



Fruit of the Vine: Understanding the Need to Establish Wineries' Rights Under the Right to Farm Law

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I. INTRODUCTION

In the age of the Slow Food Movement,¹ Americans are increasingly embracing a farm-to-table philosophy. People are generating an awareness of where their food comes from and are becoming active participants in the growing process. This philosophical shift opens the door to new opportunities. Particularly, it creates a new market for traditional farmers struggling to stay in business. As a result, more and more farmers are seeking creative ways to diversify their family farms and align their production to suit this new market, offering products that entice American families back to the family farm. For example, one Maryland cow farmer is considering opening a winery on his land to stabilize his annual revenue and bring people to his farm.²

A winery is a perfect example of an agricultural operation that provides diversification and stability to farm incomes while bringing people to share in the bounty of the land. Because wineries create an idyllic expression of vitality and beauty, and often marry the pastoral, agrarian lifestyle with notes of luxury, they provide the perfect forum to view the full-circle process from vine-to-bottle, exposing generations far removed from the labors of the land to a newfound understanding of experiencing and tasting the notes of the soil and the expression of the sun.

Unfortunately, these innovative solutions, such as wineries, are

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1. Founded in Europe in the late 1980s, Slow Food is a global grassroots movement that endeavors to help people embrace the joy of eating and gain an understanding of the processing of food through promoting local, sustainable food practices and education. See Nicole Wong, *Slow Movement*, TECHNORATI BETA (May, 21, 2010), <http://technorati.com/lifestyle/green/article/slow-food-movement/>.

2. See Jen Degregorio, *Winery Legislation Before Baltimore County Council Could Provide Boon to Maryland Farmers*, THE DAILY RECORD (Baltimore), March 6, 2007, http://findarticles.com/p/articles/mi_qn4183/is_20070306/ai_n18724824/.

often not met with open arms by surrounding communities or local municipalities and face severe legal impediments to their upstart and expansion.³ Because wineries and other new forms of agritourism⁴ do not fall within the traditional ambit of a “farm” or an “agricultural use,” legal questions arise as to whether these activities are “agricultural” and thereby protected from local regulations under the state’s Right to Farm law (RTF),⁵ or other agricultural legislation. In a recent case, *Terry v. Sperry*,⁶ the Ohio Court of Appeals addressed this very issue.⁷

In *Terry*, a newly-elected local zoning inspector sued the owners of Myrddin Winery, a small winery located on the owners’ property in a residential district.⁸ Before beginning operations, the zoning inspector at the time informed the owners that no permits were necessary to start “such a business,” and they could begin operations immediately.⁹ Accordingly, the owners began growing grapes on their property and started bottling wine to sell on the premises, primarily using grapes grown offsite.¹⁰

Three years later, the newly-elected zoning inspector contested the owners’ use of the property, alleging the winery violated the permitted uses of the property under the township’s residential zoning regulations.¹¹ The winery owners argued that the operation of the winery was an “agricultural use”¹² and thus afforded protection under the state’s zoning laws,¹³ which act in concert with the Right to Farm law.¹⁴ Under

3. See *infra* notes 174-179, 182-188 and accompanying text.

4. Agritourism is defined as “the practice of touring agricultural areas to see farms and often to participate in farm activities.” *Agritourism Definition*, MERRIAM-WEBSTER.COM, <http://www.merriam-webster.com/dictionary/agritourism> (last visited Jan. 27, 2011).

5. Right to Farm laws were enacted in response to increasing urbanization in the 1970s and are “designed to accomplish one or both of the following objectives: (1) to strengthen the legal position of farmers when neighbors sue them for private nuisance; and (2) to protect farmers from anti-nuisance ordinances and unreasonable controls on farming operations.” AMERICAN FARMLAND TRUST, RIGHT-TO-FARM LAWS 1 (1998), available at http://www.farmlandinfo.org/documents/27747/FS_RTF_9-98.pdf.

6. *Terry v. Sperry*, 930 N.E.2d 846 (Ohio Ct. App. 2010).

7. *Id.*

8. *Id.* at 847.

9. *Id.*

10. *Id.* at 847-48. See also Erin Herbold, *Winery Found To Be in Violation of Zoning Regulations*, CTR. FOR AGRIC. L. & TAX’N (May 21, 2010), http://www.calt.iastate.edu/winery_zoning.html.

11. *Terry*, 930 N.E.2d at 850.

12. Agriculture is defined in OHIO REV. CODE ANN. § 519.01 (LexisNexis 2010).

13. No power is conferred upon any township zoning board or commission:

[T]o prohibit the use of any land for agricultural purposes or the construction or use of buildings or structures incident to the use for agricultural purposes of the land on which such buildings or structures are located, including buildings or structures that are used primarily for vinting and selling wine and that are located on land any part of which is used for viticulture, and no zoning

the Ohio Code,¹⁵ viticulture is defined as agriculture; yet, the trial court held the production of wine on the property was not agriculture, and thus, the local zoning regulations did apply to the winery.¹⁶ The trial court granted an injunction to permanently enjoin the winery operation.¹⁷ On review, the Ohio Court of Appeals affirmed the decision of the lower court, holding that because the land was primarily used for the production of wine and not viticulture, the land was subject to local zoning regulations.¹⁸

Under this type of zoning structure, wineries are required to plant their vines at least three years in advance of beginning their processing activities to ensure the primary source of grapes is grown on premises.¹⁹ Because this type of local impediment frontloads a heavy capital investment,²⁰ one's ability to start a winery is severely limited. Consequently, farmers who wish to develop wineries on their lands must assert their rights as agricultural operations and forge the path of protection under the state's Right to Farm and zoning laws.

This Comment will begin by detailing the importance of the American wine industry, the history and purpose of Right to Farm statutes, and the reasons why wineries should be entitled protection under the laws. Next, the Comment will examine the various levels of protection provided by state Right to Farm and zoning laws in California, Oregon, Ohio, New York, and Pennsylvania and will illustrate how states that expressly protect the growing and processing of wine maintain a thriving wine industry, while the states that illusively protect wineries dwarf the industry's growth. Finally, the Comment will advocate for states to adopt certain provisions in their respective Right to Farm and zoning laws to ensure future growth of the wine industry.

II. BACKGROUND

A. *A Toast to the U.S. Wine Industry*

The American wine industry is experiencing unprecedented growth

certificate shall be required for any such building or structure.

OHIO REV. CODE ANN. § 519.21(A) (LexisNexis 2010) (emphasis added).

14. *Terry*, 930 N.E.2d at 850.

15. *See* OHIO REV. CODE ANN. § 519.01 (LexisNexis 2010).

16. *Terry*, 930 N.E.2d at 848-49.

17. *Id.*

18. *Id.* at 852.

19. *See Growing Guides—Growing a Grape Vine*, LANDSHARE (Apr. 23, 2010, 4:10 PM), <http://www.landshare.net/how-tos/grow-a-grape-vine-even-in-the-city/> [hereinafter *Growing Guides*] (“It can take up to three years before the vine is mature enough to produce grapes suitable to make into wine.”). *See also* Herbold, *supra* note 10.

20. *See infra* notes 79-80 and accompanying text.

and prosperity, with vineyards and wineries in all 50 states, from Maine to Florida, Alaska to Hawai'i.²¹ As a true testament to the industry, the United States' wine market continues to flourish despite the recent economic downturn.²² In fact, the United States is the world's fourth largest producer of wine and holds the number one market for wine sales when measured in dollars.²³

Wine consumption has grown at a phenomenal rate.²⁴ Over the last 50 years, American wine consumption has increased by 500%, with Americans imbibing over 767 million gallons of wine each year.²⁵ Americans are not the only ones partaking in the fruit of the vine; more than five billion gallons of wine were consumed throughout the world in 2008.²⁶ The American wine industry exported over one billion dollars of wine into this global market.²⁷ Although California dominates the U.S. wine market,²⁸ other states are seeing steady growth in the industry.²⁹ In the last 30 years, for example, almost one hundred wineries have cropped up across the state of Pennsylvania, and the state's wine production has more than tripled.³⁰ Many other states have followed suit. In fact, Oregon has added over 250 wineries to the state in the last ten years alone, and the industry generates over \$1.42 billion for the state's economy.³¹

21. See generally THOMAS PINNEY, A HISTORY OF WINE IN AMERICA: FROM PROHIBITION TO PRESENT (Univ. of Cal. Press ed., 1989).

22. See *Consumer Research Summary*, WINE MKT. COUNCIL (2009), http://www.winemarketcouncil.com/research_summary.asp.

23. *Id.*

24. Americans consumed 33 million gallons of wine in 1934. Philip Carter Strother & Robert Jackson Allen, *Wine Tasting Activities in Virginia: Is America's First Wine Producing State Destined to Wither on the View Due to Overregulation?*, 23 T.M. COOLEY L. REV. 221, 222 (2006). In 2009, Americans imbibed over 767 million gallons, showing a 2,324% increase in consumption since 1934. See *Wine Consumption in the U.S.*, THE WINE INST. (Apr. 5 2010), <http://www.wineinstitute.org/resources/statistics/article86>.

25. *Wine Consumption in the U.S.*, *supra* note 24.

26. *Consumer Research Summary*, *supra* note 22.

27. *Id.*

28. *California Wine Industry Statistical Highlights*, THE WINE INST. (Apr. 14, 2010), <http://www.wineinstitute.org/resources/statistics/article8> ("California is America's top wine producer, making ninety percent of all U.S. wine.").

29. *Red, White & New: The State of the U.S. Wine Industry*, WINE PORTFOLIO BLOG (Dec. 6, 2010, 1:10 PM), <http://wineportfolio.com/c/?tag=wine-statistics>.

