



San Joaquin College of Law

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## FOREWORD

RYAN LOPEZ AND BREANNE RUELAS  
*Co-Editors-in-Chief*

California is home to some of the world's most vast and complex agricultural lands and industries, which in turn produces a wide range of agricultural law issues. Such issues have been brought to the forefront and analyzed in the lead articles and comments presented in the 27<sup>th</sup> Volume of the San Joaquin Agricultural Law Review. Through meticulous research, writing, editing, and sacrifice, each professional and student staff writer has provided the reader with unique insight into some of the major agricultural law issues driving the modern agricultural industry today.

As one of the only Agricultural Law Reviews on the West Coast, the professional and staff writers of Volume 27 depict some of the major issues facing farmers and agricultural industries alike. In *Knowledge Management of Plant Taxonomy: A Legal Narrative Analysis*, Paul Hodgkinson, Gary Lilienthal, and Nehaluddin Ahmad discuss why official scientists apply such famous foreign names in traditional plant taxonomy locales. The authors note that indigenous farmers' rights lacked any such significant father figure and the UPOV model statute for Plant Breeders' rights appears to have overwhelmed farmers' rights. The issue is why the internationally organized Plant Breeders' Acts appear to have overridden the local farmers' rights? The writers propose that famous foreign names, were used to create so much international monetary value to a plant, using a kind of deifying process, that any local statutory rights appended to that name would have the paramount force of something resembling imperial law. The famed and ennobled European naturalist Linnaeus occupied an essentially deified rank as the dispenser of pragmatic solutions to official botanists' legalistic problems, even in far-flung local areas. He made new imperial laws of plant taxonomy, effectively overriding local farmers' rights, and influencing later worldwide statutory plant breeders' rights laws.

Lawrence A. Kogan, Esq. in *Ducking the Truth About the Great 'Commenced Conversion' Conspiracy Against America's Farmers*, discusses the prior and carefully choreographed, congressional, administrative, and environmental extremist group campaign to reverse prior commenced conversions of wetlands to farmlands. However, there was not requirement for cost-sharing under the Food Security Act of 1985, which was subsequently grandfathered as an exclusion from regulation under Section 404 of the Clean Water Act. These acts by the Federal government arguably resulted in

regulatory "takings" of farmers' private property for public use (preservation/restoration of wetlands as "waters of the U.S.") without payment of just compensation, in contravention of the Fifth Amendment of the United States Constitution. Mr. Kogan provides a historical account of the federal government's actions and their impact for purposes of vindicating the many small and medium-sized farming communities nationwide whose generations-old farming families have been devastated by these ultra vires actions. It also is intended to inspire those current fair-minded administrative and congressional officials with a conscience to craft and effectuate the statutory and regulatory changes needed, both within the Clean Water Act and the evolving 2018 Farm Bill, to return these farmers to their prior status quo ante.

In *An Imperfect System: Piece Rate Employment and the Impact on California's Central Valley Agricultural Industry*, Christopher Matthes, Esq. analyzes the imperfect system that piece rate employment creates within the context of California's statutory laws for hourly wages. Particularly, Mr. Matthes explains how piece rate employment is used in the agricultural industry and the consequences that stem from it. Next, he examines the infamous trilogy of California cases that served as the precedent to create Assembly Bill 1513. Mr. Matthes discusses AB 1513, also known as California Labor Code 226.2, and the conundrum that employers and Courts have found themselves in due to the lack of clarity in regard to employee rights and the liabilities that emerged from the trilogy. His comment concludes with the advantages and disadvantages of using piece rate employment in California.

