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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH
CENTRAL DIVISION**

ANIMAL LEGAL DEFENSE)
FUND, et al.,)
Plaintiffs,)
)
)
)
)
)
)
v.)
)
GARY R. HERBERT, in his official)
capacity as Governor of Utah, *et al.*,)
)
Defendants.)

**PROPOSED AMICUS CURIAE
BRIEF OF CENTER FOR
FOOD SAFETY, PUBLIC JUSTICE,
HEALTHY FOOD ACTION, AND
FOOD & WATER WATCH IN
SUPPORT OF PLAINTIFFS**

Case No. 2:13-cv-00679-RJS

Judge Robert J. Shelby

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Utah Code Ann. § 76-6-112.....	1
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9 C.F.R. § 309.13	7, 8, 15
9 C.F.R. § 313.2.....	15
ADMINISTRATIVE MATERIALS	
Letter from John W. Thorsky, FDA District Director, to Austin Decoster, Owner, Quality Egg LLC (Oct. 15, 2010), <i>available at</i> http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/2010/ucm229805.htm	9, 10, 17
Modernization of Poultry Slaughter Inspection, 77 Fed. Reg. 4408 (proposed Jan. 27, 2012)	14
Statement by Secretary of Agric. Ed Schafer Regarding Hallmark/Westland Meat Packing Company Two Year Product Recall, Feb. 17, 2008, <i>available at</i> http://www.usda.gov/wps/portal/usda/usdamediafb?contentid=2008/02/0046.xml&printable=true&contentidonly=true	14, 15
U.S. Dep’t of Agric., Food Safety and Inspection Serv., <i>Current thinking on measures that could be implemented to minimize human exposure to materials that could potentially contain the bovine spongiform encephalopathy agent</i> (Jan. 15, 2002), <i>available at</i> http://www.fsis.usda.gov/Oa/topics/BSE_Thinking.pdf	6
U.S. Dep’t of Agric., Office of the Inspector Gen., <i>Audit Report: Animal and Plant Health Inspection Service and Food Safety and Inspection Service: bovine spongiform encephalopathy (BSE) surveillance program – Phase I</i> (Aug. 18, 2004), <i>available at</i> www.oig.usda.gov/webdocs/50601-9-final.pdf	4
U.S. Dep’t of Agric., Office of the Inspector Gen., <i>Audit Report: Evaluation of FSIS Management Controls Over Pre-Slaughter Activities</i> (Nov. 2008), <i>available at</i> http://www.usda.gov/oig/webdocs/24601-07-KC.pdf	11, 12, 13, 15
Use of Materials Derived From Cattle in Human Food and Cosmetics, 69 Fed. Reg. 42256 (proposed July 14, 2004)	5, 6, 15

LEGISLATIVE MATERIALS

- Hearing Before the House Comm. on Oversight and Gov't Reform, Subcomm. on Domestic Policy, 111th Cong. (Mar. 4, 2010) (statement of Wayne Pacelle), *available at* http://www.humanesociety.org/assets/pdfs/farm/pacelle_slaughter_030410.pdf13
- Hearing to Discuss the Recent Hallmark/Westland Meat Recall Before the U.S. Senate Comm. on Appropriations, Subcomm. on Agric., Rural Dev., FDA, and Related Agencies, 110th Cong. (Feb. 28, 2008) (statement of Wayne Pacelle), *available at* <http://www.humanesociety.org/assets/pdfs/farm/hsus-testimony-senate-ag-approps-hearing-2-28-08.pdf>.....6, 7, 11

OTHER AUTHORITIES

- A. Gupta et al., *Emergence of multidrug-resistant Salmonella enterica serotype Newport infections resistant to expanded-spectrum cephalosporins in the United States*, 188 J. of Infectious Diseases 1707 (2003).....8
- Andrew Martin, *Largest Recall of Ground Beef Is Ordered*, New York Times (Feb. 18, 2008), *available at* http://www.nytimes.com/2008/02/18/business/18recall.html?_r=015
- Associated Press, *Recall Expands to more than half a billion eggs*, NBCNews.com, http://www.nbcnews.com/id/38741401/ns/health-food_safety/t/recall-expands-more-half-billion-eggs/#.Uq_NMuKFdmp (last visited Dec. 16, 2013)17
- C. L. Stull et al., *A review of the causes, prevention, and welfare of nonambulatory cattle*, 231 J. of the Am. Vet. Med. Assoc. 227 (2007).....5
- C. M. Byrne et al., *Characterization of Escherichia coli O157:H7 from downer and healthy dairy cattle in the upper Midwest region of the United States*, 69 Applied & Env'tl. Microbiology 4683 (2003)8
- C. R. Helps et. al, *Transfer of spinal cord material to subsequent bovine carcasses at splitting*, 67 J. of Food Prot. 1921 (2004)6
- Compassion Over Killing, *Dunkin' Donuts' Egg Supplier Exposed!*, <http://dunkincruelty.com/investigation> (last visited Dec. 16, 2013).....16
- Ctrs. for Disease Control & Prevention, *E. coli (Escherichia coli)*, <http://www.cdc.gov/ecoli/general/> (last visited Dec. 16, 2013).....3

