

OLD MACDONALD HAD A RIGHT TO FARM:
 PUTTING A HUMANE TWIST ON MISSOURI'S
 RIGHT-TO-FARM AMENDMENT

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Abstract 137

I. Introduction 138

II. Agricultural Exceptionalism, Urbanization, and the Humane Society of the
 United States 139

III. Legislative Background 144

 A. Purpose of the Amendment 144

 B. Legislative History 148

IV. Interpretation 149

 A. Agriculture 151

 B. Precatory Clause 152

 C. Farmers and Ranchers 152

 D. Farming and Ranching Practices 153

 E. Duly Authorized Powers 155

V. Future Considerations 156

 A. Is the State Constitution the Proper Venue for a Right to Farm? 156

 B. Alternatives 156

VI. Conclusion 157

ABSTRACT

Since the time of Thomas Jefferson, agricultural exceptionalism existed to protect agriculture from normal laws and regulations. Despite this protection, farmers are acutely aware of the growing separation between the farmer and non-farmer. Farmers are also growing increasingly worrisome of laws both domestically and abroad that impact the way they raise livestock. This growing apprehension has led to states enacting Right-to-Farm (RTF) laws. Local interest groups are worried that out-of-state interests groups will attempt to regulate the industry. Farmers especially feel villainized by groups like the Humane Society of the United

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States (HSUS), but both groups want the humane treatment of animals. Adding language reflecting this shared desire should provide a common ground for each side to work together.

I. INTRODUCTION

[O]ur farmers deserve praise, not condemnation; and their efficiency should be cause for gratitude, not something for which they are penalized. . . . The solution lies not so much in severe restrictions upon our talent to produce as upon proper channeling of our abundance into more effective and expanded uses. . . . [T]he family farm should be protected and preserved as a basic American institution.¹

John F. Kennedy wrote this in a 1961 message to Congress.² The drafters of the Missouri Right-to-Farm (RTF) amendment would undoubtedly agree with President John F. Kennedy's statements. The amendment, which narrowly passed in August 2014,³ reads:

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.⁴

This Article analyzes Missouri's RTF amendment in the context of an ongoing battle between farmers, and by extension farm groups, and animal welfare organizations. In Part II, this Article explains the events that partly led to this amendment's development. Next, it considers the amendment's legislative history and purpose. Then, the Article interprets the amendment and discusses whether state constitutions are an appropriate forum for protecting agriculture. Ultimately, the Article provides a solution to the conflict between farmers and animal welfare groups when debating and drafting RTF amendments.

1. JOHN F. KENNEDY, JOHN F. KENNEDY: 1961: CONTAINING THE PUBLIC MESSAGES, SPEECHES, AND STATEMENTS OF THE PRESIDENT, JANUARY 20 TO DECEMBER 31, 1961, 192-93 (1962).

2. *Id.*

3. See *August 5, 2014 Election Constitutional Amendment 1*, MO. SECRETARY ST., <http://s1.sos.mo.gov/CMSImages/ElectionResultsStatistics/RecountResults.pdf> (follow link to "Recount Results, Times, & Locations") (last visited Aug. 6, 2017) (The amendment's initial vote was 499,581 to 497,091. A recount confirmed the amendment's passage was confirmed by a vote of 499,963 to 497,588).

4. MO. CONST. art. I, § 35.

II. AGRICULTURAL EXCEPTIONALISM, URBANIZATION, AND THE HUMANE SOCIETY OF THE UNITED STATES

Reflective of President Kennedy's words, agriculture has long been a heavily protected industry. "Agricultural exceptionalism" has been used to explain this protection.⁵ Agriculture receives many exceptions or exemptions in labor, bankruptcy, environmental, and antitrust laws.⁶ Further, certain government programs are designed for farmers' exclusive benefit—indeed, the United States Department of Agriculture (USDA) administers such programs.⁷ Agriculture was also the beneficiary of "ag-gag" laws, one of which was declared unconstitutional.⁸

RTF amendments "are the newest trend in an evolution of laws aimed at protecting farming and ranching across the United States, largely in response to unprecedented efforts across the country to restrict and regulate agriculture."⁹ Currently, Missouri and North Dakota¹⁰ are the only states that have enacted RTF amendments. Several other states have considered RTF amendments: Oklahoma's was defeated at the polls¹¹ while Indiana's, Montana's, and Nebraska's never left the state legislature.¹² Further, all fifty states have enacted a RTF statute.¹³ These statutes are usually intended to provide protection for farmers from nuisance suits.¹⁴

5. Susan A. Schneider, *A Reconsideration of Agricultural Law: A Call for the Law of Food, Farming, and Sustainability*, 34 WM. & MARY ENVTL. L. & POL'Y REV. 935, 935-36 (2010).

6. *Id.* at 936.

7. *Id.*

8. Lucy L. Holifield, Comment, *Animal Legal Defense Fund v. Otter: Industrial Food Production Simply is not a Private Matter*, 12 J. FOOD L. & POL'Y 16, 28-31 (2016).

9. Ariel Overstreet-Adkins, Essay, *Extraordinary Protections for the Industry That Feeds Us: Examining A Potential Constitutional Right to Farm and Ranch in Montana*, 77 MONT. L. REV. 85, 86 (2016).

10. MO. CONST. art. I, § 35; N.D. CONST. art. XI, § 29.

11. *Oklahomans vote against 'Right to Farm'*, KFOR-TV & K (Nov. 8, 2016, 8:52 PM), <http://kfor.com/2016/11/08/oklahomans-vote-against-right-to-farm/> [hereinafter *Oklahomans Vote Against*].

12. Ryan Sabalow, *Indiana Senate Kills 'Right to Farm' Amendment*, INDY STAR (Feb. 24, 2015, 2:02 PM), <http://www.indystar.com/story/news/2015/02/24/indiana-senate-kills-right-farm-amendment/23944627/>; S. 300, 63d Leg. Reg. Sess. (Mont. 2013), <http://perma.cc/8ZKU-33AC>; JoAnne Young, *Right-to-Farm Resolution Pulled From Debate*, LINCOLN J. STAR (Mar. 24, 2016), http://journalstar.com/legislature/right-to-farm-resolution-pulled-from-debate/article_40c9dff6-c62a-53d9-8fe9-4acd6a8bb005.html.

13. Terence J. Centner, *Governments and Unconstitutional Takings: When Do Right-to-Farm Laws Go too Far?*, 33 B.C. ENVTL. AFF. L. REV. 87, 87 (2006).

14. *Id.* at 87-88.

