

THE DEFENDER

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Newsletter of the American Civil Liberties Union of Iowa

Ag Gag Free Speech, Free Press Victory Garners National Attention

The ability of journalists and watchdog groups to conduct undercover investigations in agricultural facilities is key to a safe and ethical food supply.

Ever since investigative journalist Upton Sinclair exposed sickening conditions in meat packing plants more than 100 years ago, the role of undercover investigative reporting in exposing problems with our food supply has been crucial.

So it's been concerning that "ag gag" laws have cropped up around the country. These laws give special protections specifically to agricultural facilities and threaten anyone doing undercover work at a facility with one and possibly even two years in jail, as well as stiff fines.

The ACLU and other free speech advocates have objected to this clear censorship based on content—regulating speech just in a particular industry, and not, say, to manufacturing or other industries. This type of restriction of speech based on content violates the First Amendment. And in January, the U.S. District Court for the Southern District of Iowa agreed and deemed the law unconstitutional. That ruling joined a host of court decisions in other states, including Idaho and Utah, that also found ag gag laws unconstitutional.

The law blocked more than just journalists. It also had a chilling effect on food safety, labor, environmental, and companion animal advocates who wanted to do undercover work in agricultural facilities. Those groups proved that the law had prevented them from documenting illegal, inhumane, unsanitary, and dangerous practices in such facilities.

As ACLU of Iowa Legal Director Rita Bettis Austen said, "It effectively silenced advocates and ensured that animal cruelty, unsafe food practices, environmental hazards, and inhumane working conditions go unreported for years."

The lawsuit was brought by the ACLU of Iowa, along with attorneys from the Animal Legal Defense Fund, the Law Offices of *Continued on page 5*



Amy Cariga, shown here with 4-year-old daughter, Amelia, was fired from her job as a banquet server and bartender because she missed work, mainly because of morning sickness. She supports the Iowa Pregnant Worker Fairness Act, which would require Iowa employers to provide "reasonable" accommodations for pregnant workers, such as not penalizing them for time off for morning sickness. See page 3.

Nation's Most Restrictive Abortion Ban Struck Down

A district court judge has ruled Iowa's 6-week abortion ban unconstitutional and issued a permanent block on the law.

In January, the Polk County District Court struck down the so-called "fetal heartbeat" law passed by the Iowa Legislature last session.

That law would have banned most abortions in Iowa as soon as any cardiac tissue activity was detected in an embryo, making it potentially the most restrictive abortion law in the country. Embryonic cardiac tissue activity happens around 6 weeks, a point at which many women don't even know they're pregnant. And once women do know they are pregnant, they need adequate time to decide whether to end a pregnancy. Also, they need time to pull together the needed financial resources, to get time off work, or to arrange for child care and reliable transportation.

The ACLU of Iowa, on behalf of Planned Parenthood of the Heartland and the Emma Goldman Clinic of Iowa City, filed the lawsuit last summer. The district court issued a temporary injunction, which prevented the law from going into effect until a judge could fully consider the case.

Decision Follows 72-Hour Law Victory

This decision follows another abortion victory last year, when the ACLU contested a state law that would 1) require women to make an additional medically unnecessary clinic visit and 2) then wait a minimum of 72 hours after that appointment to finally receive abortion services.

Fortunately, the Court ruled in favor of women, issuing strong wording about the fundamental right of women to abortion services, stating that "autonomy and dominion over one's body go to the very heart of what it means to be free."

The ACLU brought the case in state court, because the Iowa Constitution is even more protective than the "undue burden" standard under the U.S. Constitution. The decision provided important legal precedent and clear affirmation of a woman's constitutional right to an abortion, which may deter future attempts to erode a woman's right to control her own body. The Defender is the newsletter of the ACLU of Iowa, published three times a year.

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Making Progress in the Iowa Legislature Again This Session

The lowa Legislature convened with an appreciated call from Gov. Kim Reynolds to restore voting rights for lowans with felony convictions.

Each legislative session, the ACLU of Iowa monitors hundreds of bills that could impact civil liberties. But the prospect for one piece of legislation we thought would be a very heavy lift got far brighter: Restoring voting rights for Iowans convicted of a felony.