OTHER AUTHORITIES, CONT'D

Ctrs. for Disease Control & Prevention, <i>Tracking and Reporting Foodborne Disease Outbreaks</i> , http://www.cdc.gov/features/dsfoodborneoutbreaks/ (last visited Dec. 16, 2013)	2
Ctrs. for Disease Control & Prevention, <i>2011 Estimates of Foodborne Illness in the United States</i> , http://www.cdc.gov/Features/dsFoodborneEstimates/ (last visited Dec. 16, 2013)	2
Ctr. for Food Safety, <i>About Mad Cow Disease</i> , http://www.centerforfoodsafety.org/issues/1040/mad-cow-disease/about-mad-cow-disease (last visited Dec. 16, 2013)	5, 6
Ctr. for Food Safety, <i>Mad Cow Disease Q & A</i> , http://www.centerforfoodsafety.org/issues/1040/mad-cow-disease/mad-cow-disease-q-and-a (last visited Dec. 16, 2013)	6
D. J. Daly et al., <i>Use of a marker organism to model the spread of central nervous system tissue in cattle and the abattoir environment during commercial stunning and carcass dressing</i> , 68 <i>Applied & Envtl. Microbiology</i> 791 (2002)	7
D. M. Prendergast et al., <i>Dissemination of central nervous system tissue during the slaughter of cattle in three Irish abattoirs</i> , 154 <i>Veterinary Record</i> 21 (2004)	6
FoodSafety.gov, <i>Food Poisoning</i> , http://www.foodsafety.gov/poisoning/index.html (last visited Dec. 16, 2013)	3
G. L. Armstrong et al., <i>Emerging foodborne pathogens: Escherichia coli O157:H7 as a model of entry of a new pathogen into the food supply of the developed world</i> , 18 <i>Epidemiologic Revs.</i> 29 (1996)	7, 9
Gov't Accountability Office, <i>Food Safety: More Disclosure and Data Needed to Clarify Impact of Changes to Poultry and Hog Inspections</i> (Aug. 2013), available at http://www.gao.gov/assets/660/657144.pdf	14
Gretchen Goetz, <i>11 Years of Data Show Poultry, Fish, Beef Have Remained Leading Sources of Food-Related Outbreaks</i> , <i>Food Safety News</i> (June 28, 2013), http://www.foodsafetynews.com/2013/06/20-years-of-foodborne-illness-data-show-poultry-fish-beef-continue-to-be-leading-sources-of-outbreaks/#.UpUjJOKkGil	2, 3

OTHER AUTHORITIES, CONT'D

Helena Bottemiller, <i>Annual Foodborne Illnesses Cost \$77 Billion, Study Finds</i> , Food Safety News (Jan. 3, 2012), http://www.foodsafetynews.com/2012/01/foodborne-illness-costs-77-billion-annually-study-finds/#.UDU4Isx5XIN	3
Humane Soc’y of the U.S., <i>Cage Confinement of Laying Hens Increases Salmonella Risk</i> , http://www.humanesociety.org/issues/confinement_farm/facts/salmonella.html#.UpzFLOKkGik (last visited Dec. 16, 2013).....	10
Humane Soc’y of the U.S., <i>Owners of Infamous Calif. Slaughterhouse Pay Millions to Settle Government Fraud Case</i> (Nov. 27, 2013), <i>available at</i> http://www.humanesociety.org/news/press_releases/2013/11/Hallmark_settlement_112713.html#.Uq9-ISdu6M8	15
Humane Soc’y of the U.S., <i>Undercover at the Largest U.S. Egg Producer</i> , (2010) <i>available at</i> http://www.humanesociety.org/assets/pdfs/farm/cal-maine_investigation_report.pdf	9, 10, 16
J. Cohen et al., <i>Evaluation of the potential for bovine spongiform encephalopathy in the United States</i> (Nov. 26, 2001), Harvard Ctr. for Risk Analysis & Harvard School of Pub. Health, <i>available at</i> http://www.agcenter.com/mad%20cow/Harvard%20Study%20on%20madcow%5B1%5D.pdf	6
J. F. Edwards et al., <i>A bacteriologic culture and histologic examination of samples collected from recumbent cattle at slaughter</i> , 207 <i>J. of the Am. Vet. Med. Assoc.</i> 1174 (1995).....	7
J. S. Spika et al., <i>Chloramphenicol-resistant Salmonella newport traced through hamburger to dairy farms: a major persisting source of human salmonellosis in California</i> , 316 <i>New Eng. J. Med.</i> 565 (1987)	7
Jonathan Stempel, <i>U.S., Suppliers Settle Over School Lunch Beef Linked to Recall</i> , Reuters (Nov. 27, 2013), http://www.reuters.com/article/2013/11/27/us-usa-school-lunch-settlement-idUSBRE9AQ18M20131127	15
Lydia Zuraw, <i>CDC Acknowledges Role of Farms in Antibiotic Resistance</i> , Food Safety News (Sept. 17, 2013), www.foodsafetynews.com/2013/09/drug-resistant-infections/	11
M. J. Vanbaale et al., <i>A survey of dairy producer practices and attitudes pertaining to dairy market beef food safety</i> , 23 <i>Food Prot. Trends</i> 466 (2003)	8

OTHER AUTHORITIES, CONT'D

Nil Zacharias, *It's Time to End Factory Farming*, Huffington Post (Oct. 19, 2011), http://www.huffingtonpost.com/nil-zacharias/its-time-to-end-factory-f_b_1018840.html.....4

P. Brown, *Resistance of scrapie infectivity to steam autoclaving after formaldehyde fixation and limited survival after ashing at 360 degrees C: practical and theoretical implications*, 161 J. of Infectious Diseases 467 (1990).....5

PETA, *PETA's Butterball Investigator's Statements*, <http://www.peta.org/features/petas-butterball-investigators-statements/> (last visited Dec. 8, 2013)16

PETA, *Tyson Workers Torturing Birds, Urinating on Slaughter Line*, <https://secure.peta.org/site/Advocacy?cmd=display&page=UserAction&id=1121> (last visited Dec. 16, 2013)16

Pub. Broad. Serv., *Modern meat: interview with Dr. Robert Tauxe*, Frontline (Apr. 18, 2002), available at <http://www.pbs.org/wgbh/pages/frontline/shows/meat/interviews/tauxe.html>8, 9

R. R. Coore et al., *Dissemination of brain emboli following captive bolt stunning of sheep: capacity for entry into the systemic arterial circulation*, 67 J. of Food Prot. 1050 (2004).....7

S. Van Hoorebeke et al., *Determination of the within and between flock prevalence and identification of risk factors for Salmonella infections in laying hen flocks housed in conventional and alternative systems*, 94 J. Preventive Vet. Med. 94 (2010).....10

Sarah Klein and Caroline Smith DeWaal, *Risky Meat: A CSPI Field Guide to Meat and Poultry Safety* (2013), available at http://cspinet.org/foodsafety/PDFs/RiskyMeat_CSPI_2013.pdf.....3, 4, 8, 9

Sparks Cos., Inc., *Livestock mortalities: methods of disposal and their potential cost* (Mar. 2002), available at http://assets.nationalrenderers.org/mortalities_final.pdf.....5

T. Garland, *Brain emboli in the lungs of cattle after stunning*, 348 Lancet 610 (1996).....7

T. Grandin, *A.M.I. Sponsors Stunning and Handling Conference*, Meat & Poultry 48-49 (Mar. 1999).....7

Page(s)

OTHER AUTHORITIES, CONT'D

U.S. Food & Drug Admin., *Foodborne Illnesses: What You Need to Know*,
<http://www.fda.gov/food/resourcesforyou/consumers/ucm103263.htm> (last
visited Dec. 16, 2013)3

STATEMENT OF INTEREST

Center for Food Safety, Public Justice, Healthy Food Action, and Food & Water Watch, through undersigned counsel, respectfully submit this Brief as *Amici Curiae* in support of Plaintiffs. Plaintiffs have consented to this filing; Defendants take no position.