Still, many farmers today feel vilified, partly in response to the increasing urbanization of the United States, which has been well-documented.¹⁵ One Missouri farmer described how urbanization affected his farm, changing the area from rural to suburban over a twenty-year span.¹⁶ The 2012 Census of Agriculture reported 3.2 million farmers operated 2.1 million farms across the United States.¹⁷ In comparison with the 2007 Census of Agriculture, the number of total farmers, as well as new farmers, decreased, while the average age of principal farm operators increased.¹⁸ There were approximately 312 million people in the United States as of January 1, 2012, meaning only approximately 1% of Americans operated farms.¹⁹ In other words, there are fewer total farmers, fewer people are becoming farmers, and farmers are only getting older

This trend is consistent in Missouri. In 2007, there were 107,825 farms, but that number dropped to 99,171 in 2012.²⁰ Predictably, total farm acreage also dropped.²¹ Likewise, Missouri had 152,817 farm operators in 2012, down from 163,553 in 2007.²² A mere 5.6% of farm operators were under the age of forty-

15. See *Growth in Urban Population Outpaces Rest of Nation*, Census Bureau Reports, U.S. CENSUS BUREAU (Mar. 26, 2012), https://www.census.gov/newsroom/releases/archives/2010_census/cb12-50.html; see also Beau Dure, *Millennials Continue Urbanization of America, Leaving Small Towns*, NPR (Oct. 21, 2014, 6:38 AM), <http://www.npr.org/2014/10/21/357723069/millennials-continue-urbanization-of-america-leaving-small-towns>.

16. Steven D. Shrout, Comment, *Missouri's Right to Farm Statute's Durational Use Requirement and the Right to Farm Amendment*, 83 UMKC L. Rev. 499, 499-500 (2014).

17. U.S. DEP'T OF AGRIC., 2012 CENSUS HIGHLIGHTS (2012), https://www.agcensus.usda.gov/Publications/2012/Online_Resources/Highlights/Farm_Demographics/Highlights_Farm_Demographics.pdf ("In 2012, the number of new farmers who have been on their current operation less than ten years was down 20% from 2007 [Those on their current operation less than five years] was down 23% from 2007.")

18. *Id.*

19. *U.S. and World Population Clock*, U.S. CENSUS BUREAU, <http://www.census.gov/popclock/> (follow "Select a Date" hyperlink; then enter "January 1, 2012") (last visited Aug. 6, 2017).

20. U.S. DEP'T OF AGRIC., 2012 CENSUS OF AGRICULTURE HIGHLIGHTS: FARMS, LAND IN FARMS, VALUE OF LAND AND BUILDINGS, AND LAND USE: 2012 AND 2007 (2012), https://www.agcensus.usda.gov/Publications/2012/Full_Report/Volume_1,_Chapter_2_US_State_Level/st99_2_008_008.pdf.

21. *Id.*

22. U.S. DEP'T OF AGRIC., 2012 CENSUS OF AGRICULTURE HIGHLIGHTS: SELECTED OPERATION AND OPERATOR CHARACTERISTICS: 2012 AND 2007 (2012), https://www.agcensus.usda.gov/Publications/2012/Full_Report/Volume_1,_Chapter_2_US_State_Level/st99_2_045_045.pdf.

four.²³ Thus, in Missouri, there are also fewer farmers and farms, and farm operators are getting older. Some farmers believe this makes non-farmers “ignorant [of farming]” because they are “two to three generations removed from the farm.”²⁴

Urbanization has left farmers feeling more isolated and vulnerable. However, other events have heavily contributed to these feelings. Many farmers are specifically concerned that animal welfare groups are seeking to phase out animal agriculture.²⁵ For instance, in 2008, a California initiative was voted into law that essentially banned the use of battery cages, veal crates, and sow gestation crates that prevented an animal from standing up, turning around freely, or fully extending its limbs without touching the confinement.²⁶ Importantly, this measure, known as Proposition 2, was a voter initiative, meaning it was voted into law while bypassing the traditional legislative process.²⁷ The Humane Society of the United States (HSUS) championed this legislation, pouring in over \$2.6 million in support of it.²⁸ Proposition 2's success is identified as the moment when the agricultural industry “began to perceive HSUS as a real threat.”²⁹

In 2010, California went even further when the legislature enacted a statute that prohibited out-of-state egg farmers from selling their eggs in California if they did not comply with the aforementioned regulations.³⁰ Any farmer in violation is subject to criminal sanctions.³¹ In March 2014—the same year the Missouri RTF amendment was voted into law—several states including Missouri filed suit in federal court against the California Attorney General in response to this legislation.³² The plaintiffs alleged the law burdened interstate commerce and thus violated the Commerce Clause.³³ The plaintiffs argued that egg prices in their home state would skyrocket because they exported large quantities of their eggs to California and

23. U.S. DEP'T OF AGRIC., 2012 CENSUS OF AGRICULTURE MISSOURI HIGHLIGHTS: SUMMARY BY AGE AND PRIMARY OCCUPATION OF PRINCIPAL OPERATOR: 2012 (2012), https://www.agcensus.usda.gov/Publications/2012/Full_Report/Volume_1,_Chapter_1_State_Level/Missouri/st29_1_069_069.pdf.

24. Shrout, *supra* note 16, at 500.

25. Overstreet-Adkins, *supra* note 9, at 96.

26. CAL. HEALTH & SAFETY CODE §§ 25990-91 (West 2014).

27. Overstreet-Adkins, *supra* note 9, at 97.

28. *Id.*

29. *Id.* at 98.

30. CAL. HEALTH & SAFETY CODE § 25996 (West 2017).

31. CAL. HEALTH & SAFETY CODE § 25996.1 (West 2017).

32. *Missouri v. Harris*, 58 F. Supp. 3d 1059, 1062 (E.D. Cal. 2014).

33. *Id.* at 1063.

would be forced to comply with the stricter California laws.³⁴ The suit was ultimately dismissed for a lack of standing.³⁵ However, these examples represent a small sample of the “unprecedented efforts across the country to restrict and regulate agriculture”³⁶ as a growing number of states have passed laws that farmers perceive as threats.³⁷

Similar issues have arisen on an international level. For example, the European Union (EU) began phasing out battery cages within the EU through a 1999 directive, ultimately completely banning the use of these cages in January 2012.³⁸ A battery cage is a wire mesh cage used primarily for egg-laying hens, which is stacked and housed in a warehouse-style building.³⁹ The EU banned battery cages because they provide hens a printer-paper-sized floor space on which to live and prevent the hens from opening their wings.⁴⁰ This ban specifically caused a 44% increase in European egg prices by the first week of March 2012, rendering an egg shortage for the food industry.⁴¹ Approximately 95% of U.S. egg-producing hens are housed in battery cages,⁴² so U.S. farmers felt this event's shockwaves. Higher prices can cause a lack of demand, meaning that egg producers could suffer substantial losses, or it can force egg producers out of business and render egg shortages like it did in Europe. These types of legislation can economically disrupt the agricultural industry.

One Montana Senator noted that livestock producers are exceedingly concerned with “the encroachments of animal rights groups.”⁴³ A Missouri farmer—asked about the RTF amendment—said, “Some of these city people don't have a

34. *Id.* at 1064.

