

Recent Developments with Right-to-Farm Laws

Presenters:

Ashley Ellixson, University of Maryland,

Tiffany Lashmet, Texas A&M

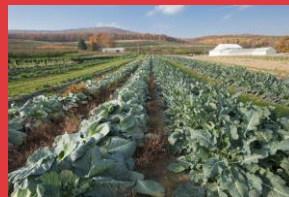
Paul Goeringer, University of Maryland



UNIVERSITY OF MARYLAND
AGRICULTURE LAW
EDUCATION INITIATIVE
EMPOWERING THE STATE

Right-To-Farm Laws: Where Did They Come From and What Are They?

Ashley Ellixson
Legal Extension Specialist



Right-To-Farm Law Webinar
April 4, 2016



Agriculture Law Education Initiative

The Agriculture Law Education Initiative (ALEI) is a collaboration of the University of Maryland Francis King Carey School of Law at the University of Maryland, Baltimore (UMB); the College of Agriculture & Natural Resources at the University of Maryland, College Park (UMCP); and the School of Agricultural and Natural Sciences at the University of Maryland Eastern Shore. ALEI is an initiative of the University of Maryland: *MPowering the State*.

Website: www.umaglaw.org

Twitter: @MdAgLaw

Facebook:

www.facebook.com/MdAgLaw

Email: umaglaw@umd.edu

University of Maryland

MPower



UNIVERSITY OF MARYLAND
AGRICULTURE LAW
EDUCATION INITIATIVE
MPOWERING THE STATE

The University of Maryland: *MPowering the State* brings together two universities of distinction to form a new collaborative partnership. Harnessing the resources of each, the University of Maryland, College Park and the University of Maryland, Baltimore will focus the collective expertise on critical statewide issues of public health, biomedical informatics, and bioengineering. This collaboration will drive an even greater impact on the state, its economy, the job market, and the next generation of innovators. The joint initiatives will have a profound effect on productivity, the economy, and the very fabric of higher education.

- <http://www.mpowermaryland.com>

Disclaimer



UNIVERSITY OF MARYLAND
AGRICULTURE LAW
EDUCATION INITIATIVE
EMPOWERING THE STATE

This presentation is intended to provide general information and should not be construed as providing legal advice. It should not be cited or relied upon as legal authority. State laws vary and any attempt made to discuss laws of states other than Maryland is for general information to help the viewer better understand Maryland law. For advice about how these issues might apply to your individual situation, consult an attorney.

Right-To-Farm Laws Overview



UNIVERSITY OF MARYLAND
**AGRICULTURE LAW
EDUCATION INITIATIVE**
EMPOWERING THE STATE

- The history of right-to-farm laws
- Why do states have them?
- What do they do?