Amicus Center for Food Safety (CFS) is a national nonprofit organization dedicated to addressing the environmental, economic, ethical, human health, and social impacts associated with the development and commercialization of agricultural and food processing technologies, with a specific focus on animal factories. CFS seeks to protect animal welfare and public health by promoting sustainable agricultural practices. CFS also advocates for consumers by protecting their right to know how their food is produced.

Amicus Public Justice, P.C. (Public Justice) is a national public interest law firm dedicated to holding corporations accountable for the manufacture, distribution, and marketing of food and other products that endanger consumers' safety, health, and nutrition. Public Justice's Food Safety & Health Project helps consumers redress the injustices that cost them their health, their peace of mind, and sometimes their lives.

Amicus Healthy Food Action is a national network of health professionals and others who advocate for healthier food produced in more sustainable ways. Healthy Food Action educates the public via its website, webinars, and publications.

Amicus Food & Water Watch (FWW) is a nonprofit organization that advocates for common-sense policies that will result in healthy, safe food, and access to safe and affordable drinking water. FWW works to ensure the food, water, and fish that Americans consume is safe, accessible, and sustainably produced. FWW also helps people take charge of where their food comes from, and forces government to do its job protecting citizens.

Together, as public interest advocacy organizations dedicated to protecting consumer rights and health with regard to food and agriculture, *Amici* have a strong interest in ensuring that consumers have access to information about how their food is produced, so that they are both

empowered to make informed decisions and protected from contaminated food produced in violation of federal law.

CORPORATE DISCLOSURE STATEMENT

Amici Center for Food Safety, Public Justice, Healthy Food Action, and Food & Water Watch are all nonprofit corporations, have no parent corporations, and do not issue stock.

Dated: December 17, 2013

Respectfully submitted,

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INTRODUCTION

Utah's "ag gag" law, Utah Code Ann. § 76-6-112, criminalizes conduct that keeps our food supply safe. Over the past fifteen years, more Americans have died from foodborne illness associated with beef and poultry than any other foods. This is not surprising when the conditions that surround the treatment and slaughter of cattle and poultry are revealed. Federal regulations requiring that bacteria- and disease-ridden animals be withheld from the food supply due to the increased risk that their meat and eggs present to consumers are routinely violated. On large-scale cattle and dairy farms, diseased cows are forcibly brought to slaughter as workers apply painful electrical shocks in sensitive areas, sometimes while splashing water on the animal to intensify the shock; drag cattle with chains pulled by heavy machinery; and spray water into their nostrils with high-pressure water hoses. On large-scale egg and poultry farms, hens are crowded into small cages with other injured, diseased, or dead birds; hens and eggs are covered in feces and blood; and dead birds are left to decay in proximity to live birds and egg conveyor belts. In addition to violating federal humane handling regulations, these conditions violate federal food safety regulations by allowing contaminated beef, poultry, and eggs to enter the food supply.

Plaintiffs' use of undercover investigations to document and expose these violations is crucial because they occur behind closed doors and away from public scrutiny. In fact, such investigations are currently the public's best defense against foodborne illnesses that are known to be caused by contaminated animal products because government regulation has proven time and again to be ineffective at stopping food safety violations. The government's ongoing failure to prevent these illegal practices undermines consumers' safety and their right to know how their food is produced, which prevents them from making informed decisions that adequately protect their health.

The undercover investigations that Utah's "ag gag" law prohibits fill a regulatory gap and help protect consumers from the grave health risks posed by adulterated food. Such

investigations have revealed widespread noncompliance with food safety regulations. They have also prompted food recalls and resulted in criminal convictions and civil judgments against noncomplying food producers. Given the significant role that documenting and exposing violations of federal law plays in protecting our food supply and millions of American consumers, the issue presented to the Court is critically important. For these reasons, the Court should decide the legality of Utah's attempt to criminalize and prohibit such speech on the merits of this case.

ARGUMENT

I. FOODBORNE ILLNESS ASSOCIATED WITH BEEF AND POULTRY PRESENTS A SIGNIFICANT THREAT TO PUBLIC HEALTH

Each year, 3000 American consumers are killed by foodborne illness.¹ Contaminated beef and poultry products are particularly to blame. Over the past fifteen years, these two products have caused more deaths from foodborne illness than any other source: *Listeria* in poultry was responsible for the most deaths from foodborne illness between 1998 and 2008,² and *E. coli* in beef was the leading cause of death associated with foodborne illness in 2009 and 2010.³

Even when not deadly, foodborne illness associated with beef and poultry products is a serious threat to public health. Each year 47.8 million people—one in six Americans—are sickened by foodborne illnesses, and 128,000 are hospitalized.⁴ The annual U.S. economic loss

¹ Ctrs. for Disease Control & Prevention (CDC), *2011 Estimates of Foodborne Illness in the United States*, <http://www.cdc.gov/Features/dsFoodborneEstimates/> (last visited Dec. 16, 2013).

² Gretchen Goetz, *11 Years of Data Show Poultry, Fish, Beef Have Remained Leading Sources of Food-Related Outbreaks*, Food Safety News (June 28, 2013), <http://www.foodsafetynews.com/2013/06/20-years-of-foodborne-illness-data-show-poultry-fish-beef-continue-to-be-leading-sources-of-outbreaks/#.UpUjJOKkGil>.

³ CDC, *Tracking and Reporting Foodborne Disease Outbreaks*, <http://www.cdc.gov/features/dsfoodborneoutbreaks/> (last visited Dec. 16, 2013).

