

MEMORANDUM

TO: Right to Food for Maine

FROM: Maja Veselinovic and William Talley, Miami Law Human Rights Clinic Student Interns, under the supervision of Prof. Denisse Córdova Montes

RE: Does the proposed Maine Constitutional Right to Food amendment conflict with existing animal welfare laws?

DATE: October 1, 2021

I. Question Presented

Does the proposed Maine Constitutional Right to Food amendment conflict with existing animal welfare laws?

II. Amendment Language

All individuals have a natural, inherent and unalienable right to food, including the right to save and exchange seeds and the right to grow, raise, harvest, produce and consume the food of their own choosing for their own nourishment, sustenance, bodily health and well-being, as long as an individual does not commit trespassing, theft, poaching or other abuses of private property rights, public lands or natural resources in the harvesting, production or acquisition of food.

III. Answer

No. The proposed Maine Constitutional Right to Food amendment does not conflict with existing animal welfare laws.

IV. Analysis

A. The Right to Food is Limited by Legality

The proposed Amendment enumerates and protects three sets of rights and then limits those rights. The three rights are (1) the right to food, (2) the right to save and exchange seeds, and (3) the right to grow, raise, harvest, produce and consume the food of [people's] own choosing[.]” The Amendment does *not* protect these rights where it would require “trespassing, theft, poaching or

other abuses of private property rights, public lands or natural resources in the harvesting, production or acquisition of food.”

B. The Right to Food Does Not Mean the Right to Raise and Consume All Animals without Limits

The right to grow, raise, harvest, produce and consume food plainly includes farm animals when it guarantees the right to “raise” and “consume” food of people’s own choosing. But the Amendment does not guarantee the right for people to raise and consume *all* animals, *wherever* or *however* they want.

The court's main objective in construing statutes is to discern and give effect to the Legislature's intent; to determine that intent, the court first looks to the statute's plain meaning and the entire statutory scheme of which the provision at issue forms a part. [*Ford Motor Company v. Darling's*, 151 A.3d 507, 515 \(Me., 2016\)](#). When a constitutional provision is ambiguous, the Supreme Judicial Court must determine the meaning by examining the purpose and history surrounding the provision. [*Voorhees v. Sagadahoc County*, 900 A.2d 733, 735 \(Me.,2006\)](#).

C. Maine Courts Will Interpret the Right to Food “in light of what meaning they would convey to an ‘intelligent, careful voter’”

In construing a constitutional amendment, Maine courts interpret the words “in light of what meaning they would convey to an ‘intelligent, careful voter.’” *Payne v. Sec’y of State*, 237 A.3d 870 (Me. 2020). An intelligent, careful voter would not take the rights to save and exchange seeds and produce one’s own food to allow for the violations of property rights, torture of animals, poaching, or to void all of Maine’s existing regulations or permit Mainers to run a farm out of a Portland apartment. There is no conflict between the language of the amendment and the language of animal cruelty laws. Animal safety regulations will stay on the books.

D. There is no Conflict between the Language of the Proposed Constitutional Right to Food Amendment and Maine Animal Welfare Laws

Similar to federal and state laws, state laws will usually prevail when state and local laws are in conflict. Like on the federal court level, the main question courts will seek to answer is whether there is even a conflict.

Per Article 8, Part 2, section 1 of the Maine Constitution, the inhabitants of any municipality shall have the power to alter and amend their charters on all matters, not prohibited by Constitution or general law, which are local and municipal in character. The Legislature shall

prescribe the procedure by which the municipality may so act. The Legislature's grant of home rule authority, grounded in the Maine Constitution, *see* [Me. Const. art. VIII, pt. 2, § 1](#), “shall be liberally construed to effect its purposes.” [30-A M.R.S. § 3001\(1\)](#).

Pursuant to the “home rule” provision of [30-A M.R.S. § 3001](#), a municipality may exercise its authority to adopt an ordinance if that power is not denied either expressly or by clear implication under state law. Local ordinances are presumptively valid, [30-A M.R.S. § 3001\(2\)](#), and an ordinance will be invalidated only when the Legislature has expressly prohibited local regulation, or when the Legislature has intended to occupy the field and the municipal legislation would frustrate the purpose of a state law. *Portland Pipe Line Corporation v. City of South Portland*, 240 A.3d 364, 370 (Me., 2020). Accordingly, an ordinance will be preempted only when state law is interpreted to create a comprehensive and exclusive regulatory scheme inconsistent with the local action or when the municipal ordinance prevents the efficient accomplishment of a defined state purpose. *Id.*

In this particular case, the language of the proposed constitutional right to food amendment does not expressly prohibit local regulation nor does it intend to occupy the field of animal welfare in Maine. Therefore, the proposed right to food constitutional amendment does not preempt animal welfare laws in Maine.