The History



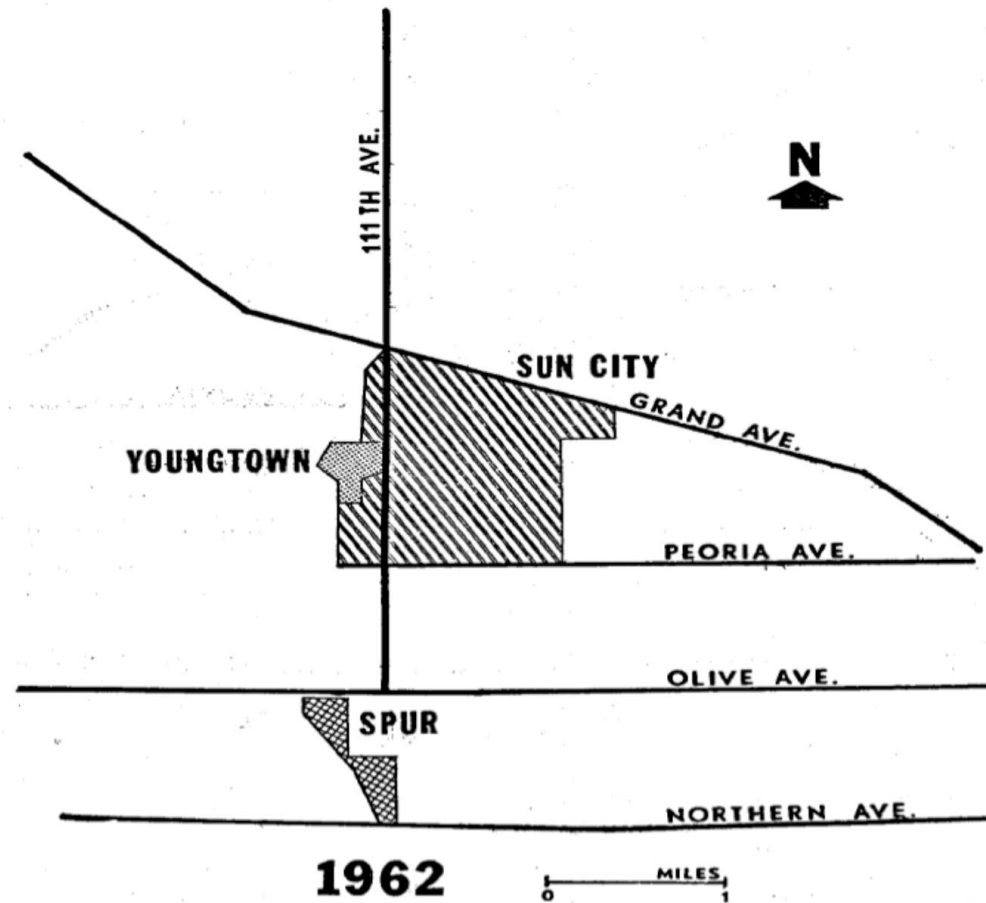
UNIVERSITY OF MARYLAND
AGRICULTURE LAW
EDUCATION INITIATIVE
MPOWERING THE STATE

- It's the year 1911 and the Spur family began farming in Maricopa County, AZ, about 15 miles west of central Phoenix.
- In 1956, Spur's predecessors began developing feedlots.
- In May of 1959, Del Webb began planning an urban retirement community to be known as "Sun City" 10.5 miles north of Spur's feedlot.

The History



UNIVERSITY OF MARYLAND
**AGRICULTURE LAW
EDUCATION INITIATIVE**
EMPOWERING THE STATE



The History



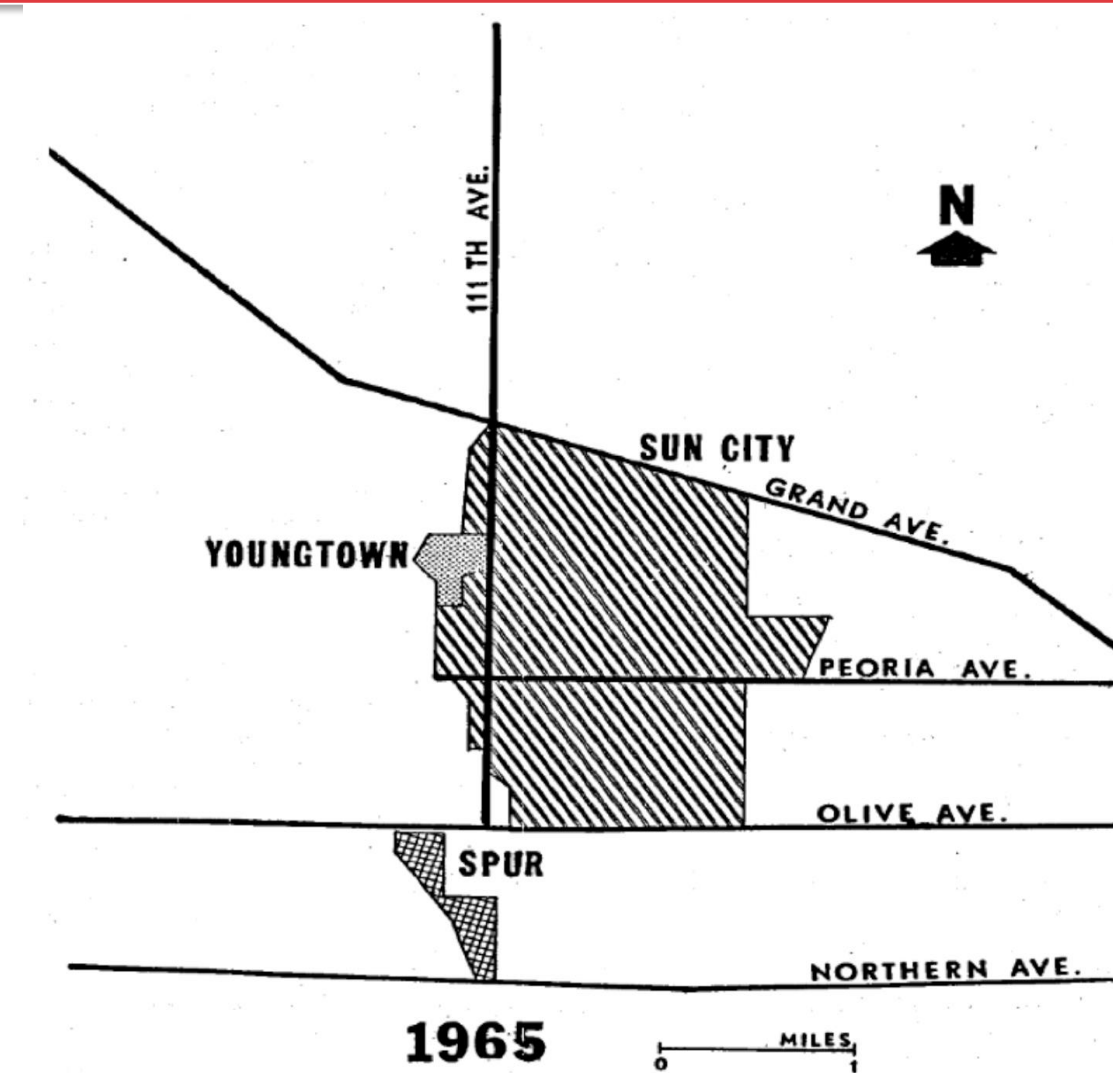
UNIVERSITY OF MARYLAND
AGRICULTURE LAW
EDUCATION INITIATIVE
EMPOWERING THE STATE

