



Animal Law Podcast: Transcript for Episode 87, Interview with Caitlin Foley & Maddie Krasno

Mariann Sullivan: Welcome to the Animal Law Podcast, Caitlin and Maddie!

Caitlin Foley: Hi, thank you so much for having us.

Maddie Krasno: Yeah, thank you for having us!

Mariann: I'm excited to be talking about this case. It's kind of a crazy case... well, they're all such crazy cases, but this is a crazy case! Unbelievable what happened here. Just because, Maddie, you started doing something that almost everybody listening does. And I'd just like to start with some of those facts, because you have some personal experience here that led you to what ultimately became social media posting.

But tell us a little, briefly, about the university's - this is the University of Wisconsin - and its primate testing program, which some people may have heard of, but just to familiarize people a little bit with what we're talking about, because it is a very famous program. Infamous, I should say, and actually you had personal experience with this program. So can you just give us a little bit of that background before we talk about the case?

Maddie: So I went to the University of Wisconsin, Madison for my undergraduate education. From 2011 to 2013, I was a student animal caretaker in the Harlow Primate Research Laboratory.

A lot of people are wondering how I ended up there and the reality is that I really loved animals and I was especially passionate about primates. I looked up to Jane Goodall and thought that if I wanted to work in primate conservation I should get some experience and why not get it right away as soon as I could?

So I applied to be a caregiver at one of the primate labs, not having any real background or knowledge of what goes into animal testing. I knew of the

infamous Harry Harlow but I also knew that Harry Harlow was no longer alive. I didn't know much about what I was getting myself into. That is how I ended up there.

And I was there for two years, a little over two years. I worked about 10 to 12 hours per week, as well as the weekends. And during that experience I witnessed a lot, I was a part of a lot and it really kind of changed my perspective on what we are doing to animals in this world, especially in animal research.

Mariann: It really is fascinating that you went into this basically naive, which I imagine both a lot of people do. It seems like everybody who goes into it then kind of is incorporated into that mindset and you weren't. Instead you were, appropriately I think, pretty horrified by what you saw.

Now that we have that background and we know where you're coming from, let's talk a little bit about the events that led to the lawsuit. I know your papers have a lot to do with how Facebook and Instagram work. Let's assume that people know generally how Facebook and Instagram work, though if there are specific details that come up feel free to clarify. This involved commenting on posts, I think. And I think that's something that most people are familiar with doing. Can you talk a little bit about what these comments were, that are involved in this lawsuit, the interactions that they involved, and where they were posted?

Maddie: What kind of came about is that...and I should say that when I worked in the lab, I was very naive to what was going on. I battled with this desire to get out of there but I also felt worried that if I left there would be people who would care less about the animals and not take as good of care of them as I was. And I know that's something that a lot of caretakers in labs struggle with. And so that being said, in order to survive that I also had to emotionally shut down a little bit and desensitize myself. But I ended up coming out of it and in the last several years I got more and more comfortable talking about my experience. It actually has helped me to heal a little bit.

What I started doing was posting about these experiences on social media, particularly Instagram and Facebook. I would tag the university in my posts, as well as comment on some of their posts about my experience, sharing things like, "I used to work in one of their labs and this is the reality..." type thing, and they immediately were untagging themselves from my posts as well as deleting

or censoring my comments on their posts to the point that a conversation could not ensue because my comments were gone.

Mariann: Yeah. Actually, I started out preparing for this interview by looking at some of their papers. And I got this feeling that you had kind of devoted your life to a barrage of constant interaction. It was actually a fairly small number of posts that we're talking about here that started this whole lawsuit, isn't it?

Maddie: Yeah, it really wasn't a whole lot, but I think that people who have worked in labs and have the firsthand experience are a lot more powerful than people think. These true experiences have the potential to really discredit what the industry has put out there.

Mariann: So there were a number of different ways, you mentioned some of them, but a number of different ways that they've limited your ability to post, whether it was comments or your own post. Can we just go through them all? So we have that sorted out in our heads, what were they doing to limit your interactions?