35. *Id.* at 1079.

36. Overstreet-Adkins, *supra* note 9, at 86.

37. See generally Whitney R. Morgan, *Proposition Animal Welfare: Enabling an Irrational Public or Empowering Consumers to Align Advertising Depictions with Reality?*, 26 U. FLA. J.L. & PUB. POL'Y 297 (2015). Sections II-IV provide an excellent summary of many state laws affecting modern agriculture and how states are responding to their farmers' concerns. See also *Right to Farm and Ranch Constitutional Amendment 1: Frequently Asked Questions*, MO. FARM BUREAU, <https://www.mofb.org/Portals/0/MFBImageContent/HTMLImages/PDFs/KMFFFAQ.pdf> (last visited Aug. 6, 2017) [hereinafter *Frequently Asked Questions*].

38. Council Directive 1999/74, art. 4-5, 1999 O.J. (L 203/53) 2-3 (EC).

39. Susan Adams, *Legal Rights of Farm Animals*, 40 MD. B.J. 19, 19-20 (2007).

40. *Id.*

41. *Europe Short On Eggs as Battery Cage Ban Bites*, DW (Mar. 22, 2012), <http://www.dw.de/europe-short-on-eggs-as-battery-cage-ban-bites/a-15826347>.

42. Sarah McNabb, Comment, *California's Proposition 2 Has Egg Producers Scrambling: Is It Constitutional?*, 23 SAN JOAQUIN AGRIC. L. REV. 159, 165 (2013-14).

43. Overstreet-Adkins, *supra* note 9, at 96.

clue what goes on in the country and how food is produced. We need this [amendment] to keep the outsiders from trying to run things.”⁴⁴ This line of thinking—that “outsiders” are going to come into a state and attempt to regulate agriculture within the state—is extraordinarily prevalent among proponents of RTF amendments. The North Dakota Farm Bureau’s president told the Minneapolis Star Tribune their amendment would

give [them] a big leg up on special interest groups that come in from outside and want to tell us what to do and what not to do . . . They’re not going to stop. That was the big thing, to beat these people back. We don’t need outsiders coming here and telling us how to do things.⁴⁵

Montana’s amendment-sponsoring Senator thought it would “preempt challenges to animal agriculture in Montana from groups like the [HSUS].”⁴⁶ The Indiana amendment’s sponsor “touted the amendment as a way to protect family farmers from the attacks of zealot animal-rights and environmental groups opposed to modern farming and livestock-rearing practices.”⁴⁷ Oklahoma’s Senate Floor Leader Mike Schulz, speaking in support of Oklahoma’s amendment, said, “Agriculture in this country is under attack not from people who care about the welfare of animals, but by people who want to make a political statement, who do not like farmers and ranchers profiting in their businesses, profiting off animals.”⁴⁸ The Nebraska amendment’s sponsor similarly alleged HSUS perpetuates “misconceptions about modern agriculture” and argued the amendment would protect farmers from these kinds of groups.⁴⁹ These sentiments perhaps reflect an urban-rural divide⁵⁰ but clearly demonstrate the agricultural community feels attacked.

44. Julie Bosman, *Missouri Weights Unusual Addition to Its Constitution: Right to Farm*, N.Y. TIMES (Aug. 2, 2014), <https://www.nytimes.com/2014/08/03/us/missouri-considers-adding-right-to-farm-to-state-constitution.html>.

45. Blake Nicholson, *Voters Make North Dakota First State in Nation to Protect Right to Farm in Constitution*, STARTRIBUNE (Nov. 8, 2012, 1:07 PM), <http://www.startribune.com/north-dakota-voters-add-farmer-protection-to-constitution/177921891/>.

46. Overstreet-Adkins, *supra* note 9, at 100.

47. Sabalow, *supra* note 12.

48. Barbara Hoberock, *Oklahoma Senate Passes ‘Right to Farm’ Bill*, TULSA WORLD (Apr. 22, 2015), http://www.tulsaworld.com/news/capitol_report/oklahoma-senate-passes-right-to-farm-bill/article_f30b73a0-7e89-5dbc-b622-076df5c1e5c7.html.

49. Zach Pluhacek, *‘Right to farm’ Amendment Backers Face Tough Questions in Legislative Hearing*, LINCOLN J. STAR (Feb. 23, 2016), http://journalstar.com/legislature/right-to-farm-amendment-backers-face-tough-questions-in-legislative/article_72263ddf-824b-5311-9bfe-87b7faa03c65.html.

50. Interestingly, some believe President Donald J. Trump’s election partly turned on this divide. See Helena Bottemiller Evich, *Revenge of the Rural Voter*, POLITICO (Nov. 13, 2016, 7:08 AM), <http://www.politico.com/story/2016/11/hillary-clinton-rural-voters-trump-231266>.

Farmers' belief that groups like the HSUS oppose RTF amendments, however, is not unfounded. The Humane Society of Missouri openly opposed the Missouri RTF amendment.⁵¹ The HSUS also opposed it and claimed it "helped to defeat measures in Nebraska and Oklahoma in 2016."⁵² Chris Holbein, HSUS Farm Animal Protection public policy director, believes RTF amendments tout agriculture's benefits "to exploit the public's pride in their state's responsible family farmers."⁵³ The HSUS believes, in practice, RTF amendments shield industrial agriculture from democratic regulation.⁵⁴ Whether this battle between RTF amendment proponents and the HSUS is justified, necessary, real, or contrived is well beyond this Article's scope. For purposes of this Article, the author only wishes to identify that the proponents and the HSUS acknowledge there is a conflict, and this has led to RTF amendments being hotly contested issues.

III. LEGISLATIVE BACKGROUND

When dealing with a voter-adopted constitutional amendment, the Missouri Supreme Court's primary interpretive rule is to give effect to the voters' intent.⁵⁵ The amendment's purpose and legislative history is helpful to determine how voters viewed it.

A. Purpose of the Amendment

To understand the amendment's purpose, one must first understand on a basic level some of the events that Missouri's farmers saw as attacks on their home soil. First, Missouri's increasing urbanization led farmers to feel isolated and vulnerable, which was exacerbated by the previously mentioned events in California and other states. Then in 2010, Missouri agriculture was hit with "a wake-up call" in the form of Proposition B.⁵⁶

Proposition B, also known as the Canine Cruelty Prevention Act,⁵⁷ was aimed

51. *Missourians Urged to Vote NO on "Right to Farm" Measure*, HUMANE SOC'Y U.S. (June 10, 2014), http://www.humanesociety.org/news/press_releases/2014/06/mo_oppose_right_to_farm_061014.html [hereinafter *Urged to Vote NO*].

52. Kelly Madrone, *Big Ag Wants to Silence You*, ALL ANIMALS MAG. (Dec. 14, 2016), <http://www.humanesociety.org/news/magazines/2017/01-02/big-ag-right-to-farm.html>.

