The Judiciary – Is it the Most Dangerous Branch for Agriculture? Litigation, Regulatory Uncertainty, and the Changing Role of the Courts Part One

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Overview

Alexander Hamilton famously described the federal judiciary as the "least dangerous" branch of government because, unlike Congress, it possessed neither the power of the purse nor the sword. *The Federalist No. 78*. The judiciary, Hamilton reasoned, would exercise "judgment" rather than political power. That description made sense in 1788. It is worth asking whether it remains entirely accurate today - particularly for American farmers and ranchers.

The modern administrative state has placed enormous regulatory power in federal agencies. But agencies do not operate in a vacuum. Their actions are reviewed, expanded, limited, delayed and sometimes effectively rewritten through litigation. And for a farmer or rancher, a lawsuit can be every bit as consequential as a regulation. That is where the concept of "lawfare" enters the discussion.

The U.S. Department of Agriculture has now made the issue official. In February 2026, USDA Secretary Brooke Rollins announced the Farmer and Rancher Freedom Framework, expressly identifying "agricultural lawfare" as "the use of administrative, legal, and legislative government systems to adversely impact farmers, ranchers, and agricultural producers."[1] USDA created an online mechanism through which farmers and ranchers can report instances of alleged lawfare.

That is a remarkable development. The Department of Agriculture - the federal department most directly responsible for American agriculture - is essentially acknowledging that the legal system itself can become a cost of doing business for agricultural producers.

That's the focus of this article – part one of a three-part series.

[1] U.S. Dep't of Agric., USDA Announces Farmer and Rancher Freedom Framework to End Agricultural Lawfare (Feb. 11, 2026).

The Courtroom Can Be the Farm's Battlefield

Legal risk. Farmers and ranchers are accustomed to dealing with risk. Weather risk. Commodity-price risk. Interest-rate risk. Disease risk. Input-cost risk. Legal risk is different. A farmer can survive a bad crop. A rancher can survive a drought. But a producer who receives a federal enforcement action,[2] loses access to land,[3] is subjected to an injunction,[4] faces criminal prosecution,[5] or is forced into years of litigation[6] may never recover the economic loss - even if the producer ultimately prevails.

Criminal prosecution can be an especially effective instrument of governmental pressure against agricultural producers. Consider the experience of Frank Robbins, a Wyoming rancher who became embroiled in a dispute with the Bureau of Land Management over an easement across his private property. After Robbins refused to grant the government the easement, BLM officials allegedly engaged in a seven-year campaign of harassment and intimidation. Among other things, officials brought criminal charges accusing Robbins of forcibly interfering with a federal officer. Federal prosecutors pursued the charges, but a jury acquitted Robbins in less than 30 minutes. The Tenth Circuit initially permitted Robbins to pursue claims alleging retaliation for exercising his constitutional property rights.[7] However, the U.S. Supreme Court reversed, holding that Robbins could not pursue the damages claims he had

[2] *See, e.g.,* Estate of Hage v. United States, 687 F.3d 1281 (Fed. Cir. 2012), *cert. denied,* 571 U.S. 951 (2013) (involving a Nevada ranching family's disputes with federal land-management agencies concerning grazing permits and access to federal lands).

[3] See the Hammond Ranches dispute in Harney County, Oregon, where environmental organizations successfully challenged a federal grazing permit covering more than 26,000 acres. After a federal court vacated the permit in 2019, environmental groups filed a second lawsuit in 2021, prompting the Biden Administration to rescind the subsequent permit approval. The litigation deprived the ranch of grazing access and illustrates how environmental litigation can disrupt established agricultural operations. See Western Watersheds Project v. Bernhardt, 428 F. Supp. 3d 327 (D. Or. 2019); Western Watersheds Project v. U.S. Department of the Interior, No. 2:21-cv-00297-HL (D. Or. Nov. 8, 2022).

[4] See Oregon Natural Desert Ass'n. v. Raby, No. 3:25-cv-00363-SI (D. Or. Apr. 30, 2025) (granting an environmental organization's motion for preliminary injunction prohibiting livestock grazing on approximately 22,000 acres of federal land; one affected rancher estimated the injunction could reduce his ranch's annual income by as much as 30% and potentially require him to sell cattle or purchase additional feed). On September 8, 2026, the trial court issued its decision on the merits, finding violations of the FLPMA, NEPA and the APA. The court remanded the agency actions to the BLM and imposed a permanent injunction maintaining restrictions on grazing in the affected research natural areas. Oregon Natural Desert Ass'n v. Groffy, No. 3:25-cv-363-SI (D. Or. Sept. 8, 2026).

[5] *See, e.g.,* U.S. Dep't of Agric., Risk Management Agency, *Department of Justice Prosecutions* (listing federal criminal prosecutions and convictions involving farmers and crop-insurance fraud); *United States v. Larry Walden*, see Internal Revenue Service, *Seven Farmers and a Tobacco Warehouse Manager Sentenced for Crop Insurance Fraud Scheme* (Dec. 22, 2025) (describing a Kentucky farmer's 52-month federal prison sentence following a guilty plea involving crop-insurance fraud).

[6] *See, e.g.,* Ideker Farms, Inc. v. United States, 71 F.4th 964 (Fed. Cir. 2023) (involving farmers' Fifth Amendment takings claims arising from recurring Missouri River flooding caused by federal water-management activities).