30. *About PA Wine*, PA. WINERY ASS'N, <http://www.pennsylvaniawine.com/Facts.aspx> (last visited Aug. 2, 2011).

31. ORE. WINE CTR., THE OREGON STORY 11-12 (2005), available at <http://www.oregonwine.org/Resources/Category/0001/0003/42/TheOregonStory.pdf>; FULL GLASS RESEARCH, THE ECONOMIC IMPACT OF THE WINE AND WINE GRAPE INDUSTRIES ON THE OREGON ECONOMY 2 (2005), available at <http://industry.oregonwine.org/wp-content/uploads/2009/08/OWB-Tools-ResourcesEISFinal.pdf> [hereinafter FULL GLASS].

In addition to revenue generation, wineries and vineyards, like most agricultural operations, promote a healthy environment, supplying open space, scenic views, watershed protection, wildlife habitat, rural lifestyles and other rural and environmental amenities and services.³² Wineries also serve as an important community centerpiece, bringing acclaim and publicity to the town through educational events, tours and tasting, musical concerts and other promotional activities.³³ As such, wineries offer a bouquet of benefits to the state and its citizens.

B. Right to Farm Laws: Protecting American Agriculture

While American vineyards are blossoming, traditional American agriculture, as a whole, tells a more withering tale. In recent decades, America has seen a rapid conversion of agricultural land.³⁴ In fact, between one and three million acres of farmland are converted to nonagricultural uses every year.³⁵ This rapid deterioration of farmland³⁶ can be attributed to a variety of sources: highway construction, natural resources development, recreational uses,³⁷ economic issues, and urban expansion.³⁸

Urbanization has generated much cause for concern.³⁹ In the 1970s,

32. U.S. DEP'T OF AGRIC., CONSERVATION POLICY: FARMLAND AND GRAZING LAND PROTECTION PROGRAMS (Mar. 25, 2009), available at <http://www.ers.usda.gov/briefing/conservationpolicy/farmland.htm>.

33. See Amanda Robert, *Visit Illinois Wineries for Close-to-Home Tourism*, ILL. TIMES, May 20, 2009, <http://www.illinoistimes.com/Springfield/article-5957-visit-central-illinois-wineres-for-close-to-home-tourism.html>; MICH. AGRIC. TOURISM ADVISORY COMM'N, AGRICULTURAL TOURISM LOCAL ZONING GUIDEBOOK AND MODEL ZONING ORDINANCE PROVISIONS 4 (2007), available at http://www.michigan.gov/documents/mda/MDA_zoneguide_185763_7.pdf.

34. Margaret Rosso Grossman & Thomas G. Fischer, *Protecting the Right to Farm: Statutory Limits on Nuisance Actions Against the Farmer*, 1983 WIS. L. REV. 95, 97 (1983).

35. Data reflects studies from 1992 to 2002. See U.S. DEP'T OF AGRIC., FARM AND RANCH LANDS PROTECTION PROGRAM: FINAL ENVIRONMENTAL ASSESSMENT 6 (2003), available at http://www.nrcs.usda.gov/programs/env_assess/FPP/Final%20FRPP%20EA%205-8-03.pdf.

36. Studies show that total cropland decreased by three percent—13 million acres—from 1997 to 2002. RUBEN LUBOSKI, MARLOW VESTERBY & SHAWN BUCHOLTZ, U.S. DEP'T OF AGRIC., LAND AND FARM RESOURCE: LAND USE 2 (2006), available at <http://www.ers.usda.gov/publications/arei/eib16/Chapter1/1.1/>.

37. U.S. DEP'T OF AGRIC. & PRESIDENT'S COUNCIL ON ENVLT. QUALITY, NATIONAL AGRICULTURAL LANDS STUDY, THE PROTECTION OF FARMLAND: A REFERENCE GUIDEBOOK FOR STATE AND LOCAL GOVERNMENTS 6 (1981), available at http://www.farmlandinfo.org/documents/37225/NAL_Executive_Summary.pdf [hereinafter LANDS STUDY].

38. Randall Wayne Hanna, Comment, *Right to Farm Statutes—the Newest Tool in Agricultural Land Preservation*, 10 FLA. ST. U. L. REV. 415 (1982).

39. Conversion of cropland for urban uses is largely irreversible and “gives rise to some of the most controversial land use issues.” U.S. DEP'T. OF AGRIC., *Land Use, Value,*

there was an obvious movement of the population from urban to more rural areas.⁴⁰ Americans moved from cities to the country seeking open space, peace and quiet, fresh air, and a better quality of life.⁴¹ This shift, in conjunction with a growing population and continuous urban sprawl, threatened and continues to threaten a substantial portion of the nation's prime farmland, encroaching upon farms from all sides, leaving them no room to breathe.⁴² Such haphazard growth and development raises concerns about a diminishing food supply, food security, and the irreversible effects of cropland conversion.⁴³

Further, city dwellers' migration to farmland has many indirect consequences, as new neighbors may be "surprised and offended by some common elements of farm life: odors from farm animals and fertilizers, dust, flies, noise from animals and machinery, pesticide and herbicide spraying, and slow-moving vehicles."⁴⁴ Outraged by offensive farm output, many new neighbors pursue legal action in the form of nuisance claims to enjoin the farm from its daily activities or seek damages against the operation.⁴⁵ In addition to private nuisance claims, shifts in local political power occur as more urbanites enter the rural scene, displacing those rooted in farm life and give way to those oriented in the urban economy.⁴⁶ As the dynamic in political power changes, ordinances may be passed to appease the newcomers, restricting normal farming practices.⁴⁷ Such litigation and local regulation has devastating consequences for farmers, often forcing them to shut down their operations, pay off surrounding neighbors, avoid future farm investments, or more often, sell their farmland to developers—giving rise to the conversion of more land for nonagricultural uses.⁴⁸

Consequently, state and local governments have implemented a

and Management: Urbanization and Agricultural Land (June 28, 2005), <http://www.ers.usda.gov/Briefing/LandUse/urbanchapter.htm>.

40. LANDS STUDY, *supra* note 37.

41. DAVID KAY, ET AL., FARMS, COMMUNITIES AND COLLABORATION: A GUIDE TO RESOLVING FARM-NEIGHBOR CONFLICT 3 (2003), *available at* <http://www.mdfarmbureau.com/Files/ResourceCenter/GuideForPDF.pdf>.

42. *Id.*

43. LUBOSKI, VESTERBY & BUCHOLTZ, *supra* note 36.

44. Grossman & Fischer, *supra* note 34, at 97.

45. KAY, *supra* note 41, at 3-5.

46. Robert E. Coughlin, *Farming on the Urban Fringe: Where are the Farmlands Going?*, 22 ENV'T: SCI. AND POL'Y FOR SUSTAINABLE DEV. 33, 35 (1980).

47. *Id.* at 35.

48. *Id.* at 34-35; *see also* N.Y. AGRIC. & MKTS. LAW § 300 (Consol. 2010); COLO. REV. STAT. § 35-3.5-101 (2010) ("[W]hen non-agricultural land uses extend into agricultural areas, agricultural operations often become the subject of nuisance suits [and a]s a result a number of agricultural operations are forced to cease operations, and many others are discouraged from making investments in farm improvements.").

number of mechanisms to minimize the conversion of farmland.⁴⁹ Zoning, tax preferences, and agricultural districting are among the most common devices employed to limit farmland conversion.⁵⁰ Zoning “seek[s] to limit the farmland available for conversion to nonagricultural uses,” while tax preferences, Right to Farm laws, and agricultural districting “seek to influence the farmer not to sell land to a developer.”⁵¹

Right to Farm laws began cropping up across the nation from 1978 to 1983 to protect America’s shrinking farmland from urban expansion.⁵² Today, all 50 states have Right to Farm laws.⁵³

1. The Purpose of Right to Farm Laws

The underlying objective of most Right to Farm laws is to promote and encourage agriculture.⁵⁴ Pennsylvania’s Right to Farm Law, like many others, declares: It is the “policy of the Commonwealth to conserve and protect and encourage the development and improvement of its

49. AMERICAN FARMLAND TRUST, THE FARMLAND PROTECTION TOOLBOX 1 (2008), available at http://www.farmlandinfo.org/documents/27761/fp_toolbox_02-2008.pdf.

50. *Id.* at 1-7.