53. *Id.*

54. *Id.*

55. *Pearson v. Koster*, 367 S.W.3d 36, 48 (Mo. 2012).

56. Jo Mannies, *Proposed 'Right to Farm' Constitutional Amendment Likely to End Up in Court*, ST. LOUIS PUB. RADIO (June 17, 2013) (quoting Blake Hurst, president of Missouri Farm Bureau), <http://news.stlpublicradio.org/post/proposed-right-farm-constitutional-amendment-likely-end-court#stream/0>.

57. MO. REV. STAT. § 273.345 (2017).

at improving dog welfare by regulating dog breeders.⁵⁸ The Missouri Farm Family Agricultural Alliance opposed Proposition B, arguing that it was ““a veiled attempt to regulate animal agriculture in Missouri.””⁵⁹ The Missourians for Animal Care coalition, which was comprised of the Missouri Farm Bureau (MFB) and other farm groups, opposed Proposition B as well.⁶⁰ Unsurprisingly, the HSUS supported Proposition B.⁶¹ The MFB took dead aim at the HSUS, saying:

As it affects animal agriculture, Proposition B may well be the first step for the radical animal rights organization called Humane Society for the United States (HSUS) to further regulate livestock farmers in Missouri. HSUS did so in several other states, bringing economic harm to farmers with unnecessary laws and regulations.

HSUS, which has an annual budget of over \$130 million, spends less than one percent of its funds on the actual care of pets. Instead, they use our human emotions and attachments to pets to raise millions of dollars annually to finance their campaigns against farmers and animal agriculture. HSUS and its president, Wayne Pacelle, have an agenda to not only eliminate animal agriculture but also pet ownership.

HSUS cleverly disguises the real intent of Proposition B by presenting it as a way to protect pets by ridding our state of unethical dog breeders. It will do no such thing. To punish the bad breeders and keep the good breeders, Missourians need to demand full funding dedicated to strict enforcement of the law already on the books.⁶²

The MFB provided a breakdown of the Proposition B support campaign's funding

58. Angela Kennedy, Comment, *Sustainable Constitutional Growth? The “Right to Farm” and Missouri’s Review of Constitutional Amendments*, 81 MO. L. REV. 205, 210 (2016).

59. Peter Rugg, *The Missouri Farm Family Agricultural Alliance’s Worst Fears: Kindness to Puppies*, KANSAS CITY PITCH (Mar. 10, 2010, 7:00 AM), <http://web.archive.org/web/20140526155619/http://www.pitch.com/FastPitch/archives/2010/03/10/the-missouri-farm-family-agricultural-alliances-worst-fears-kindness-to-puppies>.

60. Estil Fretwell, *Open Letter to Animal and Pet Lovers*, MO. FARM BUREAU, <https://www.mofb.org/NewsMedia/CuttotheChase.aspx?articleID=100> (last visited Aug. 6, 2017).

61. Kathy Sweeney, *Puppy Mill Bill: Proponents Speak About the Bill*, KFVS, <http://web.archive.org/web/20161215195557/http://www.kfvs12.com/Global/story.asp?S=12399481> (last visited Aug. 6, 2017).

62. Fretwell, *supra* note 60.

on its website, which claimed that 82% of the campaign's funding came from entities or individuals outside Missouri and nearly half came from the HSUS's Washington, D.C. headquarters.⁶³ The MFB's then-president Charles Kruse said:

We don't need out-of-state interests setting public policy here in Missouri [I]f Proposition B passes, these radical animal rights organizations and individuals won't stop there. As experienced in other states, they will work to further regulate Missouri farmers, driving them out of business as well and driving up food costs⁶⁴

Whether this belief—that radical animal rights groups were attacking animal agriculture in Missouri—was conceived during Proposition B's debate or had been prevalent for some time is unclear. However, the HSUS's support of Proposition B and its passage “[were] interpreted by some within the agricultural community as ‘outsiders’ telling farmers how to raise their animals.”⁶⁵

Once this belief took root, farmers began spotting the attacks more easily and frequently. In March 2010, fifteen individuals won an \$11.05 million judgment against ContiGroup Companies, Inc.'s hog operation in an odor nuisance action.⁶⁶ Protect the Harvest (PTH), a group founded in 2014 by oil tycoon Forrest Lucas⁶⁷ and a supporter of the RTF amendment,⁶⁸ was “created to defend and preserve the freedoms of American consumers, farmers, ranchers, outdoor enthusiasts, and animal owners” from “[e]xtreme special interests in America [that] have evolved into a wealthy and successful attack industry determined to control our farmers, eliminate hunting, outlaw animal exhibitions (like rodeos and circuses), and restrict animal ownership.”⁶⁹ PTH provides a bulleted list of HSUS attacks on animal agriculture across the country:

Tried to pass a Trojan Horse law in Missouri that would have allowed them to attack the state's food producers,

63. *Interests Outside of Missouri are Financing Proposition B*, MO. FARM BUREAU, <https://www.mofb.org/NewsMedia/News.aspx?articleID=103> (last visited Aug. 6, 2017) [hereinafter *Interests Outside of Missouri*].

64. *Id.*

65. Kennedy, *supra* note 58, at 210.

66. *Owens v. ContiGroup Companies, Inc.*, 344 S.W.3d 717, 727 (Mo. Ct. App. 2011).

67. *Leadership*, PROTECT HARVEST, <http://protecttheharvest.com/who-we-are/leadership/> (last visited Aug. 6, 2017) [hereinafter *Leadership*].

68. *Missouri: Right to Farm Amendment to be Placed on 2014 Ballot*, PROTECT HARVEST (May 15, 2013), <http://protecttheharvest.com/2013/05/16/missouri-right-to-farm-amendment-placed-on-2014-ballot/>.

69. *Mission Statement*, PROTECT HARVEST, <http://protecttheharvest.com/who-we-are/mission-statement/> (last visited Aug. 6, 2017).

Attacked egg farmers in California,

Tried to pass new laws giving the federal government unprecedented control over the day-to-day operations of farmers and ranchers,

Pressured major corporations to stop doing business with most pork producers,

Filed a series of lawsuits to intimidate America's pork industry, and,

Launched an effort to destroy the Beef Checkoff program.⁷⁰

These events, combined with the events mentioned previously in California and other states, culminated in Missouri's RTF amendment.