The staff writers' comments of Volume 27 also help paint the picture regarding the vast array of legal and agricultural issues. In *High Speed Leftovers: Takings and Unjust Compensation*, Mr. Iqbal Bains examines the impact of the California High-Speed Rail project and its effects on landowners in the Central Valley. In addition, Mr. Bains' comment discusses the well-established eminent domain laws in California, and their effects on both farm and business owners. *High-Speed Leftovers* sheds light on two opposing viewpoints via first hand interviews with landowners, along with their council, contrasted with directors and employees of the High-Speed Rail project. Mr. Bains takes readers on an in-depth exploration of takings law in California, the effect they have on adjoining parcels of land, and alternative ways of determining fair market value when it comes to farmland in the Central Valley. Mr. Bains concludes with recommendations giving balanced approaches on an expedited takings process. These recommendations aim to bridge the process between the state of California and landowners, which in turn will expedite the



takings process and help ease the tensions that come along with the taking of land.

In *Sanctuary: K-12 Districts in Agricultural Communities*, Cecilia Barnes focuses on the K-12 education in agricultural communities, considering Executive Order 13768, Enhancing Public Safety in the Interior of the United States' threat to defund any jurisdiction that is deemed a sanctuary jurisdiction for the purpose of protecting undocumented immigrants. Ms. Barnes discusses the details of the Executive Order and legal challenges it has faced. Next, she explains the K-12 school districts and their obligations regarding immigrant children. Also, she discusses how K-12 schools and the wider educational community were affected by the Executive Order. Ms. Barnes exposes the ambiguity and uncertainty surrounding the meaning of sanctuary jurisdiction. She separates two major understandings of what a "sanctuary" is and the importance of these understandings regarding K-12 school districts. In her recommendation, Ms. Barnes advocates that a farmer-supported program be utilized to allow long-term undocumented farmworkers in good standing the ability to work legally. She concludes that K-12 school districts have federal and state laws that require them to adopt pragmatic policies of non-compliance.

In *Rights of Pregnant Farmworkers: Do the Existing Regulations Protect Pregnant Farmworkers from Extreme or Hazardous Conditions?*, Ms. Gladdey Donsanouphit focuses on a public policy argument that concerns the rights to health and safety of pregnant migrant farmworkers. The Comment thoroughly examines the protections that are afforded to pregnant farmworkers, which include the Migrant and Seasonal Agricultural Worker Protection Act (MSPA), the Agricultural Worker Protection Standards (WPS), the California Occupational Safety and Health Act (Cal/OSHA), and the Pregnancy Discrimination Act. Ms. Donsanouphit addresses the history of the listed regulations that are currently in place and further discusses whether the various regulations fail to adequately protect pregnant farmworkers. These farmworkers are constantly being exposed to extreme hazardous conditions on farms, which is not only harmful to the worker, but to the fetus as well. Ms. Donsanouphit concludes her findings of a lack of adequate protection for pregnant farmworkers with proposed recommendations such as entertaining the idea of expanding the Children's Act for Responsible Employment (CARE Act) and/or amending the current regulations to provide further protection for pregnant farmworkers. Ms. Donsanouphit also explores alternatives to expanding the CARE Act and/or amending the various regulations such as working with organized groups, like the United Farm Workers, to set

regulations with employers and contractors through contractual agreements under the California Agriculture Labor Relations Act (CALRA).

In *The End of An Elusive Era: Why The Food Safety Modernization Act Appropriately Holds Irresponsible Corporate Officers Liable*, Mr. Joseph Good discusses the current and potential impact of the Food Safety Modernization Act (FSMA) and the legislation's significance. The FSMA is the first major piece of legislation passed in decades that strengthens protections, inter alia, for consumers against corporate dignitaries who do not act responsibly. Passed in 2010 and signed into law in 2011 under then President Barack Obama, the FSMA provides updated guidelines and protections for consumers in what appeared to be Congress' response to the Peanut Butter Salmonella Outbreak in 2008 that made at least 700 people ill and contributed to the deaths of at least nine people. Looking through the judicial history and the case law giving protections to consumers, Mr. Good explores the policy reasons behind The United States Food and Drug Administration and examines whether or not the FSMA is consistent with the public policy for health and food safety. Mr. Good examines all parties to be affected, the need for consumer protections, and public policy on health and food safety in general to give recommendations about the future of the Food Safety Modernization Act.