51. Grossman & Fischer, *supra* note 34, at 100-101.

52. Alexander A. Reinert, *The Right To Farm: Hog-Tied and Nuisance-Bound*, 73 N.Y.U. L. REV. 1694, 1707 (1998).

53. See ALA. CODE § 6-5-127 (2010); ALASKA STAT. § 09.45.235 (2010); ARIZ. REV. STAT. ANN. §§ 3-111 to -112 (2010); ARK. CODE ANN. §§ 2-4-101 to -108 (2010); CAL. CIV. CODE §§ 3482.5-.6 (Deering 2011); COLO. REV. STAT. §§ 35-3.5-101 to -103 (2010); CONN. GEN. STAT. ANN. § 19a-341 (West 2010); DEL. CODE ANN. tit. 3, § 1401 (2010); FLA. STAT. ANN. § 823.14 (West 2010); GA. CODE ANN. § 41-1-7 (2010); HAW. REV. STAT. §§ 165-1 to -6 (2010); IDAHO CODE ANN. §§ 22-4501 to -4504 (West 2010); 740 ILL. COMP. STAT. 70/0.01-5 (West 2010); IND. CODE ANN. §§ 32-30-6-1, 32-30-6-9 (LexisNexis 2010); IOWA CODE ANN. §§ 352.1-352.12 (West 2010); KAN. STAT. ANN. §§ 2-3201 to -3204 (2010); KY. REV. STAT. ANN. § 413.072 (LexisNexis 2010); LA. REV. STAT. ANN. §§ 3:3601-3:3624 (2010); ME. REV. STAT. ANN. tit. 7, §§ 151-161 (2010); MD. CODE ANN., CTS. & JUD. PROC. § 5-403 (West 2010); MASS. GEN. LAWS ANN. ch. 243, § 6 (West 2010); MICH. COMP. LAWS ANN. §§ 286.471-.474 (West 2010); MINN. STAT. § 561.19 (2010); MISS. CODE ANN. § 95-3-29 (2010); MO. REV. STAT. § 537.295 (2010); MONT. CODE ANN. §§ 27-30-101, 45-8-11 (2010); NEB. REV. STAT. §§ 2-4401 to -4404 (2010); NEV. REV. STAT. § 40.140 (2010); N.H. REV. STAT. ANN. §§ 432:32-35 (2010); N.J. STAT. ANN. §§ 4:1C-1 to 1C-10.4 (West 2010); N.M. STAT. ANN. §§ 47-9-1 to -7 (LexisNexis 2010); N.Y. AGRIC. & MKTS. LAW §§ 300-310 (McKinney 2010); N.C. GEN. STAT. §§ 106-700 to -701 (2010); N.D. CENT. CODE §§ 42-04-01 to -05 (2010); OHIO REV. CODE ANN. §§ 929.01-.05 (West 2010); OKLA. STAT. tit. 50, §§ 1-1.1 (2010); OR. REV. STAT. §§ 30.930-30.947 (2009); 3 PA. CONS. STAT. ANN. §§ 951-957 (West 2010); R.I. GEN. LAWS §§ 2-23-1 to -7 (2010); S.C. CODE ANN. §§ 46-45-10 to -80 (2010); S.D. CODIFIED LAWS §§ 21-10-25.1 to -.6 (2010); TENN. CODE ANN. §§ 43-26-101 to -104 (2010); TEX. AGRIC. CODE ANN. §§ 251.001-.006 (West 2010); UTAH CODE ANN. §§ 17-41-401 to -403 (West 2010); VT. STAT. ANN. tit. 12, §§ 5751-54 (West 2010); VA. CODE ANN. §§ 3.2-300 to -.302 (2010); WASH. REV. CODE §§ 7.48.300-.320 (West 2010); W. VA. CODE §§ 19-19-1 to -6 (2010); WIS. STAT. § 823.08 (2010); WYO. STAT. ANN. §§ 11-44-101 to -103 (2010).

54. AMERICAN FARMLAND TRUST, *supra* note 5.

agricultural land for the production of food and other agricultural products.”⁵⁵ Similarly, Louisiana’s policy provides that “agriculture is essential not only to the economy of the state but to the sustenance of life.”⁵⁶ While the general purpose behind Right to Farm laws is the same, each state employs a different approach, generally varying on: a) the qualifications for RTF protection; b) operations covered by the statute; and c) the nature of protection.⁵⁷

a. Qualifications for Protection

Most Right to Farm statutes provide that an agricultural facility that has been in operation for at least one year cannot become a private or public nuisance due to a changed condition in the locality.⁵⁸ This provision does not apply if the operation is negligent or engages in improper practices.⁵⁹ Some states, like Maine and Michigan, however, do not attach a specific time requirement, so long as the agricultural operation existed before the change in surrounding land use.⁶⁰ Yet, other states, like California, require the farm to have existed at least three years prior to the change in land.⁶¹ Today, many statutes shift the focus and look at whether or not the internal operations of the farm have changed and disregard the changes in the character of the surrounding locality.⁶²

b. Protected Operations

In addition to various statutory requirements and stipulations, how a state defines agriculture is another point of differentiation among Right to Farm laws. Most states define agriculture or agricultural activities broadly.⁶³ Some Right to Farm laws even extend protection to industrial

55. 3 PA. CONS. STAT. ANN. § 951 (2010). *See also* COLO. REV. STAT. § 35-3.5-101 (2010); 740 ILL. COMP. STAT. 70/1-5 (2010).

56. LA. REV. STAT. ANN. § 3:3601 (2010).

57. *See generally* Grossman & Fischer, *supra* note 33; Reinert, *supra* note 52, at 1708.

58. *See, e.g.*, KY. REV. STAT. ANN. § 413.072(2) (LexisNexis 2010); TEX. AGRIC. CODE ANN. § 251.004 (West 2010).

59. *See, e.g.*, N.C. GEN. STAT. § 106-701 (2010).

60. ME. REV. STAT. ANN. tit. 7, § 153(3) (2010); MICH. COMP. LAWS ANN. § 286.473(2) (West 2010).

61. CAL. CIV. CODE § 3482.5 (Deering 2010).

62. Reinert, *supra* note 52, at 1712.

63. For example, California’s Right to Farm Law provides that “the term[s] ‘agricultural activity, operation, or facility . . . include, but not be limited to, the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural commodity including timber, viticulture, apiculture, or horticulture. . . .’” CAL. CIV. CODE § 3482.5 (Deering 2010). North Carolina provides that an “agricultural operation includes, without limitation, any facility for the production for commercial purposes of crops, livestock products, or poultry products.” N.C. GEN.

operations.⁶⁴

Other states have taken a different approach to defining agriculture and have opted to list specific activities that are protected. Connecticut, for example, maintains nuisance protection for “agricultural operations” due to alleged objectionable:

(1) odor from livestock, manure, fertilizer or feed, (2) noise from livestock or farm equipment used in normal, generally acceptable farming procedures, (3) dust created during plowing or cultivation operations, (4) use of chemicals, provided such chemicals and the method of their application conform to practices approved by the Commissioner of Environmental Protection or, where applicable, the Commissioner of Public Health, or (5) water pollution from livestock or crop production activities. . . .⁶⁵

While exhaustive lists of protected operations may appear on their face to be more restrictive than broadly sweeping definitions, specific lists may provide more protection from overreaching local ordinances by providing clear guidelines as to what constitutes a protected operation.

c. Nature of Protection

Another point of variation among Right to Farm laws lies within the scope of protection states provide. All Right to Farm laws provide agricultural operations with an affirmative defense to nuisance claims.⁶⁶ Many Right to Farm laws go a step further and prohibit municipal ordinances from rendering a farming operation a nuisance.⁶⁷ Such preemptive language ensures farms’ protection against unsupportive local laws that could effectively undermine the intent of the Right to Farm law.⁶⁸

STAT. § 106-701 (2010).

When defining “agriculture” so broadly, states must ensure proper application of the law. Oftentimes, states will regulate protection based on the size of the operation to ensure the Act is serving its intended purpose. Grossman & Fischer, *supra* note 34, at 126. Pennsylvania’s Right to Farm Law strikes an interesting balance, protecting “normal agricultural operations” that are “not less than ten contiguous acres in area; or less than ten contiguous acres in area but [have] an anticipated yearly gross income of at least \$10,000.” 3 PA. CONS. STAT. ANN. § 952 (West 2010). As such, Pennsylvania’s statute protects farms that have a substantial impact on the state agricultural economy. *See* Grossman & Fischer, *supra* note 34, at 126.

64. Louisiana, for example, protects “any agricultural facility or agricultural land which is being used for agricultural production or agricultural *processing*. . . .” LA. REV. STAT. ANN. § 3:3602 (2010). Thus, winemaking is a protected agricultural operation in Louisiana. *Id.* *See also* IND. CODE § 32-30-6-9 (2010); ALA. CODE § 6-5-127 (2010).

65. CONN. GEN. STAT. ANN. § 19a-341 (West 2010).

66. *See* Reinert, *supra* note 52, at 1695.

67. *See, e.g.*, CAL. CIV. CODE § 3482.5(2)d (Deering 2011).

68. Nelson L. Bills, *Farmland Preservation: Agricultural Districts, Right-To-Farm*

In addition to prohibiting local ordinances from rendering farm operations a nuisance, some states limit the application of local zoning regulations that adversely affect the agricultural use of land.⁶⁹ In the same way nuisance ordinances could inhibit farming operations, local zoning regulations could effectively “zone the farm out of business.”⁷⁰ Some states include such proscriptions against unfavorable local zoning ordinances within the Right to Farm statute itself.⁷¹ For example, Idaho’s Right to Farm Act provides that “[n]o city, county, taxing district or other political subdivision of this state shall adopt . . . any zoning ordinance that forces the closure of any agricultural operation. . . .”⁷² Other states preserve the effectiveness of Right to Farm laws by enacting additional legislation, outside the Right to Farm statute, to limit the application of zoning regulations on agricultural operations.⁷³ For example, a Pennsylvania zoning statute provides that “[z]oning ordinances shall encourage the continuity, development and viability of agricultural operations. Zoning ordinances may not restrict agricultural operations or changes to or expansions of agricultural operations. . . .”⁷⁴ Acting as either a provision within the Right to Farm law or through complementary legislation, zoning laws are often utilized as another mechanism to protect agricultural lands.

Finally, some states enact provisions within the Right to Farm law to provide recovery of court costs to successful litigants.⁷⁵ Court costs can be an important benefit for farmers; “[b]ecause production agriculture is extremely capital intensive, any unforeseen expense can spell disaster for a producer.”⁷⁶ Litigation expenses are precisely the type of unforeseen expenditure that could force a farmer out of business.⁷⁷

Laws and Related Legislation, CORNELL U. STAFF PAPER, 14 (1996), available at http://www.aem.cornell.edu/research/researchpdf/sp/1996/Cornell_Dyson_sp9601.pdf.