Missouri Farmers Care (MFC), a main supporter of the amendment, argued the amendment sought to save farming jobs, protect small farmers from their larger corporate counterparts, and ultimately keep animal rights groups from targeting Missouri agriculture.⁷¹ Interestingly, MFC is comprised of several exceptionally large agricultural entities including Cargill, JBS, and Monsanto.⁷² Brent Haden, an attorney in Columbia, Missouri, supportively analyzed the amendment for MFC and identified urbanization and groups with "anti-agriculture agenda[s]" as cause for concern.⁷³ According to Haden, attacks on the agricultural community from outside groups that seek to pass regulations will ultimately burden farmers financially and raise food prices.⁷⁴ Haden pointed to national groups with deep pockets having success in other states in passing these regulations.⁷⁵ He claimed these same groups were targeting Missouri using misinformation, combined with the general public's lack of familiarity with the farming community, to outlaw certain farming practices.⁷⁶

MFC also claimed the amendment "[was] intended to strengthen legal arguments against legislation and ballot measures that place unreasonable restrictions

70. *Animal Rights vs. Farmers & Ranchers*, PROTECT HARVEST, <http://protecttheharvest.com/who-is-under-attack/animal-rights-vs-farmers/> (last visited Aug. 6, 2017).

71. *Missouri Farming Rights Amendment*, MO. FARMERS CARE, <http://mofarmerscare.com/farming-rights-amendment/> (last visited Aug. 6, 2017).

72. *Power of Partnership*, MO. FARMERS CARE, <http://mofarmerscare.com/power-of-partnership/> (last visited Aug. 6, 2017).

73. Brent Haden, *Keep Missouri Farming—Amendment #1*, MO. FARM BUREAU, <http://www.mofb.org/Portals/0/MFBImageContent/HTMLImages/PDFs/Haden-PieceWeb1113.pdf> (last visited Aug. 6, 2017).

74. *Id.*

75. *Id.*

76. *Id.*

on farming and ranching.”⁷⁷ Additionally, per Missouri’s Attorney General Chris Koster, “The [RTF] Amendment will ensure that agricultural production in Missouri is always economically competitive with other states across the country. This amendment ensures Missouri farming methods are not subject to extreme regulations that damage our state’s number one industry.”⁷⁸

Missouri farmers obviously wanted protection from outsider attacks and animal welfare groups. This protection took the form of regulations, legislation, and ultimately a constitutional amendment. One should not overlook the importance of the battle between farmers and the HSUS in this process. The core of the battle, which still rages today, can be summarized as follows: farmers do not want the HSUS influencing agricultural regulation because they believe the HSUS is attempting to phase out animal agriculture, while the HSUS opposed the amendment because it felt it gave farmers a free pass to raise animals inhumanely and mistreat them.

B. Legislative History

Representatives Bill Reiboldt and Jason Smith introduced the RTF amendment in the Missouri House of Representatives.⁷⁹ The amendment is derived from a combination of House Joint Resolutions 7 and 11.⁸⁰ House Joint Resolution 7 (HJR 7), which also granted rights to hunt, fish, and harvest,⁸¹ focused on protecting farmers’ and ranchers’ right to use modern technologies in aid of their farming and livestock production.⁸² On the other hand, House Joint Resolution 11 (HJR 11) fo-

77. *Frequently Asked Questions*, *supra* note 37.

78. *Attorney General Koster Endorses Amendment #1*, MO. FARM BUREAU, <http://www.mofb.org/NewsMedia/News.aspx?articleID=489> (last visited Aug. 6, 2017).

79. H.R.J. Res. 11, 97th Gen. Assemb., 1st Reg. Sess. (Mo. 2013); H.R.J. Res. 7, 97th Gen. Assemb., 1st Reg. Sess. (Mo. 2013).

80. Compare MO. CONST. art. I, § 35, with H.R.J. Res. 11 and H.R.J. Res. 7.

81. These right-to-hunt amendments, deemed “a solution in search of a problem,” have been compared to RTF amendments. See generally Stacey Gordon, *A Solution in Search of a Problem: The Difficulty with State Constitutional “Right to Hunt” Amendments*, 35 PUB. LAND & RESOURCES L. REV. 3 (2014).

82. H.R.J. Res. 7 (“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 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 and modern livestock production and ranching practices. Section 36. That the citizens of this state have a right to hunt, fish, and harvest wildlife.”).

cused on protecting the right to humanely raise livestock without the state imposing any economic burden.⁸³ HJR 11 also invalidated any law that criminalized mistreatment of livestock if it was not based on scientifically-accepted principles.⁸⁴ Upon being referred to the Committee on Agriculture Policy, HJR 7 and HJR 11 were combined.⁸⁵ The resulting language was more similar to HJR 7 than HJR 11.⁸⁶ The right to conduct modern farming and ranching practices was protected, and only a law enacted by the General Assembly could abridge that right.⁸⁷

In the Senate, the language of the amendment was again changed. "Modern" was deleted from the phrase "modern farming and ranching practices."⁸⁸ Thus, under this version, only the General Assembly could enact a state law that abridged a farmer's or rancher's right to engage in agricultural production or ranching practices.⁸⁹ In the Conference Committee Substitute, all mention of the General Assembly's power to enact any laws abridging farmers' rights was dropped.⁹⁰ This version's language expressly mentioned that the right conferred by this amendment was subject to any duly authorized powers conferred by Article VI of the Constitution of Missouri.⁹¹ This is the same language that was adopted in the amendment's final form.⁹²

IV. INTERPRETATION

Missouri courts have consistently held statutes ambiguous if it is susceptible to more than one reasonable interpretation, if the statute leaves key phrases undefined, or if the plain language of the statute does not resolve the dispute as to its

83. H.R.J. Res. 11. The word "humane" should have been left in the final portion of the amendment. See MO. CONST. art I, § 35.

84. H.R.J. Res. 11.

85. H. Comm. Substitute for H.R.J. Res. 11 & 7, 97th Gen. Assemb., First Reg. Sess. (Mo. 2013).

86. Compare H. Comm. Substitute for H.R.J. Res. 11 & 7, with Mo. H.R.J. Res. 11 and Mo. H. J. Res. 7.

87. H. Comm. Substitute H.R.J. Res. 11 & 7.

88. S. Substitute for H. Comm. Substitute for H.R.J. Res. 11 & 7, 97th Gen. Assemb., First Reg. Sess. (Mo. 2013).

89. *Id.*

90. Conf. Comm. Substitute No. 2 for S. Substitute for H. Comm. Substitute for H.R.J. Res. 11 & 7, 97th Gen. Assemb., First Reg. Sess. (Mo. 2013).

91. Conf. Comm. Substitute No. 2 for S. Substitute for H. Comm. Substitute for H.R.J. Res. 11 & 7.

92. See H.R.J. Res. 11 & 7; *State of Missouri—Primary Election Results*, ELECTIONS & VOTING, <http://enrarchives.sos.mo.gov/EnrNet/> (follow "Choose Election Type" drop down menu, then follow "Primary Election – August 5, 2014" hyperlink, "Constitutional Amendment 1") (last visited July 19, 2017).

meaning.⁹³ The RTF amendment is certainly susceptible to more than one reasonable interpretation, as evidenced by the differing views on its impact that were espoused during the amendment's debate. Further, no definitions accompany the amendment. For these reasons, interpretation issues will likely arise.