By 1965, the Del Webb community had expanded, coming within 500 feet of Spur's feedlots.

The History



UNIVERSITY OF MARYLAND
**AGRICULTURE LAW
EDUCATION INITIATIVE**
EMPOWERING THE STATE



The History



- Large neighborhood abutting a cattle feedlot=**LOTS OF ISSUES**
 - The smell of manure and abundance of flies were affecting the current residents of Sun City and inhibiting housing sales.
- Del Webb brought suit for an injunction against Spur, which would have forced Spur to halt or move its business.
- Ultimately the court granted the injunction, but required Del Webb to pay Spurs the costs of moving or shutting down the operation.

The History



UNIVERSITY OF MARYLAND
AGRICULTURE LAW
EDUCATION INITIATIVE
EMPOWERING THE STATE

- This case came about before there was any such thing as a “right-to-farm” law.
- **So prior to right-to-farm laws**, the court actually had a choice as to what it wanted to do and was not required by law, or statute, to deny Del Webb’s injunction request.



The History



UNIVERSITY OF MARYLAND
**AGRICULTURE LAW
EDUCATION INITIATIVE**
EMPOWERING THE STATE

- The questions which actually needed to be answered in the lawsuit in order for the court to come to its ruling:
 - May lawful business that becomes a nuisance due to a subsequent residential development be required to move or cease operation?
 - If the nuisance may be moved or ceased, may the developer (Del Webb) be required to pay the nuisance (Spur) the cost of its move or cease of operation?

The History



- **The court answered YES to both of these issues.**
 - In its reasoning, the court said:
 1. Spur was a public nuisance which means it is danger to public health
 2. And it was not due to any wrongdoing or unlawful acts by Spur since Del Webb knowingly **“came to the nuisance”**
 1. **As a result**, Del Webb was required to pay Spur all their costs of moving or shutting down

Why Do We Have Right-To-Farm Laws?



