

**Right to Farm Act: When Can Barring Nuisance Actions  
or Zoning Enforcement Constitute an Unconstitutional  
Taking?  
Or  
Something's Rotten in the State of Iowa**

**By  
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# I. Introduction

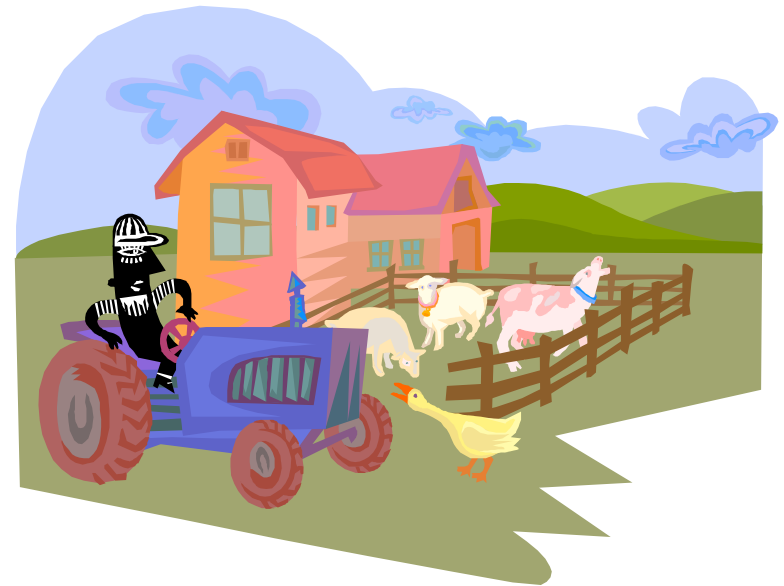
**We have  
nothing  
against pigs.**



## Introduction Cont'd

### Purpose of Right to Farm laws:

To protect family farms from urban sprawl and “nimbyism” by granting immunity from nuisance suits



## Introduction Cont'd



**Brief primer on the law of nuisance.**

- 1. Public nuisance**
- 2. Private nuisance**

## Introduction Cont'd



**Actual effect of  
Right to Farm  
Acts: the  
protection of  
mega-farms.**

## II. *Bormann v. Board of Supervisors*

- **Farm applies for agricultural area designation to give it property protection under Iowa's Right to Farm Act.**
- **State Board of Supervisors approves, and adjacent land owners appeal, claiming the designation creates a taking of land under the Iowa and Federal Constitutions.**
- **Iowa Code Section 352.11(1)(a) provides: A farm or farm operation located within an agricultural area shall not be found to be a nuisance regardless of the established date of operation or expansion of the agricultural activities of the farm or farm operations.**
- **According immunity from nuisance suits is voided by the Court, essentially invalidating the statute on its face. The Court engaged in no analysis as to the actual effect of the immunity on the plaintiff's properties but assumed a taking.**

### III. No Other State Has Followed the Iowa Supreme Court in Declaring Right to Farm Laws Unconstitutional Takings.

- **Michigan has similar enactment and has generally upheld it to allow modernization of farming.**
- **Rhode Island barred zoning enforcement of dust performance standards against a turf farm, which had dug an irrigation pond in violation of zoning.**



- **California has interpreted its Right to Farm Act to bar suits in trespass for physical invasion of property, in the case of agricultural property draining onto a residential subdivision.**
- **Washington Courts dismissed suit under Right to Farm Act when property owners and cities sought to enjoin operation and smells emanating from indoor mushroom plant.**





## IV. Some States Have Limited Right to Farm Acts or Have Interpreted Them in a More Limited Way.

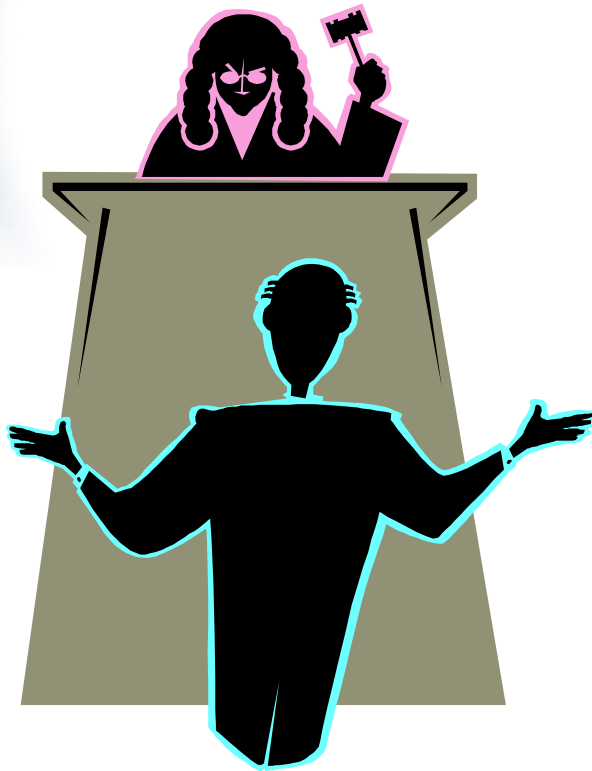
- Idaho did not protect expanded pig farm when it added open impoundments
- In *Petsey v. Coleman*, negligent operation of a cow manure to energy plan (which blew up during the trial and never did work right).
- Texas, among other states, allows nuisance suits, but they must be brought within one year of creation of the nuisance. *Holubec v. Brandenberger*.



## V. Effect of Right to Farm Act on Zoning Enforcement Varies With Statute and Facts.

- Pennsylvania Right to Farm Act places one-year statute of repose on private zoning actions, but not public ones. *Horne v. Haladay*.
- Rhode Island courts essentially equate zoning enforcement of performance standards or public or private entities with nuisance and subject them to the immunity. *Town of North Kingston v. Albert*.
- A zoning violation may be the basis for a claim of nuisance *per se*, but it does not follow that if a farm complies with zoning, it is not a nuisance. See *Tricket v. Ochs*.
- Some Right to Farm Acts pre-empt local zoning, with the State Department of Agriculture having all permitting authority. See, for example, Michigan law granting state control over odors. Similarly, Connecticut has a state standard for noise.

## VI. Does the Holding in *Bormann* Have any Legs? or Paw? or Hoofs?



- It is unlikely any other state will rule, in the way that Iowa did, that a Right to Farm Act is unconstitutional on its face.
- It is also unlikely that any other state will find right to farm immunity a taking *per se*.



- It seems more likely that other states will analyze claimed takings under the Right to Farm Act as regulatory (*Penn Central*) takings, requiring analysis of impact, investment-backed expectations, and government interests.

- **Agri-businesses will continue to fight hard to protect Right to Farm Acts, and home builders, realtors, etc., will ultimately fight back. Agri-business will continue to be concentrated in poorer areas, less likely to bring legal enforcement actions, or in the alternative, they will move overseas. Protection of CAFO's and spray fields makes less sense. It remains to be seen whether others follow Iowa and constitutionally limit Right to Farm Acts.**

