

## M E M O R A N D U M

**TO:** Meris Bickford, CEO of the Maine State Society for the Protection of Animals

**FROM:** Harold C. Pachios and Anne E. Sedlack

**DATE:** October 18, 2021

**RE:** **Question 3, Right to Produce, Harvest, and Consume Food Amendment to the Maine Constitution**

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Question Three on the ballot asks, “Do you favor amending the Constitution of Maine to declare that all individuals have a natural, inherent and unalienable right to grow, raise, harvest, produce and consume the food of their own choosing for their own nourishment, sustenance, bodily health and well-being?” L.D. 61 (130<sup>th</sup> Legis. 2021). If ratified, by receiving the majority of the votes, then Governor Mills “shall proclaim that fact without delay and the amendment becomes part of the Constitution of Maine on the date of the proclamation.” L.D. 61 (130<sup>th</sup> Legis. 2021).

Article I of the Maine Constitution would then include section 25,

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.

Supporters have framed this amendment as securing a citizen’s right to choose their own food. However, left out of this seemingly simple assertion and the phrasing of Question Three is the potential effect on animal welfare protections. While the amendment explicitly prohibits an individual from “trespassing, theft, poaching, or other abuses of private property rights, public lands or natural resources,” it does *not* prohibit an individual from violating animal welfare laws, and this omission would likely create a new defense for individuals accused both civilly and criminally of violating animal welfare laws.

Proponents of the amendment claim existing laws to protect animals would be unaffected by this amendment. For example, some say that although the language of the amendment is broad, a court would determine that the amendment would be limited by existing animal welfare laws. And students at the Human Rights Clinic at Miami Law wrote that the amendment would not preempt existing animal welfare laws because the court would determine that voters did not

mean to void existing animal welfare regulations by voting “yes” on Question Three.<sup>1</sup> However, these are purely speculative claims. Bare predictions are not guaranteed, and the consequences of ratifying the amendment are too great for guesswork.

Voters need to understand that the current animal welfare laws are a framework of municipal and state ordinances, laws, and regulations that have already been carefully crafted to grant people the freedom to raise their own food, as long as it is done humanely.

So, for example, state law requires that if a person owns or possesses an animal then that person must provide “necessary sustenance, necessary medical attention, proper shelter, protection from the weather or humanely clean conditions.” 7 M.R.S. §§ 4011(G), 4013-4015. State law also establishes specific requirements for a person raising a calf for the purpose of producing veal. For instance, the calf cannot be confined for the majority of the day. 7 M.R.S. § 4020. The state could civilly fine this person \$5,000 fine, and the Attorney General can assert criminal charges pursuant to Title Seventeen of the Maine Revised Statutes. 7 M.R.S. § 4016. Because the proposed amendment broadly states that individuals have a natural, inherent, and unalienable right to raise their own food without government interference, a person raising animals to provide meat for their own use would be permitted to intentionally under nourish an animal. Likewise, a person could keep a calf in an unsheltered pen for days without enough food because the person does not want to spend money when they know the animals soon will be slaughtered for veal.

Under current law, the state could fine this person \$5,000 or the Attorney General could bring criminal charges. The Constitutional defense will be that Article I, section 25 of the Maine Constitution grants an individual the right to raise the calf in the way that they choose even if it means that the calf is without the proper care, shelter, or food. The proponents assert that the constitutional amendment will not be an effective defense, because of what they call “historical exceptions” on the limits of constitutional rights. And the students at the University of Miami singularly argue that a court would not apply the constitutional protections because it would find that, in adopting the amendment, voters did not *mean* to limit existing animal welfare laws.

After a diligent search, we can find no legal authority for such an assertion. Apparently, the proponents have seized on a novel legal theory. We found no case on point in Maine or in other jurisdictions for when a person is guilty of violating existing state law and uses a constitutional amendment, that did not exist at the time that the statute was enacted, as an affirmative defense.

The only comparable legal issue that we found in Maine is the citizen initiative that established ranked-choice voting for elections of United States Senators, United States Representatives, Governor, State Senators, State Representatives, and federal and state primaries in Maine. Opinion of the Justices, 2017 ME 100, ¶ 3, 162 A.3d 188, 197, as revised (Sept. 19, 2017). At issue was “whether this statutorily enacted system of ranked-choice voting violates the provisions of the Maine Constitution by which successful candidates for office are identified ‘by a plurality’ of all votes returned.” *Id.* ¶ 4. In an Opinion of the Justices of the Maine

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<sup>1</sup> Memorandum from Maja Veselinovic and William Talley, Miami Law Human rights Clinic Student Interns, under the supervision of Prof. Denisse Córdova Montes to Right to Food for Maine (October 1, 2021).

Supreme Court, the Court advised the Legislature that the citizen initiative for ranked choice voting for certain electoral races was in direct contradiction to the Maine Constitution, because it prevented the candidate from receiving the majority of the votes “unless and until multiple rounds of vote-counting [had] occurred.” *Id.* ¶ 67.

In that analysis the Court detailed two things that are ultimately instructive to the issue in this case. First, that “when a statute—including one enacted by citizen initiative—conflicts with a constitutional provision, the Constitution prevails.” *Id.* ¶ 8. Second, that “Constitutional provisions are accorded a liberal interpretation in order to carry out their broad purpose, because they are expected to last over time and are cumbersome to amend” and “Citizen-initiated legislation is also liberally construed, enacted, as it is, by ‘the people, as sovereign.’” *Id.* ¶ 58 (quotation marks omitted).

No one can legitimately state that the proposed constitutional amendment will not weaken the applicability of some animal welfare laws. To the contrary, this amendment presents a risk to those who seek to enforce animal welfare laws.

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