UNIVERSITY OF MARYLAND
**AGRICULTURE LAW
EDUCATION INITIATIVE**
EMPOWERING THE STATE

- It was because of cases similar to *Spur* that legislatures in the **1970's** recognized that these types of issues threatened not only individual farms, but the food supply as a whole
- Legislatures in all 50 states passed Right-To-Farm Laws as a result

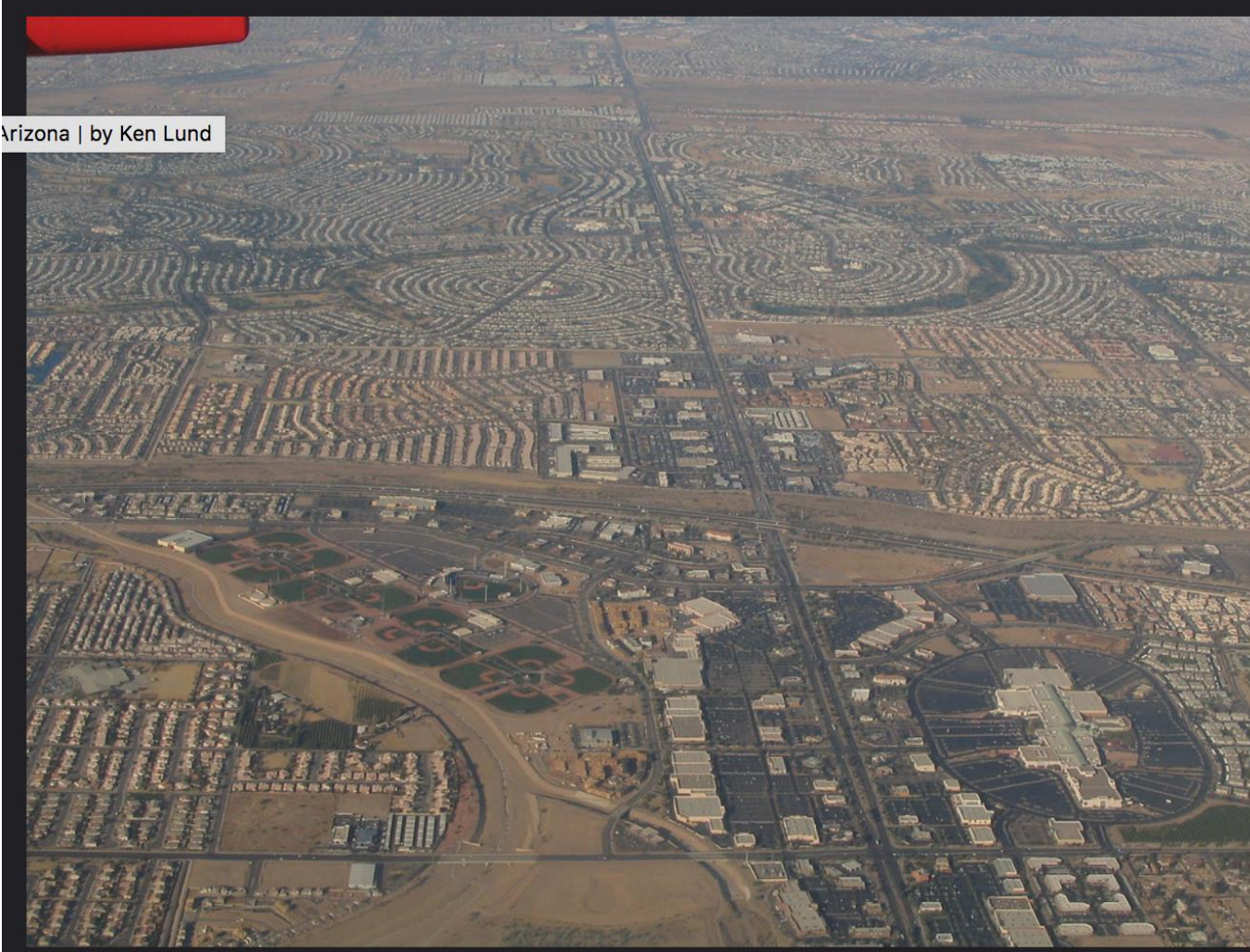


Why Do We Have Right-To-Farm Laws?