Maddie: Yeah. So they were untagging themselves. That was kind of the first indication that...I realized they noticed me because I would tag them in photos and that would show up on their tagged photos on Instagram. And then I would screenshot that to make sure they were there and when I'd go back and check again, I'd realize that they were gone. And so I actually created posts calling them out for untagging themselves from my posts.

At the same time, I had started commenting on some of their own posts. I had comments that were actually deleted. There's also a censored word list that we discovered later on that plays into how they're able to censor conversation about animal testing. So I think that those are the pieces.

Caitlin, did you have anything to add to that?

Caitlin: Yeah, the universe of activity that was going on before Maddie's account was restricted by the university was relatively small. So after she tagged the university in her own Instagram profile posts, so that wouldn't have been the university's page, but then she was automatically on their radar. And we know from documents we obtained during the course of this lawsuit that even her tagging the university in her own Instagram posts put her on their radar. There were people involved in their primate research talking about her before she'd even commented directly on their Instagram page.

So when Maddie then issued her first comment directly on the university's Instagram page criticizing their animal testing program in response to a post that the university had issued about testing on dairy cattle that they have as a part of their research subjects at the university, her comment was immediately deleted. Then a subsequent reply she made to another individual on that same post was deleted.

So they were aware of Maddie even before she commented and they were ready to take action, it seems to us, the minute that she appeared directly on their own Instagram page. Then Maddie commented just one more time on a separate post on their Instagram page and her account was then restricted. Her account being restricted, I know some people might be familiar with Instagram, is a relatively rare action, that the university at least does, in which any comment Maddie then made for four months, in this case, was automatically hidden from public view by any user. So it's a pretty harsh penalty to be imposed on someone who issues at most two comments on two posts that the university had issued on its Instagram page.

Mariann: I'm not sure if it's true of that particular action, but I know with some of these actions, which I thought was particularly interesting but I was curious to know what you knew about it, it wasn't obvious to you that your posts weren't reaching other people. It's kind of a secret. When you look at their page, either Facebook or Instagram perhaps, it looks like your comment is there. Your friends on Facebook might see it, but then the rest of the world couldn't see it.

Did, you know that? Were you deceived by that? Were you looking out for that? Because I wouldn't have thought of that, I don't think. It seems particularly insidious.

Maddie: Absolutely. And no, I did not know that initially. So what would happen, sometimes when I started to comment and think that someone would reply to me but they weren't, I started to ask friends, "Are you seeing my comment?" And that's how we started to discover that I was being censored. And that's also how we eventually discovered this censored word list, which is another aspect of their censorship that doesn't just affect me. It impacts anyone who's trying to talk about animal testing issues.

Mariann: Can we talk a little bit about that censored word list? Because this was the way they put in to automatically censor you, right? Like if one of these words show up, your post just doesn't go up on their page. And can you talk a little bit about what kind of words were in there and what effect it had on your posts?

laughs And as I'm talking about this, I have to say, it comes back to being so ridiculous. As I mentioned, when I was first thinking about this case, I thought we were talking about this huge panoply of posts! And it's actually not a lot, it's a small universe. But still, can we talk a little bit about these censorship words that automatically, if you put one of these in your post, you're automatically deleted? What kind of words are in there?

Caitlin: During the course of this litigation, we actually discovered the existence of the keyword filter list because obviously that's not something that's public knowledge, but there's two separate lists. The university maintains one for Instagram and one for Facebook.

The Instagram one is particularly interesting because the date that we last know there were 28 words on the list and 21 of them directly involved animals. So there were words such as primate, lab, testing, cruelty words that are typically used by someone who might want to voice their objection to animal testing the university conducts.

And the same is also true on Facebook, where about half the words on their filter list involved animals or an anti animal testing perspective. And that means that anyone making a comment, their comment was automatically hidden if it contained one of those words and they wouldn't receive any notification that was happening. So it's another instance of a not immediately visible suppression of someone's speech on their social media pages.