⁴ CDC, *2011 Estimates of Foodborne Illness in the United States*, *supra* note 1.

from just the resulting medical costs and loss of productivity is over \$77 billion.⁵ Even mild cases often involve five to seven days of severe stomach cramps, diarrhea (often bloody), fever, and vomiting.⁶ Some cases cause serious long-term effects such as chronic arthritis and brain and nerve damage.⁷ Infections can be severe or even life-threatening.⁸ For example, 5 to 10% of individuals struck by *E. coli* develop hemolytic uremic syndrome (HUS), a type of kidney failure that can result in serious long-term damage or death.⁹

Beef and poultry products are also principally to blame for foodborne illness outbreaks.¹⁰ In 2009 and 2010, beef and poultry were respectively the first and fourth commodities most often implicated in outbreaks attributed to a commodity food.¹¹ Chicken caused more outbreaks between 1993 and 2010 than any other meat or poultry product,¹² and *Salmonella* associated with eggs led to the most outbreak-related illnesses between 2009 and 2010.¹³ Ground beef follows

⁵ Helena Bottemiller, *Annual Foodborne Illnesses Cost \$77 Billion, Study Finds*, Food Safety News (Jan. 3, 2012), <http://www.foodsafetynews.com/2012/01/foodborne-illness-costs-77-billion-annually-study-finds/#.UDU4Isx5XIN>.

⁶ U.S. Food & Drug Admin. (FDA), *Foodborne Illnesses: What You Need to Know*, <http://www.fda.gov/food/resourcesforyou/consumers/ucm103263.htm> (last visited Dec. 16, 2013).

⁷ FoodSafety.gov, *Food Poisoning*, <http://www.foodsafety.gov/poisoning/index.html> (last visited Dec. 16, 2013).

⁸ CDC, *E. coli (Escherichia coli)*, <http://www.cdc.gov/ecoli/general/> (last visited Dec. 16, 2013).

⁹ *Id.*

¹⁰ Goetz, *supra* note 2.

¹¹ CDC, *Tracking and Reporting Foodborne Disease Outbreaks*, *supra* note 3.

¹² Sarah Klein and Caroline Smith DeWaal, *Risky Meat: A CSPI Field Guide to Meat and Poultry Safety* 8 (2013), available at http://cspinet.org/foodsafety/PDFs/RiskyMeat_CSPI_2013.pdf.

¹³ CDC, *Tracking and Reporting Foodborne Disease Outbreaks*, *supra* note 3.

poultry as the second most common source of meat- and poultry-related outbreaks reported to the Centers for Disease Control and Prevention (CDC), due to contamination with *Salmonella* and *E. coli*.¹⁴

In terms of foodborne illness, the practices that take place in secret in cattle, poultry, and egg factories that allow contaminated products to enter our food supply are at best dangerous and at worst deadly. Documenting, exposing, and preventing food safety violations in these establishments is thus paramount to protecting public health.

II. INCIDENCES OF FOODBORNE ILLNESS ARE CLOSELY CONNECTED TO ANIMAL WELFARE

The connections between foodborne illness and the conditions in animal factories are obvious and well-documented. By some estimates, 99.9% of chicken and 78% of beef eaten in the U.S. comes from animal factories.¹⁵ As a result, how food animals are raised and slaughtered in these plants has direct and serious effects on the safety of our nation's food supply and our overall public health.

A. Slaughtering "Downer" Cows Increases the Risk that Mad Cow Disease, *Salmonella*, and *E. Coli* Will Contaminate Our Food Supply.

One of the most significant food-related threats to public health comes from nonambulatory disabled livestock, or so-called "downer" cows: cattle too sick or injured to rise from a recumbent position. Every year an estimated 195,000 to 1.8 million cattle collapse for a variety of metabolic, infectious, toxic, and/or musculoskeletal reasons.¹⁶ These nonambulatory

¹⁴ Klein, *supra* note 12, at 9.

¹⁵ Nil Zacharias, *It's Time to End Factory Farming*, Huffington Post (Oct. 19, 2011), http://www.huffingtonpost.com/nil-zacharias/its-time-to-end-factory-f_b_1018840.html.

¹⁶ U.S. Dep't of Agric. (USDA) Office of the Inspector Gen. (OIG), *Audit Report: Animal and Plant Health Inspection Service and Food Safety and Inspection Service: bovine spongiform encephalopathy (BSE) surveillance program – Phase I* (Aug. 18, 2004), available at www.oig.usda.gov/webdocs/50601-9-final.pdf; Sparks Cos., Inc., *Livestock mortalities: methods of disposal and their potential cost* (Mar. 2002), available at http://assets.nationalrenderers.org/mortalities_final.pdf; C.L. Stull et al., *A review of the causes,*

animals are more likely to be contaminated with bacteria than ambulatory cattle. This bacterial contamination poses an enormous threat to public health that can only be controlled by ensuring that downer cows do not enter the food supply.

1. Mad cow disease

A cow's inability to walk or stand may indicate possible contamination with bovine spongiform encephalopathy (BSE or mad cow disease). People who eat meat from BSE-infected animals can contract the human version of BSE, which slowly eats holes in the brain over a matter of years. The disease invariably results in dementia and death. There is no known cure, treatment, or vaccine.¹⁷ Even worse, consumers have no way to protect themselves once infected meat enters the food supply because cooking does not adequately destroy infectious proteins; in fact, there is evidence that the proteins can survive incineration at temperatures hot enough to melt lead.¹⁸

As the United States Food and Drug Administration (FDA) has recognized, “nonambulatory disabled cattle . . . are the population at greatest risk for harboring BSE.”¹⁹ BSE is thought to occur spontaneously, but spreads when parts of infected cattle—including trimmings from the killing floor, inedible parts and organs, cleaned entrails, and fetuses—are included in rendered meat products that are fed to dairy cows for protein.²⁰ “BSE can result in

prevention, and welfare of nonambulatory cattle, 231 J. of the Am. Vet. Med. Assoc. 227, 227-34 (2007).

¹⁷ Ctr. for Food Safety (CFS), *About Mad Cow Disease*, <http://www.centerforfoodsafety.org/issues/1040/mad-cow-disease/about-mad-cow-disease> (last visited Dec. 16, 2013).