69. Grossman & Fischer, *supra* note 34, at 160.

70. *Id.*

71. See, e.g., TEX. AGRIC. CODE ANN. § 251.005 (West 2010); TENN. CODE ANN. § 44-18-104 (West 2010) (providing specific zoning protection for feedlots, dairy farms and poultry production houses); UTAH CODE ANN. § 17-41-402 (West 2010).

72. IDAHO CODE ANN. § 22-4504 (West 2011).

73. See, e.g., OHIO REV. CODE ANN. § 519.21 (LexisNexis 2010) (denying township zoning commissions the power “to prohibit the use of any land for agricultural purposes”).

74. 53 PA. STAT. ANN. § 10603(h) (West 2010).

75. See, e.g., 740 ILL. COMP. STAT. 70/4.5 (West 2010); TEX. AGRIC. CODE ANN. §§ 251.004(b) (West 2010); WIS. STAT. § 823.08(4) (2010).

76. Tiffany Dowell, Comment, *Daddy Won’t Sell the Farm: Drafting Right to Farm Statutes to Protect Small Family Producers*, 18 S.J. AGRIC. L. REV. 127, 141 (2008/2009).

77. *Id.*

C. *The Importance of RTF Protection for Wineries*

As noted above, Right to Farm statutes offer the farming community important protections from nuisance claims, local government regulation, and litigation expenses.⁷⁸ Although these laws serve all agricultural operations, wineries in particular need the stability of knowing state law will protect them from nuisance claims and ensure local governments will not over-regulate or “zone out” their operations.

Wineries require approximately one to three million dollars to start.⁷⁹ Additionally, wine grapes take about three years to reach sufficient maturity for wine production.⁸⁰ Accordingly, without the guarantee of state protection under the Right to Farm law, wineries are in a vulnerable position. Right to Farm laws, at the very least, provide winery owners with peace of mind, knowing they will not lose their respective businesses as a result of nuisance lawsuits, as long as their operations are properly maintained.⁸¹

More importantly, wineries need to be protected from municipalities passing ordinances that would turn their agricultural operations into nuisances. For example, a natural outgrowth for a winery often includes using its establishment as a venue to host weddings, jazz concerts, or other festive events.⁸² However, because these events generate more crowds, noise, and traffic, the local government may try to block the winery’s ability to host festive events by re-writing the municipality’s local nuisance ordinance to prohibit or limit such functions.⁸³ Such deliberate re-structuring could severely hamper a winery’s ability to grow and expand.⁸⁴

Finally, it is important that wineries are expressly defined as an agricultural operation in state law. Because wineries are a unique enterprise, often incorporating agricultural production with onsite commercial ventures, such as tasting rooms, localities often dismiss the underlying agricultural function of the winery and unlawfully regulate it as commercial.⁸⁵ This improper categorization forces the winery to

78. See discussion *supra* Part II.B.1.c.

79. Nicole Bacigalupi, *How Much Does It Really Cost to Start a Winery*, WINE 2.0 BLOG (Feb. 17, 2009, 3:25 PM), <http://www.winetwo.net/profiles/blogs/how-much-does-it-really-cost>.

80. *Growing Guides*, *supra* note 19.

81. Dowell, *supra* note 76, at 133.

82. Telephone interview with Tom Carroll, Owner, Crossing Vineyards (Dec. 29, 2010) [hereinafter Carroll Interview].

83. *Id.*

84. *Id.*

85. Telephone interview with Gregg Amore, Owner, Amore Winery (Sept. 6, 2010) [hereinafter Amore Interview]. See also Email from Chris Carroll, Owner, Crossing Vineyards, to author (Feb. 3, 2011) (on file with author) (stating that Upper Makefield

comply with local regulations and forego any agricultural exemption provided under the state's Right to Farm and zoning laws. Such error in overregulation may adversely affect the winery's vitality by halting operation or forcing the winery to shut down or never begin.⁸⁶

III. DISCUSSION OF WINERIES' RIGHT TO FARM

To properly promote the growth and development of farm wineries across the country, states must ensure wineries and other forms of agritourism are properly accounted for under their Right to Farm laws. States that explicitly include wineries under their legislative arms maintain vibrant wine communities,⁸⁷ while states that do not expressly recognize wineries as protected agricultural operations have prevented the market from taking root.⁸⁸ This section will explore the correlation between the development of the wine industry and the Right to Farm and ancillary zoning laws in the states of California, Oregon, Ohio, New York, and Pennsylvania.

A. *Express Protection: A Horn of Plenty*

States that explicitly define wineries and winemaking as an agricultural use under the Right to Farm law maintain a productive, growing wine market. States like California and Oregon are prime examples. California's wine industry is booming.⁸⁹ While Oregon's wine industry is a grape or two behind California, it has seen and continues to see significant growth.⁹⁰

Township finds Crossing Vineyards to be a "commercial operation," not an "agricultural operation," and as a result the township is wrongfully restricting the winery's ability to maintain a viable operation).

86. See *infra* notes 180-81 and accompanying text.

87. For example, California doubled the number of wineries within the state in the last ten years and now maintains 2,972 wineries. *Number of California Wineries*, THE WINE INST. (Apr. 1, 2010), <http://www.wineinstitute.org/resources/statistics/article124>. Oregon has also seen extensive growth in the industry and now ranks second in the country for the number of wineries within the state. *Oregon Wines, Wineries and Wine Country*, WINES NORTHWEST, (Jun. 25, 2010), <http://www.winesnw.com/orhome.html>.

88. See discussion *infra* III.B.1-2, III.C.1.

89. California is the fourth largest producer of wine in the world, making over ninety percent of all wine in the United States. *California Wine: A Signature California Industry*, THE WINE INST. (Apr. 10, 2010), <http://www.wineinstitute.org/files/EIR%20Flyer%202008.pdf>. California's wine industry generates \$121.8 billion for the U.S. economy, creating a total of 820,000 jobs nationwide. *Id.* This thriving market is driven by nearly 3,000 family-owned and operated wineries. *Number of California Wineries*, THE WINE INST. (Apr. 1, 2010), <http://www.wineinstitute.org/resources/statistics/article124>.

90. In fact, the number of wineries in Oregon increased by 60% from 1994 to 2004, and this growth continues. FULL GLASS RESEARCH, *supra* note 31, at 2. Oregon has established over one hundred new wineries in the last five years, growing from 303

States with an already flourishing wine market, such as California, likely fashioned their laws to further ensure continued vitality in the industry. Other states, like Oregon, with the potential to develop a strong wine market have promoted such a vision by enacting laws that ensure wineries are protected from nuisance suits and local regulations.⁹¹ Regardless of which came first, the law or the wine, there stands a direct correlation between states with inclusively protective Right to Farm laws and strong state-respective wine markets.

1. California

California's wine industry is unrivaled in the U.S.⁹² However, the State's wine industry likely would not be what it is today without stringent protections ensuring the growth of the market. California's Right to Farm Law provides in relevant part:

No agricultural activity, operation, or facility, or appurtenances thereof, conducted or maintained for commercial purposes . . . shall be or become a nuisance. . . .

This section shall prevail over any contrary provision of any ordinance or regulation of any city, county, city and county, or other political subdivision of the state. . . .

For purposes of this section, *the term agricultural activity . . . shall include*, but not be limited to . . . *viticulture*. . . .⁹³

This section of California's Right to Farm Act mirrors many other states' statutes.⁹⁴ The language clearly indicates viticulture is a protected agricultural operation; however, the language does not define viticulture and what it encompasses.⁹⁵ As a result, the statute is unclear as to its classification of winemaking. Although statutory analysis could provide some useful insight into the matter, here, the legislative intent is made clear by the next provision which accords the same protection as above;

wineries in 2005 to over 400 wineries in 2010. Oregon now ranks second in the number of wineries in the U.S. *Oregon Wines, Wineries and Wine Country*, WINES NORTHWEST (Jun. 25, 2010), <http://www.winesnw.com/orhome.html>. Additionally, "[g]rape acreage [in Oregon] more than doubled during that period, as did winery sales volume. Grape value has roughly quadrupled since 1994." FULL GLASS RESEARCH, *supra* note 30, at 2. Overall, the industry generates over \$1.4 billion of economic activity for the state. *Id.* With over 400 wineries, Oregon's wine industry is ripe with opportunity. *Oregon Wines, Wineries and Wine Country*, *supra*.

91. See discussion *infra* III.A.2.

92. *California Wine: A Signature California Industry*, *supra* note 89.

93. CAL. CIV. CODE § 3482.5 (Deering 2010) (emphasis added).

94. See, N.C. GEN. STAT. § 106-701 (2010); MO. REV. STAT. § 537.295 (2010).

95. CAL. CIV. CODE § 3482.5 (Deering 2010).

however, it extends protection to “commercial agricultural processing activities,” stating in relevant part:

No agricultural processing activity, operation, facility, or appurtenances thereof . . . shall be or become a nuisance, private or public. . . .

For the purposes of this section, the following definitions apply:

Agricultural processing activity . . . includes, but is not limited to . . . *the production and bottling of beer and wine* . . . and the storage or warehousing of any agricultural products, and includes processing for wholesale or retail markets of agricultural products.⁹⁶

This second provision explicitly calls for protection of the “production and bottling of wine.”⁹⁷ This clear directive by the legislature has enormous consequences for the state and the state’s flourishing wine industry. Not only does the provision provide wineries with a defense against nuisance claims, but the law also preempts any local ordinances or regulations that would act to create such a nuisance in the regular agricultural operations or the processing activities of a farm.