Mariann: Wasn't there one instance where there was an exchange of comments and the person who was arguing with you, their comments were appearing and then your comment, because it contained one of these words, got deleted? So it looked like you were just quiet.

Maddie: Yes. It was incredibly frustrating. Especially because I had written out like this really well thought out reply to what they were saying.

And at that point... You know, I've learned now to copy something that I write and paste it somewhere else so that if it's hidden, I can try pasting it again and writing whichever word I think was hidden in some truly ridiculous manner by putting spaces or emojis in the middle of it to make it not trigger the censored word list.

But, yes, it ultimately looked like I was just accepting what that person said and walking away.

Mariann: Let's get to the lawsuit. And the lawsuit has a lot to do with the fact that The University of Wisconsin is a public university. I think almost everyone listening has heard of the first amendment right to free speech, but can you talk a little bit about what that means in the context of a public, as opposed to a private, university?

Caitlin: The first amendment really only applies to public actors. And so that is why we're able to bring this lawsuit. Because the university is a public entity speech within certain spaces that are either traditionally thought of as protected or that the university creates to host protected speech is protected by the first amendment.

And that means that the university can't suppress it without either meeting certain tests or in the case of certain types of restrictions, can't suppress it at all. We're doing a forum analysis in this case where we're arguing that the university's creation of their Instagram and Facebook page created public forums within the comment threads of their posts.

So the comment threads are those spaces underneath the posts that the university would've issued where people can come and interact with the university and each other, and they can comment on virtually any topic of discussion and reply to each other within the comment threads. The public forum analysis that applies to this is, we are arguing, a designated public forum.

And that's really just saying that even though social media sites are new and they're not one of these traditional historical public forums that some people might think of like a public park or Hyde park in London, where it's been reserved for time immemorial for people to come and express their views. By creating an account on this inherently interactive social media site and inviting people to comment without limits has created a new public forum where people can engage in expressive conduct. And there are certain restrictions on the government's ability to suppress or silence that speech.

Mariann: And I think that you've really just summed up why this case is so important. People don't go to the park to give speeches and listen to them anymore. That's not how people interact and talk about the government.

Before we get to that in more detail, I'd just like to go through the other cause of action just to lay it out in the beginning, which people might be less familiar with than the right to free speech, and that's the right to petition the government. Can you talk about that?

Caitlin: Sure! The right to petition is often seen as a corresponding right, a tangential right, to the right to free speech but it is different. And that's basically the right for someone to ask the government to address a grievance they have.

And in this instance and context it would be the right for Maddie, just like any other individual, to ask the university on their social media page to, in this case, stop animal testing. She has grievances against animal testing, generally, and from her personal experience working as a caretaker in their labs.

And she would like the university to receive her petition. And the right to petition, it isn't really developed in case law, but it does exist and it's as protective of speech as the right to free expression. And we're arguing that she has a public right to submit her grievance to the university, just as anyone else who wants to lobby for reduced tuition rates at the university on one of their Instagram or Facebook posts, or a similar grievance.

Mariann: Yeah. And one of the things that they point out is, "Well, she could have written us a letter so her right to petition is protected." Why is it important that she be able to exercise her right to petition in this more public way?

Caitlin: Yeah, I think it's because the university has created this means for people to do so and has allowed other people to petition them for grievances, like reduced tuition rates, like controversies over their COVID testing protocols, and they've not silenced people for the submitting those petitions. They've created a public way to submit a petition and the public nature of a petition process, we think, is inherent in the right to petition. So Maddie wants to publicly tell other people about her grievance while she submits it and that right should be protected by the first amendment.

Mariann: Yeah. It seems very obvious that if you have a right to petition, you should have the right to have other people know about it rather than...yeah, you can send them a letter, that's very generous of them! *laughs* That would be allowed by the constitution, it doesn't prohibit you from sending them a letter.

The actual vehicle used to get into court is 42 USC 1983, which is a well known statute, but can you just tell us briefly if people aren't familiar with it: what it is, how it works and how it helped you get into court?

