ATTORNEY-CLIENT PRIVILEGED REPORT

TO: WES SHOEMYER, PRESIDENT, MISSOURI'S FOOD FOR AMERICA

FROM: COSGROVE LAW GROUP, LLC

SUBJECT: LEGAL ANALYSIS OF *MISSOURI RIGHT TO FARM CONSTITUTIONAL AMENDMENT* (HJ RES. NOS. 11 & 7)

DATE: JULY 24, 2014

Missouri House Joint Resolution Numbers 11 & 7, on the ballot as Constitutional Amendment 1, creates a broad right to "engage in farming and ranching practices." The proposed measure amends Article I of the Constitution of Missouri, which is Missouri's Bill of Rights, by adding a new Section 35 that states:

> Section 35. 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.

The measure could have unintended consequences because its language is vague. Indeed, if passed, it would open the door to legal challenges of government action concerning "farming and ranching practices," including enforcement of laws and regulations relating to the environment, food safety, labor, and animal cruelty.

This legal analysis examines (1) the scope of the right to "engage in farming and ranching practices" and its potential impact on a variety of state and local laws, as well as its impact on future initiative measures; (2) the effect the provision might have on existing legislation; (3) the significance of the amendment's language referring to the "duly authorized powers, if any, conferred by article VI of the Constitution"; and (4) the impact of placing this provision in Article I of the Constitution.

I. The Scope of the Right to Engage in Farming and Ranching Practices

The extent of the right the amendment grants depends on the definition of the terms used in it. Constitutional provisions are subject to the same rules of construction as other laws, except that terms may be construed more broadly and liberally. Neske v. City of St. Louis, 218 S.W.3d 417 (Mo. banc 2007) (overruled on other grounds); School District of Kansas City v. State, 317 S.W.3d 599 (Mo. banc 2010). However, if the Constitution uses words that have a long history of association with a technical meaning, that meaning shall apply unless indicated otherwise. American Federation of Teachers v. Ledbetter, 387 S.W.3d 360 (Mo. banc 2012). When not given a technical meaning or defined in the constitution, words in constitutional provisions are given their plain and ordinary meaning,

which is considered to be the dictionary meaning. Brown v. Carnahan, 370 S.W.3d 637 (Mo. banc 2012). Finally, constitutional provisions are construed in such a manner as to give effect to all the words used. Pearson v. Koster, 367 S.W.3d 36 (Mo. banc 2012).

The legal parameters of the proposed constitutional amendment are set by the words "farming," "ranching," and "practices." The potential import of these words are discussed below.

A. "Farming"

A review of Missouri law indicates that the term "farming" has a broad meaning in the state. Missouri's corporate farming law defines "farming" as:

> using or cultivating land for the production of (a) agricultural crops; (b) livestock or livestock products; (c) poultry or poultry products; (d) milk or dairy products; or (e) fruit or other horticultural products; provided; however, 'farming' shall not include a processor of farm products or a distributor of farming supplies contracting to provide spraying, harvesting, or other farming services.

Mo. Rev. Stat. § 350.010(6) (2013). Similarly, Missouri's Farmland Protection Act defines "farming purposes" as "farming, tillage of the soil, dairy farming, ranching, production or raising of crops, poultry, or livestock, breeding, pasturing, training or boarding of equines or mules, and production of poultry or livestock products in an unmanufactured state." *Id.* § 262.801.

One standard dictionary definition of farming is "the practice of agriculture." Webster's New World Dictionary 824 (3d ed. 1989). Black's Law Dictionary does not define "farming." It does, however, define "farming operation" as a "business engaged in farming, tillage of soil, dairy farming, ranching, raising of crops, poultry, or livestock, and production of poultry or livestock products in an unmanufactured state." Black's Law Dictionary 681 (9th ed. 2009).

A1. "Livestock"

Each of the definitions above includes activities relating to livestock. Like farming, "livestock" is defined broadly in both Missouri statutes and dictionaries.

Missouri law defines "livestock" in at least three different places in Title XVII ("Agriculture and Animals"). The Livestock Disease Control and Eradication Law defines livestock as:

> "horses, cattle, swine, sheep, goats, ratite birds including but not limited to ostrich and emu, aquatic products . . . 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."