Voting Rights for People with Felonies

Iowa is now one of just two states that permanently takes away voting rights for every person convicted of any felony.

For years, one governor and then another has signed a voting right executive order that reversed a previous governor. One governor would restore voting rights immediately upon completion of the criminal sentence. Then another would revoke them, taking away voting rights for anyone with a certain level of criminal conviction. The only way to get it back was to go through an arduous application process.

Now Gov. Reynolds has expressed her support for a much-needed constitutional amendment that will permanently change the Iowa Constitution so that a felony conviction will not result in permanent disenfranchisement. Governors could no longer issue executive orders on ex-felon voting one way or another.

That's important. Taking away voting rights from people convicted of a felony does nothing to strengthen our democracy or keep our communities safer. In fact, it does the opposite. Allowing people who have completed their sentence, including probation or parole, to rebuild their lives and again participate fully in their communities helps ensure successful reintegration into society.

Criminal Justice Reform

Mass incarceration in Iowa has grown dramatically in the last 40 years as a result of our country's failed War on Drugs. Iowa lawmakers across the political spectrum are realizing that it's time to rethink why and how we incarcerate people.

Too often legislators give lip service to criminal justice reform, and then propose legislation, like so-called "enhanced penalty" laws, that increases the number of people who are incarcerated. This approach over the decades has backfired, with a huge human and financial cost.

Key is reducing or eliminating Iowa's expensive and ineffective warehousing of people who have substance abuse and dependency problems. Iowa has taken a public health crisis and turned it into a criminal justice crisis.

It's important to note that nonviolent drug convictions are the single biggest driver of the prison population in Iowa over the last 25 years. Some specific suggestions:

• Eliminate all mandatory minimum sentences for nonviolent drug offenses

• Eliminate "sentence enhancement" for a second or subsequent drug offense

• Reduce the amounts of crack and methamphetamine that trigger "possession with intent to deliver" charges, rather than mere "possession" charges. Otherwise, people who are addicted to drugs are unfairly being punished as traffickers.

• Create and fund alternatives to prison and jail for nonviolent drug offenders. As data show, Iowans are safer when offenders can get adequate substance abuse treatment.

We'll also continue work on other criminal justice problems that feed mass incarceration, including racial profiling, other mandatory minimums, and the crack/powder disparity.

Marijuana Laws

For decades, the ACLU of Iowa has advocated for medical cannabis. Along with partner organizations, we've won small, incremental changes in Iowa drug laws. Slowly, conservative legislators are starting to recognize the health benefits of marijuana products that don't produce a high, but do help with medical conditions, such as epilepsy. Last session, the Iowa Legislature finally approved a program to allow Iowans with specific medical conditions to get cannabis products in Iowa. The first marijuana dispensary opened in Des Moines just a few months ago.

The ACLU will continue to work for the liberalization of Iowa's marijuana laws, essential because of their impact on unfair criminal justice.

In fact, Iowa's marijuana penalties are some of the most severe in the country. While other states decriminalize possession of small amounts, in Iowa you can be slapped with a jail sentence of six months or more as well as a \$1,000 fine, for possession of any amount. Not surprisingly, these laws are discriminatory because they disproportionately incarcerate people of color. An ACLU study of law enforcement statistics found that Black Iowans are 8 times more likely than white Iowans to be arrested for possession, even though both groups use at the same rate.

Open Records and Body Cameras

Iowa's Open Records law is outdated and has been subject to misinterpretation. We'd like to see it revised so that government officials can no longer refuse to share what should be public documents and so that law enforcement must release body camera footage for public review in certain cases.

Contesting a Proposed Constitutional Amendment on Victims' Rights

What could be wrong with enshrining victims' rights in the Iowa Constitution? Well, actually, quite a lot.

The ACLU firmly believes that crime victims deserve justice. At the same time, we also oppose changing the Iowa Constitution to include victims' rights.

Such a law would undermine a bedrock principle of our legal system—presumption of innocence. That's one reason such laws have also been opposed by organizations that often protect victims, such as the Iowa Coalition Against Domestic Violence and the Iowa Coalition Against Sexual Assault.