UNIVERSITY OF MARYLAND
AGRICULTURE LAW
EDUCATION INITIATIVE
EMPOWERING THE STATE

Arizona | by Ken Lund



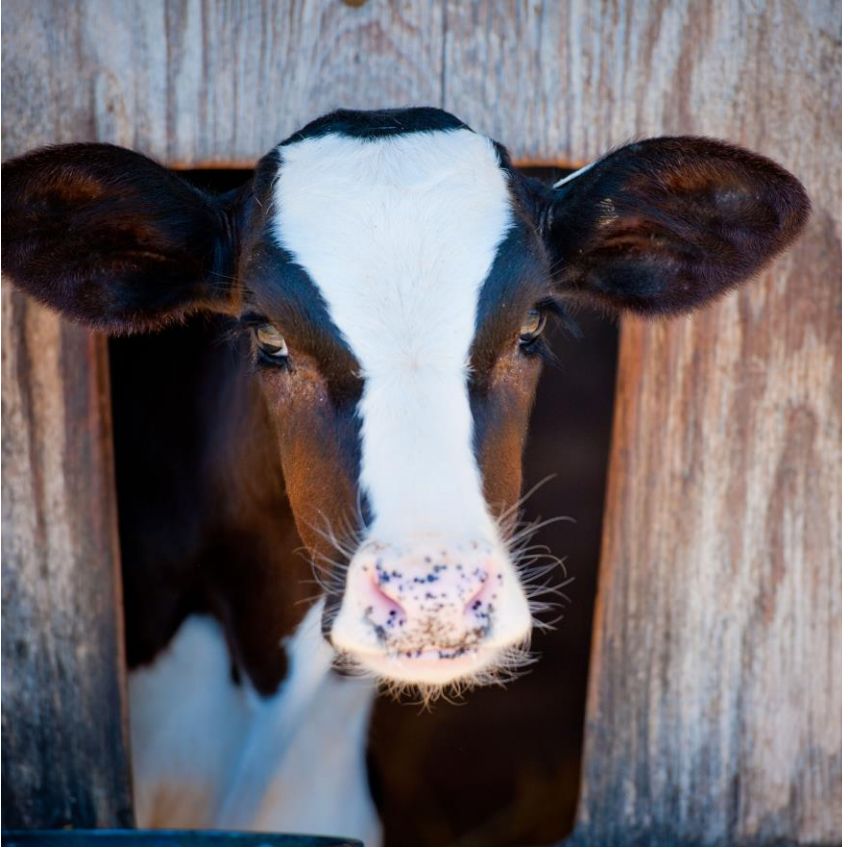


SO...WHAT ARE THESE RTF LAWS?

What Are Right-To-Farm Laws?



UNIVERSITY OF MARYLAND
AGRICULTURE LAW
EDUCATION INITIATIVE
EMPOWERING THE STATE



- RTF Laws are statutory rights that are written laws set out by local or state governments which bestow a right but is **secondary** to higher constitutional laws.

What Are Right-To-Farm Laws?



UNIVERSITY OF MARYLAND
AGRICULTURE LAW
EDUCATION INITIATIVE
EMPOWERING THE STATE

- **Generally, RTF Laws address 7 topics:**
 1. Whom does the statute apply to?
 2. What claims do the statute bar?
 3. The “time in operation” requirement
 4. Compliance with generally accepted practices?
 5. What about “change in operation”?
 6. Attorney’s fees?
 7. What are the limitations?

Right to Farm Statutes – Recent Litigation & Legislation



Tiffany Dowell Lashmet
Asst. Professor & Extension Specialist
Texas A&M Agrilife Extension

Roadmap

- Indiana swine farm lawsuits.
- Constitutional challenges in IN and MO.
- Right to grow GMO crops?
- Protection of marijuana farmers?
- New Mexico amends right to farm statute.
- Application to “wind farms?”

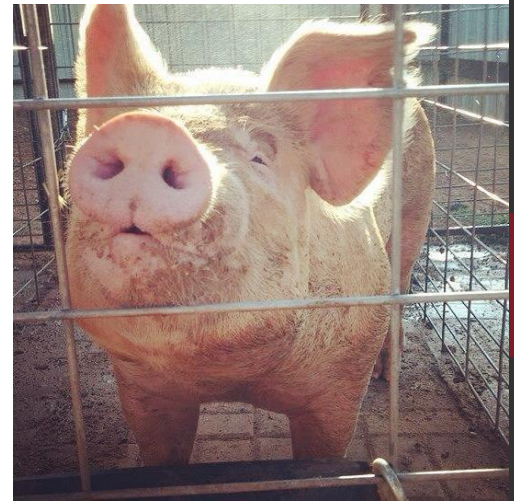


Indiana Swine Farm Lawsuits

- In 2009, five lawsuits filed against swine farms in rural east-central IN.
- Plaintiffs are neighbors of farms & all have same attorneys.
- Defendants are Maxwell Farms & individual farmers.
- Claimed nuisance, particularly that odors from hog production substantially interfered with their ability to use their own property.