V. Responses to Specific Arguments against the Amendment

A. **Maine Animal Coalition.** This [email](#), reprinted as an op-ed [here](#), arrives at the conclusion that the Amendment would permit animal cruelty. It relies wholesale on the statements of the Maine Veterinary Medical Association.

1. [This testimony](#) by the Association as well as [this video](#) describe some the animal rights groups’ objections to the Amendment. Some groups have argued that the Amendment could allow (1) slaughtering animals within urban areas, (2) slaughtering any animals, including non-livestock, and other disasters.
2. These arguments bring to mind images of cattle slaughtered in the streets of Portland and Mainers eating their pets. But both arguments presume that the right conferred by the Amendment will be absolute in all cases, everywhere. The rights guaranteed by the Maine constitution are generally subject to

reasonable limitations; even the state’s right to bear arms, which the constitution says “shall never be questioned,” may be limited by regulation. *State v. Brown*, 571 A.2d 816 (Me. 1990). With adequate due process, rights are “subject to reasonable restraints and regulations in the public interest[.]” *State v. Johnson*, 265 A.2d 711 (Me. 1970). Maine’s constitutional rights have always been subject to reasonable limits, and the Right to Food would be no different.

3. To raise livestock and poultry, which leads to an immediate death, is consistent with allowed practices in animal welfare laws. Furthermore, the purpose of the animal welfare laws is to ensure humane and proper treatment of animals. Nowhere in animal welfare laws does it say that raising livestock or poultry is considered inhumane.

B. Maine Veterinary Medical Association.

1. In its [testimony](#), the Association states, “The intention of the amendment is unclear, except to be designed to opening the door to all manner of animal abuse and neglect in the name of food.” Furthermore, it argues that “[t]his amendment seems to be offering protections for animal husbandry practices that may or may not conform to accepted practices[.]” The Association elaborates: “Does this mean I can keep a cow in my Portland apartment? Can I slaughter pigs in my front yard? Must I abide by standards and practices for humane processing? Can I house laying hens in my basement?”
2. Additionally, [this press release](#) by several animal rights groups states that the “vague and undefined amendment could take away the power of local governments to provide proper health and safety, protect water resources, supply meals for students and address climate and housing challenges through zoning,” and argues that the Amendment “would preempt all local and state ordinances pertaining to animal cruelty, zoning, and food safety in the name of the ‘Right to Food.’” More specifically, it construes the Amendment to potentially “unwind some of our state animal welfare laws, including the ban on keeping breeding sows in crates barely larger than their bodies.”

3. The Association’s arguments seem to imply that the Amendment will scrap all Maine laws on zoning and animal cruelty and invalidate residential regulations on animal husbandry. As discussed above, the right to food in the Amendment is not an absolute right—it will preserve a right to create one’s own food, which the state may reasonably limit with its police powers. Zoning rules that exist for a valid purpose and do not unreasonably impede the personal right to food will remain, and animal cruelty laws are plainly outside the scope of the Amendment.

VI. Relevant Statutes

A. Preparation of Livestock and Poultry Products for Human Consumption, 22

M.R.S.A. § 2551, *et seq.*

1. § 2521, Humane methods of slaughter. This section limits the *method* by which animals may be slaughtered. The Amendment does not contemplate the method of slaughter at all and would not preempt here.
2. § 2523, Prohibited Acts. This section deals with commercial transactions, which the Amendment would not affect.

B. Animal Welfare Act, 7 M.R.S.A. § 3901, *et seq.*

1. This statute prohibits unsanitary, inhumane, and brutal treatments of animals. It also defines “livestock.” While the Amendment would guarantee a right to food, it would not guarantee a right to produce food in any way possible. Instead, it anumerates a right to raise animals for food for their own nourishment and health. The Amendment discusses the ends—producing food—but not the means. The Amendment does not affect laws on the acceptable treatment of animals, so it would not preempt here.

C. Cruelty to Animals, 7 M.R.S.A. § 3901, *et seq.*

1. This statute, like the others, covers the acceptable treatment of animals. Its provisions all relate to either the humaneness of an animal’s treatment or the legality of hunting. The Amendment does not discuss proper treatments of animals—only “raising” them. The Animal Welfare Act is outside the scope of the Amendment and would not be preempted by it.

D. Unlawful Use of Animals, 7 M.R.S.A. § 3972

1. This statute makes unlawful (1) sales or raffles of dyed animals, (2) sale or raffle of young fowl, turtles, or rabbits, (3) use of animals as fundraising devices, prizes, etc., (4) use of animals as bait, (5) harmfully restraining animals, (6) pushing equine animals over, and (7) abandonment of deceased domesticated animals on any property without permission but one's own. The first three of these deal with commercial transactions, which the Amendment does not affect. The fourth and fifth deal with harmful treatment for non-food purposes, which the Amendment does not permit. The sixth deals with pure cruelty, which the Amendment clearly does not allow. And the last deals with disposal of remains, which has nothing to do with raising animals for "nourishment, sustenance, bodily health and well-being[.]" The Amendment would not preempt here.