Caitlin: Sure. So we're bringing this case in federal court. We're in the west district of Wisconsin and the reason that we are there is because of the statute that allows us to sue, in this case a state actor, for violation of someone's

constitutional rights, that being Maddie's rights. So it's kind of like a legal hook to get into federal court for violation of someone's constitutional rights.

Mariann: Right now, just to sum up where the lawsuit is, you're at the summary judgment stage, correct? And by and large, the facts have been stipulated too?

Caitlin: Yeah. So we're finished briefing on summary judgment. So we're awaiting a decision on that and both sides move for summary judgment on all the claims. So we're waiting on the court's take on our briefing. But the facts that are stipulated are mostly revolving around how the social media sites operate, their interactive components, and the actual facts surrounding Maddie's restrictions are, I think, mostly undisputed, but not stipulated to by the parties.

Mariann: As you mentioned, one of the most important issues in this case is the question of whether this is a designated public forum, which is what you contend, or they contend it's a limited forum. Can you tell us the difference and just expand on why you think these social media pages are a designated forum? Which is a really important concept in first amendment law.

Caitlin: As I said before, they're not traditional public forums, so we're not arguing they are, because those are the forums that have existed for time immemorial. They're historically recognized as being these places where people can come and engage in protected speech. So we are arguing that these comment threads on the social media sites are designated public forums.

Designated public forums are places that the government creates to host protected speech and many of the same protections that speech in these traditional public forums enjoy are also enjoyed in designated public forums. And that's why we think it's really important that the court recognizes and agrees with us, that the university has created them in this instance.

And the court does that by applying a two step analysis. So the court looks at the nature of the property and its compatibility with expressive activity. And then the court also looks to the policy and the practice of the government and whether or not they intended to create a public forum in the first instance.

And that latter part is an objective inquiry. So they're not looking to the university to say, "Did you create a public forum? Did you intend to do this?" In which case they would probably say no. They're looking at the actual policy and practice of how they operate and control speech within the forum.

And just briefly on the first point about the nature of the property and its compatibility with expressive activity, nearly every court to consider this issue in the social media censorship context has agreed that when you create a social media account on an expressive site like Facebook and Instagram, you are engaging in a property that is compatible with expressive activity.

So we're mostly arguing over the second point of the university's actions and monitoring and regulating speech within the form.

Mariann: Of course, it's always hard looking at a case fresh... Well, it's hard looking at a case in anyway, separating out the issues. And it's kind of the question of what kind of forum is this kind of intertwined with the question of what kind of discrimination this is?

So before we get into the details and how it applies to the facts, can you just lay out the difference between viewpoint discrimination and content discrimination under the first amendment?

Caitlin: Viewpoint discrimination is great because it applies in every forum. So, it's prohibited in every forum, whether or not you're a designated public forum, traditional, or what the university is arguing, a limited public forum.

Briefly the limited public forum is a forum where some protected speeches allowed, but the university has from the outset limited the speech allowed to protect their speakers or subjects. And we don't believe that that has occurred here. So viewpoint discrimination is prohibited in any forum.

Viewpoint discrimination, just briefly, is discrimination of speech based on a particular view or perspective that that speech can face. So we're arguing that university's decision to restrict Maddie's account or delete her comments because of her anti animal testing viewpoint is viewpoint discrimination. And then content based discrimination is generally prohibited in designated public forums and in traditional public forums and to do that, the government needs to meet a test called strict scrutiny to do that permissively under the constitution. And content based discrimination is when the government regulates speech based on the substance of the speech of the message that the speech is conveying. So a lot of people describe this as regulation of a given subject matter, such as anti animal testing.

Mariann: In a designated forum, no viewpoint discrimination and content discrimination is permissible, but only in a very limited circumstances?

Caitlin: Correct. When you meet strict scrutiny, which is a very high bar for the government to meet.

Mariann: And if it's a limited forum, as they contend, there's a no viewpoint discrimination allowed, but content discrimination is permissible if it's kind of in compliance with their rules.