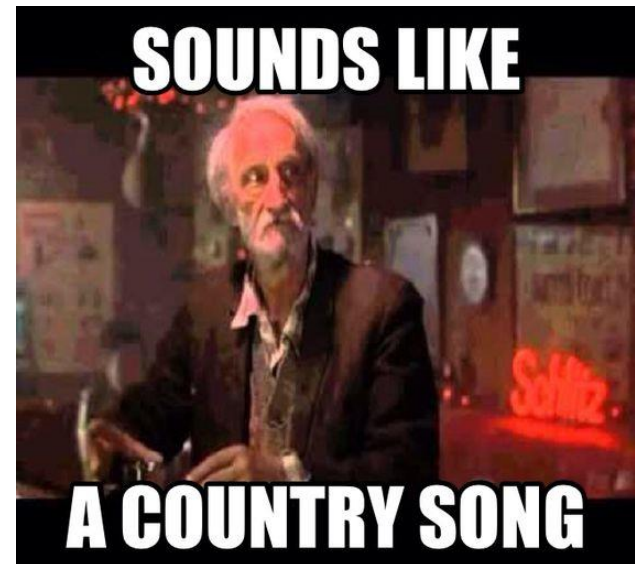
Indiana Swine Farm Lawsuits

- Plaintiffs testified that odor did not impact them on a daily basis.
- Plaintiffs admitted no knowledge of allegations in complaint.
- Plaintiffs admitted allegations came from their attorneys.
- Defendants moved for summary judgment based on the IN right to farm statute.
- All cases were dismissed.
- No attorney fee provision in IN statute.



Recent Constitutional Challenges: Indiana

- A neighbor sues hog farmer...but there's more.
 - The Plaintiff is also a farmer.
 - They are cousins.
 - Plaintiff alleges smell is so bad his wife moved out.
 - Hog farm built 2 years ago, 8,000 hogs in 2 buildings.
 - Allegations that RTF statute protects only “giant corporations that control contract growers confining thousands of animals.”
 - Claims violation of due process and equal protection.
 - Case still pending.



Recent Constitutional Challenges: Missouri

- Plaintiffs sued Cargill Pork and Bohr Farms over odor from a 4,000 head hog facility.
- Nuisance claim related to odor.
- Constitutional challenge to RTF statute.
 - Taking of private property
 - Violation of Equal Protection
 - Violation of Due Process
- MO Supreme Court upheld constitutionality of RTF statute.
 - Key rationale here was that the RTF statute was passed based on a legitimate state interest—protecting the agricultural industry.



Right to Farm GMO Crops?

- In 2014, Jackson County, OR, voters pass a law banning growing of GMO plants in the county.
- Alfalfa farmers file suit, relying in part on the RTF statute.
- Oregon RTF law provides:
 - “any local government regulation that makes a farm practice a nuisance or trespass is invalid with respect to the farm practice.”
 - Exception: damage to commercial agricultural products.



Right to Farm GMO Crops? (cont).

- United States District Court held RTF does not apply.
 - Purpose was protection from urban encroachment, not protection for a particular farming practice.
 - Relied on exception—say purpose of the ordinance is to prevent “genetic drift damage” to neighboring non-GMO farmers.
- Farmers settled the case.
 - Can continue growing for 8 years.
 - Must notify plaintiff’s attorneys where the crops are.
 - Must harvest before a certain time.

Do RTF statutes protect the growing of marijuana?

- In Oregon, marijuana legalized in July 2015.
 - Local lawmakers feared passing regulations related to marijuana growth because of state's RTF statute.
 - In March 2016, Governor Brown signed a bill stating that local governments may create “reasonable regulations” on where and how farmers can grow marijuana regardless of the RTF statute.
- Importantly, most statutes have an exception if farming activity violates state or federal law. This will likely prevent protection for marijuana growers.