In *The Decriminalization of Recreational Cannabis in California: Commercial Cultivation Could Cost Growers an Arm, a Leg, and Their Freedom*, Ms. Syuzanna Martirosyan discusses the legal dilemma commercial marijuana growers and operators in California face despite the recent decriminalization of recreational cannabis in the state. The comment illustrates the rising interest in the lucrative industry in light of existing and anticipated local ordinances favorable to the commercialization of cannabis. The comment further explores the conflicting federal position on marijuana. Specifically, the federal drug statute—the Controlled Substances Act—identifies marijuana as a Schedule I drug, which is the most heavily regulated category of controlled substances. In addition to the inherent criminal penalties resulting from federal drug offenses, businesses that endeavor into the market are further exposed to civil forfeiture and federal conspiracy claims pursuant to recent case law. While the United States Constitution unequivocally grants precedence to the federal government in enforcing federal drug laws, the extent of enforcement produces more questions than answers due to shifting political views. Ms. Martirosyan concludes her comment by proposing to prospective cannabis

businesses strict adherence to state and local laws as well as setting forth legislative recommendations related to rescheduling cannabis.

*In Protecting the Right to Harm: Why State Right to Farm Laws Should Not Shield Factory Farms from Nuisance Liability*, Ms. Madeleine Skaller discusses the issues of whether right to farm laws were construed to provide an affirmative defense to concentrated animal feedings operations (CAFO) from nuisance-type lawsuits as a result of the loss of use and enjoyment of property due to offensive odors continuously emanating from agricultural operations. Ms. Skaller argues that CAFO's are detrimental to human and environmental health, property values, community cohesion, and that right to farm laws can give CAFOs such broad nuisance immunity as to constitute unconstitutional takings. Ms. Skaller concludes that the most efficient way to ensure CAFO's are not given absolute nuisance immunity is to interpret state right to farms laws to bar them from employing the affirmative defense or amend those statutes to make this ban explicit, thereby allowing aggrieved neighbors to take advantage of unique remedies, and encourage community-building tactics to avoid initial nuisance complaints.

*In Supplemental Nutrition Assistance Program (SNAP) Formerly Known as Food Stamps: The Unfair Target of Constitutionally Suspect Conditions*, Ms. Maria E. Valencia analyzes the public benefits program SNAP, and the impact it has on the agricultural economy and the Nation as a whole. The comment starts by providing a historical background and purpose of the program along with statistical data on how the program has a positive impact on the economy. SNAP benefits increase a household's food expenditures because benefits can only be used to purchase food. As a result, when SNAP benefits are used for food, households can then use their income to purchase other goods and services. Ms. Valencia then addresses the program's policy structure followed by general public concerns with SNAP. Specifically, she discusses the stigma that attaches to SNAP recipients, concerns with the types of foods recipients can purchase with benefits and fraud within the program. Ms. Valencia analyzes the facts surrounding fraud within SNAP and recommends that focus shift from recipient fraud to retailers based on data showing that majority of the fraud is committed by retail stores. SNAP fraud is committed when benefits are exchanged for cash or when someone lies, withholds or provides false information to qualify for program benefits when they otherwise would not be eligible. She further discusses one of the most successful tools the U.S. Department of Agriculture implemented to fight SNAP fraud, the Electronic Benefits Transfer System (EBT). One of the biggest threats to the SNAP program and the benefits it provides to the economy, is the political push to change the policy structure of SNAP into a block grant. If SNAP is changed