Caitlin: In a limited public forum, the government can't engage in viewpoint discrimination. They can engage in some content based discrimination, but their restrictions on speech must also be reasonable. And we would argue that even the university's actions don't meet that lower bar in strict scrutiny.

Mariann: So their primary argument that their actions were not discriminatory seems to be that these posts were “off topic.” They talk about off topic a lot. That's the hook they're hanging most of their arguments on. You point out, I'm gonna take a quote from you, “In fact, it's employee responsible for moderation monitors its Instagram accounts for ‘animal rights’ and ‘animal research’ comments that he believes are ‘almost always off topic’ to the university's posts.”

Now, so they just automatically decide if it's about animal research, it's off topic. But there's two things - some of these posts were not even arguably off topic and other things that totally were off topic were allowed. Is that right? And can you kinda go through those factual situations? The first post you were talking about seemed to be in response to experiments on cows, is that right?

Maddie: Yeah, I mean, it was speaking to their exploitation of other animals, which is something that at the university, there are a lot of different ways that they are using animals in testing. And so I had brought it up on a post where they were talking about dairy cows. And yes, they like to claim that when I mention these issues about what's going on in their animal testing laboratories that it is off topic.

But the reality is that as a university, that part of what they do, and what is so integral to what they do is research. I argue that animal testing is always on topic. That it's part of the university and this is the university's social media. This is their page where they talk about what they do. Even in cases where it's not off topic where they're talking about...again, I would argue it's not off topic...because I'm thinking of a particular post where they were talking about Badger moms, celebrating Badgers moms...

Mariann: And Badgers are...that's the school. We're not talking about actual badgers.

Maddie: Yeah. *laughs* Sorry. University of Wisconsin, Madison's mascot... they're Badgers. And so it was like a Mother's Day post and they were celebrating Badger moms and showing students with their children.

And I had commented saying something about how they are literally forcing pregnancies in these laboratories for these monkeys, often at an age when they're not ready to be having children, and taking these babies away from them. How is that celebrating motherhood? This is something that they were not pleased to see and would consider to be off topic.

Mariann: Yeah. And I want to make clear too, as you're talking about it, that your posts, they were critical, but we're not talking about long diatribes with obscene language or a lot of like...they were pretty concise.

I'm not sure that would make a difference, whether that would make them disallowed, but I just want people to have the factual situation straight. They were relatively short, to the point and certainly not friendly, but not violent or in any way inappropriate for any other reason, other than you were expressing that point of view.

Obviously the term off topic...*laughs*...it is pretty loose term. Like what does that even mean? It's pretty in the eye of the beholder. But one of the points here as well is that there were plenty of other posts, as anybody who has ever read a series of comments on anything on social media, they go all over the place. And there were plenty of post comments made here also that weren't about animal research, but that were just as arguably off topic as these, is that correct?

Caitlin: Yes. So the reason that they're arguing that this off topic policy, which they argue is actually not a policy, their removal of comments for being off topic is permissible is because they want to fall into this limited public forum analysis where they don't have to meet strict scrutiny.

But the problem is that, what we've alleged, they really only apply this off topic practice to remove anti animal testing speech. They leave many, many comments that are arguably off topic to the eye of the beholder on their social media pages. And they only really monitor for anti animal testing speech, even before it has occurred, both through the keyword filters and through actively monitoring their page to quickly hide comments that come in.

So they're applying the off topic, quote/unquote, policy in a discriminatory manner. And it's also not consistently applied to other speech that could be considered off topic. Though we do contend Maddie's speech was on topic so wouldn't even apply to the "policy."

Mariann: Right, I understand it applies on both sides. And yet, as you mentioned before, I can't imagine there weren't plenty of topics about COVID testing on these pages. Because, you know, I work at a university too, and that's pretty much all anybody's talked about for the past two years, regardless of what the university is talking about.

They also claim that the post dilute other messaging and they label them spam. Both of these contentions seem completely ridiculous on their face. Like I said, you weren't posting 5,000 comments a day on every post, but can you just address what point they're trying to make with these claims?