¹⁸ P. Brown, *Resistance of scrapie infectivity to steam autoclaving after formaldehyde fixation and limited survival after ashing at 360 degrees C: practical and theoretical implications*, 161 J. of Infectious Diseases 467, 467-72 (1990).

¹⁹ Use of Materials Derived From Cattle in Human Food and Cosmetics, 69 Fed. Reg. 42256, 42259 (proposed July 14, 2004).

²⁰ CFS, *About Mad Cow Disease*, *supra* note 17; CFS, *Mad Cow Disease Q & A*,

an animal going down either directly, because of brain damage, or indirectly, by predisposing the animal to injury.”²¹

Tissue from BSE-infected animals can be introduced into the food supply in several ways: muscle meat can be contaminated via aerolization of the spinal cord during carcass splitting; central nervous system debris can accumulate in the split saws used to halve carcasses, which can then spread the contagion from one carcass to the next; or cheek meat can be contaminated if it is not removed before the skull of an animal with infected brain tissue is fragmented or split.²² Further, captive bolt stunning—the predominant method used to render cattle insensible before blood draining—may blow brain tissue onto slaughter plant equipment, workers’ hands and aprons, and into an animal’s bloodstream, which has the potential to disseminate the pathogen throughout the animal’s body.²³

<http://www.centerforfoodsafety.org/issues/1040/mad-cow-disease/mad-cow-disease-q-and-a> (last visited Dec. 16, 2013); Hearing to Discuss the Recent Hallmark/Westland Meat Recall Before the U.S. Senate Comm. on Appropriations, Subcomm. on Agric., Rural Dev., FDA, and Related Agencies, 110th Cong. (Feb. 28, 2008) (statement of Wayne Pacelle, President & CEO, Humane Society of the United States), *available at* <http://www.humanesociety.org/assets/pdfs/farm/hsus-testimony-senate-ag-approps-hearing-2-28-08.pdf> (citations therein) (hereinafter “Pacelle Testimony”).

²¹ Pacelle Testimony, *supra* note 20, at 3.

²² J. Cohen et al., *Evaluation of the potential for bovine spongiform encephalopathy in the United States* (Nov. 26, 2001), Harvard Ctr. for Risk Analysis & Harvard School of Pub. Health, *available at* <http://www.agcenter.com/mad%20cow/Harvard%20Study%20on%20madcow%5B1%5D.pdf>; C. R. Helps et. al., *Transfer of spinal cord material to subsequent bovine carcasses at splitting*, 67 J. of Food Prot. 1921, 1921-26 (2004); USDA Food Safety and Inspection Serv. (FSIS), *Current thinking on measures that could be implemented to minimize human exposure to materials that could potentially contain the bovine spongiform encephalopathy agent* (Jan. 15, 2002), *available at* http://www.fsis.usda.gov/Oa/topics/BSE_Thinking.pdf.

²³ 69 Fed. Reg. at 1866; D. M. Prendergast et al., *Dissemination of central nervous system tissue during the slaughter of cattle in three Irish abattoirs*, 154 Veterinary Record 21, 21-24 (2004); R. R. Coore et al., *Dissemination of brain emboli following captive bolt stunning of sheep: capacity for entry into the systemic arterial circulation*, 67 J. of Food Prot. 1050, 1050-52 (2004); T. Garland, *Brain emboli in the lungs of cattle after stunning*, 348 Lancet 610 (1996);

For these reasons, it is essential that the meat from BSE-infected animals be kept out of the food supply. As explained below, as a result of an undercover investigation, federal regulations now mandate that BSE-infected animals be slaughtered separately and condemned as unfit for human food. *See* 9 C.F.R. §§ 309.3, 309.13. When infected animals are forcibly brought to slaughter despite signs of being unfit for human consumption, the public is put at risk.

2. *Salmonella* and *E. coli* contamination

Nonambulatory cattle that may otherwise appear healthy are still at increased risk of contamination with *Salmonella* and *E. Coli*.²⁴ This is true for several reasons. First, these animals spend more time lying down, which increases the likelihood they will be contaminated with fecal matter.²⁵ Second, stressed animals are more likely to shed pathogens in large numbers.²⁶ Third, because starvation causes *E. coli* and *Salmonella* to proliferate, nonambulatory animals that are often left to starve for extended periods before slaughter may be more likely to shed pathogenic bacteria.²⁷

Dairy cattle, specifically, may harbor greater numbers of pathogens, and their slaughter

D. J. Daly et al., *Use of a marker organism to model the spread of central nervous system tissue in cattle and the abattoir environment during commercial stunning and carcass dressing*, 68 *Applied & Env'tl. Microbiology* 791, 791-98 (2002).

²⁴ *See* J. F. Edwards et al., *A bacteriologic culture and histologic examination of samples collected from recumbent cattle at slaughter*, 207 *J. of the Am. Vet. Med. Assoc.* 1174, 1174-76 (1995).

²⁵ T. Grandin, *A.M.I. Sponsors Stunning and Handling Conference*, *Meat & Poultry* 48-49 (Mar. 1999).

²⁶ J. S. Spika et al., *Chloramphenicol-resistant Salmonella newport traced through hamburger to dairy farms: a major persisting source of human salmonellosis in California*, 316 *New Eng. J. Med.* 565, 565-70 (1987).

²⁷ Pacelle Testimony, *supra* note 20, at 8 (citing G. L. Armstrong et al., *Emerging foodborne pathogens: Escherichia coli O157:H7 as a model of entry of a new pathogen into the food supply of the developed world*, 18 *Epidemiologic Revs.* 29, 29-51 (1996)).

may increase spread of pathogens at slaughter plants.²⁸ Multiple outbreaks of a multi-drug resistant strain of *Salmonella* have been tied to ground beef made from dairy cows.²⁹ Downed cows have been found to be 3.3 times more likely to harbor *E. coli* than ambulatory dairy cows.³⁰ As with BSE, “[d]ue to the ubiquity of *E. coli* O157:H7 among cattle, as well as its low infective dose and the severity of the resistant illness in humans, effective control of the pathogen may be possible *only* by eliminating [it] at its source.”³¹

Ignoring federal food safety laws that require pathogen-laden downer cows to be kept out of the food supply, *see* 9 C.F.R. §§ 309.3, 309.13, has serious consequences for public health. Cattle carry *E. coli* in their intestinal tract and on their hides. Intestinal bacteria can be transferred to the animal carcass during slaughter, and bacteria on animal hides can become airborne and settle onto exposed meat if hides are improperly removed.³² Even a single food safety violation during slaughter and processing of *E. coli*-infected cattle can contribute greatly to the onset and spread of foodborne illness. Because a single hamburger can be made from hundreds or even thousands of different cows,³³ it is “possible that, whereas in the past an infected animal would produce only a small number of cases, such an animal could now cause a

²⁸ M. J. Vanbaale et al., *A survey of dairy producer practices and attitudes pertaining to dairy market beef food safety*, 23 Food Prot. Trends 466, 466-73 (2003).