ACLU of Iowa Policy Director Daniel Zeno (facing camera) speaks with Jenny Dorman, Iowa State Bar Association lobbyist, and Kurt Swaim, First Assistant State Public Defender, at the State Capitol. Zeno will once again lead civil liberties lobbying efforts along with assistance from Pete McRoberts. Each year, the ACLU of Iowa tracks hundreds of bills and works to get other bills introduced or offer advice on language and amendments to bills that will protect civil liberties.

Abortion

Extremist politicians are at it again. In the past two legislative sessions, they passed two separate laws to block abortion access.

One was a 6-week abortion ban law, marketed as the "fetal heartbeat" law. The other was a 72-hour waiting period abortion law. Both were blocked by ACLU lawsuits.

Now politicians are taking a different

approach. They've filed an amendment to the Iowa Constitution that would state that 1) the constitution does not secure or protect a right to abortion and 2) the constitution does not require funding of abortion.

We'll continue to fight for a woman's right to control her body in our state, every step of the way.

Lobbying for Fairness for Iowa's Pregnant Workers

The Iowa Pregnant Workers Fairness Act would require Iowa employers to provide accommodations that are "reasonable" for pregnant employees.

An ACLU priority this session is passage of legislation that will require Iowa employers to accommodate the requests of workers who are pregnant and need "reasonable" accommodations for their health.

Responsible Iowa employers already do this. They recognize the value of assuring the health and well-being of pregnant employees and know it results in better employee retention, productivity, worker safety, lower workers' compensation costs, and lower insurance costs.

"Reasonable" Is Not Unreasonable

In most cases, the type of accommodations pregnant workers need during their pregnancy are things like limits on lifting weights, having a stool to sit on for periods of time, or additional time off for doctor's appointments. Some women need schedules that allow for morning sickness.

The legislation would specify that a reasonable accommodation request by an employee must be granted by the employer, *unless* it poses an undue hardship for the company. If it poses an undue hardship, the business is not required to provide it.

But we hear from pregnant workers time and time again that when they request these accommodations, they are turned down.

No Woman Should Have to Choose Between a Healthy Pregnancy And Work

That puts the employee in the position of making a choice between her job and her health, as well as the health of her pregnancy. If she chooses the latter, she may find herself demoted, receiving a pay cut, or even fired.

Iowa and federal law already require employers to provide temporary accommodations to workers with a "disability." Iowa and federal law protect against pregnancy discrimination by requiring employers to treat pregnant workers the same as they would other workers. But Iowa law does not require employers to provide reasonable accommodations to pregnant workers.

In 2013, the Iowa Civil Rights Commission issued guidance saying that pregnancy nondiscrimination under the Iowa Civil Rights Act means that employers must provide reasonable accommodations to pregnant employees unless it would pose an undue hardship to the employer.

But the Iowa Supreme Court's 2015 decision in the *McQuistion v. City of Clinton* case blurred the commission's clear directive to employers to accommodate pregnant workers. This left pregnant workers vulnerable and created confusion among employers about their legal obligations.

That's why legislation is now needed: to once again clarify the law and provide clear guidelines for employers and employees.

Anti-Racial Profiling Efforts Gaining Momentum

This legislative session we'll again be working with partner organizations on passing a bill to prevent racial profiling in lowa.

We've all seen the videos: Black drivers and other people of color targeted by police, harassed, handcuffed, searched, and worse all based on a flimsy pretext—like failing to fully stop for a stop sign or not signaling for a turn. Increasingly, as the use of cell phone cameras and police body and dash cameras are documenting this abuse of power by law enforcement, it's becoming ever more clear: Racial profiling is wrong and it must stop.

Most recently, the video of Des Moines police stopping, handcuffing, and harassing two young Black men, Montray Little and Jared Clinton, has gone viral and sparked outrage. At one point, the officer refuses to even tell Little why he is being stopped.

Racial Profiling Feeds Racial Disparities

It's racial profiling like this that exacerbates racism in our criminal justice system. That's why we'll once again work with partner organizations, including the NAACP, for meaningful legislation that makes it more difficult for law enforcement to wrongly target people of color.