In addition to the state’s Right to Farm law, counties and townships in California have adopted their own Right to Farm ordinances.⁹⁸ While this action may create a landscape of non-uniformity among the varying jurisdictions, local legislation now affords greater protection for farming.⁹⁹ For instance, many local Right to Farm ordinances require the county to disseminate information¹⁰⁰ communicating the importance “of maintaining productive agriculture in the face of urban growth.”¹⁰¹

96. CAL. CIV. CODE § 3482.6 (Deering 2010) (emphasis added).

97. *Id.*

98. *Rural Neighbors and the Right to Farm*, NOLO: LAW FOR ALL, <http://www.nolo.com/legal-encyclopedia/article-29869.html#articles> (last visited Aug. 2, 2011).

99. *Id.*

100. Most counties disperse information through one of three measures: 1) annual tax bills sent to all or a portion of the county’s property owners; 2) areas of new development located near agricultural activity (usually when subdivision or parcel maps are approved or building permits are issued by county government); or 3) realtors pass along information to potential buyers, informing them of any neighboring problems, including odor or noise. Matthew Wacker, Alvin D. Sokolow & Rachel Elkins, *County Right-to-Farm Ordinances in California: An Assessment of Impact and Effectiveness*, 15 U.C. DAVIS AGRIC. ISSUES CTR. BRIEF 1, 5 (May 2001), available at <http://aic.ucdavis.edu/pub/briefs/brief15.pdf>. Interestingly, both Sonoma and Napa County, two-key players in the state’s quintessential wine country, employ all three measures to create awareness of the importance of the preservation of farmland. *Id.* Sonoma and Napa both have added unique components in their disclosure programs. *Id.* “Sheriff’s deputies in Sonoma distribute pamphlets about county agriculture to residents, while the Napa Farm Bureau has sent pamphlets to new residents.” *Id.*

101. Wacker, Sokolow & Elkins, *supra* note 98, at 6.

While it is clear from both the state and local directives¹⁰² that the preservation of farmland, including vineyards, is an important state objective, it is important to note that owners and operators of wineries do not have free reign in establishing and expanding their fruitful endeavors. In fact, the opposite is true.¹⁰³ To establish a winery in California, one must ensure such a venture is consistent with the general plan for the development and use of the land.¹⁰⁴ If a vineyard or winery fits within the general plan of the area, then one must discern whether the proposed area is zoned for agricultural use, and even sales.¹⁰⁵ “Every city in California has a zoning ordinance that can only be changed by the city council or city planning and zoning commission.”¹⁰⁶ However, if the zoning of the area does not allow for a winery, one may apply for a conditional use permit, as set out by local ordinance, which would provide flexibility to otherwise stringent zoning.¹⁰⁷ So, while the establishment of a winery may not be an easy feat in places like California, because it is a common endeavor, local officials provide clear guidelines on the processes involved and are knowledgeable about the regulations and requirements. As a result of standardized practices in the establishment of, and protections for, wineries in California, the industry is prosperous and growing.

2. Oregon

Much like California, the Oregon Legislature has established specific designations for the establishment of wineries in agricultural districts,¹⁰⁸ yet the infrastructure for Oregon’s land use system differs dramatically from that of California. Oregon has devised a system of land use planning that designates areas of land as exclusive farm use zones, where “[I]and within such zones shall be used exclusively for farm use except as otherwise provided in [the Oregon Revised Statutes (ORS)] 215.213, 215.283 or 215.284.”¹⁰⁹ Sections 215.213 and 215.283 of the Oregon Code explicitly classify wineries¹¹⁰ as “permitted uses” of

102. See SONOMA COUNTY, CAL., ORDINANCE ch. 30, art. II, § 30-20 (2001), available at http://www.sonomacounty.org/prmd/docs/lcp/lcp_apdx_d.pdf.

103. For example, Napa County has strict and deliberate zoning districts. See NAPA COUNTY, CAL., MUNICIPAL ZONING CODE tit 17 § 52.540, available at <http://qcode.us/codes/napa/>.

104. STOEL RIVES, LLP, LAND USE ISSUES 1 (2010), available at http://www.stoelrives.com/webfiles/CaliforniaWine/Land_Use_Issues.pdf.

105. *Id.*

106. *Id.*

107. *Id.*

108. OR. REV. STAT. §§ 215.213(p), 215.283(n) (2009).

109. See *id.* § 215.203 (2009).

110. See OR. REV. STAT. § 215.452 (2009), for specific requirements on operating a

exclusive farming zones.¹¹¹

The Oregon Legislature further provides that farm land situated within an exclusive farm use zone is immune from local regulations or ordinances that hinder or otherwise restrict farming practices, assuming such activities do not adversely affect the health or welfare of the public.¹¹² As such, the exclusive farm use zoning laws of Oregon are distinct but closely interconnected with the state's Right to Farm law.¹¹³

Oregon's Right to Farm Law provides: "Any local government or special district ordinance or regulation now in effect or subsequently adopted that makes a farm practice a nuisance or trespass . . . is invalid. . . ."¹¹⁴ Oregon's Right to Farm Law defines: "Farm" as "any facility, including the land, buildings, watercourses and appurtenances thereto, used in the commercial production of crops. . . ."¹¹⁵ The legislature further provides that a "Farming practice" is a mode of operation on a farm that:

- (a) Is or may be used on a farm of a similar nature;
- (b) Is a generally accepted, reasonable and prudent method for the operation of the farm to obtain a profit in money;
- (c) Is or may become a generally accepted, reasonable and prudent method in conjunction with farm use. . . .¹¹⁶

From the plain meaning of the statute, wineries and tasting rooms fall under the definition of farm and farming practice pursuant to Oregon's Right to Farm Law, as a "facility . . . used in the commercial production of crops" that is "a generally accepted, reasonable . . . method for the operation of the [vineyard] to obtain a profit. . . ."¹¹⁷ In addition

winery in an exclusive farm use zone.

111. Oregon case law also supports the conclusion that "a vineyard is farm use and that the winery and tasting room is either a farm use or commercial activity in conjunction with farm use." See *Craven v. Jackson Cty.*, 779 P.2d 1011 (Or. 1989). While the decision in *Craven*, holding a winery was a farm use under § 215.203, was issued before the legislature amended the permitted conditional uses of exclusively zoned farm land to include wineries and was superseded in cases pertaining to tax exemptions, it still has significant impact in land use cases. See *King Estate Winery, Inc. v. Dept. of Revenue*, 988 P.2d 369, 373 (Or. 1999).

112. OR. REV. STAT. § 215.253 (2009).

113. Brent Searle, "Right-to-Farm" Law in Oregon, THE AGRIC. Q. (April 2001), available at <http://oda.state.or.us/information/AQ/AQSpring2001/06.html>.

114. OR. REV. STAT. § 30.935 (2009).

115. *Id.* § 30.930.

116. *Id.*

117. *Id.*; see also Lisa N. Thomas, Comment, *Forgiving Nuisance and Trespass: Is Oregon's Right-to-Farm Law Constitutional?*, 16 J. ENVTL. L. & LITIG. 445, 448 (2001) ("Under Oregon's Right to Farm law, a farm is 'any facility, including the land, buildings, watercourses and appurtenances thereto, used in the commercial production of crops,

to nuisance and trespass protection, Oregon's Right to Farm Act also provides for attorney's fees and costs to the prevailing party.¹¹⁸

Moreover, the express designation of a winery as a permitted use in the exclusive farm use zones and as a protected class under the Right to Farm law, provides winery owners are given ample protection from restrictive local ordinances, nuisance claims, and court costs. These prophylactic legislative measures encourage winery upstart and expansion, and as a result, the state's wine industry is budding.

*B. Illusive Protection: "Drugged is their juice . . ."*¹¹⁹

Some states, on the other hand, espouse the protection of wineries in their Right to Farm laws and complementary zoning laws, yet, provide no remedy when battling matters in the courtroom.¹²⁰ Wineries within these states are left to question whether their practices or operations are ones that will actually be protected by state law. Local townships are also left to wonder if their regulations are lawful. As a direct consequence of these uncertainties, wineries are put at great risk in not knowing their rights.¹²¹ Two states that epitomize this conundrum are Ohio and New York.¹²²

nursery stock, livestock, poultry, livestock products, poultry products or the propagation and raising of nursery stock.' *Thus, meat processing appears to be protected by the statute, and compost generation may be as well.*") (emphasis added) (citation omitted).

118. OR. REV. STAT. § 30.938 (2009) ("In any action or claim for relief alleging nuisance or trespass and arising from a practice that is alleged by either party to be a farming or forest practice, the prevailing party shall be entitled to judgment for reasonable attorney fees and costs incurred at trial and on appeal.").

119. *The Ohio Information Pack*, OHIO WINE PRODUCERS ASS'N, http://www.ohiowines.org/info_pack.shtml.

120. *See, e.g., Terry v. Sperry*, 930 N.E.2d 846 (Ohio Ct. App. 2010).

121. *See discussion supra* Part II.C.