Caitlin: Yeah, I think they're trying to build up a compelling state interest, which is part of the analysis for strict scrutiny. For them to survive a heightened analysis for whether or not their conduct violated Maddie's constitutional rights.

And by arguing that their speech isn't reaching their audience, that their posts aren't being read by students who want to engage with the university or that they can't find comments from students because Maddie's, or some other animal activist, speech is "clogging up the comment threads" is a common phrase they employ.

The problem with that is that Facebook and Instagram are built to be places where people comment in large numbers and they reply to each other and they're really easy to find, people's comments within the comment threads. They're built as platforms for people to interact with each other in large numbers and that's why the university has chosen to create social media pages in the first place, is to reach this large audience. So the idea that Maddie's comments or someone else's would dilute other people's messages in the comment threads or that those people wouldn't be able to see the university's posts, which are always visible on top of their page, doesn't really make sense. And certainly that doesn't constitute a compelling state interest in our view.

Mariann: They're certainly not spam. I mean, no matter how you define spam, it just wouldn't count as spam. They also, this may seem obvious, but they reserve the right to remove any content for any reason. Can you just explain why that doesn't help them?

Caitlin: Sure that doesn't help them even if they were a limited public forum, which they argue they are, because there are no guidelines to guide their application of a policy that allows them to remove content for any reason. I mean, if we allowed them to do that, if that was a permissible thing they could do, they could just violate people's constitutional rights for any reason if they woke up one morning and didn't like people talking about bagels one morning.

And the problem with that is it just captures so much protected speech by the first amendment. And because we know that there is no policy, the university has said that, we know that there aren't guidelines to help someone determine whether or not a comment should be removed pursuant to a policy, that there's too much discretion in their removal of people's speech and comments within the common threads.

And so that's unconstitutional in any form.

Mariann: Can you straighten something out for me? So where is this limit on off topic... Isn't that a social media policy, they're limiting off topic comments?

Caitlin: You would think so, but...

Mariann: And other things which aren't really involved here, like, I don't know, obscenities or things like that...

Caitlin: Yeah, you would think so but the university is adamant that they actually don't have a policy that applies to their moderation of comments, which is an interesting view. They say that as matter of practice, they try to their utmost to remove off topic comments, but in practice, that actually means they just look for and ferret out anti animal testing speech, but there is actually no policy posted on the social media pages themselves, or that they have internally as a measure to guide people's discretion and moderation of their social media.

Mariann: So when we talked about the keywords, you kind of addressed this, but people may be curious, automatically eliminating comments with words like monkey or various other words. Why would these not also suppress pro animal research comments? Are there no pro animal research comments or are these words that for some reason, which I don't totally get vis-à-vis all of them, would only be used... I mean, obviously vivisection is the word that would only be used by somebody who's opposed to animal research... but monkey, why would that not be used by somebody else?

Caitlin: Yeah, it certainly could be used by someone else, but it would still be constitutionally problematic because you can't remove multiple viewpoints about a particular subject matter under The Constitution.

So if even if they captured pro animal testing speech, it would be problematic. But we do think that it actually mostly targets anti animal testing speech because the creation of the keyword filters was directly in response to campaigns they were receiving from other organizations like PETA, who were telling people to go to their Instagram or Facebook page and urge them to stop animal testing.

And so they specifically chose phrases that those commenters, who were urging an end to animal testing, use in order to filter out their comments and subsequent comments, anyone could make on that particular view. So we think they are geared towards ferreting out anti animal testing speech. And because we have seen the presence of pro animal testing speech, like Maddie's example earlier about her exchange with another user, we think that the majority of people being silenced are anti animal testing advocates.

Mariann: So they troll through PETA's pages and find the words that PETA followers might be using and then ban those words from their comment sections. Is that what you're saying? It's pretty nefarious.

Caitlin: I know it is. It could be a book. They both monitor PETA's own Twitter account, we know that, for any campaigns they might be urging other people to comment about animal testing. But they also will receive comments that people who read PETA's Twitter or Instagram or Facebook account might make that site a particular thing like "release Cornelius." Cornelius is a primate kept at one of their laboratories and PETA has done some publicity around his condition and care.