Mo. Rev. Stat. § 267.565(13) (2013) (emphasis added). The other definitions of "livestock" are similar in that they include cattle, swine, sheep, ratite birds, aquatic products, llamas,

alpaca, buffalo, elk, goats, poultry, and equines, but they do not go so far as to include "other domesticated animals or birds." See id. §§ 265.300(6); 277.020(1).

The Merriam-Webster Online Dictionary defines "livestock" as "animals kept or raised for use or pleasure; *especially* farm animals kept for use and profit." Merriam-Webster.com. Merriam-Webster, n.d. Web. 3 July 2014, *at* http://www.merriam-webster.com/dictionary/livestock. The Oxford English Dictionary defines "livestock" as "animals, esp. on a farm, regarded as an asset." The Concise Oxford Dictionary of Current English 797 (9th ed. 1995). Black's Law Dictionary defines "livestock" broadly as "domestic animals and fowls that (1) are 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." Black's Law Dictionary 953 (8th ed. 2004).

Based on the above definitions, a court would likely interpret the term "farming" to at least include activities relating to "livestock."

B. "Ranching"

Missouri law does not define "ranch" or "ranching," although the terms are mentioned several times throughout Missouri statutes. See, e.g., Mo. Rev. Stat. §§ 262.801 (2013)(defining "farming purposes" as including "ranching"); § 348.015(2) (defining "agricultural property" as including "the operation of a farm or ranch"). "Ranching" is not defined in the dictionaries. The word "ranch" as a verb is defined with reference to managing or operating a ranch. "Ranch" is defined as: "1. An extensive farm . . . on which large herds of cattle, sheep, or horses are raised. 2. A large farm on which a particular crop or kind of animal is raised." The American Heritage Dictionary 1025 (4th ed. 2000). The term ranch is interpreted with reference to livestock operations, in its narrow sense, and large-scale raising of a single type of animal or crop.

C. "Practices"

The most likely meaning of the term "practices" in the context in which it is used in the proposed constitutional amendment is "a habitual or customary action or way of doing something." The American Heritage Dictionary 972 (4th ed. 2000). One Missouri case considered the term "practice" as used in Article II, § 17 of the Constitution. The term is used in that Article in a slightly different context than it is used in the proposed amendment: "That the right of no citizen to keep and bear arms in defense of his home, person and property, or in the aid of the civil power, when thereto legally summoned, shall be called in question; but nothing herein contained is intended to justify the *practice* of wearing concealed weapons." Mo. Const. art. II, § 17 (emphasis added). The word "practice" was construed as an existing custom or usage, more or less general among its citizens. State v. Keet, 190 S.W. 573, 574 (Mo. 1916). The context in which "practices" is used in the proposed constitutional amendment allows for an interpretation of the term to mean generally recognized customs or usages for conducting a particular type of farming or ranching.

II. The Effect of Adoption on Pre-Existing Law

The proposed constitutional amendment creates a broad and vague right to "engage in farming and ranching practices," and it is impossible to determine exactly how broadly a court might interpret this phrase or how far a court might find this right reaches. Based on the dictionary and statutory definitions described above, however, the State's current ability to regulate issues including horse slaughter, animal breeding, operation of factory farms, and the treatment of farm animals would be at risk. As discussed below, such laws could be upheld if a court found them to be a reasonable use of the state's police power. But there is also a possibility that a court, based on the "subject to" local control language, could interpret the provision as a bar to state-level regulation of some or all of these laws. Regardless, the majority of these laws will almost certainly face challenge as infringing upon the right to farm.

When a new constitutional provision is adopted and becomes effective, existing laws which are in conflict with the provision are no longer in effect or enforceable, as though specifically repealed. Pogue v. Swink, 261 S.W.2d 40, 43 (Mo. 1953); State ex rel. Goldman v. Hiller, 278 S.W. 708, 709 (Mo. 1926); see also Curators of Central College v. Rose, 182 S.W.2d 145, 148 (Mo. 1944) (a previous law which conflicts with a new constitutional provision is void without the necessity of being specifically repealed). Where no inconsistency exists, the prior statutes remain in effect. State ex rel. Dengel v. Hartmann, 96 S.W.2d 329, 203–04 (Mo. 1936). As such, the effect of the proposed constitutional amendment on existing statutes regulating farming and ranching practices will depend on the meaning and scope of the proposed provision as discussed above.