122. Both Ohio and New York fare well in their potential for growing great grapes. With warm sun and a sloping terrain, both region's climates are strategically similar to the wine-producing areas of Europe. *VintageTexas Sunday 'Cyclopedia of Wine: Ohio Wine*, TEX. WINE BLOG (Oct. 3, 2010, 10:22 AM), <http://vintagetexas.com/blog/?p=2540>; *Info: Wine in NY*, HUNTER & HILSBURG, <http://www.hunterhilsberg.com/Europe.cgi/EN/INFO/WineInfo.html> (last visited Jan. 6, 2011). In fact, Ohio led the United States in wine production in the 1860s, yet today, Ohio claims only 149 wineries and has dropped to the ninth largest producer of wine in the U.S. Jane Firstenfeld, *Ohio Industry Seeks Validation*, WINES & VINES (Mar. 26, 2008), http://www.winesandvines.com/template.cfm?content=54_271§ion=news; Malinda Geisler, *Wine Industry Profile*, AGRIC. MARKETING RESOURCE CENTER, IOWA ST. U. (Sept. 2010), http://www.agmrc.org/commodities_products/fruits/wine/wine_industry_profile.cfm; *General Information on the U.S. Wine Industry*, WINE AM. (2009), <http://www.wineamerica.org/newsroom/docs/Wine%20Industry%20Fact%20Sheet%2009.pdf>.

New York also has a history of wine production dating back to the 1860s and is one of America's oldest commercial wine regions. *Uncork New York: New York Grape & Wine Industry Facts*, N.Y. WINE & GRAPE FOUND., <http://www.fingerlakeswine>

1. Ohio

Ohio's Right to Farm Law is designed like many others. The statute broadly defines agriculture¹²³ and provides a complete defense against nuisance claims if the agricultural operations were conducted within an agricultural district and were established prior to the plaintiff's activities.¹²⁴

While the statute provides only a complete defense for an express group of people operating in an agricultural district,¹²⁵ it broadly defines "agricultural production," as "the production for a commercial purpose of . . . fruits . . . [that] includes the processing, drying, storage, and marketing of agricultural products when those activities are conducted in conjunction with such . . . production or growth."¹²⁶ Further, in conjunction with its Right to Farm law, Ohio's zoning laws preclude, with limited exceptions:

[A]ny township zoning commission, board of township trustees, or board of zoning appeals [from prohibiting] the use of any land for agricultural purposes or the construction or use of buildings or structures incident for agricultural purposes of the land on which such

alliance.com/Links/NewYorkWineGrapeFoundation/tabid/113/Default.aspx (last visited Jan. 6, 2011) (follow "New York Wine & Grape Foundation" hyperlink under the "LINKS" menu). While New York maintains third place as the largest wine producer in United States (behind California and Washington State), New York has only 169 wineries, 150 of which were established by 1976. *Id.* So, in the past 30 years, New York has added only 19 wineries to the state. This stunted growth is likely a direct consequence of the local government's "unfamiliarity with the precise extent of state preemption," unsound case law, and stringent guidelines defining "agriculture." See Ross H. Pifer, *The Agriculture, Communities and Rural Environment Act: Protecting Pennsylvania's Agricultural Operations from Unlawful Municipal Regulation*, 15 *DRAKE J. AGRIC. L.* 109, 110 (2010); *Terry v. Sperry*, 930 N.E.2d 846 (Ohio Ct. App. 2010); N.Y. AGRIC. & MKTS. LAW § 301(4) (Consol. 2010).

123. The Ohio Right to Farm Law defines agriculture as:

[C]ommercial aquaculture, apiculture, animal husbandry, or poultry husbandry; the production for a commercial purpose of timber, field crops, tobacco, fruits, vegetables, nursery stock, ornamental shrubs, ornamental trees, flowers, or sod; the growth of timber for a noncommercial purpose if the land on which the timber is grown is contiguous to or part of a parcel of land under common ownership that is otherwise devoted exclusively to agricultural use; or any combination of such husbandry, production, or growth; and includes the processing, drying, storage, and marketing of agricultural products when those activities are conducted in conjunction with such husbandry, production, or growth.

OHIO REV. CODE ANN. § 929.01 (A) (LexisNexis 2010).

124. *Id.* § 929.04.

125. Any person may apply to place their land in an agricultural district for five years if his or her land has been "devoted exclusively to agricultural production" for the last three years or is otherwise qualified. OHIO REV. CODE ANN. § 929.02 (LexisNexis 2010).

126. OHIO REV. CODE ANN. § 929.01 (LexisNexis 2010).

buildings or structures are located, *including buildings or structures that are used primarily for vinting and selling wine and that are located on land any part of which is used for viticulture*, and no zoning certificate shall be required for any such building or structure. . . .¹²⁷

This latter provision explicitly protects operations designed “for the vinting and selling of wine” from local ordinances thwarting their processes and production.¹²⁸ In fact, such a provision provides more protection than some of the aforementioned laws of other states,¹²⁹ expressly carving out a safe haven for winemaking enterprises.¹³⁰ However, recent litigation has eviscerated this legislative refuge for certain wineries.¹³¹

Earlier this year, the Ohio Court of Appeals held that a winery was neither an “agricultural use” as defined in Ohio Revised Code (R.C.) § 519.01 nor exempt from local zoning regulations under R.C. § 519.21, since ninety-five percent of the grapes used for production at the winery were grown off-premises.¹³² The court reasoned that while viticulture was agriculture, the other activities of the operation—making wine from outside grapes and juices, advertising their products, selling shelf stable foods, etc.—were not.¹³³ In order to be exempt from local regulation, viticulture must be “the primary activity at the winery,” and the remaining activities must be secondary.¹³⁴ Here, the majority found the “primary activities [of the winery] were the processing, bottling, and selling of wine,” and the growing of the grapes was secondary.¹³⁵ Therefore, the court concluded the winery’s activities did not fit into the definition of “agriculture” as set forth in R.C. § 519.01.¹³⁶

The court further held that the winery was not entitled to an exemption from the township’s regulations pursuant to R.C. § 519.21.¹³⁷ The court dismissed the owners’ argument that “reading R.C. § 519.01 and R.C. § 519.21(A) in *pari materia* manifests the legislature’s intent to protect winemaking operations from zoning restrictions,” and that “agriculture includes viticulture and selling wine.”¹³⁸ Rather, the court

127. OHIO REV. CODE ANN. § 519.21 (LexisNexis 2010) (emphasis added).

128. *Id.*

129. See discussion *supra* Part III.A.2.

130. OHIO REV. CODE ANN. § 519.21 (LexisNexis 2010).

131. *Terry v. Sperry*, 930 N.E.2d 846 (Ohio Ct. App. 2010).

132. *Id.*

133. *Id.* at 851.

134. *Id.*

135. *Id.*

136. *Terry*, 930 N.E.2d at 851.

137. *Id.*

138. *Id.* at 851-52.

found “a close reading of the statute reveals that while the buildings and structures used for vinting are permitted without prohibition from zoning ordinances, these buildings must be incident to the agricultural purpose;”¹³⁹ the buildings were not incident to the viticulture, and thus, the winery was not exempt from zoning regulations under R. C. § 519.21(A).¹⁴⁰ While the majority presented a cogent argument, the dissent countered with a more appropriate reading of the statute, holding that the owners’ use of their property as a winery falls under the zoning exception set forth in R. C. § 519.21(A), and thus not subject to regulation by the township.¹⁴¹

Judge DeGenaro argued in her dissent that legislative intent is paramount in statutory interpretation, and a court must first examine the language of the statute to determine such intent.¹⁴² When examining the plain language of the statute, it is well established that a specific statutory provision prevails over a conflicting general provision.¹⁴³ Here, the legislature provided a specific zoning exception for vinting operations: “[B]uildings or structures which are used primarily for vinting and selling wine and are located *on land any part of which is used for viticulture* are incident to the agricultural use of the land” are not subject to local regulations.¹⁴⁴ Thus, a township has no power to regulate such buildings or structures pursuant to R.C. § 519.21(A).¹⁴⁵

The dissent went on to say:

[T]he legislature’s use of vinting operations as a specific statutory example shows its recognition of the reality that all grapes used in vinting operations are rarely produced at the same location where the processing and winemaking occurs. Indeed, there was testimony . . . that cultivation of a single grapevine can take several years. This reality necessitates the use of outside grapes to allow a viticulture and vinting operation to sustain itself in its infancy.

Based on the plain language of the statute, the R.C. § 519.21(A) exception applies to Appellants’ winery.¹⁴⁶

Although this case likely is limited to wineries that have small or young vineyards and produce wine with the majority of grapes grown off-premises,¹⁴⁷ the case still manages to undermine the art of

139. *Id.* at 852.

140. *Id.*

141. *Id.* at 853 (DeGenaro, J., dissenting).

142. *Id.* at 854.

143. *Id.*

144. *Id.*

145. *Id.*

146. *Id.* at 854-55.

147. The majority’s decision in *Terry* hinges on the fact that 95% of the sales of wine

winemaking and its interconnection with the growing process. What is most disturbing about this decision, and what the dissent aptly points out, is that the legislature explicitly provided protection for wineries and tasting rooms.¹⁴⁸ Yet, based on this decision, local ordinances have the ability to encroach upon wineries and override express statutory limitations, further hampering the wine industry's growth.

2. New York

New York law, like Ohio law, supports the development of agricultural districts.¹⁴⁹ If the property owner is in an agricultural district, then local governments "shall not unreasonably restrict or regulate farm operations."¹⁵⁰ New York's Right to Farm statute defines "land used in agricultural production" as:

Land of not less than seven acres used as a single operation for the production for sale of orchard or vineyard crops when such land is used solely for the purpose of planting a new orchard or vineyard and when such land is also owned or rented by a newly established farm operation in its first, second, third or fourth year of agricultural production.¹⁵¹

While the laws indicate that a winery would be included under the state's zoning and Right to Farm laws, a recent case suggests that a winery may have to jump through more barrels.¹⁵² In *Rivendell Winery, LLC v. Linda Donovan*,¹⁵³ petitioner, Susan Wine, acquired two adjacent plots of land, two acres each, in an agricultural zoning district in the Town of New Paltz, Ulster County.¹⁵⁴ Ms. Wine filed an application to operate a "farm winery" on the property.¹⁵⁵ The Zoning Board of Appeals (ZBA) denied her application, and the New York Supreme

are from grapes not grown on the property. *Id.* at 853 (majority opinion). The corresponding statute provides that the processing of agricultural products must be *secondary* to the growing or production of grapes. OHIO REV. CODE ANN. § 519.01 (LexisNexis 2010) (emphasis added).

