

Roth: Corporate agribusiness and the right to harm

By [Jim Roth](#), Director and Chair of the Firm's Clean Energy Practice Group. This column was [originally published in The Journal Record](#) on May 16, 2016.



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State Question 777 is a proposed amendment to the Oklahoma Constitution, voted on by the Oklahoma State Legislature to appear on the general election ballot on Nov. 8. But this idea didn't originate in Oklahoma; it's part of a national push by corporate farming interests rolling across America. Which is ironic because most of Oklahoma's largest corporate animal processors are Chinese, Japanese and Brazilian.

The Farm Bureau, a well-respected organization, is the face pushing for this measure, while the Oklahoma Municipal League, the Sierra Club and the Humane Society are some of those opposed.

The proposed amendment would add a new section to the Oklahoma Constitution that would provide, in part, that “the rights of farmers and ranchers to engage in farming and ranching practices shall be forever guaranteed in this state.” This inspiring language has led proponents to refer to SQ 777 as the “right to farm.” However, the next sentence of the proposed amendment all but eliminates the Legislature’s ability to regulate farming in our 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.” Opponents refer to this proposed amendment as the “right to harm.”

Missouri narrowly passed a constitutional amendment in 2014, also the product of corporate agribusiness pushing constitutional protections against local regulation. That amendment was also sponsored by the national Farm Bureau and the like. The vague and sweeping language of the Missouri amendment – which is almost identical to the proposed amendment in SQ 777 – has already sparked litigation and legal challenges.

Not only is the language of the proposed constitutional amendment ambiguous, it is also superfluous in many ways because Oklahoma already has a right-to-farm statute that protects farmers from nuisance liability. The last subpart of the statute also provides that farmers must abide by state and federal laws, including the Oklahoma Concentrated Animal Feeding Operations Act and the Oklahoma Registered Poultry Feeding Operations Act. Legitimate farmers are well protected by existing Oklahoma law.

According to the U.S. Department of Commerce, agriculture, forestry, fishing, and hunting provided 1.1 percent of Oklahoma's gross domestic product in 2014. Oklahoma has more than 80,000 farms, which includes approximately 73,000 family farms and 1,900 corporate farms. About 75 percent of the land in our state is agricultural land, and the average farm size is 430 acres. The agricultural industry employs more than 120,000 Oklahomans.

If SQ 777 is passed by voters in November, it would have far-reaching and detrimental effects on family farms in our state, to the advantage of larger corporate interests. It would tie the hands of the state Legislature and municipalities, making it almost impossible to implement reasonable and necessary regulations to protect land and water from corporate pollution. As stated in the proposed amendment, the state Legislature will not be able to pass statutes regulating farming activities unless the Legislature can show a compelling state interest. This is an extremely high burden, and most proposed legislation would not be able to satisfy this threshold. What about cock-fighting? Or puppy mills? Or over-flowing waste lagoons?

No other industry is afforded this type of constitutional protection. Forcing state legislators and local regulators to satisfy such a high constitutional burden in order to protect the interests of their constituents will allow major corporate agribusiness to operate with virtual impunity in Oklahoma.

SQ 777 states that it will not overturn any existing legislation that was passed before Dec. 31, 2014. Several laws passed in 2015 could be reversed by SQ 777, including statutes regulating puppy mills in large cities and protecting pollinating insects.

If SQ 777 were passed, it would only invite more federal government intervention from agencies like the Environmental Protection Agency and U.S. Department of Agriculture. If state

regulators are rendered impotent by a state constitutional provision, federal regulators will be forced to step in to address environmental concerns, animal rights, water contamination and other harms.

Surely we Oklahomans can be trusted to respect legitimate farming interests and to respect the land that we belong to as grand without having to concrete corporate farm immunity into our vaulted Constitution. Right?

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