The proposed amendment does not include language on banning the regulation of farming and ranching practices by the state legislature. Thus, there is no facial inconsistency between existing laws and the proposed amendment. Further, as discussed below with reference to placement of the provision in Article I of the constitution, the proposed provision may not necessarily be interpreted as a ban on regulation of farming and ranching practices, thereby allowing the legislature to retain the authority to exercise its police power in the area of farming and ranching practices.

As explained below, because the proposed amendment provides that the right to engage in farming and ranching practices is "*subject to* duly authorized powers, if any, conferred [to local governments] under Article VI," a court could interpret the provision as barring all state-level regulation of farming and ranching. Should the proposed amendment be construed in this way, i.e., as ban on state regulation of farming and ranching practices, laws that regulate these activities would become null and unenforceable.

A. Laws Relating to Horse Slaughter

It is very possible that any law prohibiting or restricting the slaughter of horses for human consumption would be interpreted as infringing upon the right to engage in farming or ranching practices. Horses and other equines are included in every definition of "livestock" in the Missouri Code, see Mo. Rev. Stat. §§ 265.300(6) (2013); 267.565(13); 277.020(1), and, as discussed above, a court would likely interpret the terms "farming" and "ranching" as including activities related to livestock.

B. Laws Relating to Commercial Dog Breeding Facilities ("CDBF's")

The resolution could be interpreted as prohibiting the legislature from passing laws regulating CDBF's, and the Missouri Animal Care Facilities Act could be found to be in violation of the right to "engage in farming and ranching practices." Again, the primary questions would be (1) whether CDBF operators are considered "farmers" or "ranchers," and (2) whether the operation of a CDBF involves "farming and ranching practices."

As discussed above, "farming" would likely be interpreted broadly to include activities involving livestock. One definition of "livestock" in Missouri's agriculture code includes "domesticated animals," Mo. Rev. Stat. § 267.565(13) (2013), and dogs would certainly fall under that category. Providing more support for the argument that the operation of a CDBF, or worse, a "puppy mill," might be considered a "farming practice" is the fact that Missouri's laws relating to kennel and dog breeding operations, Chapter 273, fall under Title XVII, which is Missouri's agriculture code. Given the canons of construction for constitutional provisions and the dictionary, statutory, and case law definitions of "farming," "ranching," and "practices," there is a good likelihood that the proposed constitutional amendment will be construed to apply to dog and other pet breeding activities.

Further, at least one federal court has found that breeding dogs "can be considered livestock in the generic sense of the word." U.S. v Park, 658 F. Supp. 2d 1236, 1245 (D. Idaho 2009). That court held:

> Dogs are domestic animals. Certainly, the kenneling or breeding of dogs could be considered the keeping of farm animals kept for profit. It is undisputed that dogs can be kept for profit or pleasure-working dogs versus pure family pets. Dogs can normally be confined in kennels without impairing their utility and that dogs in kennels would not be able to intrude on the land of others. Further, the USDA's definitions for agricultural activity which livestock farming would be in 1973 included other animal production which included dog breeding and kenneling as agricultural activities.

Id.; see also United States v. Park, 536 F.3d 1058, 1063 (9th Cir. 2008) (dog breeding operation was not precluded from being livestock farming because "livestock" is ambiguous); Levine v. Conner, 540 F. Supp. 2d 1113, 1116 (N.D. Cal. 2008) (analyzing the dictionary definitions of the word "livestock" and observing that "the scope of domestic animals used or raised on a farm can potentially extend to guinea pigs, cats, dogs, fish, ants, and bees."); Myers v. Council of Village of Spencer, No. 1479, 1986 WL 8543 (Ohio App. July 30, 1986) (dog breeding is a form of animal husbandry for purposes of right-to-farm and zoning enactments); Harris v. Rootstown Tp. Zoning Bd. Of Appeals, 338 N.E.2d 763 (Ohio 1975). In a bankruptcy context, which gives a liberal construction to words used in the bankruptcy code, a kennel was held to be a farming operation. In re: Maike, 77 B.R. 832 (Kan. Bankr. 1987). But see Township v. Groveland v. Rademacher, No. 175732, 1998 WL 1988929 (Mich. App. Nov. 3, 1998) (dog kennel was held not within the protection of the state's right-to-farm statute since it was not a farming operation).