Additional support for this notion is found in *Shoemyer v. Kander*.⁹⁴ Wes Shoemyer challenged the amendment's ballot title and summary—not the amendment itself—as unfair and inadequate.⁹⁵ While the Supreme Court of Missouri ultimately disagreed with Shoemyer,⁹⁶ it noted some potential issues. First, the court noted the amendment only protects farmers and ranchers, not all Missouri citizens.⁹⁷ Second, the court pointed out the amendment will still be subject to some limitations because “no constitutional right is so broad as to prohibit all regulation.”⁹⁸ These points indicate the need for interpretation to resolve several questions about the amendment. Who will be considered “farmers and ranchers”? Additionally, what are “farming and ranching practices”? What limitations can constitutionally be imposed?

When determining how a Missouri court would interpret the amendment, Missouri's general constitutional amendment construction rules are noteworthy. When an amendment is adopted, “the courts must give effect to the intent of the [citizens]” while harmonizing any apparently conflicting provisions.⁹⁹ The interpretation should be fair while considering the intent of the drafters; it should not be technical, liberal, or strict,¹⁰⁰ although constitutional provisions should be interpreted more broadly and liberally than statutes.¹⁰¹ If a word's definition is not given, the court will determine the word's “plain and ordinary meaning” by using both the standard and legal dictionary.¹⁰²

The amendment can be separated into four distinct clauses.¹⁰³ In addition to these clauses, agriculture must be defined as well. The RTF amendment's text,

93. See *State v. Graham*, 204 S.W.3d 655, 656 (Mo. 2006); *City of Univ. City v. AT&T Wireless Servs.*, 371 S.W.3d 14, 19 (Mo. Ct. App. 2012); *BASF Corp. v. Dir. of Revenue*, 392 S.W.3d 438, 444 (Mo. 2012).

94. See *Shoemyer v. Kander*, 464 S.W.3d 171, 175 (Mo. 2015).

95. *Id.* at 172-73.

96. *Id.* at 175.

97. *Id.*

98. *Id.*

99. *Barnes v. Bailey*, 706 S.W.2d 25, 28 (Mo. 1986).

100. *State ex rel. Lashly v. Becker*, 235 S.W. 1017, 1020 (Mo. 1921).

101. *Rathjen v. Reorganized Sch. Dist.*, 284 S.W.2d 516, 530 (Mo. 1955).

102. *In re Finnegan*, 327 S.W.3d 524, 526-27 (Mo. 2010).

103. Sean McElwain, Note, *The Misnomer of Right to Farm: How Right-to-Farm Statutes Disadvantage Organic Farming*, 55 WASHBURN L.J. 223, 252 (2015).

complete with numerical representation of each clause, is set forth here for the reader's convenience:

That [(1)] agriculture [(2)] 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, [(3)] the right of farmers and ranchers [(4)] to engage in farming and ranching practices shall be forever guaranteed in this state, [(5)] subject to duly authorized powers, if any, conferred by article VI of the Constitution of Missouri.¹⁰⁴

A. Agriculture

The first portion of the amendment that needs interpretation is "agriculture." Agriculture can be defined as "the science or art of cultivating soil, harvesting crops, and raising livestock."¹⁰⁵ The definition provided by Webster's Dictionary is similar.¹⁰⁶ Livestock can be defined as "domestic animals and fowls that are (1) kept for profit or pleasure, (2) can normally be confined within boundaries without seriously impairing their utility, and (3) do not normally intrude on others' land in such a way as to harm the land or growing crops."¹⁰⁷ Further, according to the Livestock Disease Control and Eradication Law, a Missouri statute, livestock includes:

[H]orses, cattle, swine, sheep, goats, ratite birds including but not limited to ostrich and emu, aquatic products as defined in section 277.024, llamas, alpaca, buffalo, elk documented as obtained from a legal source and not from the wild and raised in confinement for human consumption or animal husbandry, poultry and other domesticated animals or birds.¹⁰⁸

Borrowing from these definitions and construing agriculture "more broad[ly] and liberal[ly]"¹⁰⁹ than a statutory definition, agriculture should be defined to include all the following: soil cultivation, crop growing, livestock raising, gardening, horticulture, viticulture, dairying, poultry raising, beekeeping, or ranching. For purposes of this definition, livestock should include the animals listed in the above statute.

104. MO. CONST. art. I, § 35.

105. *Agriculture*, BLACK'S LAW DICTIONARY (10th ed. 2014).

106. *See Agriculture*, MERRIAM-WEBSTER, <http://www.merriam-webster.com/dictionary/agriculture> (last visited Aug. 6, 2017).

107. *Livestock*, BLACK'S LAW DICTIONARY (10th ed. 2014).

108. MO. REV. STAT. § 267.565(13) (2017).

109. *Rathjen v. Reorganized Sch. Dist.*, 284 S.W.2d 516, 530 (Mo. 1955).

B. Precatory Clause

At least one commentator argued the amendment only protects agriculture “which provides food, energy, health benefits, and security.”¹¹⁰ Whether this precatory clause¹¹¹ actually limits the amendment’s application to this specific type of agriculture is important. For example, if a court uses this language as limiting the amendment’s applicability, some areas of agriculture—like Christmas tree nurseries, cotton farming, or tobacco farming—would seemingly be disqualified from protection¹¹² because they do not provide “food, energy, health benefits, [or] security.”¹¹³ A court does have a few options when this issue arises. First, the court could construe this language as limiting the definition of agriculture.¹¹⁴ Second, the court could read “and” as “or,” which would perhaps result in overinclusion of crop and livestock farming that was otherwise meant to be unprotected.¹¹⁵ Finally, the court could treat this language as what it seems to be: language touting agriculture’s benefits “to exploit the public’s pride in their state’s responsible family farmers.”¹¹⁶ If the court accepts this suggestion, it could ignore the clause as a non-modifier, which would allow the court to altogether avoid the issue of its interpretation and relation to the amendment’s substance.

C. Farmers and Ranchers

Next, it is appropriate to determine who will be characterized as farmers and ranchers.¹¹⁷ A farmer is “[a] person whose business is farming,”¹¹⁸ or alternatively, “[a] person who cultivates land or crops or raises animals.”¹¹⁹ Similarly, a rancher is “one who owns or works on a ranch.”¹²⁰ A farm can be defined as “[l]and and

110. Kennedy, *supra* note 58, at 232.

111. McElwain, *supra* note 103, at 252.

112. *Id.* at 252-53.

113. MO. CONST. art. I, § 35.

114. McElwain, *supra* note 103, at 252-53.

115. *Id.*

116. Madrone, *supra* note 52; McElwain, *supra* note 103, at 252-53. That one commentator referred to this precatory clause as “rote platitudes more than assertions of present fact” supports the idea that this clause is unimportant to the amendment’s interpretation. Kennedy, *supra* note 58, at 206.