into a block grant, the individual states will have more control over the program and eligibility requirements. The federal government will lose the ability to quickly stimulate the economy during an economic downturn by increasing SNAP benefits. Ms. Valencia further discusses that if SNAP were a block grant, there is a possibility states would also impose constitutionally suspect conditions as part of SNAP requirements which would deter needy families that qualify for benefits from applying. Lawmakers have been successful in drug testing recipients in other government programs such as the Temporary Assistance for Needy Families (TANF) program. Ms. Valencia compares SNAP to TANF and explores two constitutionally suspect conditions that are allowed in TANF—drug testing and home searches. Ms. Valencia explains the unfairness of the requirements on citizens who seek public aid and that they border constitutional violations of their Fourth Amendment right. She then explains the Fourth Amendment and analyzes two appellate court decisions (*Lebron v. Secretary of Florida Department of Children & Families*, 772 F.3d 1352 (11th Cir. 2014) and *Sanchez v. City of San Diego*, 464 F.3d 916 (9th Cir. 2006)), in which the court considered the constitutionality of drug testing and home searches, respectively. Finally, Ms. Valencia recommends that instead of implementing requirements that are constitutionally suspect, lawmakers should shift their focus to retailers to reduce fraud within SNAP. Lawmakers can borrow anti-fraud measures used by another public benefit program, Medicare. Medicare informs the public of their right to bring a civil action against medical providers or program recipients engaged in fraud. The USDA has the ability to take advantage of the same policy under the *qui tam* provision within the False Claims Act and should seek to enforce it against retailers that engage in SNAP fraud.

The Central Valley is the beating heart of California's agricultural industry and boasts some of the world's leading agricultural producers. The San Joaquin Agricultural Law Review is extremely unique and fortunate to have such great resources in its backyard. The contributions of both the professional articles and staff member comments of Volume 27 thoroughly examine these current issues through diligent research and speaking with the leaders of agricultural industry. Together, these articles and comments provide the reader with insight into the world of agriculture and the complex legal issues facing the agricultural industry across the world.

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# SAN JOAQUIN AGRICULTURAL LAW REVIEW



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VOLUME 27

2017-2018

NUMBER 1

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## TABLE OF CONTENTS

### ARTICLES

KNOWLEDGE MANAGEMENT OF PLANT TAXONOMY: A LEGAL NARRATIVE ANALYSIS .....	<i>PAUL HODGKINSON, GARY LILIENTHAL, NEHALUDDIN AHMAD</i>	1
DUCKING THE TRUTH ABOUT THE GREAT 'COMMENCED CONVERSION' CONSPIRACY AGAINST AMERICA'S FARMERS PESTICIDE .....	<i>LAWRENCE A. KOGAN, ESQ.</i>	19
AN IMPERFECT SYSTEM: PIECE RATE EMPLOYMENT AND THE IMPACT ON CALIFORNIA'S CENTRAL VALLEY AGRICULTURAL INDUSTRY .....	<i>CHRISTOPHER MATTHES</i>	67

### COMMENTS

HIGH SPEED LEFTOVERS: TAKINGS AND UNJUST COMPENSATION .....	<i>IQBAL BAINS</i>	93
SANCTUARY: K-12 DISTRICTS IN AGRICULTURAL COMMUNITIES .....	<i>CECILIA BARNES</i>	115
RIGHTS OF PREGNANT FARMWORKERS: DO THE EXISTING REGULATIONS PROTECT PREGNANT FARMWORKERS FROM EXTREME OR HAZARDOUS CONDITIONS .....	<i>GLADDEY DONSA NOUPHIT</i>	141
THE END OF AN ELUSIVE ERA: WHY THE FOOD SAFETY MODERNIZATION ACT DOES NOT OVEREXTEND CRIMINAL LIABILITY TO CORPORATE DIGNITARIES .....	<i>JOSEPH GOOD</i>	161
THE DECRIMINALIZATION OF RECREATIONAL CANNABIS IN CALIFORNIA: COMMERCIAL CULTIVATION COULD COST GROWERS AN ARM, LEG, AND THEIR FREEDOM .....	<i>SYUZANNA MARTIROYSAN</i>	187
PROTECTING THE RIGHT TO HARM: WHY STATE RIGHT TO FARM LAWS SHOULD NOT SHIELD FACTORY FARMS FROM NUISANCE LIABILITY .....	<i>MADELEINE SKALLER</i>	209
SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM (SNAP) FORMERLY KNOWN AS FOOD STAMPS: THE UNFAIR TARGET OF CONSTITUTIONALLY SUSPECT CONDITIONS .....	<i>MARIA E. VALENCIA</i>	233