In short, it is impossible to predict whether a court would find that the operation of CDBFs or "puppy mills" is protected by the right to engage in farming practices. Although the ultimate answer is unclear, there is no question that, if enacted, the measure will be used to fight the enactment of any new laws concerning puppy mills, and will likely be used in court to challenge existing laws and regulations.

C. Laws Relating to Farm Animals and Industrial Farms

Laws relating to the welfare of farm animals, such as those aimed at ending the use of veal crates and tail docking in Missouri, as well as laws aimed at regulating the operating practices of large-scale industrial farms would be impacted if the proposed constitutional amendment is passed. As discussed above, pigs, cows, and chickens all clearly fall under the definition of "livestock" under both dictionary definitions and Missouri law, and it is almost certain that a court would find the various methods of raising these animals and their general treatment on a farm to be farming and ranching practices. Likewise, laws regulating the operation of large-scale industrial farms, including regulation of the treatment and storage of waste and manure, would be at risk. Thus, laws restricting and regulating the treatment of farm animals and the operation of farms would arguably infringe upon the right to "engage in farming and ranching practices."

D. Laws Relating to Animal Fighting

Again, because the language of proposed Constitutional Amendment 1 is vague and the terms "farming" and "ranching" could be interpreted very broadly. The provision could bolster any argument that Missouri law relating to cockfighting and dogfighting infringes upon the right to engage in farming and ranching practices. As discussed above, it is likely that a court would find poultry, including gamecocks, to be "livestock," and that activities relating to the raising and keeping of poultry to be "farming." Likewise, there is also the possibility that a court would find activities related to the raising and keeping of dogs to fall within the ambit of "farming." While it is unlikely that a court would stretch the meaning of "farming practice" to include the actual fighting of birds or dogs, it is entirely possible that the court would find that laws prohibiting the possession and breeding of gamecocks or dogs with the intent of fighting those animals in the future to infringe upon the right to engage in farming and ranching practices. See, e.g., Mo. Rev. Stat. § 578.025(1) (2013) (prohibits owning, possessing, keeping, or training any dog "with the intent that such dog shall be engaged in an exhibition of fighting with another dog").

E. Initiative Measures

As with laws passed by the state legislature, while the proposed constitutional amendment does not directly prohibit the passage of laws related to farming and ranching practices via citizen-driven ballot initiatives, it is likely that any non-constitutional measures affecting farming and ranching would be challenged as a violation of the Right to Farm. Again, this right is broad, open, and undefined, and as with the granting of an individual right, the specter of such a challenge would likely chill and could prevent initiative-based efforts at the state level to restrict farming and ranching practices.

Indeed, the Missouri Farm Bureau's President believes the resolution would put limits on initiative-based efforts, stating "we still feel that [the resolution, as passed] does put some limits on what you can do by initiative petition."[1]

III. The Effect of Article VI (Local Control)

The proposed constitutional amendment purports to preserve the authority of local governments to regulate farming and ranching activities via reference to Article VI of the Missouri Constitution. A review of the powers granted to these local bodies by Article VI and the legislature, however, reveals that such authority is extremely limited. With the exception of charter counties (of which there are only four), counties and cities in Missouri may only regulate in those areas expressly delegated to them by the legislature.

The legislature previously passed a law expressly prohibiting the vast majority of Missouri's counties from enacting ordinances that regulate agricultural operations, and it could choose to further limit the authority of local governments. In sum, the fact that the proposed "Right to Farm" would be "subject to duly authorized powers, if any, conferred by article VI of the Constitution of Missouri" means little: the majority of counties (89 out of 114) are already prohibited from enacting ordinances affecting agricultural operations.

