



April 24, 2013

The Honorable Bill Haslam  
State Capitol  
First Floor  
Nashville, TN 37243

Dear Governor Haslam:

On behalf of ACLU members and supporters in Tennessee, I write to urge you to veto SB 1248/HB 1191 because of the serious First Amendment concerns it raises. This legislation does not protect animals from abuse, but instead chills the free speech of citizens and journalists seeking to expose animal cruelty, protecting animal abusers in the process.

SB 1248/HB 1191 requires any “person who intentionally records by photograph, digital image, video or similar medium for the purpose of documenting” abuse “committed against livestock shall, within forty-eight (48) hours, or by the close of business the next business day” report such violations to law enforcement and submit any unedited photographs, digital images or video recordings to law enforcement, or face criminal charges and fines. As written, SB 1248/HB 1191 has serious implications for at least two fundamental rights protected by the U.S. and Tennessee constitutions: the right to freedom of expression and freedom of the press.

**The First Amendment of the U.S. Constitution and Article 1 § 19 of the Tennessee Constitution provide strong protections for freedom of speech.**

The government has no power to restrict expression because of its message, its ideas, its subject matter or its content. *Ashcroft v. American Civil Liberties Union*, 535 U.S. 564, 573 (2002). The government also may not indirectly chill speech that it has no power to directly censor. SB 1248/HB 1191 targets constitutionally-protected recordings, not the act of abusing livestock. The U.S. Supreme Court recently held that recordings such as those targeted by SB 1248/HB 1191’s reporting requirement are protected by the First Amendment. *United States v. Stevens*, 559 U.S. 460, (2010). The Court struck down a law which made it a crime to create, sell, or possess a depiction of animal cruelty for commercial gain in foreign or interstate

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commerce. Like the law in that case, SB 1248/HB 1191 attempts to regulate recordings that are a form of expression protected by both the First Amendment of the U.S. Constitution and Article 1 § 19 of the Tennessee Constitution.

The government absolutely has the power to punish livestock abuse directly; however, it may not burden constitutionally-protected speech in an indirect way to get at that practice.

**SB 1248/HB 1191's reporting requirement could significantly chill constitutionally-protected expression and freedom of the press.**


This legislation suppresses the very type of expression the Supreme Court held is protected by the First Amendment by also imposing the onerous requirement that anyone who records ill-treatment of livestock must report such ill-treatment and submit any unedited photographs or video recordings to law enforcement within 48 hours.

Moreover, the chilling effect would extend to those working to expose ill-treatment of livestock, such as investigative photojournalists and documentary filmmakers. "Both the United States Supreme Court and the Tennessee Supreme Court have held that the discussion and debate regarding the conduct of public officials and other subjects of public importance are so indispensable to our free society that they deserve constitutional protection." *Lewis v. NewsChannel 5 Network, L.P.*, 238 S.W.3d 270, 289 (Tenn. Ct. App. 2007). Journalists and filmmakers would understandably fear that SB 1248/HB 1191's requirement would jeopardize their sources and thwart their investigations. The requirement would thereby serve as a disincentive to produce revelatory works that could help end livestock abuse.

This legislation does not help stop animal cruelty but instead violates free speech rights and criminally punishes those who seek to end this crime. Therefore, ACLU-TN urges you to veto this legislation.

Thank you for your consideration.

Sincerely,

  
Hedy Weinberg  
Executive Director