Racial profiling happens when law enforcement stop people of color for suspicion of crime based on perceived race, ethnicity, national origin, or religion. Law enforcement cannot simply stop a person or pull a car over just because they have a "hunch." After all, one of the core principles of the Fourth Amendment is that the police cannot stop and detain a person without some legal reason. They need probable cause, or reasonable suspicion. Merely being Black or brown is hardly a legal reason to stop a person.

But as the videos and individual complaints from people of color show, discriminatory policing in our state continues. It's time to pass meaningful legislation to stop racial profiling.

Key Elements of Legislation

Any legislation to ban racial profiling should include language that does the following:

• Specifically bans racial profiling.

• Bans pretextual stops, which are stops made on the pretense of one reason like a driver going just slightly over the speed limit—but are really made because an officer decided that a driver looked "suspicious," which often translates simply and wrongly as being a person of color.

• Requires annual data collection and analysis of traffic stops and arrests to determine patterns within neighborhoods, cities, and among individual officers. That data should then be available to the public.

• Creates a citizen review board that can review complaints of profiling and discriminatory policing practices, whether they're for an entire department, for a particular practice, or for a particular officer.

• Requires annual training for law enforcement on racial profiling and discriminatory policing. The annual training should also cover proper data collection and data reporting.

More than 30 other states have passed anti-racial profiling laws. It's long past time for Iowa to do the same.

Progress is being made in some parts of the state. In two Iowa cities, Des Moines and University Heights, community groups and the ACLU have called for local action by city councils (which oversee police departments). For example, in November, community members, the ACLU, Iowa Citizens for Community Improvement, LULAC, and the Iowa-Nebraska NAACP publicly called upon the Des Moines City Council to pass an ordinance that would ban police racial profiling. In December, the University Heights City Council had the first reading of its proposed racial profiling ordinance.

A Good Start

And at least two Iowa cities, Iowa City and Davenport, have collected race data on traffic stops and shared that data with the public. Collecting and sharing such data is an important step for government transparency and for holding law enforcement accountable.

At least 15 Iowa police departments have internal racial profiling policies, but internal policies are not enough. A statewide law is needed to ban racial profiling across the entire state.

Our work in Iowa dovetails with the ACLU's national work on racial profiling. We're working for passage of data collection and anti-profiling federal legislation and litigating on behalf of people who have been victims of racial profiling by airlines, police, and government agencies.

Racial Profiling by the Numbers



Ag Gag Law Assures Media Free Speech

Continued from page 1

Matthew Strugar, Public Justice, and the Center for Food Safety.

They filed the lawsuit on behalf of several clients. One of those, Bailing Out Benji, is an Iowa nonprofit focused on protecting the welfare of dogs and puppies. Its concern was the impact of the law in finding animal cruelty in Iowa's puppy mills.

Silenced Critics of Factory Farming

Another client, Iowa Citizens for Community Improvement (CCI), 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.

Iowa's ag gag law was passed by the Iowa Legislature in 2012 and the lawsuit was filed by the coalition in the fall of 2017, after it became clear that the law was having a chilling effect on undercover investigations in agricultural facilities.

Special Penalties Just for Agriculture

The law threatened time in jail for those individuals, news media, and advocacy groups who use undercover means to document questionable activities in agricultural animal facilities. In some circumstances, it would criminalize even mere whistle-blowing by conscientious employees.

Before the ag gag law, other laws already were in place that criminalize trespassing, fraud, and other similar crimes. But the ag gag law criminalized access to the facilities under false pretenses. It also criminalized publication of information found by those means, even when there was no harm or injury to the facility investigated.

Protecting a Free Press

Attempts to pass and uphold ag gag laws around the country are highly destructive to the ability of reporters to do their jobs. Undercover reporting is a critical tool to inform the public about corporate wrongdoing. Overbroad laws that criminalize false speech violate the First Amendment. They also prevent investigative journalism from holding powerful private actors accountable.



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Know Your Rights: The Basics About Protesting in Iowa

Q: Can my free speech be restricted because of what I say, even if it is controversial?