And so people using that word might go to University of Wisconsin, Madison's Instagram or Facebook page, write a comment urging his release and because they know that that's coming from an anti animal testing perspective, because they monitor PETA, they would add that to the keyword list and all those comments would be hidden.

Mariann: And is that another situation where the person who was posting it would think that the world could see their comments but they actually couldn't.

Caitlin: Yes, comments caught by the keyword filtered lists are hidden, but there's no notification to the individual and they can still see their comment.

Mariann: It's so nefarious! I keep using the word nefarious, but it seems to fit here. It also, I was gonna wait to discuss this until the end, but I'm compelled to do it now. A lot of people say social media activism is a waste of time. You have to get out there. You have to do more than that.

And I totally agree people should do more. But this seems to indicate that they are...like social media activism has its place very strongly in the world of animal activism. If they can be this upset about it and spend this many resources on just blocking people from saying what they think it seems they're worried that it could have a big impact.

Maddie: Absolutely. That was exactly what came to me when they started untagging themselves from my post in the beginning. It's interesting to think about what would've happened had they not reacted in that way. Because their immediate panic about me talking about what was going on in the lab, kind of prompted me to realize the power of me sharing my stories and I realized the power of other individuals like me who have these experiences sharing these stories. And that with this realization, I think it has the potential to really sort of lift the veil, so to speak, on the animal testing industry. I've had individuals now from labs nationwide that have actually reached out to me because of my posts, confiding in me about their experiences.

They may not be at the point yet where they're ready to publicly talk about it, but I find it really uplifting because I think that the industry does a really good job of encouraging people to just stay quiet, whether or not they leave the industry pleased or displeased, and I'm hoping to help encourage others like me to feel supported and empowered to speak their truth if they want to.

Because I just know that working in one of these labs, it really changes you. And it can change you in ways that you can't come back from but I know that having support is really important. And so I just think that these pieces, they're all kind of connecting for me, and it all began with me just feeling like it's time to share my story and what prompted me to feel like I could was from speaking with someone else who had worked in the industry.

So I think building these relationships is important and I think the industry fears that.

Mariann: Yeah, I think this lawsuit really indicates that they have been going to this much trouble just to hide some comments on social media. And that people who may be reaching out as you did, looking for that support and not getting it don't realize that their comments aren't reaching an audience. And so of course

they're not getting any likes on their comment, or support, or great emojis or whatever, whatever it is you get on social media that makes you feel better. And they think it's because no one cares and it's because their posts aren't reaching anybody. It's really horrible.

All right, back to the lawsuit. There is a backup argument. You're arguing this is viewpoint discrimination. That certainly seems like a very strong argument, but you do also argue that it's content discrimination, which assuming that this is a designated public forum, as you argue, is not outright disallowed, but as we mentioned before, requires strict scrutiny.

And can you just explain what that standard is?

Caitlin: So strict scrutiny is an extremely high bar and it means that the government's regulation of speech must be necessary to serve a compelling state interest. And it also has to be narrowly tailored to address that interest. We're arguing that the university suppression of Maddie's speech doesn't come close to crossing that. In part, as we discussed, the compelling state interest of minimizing the amount of comments that they receive in a post so that their post could be read or that they can find someone's comments so they can interact with another user doesn't really hold water in the context of an interactive social media page, where scrolling takes a matter of seconds to find someone's comment.

And the university's posts are always front and visible. They're never hidden by... no matter how many comments are appended to the post itself. And also it doesn't really make sense because there are posts with 200 plus on topic, quote/unquote, comments that are never regulated for being dilutive of the university's message or restricted, because the university can't find someone's question that that was issued to them.

So we don't think any compelling state interest exists here. We also don't think narrow tailoring is met here, restricting Maddie's account for four months, because of two posts that she commented on, doesn't seem like a way to ensure that most of her protected speech isn't being silenced, even if there was an off-topic policy that was being applied here that was constitutional.