**HUGS
NOT
DRUGS**

NM Right to Farm Amendment

- Last month, NM amended RTF statute.
- Agricultural industry pushed after 11 nuisance lawsuits filed against NM dairy farms.
- New language provides:
 - *“No cause of action based upon nuisance may be brought by a person whose claim arose following the purchase, lease, rental, or occupancy of property proximate to a previously established agricultural operation or agricultural facility, except when such previously established agricultural operation or agricultural facility has **substantially changed in the nature and scope of its operations.**”*



Protection for Wind Farms?

- 2014 Michigan Legislature considered a bill that would have added “wind farms” to the definition of “farming activities.”
- Bill died in committee.
- Michigan Farm Bureau opposed the bill—argued this was not the purpose of the law and did not want the law “weakened or jeopardized by including practices not directly related to farming.”





UNIVERSITY OF MARYLAND
AGRICULTURE LAW
EDUCATION INITIATIVE
EMPOWERING THE STATE

A Constitutional Right-to-Farm?

Paul Goeringer

Twitter: @AgLawPaul

Extension Legal Specialist,

Department of Ag and Resource Economics

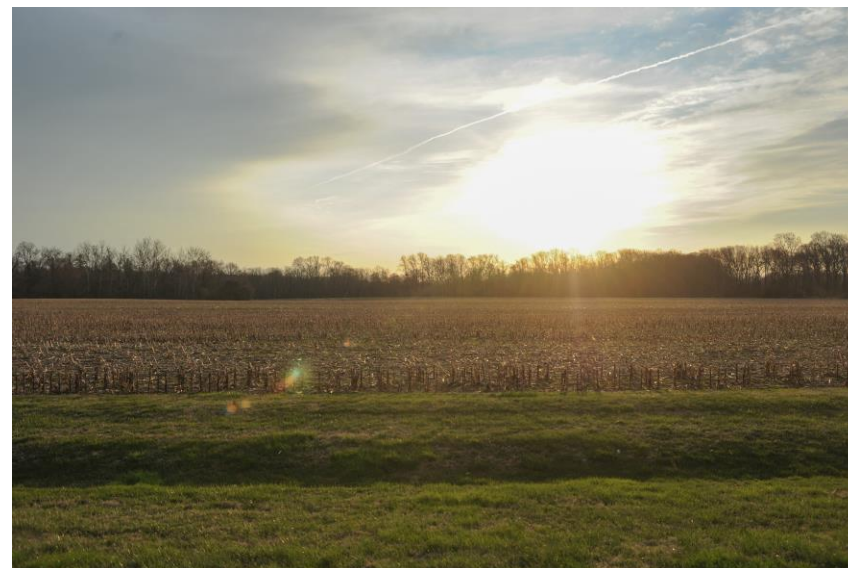


Overview



UNIVERSITY OF MARYLAND
AGRICULTURE LAW
EDUCATION INITIATIVE
MPOWERING THE STATE

- Current right-to-farm laws act as a nuisance defense.
- Ashley and Tiffany have highlighted these laws.
- Seeing new movement by states to add constitutional protections



What Are These Amendments?



UNIVERSITY OF MARYLAND
**AGRICULTURE LAW
EDUCATION INITIATIVE**
MPOWERING THE STATE

- A move away from nuisance defenses to provide a broader protection.
- Similar to freedom of speech, religion, right to due process, and other rights found in the constitution



Hierarchy of Laws



UNIVERSITY OF MARYLAND
AGRICULTURE LAW
EDUCATION INITIATIVE
EMPOWERING THE STATE

Constitutions

Statutes,
Regulations, &
Court Rules

Judicial Decisions & Agency
Decisions

What State Constitutions?



UNIVERSITY OF MARYLAND
**AGRICULTURE LAW
EDUCATION INITIATIVE**
EMPOWERING THE STATE

- Currently in:
 - North Dakota (2012)
 - Missouri (2014)
- States considering:
 - Oklahoma (on Nov. 2016 ballot)
 - Nebraska and Indiana



Language of Amendments



UNIVERSITY OF MARYLAND
AGRICULTURE LAW
EDUCATION INITIATIVE
EMPOWERING THE STATE

- North Dakota:
 - ***The right of farmers and ranchers to engage in modern farming and ranching practices shall be forever guaranteed in this state.*** No law shall be enacted which abridges the right of farmers and ranchers to employ agricultural technology, modern livestock production and ranching practices.