A. Powers Conferred to Local Governments by Article VI of the Missouri Constitution

Article VI contains Missouri's constitutional provisions relating to "local government." Missouri (along with many other states) follows the "Dillon Rule," by which counties, cities, and other municipal corporations "have no inherent powers but are confined to those expressly delegated by the sovereign and to those powers necessarily implied in the authority to carry out the delegated powers." Christian County v. Edward D. Jones and Co., L.P., 200 S.W.3d 524, 527 (Mo. banc 2006); see also Damon v. City of Kansas City, No. WD 75363 2013 WL 6170565 (Mo. App. W.D. Nov. 26, 2013) (municipalities are "creatures of the legislature" and are "confined to those [powers] expressly delegated by the state"); State v. Ostdiek, 315 S.W.3d 758 (Mo. App. W.D. 2011) (where a municipality is organized under the statutes of the state, its power to enact ordinances is derived from the state and must be exercised under the authority granted to it by the state). Under the Dillon Rule, counties and other municipal corporations "may only exercise powers (1) granted to them in express words by the state, (2) those necessarily and fairly implied in or incident to those powers expressly granted, and (3) those essential and indispensable to the declared objectives and purposes of the county." Borron v. Farrenkopf, 5 S.W.3d 618, 620 (Mo. App. W.D. 1999); Premium Standard Farms, Inc. v. Lincoln Township of Putnam County, 946 S.W.2d 234, 238 (Mo. banc 1997); see also Babb v. Missouri Public Service Com'n, No. WD 76384, 2013 WL 6170640 (Mo. App. W.D. Nov. 26, 2013) (a municipality "derives its governmental powers from the state and exercises generally only such governmental functions as are expressly or impliedly granted it by the state"). Thus, in general, counties and cities in Missouri are limited by the legislature with respect to the types of ordinances they may enact.

[1] Julie Harker, "MO lawmakers pass Right to Farm measure" (May 14, 2013), *available at* http://brownfieldagnews.com/2013/05/14/hurst-pleased-with-right-to-farm-passage/

The constitutional basis for application of the Dillon Rule is found in Article VI, §8 (counties) and §15 (cities and towns). Both provisions state that the general assembly "shall provide by general laws for the organization and classification of [counties, cities and towns]. . . and *the powers of each class shall be defined by general laws* so that all [municipal corporations] within the same class shall possess the same powers and be subject to the same restrictions." (emphasis added). The one exception to application of the Dillon Rule is for counties and cities that have adopted a charter form of government pursuant to Article VI, § 19. Most of the municipal corporations in Missouri are non-charter. According to the Missouri Association of Counties, as of January, 2014 only four out of 114 counties in Missouri have adopted a charter form of government. Thus, the vast majority of counties in Missouri are bound by the Dillon Rule, and the power to enact ordinances is limited to that which is delegated to them by the legislature. Charter governments are discussed separately below.

B. Non-Charter Counties, Cities, and Townships

Pursuant to Article VI, § 8, the legislature has divided non-charter counties into four different classes: First Class counties are those which have had an assessed valuation of $900 million or more for five consecutive years; Second Class counties are those which have had an assessed valuation of between $600 million and $900 million for five consecutive years; Third Class counties include all counties having an assessed valuation of less than $600 million; and Fourth Class counties include all counties which were Second Class prior to August 1988, and which would otherwise return to Third Class after August 1988 due to changes in assessed valuation. These "Fourth Class" counties technically remain Second Class, and operate under the laws applying to Second Class counties. See Mo. Rev. Stat. § 48.020(1) (2013). Out of a total of 114 counties, there are currently 18 First Class counties; 3 Second Class counties; 89 Third Class counties, and 4 Fourth Class counties.

As discussed above, any powers to enact ordinances must be either constitutionally-based or delegated to a county or city by the legislature. The extent of the powers of non-charter counties and cities varies by class. First Class counties (of which there are 18) have the broadest power to regulate: Article VI, § 18(m) allows first class counties that do not adopt charters to instead adopt constitutions that give them "any and all powers the general assembly has the authority to confer, provided such powers are not limited or denied by [state law]." This includes general police powers.

Mo. Rev. Stat. § 49.650 (2013) delegates various police powers to counties. These powers include authority to adopt ordinances relating to:

(1) County roads controlled by the county;
(2) Emergency management;
(3) Nuisance abatement, but *excluding agricultural property*;
(4) Storm water control, but *excluding agricultural property*;
(5) Promotion of economic development for job creation purposes;
(6) Parks and recreation; and
(7) Protection of the environment from the risks posed by methamphetamine production.

Thus, the powers delegated to counties by the legislature are relatively limited Some powers, like the power to enact ordinances for nuisance abatement, specifically exclude the

power to regulate farms. Further (and perhaps more important, since Third Class counties account for the majority of counties in Missouri), Third Class Counties are specifically prohibited from enacting ordinances relating to agricultural operations. See Mo. Rev. Stat. § 49.650(5) (2013)("No county commission of any count of the third classification shall enact an ordinance with regard to agricultural operations under this section. Any zoning ordinance adopted by any county of the third classification before August 28, 2004, shall be exempt from this subsection.").