148. *Terry*, 930 N.E.2d at 854 (DeGenaro, J., dissenting).

149. The New York Legislature has employed agricultural districts as a tool "to provide a locally-initiated mechanism for the protection and enhancement of New York state's agricultural land as a viable segment of the local and state economies and as an economic and environmental resource of major importance." N.Y. AGRIC. & MKTS. LAW § 300 (Consol. 2010).

150. N.Y. AGRIC. & MKTS. LAW § 305-a (Consol. 2010).

151. *Id.* § 301.

152. *Rivendell Winery, LLC v. Linda Donovan*, 903 N.Y.S.2d 597 (N.Y. App. Div. 2010).

153. *Id.*

154. *Id.* at 598.

155. *Id.*

Court, Appellate Division affirmed the ZBA's ruling.¹⁵⁶

The court concluded that the ZBA's denial of Ms. Wine's application was not irrational or arbitrary and capricious.¹⁵⁷ Because the term "agriculture" was not specifically defined in the definition section of New Paltz's Zoning Code, the ZBA and the court looked to New York's Agriculture and Markets Law, referenced by the town's code.¹⁵⁸ As relevant here, land must maintain at least seven acres in "agricultural production" to qualify for an agricultural exemption, specifically "[excluding] land or portions thereof used for processing or retail merchandising of such crops."¹⁵⁹

The court found the ZBA's determination to be reasonable because Ms. Wine's proposed use of the land did not fit within the definition of agriculture.¹⁶⁰ At the time of the application, her property consisted of two acres of land with a single family dwelling and an additional two acres of land upon which there were no vines, grapes, or any other crops planted, growing, or being harvested.¹⁶¹ Although some land was being prepared for planting and another ten acres were purportedly to be leased for the vineyard, there was not a lease at the time of the decision.¹⁶²

Although the court did not issue a ruling on whether a winery is an agricultural use, but rather determined the ZBA's denial of petitioner's application was rational, the ruling has significant consequences for start-up wineries in the state.¹⁶³ Under the statute and the court's ruling, a winery must first obtain at least seven acres of land and have grapes planted and ready for harvest before even contemplating the plans for an accompanying winery.¹⁶⁴ Such severe hindrances greatly restrict an individual's ability to start a winery, especially when the initial capital investment necessary to start a winery is extraordinarily high.¹⁶⁵ While this case is not necessarily a universal holding within the state of New York and is purportedly confined to the Town of New Paltz's reading of the Code, it is likely that many other localities will rely on the court's interpretation of the state's Right to Farm law.¹⁶⁶ Consequently, the fact

156. *Id.*

157. *Rivendell Winery, LLC*, 903 N.Y.S.2d at 599.

158. *Id.*

159. *Id.*

160. *Id.* at 599.

161. *Id.*

162. *Id.*

163. *See generally Rivendell Winery, LLC*, 903 N.Y.S. 2d 597.

164. *See generally* N.Y. AGRIC. & MKTS. LAW § 301(4) (Consol. 2010); *Rivendell Winery, LLC*, 903 N.Y.S. 2d 597.

165. *See* Bacigalupi, *supra* note 79.

166. It will be interesting to see how these questions get resolved in New York. There currently is litigation underway that may decide the issue of whether wineries are agriculture in New York and exempt from local regulations. *See* Tim Glannon, *Judge:*

that only 19 wineries have been established within the state in the last 30 years¹⁶⁷ is not remarkable considering the stringent laws in place. Accordingly, if a state wants its wine market to blossom, it must ensure express and liberal protection of wineries by its legislature and courts.

C. Enigmatic Protection: One Tangled Vine

Like Ohio and New York, some states' Right to Farm and zoning laws seemingly protect wineries; yet, unlike Ohio and New York, there are no court decisions on the matter and the rights of wineries hang in the tender balance of localities. Because neither legislation nor case law clearly demarcates local governments' ability to regulate wineries, and because most municipalities are not familiar enough with winery practices to create well-informed, prospective ordinances,¹⁶⁸ great uncertainty stagnates the wine community.¹⁶⁹ Pennsylvania embodies this unsavory predicament.

Ag Laws Prevent Town from Halting Vineyard Operations, RIVERHEAD NEWS-REVIEW, Jan. 8, 2011, <http://riverheadnewsreview.timesreview.com/2011/01/6610/judge-denies-injunction-against-baiting-hollow-farm-vineyard/>. Further, as of June 2011, the New York Legislature has amended its law by enlarging the definition of land used in support of a farm operation to include "agricultural amusements," not limited to "corn mazes" or "hay bale mazes." Act of June 8, 2011, ch. 47, N.Y. Laws, S. 769 (including agricultural amusements on farm land within agricultural districts). This new provision may expand winery owners' rights with respect to the production of wine and other operating functions.

167. *Uncork New York: New York Grape & Wine Industry Facts*, N.Y. WINE & GRAPE FOUND., <http://www.fingerlakeswinealliance.com/Links/NewYorkWineGrapeFoundation/tabid/113/Default.aspx> (last visited Jan. 6, 2011).

168. Interview with Elwin Stewart, Happy Valley Vineyard, in State College, Pa (Sept. 6, 2010).

169. See *infra* notes 176-180, 183 and accompanying text.

1. Pennsylvania¹⁷⁰

Pennsylvania's Right to Farm Law defines agricultural commodities as "agricultural, aquacultural, horticultural, floricultural, *viticulatural* or dairy products."¹⁷¹ The Pennsylvania Right to Farm Law further provides:

Every municipality shall encourage the continuity, development and viability of agricultural operations within its jurisdiction. Every municipality that defines or prohibits a public nuisance shall exclude from the definition of such nuisance any agricultural operation conducted in accordance with normal agricultural operations. . . .

Direct commercial sales of agricultural commodities upon property owned and operated by a landowner who produces not less than 50% of the commodities sold shall be authorized, notwithstanding municipal ordinance, public nuisance or zoning prohibitions. . . .¹⁷²

The plain language of the statute along with the legislative intent¹⁷³ of the Right to Farm law provide protection against nuisance actions and ordinances for wineries that grow at least 50% of the grapes used in production.¹⁷⁴ Yet, this seemingly clear threshold gets muddled by local regulation.

With over 2500 municipalities, each with the capability of creating new regulations and ordinances for its respective domain, Pennsylvania hosts a diverse landscape of local law.¹⁷⁵ Winery owners throughout the

170. Much like Ohio and New York, Pennsylvania's rolling terrain and moderate climate provides excellent conditions for grape growing. *About PA Wine*, PA. WINERY ASS'N, <http://www.pennsylvaniawine.com/Facts.aspx> (last visited Jan. 23, 2011). Home to approximately 14,000 acres of grapes, including juice grapes, Pennsylvania is the fourth largest grape-grower in the nation and the seventh largest wine producer. *Id.* Pennsylvania currently has around 125 wineries, producing nearly one million gallons of wine each year. *Id.*

Pennsylvania wine production began as early as the 1600s. Barbara L. Goulart & Kathleen Demchak, *Characterizing Wine Grape Production and Producers in Pennsylvania: Results of a Recent Survey*, 9 HORTTECHNOLOGY 70 (Jan.-Mar. 1999). However, it was not until 1968 when Pennsylvania took notice of the potential for this industry, with the Limited Winery Act of 1968. *Id.*

The Limited Winery Act of 1968 has been the impetus to Pennsylvania's modern-day wine industry. Heralded into passage by the inspired grape growers of the state, the Act allowed grape growers to sell wine produced by the "limited winery" on its premises in order to "promote tourism" and "provide jobs" and greater "tax revenues." Memorandum from Pa. Grape Marketing Advisory Council (Feb. 28, 1968).

171. 3 PA. STAT. ANN. § 951 (West 2010).

172. *Id.* § 953 (West 2010).

173. *Id.* §§ 951-953.

174. *Id.* § 953.