Language of Amendments



UNIVERSITY OF MARYLAND
AGRICULTURE LAW
EDUCATION INITIATIVE
EMPOWERING THE STATE

- Missouri
 - That agriculture which provides food, energy, health benefits, and security is the foundation and stabilizing force of Missouri's economy. To protect this vital sector of Missouri's economy, ***the right of farmers and ranchers to engage in farming and ranching practices shall be forever guaranteed in this state***, subject to duly authorized powers, if any, conferred by article VI of the Constitution of Missouri.

Language of Amendments



UNIVERSITY OF MARYLAND
AGRICULTURE LAW
EDUCATION INITIATIVE
EMPOWERING THE STATE

- Oklahoma:
 - To protect agriculture as a vital sector of Oklahoma's economy, which provides food, energy, health benefits, and security and is the foundation and stabilizing force of Oklahoma's economy, ***the rights of farmers and ranchers to engage in farming and ranching practices shall be forever guaranteed in this state.*** The Legislature shall pass no law which abridges the right of farmers and ranchers to employ agricultural technology and livestock production and ranching practices without a compelling state interest.

Comparing Language



UNIVERSITY OF MARYLAND
AGRICULTURE LAW
EDUCATION INITIATIVE
EMPOWERING THE STATE

North Dakota

- ***The right of farmers and ranchers to engage in modern farming and ranching practices shall be forever guaranteed in this state***
- Requires that the practice be “modern”

Missouri and Oklahoma

- ***the right of farmers and ranchers to engage in farming and ranching practices shall be forever guaranteed in this state***
- No similar limitation to be a “modern practice”

What Does It All Mean?



UNIVERSITY OF MARYLAND
**AGRICULTURE LAW
EDUCATION INITIATIVE**
EMPOWERING THE STATE



What Does It All Mean?



UNIVERSITY OF MARYLAND
**AGRICULTURE LAW
EDUCATION INITIATIVE**
EMPOWERING THE STATE

- At this point, we will have to see how it plays out in the legal system.
- At this point know that Missouri's does allow for the state to still restrict marijuana cultivation
- Will need litigation to determine boundaries



What Does It All Mean?



UNIVERSITY OF MARYLAND
AGRICULTURE LAW
EDUCATION INITIATIVE
EMPOWERING THE STATE



- Will not trump federal law or federal constitution.
- Will still have to comply with federal laws and regulations, such as WOTUS, RCRA, CAA, etc.

What Does It All Mean?



UNIVERSITY OF MARYLAND
**AGRICULTURE LAW
EDUCATION INITIATIVE**
EMPOWERING THE STATE

- Similar to other constitutional restrictions
- Litigation will tell us bounds of the right-to-farm amendment



Wrap-up



UNIVERSITY OF MARYLAND
**AGRICULTURE LAW
EDUCATION INITIATIVE**
EMPOWERING THE STATE



- Constitutional right-to-farm amendments offer broader protections than right-to-farm laws
- True impacts of these amendments is currently not known

Thank you

Any Questions?

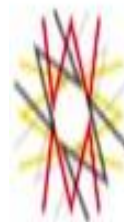
- Ashley Ellixson:
 - Email: aellix@umd.edu
 - Phone: 301-458-5125
 - Twitter: @Legally_Ashley
- Tiffany Lashmet
 - Email: tdowell@tamu.edu
 - Phone: 806-677-5668
 - Twitter: @TiffDowell
 - Blog: <http://agrilife.org/texasaglaw>
- Paul Goeringer:
 - Email: lgoering@umd.edu
 - Phone: 301-405-3541
 - Twitter: @AgLawPaul

Sponsored by:

DEPARTMENT OF AGRICULTURAL AND RESOURCE ECONOMICS

COLLEGE OF AGRICULTURE & NATURAL RESOURCES

UNIVERSITY OF MARYLAND



UNIVERSITY OF MARYLAND
AGRICULTURE LAW
EDUCATION INITIATIVE

EMPOWERING THE STATE

TEXAS A&M
AGRI LIFE
EXTENSION