in Linn County, African Americans are 25 percent more likely than white people to be cited rather than warned when stopped for a traffic violation.

Waterloo had the worst disparities in the traffic stop data. While African Americans make up just 15 percent of the population, data from the Waterloo Police Department show that 38 percent of traffic stops were of Black drivers. Black drivers were also substantially more likely to be arrested and searched and substantially less likely to be merely warned than white drivers. ■



## Court Debt Driving Iowans Into Poverty

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your employer found out you were in jail, you may well be fired.

- Your attorney might suggest you plead guilty or sign a dismissal agreement just to get you out of jail, even if you are not guilty. But typically that offer is made only if you first agree to pay court costs, which can total thousands of dollars.
- There also are often substantial legal fees, even for a court-appointed lawyer.
- Some judges properly conduct a “reasonable ability to pay” hearing and then limit the amount you are expected to repay. But, disturbingly, some judges do not.

### State policies worsen the problem

In 2015, the State of Iowa partially privatized court fees collection, which automatically added a 25 percent collection fee to debt.

The State of Iowa also engages in a host of aggressive debt collection activities. Iowans are sometimes even jailed for their inability to pay.

The problem is only getting worse. Between 2000 and 2016, outstanding court debt ballooned from \$200 million to more than \$680 million, according to the Iowa Legislative Services Agency.

### Racial disparities in court debt

Court debt has disturbing and profound implications for racial inequality, too. Iowa ranks among the worst in the nation for racial disparities in incarceration. A Black person in Iowa is 11 times more likely to be incarcerated than a white person, for example.

For that and other reasons, including income inequality between Black and white people, a Black person is disproportionately more likely to be affected by court debt and to be impacted more negatively by the debt.

Also, Iowa is one of just three states that takes away your voting rights for life if you are convicted of a felony. To go through the arduous process of trying to get that right to vote back, you must have paid or be current on all legal fines, fees, and restitution. Court debt makes more difficult to cover those costs. This deprivation of voting rights compounds existing disparities to systematically weaken the political power of Black people and their communities.

“The first step in working to remedy all this is to study it,” said Brown.

“We need to quantify the problem so that we can then raise awareness as well as possibly seek legislative and legal reforms.” ■

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PROTECT OUR STATE'S

# FUTURE

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1/2018DEF

# We Need You to Speak Up This Legislative Session

**Your voice has never been more important. Work with us to make it heard and to effect change.**

These days it can be tough to think of the Iowa Statehouse as the “people’s house.” The 2017 legislative session certainly delivered a number of disappointing setbacks. This time around, with the 2018 legislative session that just started, citizen action may seem like a waste of time. But don’t believe it! We know that when people show up and speak up, we can fight off the worst legislation and advance the best, no matter which party is in control.

## Legislative team ready to roll

Heading into the legislative session, our savvy and strategic policy team, led by Policy Director Daniel Zeno, is ready to push back against a myriad of bills, such as so-called religious freedom bills that are really just a guise to discriminate, school vouchers that can support discrimination by private schools and leave the most vulnerable

students without desperately needed resources in our public schools, and assaults on immigrants’ rights.

## Optimistic for wins on key bills

Even as we defend against these potential threats and others, we will also be taking proactive steps for pregnant worker rights and continuing in our pursuit of long overdue anti-racial profiling legislation. (See page 2 for details on these and other key civil liberty legislation.)

We expect there will be a lot to do, it’s true. But, with your help, we will be up to the challenges. In this overly partisan political climate, the ACLU’s principled nonpartisan approach combined with the activism of our friends and supporters gives us the credibility to productively engage with legislators across the political spectrum.

That’s why we are adding a Community Engagement Associate position to our staff. This person will help organize and engage our volunteer activists in a number of ways, including legislatively. We hope *you* will end

up connecting with this person, and making your voice heard. Citizen engagement matters to decision makers and can be a deciding factor in whether or not a bill passes or fails. In fact, see page 5 for tips on how you can determine which laws do—or do not—pass in our state.

## Speak up!

A healthy democracy demands that we all see ourselves as stakeholders in the future of our state and requires that we participate where we can. So thank you in advance for all that you will do to support our shared work in 2018. We couldn’t make the difference that we do—and will—without you!

Best of this new year to you and yours,



**Mark Stringer**  
Executive Director,  
ACLU of Iowa



Current ACLU members will soon have the opportunity to vote online for new members to serve on the ACLU of Iowa statewide board of directors. Look for a postcard to be mailed to you in February, with specific membership ID number information and directions. If you have questions, or don’t want to vote online, contact Ellen Simmons at [ellen.simmons@aclu-ia.org](mailto:ellen.simmons@aclu-ia.org) or call 515-243-3988.

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