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

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Overview

The judiciary's relationship with American agriculture is complicated. Courts can serve as an essential constitutional safeguard, protecting farmers and ranchers against government overreach, infringement of property rights, and arbitrary agency action. But litigation can also become a powerful instrument for advancing regulatory and political objectives that might otherwise be difficult to accomplish through legislation. From disputes over agricultural land use and environmental regulation to federal prosecutions arising out of property-boundary disagreements, the growing use of litigation has significant consequences for agricultural producers. This second installment examines both sides of that judicial influence, asking whether the courts are consistently protecting the constitutional rights of agricultural landowners or, in some instances, becoming another avenue through which those rights are threatened.

The Constitution Still Matters on the Farm

Several important Supreme Court decisions demonstrate that the judiciary can also serve as a critical protector of agricultural property rights. Consider *Horne v. Department of Agriculture*.[1] California raisin growers challenged a federal marketing order requiring them to set aside a portion of their crop. The USDA's enforcement efforts resulted in substantial monetary penalties. The Supreme Court ultimately held that the government could not take the growers' raisins without providing constitutionally required compensation. The case stands for an important proposition: property rights do not disappear simply because the property happens to be agricultural.

The same principle appeared in *Cedar Point Nursery v. Hassid*.[2] California required agricultural employers to allow union organizers onto their property for specified periods of time. The Supreme Court held that the regulation constituted a per se physical taking under the Fifth Amendment. Again, the message was

[1] 576 U.S. 350 (2015).
[2] 594 U.S. 139 (2021).

straightforward: government cannot simply commandeer private agricultural property without constitutional consequences.

These cases are important because they demonstrate what the judiciary is supposed to do. The judiciary should not become an additional regulatory agency. It should enforce the Constitution and the laws enacted by the people's representatives.

Litigation Can Be Used from Either Direction

There is another dimension to agricultural lawfare that deserves attention. Lawfare does not necessarily require a government agency to sue a farmer. Private organizations can use litigation to challenge government actions that benefit agriculture. Environmental organizations, animal-rights organizations and other advocacy groups have statutory causes of action and procedural tools that can produce enormous consequences for agricultural operations.

The *Central Oregon LandWatch v. Jefferson County* litigation provides a recent illustration of how land-use litigation can affect agricultural property. In 2026, the Oregon Court of Appeals addressed litigation surrounding a 142.5-acre parcel zoned for range land and whether grazing remained a practicable agricultural use.[3] The court emphasized that the inability of the parcel to support an independently profitable farming operation did not mean that grazing ceased to constitute a legitimate farm use.

The case itself is not evidence of judicial hostility toward agriculture. Quite the contrary - the decision recognized the continuing agricultural character of the land. But the litigation illustrates something farmers understand intuitively: The legal system can determine whether land remains agricultural without anyone ever putting a plow in the ground. A lawsuit can challenge a zoning decision. Another can challenge an environmental permit. Another can challenge a federal agency's approval. Another can seek an injunction. Another can force an environmental review. Each individual lawsuit may have a legitimate legal basis. Collectively, however, litigation can impose enormous transaction costs on agriculture. That distinction matters.

Criticizing litigation-driven regulation does not mean that environmental organizations should be denied access to the courts. Nor does it mean that every lawsuit against a farmer, rancher or agricultural agency is “lawfare.” The rule of law requires courts to hear legitimate claims. The question is whether the legal

[3] Central Oregon LandWatch v. Jefferson County, 347 Or. App. 454, 586 P.3d 957 (2026).

system is being used to resolve genuine legal disputes - or whether litigation is being used strategically to impose economic and political consequences that could not be achieved through legislation.

The Maude Family: When a Boundary Dispute Becomes a Federal Prosecution

The Charles and Heather Maude case is perhaps the clearest recent example of why USDA has adopted the term "lawfare." The Maudes, fifth-generation South Dakota ranchers, became embroiled in a dispute with the U.S. Forest Service concerning a fence and approximately 50 acres (25 acres of the Maudes' land adjacent to the Buffalo Gap National Grasslands and 25 acres of federal land).[4] What began as a property-boundary dispute ultimately resulted in federal criminal indictments against the couple in 2024. The charges were later dismissed in April 2025 once the Trump Administration came into power.[5] USDA itself subsequently identified the Maude matter as an example of what it characterized as politically motivated agricultural lawfare.

Reasonable lawyers can disagree about the government's underlying legal position. But there is a larger principle here. The power to prosecute is among the most formidable powers possessed by government. When a longstanding property dispute can escalate into felony charges against a farm or ranch family, every agricultural landowner should pay attention. The cost is not merely attorneys' fees. It is lost time, lost production, damaged reputation, family stress, financing problems and the possibility that a multigenerational agricultural operation may not survive the dispute.

***Boucher* and the Limits of USDA's Swampbuster Authority**

The *Boucher* litigation provides an important counterpoint to the Maude matter because it demonstrates that courts can (and sometimes do) serve as an effective check on federal overreach. In *Boucher v. USDA*,[6] the USDA treated several acres of an Indiana farm as converted wetlands under the Swampbuster provisions of the Food Security Act after the farmer had removed nine trees. The consequence was potentially sweeping: the entire farm became ineligible for USDA program benefits. The Seventh Circuit reversed, concluding that the agency's determination was arbitrary and capricious. The USDA had disregarded evidence that the disputed acreage lacked the hydrology necessary to qualify

[4] See *United States v. Maude*, Nos. 5:24-cr-50081 and 5:24-cr-50082 (D.S.D. 2024); Jennifer Carrico, *The Maudes and the US Forest Service: How a Fence Line Dispute Almost Tore a Family Apart*, DTN/Progressive Farmer (Jan. 21, 2026).
[5] United States v. Maude, No. 5:24-cr-50081 (D.S.D. Apr. 28, 2025) (order granting government's motion to dismiss indictment without prejudice).
[6] Boucher v. U.S. Department of Agriculture, 934 F.3d 530 (7th Cir. 2019).

as wetlands, relied on an inappropriate comparison site, and shifted its explanations during the administrative process and litigation.

The court's analysis is significant for agricultural landowners. The removal of vegetation, standing alone, did not relieve USDA of its obligation to determine whether the statutory elements of a wetland were present. Hydrology mattered. The agency could not substitute assumptions, an unsuitable comparison site, or post hoc explanations for a reasoned determination supported by the administrative record. The court emphasized that an agency must examine the relevant data, consider important aspects of the problem, and articulate a rational connection between the facts found and the decision made. That is the essence of meaningful judicial review under the Administrative Procedure Act.[7]

Boucher is especially useful when evaluating the balance between environmental objectives and the rights of agricultural producers. Swampbuster is a congressional policy choice, and USDA has authority to administer it. But that authority is not unlimited. A producer should not lose eligibility for farm program benefits because an agency applies its own rules inconsistently or fails to establish the factual predicates Congress required. In this respect, *Boucher* illustrates the judiciary at its best: enforcing the law as written rather than deferring to an agency simply because the dispute involves technical subject matter.

The cases discussed above demonstrate that courts can serve as an important check on government power. But agricultural lawfare is not confined to federal agencies or federal courtrooms. State environmental enforcement, federal land-management decisions, and broader conservation initiatives can create additional litigation risks for farmers and ranchers. These disputes are particularly consequential because agricultural operations depend on access to land, water, and infrastructure. The next installment examines several current examples and considers what they reveal about the growing intersection of environmental policy, administrative enforcement, and judicial power.

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[7] 5 U.S.C. § 706(2)(A).