

Legislation in the Lame-Duck; Drones, Wills, Disease and Fencerows – Sunday Afternoon Thoughts

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What Might Happen in the Lame-Duck?

Now that the election is over, what are the prospects for legislation during the “lame-duck” session given that there are (at the present time) only about 15 legislative days remaining? I categorize the possibilities into three categories – legislation that “must pass” during the session; legislation that “may pass” during the session; and legislation that is “unlikely to pass.”

• **Must Pass**

- Disaster assistance – for hurricanes, wildfires, tornadoes and the rebuilding of infrastructure such as the Baltimore bridge that was damaged earlier this year.
- Discretionary funding – this makes up about 30 percent of the federal budget and expires at the end of 2024. The deadline is December 20 to pass the legislation to avoid a government shut-down.
- Extender legislation – this would be legislation to extend certain critical provisions such as the National Defense Authorization Act
- Farm Bill – I would put the Farm Bill in this category, but my view is that it is still highly unlikely that the lame-duck session would pass a Farm Bill.

• **May Pass**

- Water Resources Development Act – this legislation is for civil works projects for ports and harbors, inland waterways as well as flood and storm protection.
- Artificial intelligence – legislation is needed to set additional boundaries on the usage of artificial intelligence.
- Provisions concerning China – multiple bills have been introduced designed to deal with various national security threats of China.

• **Unlikely to Pass**

- Farm Bill – I expect an extension again.
- Expediting permitting for oil and gas projects – the election will clearly result in an ramp-up in oil and gas production in the U.S. and a de-emphasis on less efficient, less reliable, heavily taxpayer subsidized forms of energy production/generation.
- Railway safety legislation
- Debt limit – at some point, the Congress will increase the limit again.
- Rescission legislation – this can be passed without the President’s signature and allows the Congress to revisit spending decisions. This could be done to block Ukraine’s use of Army



Tactical Missile Systems (long-range U.S. manufactured missiles) on targets inside Russia. Russia is now at war with the U.S. by virtue of Pres. Biden's unilateral decision to approve Ukraine's use of this type of missile system. The introduction of this legislation would send a clear message to Pres. Biden and Ukraine's President that the war lacks significant and bi-partisan support in the Congress.

Drones, Privacy and the U.S. Supreme Court

The use of drones in agriculture is increasing. Some of the uses of drones include scouting crops and monitoring livestock. But drones can also be used for questionable purposes.

All states have drone laws outlining the permissible and impermissible use of drones. The Texas law, like many other state drone laws, has surveillance provisions and no-fly provisions. The law says that a drone can't be used to capture an image of an individual or privately owned real property with the intent to conduct surveillance. Publication of images captured in that manner is prohibited. Newsgathering is not an exempted use. In addition, the law's no-fly provision makes it unlawful to fly a drone over certain structures including a confined animal feeding operation. It's one of the strictest drone laws in the U.S.

Two media organizations challenged the law as unconstitutional on free speech grounds and the trial court agreed. But the appellate court reversed. [*Nat'l Press Photographers Association v. McCraw*, 90 F.4th 770 \(5th Cir. Tex. 2024\)](#).

In early October of 2024, the U.S. Supreme Court declined to take the case. *No. 23-1105, 2024 U.S. LEXIS 4033 (U.S. Sup. Ct. Oct. 7, 2024)*. This all means that the Fifth Circuit's opinion upholding the Texas law is a key decision for agriculture. This is particularly true because of the vulnerability of farming and ranching operations and agribusinesses that have property in the open to being surveilled by the government, as well as organizations that want to do them harm. That last point is particularly true with respect to confinement animal operations. The Fifth Circuit's upholding of the Texas law's constitutionality could encourage other states to enact similar legislation.

Challenging a Will Based on a Promise

Sometimes a decedent's will is challenged by an heir claiming that the decedent was influenced by someone else that caused the decedent to change how their assets would be disposed of. Or the will might be challenged based on a claim that the decedent wasn't competent to execute the will. But can a will be challenged based on the decedent's promise?

In a recent case, the plaintiff claimed that she deserved the decedent's estate because the decedent had promised to give her his farm ground and had named her his agent under his medical and durable powers of attorney. The other persons that received the farm moved to dismiss the claim. The court noted that an attorney drafted the will, and the decedent signed it with two witnesses present. Both the attorney and witnesses had attested that the decedent was of sound mind and understood the nature and extent of his property when he created and signed the will. There was no contrary testimony. The court held that the plaintiff failed to establish that the decedent was not in his right



mind or that he was subject to undue influence. Mere suspicions and thoughts were not enough to show a genuine issue of material fact regarding the validity of the decedent's will. The court said that to show an issue of material fact the plaintiff should have presented actual evidence, such as testimony from the decedent's caretakers. Simply challenging the will based on an oral promise was not enough.

Liability for Spread of Animal Disease

If you have diseased livestock or diseased premises, what's your liability for the spread of the disease? In general, once you know that an animal of yours that is under your control is diseased, you must take reasonable steps to ensure that the animal does not come into contact with healthy, uninfected livestock of anyone else. Several states require restraint of animals that are known to have an infectious or contagious disease from running at large or coming into contact with other animals.

Absent a written lease that says differently, a landlord is generally *not* liable for damages to a tenant if the premises causes the tenant's healthy animals to become diseased. That means if a tenant has healthy animals and brings those animals onto the landlord's diseased or contaminated premises and the animals become diseased themselves, it will be difficult for the tenant to recover against the landlord. The tenant takes the premises "as is." If the tenant fails to ask whether the leasehold is disease or contamination free, the landlord has no duty to disclose that fact to the tenant. Actual deceit on the landlord's part is required.

For a tenant to get legal protection, a landlord would either have to admit liability or specify responsibility in writing for any disease-related damages associated with the leased premises.

Issues When Cleaning Out a Fencerow

The winter months are often the time to clean out fence rows. But the cleanup process can generate legal issues that you might not have thought about.

When you're cleaning out a fence row issues can arise that you hadn't thought about. For example, what if there's a tree in the fence line. In that situation, each adjacent owner has an ownership interest in the tree. But, if only the branches or roots extend past the property line and onto an adjoining neighbor's property, the branches and roots don't give the neighbor an ownership interest in the tree. The tree is considered to be jointly owned, and you could be liable for damages if you cut it down and your neighbor objects. But you can trim branches that hang over onto your property. That's an important point, for example, if you are dealing with a thorn tree that can puncture tires.

Always make sure to trim branches, bushes and vines on a property line with care. Keep the neighbor's rights in mind when doing the cleanup work. Also, if a neighbor's tree falls onto your property, it's your responsibility to clean up the mess – but you can keep the resulting firewood. The converse is also true. It's also not a trespass to be on your neighbor's side of the fence when doing fence maintenance, such as cleaning out a fence row.

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