And we actually know that the university thinks it hid on topic speech that Maddie made during her account restriction by silencing a comment she made about the treatment given to a dog for cancer at one of the university's veterinary hospitals, it was automatically silenced by the university.

They knew it was on topic and kept it hidden. So we know that the restriction that they placed on Maddie's comment was not narrowly tailored to address the concerns that they think they've identified.

Mariann: And you argue that they're both, in the classic language, both overbroad and under inclusive. Can you explain what are the possible impacts of these kind of restrictions?

Caitlin: Yeah, they're over broad because they capture so much more speech than is appropriate. So if they were concerned with, again, the dilutive effect of many comments on their posts, if they were concerned with their posts not being visible, there are other means than employing keyword filters that automatically bar, even before a comment is made, speech by anyone containing that keyword, it's just over inclusive.

It captures too many instances of protected speech to obtain the outcome that the university purports they're trying to obtain. They're also under inclusive because as I mentioned before, even if the university was trying to make sure their posts were visible, even if they wanted to find people's speech within the comment threads, there's still so much on topic speech made within their comment threads. Like 200 plus posts, continuing the words "on Wisconsin" which is, I guess, their rallying cheer that would make it very hard, according to the university, to find speech they want to find. It doesn't capture or address the concerns that they purport the restrictions exist for. It also doesn't capture, their keyword filters and their account restriction of Maddie, does not capture any speech that's off topic if it doesn't relate to animal testing. So we can find numerous examples just by going on the university's website today, their social media pages, and looking at the comment threads. Of comments that don't seem to relate at all to the post university's issuing, about tuition rates, about teachers people don't like, about the weather that day. And they have nothing to do with the post at issue, the university's issuing, yet they remain visible. And so that seems to detract from the university's assertion, that it needs to take away all these anti animal research comments from their comment threads in order to achieve what they want to achieve.

Mariann: Yeah, I mean, if anybody's ever read a comment thread, they kind of know that this is nonsensical. *laughs* Like they're all over the place! I can imagine on a university they are even more all over the place. And I just want to emphasize, because I'm not sure I emphasized it before, where you're talking about these keywords. It's not like they have keywords on loads of different topics that are problematic. Their whole keyword program is focused on words that relate to animal research.

Caitlin: Yes. So as we know, the latest, they have their keyword filter list, that might change many point in time. But to our knowledge, their keyword filter list on Instagram, had 28 words and 21 of them related to anti animal testing perspective. Animals, experimenting, those sorts of words.

On Facebook about half of the words related directly to animals. And then some of the other words related to obscenities and some mentions of current or former presidents, but the focus is definitely on an anti animal testing perspective.

Mariann: I know there are a bunch of issues also involving various defendants, but I didn't get the feeling that any of them involve the lawsuit as a whole so I thought we would skip over that. Which one defendant one defendant was in and one defendant was out, am I right about this? Am I leaving out any global issues that we haven't covered?

Caitlin: No.

Mariann: If there's anything else I should have asked you but I didn't, please let me know.

And I assume that the next step in this case is just waiting. When do you expect the decision to come down?

Caitlin: Yes, we're hoping it's in the rocket docket, the Western district of Wisconsin considers themselves pretty quick to turn decisions around. So we're hoping in the next few months to get a decision and depending on that, we might set trial dates, which are currently adjourned.

So awaiting a decision and might set trial dates if needed after that.

Mariann: I'm hoping there won't be any trial dates, but I'm sure you're gonna win it if there is one because this is just one...I interview people about the craziest cases! Like, people wouldn't believe it. And like I said, I started looking at this case by reading their papers and I just thought that this involved somebody who was posting like 42 comments every day on everything that the university posted, just trying to bury them! Which, it's my point of view, would've been fine, but it's hardly what we're talking about here.

So, best of luck with the case. Thank you so much for sharing it with us today. I can't wait for people to hear this!

Caitlin: Thank you so much! We love your podcasts and we're looking forward to hearing this one.

Maddie: Yeah. Thank you so much!