117. Overstreet-Adkins, *supra* note 9, at 114. However, Missouri’s amendment specifically refers to “farmers and ranchers” and not “the people” or “the citizens,” and thus we must define who is and is not a farmer and rancher.

118. *Farmer*, BLACK’S LAW DICTIONARY (10th ed. 2014).

119. *Farmer*, MERRIAM-WEBSTER, <http://www.merriam-webster.com/dictionary/farmer> (last visited Aug. 6, 2017).

120. *Rancher*, MERRIAM-WEBSTER, <http://www.merriam-webster.com/dictionary/rancher?show=0&t=1416323685> (last visited Aug. 6, 2017).

connected buildings used for agricultural purposes,”¹²¹ or “a tract of land devoted to agricultural purposes.”¹²² A ranch can be defined as a “large farm for raising horses, beef cattle, or sheep.”¹²³ “Missouri Agricultural Statistics Services defines farms as places with \$1,000 or more in annual sales of agricultural products.”¹²⁴

Federal law also provides useful definitions for these terms. The USDA deems a farm “any place from which \$1,000 or more of agricultural products were produced and sold, or normally would have been sold, during the year.”¹²⁵ The Internal Revenue Code deems a farmer to be someone whose gross income from farming is 66.67% of their total gross income in a taxable year.¹²⁶ The Bankruptcy Code provides that a farmer is someone whose gross income from farming exceeds 80%.¹²⁷

Taking these definitions together, a farmer or rancher is someone who works on or owns a farm or ranch. Most Missouri citizens will not receive this amendment’s protection. The amendment only applies to “farmers and ranchers,” i.e., people that run, own, or work on a farm or ranch. It is also important to point out that in Missouri, “a corporation is [considered] a citizen, resident, and domiciliary of the state of its incorporation.”¹²⁸ Further, Missouri’s corporate farm statute allows corporations to farm in various circumstances.¹²⁹ Thus, a corporation that is incorporated in Missouri could be afforded the amendment’s protection.

D. Farming and Ranching Practices

The next portion of the amendment that requires interpretation is “to engage in farming and ranching practices.” Specifically, the court needs to determine what constitutes a practice for purposes of this amendment. One definition of practice is

121. *Farm*, BLACK’S LAW DICTIONARY (10th ed. 2014).

122. *Farm*, MERRIAM-WEBSTER, <http://www.merriam-webster.com/dictionary/farm> (last visited Aug. 6, 2017).

123. *Ranch*, MERRIAM-WEBSTER, <http://www.merriam-webster.com/dictionary/ranch> (last visited Aug. 6, 2017).

124. *Missouri Economic Research Brief: Farm and Agribusiness*, MO. DEP’T ECON. DEV., https://www.missourieconomy.org/pdfs/missouri_farms_and_agribusiness.pdf (last visited Aug. 6, 2017).

125. *Glossary*, USDA, <https://www.ers.usda.gov/topics/farm-economy/farm-household-well-being/glossary.aspx#farm> (last updated Aug. 4, 2017).

126. 26 U.S.C. § 6654(i)(2) (2012).

127. 11 U.S.C. § 101(20) (2012). The Bankruptcy Code distinguishes a “family farmer,” which such definition is much more detailed. 11 U.S.C. § 101(18) (2012).

128. *State ex rel. Broglin v. Nangle*, 510 S.W.2d 699, 702 (Mo. 1974).

129. *See* MO. REV. STAT. § 350.015 (2017). One commentator noted that while the statute’s purpose is to limit corporate farming, its exceptions are “quite inclusive.” Kennedy, *supra* note 58, at 234.

“to do or perform often, customarily, or habitually.”¹³⁰ In many cases, whether a farmer is “engage[d] in farming and ranching practices” will be an easy decision, but it will require a very fact-specific analysis in more difficult cases.

It is also important to note that while some of the proposed versions of the amendment mentioned “humane” practices, the final amendment did not.¹³¹ Including “humane” in the final bill would serve an essential purpose to the amendment: it would help bridge the divide between farmers and the HSUS. “[A]nimal welfare . . . regulations must continue” in the face of RTF amendments.¹³² “Rather than closing doors to keep farm activities hidden from consumers’ view, the agricultural community must do a better job of demonstrating and explaining production practices to consumers.”¹³³ RTF amendments “can undermine the public’s ability to use state ballot initiatives in order to improve livestock animal welfare.”¹³⁴ One opponent’s concern about the amendment was that it would protect and encourage inhumane animal rearing practices—specifically “the ‘farming’ of dogs in puppy mills.”¹³⁵ However, farmers and farm groups that supported the RTF amendment were likely not seeking to protect the types of puppy mills the HSUS was trying to abolish. Therefore, this Article suggests to future states that only protecting “humane” farming and ranching¹³⁶ is a great first step in bridging the divide between farmers and the HSUS.

There are many definitions of “humane” available to drafters of these amendments. Some humane certification bodies allow de-beaking of chickens, a common practice in poultry production.¹³⁷ To borrow a definition like this would ease farmers’ concerns that their current farming practices would be outlawed. Further, the Humane Methods of Livestock Slaughter Act requires humane slaughter.¹³⁸ Livestock may be rendered insensible before being “shackled, hoisted, thrown, cast, or

130. *Practice*, MERRIAM-WEBSTER, <http://www.merriam-webster.com/dictionary/practice> (last visited Aug. 6, 2017).

131. *Compare* H.R.J. Res. 11, 97th Gen. Assemb., 1st Reg. Sess. (Mo. 2013), with MO. CONST. art. I, § 35.

132. Overstreet-Adkins, *supra* note 9, at 86.

133. *Id.* at 96.

134. Morgan, *supra* note 37, at 330.

135. *Urged to Vote NO*, *supra* note 51.

136. While “humane” might seem to only apply to livestock rearing, it could also apply to crop production if the drafters so choose. For purposes of this Article, the author only addresses livestock rearing practices because of the context in which this Article is written, i.e., the battle between the HSUS and farmers.

137. *See* Morgan, *supra* note 37, at 304.

138. 7 U.S.C. § 1902 (2012).

cut.”¹³⁹ Slaughter is also humane if the animal suffers loss of consciousness by anemia of the brain and severance of the carotid arteries in accordance with religious slaughter practices.¹⁴⁰ If the drafters of future RTF amendments incorporated the word “humane” and drew definitions from these and other sources, current farm practices that are consistent with existing law would still be protected while effectively banning overtly inhumane practices—like puppy mills.¹⁴¹ This would help assuage farmers’ concerns of the regulation stemming from animal welfare groups (such as the HSUS) while eliminating inhumane practices from the amendment’s protection.