²⁹ A. Gupta et al., *Emergence of multidrug-resistant Salmonella enterica serotype Newport infections resistant to expanded-spectrum cephalosporins in the United States*, 188 J. of Infectious Diseases 1707, 1707-16 (2003).

³⁰ C. M. Byrne et al., *Characterization of Escherichia coli O157:H7 from downer and healthy dairy cattle in the upper Midwest region of the United States*, 69 Applied & Env'tl. Microbiology 4683, 4683-88 (2003).

³¹ *Id.* (emphasis added).

³² Klein, *supra* note 12, at 9.

³³ Pub. Broad. Serv., *Modern meat: interview with Dr. Robert Tauxe*, Frontline (Apr. 18, 2002), available at <http://www.pbs.org/wgbh/pages/frontline/shows/meat/interviews/tauxe.html>.

large, widespread outbreak.”³⁴ A single downed cow infected with a pathogen such as *E. coli* could contaminate more than 100,000 hamburgers with an infectious dose.³⁵ Thus, violating food safety regulations prescribing proper slaughter procedures seriously threatens public health.

B. Unsanitary Conditions on Egg and Poultry Farms Increase the Risk that *Salmonella* and *E. coli* Will Contaminate Our Food Supply.

Meat and eggs from poultry that are raised and slaughtered under unsanitary conditions also present serious risks of *Salmonella* or *E. coli* contamination. *Salmonella* contamination in poultry occurs most often during slaughter and processing, because live birds carry pathogens on their feathers and in their intestines that can be transferred to the carcass during slaughter.³⁶ Accordingly, the risk of contamination is directly related to the way in which the animals are raised. As with cattle, inhumane treatment of egg-laying hens and chicken often overlaps with unsanitary conditions that, together, promote disease.

Hens raised in animal factories are regularly kept in unsanitary conditions. Just some of the documented conditions include hens: covered in liquid manure from shallow manure scraping pits, moving between barns through manure trenches or on egg conveyors, and walking amidst manure overflows on barn floors.³⁷ In animal factories that use battery cages, hens are often: confined in overcrowded cages with the rotting corpses of other birds or birds suffering bloody injuries, covered in feces from birds in overhead cages, and prone to drown in manure

³⁴ Armstrong, *supra* note 27.

³⁵ *Id.*

³⁶ Klein, *supra* note 12, at 8.

³⁷ Humane Soc’y of the U.S. (HSUS), *Undercover at the Largest U.S. Egg Producer*, (2010) available at http://www.humanesociety.org/assets/pdfs/farm/cal-maine_investigation_report.pdf; Letter from John W. Thorsky, FDA District Director, to Austin Decoster, Owner, Quality Egg LLC (Oct. 15, 2010), available at <http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/2010/ucm229805.htm>.

trenches that run underneath the cages and into pipes leading to outside lagoons.³⁸ Decaying dead hens are customarily left on floors, in cages, and on cage ledges and tops, often in direct contact with live hens and eggs.³⁹ When animals are not only exposed to feces and decaying carcasses but live in and among them, the risk of contamination is dire.

One primary indicator of the connection between animal factory conditions and contamination is the higher risk of *Salmonella* that caged hens have consistently been proven to present.⁴⁰ A 2010 study reported that housing laying hens in conventional battery cages is a significant risk factor for *Salmonella* Enteritidis and/or Typhimurium, and that *Salmonella* shedding in caged flocks was twenty times more likely than in non-caged flocks.⁴¹ The study attributed this to several factors, including larger hen flocks on cage farms, the reuse of cages without cleaning them between production rounds, the high density of animals, and low air quality due to indoor confinement.⁴² Together, these factors create unsanitary conditions that cause bacteria to spread, and stressful conditions that cause poultry to shed bacteria they may be harboring.

These risks are exacerbated by the excessive use of antimicrobial feed additives and non-therapeutic antibiotics, which contribute to the emergence of resistant strains of pathogens. This causes disease to proliferate and spread among animals that are then introduced into the

³⁸ HSUS, *supra* note 37.

³⁹ *Id.*

⁴⁰ HSUS, *Cage Confinement of Laying Hens Increases Salmonella Risk*, http://www.humanesociety.org/issues/confinement_farm/facts/salmonella.html#.UpzFLOKkGik (last visited Dec. 16, 2013).

⁴¹ S. Van Hoorebeke et al., *Determination of the within and between flock prevalence and identification of risk factors for Salmonella infections in laying hen flocks housed in conventional and alternative systems*, 94 J. Preventive Vet. Med. 94, 94-100 (2010).

⁴² *Id.* at 99.

food supply, which has direct implications for public health. CDC recently recognized that “there are specific situations in which the widespread use of antimicrobials in agriculture has resulted in an increase in resistant infections in humans.”⁴³ In fact, six antibiotic-resistant microorganisms are linked to foodborne illness.⁴⁴ It is thus beyond dispute that how food animals are raised and slaughtered directly impacts public health.

III. GOVERNMENT REGULATION ALONE HAS PROVEN INEFFECTIVE AT ADEQUATELY PROTECTING OUR FOOD SUPPLY

Unfortunately, government regulation has proven woefully ineffective at protecting the public from foodborne illness associated with beef and poultry. The inadequacy of the U.S. government’s efforts in this area was dramatically illustrated by a 2007 investigation conducted by the Humane Society of the United States (HSUS) at a California slaughter plant operated by Hallmark/Westland (Hallmark). At the time, Hallmark was the second-largest supplier of beef to the U.S. Department of Agriculture (USDA)’s Agricultural Marketing Service, which purchases beef for distribution to needy families, the elderly, and schools through the National School Lunch Program.