A: No. Both the U.S. and Iowa Constitutions prohibit restrictions based on the *content* of your speech.

However, this does not mean that the Constitution completely protects all types of speech activity in every circumstance. The government is allowed to place certain nondiscriminatory and narrowly drawn "time, place and manner" restrictions on the exercise of free speech and expression rights.

But any time, place or manner restrictions must apply to all speech regardless of its point of view.

For instance, the government may validly impose permit requirements for large groups using parks or limits on the loudness of sound amplifiers.

The government may also limit speech or activity that is overly disruptive, such as shouting in a quiet auditorium to interrupt a speaker, as long as officials have requested the protester to stop the disruptive behavior, and the restriction is not based on viewpoint.

However, whether behavior is disruptive depends on context. For example, shouting at an outdoor rally may be wholly appropriate.

Also, some speech is not protected, like "true threats" of violence or speech that a court determines is "obscene."

Q: Where can I engage in free speech?

A: Generally, nearly all types of expression are constitutionally protected in traditional "public forums."

These include streets, sidewalks and parks. In addition, you may have a right to speak in other public locations that the government has opened up to unrestricted public speech, such as the plazas in front of government buildings or outdoor areas of public—not private—colleges.

There are different rules for different locations. Learn the rules for the location where you are planning to protest or demonstrate before your activity begins.

Keep in mind that excessive noise or disruption, obstructions of sidewalks or doorways, or harassment of unwilling passers-by could be used by officials to end your activity.

Observe traffic rules and other reasonable time, place, and manner restrictions. But you have a right to be heard, and officials shouldn't direct you to a route that doesn't reach your target audience.

Q: What about speech on private property?

A: The general rule is that the owners of private property may set rules limiting your free speech on that property.

If you disobey, they can order you off their property and have you arrested for trespassing if you do not comply.

Your speech may not be restricted on your *own* property, or *with the property owner's consent.*

Privately-owned shopping malls are considered private property in Iowa, even though they are open to the public.

Q: Do I have a right to picket on public sidewalks?

A: Yes—and a permit is not required.

But picketing must be orderly and nondisruptive so pedestrians can pass by and entrances to buildings are not blocked. Additionally, cities may constitutionally prohibit picketing in residential areas.



Q: Do I need a permit?

A: Not usually.

However, certain types of events require permits. Generally, these events are:

• A march or parade that does not stay on the sidewalk, and other events that require blocking traffic or street closure.

- A large rally requiring sound amplifying devices
- A rally at certain designated parks or plazas

Q: Do counter-demonstrations have free speech rights, too?

A: Yes. Even though counterdemonstrators should not be allowed to physically disrupt an event they are protesting, they do have the right to be present and to voice their displeasure.

Police are permitted to keep two antagonistic groups separated but should allow them to be within the general vicinity of one another.

For more details and information on your rights to protest, go to *www.aclu-ia.org*

Vote for the 2019 Board of Directors

In March, cast your vote online for new and returning ACLU of Iowa board members.

This year, there are several openings on the 22-member statewide board of directors. A slate of candidates will be made public in late February, and membership will then be able to cast their votes March 11 through March 25.

Here's how to vote:

• Only ACLU members may vote.

• Locate your ACLU membership number. It can be found on with the mailing address of this newsletter as well as your ACLU of Iowa membership card, if you have it.

• On March 11 through 25, go to *www.aclu-ia.org/boardelections*. Using your membership number, cast your vote online.

• If you have questions or prefer a paper ballot, email *info@aclu-ia.org* or call 515-243-3988, ext. 113.

Upcoming Events

Tinkers to Mark 50th Anniversary With Iowa Visit

Mary Beth and John Tinker are returning to lowa to celebrate a half century since their landmark student rights win at the U.S. Supreme Court in February.

Sunday, February 24, marks 50 years since the U.S. Supreme Court handed down *Tinker v. the Des Moines Schools*, an ACLU lawsuit in which Mary Beth and John Tinker sued for the right to express their political views at school by wearing black armbands to protest the Vietnam War. A series of ACLU of Iowa events are planned.