With respect to cities, the legislature has given Third and Fourth Class cities general police powers. See id. § 77.590 (giving Third Class cities the power to "enact and make all such ordinances and rules, not inconsistent with the laws of the state, as may be expedient for maintaining the peace and good government and welfare of the city and its trade and commerce"); id. § 79.110 (giving Fourth Class cities the "power to enact . . . any and all ordinances not repugnant to the constitution and laws of this state").

Finally, townships have been granted broad zoning powers for the purpose of promoting "health, safety, morals, comfort or the general welfare," but this zoning power expressly prohibits regulations "with respect to the erection, maintenance, repair, alteration or extension of *farm buildings or farm structures*." Id. § 65.677. Missouri courts have struck down township zoning ordinances that required minimum setbacks for hog CAFOs on several occasions. See Premium Standard Farms, Inc. v. Lincoln Tp. Of Putnam County, 946 S.W.2d 234 (Mo. banc 1997); Bd. Of Directors of Richland Tp. V. Kenoma, LLC, 284 S.W.3d 672 (Mo. App. S.D. 2009).

C. Charter Municipalities

Article VI permits certain counties and cities to "frame and adopt a charter for its own government." See Mo. Const. art. VI, § 18(a) (counties) and §19 (cities). Charter counties and cities have broad police power authority to enact ordinances and may not be limited by the legislature unless such ordinances conflict with state law. See Mo. Const. art. VI, § 18(c) (allowing charter counties to exercise legislative power "pertaining to any and all services and functions of any municipality or political subdivision," subject to certain restrictions). This has been interpreted to include general police powers. See Barber v. Jackson County Ethics Comm'n, 935 S.W.2d 62, 66 (Mo. App. W.D. 1996) ("One of the powers granted to charter counties by the constitution is the police power."); see also Mo. Const. art. VI, § 19(a) (giving charter cities "all powers which the general assembly of the state of Missouri has authority to confer upon any city," subject to the state constitution and laws). However, as noted above, if the amendment passes it is likely that even charter municipality ordinances relating to farming and ranching practices would be challenged on the basis that they infringe upon the right to engage in such practices.

Only four Missouri counties have achieved charter status: Jackson, Jefferson, St. Charles, and St. Louis.

D. Authority of Counties to Enact Health Regulations

While, as discussed above, the authority of local governments to regulate farming and agricultural operations is extremely limited, there is one source of authority that counties could potentially cite to as a basis for enacting regulations relating to factory farms, horse slaughter, and puppy mills. Section 192.300 of the Missouri Code gives

counties the authority to "make and promulgate orders, ordinances, rules or regulations, respectively as will tend to enhance the public health and prevent the entrance of infections, contagious, communicable or dangerous diseases into such county . . . ." Mo. Rev. Stat. § 192.300 (2013). In Borron v. Farrenkopf, 5 S.W.3d 618 (Mo. App. W.D. 1999), the Missouri Court of Appeals upheld a Third-class county ordinance that established minimum building and setback requirements for CAFOs due to the fact that such facilities are a public health threat. The court found that the ordinance was not a zoning ordinance, but a health ordinance because its purpose was to "regulate for health concerns rather than for a uniform development of real estate." Id. at 619–20. The court recognized that "there is a font of case law and technical information illustrating the health hazards related to hog facilities," and found that "[i]t is clear that the Ordinance here enacted by Linn County is rationally related to the health problems stemming from livestock facilities, and therefore expressly authorized under § 192.300." Id. at 622. Thus, county ordinances regulating factory farms, horse slaughter, and puppy mills may be upheld as long as there is a rational relation to public health.

The legislature could, however, rescind this delegation of authority. Indeed, the legislature has already made several attempts: in 2007, Senate Bill 364 would have amended Missouri's Right to Farm Act to prohibit any local health ordinances that apply to agricultural operations. See S.B. 364, 94th Gen. Assemb. 1st Reg. Sess. (Mo. 2007). More recently, language was added to a bill regarding political subdivisions that would have amended Chapter 192.300 to provide that "no public health order, ordinance, rule, or regulation promulgated by a county health board under this section shall apply to any agricultural operation and its appurtenances." H. Comm. Substitute for S. Comm. Substitute S.B. 692, 96th Gen. Assemb. 2nd Reg. Sess. (Mo. 2012).

