

In the Agribusiness Industry? Don't Miss These Three Legal Developments to Keep an Eye On

September 1, 2021



The North Carolina Chamber of Commerce is an avid advocate for the economic health and well-being of agribusiness and agriculture in the State through its lobbying efforts, resources available on its website, and through its 'Ag Allies' webinars.

Ray Starling, the Chamber's General Counsel and President of the Chamber's Legal Institute, and others from the Chamber have been at the forefront of highlighting through the Ag Allies webinars key issues that the industry is facing or may soon face.

Attorneys with our Agribusiness team Allen Trask and Amy Wooten recently attended the Chamber's "Ag Allies: Landscape-Shifting Legal Developments" webinar, which covered three developments of interest for North Carolina's agribusiness industry:

- California's Proposition 12 presented by Amber S. Miller, Esq., a Partner at Crenshaw, Dupree & Milam, LLP,
- *Cedar Point Nursery v. Hassid* (a regulatory takings case) presented by Texas A&M Assistant Professor and Extension Specialist in Agricultural Law Tiffany Dowell Lashment, and
- An update on North Carolina's Right to Farm law presented by Farm Bureau Mutual Insurance Company's Chief Legal Officer, Jake Parker.

California's Proposition 12, often referred to as "Prop. 12," is California's "Prevention of Cruelty to Farm Animals Act." When implemented on January 1, 2022, it will ban the sale in California of "whole pork meat" products derived from animals born after January 1, 2022, that were not raised in accordance with Prop. 12's exacting requirements. The impact of Prop. 12 on North Carolina's pork industry is expected to be significant and wide ranging and will likely entail a substantial investment in time and funds to achieve compliance, loss of market share and presence for those who are not compliant, and increased costs for pork consumers. In short, the price of bacon is (expected to be) going up.

In ***Cedar Point Nursery v. Hassid***, the United States Supreme Court was tasked with deciding whether a California regulation that required ag employers to give labor organizations the right to access the employer's property to meet and talk with the employer's employees and to solicit their support for unionization

constituted a taking by the government that required just compensation. In a 6-3 decision, the Court determined that the regulation was a taking. In reaching that result, the Court recognized that the right of a property owner to *exclude* someone from the owner's property is itself a property right for which just compensation must be paid when that right is taken by the government. This decision is an important one for property owner employers that could curtail the creation of regulations like the one at issue in the case that require them to make their property available without just compensation.

North Carolina's Right to Farm law received a boost from the North Carolina General Assembly through amendments in 2017 (capped recoverable damages to the fair market value of a plaintiff's property) and in 2018 (narrowed who can bring a nuisance lawsuit against a farm and the time in which they can bring a nuisance suit). These changes were enacted by the General Assembly in response to the mass nuisance litigation brought by over 500 plaintiffs against Murphy-Brown/Smithfield and the threat that future litigation like it presented for the State's agribusiness industry. In 2019, three non-profit organizations challenged these amendments on the grounds that they violated North Carolina's Constitution. Their challenge was dismissed at the state court level and is currently pending appeal before North Carolina's Court of Appeals.

We appreciate the Chamber's efforts to highlight these important legal developments. Be sure to check out the Chamber's Ag Allies Conference scheduled on October 15, 2021, in Raleigh (with a virtual option).

Please do not hesitate to reach out to one of our Agribusiness team members if you have any questions about the material covered in this article or agribusiness representation in general. Agriculture is today, and has always been, near and dear to our Firm's heart. North Carolina is where we focus, and agriculture is a critical pillar of our State's economy. We have worked with agribusinesses of all kinds for over fifty years, and we have focused that representation on a dedicated practice group. From farmers and nurseries to processors and storage houses, to chemical and equipment providers, we are here to help.

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