Sunday, February 24 Harding Middle School, Des Moines

2:00 p.m. Join us at Mary Beth's former junior high for a press conference for media and student journalists from Marjory Stoneman Douglas High School in Florida.

2:30 p.m. Meet the Tinkers! Community reception and refreshments. Public welcome.

Monday, February 25 Iowa State University Memorial Union

7:00 p.m. ACLU of Iowa Executive Director Mark Stringer will facilitate a panel discussion with the Tinkers.

Tuesday, February 26 University of Iowa Old Capitol

6:00 Reception for ACLU supporters. Email *sarah.conroy@aclu-ia.org* by Feb. 24 to attend.

7:30: Mark Stringer will again facilitate a panel discussion with the Tinkers.

See a complete listing of events at

https://tinkertourusa.org/tourinfo/tinker-turns-50/

SAVE THE DATE

2019 Bill of Rights Brunch

Saturday, September 21 10:00 a.m. to 12:30 p.m. Des Moines Hilton

Details to come at www.aclu-ia.org

APRIL 11-12



The ACLU 100 Experience premiered in Houston at the ACLU National Staff Conference. It will stop at South by Southwest in March and several other cities before hitting Des Moines.

ACLU 100 Interactive Experience Coming to Des Moines in April

The ACLU is celebrating its 100th birthday with a traveling bash that highlights its work, staged at the Des Moines Social Club.

How do you celebrate 100 years of defending civil liberties? By looking toward the future, of course.

The ACLU national office has created a traveling "interactive experience" to educate and engage people on some of the key civil liberties issues of our times. It's coming to Des Moines April 11 and 12.

Interactive and Virtual Reality

You'll experience interactive and virtual reality exhibits, meet leading activists, and learn more to amplify your voice and connect with others who share a desire to create a more just society.

The heart of the exhibit is trailer-like experience rooms that visitors walk through and interact with.

At the mass incarceration exhibit, for example, people can pick up phones to listen to the stories from real people who have been unfairly incarcerated. They are surrounded with millions of dots that represent the 2.3 million people held in correctional facilities in our country, which incarcerates more people per capita than any other nation in the world.

Live Music, Food Trucks, Activities

Besides the experience rooms, the setup for each ACLU 100 Experience will be different in each city. The exhibit/experience will debut at the South by Southwest Film Festival in Austin in March and then tour 15 U.S. cities through June.

Cities will have a mix of elements that may include live music, food trucks, art performances, and visual art. There will also be action stations for materials to make lapel buttons, write letters to elected officials, and learn more about civil liberties issues. The Des Moines specifics are still being finalized.

Details

• The experience will be staged in covered spaces in the outdoor courtyard of the Des Moines Social Club, located at 900 Mulberry Street.

• The exhibit will be open on Thursday, April 11, and Friday, April 12, from 10:00 a.m. to 8:00 p.m.

• The exhibit is free and family-friendly, though some content may be too intense for younger children.

• More information at *www.aclu100.org*

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SI-II lingA 2900 Section ACLU 100 Experience

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We expect challenging headwinds against civil liberties at the statehouse this session, including the one-party rule that has kept us

Can we count on you to join our team?

Sign up at

https://tinyurl.com/ACLUrapidresponse

With a new legislative session underway

at the statehouse, we need your help.

We hear it time and time again from

That is exactly why we have been

Team of volunteer activists to work with us

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building a Legislative Rapid Response

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Mark Stringer Executive Director ACLU of Iowa

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legislators—phone calls and emails from just a dozen or so constituents make them sit up,

Help us move quickly to block or promote key civil liberties bills this session.

No matter where in Iowa you reside answering our call to

likely it will be that the rights and liberties of Iowans will be advanced and preserved. and no matter which side of the aisle your

representatives may be on, you can have an impact. And by signing up for our team and

unnecessary voter ID legislation, and the appalling so-called anti-sanctuary cities bill. The more people like you we have at the ready to respond to our calls to contact

collective voice will become and the more

lawmakers at key moments, the stronger our

busy over the past two years with attacks on women's rights to control their own bodies,

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