IV. The Placement of the Provision in Article I of the Missouri Constitution

Article I is the Bill of Rights provision of the Missouri Constitution. The Bill of Rights "is generally a list of fundamental rights, recognized and declared in the document and not granted to the people by a constitution." Eastern Missouri Coalition of Police v. City of Chesterfield, 386 S.W.3d 755, 761 (Mo. banc 2012)(citations omitted).[2] The provisions according rights function as restrictions or limitations on government action that conflicts with the rights recognized and are self-executing. Id. They can also give rise to affirmative duties on behalf of the government to protect those rights. Id. at 762.

Rights accorded under the Bill of Rights of the Missouri Constitution are not recognized as absolute. They generally remain subject to the state's inherent right to exercise its police power. See, e.g., Kansas City Premier Apartments, Inc. v. Missouri Real Estate Comm'n, 344 S.W.3d 160, 170 (Mo. banc 2011) (free speech); White v. White, 291 S.W.3d 1, 25 (Mo. App. W.D. 2009) (access to courts); State v. Richard, 298 S.W.3d 529, 532 (Mo. banc 2009) (right to keep and bear arms). "A regulation designed to promote the health and welfare of the people does not infringe on constitutional guaranties of personal rights and due process 'unless the regulation passes the bounds of reason and assumes the

[2] Several provisions in the Bill of Rights do not actually establish rights. See, e.g., Mo Const. art. I §§ 7 (prohibiting use of public aid for religious purposes and discrimination based on religion); § 31 (prohibiting enactment of law delegating authority to administrative agency make any rule providing a fine or imprisonment for its violation); § 33 (providing that only marriage between a man and woman is recognized valid).

character of arbitrary power.'" Milton Const. and Supply Co. v. St. Louis Sewer Dist., 352 S.W.2d 685, 692 (Mo. 1962). The relevant inquiry is whether the regulation is "fairly traceable to the police power of the State or municipality" and was enacted "for the protection, and in furtherance, of the peace, comfort, safety, health, morality, and general welfare of the [people]." Flower Valley Shopping Center, Inc. v. St. Louis County, 528 S.W.2d 749, 753–54 (Mo. banc 1975)(citations omitted).

The proposed Right to Farm would not necessarily be subject to the state's inherent right to exercise its police power with respect to action taken at the state (versus local) level because the amendment provides that the Right is "*subject to* duly authorized powers, if any, conferred [to local governments] under Article VI of the Constitution." A court may construe this language to mean that the Right is subject to *only* laws enacted pursuant to Article VI (local) powers. Indeed, if the right were "subject to" laws enacted (or regulations promulgated) pursuant to state and/or local power, this clause would not be needed. Thus, the provision may be interpreted to act as a bar to state-level regulation of "farming and ranching practices." As no other provision in the Missouri Bill of Rights contains similar language, it is impossible to predict how the courts would interpret this clause.

V. Conclusion

Under broad and liberal rules of construction for Constitutional provisions, the terms "farming" and "ranching" likely would be construed to encompass not only livestock, but also domesticated animals. Thus, the scope of the right to engage in farming and ranching practices will be subject to broad interpretation which could potentially restrict reasonable regulation relating to livestock operating practices used on large-scale industrial farms, horse slaughter, puppy mills, and animal fighting and potentially foreclose any non-constitutional ballot measure affecting livestock or domestic animals.

The language "subject to duly authorized powers, if any, conferred by article VI of the Constitution of Missouri" potentially bars state measures relating to farming or ranching because article IV addresses only local powers, and thus may create an inference that the amendment is not subject to state powers. Any powers for local governments to enact ordinances must be either constitutionally-based or delegated to a county or city by the legislature. The "duly authorized powers" given to local governments provides counties and cities with very little authority to impact farming or ranching regulations. The majority of counties in Missouri are expressly prohibited from enacting ordinances concerning agricultural operations. Furthermore, while the legislature has delegated authority to counties to enact regulations relating to public health, this authority is not absolute. Therefore, this amendment would have a stifling effect on the state and local governments' ability to pass reasonable farming or ranching regulations – and could even preclude virtually all state-level regulation with respect to these subjects.

Finally, enactment of this provision could have a substantial impact on existing legislation. While it remains unclear whether this amendment would effectively repeal any existing laws broadly relating to farming and ranching, its vague language will no doubt create a spawn of litigation requiring the courts to answer the various unanswered questions that this amendment raises.