175. *Brief Explanation of Local Government for Pennsylvania*, TOWNSHIP/MUNICIPAL DIRECTORIES (2009), <http://www.township-directory.com/Local%20Government.htm>.

state face a variety of impediments; few of which are uniform. In fact, some wineries receive great support and encouragement from local municipalities.¹⁷⁶

However, other municipalities are not supportive and view wineries as a nuisance to their community. For example, Ferguson Township, Centre County, prolonged the approval process of a winery for nearly three years out of fear that the winery would encourage drunk driving in the neighborhood; increase noise levels; and enhance tourist and tour bus activities, leading to an increase in road use.¹⁷⁷ There were also issues concerning public access to the farm winery.¹⁷⁸ It was not until after a few select members of the community obtained a petition with hundreds of signatures from the local residents supporting the winery that the township allowed the approval process to move forward.¹⁷⁹ Overall, the township's lack of knowledge and understanding of a winery wrongfully prolonged the winery's establishment.¹⁸⁰

Despite community support, a winery may face unending resistance from the township.¹⁸¹ A winery may even be forced to shut down its operation.¹⁸²

Regardless of whether a winery is delayed in operation or whether it is forced to close its doors, dealing with localities can be an undeniably frustrating process, as seen in the noted examples. Furthermore, without litigation on point, there is little for struggling vintners to use against

176. Interview with Elwin Stewart, Happy Valley Vineyard, in State College, Pa (Sept. 6, 2010).

177. *Id.*

178. *Id.*

179. *Id.*

180. *Id.*

181. For instance, one winery in East Allen Township had been in operation for several years and well received by the community when a fire destroyed the backside of the winery. Amore Interview, *supra* note 85. Upon reconstruction, the township declared that the winery was not an agricultural operation and needed a conditional use permit to continue its operation despite the fact the winery was located on more than one hundred acres of agricultural land, growing one hundred percent of its own grapes. *Id.* With over a year of going back and forth with the township and trying to comply with their orders, the winery ceased operation and has lost significant revenue. *Id.* While the matter is still in the process of resolution, it has resulted in unnecessary and arbitrary delays, lost income, and great frustration. *Id.*

182. In Daugherty Township, Beaver County, after years of challenging the township's zoning board on the right to import grapes, the Lopic Winery finally closed the doors to its business. *Winemaker Has Gripe with Grape-Based Zoning Rules*, INTELLIGENCER J. (Lancaster, Pa.), Oct. 25, 2004, at State News. In 2004, Daugherty Township began to scrutinize the grape-importation practices of the Lopic Winery. *Id.* The township manager found that the 30-year old winery agreed to import no more than 20% of the grapes; however, upon inspection, it was determined the winery was importing about 80% of its grapes. *Id.* Consequently, the winery was told it must abide by the 20% import restriction. *Id.* Unable to comply with the strict measures, the Lopic Winery closed its doors after 30 years of business. *Id.*

overly-restrictive local ordinances. Winery owners are often left to deal with and comply with harmful regulations.¹⁸³ However, a court's ruling may soon put shape to Pennsylvania's law.¹⁸⁴

In 2000, after obtaining all of the necessary permits and requirements, Crossing Vineyards began operation of its vineyard and winery in Upper Makefield Township, Bucks County.¹⁸⁵ The winery obtained much success and became a well-known establishment in the area, hosting events for the community and even the township.¹⁸⁶

In 2007, the municipality, in conjunction with two neighboring townships, formed a joint local ordinance restricting the use and practice of a winery or vineyard.¹⁸⁷ The ordinance places limitations on the amount of space a winery can utilize for its commercial enterprise; the number of annual, outdoor events; signage; the timing of events; and other restrictions.¹⁸⁸ Two years after codification, the township cited Crossing Vineyards, saying the winery violated the ordinance by holding more than 24 annual, outdoor events and by allowing the events to run past ten o'clock at night.¹⁸⁹

The owners of Crossing Vineyards are challenging the citation.¹⁹⁰ The owners believe: 1) their winery should be grandfathered into the ordinance and not required to comply with the current standards that were languidly enforced two years after adoption; and 2) the ordinance should be repealed.¹⁹¹

Crossing Vineyards alleges the ordinance restricts a winery or a vineyard's ability to create a viable agricultural enterprise.¹⁹² As part of a greater movement to agritourism, wineries must promote themselves beyond placing wine on their shelves.¹⁹³ Like many other businesses, wineries must host events to draw customers to their site.¹⁹⁴ They must create educational and recreational activities that give people a reason to come to the winery and taste their wines.¹⁹⁵

183. See *supra* note 180-81 and accompanying text.

184. Carroll Interview, *supra* note 82.

185. *Id.*

186. *Id.*

187. NEWTON, BUCKS COUNTY, PA. JOINT MUNICIPAL ZONING ORDINANCE art. VIII § 803 H-17, available at <http://www.keystatepub.com/keystate-pdf/PA/Bucks/Newtown%20Area%20Joint%20Municipal%20Zoning%20Ordinance/Article%20VIII%20Use%20Regulations.pdf>.

188. *Id.*

189. Carroll Interview, *supra* note 82.

190. *Id.*

191. *Id.*

192. *Id.*

193. Carroll Interview, *supra* note 82.

194. *Id.*

195. For a winery to be competitive, it must extend its marketing scheme beyond

Under Pennsylvania's Right to Farm Law, "[e]very municipality shall encourage the continuity, development and viability of agricultural operations within its jurisdiction."¹⁹⁶ The joint municipal ordinance on wineries stands in direct conflict with such a purpose. Rather than promoting and encouraging the growth and development of wineries, the township is preventing Crossing Vineyards and other wineries from creating and sustaining viable operations. The owners of Crossing Vineyards are submitting an appeal of the zoning board's decision to the Bucks County Court of Common Pleas.¹⁹⁷ They are also utilizing a unique piece of legislation¹⁹⁸ found in Pennsylvania, called the Agricultural Communities and Rural Environment (ACRE) Act.¹⁹⁹ ACRE provides farmers protection from municipal ordinances that unlawfully restrict agriculture.²⁰⁰ Developed in 2005, ACRE "allows farm owners or operators to ask the Attorney General to review local ordinances that they feel restrict normal agricultural operation or ownership."²⁰¹ The law also gives the Attorney General the authority to challenge the legality of an ordinance directly with the Commonwealth Court of Pennsylvania, one of two state appellate courts, as opposed to the county-level trial court.²⁰² As such, ACRE enables a farmer or farm owner to challenge an unlawful ordinance without exhausting all of their personal resources to pursue the matter.²⁰³ Because the owners of Crossing Vineyards are such strong advocates for wineries across the state, they are pursuing the matter in both the county-level courtroom and the Attorney General's office.²⁰⁴

While it is likely Pennsylvania will soon have case law on the matter, either through independent litigation or through the ACRE Act, it is important for states to re-address their laws and create clear lines of permissible regulation for wineries, so municipalities do not unlawfully crush viable winery operations.

placing wine on its shelves. Often, wineries must host parties, weddings, jazz nights, educational events, dinners and wine pairings, and offer winery tours and tastings and other exciting activities that lure people onto the premises. *See* Glannon, *supra* note 163; Carroll Interview, *supra* note 82.

196. 3 PA. STAT. ANN. § 953 (West 2010).

197. Carroll Interview, *supra* note 82.

198. *Id.*

199. 3 PA. CONS. STAT. ANN. § 314 (West 2010).

200. *See id.*

201. PA. ATTORNEY GENERAL, ACRE/ACT 38 FARM ORDINANCE REVIEW (2010), available at <http://www.attorneygeneral.gov/theoffice.aspx?id=326>.

202. *Id.*

203. *See generally* 3 PA. CONS. STAT. ANN. § 317 (West 2010).

204. Carroll Interview, *supra* note 82.

IV. CONCLUSION

To ensure a growing wine market, states and local municipalities must implement clear, unambiguous laws and ordinances that further the intent behind the Right to Farm and zoning laws and protect wineries as modern agricultural operations.

First, states must expressly include wineries as agricultural operations in their Right to Farm laws and corresponding zoning laws.²⁰⁵ Because wineries reconfigure the conventional concept of a farm, express designation by the legislature is needed to prevent the unlawful overregulation of wineries. California exemplifies this by providing explicit protection for both the growing and processing of grapes in its Right to Farm law.²⁰⁶ This clear directive abolishes any uncertainty as to whether a winery is a protected agricultural operation and ensures the art of winemaking is seen as a value-added process that promotes the agricultural endeavors of the state.

Next, states must ensure that onsite wine sales are protected. For instance, Pennsylvania's Right to Farm Law authorizes the commercial sale of farm commodities, if at least fifty percent of the product base is grown on-premises.²⁰⁷ Here, states should allow certain concessions for wineries. Because it takes years for a vineyard to bear fruit suitable for consumption,²⁰⁸ requiring half of the grapes to be grown onsite is not a reasonable requirement for a new winery. Additionally, to be a contender in the consumer-driven wine market, wineries must be able to obtain the grape varietals that are in-demand.²⁰⁹ If a popular varietal is unable to grow on the winery's terrain, a vintner must be able to procure the grape from another location. Accordingly, states must be flexible with the required percentage of fruit grown on the premises.

Additionally, local municipalities need to become educated on the benefits wineries bring to the community and to the state. Municipalities need to create ordinances that promote and encourage the growth and development of wineries and vineyards. Municipalities must work with grape growers and winemakers to create ordinances that promote a sustainable, growing wine industry and enhance the overall community. Wineries not only have the capability of bringing substantial revenue and jobs to a community, but they also can act as a centerpiece, bringing the community together to share in the joys of the land.

205. See discussion *supra* Parts III.A.1-2.

206. CAL. CIV. CODE § 3482.6 (Deering 2010).

207. 3 PA. STAT. ANN. § 953(b) (West 2010).

208. See *Growing Guides*, *supra* note 19 and accompanying text.

209. Carroll Interview, *supra* note 82.

Finally, states should create reinforcing legislation, like ACRE,²¹⁰ that enables farmers to challenge the legality of restrictive ordinances. Retrospective remedies are needed to guarantee farmers' protection against newly established, over-reaching ordinances. Such state-created rights not only add another layer of protection for farmers but also reinforce the purpose of Right to Farm laws by promoting agriculture within the state.

In sum, wineries and vineyards alike are agricultural operations of the truest form. They promote the preservation of farmland and restore a connection to a pastoral beginning. Accordingly, it is important that actions are taken on both the state and local level to enact laws and ordinances that expressly account for wineries' protection under Right to Farm and zoning laws.

210. 3 PA. CONS. STAT. ANN. § 314 (West 2010).