For approximately six weeks in 2007, an HSUS investigator worked at the Hallmark plant and documented “egregious” violations of federal regulations.⁴⁵ Slaughterhouse employees routinely and purposefully ignored regulations “simply so they could get these cattle who could not even walk into the kill box.”⁴⁶ Among other things, the HSUS investigator “filmed workers

⁴³ Lydia Zuraw, *CDC Acknowledges Role of Farms in Antibiotic Resistance*, Food Safety News (Sept. 17, 2013), www.foodsafetynews.com/2013/09/drug-resistant-infections/.

⁴⁴ *Id.*

⁴⁵ USDA, OIG, *Audit Report: Evaluation of FSIS Management Controls Over Pre-Slaughter Activities*, at i, iii (Nov. 2008), available at <http://www.usda.gov/oig/webdocs/24601-07-KC.pdf> (hereinafter “Audit Report”).

⁴⁶ Pacelle Testimony, *supra* note 20, at 2.

ramming cows with the blades of a forklift, jabbing them in the eyes, applying painful electrical shocks often in sensitive areas, dragging them with chains pulled by heavy machinery, and torturing them with a high-pressure water hose to simulate drowning” by spraying water into their nostrils, “all in attempts to force crippled animals to walk to slaughter.”⁴⁷ In one case, the investigator videotaped a cow “who collapsed on her way into the stunning box. After she was electrically shocked and still could not stand, she was shot in the head with a captive bolt gun to stun her and then dragged on her knees into slaughter.”⁴⁸

These practices took place at a plant where on-site USDA inspectors were present. USDA management assigns tasks to inspectors throughout a slaughter facility, and inspectors are not necessarily permanently stationed in areas where they can witness animal handling. In the Hallmark plant, the USDA inspector was only present at two predictable times each day. Rather than inspect animals individually, the inspector looked at groups of thirty to thirty-five animals as they passed by and “merely noted those animals who could not stand and then approved the remainder for slaughter.”⁴⁹ In addition, even though USDA inspectors are required to monitor and verify humane handling during offloading and for holding animals, the inspector was “rarely” present during offloading and was only observed in pens or chutes at the two predictable times each day.⁵⁰ The HSUS investigation ultimately led Congress, USDA, and the public to question how such events could have occurred at a slaughter plant that was under inspection by USDA’s Food Safety and Inspection Service (FSIS).⁵¹

USDA could not deny its failures with regard to the Hallmark plant. In the USDA Office

⁴⁷ *Id.* at 1.

⁴⁸ *Id.*

⁴⁹ *Id.* at 2.

⁵⁰ *Id.* at 4.

⁵¹ Audit Report, *supra* note 45, at ii.

of the Inspector General (OIG)'s audit of Hallmark following HSUS's investigation, FSIS veterinarians admitted that "they took shortcuts in ante-mortem inspection activities in order to complete all assigned tasks."⁵² OIG further found that "there were deliberate actions by Hallmark personnel to bypass required inspections, as well as noncompliance with required inspection procedures by FSIS in-plant staff. Supervisory and other management controls did not detect and/or prevent these incidents."⁵³ OIG concluded that "there is an inherent vulnerability that humane handling violations can occur and not be detected by FSIS inspectors."⁵⁴

Even following HSUS's investigation, in some cases USDA still fails to enforce federal regulations in a way that protects consumer health. For example, a hidden camera installed in a veal slaughtering plant as part of an undercover investigation in 2009 revealed a USDA inspector failing to act when confronted with clear evidence of serious regulatory violations. "In one scene, a worker attempted to skin a calf who was still alive, directly in front of this inspector. The government official told the worker that if another USDA inspector . . . saw this, the plant would be shut down, but he allowed the abuse to continue."⁵⁵ The worker then told the HSUS investigator "not to tell him if a live calf was in the pile of dead animals because, 'I'm not supposed to know. I could shut them down for that.'"⁵⁶

Today, the situation is no better—and has arguably taken a turn for the worse. Since HSUS's investigation, Congress has proposed regulations that will result in even fewer

⁵² *Id.* at iv.

⁵³ *Id.* at iii.

⁵⁴ *Id.*

⁵⁵ Hearing Before the House Comm. on Oversight and Gov't Reform, Subcomm. on Domestic Policy, 111th Cong. (Mar. 4, 2010) (statement of Wayne Pacelle), *available at* http://www.humanesociety.org/assets/pdfs/farm/pacelle_slaughter_030410.pdf.

⁵⁶ *Id.*

inspectors being present at beef and poultry plants.⁵⁷ The new law will also result in quicker turnaround times on production lines, which increases pressure on plant workers and can make it more difficult to stop contamination. In all, government regulations and enforcement have been, and continue to be, demonstrably inadequate when it comes to protecting the food supply from contaminated beef and poultry products.

IV. UNDERCOVER INVESTIGATIONS ARE CRITICAL TO DOCUMENTING, EXPOSING, AND PREVENTING INHUMANE AND UNSANITARY PRACTICES THAT THREATEN PUBLIC HEALTH

In light of the serious implications for public health, it is essential that the public, the federal agencies tasked with protecting our food supply, and our lawmakers be made aware of how animals are treated and slaughtered in animal factories. In the absence of effective government regulation, private, undercover investigations of the kind conducted by Plaintiffs and outlawed by Utah's "ag gag" law fulfill the much-needed role of overseeing the safety of our food supply.

A. Hallmark/Westland Investigation and Recall

HSUS's 2007 investigation of the Hallmark plant did not just reveal atrocities at a federally-regulated plant; it also resulted in the largest beef recall in U.S. history and landmark changes to food safety regulation. As a direct result of the investigation, USDA recalled two years' worth of ground beef—143 million pounds—due to concerns that it did not receive complete and proper inspection and was therefore unfit for human consumption.⁵⁸ HSUS's

⁵⁷ See Modernization of Poultry Slaughter Inspection, 77 Fed. Reg. 4408 (proposed Jan. 27, 2012); see generally Gov't Accountability Office, *Food Safety: More Disclosure and Data Needed to Clarify Impact of Changes to Poultry and Hog Inspections* (Aug. 2013), available at <http://www.gao.gov/assets/660/657144.pdf>.