With or without the word “humane,” Missouri’s amendment does not abrogate any statutory provisions that criminalize animal abuse, neglect, or abandonment.¹⁴² Missouri has provisions in place to ensure farmers that do not provide adequate care (including wholesome food, clean water, and shelter) for animals, or those who do not slaughter animals in accordance with the law, will be guilty of a misdemeanor.¹⁴³ This amendment will allow farmers to continue utilizing customary farming practices while keeping in place protections against abuse, neglect, and abandonment. In other words, it does not provide a farmer a license to criminally abuse, neglect, or abandon his or her animals.

E. Duly Authorized Powers

The final portion of the amendment to interpret is the phrase “subject to duly authorized powers, if any, conferred by article VI of the Constitution of Missouri.” Article VI of the Missouri Constitution recognizes local governments such as those for counties, cities, and townships.¹⁴⁴ The Missouri Supreme Court noted the RTF amendment does not modify existing article VI law; thus, the right conferred upon Missourians under the amendment “is subject to local government regulation under article VI.”¹⁴⁵ While the extent to which local governments can regulate farming may be debatable, the existence of this ability is not. Farmers and ranchers are still subject to article VI local regulations.

139. 7 U.S.C. § 1902(a) (2012).

140. 7 U.S.C. § 1902(b) (2012).

141. This Article will not debate the true definition of a puppy mill. Rather, the author assumes the kind of puppy mills the HSUS seeks to abolish are inhumane.

142. These statutes do not bear on the *guarantee* to farmers and ranchers that they may engage in farming and ranching practices; rather, they regulate the way that guarantee may be utilized. *See generally* MO. CONST. art. I, § 35.

143. MO. REV. STAT. § 578.005 (2017); MO. REV. STAT. § 578.009 (2017); MO. REV. STAT. § 578.012 (2017).

144. *See generally* MO. CONST. art. VI, § 1.

145. *Shoemyer v. Kander*, 464 S.W.3d 171, 175 (Mo. 2015).

V. FUTURE CONSIDERATIONS

A. *Is the State Constitution the Proper Venue for a Right to Farm?*

In the RTF context, the Missouri Constitution was used as a weapon in an emotional and politically-charged campaign run by interest groups on both sides.¹⁴⁶ While one might think inclusion in the Missouri Constitution makes the RTF an important value to Missourians, Missouri's Constitution also includes provisions "legalizing 'charitable bingo' and . . . establishing water pollution control."¹⁴⁷ This is not to say Missouri's Constitution itself is unimportant, but rather, not all provisions contained therein embrace values that are important to all Missourians. "State constitutional amendments often reflect partisan politics and concerns instead of the broader, weightier issues important to the whole of state populations."¹⁴⁸ Some argue RTF amendments alter state constitutions not to reflect the current citizens' values, but instead out of the proponent's concern that citizens may no longer hold those values important.¹⁴⁹

However, state constitutions are the creations of citizens in the respective state.¹⁵⁰ Ultimately, these constitutions belong to the people of that state. In this case, the Missouri Constitution belongs to Missourians. If future states wish to amend their constitutions to include a RTF, and their voters approve it, that is their prerogative.

B. *Alternatives*

For those still concerned that RTF amendments will give farmers too much free rein, capitalism can also be a form of regulation for the agricultural industry. As market demands change from quick, cheap meals to a more whole-food driven product, pure capitalism dictates producers will adapt to meet consumers' demands. Smithfield Foods, Inc., the number one pork producer in the United States,¹⁵¹ began asking its farmers to transition from gestation crates to group pens

146. Kennedy, *supra* note 58, at 210.

147. *Id.* at 250.

148. Gordon, *supra* note 81, at 11.

149. *Id.* at 11-12.

150. Kennedy, *supra* note 58, at 250.

151. *Company Profile & History*, SMITHFIELD FOODS, <http://www.smithfield-foods.com/about-smithfield/company-profile> (last visited Aug. 6, 2017).

for their hogs as a response to the consumer market seeking products from companies that use practices perceived as humane.¹⁵² McDonald's is also on board, requiring its pork suppliers to phase out gestation crates.¹⁵³ Public demand is clearly influencing agricultural practices in a very effective way in terms of producing society's desired results. As demand continues to change, the agricultural industry will adapt.

VI. CONCLUSION

Missouri's RTF amendment takes agricultural protections in a new direction. Traditionally, RTF statutes protected farmers from nuisance lawsuits.¹⁵⁴ Missouri had such a statute on the books when the RTF amendment was passed.¹⁵⁵ However, the amendment's purpose was not to provide farmers with protection from their neighbors; it was to provide farmers with protection from the influence of outsiders and animal welfare groups. Due to the amendment's sweeping, generalized purpose and undefined terms, its legal impact will be complex.¹⁵⁶

The amendment's passage in Missouri led more lawmakers in other states to introduce and pass similar constitutional amendments.¹⁵⁷ As of 2012, Missouri ranked sixteenth nationally in market value of total agricultural products sold, highlighted by their second-ranked hay acreage, fourth-ranked soybean acreage, seventh-ranked hog and pig monetary production, ninth-ranked poultry and egg monetary production, and ninth-ranked cattle and calf monetary production.¹⁵⁸ States with similar agricultural strength will continue to attempt to enact these RTF amendments.

Missouri and North Dakota set an example for states that take pride in their agriculture. They enshrined a right to farm within the state constitution in order to protect their farmers. But if a future state desires to protect its farmers in the same

152. Christopher Doering, *Smithfield Urges Farmers to End Use of Gestation Crates*, USA TODAY (Jan. 7, 2014, 7:13 PM), <http://www.usatoday.com/story/news/nation/2014/01/07/hog-crates-ban/4362353/>.

153. Nancy Shute, *McDonald's Teams Up With Humane Society to Phase out Pig Crates*, NPR (Feb. 14, 2012, 2:31 PM), <http://www.npr.org/blogs/thesalt/2012/02/14/146863301/mcdonalds-teams-up-with-humane-society-to-phase-out-pig-crates>.

154. Centner, *supra* note 13, at 90.

155. See MO. REV. STAT. § 537.295 (2017).

156. See McElwain, *supra* note 103, at 266-68.

157. See *Oklahomans Vote Against*, *supra* note 11.

158. See *2016 State Agriculture Overview: Missouri*, USDA, http://www.nass.usda.gov/Quick_Stats/Ag_Overview/stateOverview.php?state=MISSOURI (last visited Aug. 6, 2017).

2017]

Missouri's Right-to-Farm Amendment

158

way Missouri and North Dakota have, it could and should improve upon the Missouri amendment. Considering the heated battles between farmers and the HSUS, future states should expressly limit the protected farming practices to those that are humane. Farmers must consider the message “humane” sends to consumers: farmers want protection from what they perceive as unfair legislation, but they do not want to treat animals inhumanely, nor do they want protection for practices like puppy mill breeding. This solution is a win-win for the agricultural industry and the HSUS.