[7] Robbins v. Wilkie, 433 F.3d 755 (10th Cir. 2006).

asserted under *Bivens* and RICO.[8] But, the Court acknowledged that the district court had found sufficient evidence to support Robbins's allegation that BLM employees had filed false criminal charges against him.[9]

Litigation as a regulatory strategy. Legal risk is particularly harsh on farmers and ranchers because agriculture is land-based. A manufacturer can sometimes move a factory. A software company can move its employees. A farmer cannot move the farm. The location of the land determines the applicable water rules, zoning rules, environmental requirements, endangered-species restrictions, land-use regulations, property-tax rules and, increasingly, the litigation exposure associated with operating the property. The result is that litigation can become a form of regulation in itself.

A court does not have to order a farmer to stop farming permanently. A preliminary injunction, a remand to an agency, years of litigation, or uncertainty over whether a particular activity is lawful may be sufficient to make the farming operation economically impractical. The Montana Supreme Court's decision in *Held v. State*,[10] illustrates the point. Sixteen young plaintiffs challenged Montana's energy policies, arguing that the State's failure to consider greenhouse gas emissions in certain environmental reviews violated their constitutional right to a clean and healthful environment. The Montana Supreme Court agreed that the constitutional protection encompassed a stable climate system and invalidated the statutory prohibition against considering greenhouse gas emissions in those reviews. Significantly, the Court discussed evidence concerning the effects of drought and declining snowpack on ranches owned by plaintiffs' families.

Although the Court did not order the elimination of fossil fuels or prohibit any particular agricultural activity, the decision demonstrates how constitutional environmental litigation can alter the regulatory framework governing energy development and potentially affect agricultural operations. Livestock facilities, irrigation projects, rural energy development, and agricultural infrastructure may all become targets of litigation involving greenhouse gas emissions.

The larger concern is institutional. Courts can effectively establish regulatory policy through constitutional interpretations, injunctions, and orders requiring additional agency review. For farmers and ranchers, the resulting litigation costs, delays, and uncertainty can be economically devastating even

[8] Wilkie v. Robbins, 551 U.S. 537 (2007).
[9] *Id.*
[10] 2024 MT 312.

when they ultimately prevail. In that sense, the judiciary can become a regulatory branch without having to promulgate a single regulation.

Sackett and the Problem of Regulatory Uncertainty

Few cases illustrate the agricultural stakes better than *Sackett v. EPA*.[11] The Sacketts were not farmers, but the case involved a fundamental question for agricultural landowners: How much authority does the federal government have over land that may contain wetlands? The Supreme Court ultimately rejected an expansive interpretation of the Clean Water Act and held that wetlands fall within federal jurisdiction only when they have a sufficiently close connection to traditional navigable waters.

Why does that matter to agriculture? Because farmers routinely move dirt, install drainage, construct ponds, repair roads, build barns, improve pasture, install irrigation systems and otherwise modify land. If the federal government can characterize an ordinary farm feature as a federally regulated "water," an otherwise routine improvement can become a federal permitting issue. And the consequences of getting it wrong can be severe.

What makes *Sackett* particularly important is that the Supreme Court was forced to impose a judicial boundary on an agency's interpretation of federal law. The case demonstrates both the problem and the solution: when agencies push statutory language beyond what Congress actually enacted, courts must enforce the statutory limits.

But that brings us to a larger question. How much litigation should it take for a private landowner to obtain the right to rely upon the actual words of a statute?

When Courts Become Regulators

The same concern appears in administrative law. For four decades, *Chevron U.S.A. Inc. v. Natural Resources Defense Council*, [12] permitted courts to defer to reasonable agency interpretations of ambiguous statutes. In *Loper Bright Enterprises v. Raimondo*,[13] the Supreme Court overruled *Chevron*, holding that courts must exercise their own independent judgment in deciding whether an agency has acted within statutory authority.

[11] 598 U.S. 651 (2023).
[12] 467 U.S. 837 (1984).
[13] 603 U.S. 369 (2024).

For agriculture, *Loper Bright* is enormously important. Farmers and ranchers live under thousands of pages of statutes and regulations administered by USDA, EPA, FWS, the Army Corps of Engineers, the Department of the Interior and other agencies. If the agency gets to decide what an ambiguous statute means - and courts then defer to that interpretation - the practical law governing agriculture can become whatever the agency says it is. That is not legislation. It is not constitutional government. And it is particularly troubling when the regulated party cannot afford to challenge the agency interpretation.

Loper Bright restores an important constitutional principle: agencies administer the law; they do not possess the final authority to say what the law means. That responsibility belongs to the judiciary. But judicial responsibility can itself become problematic when courts effectively create rules that Congress never enacted.

But there is another side to this story. The judiciary is not always an adversary of agriculture. In fact, some of the most important judicial decisions affecting farmers and ranchers have involved courts protecting private property rights, enforcing statutory limitations on agency authority, and requiring government officials to follow the Constitution. The challenge is distinguishing legitimate judicial review from judicial policymaking. That distinction becomes particularly important when examining how litigation is being used against agricultural operations - and how courts sometimes provide the only meaningful protection available to them.

Stay tuned for Part Two.

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