⁵⁸ Statement by Secretary of Agric. Ed Schafer Regarding Hallmark/Westland Meat Packing Company Two Year Product Recall, Feb. 17, 2008, available at <http://www.usda.gov/wps/portal/usda/usdamediafb?contentid=2008/02/0046.xml&printable=true&contentidonly=true>.

undercover investigation also led to a comprehensive audit that revealed numerous deficiencies in FSIS compliance, detection, and management that implicate food safety industry-wide;⁵⁹ led the U.S. Secretary of Agriculture to request a criminal investigation that resulted in criminal charges against plant staff;⁶⁰ and enabled HSUS to bring a *qui tam* action against Hallmark that resulted in the company agreeing to entry of a judgment approaching \$156 million, following a \$497 million judgment.⁶¹

HSUS's undercover investigation also prompted USDA to issue regulations requiring nonambulatory disabled cattle to be condemned as unfit for human food under the Federal Meat Inspection Act, 21 U.S.C. §§ 601-625. 9 C.F.R. §§ 309.3, 309.13. Downer cows and calves must now be separated from ambulatory animals and placed in covered pens, and FSIS inspectors must be notified when downer cows are present. *Id.* §§ 309.3(e), 309.13(b), 313.2(d).⁶² The regulations further prohibit “[t]he dragging of disabled animals and other animals unable to move, while conscious.” *Id.* § 313.2(d). These regulations are specifically meant to mitigate the potential for downer cows to be slaughtered and introduced into the food supply because they “present a significant risk to human health.” 69 Fed. Reg. at 1863.

If these regulations were fully enforced, they could reduce the number of illnesses and

⁵⁹ See generally Audit Report, *supra* note 45, at iv-v.

⁶⁰ *Id.* at ii; Andrew Martin, *Largest Recall of Ground Beef Is Ordered*, New York Times (Feb. 18, 2008), available at http://www.nytimes.com/2008/02/18/business/18recall.html?_r=0.

⁶¹ Jonathan Stempel, *U.S., Suppliers Settle Over School Lunch Beef Linked to Recall*, Reuters (Nov. 27, 2013), <http://www.reuters.com/article/2013/11/27/us-usa-school-lunch-settlement-idUSBRE9AQ18M20131127>; HSUS, *Owners of Infamous Calif. Slaughterhouse Pay Millions to Settle Government Fraud Case* (Nov. 27, 2013), available at http://www.humanesociety.org/news/press_releases/2013/11/Hallmark_settlement_112713.html#.Uq9-ISdu6M8.

⁶² Unlike downer cattle, downer veal calves are not required to be condemned. They must be set apart and held for treatment, but can still be slaughtered for human consumption after treatment. 9 C.F.R. § 309.13(b).

deaths caused by adulterated beef products. However, enforcement requires adequate investigation. As explained above, USDA has simply failed in this respect. Undercover investigations thus fill a crucial gap by helping to ensure that vitally important federal regulations are followed, and that violations are revealed and remedied.

B. Other Undercover Investigations

The documented abuses and food safety violations at the Hallmark plant are not isolated instances; numerous undercover investigations have revealed similar behavior with similar food safety implications. Plaintiff PETA's 2006 undercover investigation of the Butterball turkey processing plant revealed workers strangling birds to death, trying to decapitate birds with their bare hands, stomping on live birds to crush their skulls, and kicking live birds around in standing water to make a splash just before killing them.⁶³ PETA's 2007 investigation at a Tyson Foods plant documented workers urinating on the conveyor in the "live-hang area," where chickens hang by their feet in a shackle conveyor that moves them to slaughter.⁶⁴ A 2009 undercover investigation at one of the largest egg suppliers in the U.S. revealed mummified bird corpses disintegrating in cages with live birds, and eggs rolling over rotting carcasses.⁶⁵ In 2010, an undercover investigation that revealed hens and eggs exposed to dead birds, manure, and blood led to a nationwide egg recall when eggs from the plant tested positive for *Salmonella*.⁶⁶ That same year, similar conditions documented by FDA at an Iowa egg processing plant led to one of

⁶³ PETA, *PETA's Butterball Investigator's Statements*, <http://www.peta.org/features/petas-butterball-investigators-statements/> (last visited Dec. 8, 2013).

⁶⁴ PETA, *Tyson Workers Torturing Birds, Urinating on Slaughter Line*, <https://secure.peta.org/site/Advocacy?cmd=display&page=UserAction&id=1121> (last visited Dec. 16, 2013).

⁶⁵ Compassion Over Killing, *Dunkin' Donuts' Egg Supplier Exposed!*, <http://dunkincruelty.com/investigation> (last visited Dec. 16, 2013).

⁶⁶ HSUS, *supra* note 37.

the largest egg recalls in U.S. history.⁶⁷

Had “ag gag” laws such as Utah’s been in effect at the time of these investigations, they could not have taken place. Consumers would have been wholly unaware of these illegal practices at animal factories and the government’s failure to stop them. The illegal activities would have continued unabated and without consequence, and keeping consumers at unnecessary risk of contracting foodborne illness from contaminated animal products. These investigations thus play a crucial role—which the government has failed to fulfill—of protecting our food supply and public health.

CONCLUSION

The deplorable conditions at animal factories have significant consequences for public health. The connections between inhumane, unsanitary practices and foodborne illness are plain. The disregard for food safety that accompanies the disregard for animal well-being puts the American public at unnecessary, preventable risk of foodborne illness. In light of the serious implications for public health, it is essential that the public, the federal agencies tasked with protecting our food supply, and our lawmakers be made aware of how animals are treated and slaughtered in animal factories. Utah’s attempts to keep hidden such critical information is therefore an issue of vital importance that the Court should decide on the merits of this case.

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Respectfully submitted,

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⁶⁷ Letter from John W. Thorsky, *supra* note 37; Associated Press, *Recall Expands to more than half a billion eggs*, NBCNews.com, http://www.nbcnews.com/id/38741401/ns/health-food_safety/t/recall-expands-more-half-billion-eggs/#.Uq_NMuKFdmp (last visited Dec. 16, 2013).

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CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of December, 2013, I electronically filed the foregoing Motion for Leave to File an *Amicus Curiae* Brief with this Court using the CM/ECF system, which sent electronic notification to all counsel of record.

/s/ Cristina R. Stella
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